

# **NORTH DAKOTA ADMINISTRATIVE CODE**

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**Prepared by the Legislative Council staff  
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**TITLE 10**  
**ATTORNEY GENERAL**



## JANUARY 2018

### ARTICLE 10-16 MULTI-STATE LOTTERY

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#### CHAPTER 10-16-01

##### 10-16-01-01. Definitions.

As used in this article:

1. "Applicant's agent" means a general manager, sole proprietor, partner of a partnership, or, for a corporation, an officer or director who is primarily responsible for financial affairs or a shareholder who owns ten percent or more of the common stock, of a business that is applying for or renewing a license. A general manager is a person who regularly is onsite and primarily responsible and accountable for managing and controlling the day-to-day operation of the business.
2. "Cash voucher" means a voucher generated by the lottery's player-activated terminal that can be validated for cash at the retailer's lottery terminal.
3. "Draw" means the formal process of randomly selecting winning numbers, letters, or symbols that determine the number of winning plays for each prize level of a game.
4. "Deposit account" means the account to which funds are deposited and from which subscription purchases are made.
5. "Game" means an on-line game authorized by the lottery.

6. "Game group" means a group of lotteries that have joined together to offer a game on a multi-state basis according to the terms of the MUSL or the game group's rules or both.
7. "Grand prize" means the top prize that can be won in a game.
8. "Group play" means two or more individuals sharing a purchase made.
9. "Lottery" means the North Dakota lottery.
10. "Multi-state lottery" means a lottery game that spans the individual borders of a state, jurisdiction, province, district, commonwealth, territory, or country.
11. "MUSL" means the multi-state lottery association.
12. "North Dakota Lottery Players Club<sup>SM</sup>" means a program that players can join to earn exclusive benefits and rewards.
13. "Online gaming system" means a computer system designed to control, monitor, communicate with a terminal, and record play transactions and accounting data.
14. "Play" means the numbers, letters, or symbols that are on a ticket or properly and validly registered subscription play to be played by a player in a draw, excluding a lottery promotion.
15. "Play area" means the area of a play slip that contains one or more sets of numbered squares to be marked by a player for a game. Each set contains a certain number of numbers, letters, or symbols that correspond to the game.
16. "Play slip" means a ~~card used in marking a player's selections of numbers, letters, or symbols and containing one or more play areas for a game~~physical or electronic means by which a player communicates their intended play selection to the retailer as defined and approved by the lottery.
17. "Player-activated terminal" means a device authorized by the lottery and operated by a player to function in an online, interactive mode with the lottery's computer system to receive and process lottery transactions, including the purchase and issuance of a ticket, the validation of a ticket, and the issuance of a cash voucher.
18. "Points for Drawings<sup>TM</sup>" means a program where players can enter drawings by using points received from the submission of valid tickets.
19. "Points for Prizes<sup>®</sup>" means a rewards program where players can earn points by becoming registered members and submitting valid tickets.
20. "Quick pick" means a random selection of numbers, letters, or symbols by a computer system that are printed on a ticket or properly and validly registered subscription play and played by a player for a draw in a game.
21. "Retailer fraud" means an owner or employee of a licensed retailer who knowingly and intentionally:
  - a. Fails to properly validate a player's winning ticket;
  - b. Fails to pay the player the proper prize amount on a winning ticket;
  - c. Fails to provide the player the proper exchange ticket on a winning multi-draw ticket; or
  - d. Performs any other act that causes financial harm to a player in violation of the lottery law or rules.

22. "Set prize" means all prizes, except the grand prize for a game that are to be paid by a single cash payment and, except as provided by rule, will be equal to the prize amount established by the MUSL and/or the game group for the prize level of the game.
23. "Subscription" means a purchase of a draw game play for drawings up to one year.
24. "Terminal" means a device authorized by the lottery and operated by a retailer or the lottery to function in an on-line, interactive mode with the lottery's computer system to issue a ticket and enter, receive, and process a lottery transaction, including a purchase, validation of a ticket, and issuance of a report.
25. "Ticket holder" means a person who has signed a ticket or possesses an unsigned ticket.
26. "Top prize" means the first prize that can be won in a game.
27. "Validation" means the process of determining whether a ticket presented for a prize is a winning ticket.
28. "Winning account" means the account to which subscription winnings are deposited and from which player withdrawals are made.
29. "Winning numbers" means the numbers, letters, or symbols randomly selected in a draw to determine a winning play contained on a ticket or properly and validly registered subscription play or randomly selected in a lottery promotion to determine a winning prize stated on a ticket or coupon.

**History:** Effective February 1, 2004; amended effective April 1, 2006; July 1, 2008; July 6, 2014; January 31, 2016; February 1, 2016; [October 29, 2017](#).

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**CHAPTER 10-16-02**

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

1. The lottery shall credit a retailer's account for:
  - a. A sales commission of five percent of the retail price of a ticket sold or otherwise issued by the retailer;
  - b. A sales commission of five percent of the amount of a subscription sale that is transacted through the North Dakota Lottery Players Club<sup>SM</sup> when a player chooses a specific retailer. The retailer must be currently licensed when the subscription is purchased; and
  - c. A sales bonus for selling a ticket with a winning play, for a game as stated below. However, the retailer must be currently licensed when a draw is conducted that results in the winning play of a ticket. If the winning play for POWERBALL® has the power play option, or the winning play for MEGA MILLIONS® has the Megaplier® option, or the winning play for ~~HOT LOTTO® has the triple sizzler~~ LOTTO AMERICA<sup>SM</sup> has the All Star Bonus<sup>SM</sup> option, the retailer's account must also be credited for an additional bonus as stated below:

| <u>Prize</u>                 | <u>Bonus</u>           | <u>Additional Bonus</u>                           |
|------------------------------|------------------------|---|
| <b>POWERBALL®</b>            |                        |   |
| Grand prize                  | \$50,000               | Additional \$50,000 with power play               |
| \$1,000,000                  | \$5,000                | Additional \$5,000 with power play                |
| \$50,000                     | \$1,000                | Additional \$1,000 with power play                |
| <b>MEGA MILLIONS®</b>        |                        |   |
| Grand prize                  | \$50,000               | Additional \$50,000 with Megaplier®               |
| \$1,000,000                  | \$5,000                | Additional \$5,000 with Megaplier®                |
| <del>\$5,000</del> \$10,000  | <del>\$250</del> \$500 | Additional <del>\$250</del> \$500 with Megaplier® |
| <b>HOT LOTTO®</b>            |                        |   |
| <del>Grand prize</del>       | <del>\$5,000</del>     | <del>Additional \$5,000 with triple sizzler</del> |
| <del>\$30,000</del>          | <del>\$750</del>       | <del>Additional \$750 with triple sizzler</del>   |
| <del>\$3,000</del>           | <del>\$150</del>       | <del>Additional \$150 with triple sizzler</del>   |
| <b>LUCKY FOR LIFE™ LIFE®</b> |                        |   |
| \$7,000/week for life        | \$25,000               |   |
| \$25,000/year for life       | \$2,500                |   |
| \$5,000                      | \$250                  |   |
| <b>2BY2®</b>                 |                        |   |
| Grand prize                  |                        |   |
| \$22,000                     | \$500                  |   |
| \$44,000*                    | \$1,000                |   |

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

LOTTO AMERICA<sup>SM</sup>

Grand prize

\$5,000 Additional \$5,000 with All Star Bonus<sup>SM</sup>

\$20,000

\$500 Additional \$500 with All Star Bonus<sup>SM</sup>

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

**History:** Effective February 1, 2004; amended effective January 1, 2006; January 3, 2008; January 31, 2010; January 15, 2012; October 19, 2013; July 6, 2014; October 4, 2015; February 25, 2016; October 29, 2017.

**General Authority:** NDCC 53-12.1-13

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

## CHAPTER 10-16-03

### 10-16-03-01. Games authorized.

The lottery may conduct online games of POWERBALL®, MEGA MILLIONS®, ~~HOT-LOTTO®~~ LOTTO AMERICA<sup>SM</sup>, 2BY2®, and LUCKY FOR LIFE<sup>TM</sup> LIFE®.

**History:** Effective February 1, 2004; amended effective November 8, 2005; July 1, 2008; January 31, 2010; January 31, 2016; February 25, 2016; October 29, 2017.

**General Authority:** NDCC 53-12.1-13

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

### 10-16-03-08. Claim of a prize.

A prize for a validated winning ticket must be claimed as follows:

1. No prize may be awarded nor is the lottery liable for a ticket not submitted for validation or for an announcement or dissemination by the lottery or any other person of an incorrect number, letter, or symbol drawn.
2. A ticket bought or used to claim a prize in violation of federal or state law, or bought in violation of the lottery law or rules, is void and may not be used to claim a prize.
3. A ticket for a prize must be actually received or, if mailed, postmarked, within one hundred eighty days after the date of a draw for the game for which the ticket was issued. If the final day of the claim period is a Saturday, Sunday, or state holiday, the claim period is extended to the next business day. An unclaimed prize is forfeited and retained by the lottery. However, if the grand prize for the game of POWERBALL®, MEGA MILLIONS®, or ~~HOT-LOTTO®~~ LOTTO AMERICA<sup>SM</sup> is unclaimed, then MUSL shall administer the grand prize money. If the top prize or second prize for LUCKY FOR LIFE<sup>TM</sup> LIFE® is unclaimed, the lottery's liability for that prize expires and no settlement of funds will be scheduled. If a lower tier prize for LUCKY FOR LIFE<sup>TM</sup> LIFE® is unclaimed, the lottery's liability for that prize expires and is allocated back to the lottery in relation to the sale's percent for the specific drawing.
4. A person who owns or redeems a winning ticket:
  - a. Agrees to be bound by the lottery law, rules, procedure, policy, validation requirements, dispute resolution, and game group game rules related to the game for which the ticket was issued; and
  - b. Agrees that the state, lottery, the MUSL, game group, and their officers, employees, agents, representatives, and contractor are discharged from any liability upon payment of a prize on a ticket.
5. The owner of a winning ticket may win only one prize per play for the winning numbers, letters, or symbols drawn and is entitled only to the prize won by those numbers in the highest matching prize category.
6. A retailer may redeem a ticket only at the business address listed on the license. The retailer may pay a prize in cash or by business check, certified or cashier's check, money order, or combination of methods.
7. A person may redeem a winning ticket for a prize only during the normal business hours of a retailer provided that the lottery's online computer system is operating and a ticket may be validated. If the retailer is normally open for business before or after the hours when the lottery's on-line computer system operates, the retailer shall post the hours at the site when a person may redeem a ticket.

8. To claim a prize for an apparent winning ticket of less than six hundred dollars, a player may:
  - a. Present the ticket to a retailer, regardless of which retailer sold the ticket; or
  - b. Complete the back side of the ticket by entering the person's full name and address and signing the ticket, and present or mail the ticket to the lottery's office.
9. If a ticket has a prize value of less than six hundred dollars, is owned by one person, and is presented to a retailer, the retailer may redeem the ticket and pay the prize to the person who physically possesses an unsigned ticket or to the person whose signature is shown on the ticket. If a person desires to redeem a winning ticket that is signed, the retailer shall request evidential proof of identity from the player before the retailer may validate or pay the prize. If the player does not provide proof of identity, the retailer may not validate the ticket or pay the player a prize and shall return the ticket to the player. For an unsigned ticket or a signed ticket in which the ticket holder is the identified owner, the retailer shall validate the ticket and, for a winning ticket, pay the prize to the player. If the retailer is unable to validate a ticket, the retailer shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery.
10. If an apparent winning ticket has a total prize value of all plays of six hundred dollars or more and one person signed or claims ownership of the ticket, a retailer may not redeem the ticket and shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery. The ticket holder shall complete and sign the form and back side of the ticket and present or mail the form and ticket to the lottery. For a validated winning ticket, the lottery shall present or mail a check to the player for the amount of the prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. The lottery shall pay the prize to the person whose name is on the ticket, notwithstanding the name on the claim form. For a nonwinning ticket, the lottery shall deny the claim, notify the claimant, and return the ticket.
11. If more than one person signed or claims ownership of an apparent winning ticket, the retailer shall provide the claimant with a prize claim form and instruct the claimant how to file a claim with the lottery, as follows:
  - a. Each person who claims part ownership of the ticket must complete and sign the prize claim form and designate the person's percentage of ownership and, if subdivision d applies, the one authorized payee;
  - b. At least one of the people who claim ownership must sign the ticket and that signature must be on the prize claim form;
  - c. The prize claim form and ticket must be presented or mailed to the lottery;
  - d. For a validated ticket, if the amount of the prize allocated to each claimant is six hundred dollars or more, the lottery shall present or mail a separate prize check to each claimant. The lottery shall present or mail a check to each claimant for the amount of each player's prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. If the prize allocated to each claimant is less than six hundred dollars, at the claimant's request, the lottery shall issue a single prize check to the person designated and authorized on the prize claim form to receive payment of the prize on behalf of all the claimants or present or mail a check to each claimant for the amount of each player's prize; and

- e. Notwithstanding subdivision d, if the claimants desire to designate one person in whose name the entire claim may be made and list the persons to whom the winnings are taxable, the claimants may file, along with a claim prize form, internal revenue service form 5754 (statement by person(s) receiving gambling winnings) with the lottery.
- 12. The lottery shall pay a prize to a player within a reasonable time after the player's winning ticket is validated by the lottery.
- 13. Except as provided by rule, if two or more plays win the grand prize, the prize money must be divided equally among the players whose tickets won. Except as provided by rule, for a set prize, each player wins the set amount of a prize regardless of whether two or more players have winning tickets for the prize.
- 14. The lottery is not liable for a ticket not delivered to the correct address of the lottery or a delay in delivery of a ticket or damage to a ticket while being delivered to the lottery.
- 15. A player who redeems a winning ticket is solely responsible for any federal or state income tax liability related to the prize.
- 16. A person's right to a prize is assignable and payment of a prize may be made to a person pursuant to an appropriate judicial order.
- 17. A prize may not be payable to a trust until after the lottery conducts a debt setoff on the beneficiaries of the trust.
- 18. If a player redeems an original multi-draw ticket before the ticket's last draw and a retailer returns the original ticket, rather than an issued exchange ticket, to the player, the lottery may not pay another prize on the original ticket until after the exchange ticket expires and has not been redeemed.
- 19. A winning ticket with a total prize value of all plays of six hundred dollars or more may not be paid to a person who is identified as being in the United States illegally.

**History:** Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008; January 31, 2010; January 1, 2011; October 19, 2013; January 31, 2016; February 25, 2016; [October 29, 2017](#).

**General Authority:** NDCC 53-12.1-13

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

#### **10-16-03-08.1. Subscription.**

- 1. A player shall purchase a subscription only from, and the financial transaction for that subscription must be only with, the lottery through the North Dakota Lottery Players Club™ website and payment processor. A player may use automated clearinghouse, debit card, or authorized credit card to pay for a subscription.
- 2. A person must be at least eighteen years of age.
- 3. A person must provide the following information when registering as a player, or a member of a group, for the lottery subscription service:
  - a. Name;
  - b. Address;
  - c. Date of birth;
  - d. Telephone number;

- e. Valid email address; and
  - f. Last four digits of their social security number.
4. A person, whether individually or as a member of a group, must have a North Dakota mailing address and must pass all verification processes used by the lottery during the player's registration process.
  5. A player may purchase one or more subscriptions for one or more games. Each subscription is limited to one play for a draw for one game. A player may purchase a subscription for up to fifty-two weeks. A subscription is not refundable or cancelable by a player unless the game group makes a matrix change to the game at which time, the subscription would be canceled by the lottery and funds used to purchase the subscription would be refunded to the player's deposit account through the lottery's subscription service, based on the number of draws actually held under the former game matrix in relation to the total number of draws purchased.
  6. To be valid, a subscription play must be properly and validly registered with the lottery on its subscriber data base at its central computer site which meets the requirements established by the product group and MUSL security and integrity committee. All data on a subscriber is confidential.
  7. The owner of a subscription play is the person whose name is validly and properly registered with the lottery. However, the lottery may split a prize among two or more persons who are registered members of a group play.
  8. After the lottery properly and validly registers a subscription play, the lottery shall send a confirmation email to the subscriber. The confirmation email is the player's evidence of an actual play in a draw and there is no actual ticket. The confirmation email must include:
    - a. Name of game. For the game of POWERBALL®, indication of whether the play has the power play option. For the game of MEGA MILLIONS®, indication of whether the play has the Megaplier® option. For the game of ~~HOT LOTTO®~~LOTTO AMERICA<sup>SM</sup>, indication whether the play has the ~~triple sizzler~~All Star Bonus<sup>SM</sup> option;
    - b. Number of and starting and ending dates of the draws;
    - c. Numbers, letters, or symbols of the play;
    - d. The subscriber is responsible for ensuring that all subscriber information and game play numbers, letters, or symbols are correct; and
    - e. Explanation of how a prize will be awarded.
  9. Except as provided by subsection 10, a subscription play is valid for only the date range of draws specified in the confirmation email. The effective date of a new subscription play will be valid for the present draw in the game, if it is purchased by 8:30 p.m. central time for LUCKY FOR ~~LIFE<sup>TM</sup>~~LIFE® or by 8:58 p.m. central time for POWERBALL®, ~~HOT LOTTO®~~LOTTO AMERICA<sup>SM</sup>, MEGA MILLIONS®, and 2BY2®.
  10. If the value of a prize on a winning POWERBALL®, ~~HOT LOTTO®~~LOTTO AMERICA<sup>SM</sup>, MEGA MILLIONS®, LUCKY FOR ~~LIFE<sup>TM</sup>~~LIFE®, or 2BY2® subscription play for a draw is:
    - a. Less than six hundred dollars, the lottery shall automatically deposit the funds into the player's winning account.
    - b. Equal to or more than six hundred dollars, the lottery shall contact the player by email and phone to arrange payment of the prize, less withholding of income tax required by

federal or state law and any debt setoff according to North Dakota Century Code section 53-12.1-12.

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

**History:** Effective November 8, 2005; amended effective January 3, 2008; November 1, 2008; July 1, 2010; October 19, 2013; July 6, 2014; January 31, 2016; February 1, 2016; [October 29, 2017](#).

**General Authority:** NDCC 53-12.1-13

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

**CHAPTER 10-16-05  
HOT LOTTO® GAME**

[Repealed effective October 29, 2017]

**Section**

- ~~10-16-05-01 — Game Description~~
- ~~10-16-05-02 — Expected Prize Pool Percentages and Odds~~
- ~~10-16-05-03 — Probability of Winning [Repealed]~~
- ~~10-16-05-04 — Prize Pool and Payment~~
- ~~10-16-05-05 — Prize Payment [Repealed]~~
- ~~10-16-05-06 — Triple Sizzler Option~~

## CHAPTER 10-16-08

### 10-16-08-01. Game description.

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

**History:** Effective January 31, 2010; amended effective October 19, 2013; October 28, 2017.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

### 10-16-08-02. Expected prize pool percentages and odds.

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

| <u>Matches Per Play</u> | <u>Prize</u>                       | <u>Prize Pool Percentage<br/>Allocated to Prize</u> | <u>Odds**</u>                                    |
|-------------------------|------------------------------------|---|--|
| 5 white + 1 gold        | Grand prize*                       | <del>65.15%</del> <u>75.30%</u>                     | <del>1:258,890,850</del><br><u>1:302,575,350</u> |
| 5 white + 0 gold        | \$1,000,000                        | <del>10.82%</del> <u>7.93%</u>                      | <del>1:18,492,204</del><br><u>1:12,607,306</u>   |
| 4 white + 1 gold        | <del>\$5,000</del> <u>\$10,000</u> | <del>1.35%</del> <u>1.07%</u>                       | <del>1:739,688</del> <u>1:931,001</u>            |
| 4 white + 0 gold        | \$500                              | <del>1.89%</del> <u>1.29%</u>                       | <del>1:52,835</del> <u>1:38,792</u>              |
| 3 white + 1 gold        | <del>\$50</del> <u>\$200</u>       | <del>.93%</del> <u>1.37%</u>                        | <del>1:10,720</del> <u>1:14,547</u>              |
| 3 white + 0 gold        | <del>\$5</del> <u>\$10</u>         | <del>1.31%</del> <u>1.65%</u>                       | <del>1:766</del> <u>1:606</u>                    |
| 2 white + 1 gold        | <del>\$5</del> <u>\$10</u>         | <del>2.11%</del> <u>1.44%</u>                       | <del>1:473</del> <u>1:693</u>                    |
| 1 white + 1 gold        | <del>\$2</del> <u>\$4</u>          | <del>7.08%</del> <u>4.48%</u>                       | <del>1:56</del> <u>1:89</u>                      |
| 0 white + 1 gold        | <del>\$1</del> <u>\$2</u>          | <del>9.35%</del> <u>5.46%</u>                       | <del>1:21</del> <u>1:37</u>                      |

Overall odds of winning a prize on a ~~one~~two dollar play are ~~1:14.71~~1:24.

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

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

**History:** Effective January 31, 2010; amended effective October 19, 2013; October 28, 2017.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**10-16-08-04. Megaplier® option.**

1. The Megaplier® option is a limited extension of the MEGA MILLIONS® game and is conducted according to the game group's game rules. The option offers the owner of a qualifying play a chance to multiply or increase the amount of a set prize.
2. A qualifying play is a single MEGA MILLIONS® play for which the player pays an extra one dollar for the Megaplier® option. Megaplier® does not apply to the grand prize.
3. A qualifying play which wins one of the set prizes will be multiplied by the number selected, two through five, in a separate random Megaplier® drawing.
4. A single number from a series of fifteen numbers is selected according to the following frequency: ~~two~~five number 2s, ~~four~~six number 3s, three number 4s, and ~~six~~one number ~~5s~~5. The game group may change one or more of the multiplier numbers for a special promotion.
5. A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying Megaplier® will pay the amounts shown below when matched with the Megaplier® number drawn:

MEGA MILLIONS® Pays Instead

| Matches Per Play | Set Prize Amount                   | Prize Amounts With Megaplier® Purchase and Multiplier |                                     |                                     |                                     |
|------------------|------------------------------------|---|-------------------------------------|-------------------------------------|-------------------------------------|
|                  |                                    | 5X  | 4X                                  | 3X                                  | 2X                                  |
| 5 white + 0 gold | \$1,000,000                        | \$5,000,000   | \$4,000,000                         | \$3,000,000                         | \$2,000,000                         |
| 4 white + 1 gold | <del>\$5,000</del> <u>\$10,000</u> | <del>\$25,000</del> <u>\$50,000</u>                   | <del>\$20,000</del> <u>\$40,000</u> | <del>\$15,000</del> <u>\$30,000</u> | <del>\$10,000</del> <u>\$20,000</u> |
| 4 white + 0 gold | \$500                              | \$2,500   | \$2,000                             | \$1,500                             | \$1,000                             |
| 3 white + 1 gold | <del>\$50</del> <u>\$200</u>       | <del>\$250</del> <u>\$1,000</u>                       | <del>\$200</del> <u>\$800</u>       | <del>\$150</del> <u>\$600</u>       | <del>\$100</del> <u>\$400</u>       |
| 3 white + 0 gold | <del>\$5</del> <u>\$10</u>         | <del>\$25</del> <u>\$50</u>                           | <del>\$20</del> <u>\$40</u>         | <del>\$15</del> <u>\$30</u>         | <del>\$10</del> <u>\$20</u>         |
| 2 white + 1 gold | <del>\$5</del> <u>\$10</u>         | <del>\$25</del> <u>\$50</u>                           | <del>\$20</del> <u>\$40</u>         | <del>\$15</del> <u>\$30</u>         | <del>\$10</del> <u>\$20</u>         |
| 1 white + 1 gold | <del>\$2</del> <u>\$4</u>          | <del>\$10</del> <u>\$20</u>                           | <del>\$8</del> <u>\$16</u>          | <del>\$6</del> <u>\$12</u>          | <del>\$4</del> <u>\$8</u>           |
| 0 white + 1 gold | <del>\$1</del> <u>\$2</u>          | <del>\$5</del> <u>\$10</u>                            | <del>\$4</del> <u>\$8</u>           | <del>\$3</del> <u>\$6</u>           | <del>\$2</del> <u>\$4</u>           |

Multiplier numbers do not apply to the grand prize.

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

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

| Megaplier®             | Probability of Prize Increase |
|------------------------|-------------------------------|
| 5X - Prize won times 5 | <del>6</del> 1 in 15          |
| 4X - Prize won times 4 | 3 in 15                       |
| 3X - Prize won times 3 | <del>4</del> 6 in 15          |

**History:** Effective January 31, 2010; amended effective September 14, 2010; December 1, 2010; October 19, 2013; [October 28, 2017](#).

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**CHAPTER 10-16-11**  
**LUCKY FOR LIFE™LIFE® GAME**

Section

|             |                        |
|-------------|------------------------|
| 10-16-11-01 | Game Description       |
| 10-16-11-02 | Prizes and Odds        |
| 10-16-11-03 | Prize Pool and Payment |
| 10-16-11-04 | Prize Liability Limits |

**10-16-11-01. Game description.**

To play LUCKY FOR LIFE™LIFE®, a player selects five different numbers, between one and forty-eight, and one additional number (Lucky Ball) between one and eighteen. The additional number may be the same as one of the first five numbers selected. The price of a play is two dollars. Draws are held every Monday and Thursday.

**History:** Effective January 31, 2016; [amended effective October 29, 2017.](#)

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**CHAPTER 10-16-12**  
**LOTTO AMERICA<sup>SM</sup>**

Section

|                    |   |
|--------------------|---|
| <u>10-16-12-01</u> | <u>Game Description</u>                         |
| <u>10-16-12-02</u> | <u>Expected Prize Pool Percentages and Odds</u> |
| <u>10-16-12-03</u> | <u>Prize Pool and Payment</u>                   |
| <u>10-16-12-04</u> | <u>All Star Bonus<sup>SM</sup> Option</u>       |

**10-16-12-01. Game description.**

To play LOTTO AMERICA<sup>SM</sup>, a player selects five different red/white numbers, between one and fifty-two, and one additional blue/white number (star ball) between one and ten. The additional number may be the same as one of the first five numbers selected. The price of a play is one dollar. A grand prize is paid, at the election of a winning player or by a default election made according to these rules, either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for the prize pool on a pari-mutuel basis. A set prize (cash prize of twenty thousand dollars or less) is paid on a single-payment cash basis. Draws are held every Wednesday and Saturday.

**History:** Effective November 12, 2017.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**10-16-12-02. Expected prize pool percentages and odds.**

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

| <u>Matches Per Play</u>           | <u>Prize</u>       | <u>Prize Percentage Allocated to Prize</u> | <u>Odds*</u>        |
|-----------------------------------|--------------------|--|---------------------|
| <u>5 red/white + 1 blue/white</u> | <u>Grand prize</u> | <u>23.10%</u>                              | <u>1:25,989,600</u> |
| <u>5 red/white + 0 blue/white</u> | <u>\$20,000</u>    | <u>0.69%</u>                               | <u>1:2,887,733</u>  |
| <u>4 red/white + 1 blue/white</u> | <u>\$1,000</u>     | <u>0.90%</u>                               | <u>1:110,594</u>    |
| <u>4 red/white + 0 blue/white</u> | <u>\$100</u>       | <u>0.81%</u>                               | <u>1:12,288</u>     |
| <u>3 red/white + 1 blue/white</u> | <u>\$20</u>        | <u>0.83%</u>                               | <u>1:2,404</u>      |
| <u>3 red/white + 0 blue/white</u> | <u>\$5</u>         | <u>1.87%</u>                               | <u>1:267</u>        |
| <u>2 red/white + 1 blue/white</u> | <u>\$5</u>         | <u>3.12%</u>                               | <u>1:160</u>        |
| <u>1 red/white + 1 blue/white</u> | <u>\$2</u>         | <u>6.86%</u>                               | <u>1:29</u>         |
| <u>0 red/white + 1 blue/white</u> | <u>\$2</u>         | <u>11.80%</u>                              | <u>1:17</u>         |

Overall odds of winning a prize on a one dollar play are 1:9.63.

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

**History:** Effective November 12, 2017.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-12

### **10-16-12-03. Prize pool and payment.**

1. The prize pool for all prize categories must consist of fifty percent of each draw period's sales after the prize pool accounts and prize reserve accounts are funded.
2. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the game group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw.
3. If there are multiple grand prize winning plays during a draw, each player selecting the annuitized option prize, then a winning play's share of the guaranteed annuitized grand prize must be determined by dividing the guaranteed annuitized grand prize by the number of winning plays.
4. A grand prize must be paid, at the election of the winning player made within sixty days after the player becomes entitled to the prize, with either a per winning player annuity or cash payment. If the payment election is not made by the player within sixty days after the player becomes entitled to the prize, then the prize must be paid as an annuity prize. An election for an annuity payment made by a player may be changed to a cash payment at the election of the player until the expiration of sixty days after the player becomes entitled to the prize. Otherwise, the payment election is final. Shares of the grand prize must be determined by dividing the cash available in the grand prize pool equally among all winning plays of the grand prize. A player who elects a cash payment must be paid the share in a single cash payment. A player who elects an annuitized prize must be paid annually in thirty graduated payments with the initial payment being made in cash, followed by twenty-nine payments, increasing each year, by a rate determined by the game group funded by the annuity. Annual payments after the initial payment must be made by the lottery on the anniversary date or if this date falls on a nonbusiness day, then the first business day following the anniversary date of the draw of the grand prize winning numbers.
5. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.
6. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

**History:** Effective November 12, 2017.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

### **10-16-12-04. All Star Bonus<sup>SM</sup> option.**

1. The All Star Bonus<sup>SM</sup> option is a limited extension of the LOTTO AMERICA<sup>SM</sup> game and is conducted according to the game group's game rules. The option offers the owner of a qualifying play a chance to multiply or increase the amount of a set prize.
2. A qualifying play is a single LOTTO AMERICA<sup>SM</sup> play for which the player pays an extra one dollar for the All Star Bonus<sup>SM</sup> option. All Star Bonus<sup>SM</sup> does not apply to the grand prize.
3. A qualifying play that wins one of the eight lowest set prizes will be multiplied by the number selected, two through five, in a separate random All Star Bonus<sup>SM</sup> drawing.
4. A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying All Star Bonus<sup>SM</sup> will pay the amounts shown below when matched with the All Star Bonus<sup>SM</sup> number drawn:

LOTTO AMERICA<sup>SM</sup> Pays Instead

| <u>Matches Per Play</u>           | <u>Set</u>          | <u>Prize Amounts With All Star Bonus<sup>SM</sup> Purchase</u> |                 |                 |                 |
|-----------------------------------|---------------------|--|-----------------|-----------------|-----------------|
|                                   | <u>Prize Amount</u> | <u>5X</u>  | <u>4X</u>       | <u>3X</u>       | <u>2X</u>       |
| <u>5 red/white + 0 blue/white</u> | <u>\$20,000</u>     | <u>\$100,000</u>   | <u>\$80,000</u> | <u>\$60,000</u> | <u>\$40,000</u> |
| <u>4 red/white + 1 blue/white</u> | <u>\$1,000</u>      | <u>\$5,000</u>   | <u>\$4,000</u>  | <u>\$3,000</u>  | <u>\$2,000</u>  |
| <u>4 red/white + 0 blue/white</u> | <u>\$100</u>        | <u>\$500</u>   | <u>\$400</u>    | <u>\$300</u>    | <u>\$200</u>    |
| <u>3 red/white + 1 blue/white</u> | <u>\$20</u>         | <u>\$100</u>   | <u>\$80</u>     | <u>\$60</u>     | <u>\$40</u>     |
| <u>3 red/white + 0 blue/white</u> | <u>\$5</u>          | <u>\$25</u>  | <u>\$20</u>     | <u>\$15</u>     | <u>\$10</u>     |
| <u>2 red/white + 1 blue/white</u> | <u>\$5</u>          | <u>\$25</u>  | <u>\$20</u>     | <u>\$15</u>     | <u>\$10</u>     |
| <u>1 red/white + 1 blue/white</u> | <u>\$2</u>          | <u>\$10</u>  | <u>\$8</u>      | <u>\$6</u>      | <u>\$4</u>      |
| <u>0 red/white + 1 blue/white</u> | <u>\$2</u>          | <u>\$10</u>  | <u>\$8</u>      | <u>\$6</u>      | <u>\$4</u>      |

Rarely, under the game group's limitation of liability rules, a set prize amount may be less than the amount shown. In that case, the eight lowest All Star Bonus<sup>SM</sup> prizes will be changed to an amount announced after the draw. For example, if the match 4+1 set prize amount of one thousand dollars becomes five hundred dollars under the game group's rules, an All Star Bonus<sup>SM</sup> player winning that prize amount when a "5" has been drawn would win two thousand five hundred dollars (\$500 x 5).

5. The following table reflects the probability of the All Star Bonus<sup>SM</sup> numbers being drawn:

| <u>All Star Bonus<sup>SM</sup></u> | <u>Probability of Prize Increase</u> |
|------------------------------------|--------------------------------------|
| <u>5X - Prize won times 5</u>      | <u>3 in 32</u>                       |
| <u>4X - Prize won times 4</u>      | <u>4 in 32</u>                       |
| <u>3X - Prize won times 3</u>      | <u>10 in 32</u>                      |
| <u>2X - Prize won times 2</u>      | <u>15 in 32</u>                      |

All Star Bonus<sup>SM</sup> does not apply to the grand prize. The game group may elect to run limited promotions that may modify the multiplier features.

**History:** Effective November 12, 2017.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**TITLE 24.1**  
**STATE ELECTRICAL BOARD**



## JANUARY 2018

### CHAPTER 24.1-03-01

#### 24.1-03-01-05. Apprentice electrician.

There are two categories of apprentice electrician training:

1. Apprentice electricians who have successfully completed ~~the United States department of labor training program recognized by the office of apprenticeship~~ least two years of electrical school approved by the board.
2. Apprentice electricians who have successfully completed at ~~least two years of electrical school approved by the board~~ or five hundred seventy-six hours of training classes recognized by the United States department of labor office of apprenticeship. An unlicensed electrician who has prior experience outside of the state of North Dakota may take a placement examination equal to the verification of practical experience obtained in order to apply credit toward the verification of hours. If the electrician fails the placement examination, the electrician is ineligible to retake the examination. An appeal would need to be submitted in writing to the board.

An apprentice electrician who has not successfully completed training as stated in subsections 1 or 2 is required to be registered with the board, but is not eligible to take the journeyman or class B license examination. If the person receives a license from another state based on the verification that the majority of practical experience was obtained in the state of North Dakota the person will not be eligible for examination for licensure or a reciprocal license.

**History:** Effective April 1, 2017; amended effective January 1, 2018.

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

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

## CHAPTER 24.1-05-01

### 24.1-05-01-01. Electrical certificates.

1. All electrical installations, including new jobs and additional work on old installations, made in this state, must have an electrical wiring certificate or e-cert (electronic version of a wiring certificate) properly executed and submitted by the master or class B electrician supervising the installation of electrical wiring. The board shall prescribe an e-cert form for a master or class B electrician licensed on or after the effective date of these rules.
2. Before work commences on any electrical installation when a new entrance is installed, an existing entrance is altered or repaired, a building is moved, when a mobile home feeder is installed, or when the cost of the repair work or additional installation exceeds threefive hundred dollars, the master or class B electrician supervising such installation shall submit an electrical wiring certificate and distribute as follows:
  - a. A startup copy of the certificate must be submitted to the board and a copy to the power company before work is commenced and before an electrical installation may be energized.
  - b. Within fifteen days of completion, use, or occupancy, whichever is first, the final paperwork must be submitted to the office of the board, along with the proper fee. The wiring certificate must be completed with the location and a proper description of work completed.
  - c. A copy must be retained by the master or class B electrician.
  - d. A copy must be left in or on the panel or given to the owner.
3. Certificates with job cost of twenty thousand dollars or less are valid twelve months from the original filing date. A new wiring certificate must be filed on all unfinished work.
4. E-certs are available upon request and submission of an application from any master or class B electrician holding a proper current license from the board. Electrical (paper) wiring certificates are available until August 31, 2020, or the effective date of the 2020 Laws, Rules & Wiring Standards. The master or class B electrician is be responsible for all certificates issued to and by that person. A charge of twenty-five dollars to cover board costs must be assessed on each lost electrical paper wiring certificate issued to any master or class B electrician, unless returned to the board.
5. Whenever an electrical installation made by or under the supervision of a master or class B electrician is commenced or in use without submitting an electrical wiring certificate, as directed in subsection 2, the certificate may be considered late and the normal inspection fee, as required under this section, is increased in the amount of fifty dollars. In addition when time and travel are expended by employees of the board to obtain a late certificate, an investigative fee may be charged to cover the costs incurred. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.
6. Property owners who are self-wiring or doing their own electrical work shall comply with the following before any electrical work commences:
  - a. Notify the board office of intent to self-wire.
  - b. Must own and occupy the residential property or farmstead where the electrical work will be done.

- c. Review plans or drawings depicting wiring to be done with the local electrical inspector.
- d. Inspection fees will be calculated as stated in this section with a minimum of fifty dollars.
- e. Certification and inspection are required as stated in this section.

**History:** Effective April 1, 2017; amended effective January 1, 2018.

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

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

**24.1-05-01-02. Fees.**

1. The electrical inspection fee shall be based on the total amount of the electrical contract or total cost to the owner, including extras. The following items need not be included in the cost:
  - a. Appliances, including dishwashers, heat pumps, air-conditioners, disposals, and similar equipment.
  - b. Heating, ventilating, and air-conditioning (HVAC) units.
  - c. Electric motors, PLC, generators; and
  - d. Industrial machines.
2. The electrical contractor is responsible to collect the proper inspection fee on each installation. When the owner furnishes the material and the electrical contractor furnishes the labor, the owner shall provide the electrical contractor with the total amount expended for electrical materials used in connection with the installation, and the electrical contractor shall then calculate and collect the necessary inspection fee from the owner. Whenever electrical materials are donated or removed from an existing installation and placed at another location or labor is donated to an installation, the electrical contractor shall estimate the cost of these materials and labor and include the amount in the job cost for the purpose of calculating the proper inspection fee.
3. It shall be grounds for discipline of a master or class B electrician's license if it is discovered that they charged or collected from the customer an electrical inspection fee greater than the fee actually in effect.
4. Inspection fees shall be as follows:

| Job Cost:   | Inspection Fee:   |
|---|---|
| Up to <del>\$300.00</del> <u>\$500.00</u>         | \$25.00 (minimum fee)   |
| <del>\$300.00</del> <u>\$500.00</u> to \$3,000.00 | \$25.00 for the first <del>\$300.00</del> <u>\$500.00</u> plus 2% on balance up to \$3,000.00 |
| \$3,000.00 to \$10,000.00                         | \$79.00 for the first \$3,000.00 plus 1.5% on balance up to \$10,000.00                       |
| \$10,000.00 to \$15,000.00                        | \$184.00 for the first \$10,000.00 plus 1% on balance up to \$15,000.00                       |
| \$15,000.00 to \$100,000.00                       | \$234.00 for the first \$15,000.00 plus 1/2 of 1% on balance up to \$100,000.00               |
| Over \$100,000.00                                 | \$659.00 for the first \$100,000.00 plus 1/4 of 1% on balance                                 |

5. Companies having supervision of elevators, dumbwaiters, electrically driven irrigation machine or out-of-state structures or skids installed in North Dakota shall submit reports to the board. The report shall be completed, signed by owner or manager, and forwarded to the board with the inspection fee. The inspection fee shall be as follows:
  - a. Elevators and dumbwaiters having horsepower rating up to 5 horsepower - \$25.00
  - b. Elevators and dumbwaiters having horsepower rating 5 horsepower through 15 horsepower - \$40.00
  - c. Elevators and dumbwaiters having horsepower rating over 15 horsepower - \$60.00
  - d. Electrically driven irrigation machines - \$50.00
  - e. Out-of-state structures or skids - Based on inspection fee schedule.
6. Whenever a correction order is written and corrections are not completed within the allotted time, there shall be an administration charge of fifty dollars, which shall be paid to the board by the master or class B electrician.
7. All reinspections shall be paid for by the electrical contractors at a cost of fifty dollars per hour with a minimum charge of one hundred dollars.
8. For inspections not covered in this section or special services, the fee shall be fifty dollars per hour, including travel time, plus mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile traveled.

**History:** Effective April 1, 2017; [amended effective January 1, 2018](#).

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

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

**TITLE 30**  
**GAME AND FISH DEPARTMENT**



## JANUARY 2018

### CHAPTER 30-03-01.1 BAIT VENDORS

#### Section

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

#### **30-03-01.1-02. Bait definitions.**

Refer to the current fishing proclamation for legal live aquatic bait ~~and legal live baitfish~~ definitions.  
Rainbow smelt are only considered legal live aquatic bait when trapped or seined within the state.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2018.

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

#### **30-03-01.1-03. Legal live aquatic bait ~~and legal live baitfish~~ species permitted.**

A licensee may possess only legal live aquatic bait ~~or legal live baitfish~~. Other species caught while seining or trapping must be returned to the water immediately.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2018.

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

#### **30-03-01.1-04. License limitations.**

Retail or wholesale bait vendor licenses are issued for a calendar year to one person only. An individual may be issued only one wholesale license per calendar year. The holder of a retail bait vendor license may sell legal live aquatic bait ~~and legal live baitfish~~ at retail only, at one specified selling location per license. A wholesale bait vendor may only sell legal live aquatic bait ~~and legal live baitfish~~ to licensed bait vendors or for permitted private fish pond stocking. A person licensed as a wholesaler in any state may not act as an assistant under a North Dakota wholesaler license. Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee. Violations of this chapter may result in license denial, suspension, or revocation. An individual who has been convicted of a state or federal criminal game or fish violation in the last three years or whose license to hunt or fish is under suspension or revocation may not receive a wholesale or retail bait vendor license. As used in this rule, "conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, a judgment of conviction even though the court suspended execution of a sentence in accordance with subsection 3 of North Dakota Century Code section 12.1-32-02, or a deferred imposition of sentence in accordance with subsection 4 of North Dakota Century Code section 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt which is reversed on appeal.

**History:** Effective April 1, 2008; amended effective April 1, 2009; October 1, 2010; January 1, 2014; January 1, 2018.

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

#### **30-03-01.1-05. Assistants covered by license.**

A licensed wholesale bait vendor may employ the assistance of up to six other persons to capture or sell and transport legal live aquatic bait in the manner approved by the director. All assistants must have in their possession department-issued documentation. The licensee is responsible for the actions of employees, including all agents or assistants acting under the licensee's license. No one who has had a department-issued license revoked or suspended within three years may act as an agent or assistant. Anyone who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2018.

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

#### **30-03-01.1-06. Quantity requiring license.**

A retail or wholesale license is required for the possession of more than the limits described in the current fishing proclamation of legal live ~~baitfish, rainbow smelt (must be dead), live crayfish, live frogs, or live salamanders~~ aquatic bait.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2018.

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

#### **30-03-01.1-07. Equipment for holding and transport.**

Persons commercializing in or transporting legal live aquatic bait ~~and legal live baitfish~~ shall use equipment capable of maintaining such live bait in a healthy and lively condition at all times, except for rainbow smelt which must be killed immediately after capture. Each species of legal live ~~baitfish~~ aquatic bait must be kept separate from other species of legal live ~~baitfish~~ aquatic bait in holding and transport equipment. The premises and equipment of all persons commercializing in legal live aquatic bait shall be open to the inspection of the director or any of the director's duly appointed agents at any time.

Equipment used for transporting legal live aquatic bait into or within the state, ~~including bedding (medium)~~, must be free of aquatic nuisance species. Water used to transport legal live aquatic bait into the state must be from a potable or ground water (well) source and shall not contain any aquatic vegetation. Retail bait vendors must keep all aquatic vegetation and aquatic nuisance species out of bait tanks at their point of sale. Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a ~~one~~two hundred dollar fee.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014; January 1, 2018.

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

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

### **30-03-01.1-08. Interstate transport.**

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

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014; January 1, 2018.

**General Authority:** NDCC 20.1-02-05(22), 20.1-06-01, 20.1-06-14

**Law Implemented:** NDCC 20.1-02-05(22), 20.1-06-01, 20.1-06-14

### **30-03-01.1-10. Transportation of bait in water within the state.**

It is illegal to transport aquatic bait in water within the state except with an appropriate license or permit issued by the director and only in the manner approved by the director. Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a ~~one~~two hundred dollar fee.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2018.

**General Authority:** NDCC 20.1-17-01

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

### **30-03-01.1-12. Equipment for taking legal live aquatic bait ~~and legal live baitfish~~.**

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

A person possessing the appropriate wholesale license may take legal live aquatic bait ~~and legal live baitfish~~ with fish traps less than seven feet [2.1 meters] in any dimension. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure and the throat opening shall be less than three inches [76.2 millimeters] in diameter or width. A valid tag issued by the department must be attached to each trap. Seines used by a licensed wholesaler shall be restricted to those less than two hundred fifty feet [76 meters] in length and fourteen feet [4.25 meters] in depth. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure. A tag issued by the department must be affixed to each seine used by the licensee. Only seines and dip nets may be used for the taking of rainbow smelt.

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

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014; [January 1, 2018](#).

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-04

### **30-03-01.1-13. Prohibited waters for taking legal live [aquatic](#) bait ~~and legal live baitfish~~.**

Licensees shall not be permitted to take [legal](#) live [aquatic](#) bait ~~and live baitfish~~ from the following:

1. Waters managed as recreational fisheries (except the Missouri River system where rainbow smelt may be taken);
2. Waters designated by the department as infested with prohibited or regulated aquatic nuisance species (except the Missouri River system where rainbow smelt may be taken);
3. The United States fish and wildlife service's wildlife development areas, waterfowl production areas, or refuges;
4. The department's wildlife management areas (except the Missouri River system where rainbow smelt may be taken); or
5. Any waters that have been licensed as a private fish hatchery in the past three years.

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

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014; [January 1, 2018](#).

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

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

### **30-03-01.1-14. Wholesale bait pond.**

The term "wholesale bait pond" means any pond used to take legal live [aquatic](#) bait ~~and legal live baitfish~~ for wholesale. A legal description, to the quarter section, of each wholesale bait pond must be listed on the wholesaler's application and all ponds must be approved by the director before a license is issued. The maximum number of approved legal descriptions for ponds from which a wholesale bait vendor may trap annually is fifty. Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

**History:** Effective April 1, 2008; amended effective April 1, 2009; October 1, 2010; [January 1, 2018](#).

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

### **30-03-01.1-15. Inspections and records.**

Equipment used to capture, transport, or hold, and shipments of, legal live [aquatic](#) bait ~~and legal live baitfish~~ are subject to inspections by duly appointed agents of the director. ~~Each licensee trapping, seining, or purchasing legal live bait and legal live baitfish for sale must accurately complete forms furnished by the department. Each licensee shall keep current (within a month) records at the retail licensee's point of sale or the wholesaler licensee's permanent business address, or both. Records must be open to inspection by the department. A copy of these records shall be submitted to the director no later than thirty days following expiration of the license. Records must be retained by the licensee until submitted to the department. Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.~~

For all retail vendors, each licensee shall keep current receipts of purchase at the retail licensee's point of sale for the calendar year in which they are licensed. Purchase receipts must be open to inspection by the department.

For all wholesale vendors, each licensee trapping, seining, or purchasing legal live aquatic bait for sale shall accurately complete forms furnished by the department. Each wholesale licensee shall keep current, within a month, records at the wholesaler licensee's permanent business address. Records must be open to inspection by the department. A copy of these records must be submitted to the director no later than thirty days following expiration of the license. Records must be retained by the licensee until submitted to the department.

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

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014; January 1, 2018.

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

### **30-03-01.1-16. Violations and penalties.**

Violation of any rule not designated as having a noncriminal penalty is considered a criminal violation as established in the appropriate chapter of North Dakota Century Code title 20.1. ~~Violations may result in license denial, suspension, or revocation.~~

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2018.

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

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



**TITLE 33**  
**STATE DEPARTMENT OF HEALTH**



**JANUARY 2018**

**CHAPTER 33-03-24.1  
BASIC CARE FACILITIES**

Section

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**33-03-24.1-01. Definitions.**

1. "Abuse" includes the willful infliction of mental, physical, sexual, and verbal abuse which could result in temporary or permanent mental, physical, emotional, or psychological injury or harm. Mental abuse includes humiliation, harassment, intimidation, threats of punishment, or deprivation. Physical abuse includes hitting, slapping, pinching, kicking, unreasonable confinement, and deprivation, by an individual, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. It also includes controlling behavior through corporal punishment. Sexual abuse includes sexual harassment, sexual coercion, sexual contact, or sexual assault. Verbal abuse includes any use of oral, written, or

gestured language that includes disparaging and derogatory terms to residents or their families, used within their hearing distance to describe the residents, regardless of their age, ability to comprehend, or disability.

2. "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including eating, nutrition, dressing, personal hygiene, mobility, toileting, and behavior management.
  - a. "Assistance" means the resident is able to help with most of an activity, but cannot do it entirely alone. The resident may need prompting, encouragement, or the minimal hands-on assistance of the personal care attendant.
  - b. "Independent" means the resident can perform the activities of daily living without help.
3. "Activity staff" means an employee who is responsible for providing an activity program.
4. "Adult day care services" means the provision of basic care facility services to meet the needs of individuals who do not remain in the facility overnight.
5. "Basic care facility" means a facility licensed by the department under North Dakota Century Code chapter 23-09.3 whose focus is to provide room and board and health, social, and personal care to assist the residents to attain or maintain their highest level of functioning, consistent with the resident assessment and care plan, to five or more residents not related by blood or marriage to the owner or manager. These services shall be provided on a twenty-four-hour basis within the facility, either directly or through contract, and shall include assistance with activities of daily living and instrumental activities of daily living; provision of leisure, recreational, and therapeutic activities; and supervision of nutritional needs and medication administration.
6. "Capable of self-preservation" means a resident's ability, with or without assistance, to evacuate the facility or relocate from the point of occupancy to a point of safety in case of fire in compliance with the requirements of this chapter.
7. "Department" means the North Dakota state department of health.
8. "End-of-life care" means a program of palliative and supportive care for a resident with a physician or nurse practitioner's order identifying a terminal illness or condition with a limited prognosis of six or fewer months to live that has elected to receive hospice services through a licensed and Medicare-certified hospice agency.
9. "Facility" means a basic care facility.
10. "Governing body" means the entity legally responsible for the operation of a basic care facility.
11. "Instrumental activities of daily living" includes preparing meals, shopping, managing money, housework, laundry, transportation, use of telephone, and mobility outside the basic care facility.
12. "Licensed health care practitioner" means an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota.
13. "Medication administration" means an act in which a drug or biological is given to a resident by an individual who is authorized in accordance with state laws and regulations governing such acts, and may include a licensed health care practitioner, licensed nurse, or medication assistant.

14. "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful temporary or permanent taking or use of a resident's belongings or money, or both.
15. "Neglect" includes failure to carry out resident services as directed or ordered by the licensed health care practitioner or other authorized personnel, or failure to give proper attention to residents.
16. "Personal care" means assistance with activities of daily living and instrumental activities of daily living and general supervision of physical or mental well-being.
17. "Resident" means an individual admitted and retained in a facility in order to receive room and board and health, social, and personal care who is capable of self-preservation, and whose condition does not require continuous, twenty-four-hour a day onsite availability of nursing or medical care.
18. "Restricting device" means any device that limits a resident from freely exiting the facility or unit, including pressure devices that delay the timeframe in which a door will open.
19. "Secured facility" means a facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility that has restricting devices to restrict residents from freely exiting the building.
- ~~19-20.~~ "Secured unit" means a specific area of the facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care unit that has a restricting device separating the residents in the unit from the residents in the remainder of the facility.
- ~~20-21.~~ "Significant medication error" means a medication error which causes the resident discomfort or jeopardizes his or her health and safety, or a pattern of more than three medication errors that has the potential for causing a negative impact or harm to residents.
22. "Unsecured facility" means a facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility without restricting devices to restrict residents from freely exiting the building.
23. "Unsecured unit" means a specific area of the facility which is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care unit that is separate from the residents in the remainder of the facility without a restricting device.

**History:** Effective January 1, 1995; amended effective January 1, 2008; July 1, 2015; January 1, 2018.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3

**33-03-24.1-24. Optional Alzheimer's, dementia, special memory care, or traumatic brain injury facility or unit services.**

A basic care facility or unit that admits or retains only residents with Alzheimer's, dementia, or special memory care needs in a secured or unsecured facility or unit, or a facility that admits and retains only residents with traumatic brain injury must comply with the additional requirements of this section, apply on an application as specified by the department, and receive written approval from the department before providing the services. A basic care facility may not advertise or hold itself out to the public to provide specialized care to residents with Alzheimer's, dementia, memory loss, or care for residents with traumatic brain injury unless licensed consistent with this section. The facility must meet the following requirements:

1. A basic care facility licensed to provide specialized services to residents in this section may admit and retain residents who require twenty-four-hour per day dedicated personal care staff; however, do not need more than intermittent nursing or medical care.
2. Residents with Alzheimer's, dementia or special memory care needs, or traumatic brain injury admitted and retained must meet the basic care functional level of care and be capable of self-preservation.
3. The facility or unit licensed to provide specialized care and services to residents under this section shall provide:
  - a. Care of residents with chronic moderate to severe memory loss or an individual who has significant emotional, behavioral, or cognitive impairments and needs services that may include independent living skills, support and training to promote and develop relationships, participate in the social life of the community, and develop behavioral skills as determined necessary based on assessment and care plan;
  - b. Protective oversight and supervision in a structured environment that is staffed with sufficient personal care and intermittent licensed nursing staff to monitor, evaluate, and accommodate an individual's changing needs;
  - c. Service in which assistance with activities of daily living and independent activities of daily living, therapeutic, social, and recreational programming is provided; and
  - d. Care furnished in a way that fosters the maintenance or improvement, as appropriate, to promote independence of the resident.
4. The facility shall develop a written policy related to resident rights and provide the policy to the resident or designee, verbally and in writing. The facility shall ensure each resident's right to privacy, dignity and respect, and freedom from coercion and restraint by promoting individual initiative, autonomy, and independence in making life choices related to daily activities, physical environment, and with whom to interact. The facility or unit shall comply with residents' rights in North Dakota Century Code chapter 50-10.2, and:
  - a. Residents must be provided privacy in their sleeping or living area, including entrance doors lockable by the individual, with only appropriate staff having keys to the doors;
  - b. Residents sharing a room with another resident must have a choice of roommate in that setting;
  - c. Residents must be granted the freedom to furnish and decorate their sleeping unit or living area to the extent allowable based on facility policy and fire code requirements;
  - d. Residents must have the freedom and support to control their schedules and activities and have access to food any time and eat where they choose;
  - e. Residents are allowed to have visitors of their choosing at any time;
  - f. Must have access to the community; and
  - g. Residents must have access to outdoor space. Residents in a secured facility or unit must have access to a secured outdoor space.
5. The facility shall develop a person-centered care plan for each resident. The care plan must be completed following the functional assessment and be based on input from the resident or designee.

6. The person-centered care plans must be reviewed quarterly and anytime there is a change in need by the resident based on the assessment, and modified as needed.
7. A basic care facility licensed to provide specialized services to residents in this section shall ensure training and competency evaluation is completed for all nursing and personal care staff members specific to the care and services necessary to meet the needs of the residents. A minimum of eight educational hours on the following topics must be completed within three months from the date of hire. Nursing and personal care staff may not be assigned to work independently until they have successfully completed a competency evaluation. The areas to be covered include:
  - a. Dementia education, including progression of the disease, memory loss, and psychiatric and behavioral symptoms;
  - b. Techniques for understanding and approaching behavioral symptoms, such as aggravating behaviors, sexual behaviors, and wandering, including alternatives to chemical and physical restraints;
  - c. Positive therapeutic interventions;
  - d. Strategies for addressing social needs and providing options for meaningful activities;
  - e. Information on how to address aspects of care and safety, such as pain, food, fluid, and wandering;
  - f. Communication issues;
  - g. Resident rights, including dignity, respect, choice, independence, and privacy; and
  - h. Strategies for providing person-centered care.
8. Each nursing or personal care staff member shall receive annually a minimum of four hours of educational training in two or more of the topics identified in subsection 7.
9. Nursing or personal care staff members must successfully complete a competency evaluation in the areas identified in subsection 7 annually.
10. For other staff members hired to work in a facility or unit licensed under this section, training upon hire and annual training shall include at a minimum an overview of dementia and communication issues, and may include other topics identified in subsection 7 as needed.
11. Before providing services to residents, a basic care facility licensed to provide specialized services to residents in this section shall comply with the additional requirements in this section and receive approval on a printed new license from the department.
12. The department may issue existing facilities a provisional license not to exceed one year to complete construction or remodel to come into compliance with environmental requirements if it does not pose a danger to the health and safety of the residents. An additional provisional license for no more than six months may be granted at the discretion of the department to complete the project.
13. If the facility or unit is unable to meet the needs of the resident, or the resident no longer meets the criteria for retention, the facility promptly shall make arrangements to discharge or transfer the resident to a safe and appropriate placement consistent with the level of care required to meet the resident's needs.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 23-09.3-09, 28-32-02

| **Law Implemented: NDCC 23-09.3-04, 23-09.3-09**

## CHAPTER 33-06-01

### 33-06-01-01. Reportable conditions.

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

1. Anthrax\*.
2. Arboviral infection.
3. Botulism\*.
4. Brucellosis\*.
5. ~~Campylobacter enteritis\*~~Campylobacteriosis.
6. Cancer, all malignant and in situ carcinomas; in addition, all benign cancers of the central nervous system, pituitary gland, pineal gland, and craniopharyngeal duct. Carcinoma in situ of the cervix is not collected. Basal or squamous cell carcinoma is not collected unless diagnosed in the labia, clitoris, vulva, prepuce, penis, or scrotum.
7. ~~AH~~ CD4 test results (all).
8. Chickenpox (varicella).
9. Chlamydial infections.
10. Cholera\*.
11. Clostridium perfringens intoxication\*.
12. Coccidioidomycosis\*.
13. Creutzfeldt-Jakob disease.
14. Cryptosporidiosis.
15. Diphtheria\*.
16. E. coli, shiga toxin-producing\*.
17. ~~Enterococcus, vancomycin-resistant (VRE)\*.~~
- ~~18.~~ Foodborne or waterborne outbreaks.
- ~~19.~~18. Giardiasis.
- ~~20.~~19. Glanders\*.
- ~~21.~~20. Gonorrhea.
21. Haemophilus influenzae infection (invasive infection with haemophilus influenzae isolated from blood, cerebral spinal fluid, or other normal sterile site)\*.
22. Hantavirus\*.

23. ~~Haemophilus influenzae infection (invasive infection with haemophilus influenzae isolated from blood, cerebral spinal fluid, or other normal sterile site)\*.~~
- ~~24.~~ Hemolytic uremic syndrome.
- 25.24. Hepatitis (~~specify type A, B, C, D, and E~~), including hepatitis C nucleic acid test result (detectable or nondetectable) and hepatitis C genotype results.
- 26.25. Human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS)\*. (Any positive HIV test result, including gene sequencing and drug resistance patterns.) Human immunodeficiency virus (HIV) nucleic acid test result (including nondetectable).
- ~~27.~~ ~~Human immunodeficiency virus (HIV) nucleic acid test result (detectable or nondetectable).~~
- ~~28.~~ ~~Human immunodeficiency virus (HIV) rapid screens (positive only).~~
- 29.26. Influenza.
- 30.27. Laboratory incidences involving the possible release of category A bioterrorism agents or novel influenza viruses into the laboratory environment.
- 31.28. Lead blood level ~~greater than or equal to 10 ug/dl~~ results (all).
- 32.29. Legionellosis.
- 33.30. Listeriosis\*.
- ~~34.~~ ~~Lyme disease.~~
- 35.31. Malaria\*.
- 36.32. Measles (rubeola)\*.
- 37.33. Melioidosis\*.
- ~~38.~~ ~~Meningitis, bacterial (all bacterial species isolated from cerebrospinal fluid)\*.~~
- 39.34. Meningococcal disease (invasive infection with neisseria meningitidis isolated from blood, cerebral spinal fluid, or other normal sterile site)\*.
- 40.35. Mumps.
- 41.36. Nipah viral infections\*.
- 42.37. Nosocomial outbreaks ~~in institutions.~~
38. Novel severe acute respiratory illness\*.
- 43.39. Organisms ~~with reduced susceptibility~~ resistant to carbapenem or with emerging antimicrobial resistance\*. ~~(ex. klebsiella pneumonia carbapenemase [KPC], carbapenem-resistant enterobacteriaceae [CRE], etc.).~~
- 44.40. Pertussis\*.
- 45.41. Plague\*.
- 46.42. Poliomyelitis\*.
- 47.43. Pregnancy in a person infected with hepatitis B or HIV.

- | ~~48.~~ ~~Psittacosis.~~
- | ~~49.~~44. Q fever\*.
- | ~~50.~~45. Rabies (animal or human\*).
- | ~~51.~~ ~~Rocky Mountain spotted fever.~~
- | ~~52.~~46. Rubella\*.
- | ~~53.~~47. Salmonellosis\*.
- | ~~54.~~48. Scabies outbreaks in institutions.
- | ~~55.~~ ~~Severe acute respiratory syndrome (SARS)\*.~~
- | ~~56.~~49. Shigellosis\*.
- | ~~57.~~50. Smallpox\*.
- | ~~58.~~ ~~Staphylococcus aureus, methicillin resistant (MRSA), invasive sites only--excluding urine\*.~~
- | ~~59.~~51. Staphylococcus aureus, vancomycin resistant and intermediate resistant (VRSA and VISA)\*.
- | ~~60.~~52. Staphylococcus enterotoxin B intoxication\*.
- | ~~61.~~53. ~~Streptococcal~~Streptococcus pneumoniae infections (invasive infection ~~of streptococcus~~  
~~group A or B or streptococcus pneumoniae~~ isolated from blood, cerebral spinal fluid, or other  
normal sterile site)\*.
- | ~~62.~~54. Syphilis.
- | ~~63.~~55. Tetanus.
- | ~~64.~~56. Tickborne diseases\*.
- | ~~65.~~ ~~Tickborne hemorrhagic fevers.~~
- | ~~66.~~ ~~Toxic shock syndrome\*.~~
- | ~~67.~~57. Trichinosis.
- | ~~68.~~58. Tuberculosis (tuberculosis ~~disease~~infection caused by ~~mycobacterium~~Mycobacterium  
tuberculosis or ~~mycobacterium~~Mycobacterium bovis)\*.
- | ~~69.~~59. Tularemia\*.
- | ~~70.~~60. Tumors of the central nervous system.
- | ~~71.~~61. Typhoid fever\*.
- | ~~72.~~62. Unexplained or emerging critical illness or death ~~in an otherwise healthy person.~~
- | ~~73.~~63. Unusual cluster of severe or unexplained illnesses or deaths.
- | 64. Vibriosis\*.
- | ~~74.~~65. Viral hemorrhagic fevers.
- | ~~75.~~66. Weapons of mass destruction suspected event.

| ~~76.67.~~ Yellow fever\*.-

| ~~77.~~ ~~Vibriosis\*~~.

**History:** Amended effective May 1, 1984; December 1, 1986; January 1, 1988; January 1, 1989; October 1, 1990; January 1, 1991; February 1, 1992; May 1, 1994; January 1, 1995; July 1, 1996; February 1, 2000; August 1, 2002; March 1, 2003; July 1, 2004; April 1, 2007; January 1, 2011; January 1, 2018.

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

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

## CHAPTER 33-06-04 CONTROL OF SPECIFIC DISEASES

### Section

|             |   |
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| 33-06-04-01 | <del>Diphtheria</del> <a href="#">Scientific Guidance</a>   |
| 33-06-04-02 | Measles <a href="#">[Repealed]</a>                          |
| 33-06-04-03 | Mumps <a href="#">[Repealed]</a>                            |
| 33-06-04-04 | Pertussis <a href="#">[Repealed]</a>                        |
| 33-06-04-05 | Poliomyelitis <a href="#">[Repealed]</a>                    |
| 33-06-04-06 | Rabies  |
| 33-06-04-07 | Rubella <a href="#">[Repealed]</a>                          |
| 33-06-04-08 | Tuberculosis <a href="#">[Repealed]</a>                     |
| 33-06-04-09 | Typhoid Fever, Paratyphoid Fever <a href="#">[Repealed]</a> |
| 33-06-04-10 | Sexually Transmitted Diseases                               |
| 33-06-04-11 | Vaccines  |

### **33-06-04-01. ~~Diphtheria~~ [Scientific guidance.](#)**

- ~~1. Isolation of patient is to be continued following completion of antibiotic therapy until two cultures, taken at least twenty-four hours apart, from both nose and throat are negative for toxicogenic bacilli.~~
- ~~2. It is not necessary to isolate or treat carriers if cultures are positive for nontoxicogenic bacilli.~~
- ~~3. Exposed persons, household, and close contacts should be examined for signs and symptoms, including nose and throat cultures. All persons with positive toxicogenic bacilli shall be isolated, until two nose and throat cultures are negative after treatment.~~

In the control of infectious diseases, the department, local public health units, local law enforcement agencies, and veterinarians shall apply applicable guidelines set forth by the centers for disease control and prevention, advisory committee on immunization practices, American academy of pediatrics, American public health association, and other applicable experts.

History: Amended effective January 1, 2018.

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

**Law Implemented:** NDCC 23-01-03

### **33-06-04-02. Measles.**

Repealed effective January 1, 2018.

~~Isolation of patient shall be from diagnosis through fourth day of rash.~~

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

~~**Law Implemented:** NDCC 23-01-03~~

### **33-06-04-03. Mumps.**

Repealed effective January 1, 2018.

~~Isolation of patient shall be from diagnosis until swelling has subsided and all other manifestations have cleared.~~

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

~~**Law Implemented:** NDCC 23-01-03~~

#### 33-06-04-04. Pertussis.

Repealed effective January 1, 2018.

~~—Isolation of pertussis patients, particularly from young infants, shall be for three weeks from onset of disease or until cough has stopped, whichever is shorter.~~

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

~~Law Implemented: NDCC 23-01-03~~

#### 33-06-04-05. Poliomyelitis.

Repealed effective January 1, 2018.

~~—Isolation of patient shall be for seven days in hospital or under medical management.~~

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

~~Law Implemented: NDCC 23-01-03~~

#### 33-06-04-06. Rabies.

1. **How reported.** If any physician or veterinarian has knowledge that any person has been bitten or scratched by, or otherwise exposed to a dog, other domestic animal, or a wild mammal, infected or suspected of being infected with rabies, the physician or veterinarian shall report these facts within forty-eight hours to the state department of health. The requirements of this subsection do not apply to dog or cat bites, scratches, or saliva exposure if there is a standing order or agreement with health care providers to report animal bites or possible exposure to rabies to a local law enforcement agency.
2. **Vaccine replacement.** The state health officer, or the health officer's designee, in that person's discretion may provide for the replacement of rabies vaccine and rabies immune globulin used to treat possible exposure to rabies. Any request for rabies vaccine and rabies immune globulin must be in writing, must be signed by the person who received postexposure vaccine or the person's parent or guardian, and must indicate that the person was possibly exposed to rabies, not through the person's own fault or that of the person's parent or guardian, and is financially unable to pay for the vaccine and immune globulin. A person will not be considered financially unable to pay if:
  - a. An insurer or a governmental agency other than the state department of health includes as a covered benefit, or another person is liable for, rabies vaccine or rabies immune globulin;
  - b. The person is eligible for complimentary vaccine or immune globulin from a vaccine manufacturer; or
  - c. The person, or the person's family, has an adjusted gross income of more than one hundred thirty-three percent of the poverty line determined in accordance with 42 U.S.C. 9902(2) applicable to a family of the size involved or assets in excess of those permitted under section 75-02-02.1-26, including the exceptions allowed under section 75-02-02.1-27.

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

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

**History:** Amended effective July 1, 1987; October 1, 1988; May 1, 1989; January 1, 1990; February 1, 2000; [January 1, 2018](#).

**General Authority:** NDCC 23-36

**Law Implemented:** NDCC 23-36

### **33-06-04-07. Rubella.**

[Repealed effective January 1, 2018.](#)

~~Isolation of rubella cases of hospital patients only shall be from diagnosis to five days after the appearance of rash. This type of isolation is to prevent infection in nonimmune (susceptible) women during pregnancy and high-risk infants.~~

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

**Law Implemented:** NDCC 23-01-03

### **33-06-04-08. Tuberculosis.**

[Repealed effective January 1, 2018.](#)

- ~~1. **Employment of tuberculous patient.** No individual who has tubercle bacilli in their sputum or other bodily discharges shall be allowed to engage in employment where children, students, and medical patients may be exposed, or where food is handled and sold unless the patient has received a certificate or clearance from the local health department or attending physician stating that the patient's employment would not be dangerous to the public's health.~~
- ~~2. **Student tuberculous patient.** No student, who has tuberculosis in a contagious and infectious stage as determined by bacteriological examination or medical evaluation, shall be allowed to attend school until the student is no longer contagious or infectious and has received a certificate or clearance from the local health department or attending physician stating that the student is no longer contagious or infectious and would not constitute a public health danger.~~
- ~~3. **Contacts of active cases.** Any person exposed to an active case of tuberculosis shall be considered as a suspicious case until determined otherwise by a tuberculin test, if previously negative. An x-ray, laboratory, or medical evaluation is necessary for those individuals with a positive tuberculin test.~~
- ~~4. **Uncooperative patients.** The local health department should be notified immediately if an individual knowingly refuses to accept treatment for contagious or infectious tuberculosis and is endangering the health of others.~~

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

**Law Implemented:** NDCC 23-01-03

### **33-06-04-09. Typhoid fever, paratyphoid fever.**

[Repealed effective January 1, 2018.](#)

- ~~1. **Isolation required.** All cases of typhoid fever and paratyphoid fever shall be isolated in a flyproof room, preferably under hospital conditions of such cases as cannot command adequate sanitary environment and nursing care in their homes.~~
- ~~2. **Period of isolation.** No patient shall be released from isolation until reports of three negative laboratory examinations of both the urine and feces, collected not less than twenty-four hours apart, shall have been returned from the state public health laboratory.~~
- ~~3. **Source of infection.** When a case of typhoid fever or paratyphoid fever is discovered, the state department of health shall immediately proceed to search for the source of infection, missed case, carrier, or convalescent. When the source of infection is discovered, immediate abatement must be instituted.~~
- ~~4. **Laboratory confirmation.** Every physician or health officer having knowledge of a case or suspected case of typhoid fever, paratyphoid fever, or any continued fever not otherwise diagnosed must obtain laboratory confirmation by the usual approved methods, if possible. Report, however, shall be made immediately on a clinical diagnosis.~~
- ~~5. **Control of typhoid carriers.**
  - ~~a. For the purpose of this section, a typhoid carrier is a person who harbors typhoid bacteria and emits them, regularly or intermittently. This condition may or may not follow a recognized attack of typhoid fever. A person continuing to discharge typhoid bacteria following an attack of typhoid fever shall be regarded as a case rather than a carrier, for a period of at least twelve weeks following subsidence of clinical symptoms. After that period the physician may, in the physician's discretion, declare such person to be a carrier.~~
  - ~~b. The physician, upon the discovery of a typhoid carrier, shall immediately report the fact to the state department of health, giving the full name, age, occupation, and address of such carrier (together with any other information relative to possible or probable infection of others), and shall also communicate the fact to the carrier personally, or the carrier's guardian, imparting to the carrier detailed information regarding the precautions to be observed in the disposing of the carrier's discharges, in preventing contamination of the carrier's hands, and thus protecting others from infection. This information to the carrier personally shall be confirmed by a written notice to such carrier, giving special and specific instructions as may be required in special circumstances.~~

~~Instructions given by the physician shall include directions to wash the hands thoroughly with soap and water immediately after using the toilet.~~
  - ~~c. Bowel or bladder discharges of a carrier living in a location without an approved sewage treatment plant should be deposited in a cesspool, or privy, properly located, of an approved sanitary construction. One of the essentials of a sanitary privy is the flyproof and rodent-proof vault. The interior of the privy should be kept clean and scrubbed with warm water and soap whenever necessary.~~
  - ~~d. No typhoid carrier may engage in any occupation involving the handling of ready-to-eat food and milk, or to work as a food, drink, or milk handler, or to work in or around any place where food or drink is manufactured, packed, stored, deposited, collected, prepared, produced, or sold. It is extremely important that typhoid carriers do not prepare food or drink for anyone except themselves or their immediate families; and especially that they do not supply any food, drink, milk, or milk products to visitors at their homes, or at community or social gatherings of any type. It is recommended, that immediate members of the household should all be immunized against typhoid fever every three years during the time they are continually exposed to a carrier.~~~~

- ~~e. No typhoid carrier shall leave the community in which the carrier resides without notification to the state department of health who are to be informed of the carrier's destination, including the carrier's new address.~~
- ~~f. The state department of health shall visit each typhoid carrier once a year and complete a form prescribed for the purpose.~~
- ~~g. The release of chronic typhoid carriers may be granted only on the approval of the state health officer after submission of the following evidence:
  - ~~(1) That the gall bladder has been removed.~~
  - ~~(2) That, subsequent to the removal of the gall bladder, each of the three specimens of the duodenal contents, taken at intervals of not less than twenty-four hours, has been examined by the laboratory of the state department of health and found to contain no typhoid bacilli.~~~~
- ~~h. The physician may, at the physician's discretion, release chronic typhoid carriers upon other evidence which the physician may consider satisfactory.~~

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

**Law Implemented:** NDCC 23-01-03

## CHAPTER 33-06-05

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

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

- a. "Advisory committee on immunization practices" refers to a panel of experts in fields associated with immunization who have been selected by the secretary of the United States department of health and human services to provide advice and guidance to the secretary, the assistant secretary for health, and the centers for disease control and prevention on the most effective means to prevent vaccine-preventable diseases.
- b. "Age-appropriate immunizations" refers to the vaccines a child should receive based on age and previous immunization history as recommended by the advisory committee on immunization practices of the United States department of health and human services and outlined by the North Dakota immunization schedule.
- c. "Beliefs" as used in subsection 3 of North Dakota Century Code section 23-07-17.1 means sincerely held religious, philosophical, or moral beliefs which are not a pretense for avoiding legal requirements.
- d. "Institution" includes all early childhood facilities, head start programs, preschool educational facilities, public and private kindergartens, and elementary, middle, and high schools operating in North Dakota.
- e. "Institutional authority" means anyone designated by the governing body of an institution.
- f. "Medical exemption" means an exemption from an immunization requirement based on a form signed by a licensed physician stating that the physical condition of the child seeking the exemption is such that the vaccine administered would endanger the life or health of the child.

#### 2. **Minimum requirements.**

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

#### 3. **Effective dates.**

- a. ~~Effective with the 1992-93 school year, a second dose of measles, mumps, and rubella vaccine is required for school entry into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the requirement so those students transferring into North Dakota schools are added to the measles, mumps, and rubella immunization cohort.~~
- b. ~~Effective with the 2000-01 school year, a student must complete the hepatitis B vaccine series prior to entry into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the~~

~~hepatitis B immunization requirement so those students transferring into North Dakota schools are added to the hepatitis B immunization cohort.~~

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

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

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

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

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

~~c. Effective with the 2018-19 school year, a student must be adequately immunized according to the advisory committee on immunization practices with tetanus, diphtheria, and pertussis (tdap) vaccine before being admitted into eighth through twelfth grade.~~

~~d. Effective with the 2018-19 school year, a student must be adequately immunized according to the advisory committee on immunization practices with meningococcal conjugate vaccine before being admitted into eighth through twelfth grade.~~

4. **Exemptions.** A child with a medical or a beliefs exemption is exempt from any one or all of the immunization requirements. A physician must sign an exemption form indicating the vaccines that are included in the medical exemption. A parent or guardian must sign an exemption form stating that the child has a beliefs exemption and indicate which vaccines are exempt because of beliefs. A child with a reliable history of chickenpox-disease, hepatitis A, hepatitis B, measles, mumps, or rubella is exempt from ~~varicella (chickenpox)~~applicable immunization requirements. A physician ~~or parent or guardian~~ must sign an exemption form stating that the child has had ~~chickenpox~~a forementioned disease. Exemption forms must be kept on file with the immunization records at the child's school, early childhood facility, head start program, or preschool educational facility.
5. **Recordkeeping and reporting.** Records and reports requested by the state department of health shall be completed and submitted to the state department of health.
  - a. Certificates of immunization, a North Dakota immunization information system (NDIIS) record, or other official proof of immunization must be presented to the designated institutional authority before any child is admitted to an institution.

- b. Upon request by the institutional authority and approval by the department, the department shall provide access to the NDIIIS ~~by institutional authority~~. The department of health shall disclose immunization records maintained by the NDIIIS to an institutional authority or designee to fulfill the required proof of immunization.
- c. The parent or guardian of a child claiming a medical, history of disease, or beliefs exemption shall present an appropriately signed statement of exemption to the designated institutional authority. Proof of immunization or the statement of exemption must be maintained by the child's school or early childhood facility.
- d. The school or early childhood facility immunization summary report must be submitted to the state department of health by November first of each year or such other annual date as the department may designate.

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

- ~~a.~~ An institutional authority shall be appointed for each institution by its governing board or authorized personnel. The authority must be an employee of such institution.
- ~~b.~~ ~~The name of the designated institutional authority, the institution, address, and telephone number shall be submitted to the appropriate governing state department by July first of each year.~~

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

**History:** Amended effective November 1, 1979; September 1, 1991; January 1, 1998; February 1, 2000; January 1, 2004; January 1, 2008; January 1, 2014; January 1, 2018.

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

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

## CHAPTER 33-10-03.1

### 33-10-03.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 30.

10 Code of Federal Regulations 30.1, 30.2, 30.3, 30.4, 30.7, 30.9, 30.10, 30.11, 30.12, 30.13, 30.14, 30.15, 30.18, 30.19, 30.20, 30.21, 30.22, 30.31, 30.32, 30.33, 30.34, 30.35, 30.36, 30.37, 30.38, 30.39, 30.41, 30.50, 30.51, 30.52, 30.53, 30.61, 30.62, 30.70, 30.71, and 30.72 and appendix A through appendix E to part 30 are adopted by reference as they exist on ~~October~~[December](#) 1, 2015, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations 30.21(c), 30.3(b)(1), 30.3(b)(2), 30.3(b)(3), 30.34(d), 30.34(e)(1), 30.34(e)(3), 30.41(b)(6), paragraph (2) of the definition of "commencement of construction", and paragraph (9)(ii) of the definition of "construction".
2. Requirements in 10 Code of Federal Regulations part 30 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional office", or "administrator of the appropriate regional office" appear in 10 Code of Federal Regulations part 30, substitute the words "North Dakota state department of health" except when used in 10 Code of Federal Regulations 30.12, 30.21(c), 30.34(h)(1), and 30.50(c)(1).
4. 10 Code of Federal Regulations 30.7 employee protection also applies to violations of North Dakota Century Code chapters 23-20 and 23-20.1.
5. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
6. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 30.
7. North Dakota state form number 8414, "notice to employees", must be posted instead of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations part 30.
8. North Dakota State department of health radioactive material license replaces NRC form 374, "byproduct material license", as specified in 10 Code of Federal Regulations part 30.
9. North Dakota state form number 18941, "certificate: disposition of radioactive material", must be used instead of NRC form 314 as specified in 10 Code of Federal Regulations part 30.
10. For references to 10 Code of Federal Regulations part 170, see chapter 33-10-11 for applicable fee schedules.

**History:** Effective January 1, 2011; amended effective October 1, 2016; [January 1, 2018](#).

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

## CHAPTER 33-10-04.2

### 33-10-04.2-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 20.

10 Code of Federal Regulations 20.1001, 20.1002, 20.1003, 20.1004, 20.1005, 20.1008, 20.1101, 20.1201, 20.1202, 20.1203, 20.1204, 20.1206, 20.1207, 20.1208, 20.1301, 20.1302, 20.1401, 20.1402, 20.1403, 20.1404, 20.1405, 20.1406, 20.1501, 20.1502, 20.1601, 20.1602, 20.1701, 20.1702, 20.1703, 20.1704, 20.1705, 20.1801, 20.1802, 20.1901, 20.1902, 20.1903, 20.1904, 20.1905, 20.1906, 20.2001, 20.2002, 20.2003, 20.2004, 20.2005, 20.2006, 20.2007, 20.2008, 20.2101, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, 20.2207, 20.2301, and 20.2302, appendix A through C to part 20, appendix E to part 20, and appendix G to part 20 are adopted by reference as they exist on ~~October~~[December](#) 1, 2015, with the following exceptions:

1. Not adopted by reference are 10 Code of Federal Regulations (CFR) 20.1406(b), 20.1905(g), 20.2203(c), and 20.2206(a)(1), (a)(3), (a)(4), and (a)(5).
2. All of the requirements in chapter 33-10-04.2 apply to both licensees and registrants. A reference in 10 CFR part 20 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", a reference to "licensed material(s)" includes "registered source of radiation", and a reference to "licensed radioactive material" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33-10 and North Dakota Century Code chapter 23-20.1. "Registration" means the notification of the North Dakota state department of health of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23-20.
3. Where the words "NRC", "commission", "administrator of the appropriate NRC regional office", "administrator of the nearest commission regional office", or "NRC regional office" appear in 10 CFR part 20, substitute the words "North Dakota state department of health".
4. Requirements in 10 CFR part 20 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
5. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
6. North Dakota state form number 19443, "occupational radiation exposure history", must be used instead of NRC form 4 as specified in 10 CFR part 20.
7. North Dakota state form number 8416, "current occupational radiation exposure", must be used instead of NRC form 5 as specified in 10 CFR part 20.
8. NRC form 748 shall not be used as described in 10 CFR part 20.
9. The words "in the Federal Register and" shall be omitted from 10 CFR 20.1405(b).

**History:** Effective January 1, 2011; amended effective October 1, 2016; [January 1, 2018](#).

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

## CHAPTER 33-10-10.1

### 33-10-10.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 19.

10 Code of Federal Regulations 19.1, 19.2, 19.3, 19.5, 19.11, 19.12, 19.13, 19.14, 19.15, 19.16, 19.17, 19.18, 19.20, 19.31, and 19.32 are adopted by reference as they exist on ~~January 1, 2010~~December 1, 2015, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations 19.14(a).
2. All of the requirements in chapter 33-10-10.1 apply to both licensees and registrants. A reference in 10 Code of Federal Regulations part 19 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", and a reference to "licensed radioactive material" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33-10 and North Dakota Century Code chapter 23-20.1. "Registration" means the notification of the North Dakota state department of health of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23-20.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "administrator of the appropriate commission regional office", "administrator of the appropriate regional office", "regional office administrator", "executive director for operations", "regional administrator of the appropriate United States nuclear regulatory commission regional office", or "agency" appear in 10 Code of Federal Regulations part 19, substitute the words "North Dakota state department of health".
4. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
5. State form number 8414, "notice to employees", must be posted in place of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations 19.
6. Where 10 Code of Federal Regulations part 19 specifies contacting the United States nuclear regulatory commission, contact the North Dakota state department of health.

**History:** Effective January 1, 2011; amended effective January 1, 2018.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

## CHAPTER 33-10-13.1

### 33-10-13.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 71.

10 Code of Federal Regulations 71.0, 71.3, 71.4, 71.5, 71.7, 71.8, 71.9, 71.10, 71.12, 71.13, 71.14, 71.15, 71.17, 71.20, 71.21, 71.22, 71.23, 71.47, 71.81, 71.83, 71.85, 71.87, 71.88, 71.89, 71.91, 71.93, 71.95, 71.97, 71.101, 71.103, 71.105, 71.127, 71.129, 71.131, 71.133, 71.135, and 71.137 and appendix A to part 71 are adopted by reference as they exist on ~~October~~[December](#) 1, 2015, with the following exceptions:

1. Not adopted by reference are 10 Code of Federal Regulations 71.0(d), 71.14(b), and 71.101(c)(2), (d), and (e).
2. Requirements in 10 Code of Federal Regulations part 71 that apply to "licensed material" or "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", or "administrator of the appropriate regional office" appear in 10 Code of Federal Regulations part 71, substitute the words "North Dakota state department of health" except when used in 10 Code of Federal Regulations 71.5(b), 71.10, 71.17(b), (c) (3), and (e), 71.85(c), 71.88(a)(4), 71.93(c), 71.95, 71.97(c), (c)(3)(iii), and (f), and 71.101(c) (1).
4. 10 Code of Federal Regulations 71.9 employee protection also applies to violations of North Dakota Century Code chapters 23-20 and 23-20.1.
5. State form number 8414, "notice to employees", must be posted instead of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations part 71.

**History:** Effective January 1, 2011; amended effective October 1, 2016; [January 1, 2018](#).

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

**Law Implemented:** NDCC 28-32-02

## CHAPTER 33-10-16

### 33-10-16-01. Adoption by reference of several sections in 10 Code of Federal Regulations, part 40.

10 Code of Federal Regulations 40.1, 40.2, 40.3, 40.4, 40.7, 40.9, 40.10, 40.11, 40.12, 40.13, 40.14, 40.20, 40.21, 40.22, 40.25, 40.26, 40.31, 40.32, 40.34, 40.35, 40.36, 40.41, 40.42, 40.43, 40.44, 40.45, 40.46, 40.51, 40.54, 40.55, 40.60, 40.61, 40.62, 40.63, 40.65, and 40.71 and appendix A to part 40 are adopted by reference as they exist on ~~October~~[December](#) 1, 2015, with the following exceptions:

1. Not adopted by reference are 10 Code of Federal Regulations 40.12(b); 40.31(j), (k), and (l); 40.32(d), (e), and (g); 40.41(d), (e)(1), (e)(3), and (g); 40.51(b)(6); appendix A, criterion 11A through F and criterion 12; paragraph (2) of the definition of "commencement of construction"; and paragraph (9)(ii) of the definition of "construction".
2. Requirements in 10 Code of Federal Regulations part 40 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional administrator", or "administrator of the appropriate regional office" appear in 10 Code of Federal Regulations part 40, substitute the words "North Dakota state department of health" except when used in 10 Code of Federal Regulations 40.11.
4. 10 Code of Federal Regulations part 40 employee protection also applies to violations of North Dakota Century Code chapters 23-20 and 23-20.1.
5. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
6. North Dakota state form number 8414, "notice to employees", must be posted instead of NRC form 3 that is specified in 10 Code of Federal Regulations part 40.
7. North Dakota state form number 16092, "registration certificate: use of depleted uranium under general license", must be used instead of nuclear regulatory commission form 244 that is specified in 10 Code of Federal Regulations part 40.
8. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 40.
9. North Dakota state form number 18941, "certificate: disposition of radioactive material", must be used instead of NRC form 314 as specified in 10 Code of Federal Regulations part 40.
10. For references to 10 Code of Federal Regulations parts 170 and 171, see chapter 33-10-11 for applicable fee schedules.

**History:** Effective January 1, 2011; amended effective October 1, 2016; [January 1, 2018](#).

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

## CHAPTER 33-10-17

### 33-10-17-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 70.

10 Code of Federal Regulations 70.1, 70.2, 70.3, 70.4, 70.7, 70.9, 70.10, 70.11, 70.12, 70.17, 70.18, 70.19, 70.20, 70.21, 70.22, 70.23, 70.25, 70.31, 70.32, 70.33, 70.34, 70.35, 70.36, 70.38, 70.39, 70.41, 70.42, 70.50, 70.51, 70.56, and 70.81 are adopted by reference as they exist on ~~October~~[December](#) 1, 2015, with the following exceptions:

1. The following are not adopted by reference: 10 Code of Federal Regulations 70.1(c), (d), and (e); 70.20a; 70.20b; 70.21(a)(1), (c), (f), (g), and (h); 70.22(b), (c), (f), (g), (h), (i), (j), (k), (l), (m), and (n); 70.23(a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), and (b); 70.23a; 70.25(a)(1); 70.31(c), (d), and (e); 70.32(a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (b)(1), (b)(3), (b)(4), (c), (d), (e), (f), (g), (h), (i), (j), and (k); 70.42(b)(6); 70.51(c); paragraph (2) of the definition of "commencement of construction"; and paragraph (9)(ii) of the definition of "construction".
2. Requirements in 10 Code of Federal Regulations part 70 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional administrator", "NRC regional office", "administrator of the appropriate nuclear regulatory commission's regional office", "administrator of the appropriate regional office", or "nuclear regulatory commission's office of nuclear material safety and safeguards, division of industrial and medical nuclear safety" appear in 10 Code of Federal Regulations part 70, substitute the words "North Dakota state department of health".
4. 10 Code of Federal Regulations 70.7 employee protection also applies to violations of North Dakota Century Code chapters 23-20 and 23-20.1.
5. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
6. North Dakota state form number 8418, "application for radioactive material license", must be used instead of nuclear regulatory commission form 313 as specified in 10 Code of Federal Regulations part 70.
7. North Dakota state form number 8414, "notice to employees", must be posted instead of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations part 70.
8. For references to 10 Code of Federal Regulations part 170, section 33-10-11 for applicable fee schedules.

**History:** Effective January 1, 2011; amended effective October 1, 2016; [January 1, 2018](#).

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

## CHAPTER 33-10-19

### 33-10-19-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 150.

10 Code of Federal Regulations 150.1, 150.2, 150.3, 150.11, 150.20, 150.31, and 150.32 are adopted by reference as they exist on ~~October~~December 1, 2015, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations 150.3 foreign obligations.
2. Requirements in 10 Code of Federal Regulations part 150 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "regional administrator", "United States nuclear regulatory commission", "region", or "regional administrator of the United States nuclear regulatory commission regional office" appear in 10 Code of Federal Regulations part 150, substitute the words "North Dakota state department of health" except when used in section 150.5.
4. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
5. North Dakota state form number 58230, "radioactive material reciprocity request", must be used instead of nuclear regulatory commission form 241 as specified in 10 Code of Federal Regulations part 150.
6. Where the words "non-agreement states", "areas of exclusive federal jurisdiction within agreement states", or "offshore waters" are used in 10 Code of Federal Regulations 150.20(a)(1)(i), (ii), (iii), (b), (b)(3), and (b)(4) substitute the words "state of North Dakota".
7. Where the words "agreement states license" are used in 10 Code of Federal Regulations 150.20, also add the words "nuclear regulatory commission license". Where the words "license issued by an agreement state" are used in 10 Code of Federal Regulations 150.20 also add the words "license issued by the nuclear regulatory commission". Where the words "license from an agreement state" are used in 10 Code of Federal Regulations 150.20 also add the words "license from the nuclear regulatory commission".
8. The words "for the first time in a calendar year" are stricken from 10 Code of Federal Regulations 150.20(b)(1).
9. Where the words "in any calendar year, except that the general license in paragraph (a) of this section concerning activities in offshore water authorizes that person to possess or use radioactive materials, or engage in the activities authorized, for an unlimited period of time" are used in 10 Code of Federal Regulations 150.20(b)(4), substitutes the words "in a 365-day period".
10. For references to 10 Code of Federal Regulations part 170, see chapter 33-10-11 for applicable fee schedules.

**History:** Effective January 1, 2011; amended effective October 1, 2016; January 1, 2018.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

## CHAPTER 33-10-22

### 33-10-22-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 37.

10 Code of Federal Regulations 37.1, 37.3, 37.5, 37.11, 37.21, 37.23, 37.25, 37.27, 37.29, 37.31, 37.33, 37.41, 37.43, 37.45, 37.47, 37.49, 37.51, 37.53, 37.55, 37.57, 37.71, 37.73, 37.75, 37.77, 37.79, 37.81, 37.101, 37.103, 37.105, and appendix A to part 37 are adopted by reference as they exist on ~~October~~ December 1, 2015, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations (CFR) 37.11(b) and 37.43(d)(9).
2. All of the requirements in chapter 33-10-22 apply to both licensees and registrants. A reference in 10 CFR part 37 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", a reference to "licensed material(s)" includes "registered source of radiation" and a reference to "licensed radioactive material" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33-10 and North Dakota Century Code chapter 23-20.1. "Registration" means the notification of the North Dakota state department of health of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23-20.
3. Where the word "NRC" appears in 10 CFR 37.31(d), 37.43(c)(3)(iii), 37.57(a), 37.57(c), 37.77 [with the exception of "the NRC's Web site" in 37.77(a)(1)], and 37.81(g), substitute the words "North Dakota state department of health".
4. Where the word "Commission" appears in 10 CFR 37.5 (definitions of "byproduct material" and "person"), 37.11(a), 37.43(a)(3), 37.43(c)(1)(ii), 37.101, 37.103, and 37.105, substitute the words "North Dakota state department of health".
5. Where the words "NRC regional office" appear in 10 CFR 37.41(a)(3) and 37.81, substitute the words "North Dakota state department of health".
6. Where the words "appropriate NRC regional office listed in § 30.6(a)(2) of this chapter" appear in 10 CFR 37.45(b), substitute the words "North Dakota state department of health".
7. Where the words "NRC's Operational Center (301-816-5100)" appear in 10 CFR 37.57(a), 37.57(b), and 37.81, substitute the words "North Dakota state department of health".
8. Where the words "NRC's Operational Center" appear in 10 CFR 37.81, substitute the words "North Dakota state department of health".
9. Where the words "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. The notification to the NRC may be made by email to RAMQC\_SHIPMENTS@nrc.gov or by fax to 301-816-5151" appear in 10 CFR 37.77(a)(1), substitute the words "North Dakota state department of health".
10. Where the words "NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.77(c)(1), substitute the words "North Dakota state department of health".
11. Where the words "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.77(c)(2) and 37.77(d), substitute the words "North Dakota state department of health".

12. Where the words "Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.81(g), substitute the words "North Dakota state department of health".
13. Requirements in 10 CFR part 37 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
14. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.

**History:** Effective October 1, 2016; [amended effective January 1, 2018](#).

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.01-04

## CHAPTER 33-10-23

### 33-10-23-08. Disposal and transfer of waste for disposal.

1. Each person subject to this chapter's general and specific licensing requirements shall manage and dispose of wastes containing TENORM:
  - a. By transfer of the wastes for storage, treatment, or disposal at a facility authorized to accept wastes containing TENORM by the department or other applicable state or federal agency;
  - b. By transfer for disposal in another state as otherwise approved by the applicable governmental authority; or
  - c. In accordance with alternate methods authorized by the department or other applicable state or federal agency.
2. Containers:
  - a. TENORM waste shall be kept in a leak-proof container.
  - b. The licensee shall use a container made of, or lined with, materials that will not react with, or be incompatible with the TENORM waste to be stored so that the ability of the container to contain the waste is not impaired or compromised.
  - c. A container containing TENORM waste shall always be closed ~~and sealed~~ or covered to prevent loss of material and entrance of outside elements during storage or while in transport, except when it is necessary to add or remove waste.
  - d. A container containing TENORM waste shall not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.
  - e. At least quarterly, the licensee shall inspect areas where containers of TENORM waste are stored, looking for leaking or deteriorating containers or containment systems.
  - f. All containers of TENORM waste shall be stacked in such a manner that each container identification label can be read from the access aisle or area.
  - g. Each container of TENORM waste shall be labeled with the following information prior to storage:
    - (1) Name and address of generator.
    - (2) Type of material (e.g., sludge, scale, dirt, scrap metal, etc.).
    - (3) Date stored.
    - (4) Labeled as radioactive material.
  - h. Records of inspections shall be maintained by the licensee for inspection by the department for five years.
3. Tanks containing TENORM.

The licensee shall develop a schedule and procedure for assessing the condition of each tank containing TENORM waste. The schedule and procedure must be adequate to detect cracks, leaks, corrosion, and erosion that may lead to cracks, leaks, or wall thinning to less than the required thickness to maintain vessel integrity. Procedures for emptying a tank to allow entry,

procedures for personnel protection, and inspection of the interior must be established when necessary to detect corrosion of the tank sides and bottom. The frequency of these inspections shall be performed at intervals not to exceed twelve months. Records shall be maintained for a period of five years.

4. Each shipment of TENORM shall be accompanied by a manifest containing all of the following information prior to leaving the licensee's site:
  - a. The licensee's (generator's) name, physical site address, and telephone number;
  - b. The name, address, telephone number, and radioactive material license number of each transporter;
  - c. The name, address, and telephone number of the designated disposal facility;
  - d. The description of the waste material; and
  - e. The total quantity of all TENORM waste by units of weight in tons or cubic yards and the number and type of containers.
5. The following certification must appear on the manifest and be signed and dated by the licensee as follows:

"I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport according to applicable international and national government regulations."
6. The licensee shall:
  - a. Sign and date the manifest upon initial transporter acceptance of the waste material;
  - b. Obtain the signature of the initial transporter and date of the acceptance of the manifest;
  - c. Retain one copy for a period of not less than three years;
  - d. Provide the initial transporter the remaining copies of the manifest; and
  - e. Receive the fully signed copy of the manifest from the designated disposal facility within forty-five days from the delivery to the initial transporter. In the event the licensee does not receive the signed manifest within this period, the licensee shall:
    - (1) Notify the department within seven days;
    - (2) Conduct an investigation into the reason the manifest was not received; and
    - (3) Report the results of the investigation to the department within thirty days.
7. The licensee shall file with the department a quarterly summary report stating the date, type, and total quantity by weight in tons or cubic yards, generator and final disposal facility of each TENORM transferred. Each report shall be filed within thirty days of the end of each quarter. If no transfers of TENORM have been made during the reporting period, the report must so indicate. Quarterly summary reports shall be maintained for a period of three years.

**History:** Effective January 1, 2016; [amended effective January 1, 2018](#).

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### 33-10-23-24. Reciprocal recognition of specific licenses.

1. Any person who holds a specific license from another agreement state or licensing state, issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within North Dakota for a period not in excess of one hundred eighty days in any twelve-month period, provided that:
  - a. A current copy of the licensing document or equivalent authorization is on file with the department and the authorized activities are not limited to specified installations or locations;
  - b. The out-of-state licensee notifies the department at least three days before engaging in such activity. Such notification shall indicate the location, period, and type of proposed possession and use within North Dakota. Upon receipt from the out-of-state licensee of a written request containing a schedule of activities to be conducted within North Dakota, the department may waive the requirement for additional notifications during the twelve-month period following the receipt of the initial notification;
  - c. The out-of-state licensee complies with all applicable rules of the department, including sections 33-10-23-11 and 33-10-23-12 and with all the terms and conditions of the licensing document or equivalent authorization, except any such terms and conditions which may be inconsistent with article 33-10;
  - d. The out-of-state licensee supplies any other information necessary to show compliance with article 33-10; and
  - e. The out-of-state licensee shall not transfer or dispose of TENORM possessed or used under the general license, except by transfer to a person:
    - (1) Specifically licensed by the department or by another licensing state to receive such TENORM; or
    - (2) Exempt from the requirements for a license for such TENORM under section 33-10-23-04.
2. The department may withdraw, limit, or qualify its acceptance of any specific license or equivalent authorization issued by a licensing state, or any product distributed pursuant to such license or equivalent authorization, if the department determines that, had the out-of-state licensee been licensed by North Dakota, the licensee's license would have been subject to action under section 33-10-23-22.

**History:** Effective January 1, 2016; amended effective January 1, 2018.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

**ARTICLE 33-33**  
**RULES INITIATED BY THE INSPECTION DIVISION**

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| 33-33-03          | Food Vending Rules                |
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**CHAPTER 33-33-04**  
**FOOD CODE**

[Repealed effective January 1, 2018]

**Section**

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**CHAPTER 33-33-04.1**  
**FOOD CODE**

Section

33-33-04.1-01 Adoption of the United States Food and Drug Administration 2013 Model Food Code by Reference

**33-33-04.1-01. Adoption of the United States food and drug administration 2013 Model Food Code by reference.**

The provisions of the United States food and drug administration 2013 Model Food Code and its supplement are adopted by reference into this chapter, with the following modifications:

1. Paragraph 2-102.12 Certified Food Protection Manager. For the purposes of this chapter, is revised as follows:

a. At least one employee that has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program. Food establishments licensed and operating prior to the effective date of these rules, have one year from the effective date of the rules to come into compliance with this requirement.

b. This section does not apply to certain types of food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation. Higher risk food establishments shall be required to employ a certified food protection manager and include food establishments that serve an extensive menu; handle multiple raw ingredients; prepare or serve time/temperature control for safety foods; or where complex food processes are involved, including cooking, cooling, reheating for hot holding, hot holding, or cold holding; food establishments that serve a highly susceptible populations, for example, infants, toddlers, the elderly, or the immunocompromised; and food establishments that conduct specialized processes, for example, smoking and curing, reduced oxygen packaging for extended shelf-life, or other processes that require a hazard analysis critical control point plan review. Lower-risk food establishments that do not serve or prepare multiple raw ingredients or time/temperature control for safety food, do not use complex food processes, do not serve a highly susceptible population, or do not involve specialized processes are not required to have a certified food protection manager.

c. Once a food establishment has come into compliance with this requirement consistent with subdivision a, the licensed food establishment may not operate without a certified food protection manager for longer than a six-month time period when a vacancy occurs.

2. Paragraph 8-401.10 Establishing Inspection Interval. For the purposes of this chapter, is revised as follows:

a. Except as specified in subdivisions b and c of this subsection, the regulatory authority, at any time during operation, may inspect a food establishment. The department shall determine the frequency of inspection based on the level of risk categorization, complaints, and previous compliance history.

b. The regulatory authority may increase the interval between inspections if:

(1) The food establishment is fully operating under an approved and validated hazard analysis critical control point plan as specified under section 8-201.14 and paragraphs 8-103.12 (A) and (B);

(2) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction. The food establishment may be contacted by telephone or other means by the regulatory authority to ensure the establishment manager and the nature of food operation are not changed; or

(3) The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not time/temperature control for safety food, such as carbonated beverages and snack food, such as chips, nuts, popcorn, and pretzels.

c. The regulatory authority periodically shall inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged time/temperature control for safety food and that:

(1) Has improvised rather than permanent facilities or equipment for accomplishing functions, such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or

(2) Has inexperienced food employees.

3. Paragraph 8-405.11 Timely Correction. For the purpose of this chapter, is revised as follows:

a. Except as specified in subdivision b of this subsection, a permit holder, at the time of inspection, shall correct a violation of a priority item or priority foundation item of this code and implement corrective actions for a hazard analysis critical control point plan provision that is not in compliance with its critical limit.<sup>Pf</sup>

b. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame and approve a compliance schedule.

4. Paragraph 8-406.11 Time Frame for Correction. For the purpose of this chapter, is revised as follows:

a. Except as specified in subdivision b of this subsection, the permit holder shall correct core items by a date and time agreed to or specified by the regulatory authority.

b. The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under subdivision a of this subsection if a written schedule of compliance is submitted by the permit holder and no health hazard exists or will result from allowing an extended schedule for compliance.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 23-09

**Law Implemented:** NDCC 23-09



**TITLE 42**  
**INDIAN SCHOLARSHIPS, BOARD FOR**



## JANUARY 2018

### CHAPTER 42-01-01 GENERAL ADMINISTRATION

#### Section

42-01-01-01 Organization of Indian Scholarship [ProgramBoard](#)

#### **42-01-01-01. Organization of Indian scholarship [programboard](#).**

1. **History and function.** The 1963 legislative assembly first provided for the North Dakota Indian scholarship [programboard](#) by a law codified as North Dakota Century Code chapter 15-63.
2. **[ProgramBoard](#) membership.** Members of the North Dakota Indian scholarship [programboard](#) consist of an Indian appointed by the governor, the executive director of the state Indian affairs commission, and the chancellor of higher education or the chancellor's designee. The chancellor of higher education or the chancellor's designee shall serve as chairman and the executive director of the state Indian affairs commission shall serve as secretary of the board for Indian scholarships.
3. **Inquiries.** Inquiries regarding the [programboard](#) may be addressed to:

North Dakota Indian Scholarship [ProgramBoard](#)  
North Dakota University System  
600 East Boulevard Avenue, Dept. 215  
Bismarck, ND 58505-0230

**History:** Effective February 1, 2000; amended effective August 1, 2000; [January 1, 2018](#).

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

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

## CHAPTER 42-02-01

### 42-02-01-01. Indian scholarship basic policy.

The North Dakota Indian scholarship ~~program~~board was established to provide scholarship awards to Indian students who qualify through an application procedure ~~as set out~~established by the ~~North Dakota Indian scholarship program~~ board. ~~Two types of awards are available: the first is a need-based award and the second is a merit-based award. In addition, all Indian valedictorian students graduating from high school anywhere in North Dakota will be provided an automatic merit-based scholarship if they will be attending a college or university in North Dakota as full-time students.~~The board provides awards to state resident Indian students admitted to any institution of higher learning or state career and technical education program within this state. A student may qualify for an award by graduating as a North Dakota high school valedictorian, by demonstrating academic merit, or by demonstrating financial need.

**History:** Effective February 1, 2000; amended effective January 1, 2018.

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

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

## CHAPTER 42-02-02

### 42-02-02-01. Eligibility of applicants.

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

1. An applicant must be an enrolled member of a federally recognized Indian tribe and a resident of North Dakota. Residency for each student shall be determined by the institution that student is attending.
2. An applicant may not be considered eligible until the applicant has gained admission to any institution of higher learning or state ~~vocational~~career and technical education program of study within North Dakota and has had this fact certified to the board.
3. An applicant must ~~be in financial need or a~~graduate as a North Dakota high school valedictorian ~~or,~~ demonstrate academic merit, or demonstrate financial need.
4. An applicant must ~~show~~demonstrate probable and continuing success as a student by earning a minimum cumulative grade point average of 3.50 for a merit-based scholarship or 2.00 for a need-based scholarship. Applicants who apply with a general educational development high school diploma shall be considered to have met the requirement of a 2.00 cumulative grade point average.
5. The scholarship funds are ~~only~~ available to students ~~who are considered to be~~enrolled full-time ~~students,~~ or to part-time students who ~~may need minimal credits to~~will complete their degree requirements within one ~~semester, in their course of study by the college or university they are attending~~term. Prorated awards are available to post-baccalaureate students enrolled less than full time. The board considers full-time enrollment to be twelve semester hours for undergraduate students and nine semester hours for graduate students, or an equivalent number of quarter hours or clock hours.
6. Students participating in internships, student teaching, teaching assistance programs, or cooperative education programs shall be eligible for a scholarship award only if participation in that program will earn credits which require tuition and which are required for a degree.
7. Students may not receive more than the equivalent of full funding for six academic years under the scholarship.

**History:** Effective February 1, 2000; amended effective August 1, 2000; January 1, 2018.

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

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

### 42-02-02-02. Procedures for application.

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

North Dakota Indian Scholarship ~~Program~~Board  
North Dakota University System  
600 East Boulevard Avenue, Dept. 215  
Bismarck, ND 58505-0230
2. The priority deadline for application is the fifteenth of July of each year.
3. Along with a completed application form, ~~all~~ candidates shall also submit ~~the following~~:
  - a. Verification of tribal enrollment;

- b. The applicant's most recent transcript (~~high school, college, university, or general equivalency diploma certificate~~)that shows a cumulative grade point average; and
- c. A budget needs analysis form completed by a financial aid officer at the institution the applicant will be attending; and
- d. The free application for federal student aid (FAFSA), for consideration for need-based awards.

4. ~~Applicants whose financial circumstances change in the year of the awarded grant may be considered for revision of award or other budget adjustments, or both, through a special request to the scholarship board.~~Current award recipients may apply for continued funding through the following academic year by submitting an application and items listed in subdivisions b through d of subsection 3.

5. ~~Current recipients wishing to apply for continued funding through the following academic year shall submit:~~

~~a. An updated transcript; and~~

~~b. A new budget completed by the financial aid officer at the institution the student is attending.~~Applicants whose circumstances change during the academic year may be considered for an award or an adjustment to an award by appealing in writing to the board.

**History:** Effective February 1, 2000; amended effective August 1, 2000; January 1, 2018.

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

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

#### **42-02-02-03. Selection process.**

All completed applications received ~~before~~by the application priority deadline ~~will~~must be given full and equal consideration when screening for eligibility for the scholarship.

Candidates for the scholarship will must be in the following assigned to one of three groups: award categories as valedictorian, merit-based, or need-based applicants. Award priority must be given to high school valedictorians, then to merit-based applicants, then to need-based applicants. Grade point averages must be ranked from highest to lowest for merit-based applicants. Demonstrated financial need, defined as an applicant's cost of attendance minus nonloan financial aid resources and the applicant's free application for federal student aid-calculated expected family contribution, must be ranked from highest need to lowest need for need-based applicants. Within each award category, the board may give preference to applicants who are members of North Dakota-based Indian tribes. The board may establish additional priority criteria as required to make award selections.

Any eligible applicant who is not offered an award but whose application was received by the priority deadline must be placed on a wait list for funds, which may become available throughout the academic year. Students on the wait list must be ranked according to the priority funding selection process.

Applications received after the priority deadline may be considered only if all eligible applicants meeting the deadline are awarded and if funds remain. Late applications must be considered in date order received based on the priority funding selection process previously noted. All awardees and their respective institutions must be sent notification after the completion of the selection process.

1. **Awards for valedictorians.** All high school valedictorians meeting the application criteria ~~will~~shall receive an award ~~if the application deadline has been met~~for the academic year immediately following their graduation from high school.

2. **Awards for merit-based scholarship.** The recipient of the merit-based scholarship must have a cumulative grade point average of at least 3.50. Financial need is not ~~necessarily~~ a factor. The award is to provide an incentive to students with high academic achievements.
3. **Awards for financial ~~need or basic~~ need-based scholarship.** The recipient of the basic~~need-based~~ scholarship must ~~show~~ demonstrate financial need on the needs analysis form completed by a financial aid officer at the institution the applicant is attending, and maintain must have a cumulative grade point average of at least 2.00 or possess an acceptable high school equivalency credential. Undergraduates will be given priority over graduate students.

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

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

**History:** Effective February 1, 2000; amended effective August 1, 2000; January 1, 2018.

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

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

## CHAPTER 42-02-03 SCHOLARSHIP AWARDS

Section

|             |   |
|-------------|---|
| 42-02-03-01 | Award Amounts   |
| 42-02-03-02 | Policy for a Student Who Declines an Initial Offer of Scholarship Award <u>[Repealed]</u> |
| 42-02-03-03 | Disbursement Procedures   |

### 42-02-03-01. Award amounts.

Criteria to be used in determining award amounts are availability of funds, total number of applicants, prevailing tuition rates, grade point averages, and financial need. The board shall set award amounts each academic year. The award amount may be reduced to accord with an individual recipient's financial need.

**History:** Effective February 1, 2000; amended effective January 1, 2018.

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

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

### 42-02-03-02. Policy for a student who declines an initial offer of scholarship award.

Repealed effective January 1, 2018.

~~—A student who declines the initial offer of a scholarship and requests reinstatement will be considered only in the event attrition produces funds available for reawarding.~~

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

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

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

### 42-02-03-03. Disbursement procedures.

~~—Upon receipt of acceptance notices from the students, the North Dakota university system will process award checks according to procedures set out at colleges or universities.~~

~~The checks will~~Each academic term, award payments must be sent to the ~~institution's financial aid office~~student's institution for disbursement ~~to the students~~upon verification of enrollment and scholarship eligibility requirements. Students are expected to use scholarship disbursements to pay their normal education expenses. Recipients may apply the awards toward the cost of registration, health, activities, ~~room and~~ board, books, and other necessary items.

~~**History:** Effective February 1, 2000; amended effective August 1, 2000;~~ January 1, 2018.

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

~~**Law Implemented:** NDCC 15-63-02, 15-63-05~~

## CHAPTER 42-02-04 POLICY REQUIREMENTS

### Section

|             |  |
|-------------|--|
| 42-02-04-01 | Policy for Satisfactory Progress   |
| 42-02-04-02 | Policy for Students Who Delay or Interrupt Their Academic Programs <u>[Repealed]</u> |
| 42-02-04-03 | Policy for Refunds and Repayments  |

#### **42-02-04-01. Policy for satisfactory progress.**

The North Dakota Indian scholarship ~~program~~board requires the student to maintain a minimum cumulative grade point average of 2.00 ~~or above~~ for renewal. A merit-based scholarship recipient who does not maintain a minimum cumulative grade point average of 3.50 may be considered for a need-based scholarship if the student maintains a minimum cumulative grade point average of 2.00.

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

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

**History:** Effective February 1, 2000; amended effective January 1, 2018.

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

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

#### **42-02-04-02. Policy for students who delay or interrupt their academic programs.**

Repealed effective January 1, 2018.

~~— Students who accept and use a scholarship and who subsequently interrupt their academic programs may petition the board for reinstatement.~~

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

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

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

#### **42-02-04-03. Policy for refunds and repayments.**

A student who withdraws after having received ~~an advance on the student's~~ a North Dakota Indian scholarship shall have any refunds or repayments due to the scholarship program~~board~~ determined by the stated refund or repayment policy of the campus the student is attending.

**History:** Effective February 1, 2000; amended effective January 1, 2018.

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

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

## CHAPTER 42-02-05

### 42-02-05-01. Appeals process.

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

The appeal should be addressed to the ~~scholarship~~-board:

North Dakota Indian Scholarship ~~Program~~Board  
North Dakota University System  
600 East Boulevard Avenue, Dept. 215  
Bismarck, ND 58505-0230

The board shall consider the appeal and ~~will, under extraordinary circumstances affecting a student's eligibility for funding, may grant an award on appeal for the remainder of the academic year.~~ The board shall contact the student regarding its decision within two weeks after the board renders a decision.

**History:** Effective February 1, 2000; amended effective August 1, 2000; January 1, 2018.

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

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

**TITLE 50**  
**NORTH DAKOTA BOARD OF MEDICINE**



**JANUARY 2018**

**ARTICLE 50-02  
PHYSICIAN LICENSURE**

|                   |   |
|-------------------|---|
| Chapter           |   |
| 50-02-01          | Provisional Temporary License   |
| 50-02-02          | Special License   |
| <u>50-02-02.1</u> | <u>Administrative License</u>   |
| 50-02-03          | Examinations  |
| 50-02-04          | National Board of Examiners for Osteopathic Physicians and Surgeons, Inc.<br>[Repealed] |
| 50-02-05          | Graduates of Foreign Medical Schools  |
| 50-02-06          | American Students in Foreign Medical Schools  |
| 50-02-07          | License Fees [Repealed]   |
| 50-02-07.1        | License Fees  |
| 50-02-08          | Credentials Committee [Repealed]  |
| 50-02-09          | Informal Disciplinary Action [Repealed]   |
| 50-02-10          | Patient Records   |
| 50-02-11          | Examinations  |
| 50-02-12          | Notice of Denial or Limitation of Licensure   |
| 50-02-13          | Resident Licensure  |
| 50-02-14          | Renewal of Licenses   |
| <u>50-02-15</u>   | <u>Telemedicine</u>   |

**CHAPTER 50-02-02  
SPECIAL LICENSE**

|             |  |
|-------------|--|
| Section     |  |
| 50-02-02-01 | <del>Special License Requirements</del> <u>Exceptions to Technical Requirements on Licensure</u> |
| 50-02-02-02 | Special License Requirements for Foreign Medical School Graduates [Repealed]                     |

**50-02-02-01. ~~Special license requirements~~Exceptions to technical requirements on licensure.**

~~In the best interests of this state, the board may grant a special license to special applicants. The special applicant must appear before the board for such examination into the applicant's qualifications as may be required by the board. A special license is reviewable annually by the board. The special license may be converted to a regular license upon meeting all statutory and board requirements. The board may issue a medical license to an applicant who does not meet all technical eligibility requirements if the board determines the applicant is uniquely qualified through training or experience or will make a unique or special contribution to the practice of medicine not readily available to the~~

citizens of the state. In applying this rule, the board shall make written findings supporting the issuance of a special license. In addition to the potential benefit to the state, the board shall include in its analysis consideration of the following:

1. Board certification;
2. Nature and length of medical practice;
3. Nature and length of postgraduate training or research;
4. Licenses issued by other states;
5. The existence of disciplinary actions by other medical boards or adverse actions by medical facilities;
6. History of malpractice judgments or settlements;
7. Licensing examinations, such as the United States medical licensing examination (USMLE) or special purpose examination (SPEX); and
8. Such other considerations that bear upon an applicant's eligibility.

A license issued under this section is, for all purposes, the same as a regular medical license issued by the board.

**History:** Amended effective February 1, 1985; January 1, 2018.

**General Authority:** NDCC ~~43-17-13~~28-32-02

**Law Implemented:** NDCC ~~43-17-21~~43-17

**CHAPTER 50-02-02.1**  
**ADMINISTRATIVE LICENSE**

Section

50-02-02.1-01 Administrative License

**50-02-02.1-01. Administrative license.**

1. The board may issue a license that is limited to administrative medicine, which is defined as administration or management using the medical knowledge, skill, and judgment of a licensed physician which may affect the health of any member of the public.
2. An administrative medical license does not permit the licensee to practice clinical medicine that, for purposes of this rule, includes the provision of any patient diagnosis or treatment, the prescribing of any drug, or the delegation of medical authority to, or the supervision of, any health professional. The board shall require an applicant for an administrative medical license to sign an acknowledgment of these limitations before the issuance of an administrative medical license.
3. An applicant for an administrative medical license must meet all the eligibility requirements for a regular medical license, except that the applicant may not be required to demonstrate the maintenance of an active clinical practice prior to applying for an administrative medical license.
4. The holder of an administrative medical license is subject to the same rules and regulations as those holding a regular medical license, including the regulations governing license renewal, fees, continuing medical education, and discipline.

**History:** Effective January 1, 2018.

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

**Law Implemented:** NDCC 43-17-07.1

## **CHAPTER 50-02-15** **TELEMEDICINE**

### Section

|                    |   |
|--------------------|---|
| <u>50-02-15-01</u> | <u>Definitions</u>                              |
| <u>50-02-15-02</u> | <u>Licensure</u>                                |
| <u>50-02-15-03</u> | <u>Standard of Care and Professional Ethics</u> |
| <u>50-02-15-04</u> | <u>Prescribing</u>                              |

### **50-02-15-01. Definitions.**

As used in this chapter:

1. "Telemedicine" means the practice of medicine using electronic communication, information technologies, or other means between a licensee in one location and a patient in another location, with or without an intervening health care provider. The term includes direct interactive patient encounters as well as asynchronous store-and-forward technologies and remote monitoring.
2. "Licensee" means a physician or physician assistant licensed to practice in North Dakota. A physician assistant practicing telemedicine from another state is subject to the rules regarding physician supervision, except that supervision may be by a North Dakota licensed physician who is practicing telemedicine in North Dakota and need not be by a North Dakota licensed physician who is physically located in North Dakota.

**History:** Effective January 1, 2018.

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

**Law Implemented:** NDCC 43-17

### **50-02-15-02. Licensure.**

The practice of medicine is deemed to occur in the state the patient is located. Practitioners providing medical care to patients located in North Dakota are subject to the licensing and disciplinary laws of North Dakota and must possess an active North Dakota license for their profession.

**History:** Effective January 1, 2018.

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

**Law Implemented:** NDCC 43-17, 43-51-02

### **50-02-15-03. Standard of care and professional ethics.**

Licensees are held to the same standard of care and same ethical standards whether practicing traditional in-person medicine or telemedicine. Therefore, the following apply in the context of telemedicine:

1. Scope of practice. Professional ethical standards require all practitioners to practice only in areas in which they have demonstrated competence, based on their training, ability, and experience. In assessing a licensee's compliance with this ethical requirement, consideration must be given to board certifications and specialty groups' telemedicine standards.
2. Patient-licensee relationship. A licensee practicing telemedicine shall establish a valid relationship with the patient prior to the diagnosis or treatment of a patient. A licensee practicing telemedicine shall verify the identity of the patient seeking care, and disclose, and ensure the patient has the ability to verify, the identity and licensure status of any licensee providing medical services to the patient.

3. Evaluations and examinations required to establish a patient-licensee relationship. Prior to initially diagnosing or treating a patient for a specific illness or condition, an examination or evaluation must be performed. An examination or evaluation may be performed entirely through telemedicine, if the examination or evaluation is equivalent to an in-person examination. A video examination that utilizes appropriate diagnostic testing and use of peripherals that would be deemed necessary in a like in-person examination or evaluation meet this standard, as does an examination conducted with an appropriately licensed intervening health care provider, practicing within the scope of their profession, providing necessary physical findings to the licensee. An examination or evaluation that consists only of a static online questionnaire or an audio conversation may not be considered to meet the standard of care.

Once a licensee conducts an acceptable examination or evaluation, whether in-person or by telemedicine, and establishes a patient-licensee relationship, subsequent followup care may be provided as deemed appropriate by the licensee, or by a provider designated by the licensee to act temporarily in the licensee's absence.

It is recognized that in certain types of telemedicine utilizing asynchronous store-and-forward technology or electronic monitoring, such as teleradiology or intensive care unit monitoring, it is not medically necessary for an independent examination of the patient to be performed.

4. Medical records. Licensees practicing telemedicine are subject to all North Dakota laws governing the adequacy of medical records and the provision of medical records to the patient and other medical providers treating the patient.

5. Licensees must have the ability to make appropriate referrals of patients not amenable to diagnosis or complete treatment through a telemedicine encounter, including those patients in need of emergent care, or complementary in-person care.

**History:** Effective January 1, 2018.

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

**Law Implemented:** NDCC 43-17-31

#### **50-02-15-04. Prescribing.**

A licensee who has performed a telemedicine examination or evaluation meeting the requirements of this chapter may prescribe medications according to the licensee's professional discretion and judgment; however, licensees may not prescribe opioids through a telemedicine encounter.

Licensees who prescribe controlled substances, as defined by North Dakota law, in circumstances allowed under this rule, shall comply with all state and federal laws regarding the prescribing of controlled substances, and shall participate in the North Dakota prescription drug monitoring program.

**History:** Effective January 1, 2018.

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

**Law Implemented:** NDCC 19-02.1-15.1, 19-03.1-22.4, 19-03.5-09, 43-17

**ARTICLE 50-05  
PRESCRIPTIVE PRACTICES**

|          |   |
|----------|---|
| Chapter  |   |
| 50-05-01 | Expedited Partner Therapy                 |
| 50-05-02 | Prescription Drug Monitoring Program Rule |

**CHAPTER 50-05-02**  
**PRESCRIPTION DRUG MONITORING PROGRAM RULE**

|             |   |
|-------------|---|
| Section     |   |
| 50-05-02-01 | Prescription Drug Monitoring Program Rule |

**50-05-02-01. Prescription drug monitoring program rule.**

1. Every practitioner with a drug enforcement agency registration number shall register with the prescription drug monitoring program.
2. a. When a practitioner determines reported drugs will be prescribed to a patient for a period to exceed twelve weeks, the practitioner shall request a prescription drug monitoring program report for that patient and, at a minimum, at least semiannually thereafter.  
b. This requirement does not apply to reported drugs prescribed to patients in a controlled setting in which the drugs are locked and administered to the patient, for example, admitted hospital or hospice patients, long-term care patients or group home residents.
3. In addition to those reports requested under subsection 2, practitioners shall request a prescription drug monitoring program report when it is documented in the prescribing practitioner's medical record for that patient that the patient exhibits signs associated with diversion or abuse, including:
  - a. Selling prescription drugs;
  - b. Forging or altering a prescription;
  - c. Stealing or borrowing reported drugs;
  - d. Taking more than the prescribed dosage of any reported drug;
  - e. Having a drug screen that indicates the presence of additional or illicit drugs;
  - f. Being arrested, convicted, or diverted by the criminal justice system for a drug-related offense;
  - g. Receiving reported drugs from providers not reported to the treating practitioner;
  - h. Having a law enforcement or health professional express concern about the patient's use of drugs.
  - i. Violating any prescribing agreement with the physician;
  - j. Frequently requests early refills of a reported drug for any reason;
  - k. Appears impaired or excessively sedated to the physician in any patient encounter; and
  - l. Has a history of drug abuse dependency.

4. A practitioner shall document the receipt and assessment of prescription drug monitoring program reports made under this rule.

**History:** Effective January 1, 2018.

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

**Law Implemented:** NDCC 19-03.5-09, 43-17



**TITLE 67**  
**PUBLIC INSTRUCTION, SUPERINTENDENT OF**



**JANUARY 2018**

**ARTICLE 67-10  
SCHOOL CONSTRUCTION LOAN APPLICATION AND LOAN APPROVAL**

Chapter

|                     |  |
|---------------------|--|
| 67-10-01            | School Construction Loan Application and Loan Approval <u>[Repealed]</u>   |
| <del>67-10-02</del> | <del>School Construction Loan Application and Loan Approval - Coal Development Trust Fund</del>                        |
| <del>67-10-03</del> | <del>School Construction Loan Application and Loan Approval - School Construction Assistance Revolving Loan Fund</del> |

**CHAPTER 67-10-01  
SCHOOL CONSTRUCTION LOAN APPLICATION AND LOAN APPROVAL**

[Repealed effective January 1, 2018]

Section

|                        |  |
|------------------------|--|
| <del>67-10-01-01</del> | <del>Definitions</del>   |
| <del>67-10-01-02</del> | <del>Loan Eligibility</del>  |
| <del>67-10-01-03</del> | <del>Application Form</del>  |
| <del>67-10-01-04</del> | <del>Order of Approval - Priority - Times Loan Applications Considered</del>                         |
| <del>67-10-01-05</del> | <del>Loan Approval - Demonstration of Fiscal Need and Capacity to Repay</del>                        |
| <del>67-10-01-06</del> | <del>Loan Approval - Order - Determination of Loan Amount and Percent of Interest - [Repealed]</del> |
| <del>67-10-01-07</del> | <del>Board Approval</del>  |

**CHAPTER 67-10-02**  
**SCHOOL CONSTRUCTION LOAN APPLICATION AND LOAN APPROVAL - COAL**  
**DEVELOPMENT TRUST FUND**

Section

|                    |  |
|--------------------|--|
| <u>67-10-02-01</u> | <u>Definitions</u>                           |
| <u>67-10-02-02</u> | <u>Loan Eligibility</u>                      |
| <u>67-10-02-03</u> | <u>Application Form</u>                      |
| <u>67-10-02-04</u> | <u>Order of Approval</u>                     |
| <u>67-10-02-05</u> | <u>Loan Approval - Demonstration of Need</u> |
| <u>67-10-02-06</u> | <u>Loan Issuance</u>                         |

**67-10-02-01. Definitions.**

For purposes of this chapter:

1. "Board" means the board of university and school lands.
2. "Department" means the North Dakota department of public instruction.
3. "District" means a North Dakota public school district.
4. "Loan application" means the construction loan application provided by the department.
5. "Project" means a building or facility that a school district is authorized to construct under North Dakota Century Code section 15.1-36-01.
6. "Superintendent" means the North Dakota superintendent of public instruction.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-36-01, 15.1-36-02, 28-32-02

**Law Implemented:** NDCC 15.1-36-01, 15.1-36-02

**67-10-02-02. Loan eligibility.**

To be eligible for a loan:

1. The project is approved by the superintendent under North Dakota Century Code section 15.1-36-01.
2. The district has submitted a complete application as required by the superintendent.
3. The district must demonstrate a need based on:
  - a. An unanticipated construction project;
  - b. An unanticipated replacement project; or
  - c. An emergency repair.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-36-01, 15.1-36-02, 28-32-02

**Law Implemented:** NDCC 15.1-36-02

**67-10-02-03. Application form.**

The district shall provide the following information to the superintendent on a form provided by the department:

1. Verification of existing indebtedness;
2. A discussion of alternative sources or methods for financing the unanticipated construction, unanticipated replacement, or emergency repair;
3. Past, current, and projected enrollment data;
4. Current bonded indebtedness, debt retirement schedules, and total capital expenditures of the district;
5. Current taxable valuation of the district;
6. Trend data of per-pupil taxable valuation of the district;
7. Current and projected operating expenses of the district;
8. Data on tax levies of the district; and
9. Other data as deemed necessary by the superintendent.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-36-02, 28-32-02

**Law Implemented:** NDCC 15.1-36-02

**67-10-02-04. Order of approval.**

Loan applications will be considered in the order of approval of construction projects under North Dakota Century Code section 15.1-36-01.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-36-02, 28-32-02

**Law Implemented:** NDCC 15.1-36-02

**67-10-02-05. Loan approval - Demonstration of need.**

To be approved for a loan under this chapter, the district shall submit all information requested by the superintendent and submit the application provided by the superintendent.

To be approved for a loan under this section, the district must clearly demonstrate and provide narrative, documents, and other written evidence that the loan application is necessary to fund:

1. An unanticipated construction project;
2. An unanticipated replacement project; or
3. An emergency repair.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-36-02, 28-32-02

**Law Implemented:** NDCC 15.1-36-02

**67-10-02-06. Loan issuance.**

The superintendent shall submit approved loan applications to the board and the board shall issue a loan from the coal development trust fund in the order submitted by the superintendent and terms as provided in subsection 4 of North Dakota Century Code section 15.1-36-02.

1. Minimum loan is two hundred fifty thousand dollars; maximum loan is two million dollars.

2. Term of the loan is twenty years, or less if requested by the district.

3. Interest rate may not exceed two percent per year.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-36-02, 28-32-02

**Law Implemented:** NDCC 15.1-36-02

**CHAPTER 67-10-03**  
**SCHOOL CONSTRUCTION LOAN APPLICATION AND LOAN APPROVAL - SCHOOL**  
**CONSTRUCTION ASSISTANCE REVOLVING LOAN FUND**

Section

|                    |                                      |
|--------------------|--------------------------------------|
| <u>67-10-03-01</u> | <u>Definitions</u>                   |
| <u>67-10-03-02</u> | <u>Loan Eligibility</u>              |
| <u>67-10-03-03</u> | <u>Loan Application and Approval</u> |
| <u>67-10-03-04</u> | <u>Loan Issuance</u>                 |

**67-10-03-01. Definitions.**

For purposes of this chapter:

1. "Board" means the board of a North Dakota public school district.
2. "District" means a North Dakota public school district.
3. "Project" means a building or facility that a school district is authorized to construct under North Dakota Century Code section 15.1-36-01.
4. "Superintendent" means the North Dakota superintendent of public instruction.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-36-08, 28-32-02

**Law Implemented:** NDCC 15.1-36-08

**67-10-03-02. Loan eligibility.**

1. To be eligible for a loan a district must:
  - a. Obtain project approval from the superintendent pursuant to North Dakota Century Code section 15.1-36-01.
  - b. Propose a project for new construction or remodel with a cost of at least one million dollars and expected utilization of at least thirty years.
  - c. Publish information in the official newspaper regarding additional millage and dollar increase per one thousand dollars of taxable valuation along with the notice of election to authorize the school construction bond issuance.
  - d. Post notice of the information on the district website.
  - e. Receive authorization for a bond issue under North Dakota Century Code chapter 21-03.
2. The board shall submit a completed application to the Bank of North Dakota.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-36-01, 15.1-36-08, 21-03, 28-32-02

**Law Implemented:** NDCC 15.1-36-08

**67-10-03-03. Loan application and approval.**

The superintendent shall review loan applications on a prioritization system to include a review of all applications filed during the twelve-month period preceding April first.

For prioritization, consideration must be given to:

1. Student occupancy and academic needs.
2. Ages of existing structures to be replaced or remodeled.
3. Building design based on safety and vulnerability assessments.
  - a. A district must provide evidence of safety and vulnerability assessments conducted by the district.
  - b. Any other evidence provided by the district.
4. Community support.
5. Project cost.
6. Any other criteria required by the superintendent after consultation with an interim committee appointed by the legislative management.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-36-01, 15.1-36-08, 28-32-02

**Law Implemented:** NDCC 15.1-36-08

#### **67-10-03-04. Loan issuance.**

Upon approval of the superintendent, the Bank of North Dakota shall issue a loan from the school construction assistance revolving loan fund.

1. The maximum loan is ten million dollars.
2. If the school district's unobligated general fund balance on the preceding June thirtieth exceeds limitations set in North Dakota Century Code section 15.1-27-35.3, the maximum loan may not exceed eighty percent of the project cost up to a maximum loan of eight million dollars.
3. The term of the loan is twenty years, or less at the request of the board.
4. The interest rate may not exceed two percent per year.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-27-35.3, 15.1-36-01, 15.1-36-08, 28-32-02

**Law Implemented:** NDCC 15.1-36-08

**ARTICLE 67-11**  
**EDUCATION PROFESSIONAL CREDENTIALS**

|            |   |
|------------|---|
| Chapter    |   |
| 67-11-01   | Driver Education Instructor's Credential [Repealed]                             |
| 67-11-02   | Elementary Principal's Credential   |
| 67-11-03   | Reading Credentials [Repealed]  |
| 67-11-03.1 | Reading and Mathematics Credentials [Repealed]                                  |
| 67-11-03.2 | Reading and Mathematics Credentials <u>[Repealed]</u>                           |
| 67-11-03.3 | Title I Coordinator Credential <u>[Repealed]</u>                                |
| 67-11-04   | Library Media Credential  |
| 67-11-05   | School Counselor Credentials  |
| 67-11-06   | Secondary Principal's Credential  |
| 67-11-07   | Superintendent's Credential   |
| 67-11-08   | Special Education Director's Credential   |
| 67-11-09   | Early Childhood Special Education Teacher Credential                            |
| 67-11-10   | Emotional Disturbance Teacher Credential  |
| 67-11-11   | Gifted and Talented Teacher Credential  |
| 67-11-12   | Physical Disabilities Teacher Credential  |
| 67-11-13   | Specific Learning Disabilities Teacher Credential                               |
| 67-11-14   | Certificate of Completion for Paraprofessionals                                 |
| 67-11-15   | School Psychology Intern Approval   |
| 67-11-16   | Special Education Strategist Credential   |
| 67-11-17   | Mental Retardation Teacher Credential   |
| 67-11-18   | Credential Requirement for Teachers of the Visually Impaired                    |
| 67-11-19   | Credential Requirement for Teachers of Students Who Are Deaf or Hard of Hearing |
| 67-11-20   | Certificate of Completion for Speech-Language Pathology Paraprofessionals       |

**CHAPTER 67-11-03.2**  
**READING AND MATHEMATICS CREDENTIALS**

[Repealed effective January 1, 2018]

**Section**

|                          |   |
|--------------------------|---|
| <del>67-11-03.2-01</del> | <del>Credential Required</del>  |
| <del>67-11-03.2-02</del> | <del>Requirements for Reading Credentials in an Elementary School Setting</del>   |
| <del>67-11-03.2-03</del> | <del>Requirements for Reading Credentials in Grades Five Through Eight in a Middle School or Junior High School Setting</del>     |
| <del>67-11-03.2-04</del> | <del>Requirements for Mathematics Credentials in an Elementary School Setting</del>   |
| <del>67-11-03.2-05</del> | <del>Requirements for Mathematics Credentials in Grades Five Through Eight in a Middle School or Junior High School Setting</del> |
| <del>67-11-03.2-06</del> | <del>Requirements for Mathematics Credentials in Grades Seven Through Twelve in a Secondary School Setting</del>                  |
| <del>67-11-03.2-07</del> | <del>Requirements for Secondary Generalist Title I Teacher in a Secondary School Setting</del>                                    |
| <del>67-11-03.2-08</del> | <del>Initial Credentials</del>  |
| <del>67-11-03.2-09</del> | <del>Application Process</del>  |
| <del>67-11-03.2-10</del> | <del>Renewals</del>   |
| <del>67-11-03.2-11</del> | <del>Use of Federal Rules and Policies</del>  |

**CHAPTER 67-11-03.3  
TITLE I COORDINATOR CREDENTIAL**

[Repealed effective January 1, 2018]

**Section**

- ~~67-11-03.3-01—Types of Credentials—Requirements for Title I Coordinator Credentials~~
- ~~67-11-03.3-02—Duties of Title I Coordinators~~
- ~~67-11-03.3-03—Application for Title I Coordinator Credentials~~
- ~~67-11-03.3-04—Renewal of Title I Coordinator Credentials~~

## CHAPTER 67-13-01

### 67-13-01-01. Purpose.

School districts cooperating with another school district or districts for the purpose of providing joint educational opportunities to the students as established by North Dakota Century Code section ~~15-40.1-07.4~~15.1-27-16 may receive additional per student payments ~~for each high school and elementary student for up to four years~~as provided in North Dakota Century Code section 15.1-27-16.

**History:** Effective May 1, 1999; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, ~~15-40.1-07.4~~

**Law Implemented:** NDCC ~~15-40.1-07.4~~15.1-27-16

### 67-13-01-02. Approval.

Cooperative agreements of education must first receive the approval of the superintendent of public instruction and shall be effective ~~for a period of one school year~~ beginning July first of the year approved, upon the approval of the school boards of the member districts. The agreement may be changed only by a majority vote of each board signing the agreement and the approval of the department of public instruction. Any change to the agreement requires submission to and approval from the superintendent of public instruction prior to the change becoming effective.

**History:** Effective May 1, 1999; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, ~~15-40.1-07.4~~

**Law Implemented:** NDCC ~~15-40.1-07.4~~15.1-27-16

### 67-13-01-03. Withdrawal.

Any district wishing to withdraw from the cooperative agreement must submit its intent to the other cooperative members in writing by January fifteenth. Withdrawal will become effective June thirtieth of the same year. The superintendent of public instruction must be notified in writing thirty days prior to the termination of the agreement.

**History:** Effective May 1, 1999; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, ~~15-40.1-07.4~~

**Law Implemented:** NDCC ~~15-40.1-07.4~~15.1-27-16

### 67-13-01-04. School districts.

Cooperating school districts must agree to equitably share expenses of the cooperative agreement, to inventory all equipment used by the cooperative, and to provide appropriate transportation.

**History:** Effective May 1, 1999; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, ~~15-40.1-07.4~~

**Law Implemented:** NDCC ~~15-40.1-07.4~~15.1-27-16

### 67-13-01-05. Cooperative program.

The school district cooperative must address the following:

1. A plan for providing unduplicated grade level services for at least four grade levels;
2. A plan for sharing administration, at a minimum a shared superintendent;
3. A plan for sharing cooperative expenditures between the member districts;
4. A plan for sharing cooperative revenues upon termination of the cooperative; and

5. A plan for the changing of the agreement.

**History:** Effective May 1, 1999; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, ~~15-40.1-07.4~~

**Law Implemented:** NDCC ~~15-40.1-07.4~~ 15.1-27-16

#### **67-13-01-06. Agreements.**

The following areas must be discussed with hopes of arriving at written agreements. However, written agreements are not required for:

1. Identification of the location of education and grade level services programs;

2. Provisions for curriculum integration;

3. Site utilization regarding partial usage or closure;

4. ~~Provision of administrative positions beyond the minimums required by school accreditation;~~

- ~~5.~~ Provision for sharing of extracurricular activities; and

- 6.5. The number and timely manner in which the school boards will meet jointly during the duration of the agreement.

**History:** Effective May 1, 1999; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, ~~15-40.1-07.4~~

**Law Implemented:** NDCC ~~15-40.1-07.4~~ 15.1-27-16

**ARTICLE 67-19**  
**ACCREDITATION: PROCEDURES, STANDARDS, AND CRITERIA**

|          |  |
|----------|--|
| Chapter  |  |
| 67-19-01 | Accreditation: Procedures, Standards, and Criteria                       |
| 67-19-02 | Waiver of Accreditation Standards or High School Unit Instructional Time |
| 67-19-03 | <u>Innovative Education Program</u>                                      |

**CHAPTER 67-19-03**  
**INNOVATIVE EDUCATION PROGRAM**

|                |  |
|----------------|--|
| <u>Section</u> |  |
| 67-19-03-01    | Definitions  |
| 67-19-03-02    | Participation  |
| 67-19-03-03    | Planning Proposal - Innovative Education Program       |
| 67-19-03-04    | Implementation Proposal - Innovative Education Program |
| 67-19-03-05    | Waiver   |

**67-19-03-01. Definitions.**

As used in this section:

1. "Board" means the school board of a public school district.
2. "Governing board" means the board or governing body of a nonpublic school.
3. "Superintendent" means the superintendent of public instruction.

**History:** Effective January 1, 2018.

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

**Law Implemented:** NDCC 15.1-06-08.2

**67-19-03-02. Participation.**

Any public school or school district or any nonpublic school may apply to the superintendent for participation in an innovative education program.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-06-08.2, 28-32-02

**Law Implemented:** NDCC 15.1-06-08.2

**67-19-03-03. Planning proposal - Innovative education program.**

To be considered, the planning proposal at a minimum must include:

1. Rationale and vision.
  - a. Provide justification for implementation of an innovative education program. Cite research, evidence-based, or best practice information.
  - b. Describe how the innovative education program will:
    - (1) Improve the delivery of education;
    - (2) Improve the administration of education;
    - (3) Provide increased educational opportunities for students; or

(4) Improve the academic success for students.

2. Stakeholder engagement. Describe how the planning process included stakeholders. Stakeholders should include district and school leaders, teachers and teacher leaders, students, parents, school district board or school governing board members, community and business leaders, and institutions of higher learning where appropriate.
3. Public school district board and nonpublic school governing board - Approval. The board or governing board must approve the innovative education program planning proposal. Documentation of approval must include:
  - a. In the case of a public school, approved minutes of the meeting at which the innovative education program planning proposal was discussed and approved by the district board and signed by the president of the board and the superintendent; or
  - b. In the case of a nonpublic school, approved minutes or an official statement indicating when the innovative education program planning proposal was discussed and approved by the governing board and signed by the chair of the governing board and the chief executive officer.
4. Professional development. Establish and describe a professional development plan aligned to the innovative education program.
5. Application process.
  - a. Schools, school districts, and nonpublic schools are encouraged to submit an innovative education program planning proposal by November first.
  - b. No specific form is required.
  - c. Innovative education program planning proposals should be mailed or emailed to the director, office of school approval and opportunity.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-06-08.2, 28-32-02

**Law Implemented:** NDCC 15.1-06-08.2

**67-19-03-04. Implementation proposal - Innovative education program.**

To be considered, the implementation proposal at a minimum must include:

1. A copy of the approved innovative education program planning proposal along with evidence of one year of planning.
2. Stakeholder engagement. Describe how the innovative education program implementation proposal planning process included stakeholders. Stakeholders should include district and school leaders, teachers and teacher leaders, students, parents, school district board or governing board members, community and business leaders, and institutions of higher learning where appropriate.
3. Implementation plan. The innovative education program implementation proposal must:
  - a. Describe how the implementation proposal aligns with the school's vision for teaching and learning.
  - b. Describe the plan to initiate the implementation plan.

c. Include measurable goals and objectives, timelines, and action plan, including parties responsible for completion of activities.

d. Provide information on how the implementation plan is expected to:

(1) Improve the delivery of education;

(2) Improve the administration of education;

(3) Provide increased education opportunities for students; or

(4) Improve the academic success of students.

4. Public school district board and nonpublic school governing board - Approval. The board or governing board must approve the innovative education program implementation proposal. Documentation of approval must include:

a. In the case of a public school, approved minutes of the meeting at which the innovative education program implementation proposal was discussed and approved by the district board and signed by the president of the board and the superintendent; or

b. In the case of a nonpublic school, approved minutes or an official statement indicating when the innovative education program implementation proposal was discussed and approved by the governing board and signed by the chair of the governing board and the chief executive officer.

5. Professional development. Establish and describe a professional development plan aligned to the innovative education program.

6. Continuous improvement.

a. Provide documentation of commitment made to a continuous improvement process that will guide schools toward the vision created by the innovative education program planning proposal.

b. Describe how the use of data will guide the innovative education program implementation proposal.

7. Evaluation criteria.

a. Describe the evaluation measures to monitor the progress of innovative education program implementation as well as the measures to be used to evaluate how the program has:

(1) Improved the delivery of education;

(2) Improved the administration of education;

(3) Provided increased education opportunities for students; or

(4) Improved the academic success of students.

b. The evaluation plan must include multiple measures, such as quantitative and qualitative indicators, short-term and long-term goals, academic, school climate, and timelines.

c. Early stages of evaluation must include measures, such as attendance, disciplinary incidents, student engagement, student voice, student and parent surveys, and evidence of improved instructional practices.

d. Mid-stages and later stages of evaluation must include measures of student performance, including academic content skills, performance indicators, as well as proficiency and growth measures.

8. Sustainability. Describe a sustainability plan designed to ensure the plan is embedded in future planning giving consideration to possible changes to school and district leaders, building administration, the district superintendent, the governing board or the chief executive officer.

9. Application process.

a. Schools, school districts, and nonpublic schools are encouraged to submit an innovative education program implementation proposal by March first. Proposals may be submitted throughout the school year with the knowledge that implementation will begin after the proposal has been approved.

b. No specific form is required.

c. Innovative education program implementation proposals should be mailed or emailed to the director, office of school approval and opportunity.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-06-08.2, 28-32-02

**Law Implemented:** NDCC 15.1-06-08.2

**67-19-03-05. Waiver.**

When deemed appropriate and necessary to implement the innovative education program implementation proposal, the superintendent may grant a waiver of all or part of statute as provided in subsection 2 of North Dakota Century Code section 15.1-06-08.1.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 15.1-06-08.1, 28-32-02

**Law Implemented:** NDCC 15.1-06-08.1

**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**



## JANUARY 2018

### CHAPTER 75-02-04.1 CHILD SUPPORT GUIDELINES

#### Section

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#### **75-02-04.1-04. Minimum support level.**

[Repealed effective January 1, 2018.](#)

~~—A support obligation should be established in each case where the obligor has any income. Even though the obligor's payment is far from sufficient to meet the child's needs, considerations of policy require that all parents understand the parental duty to support children to the extent of the parent's ability. Equally important considerations of policy require the fostering of relationships between parents and children which may arise out of the recognition of parental duty.~~

**History:** Effective February 1, 1991.

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

#### **75-02-04.1-07. Imputing income based on earning capacity.**

1. For purposes of this section:

- a. "Earnings" includes in-kind income and amounts received in lieu of actual earnings, such as social security benefits, workers' compensation wage replacement benefits, unemployment insurance benefits, veterans' benefits, and earned income tax credits; and
  - b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than this state's statewide average earnings for persons with similar work history and occupational qualifications.
2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than the greater of:
- a. Six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications; or
  - b. A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage.
3. Except as provided in subsections 4, 5, 6, ~~and 7, 8, 9, 10, and 11~~, gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.
- a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.
  - b. An amount equal to six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications.
  - c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided.
4. Monthly gross income based on earning capacity may not be imputed ~~in an amount less than would be imputed~~ under subsection 3 if ~~the obligor shows~~:
- a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child:
    - (1) For whom the obligor has primary residential responsibility;
    - (2) Who is under the age of ~~fourteen~~thirteen; and
    - (3) For whom there is no other adult caretaker in the ~~parent's~~obligor's home available to meet the child's needs during absence due to employment.
  - b. ~~The~~Current medical records confirm the obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to at least one hundred sixty-seven times the hourly federal minimum wage ~~and subdivision b of subsection 7 does not apply~~.
  - c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
  - d. The obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.

~~e. The obligor is under eighteen years of age or is under nineteen years of age and enrolled in and attending high school.~~

~~f. The obligor is receiving:~~

~~(1) Supplemental security income payments;~~

~~(2) Social security disability payments;~~

~~(3) Workers' compensation wage replacement benefits;~~

~~(4) Total and permanent disability benefits paid by the railroad retirement board;~~

~~(5) Pension benefits, as defined in subsection 9, paid by the veterans benefits administration; or~~

~~(6) Disability compensation paid by the veterans benefits administration based on an overall disability rating of one hundred percent.~~

~~g. It has been less than one hundred eighty days since the obligor was released from incarceration under a sentence of at least one hundred eighty days.~~

~~h. The obligor is incarcerated under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing.~~

~~5. Gross income based on earning capacity may not be imputed if the obligor shows that the obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.~~

~~6. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable within one hundred miles [160.93 kilometers] of the obligor's actual place of residence, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.~~

~~7. a. Unless subdivision b applies, monthly gross income based on earning capacity may not be imputed under subsection 3 in an amount greater than one-half of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor is under eighteen years of age or is under nineteen years of age and enrolled in and attending high school.~~

~~b. Monthly gross income based on earning capacity may not be imputed under subsection 3 if the obligor is receiving:~~

~~(1) Supplemental security income payments;~~

~~(2) Social security disability benefits;~~

~~(3) Workers' compensation wage replacement benefits; or~~

~~(4) Total and permanent disability benefits paid by the railroad retirement board.~~

~~8. a. Unless subdivision d applies, if an obligor is incarcerated, monthly gross income based on earning capacity may not be imputed under subsection 3:~~

- ~~(1) In an amount greater than one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for less than one year;~~
- ~~(2) In an amount greater than eighty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least one year but less than two years;~~
- ~~(3) In an amount greater than sixty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least two years but less than three years;~~
- ~~(4) In an amount greater than forty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least three years but less than four years;~~
- ~~(5) In an amount greater than twenty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least four years but less than five years; or~~
- ~~(6) In any amount if the obligor has been incarcerated for at least five years.~~

~~b. For purposes of this subsection, "incarcerated" means physically confined to a prison, jail, or other correctional facility.~~

~~c. In determining the length of time an obligor has been incarcerated for purposes of applying subdivision a, only continuous periods of actual confinement may be considered except that any periods representing work release may not be considered.~~

~~d. If an incarcerated obligor is receiving, or immediately prior to incarceration was receiving, any payment listed in subdivision b of subsection 7, income may not be imputed in any amount.~~

**9.6.** If the obligor fails, upon reasonable request made in any proceeding to establish or review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, and if that information cannot be reasonably obtained from sources other than the obligor, income must be imputed based on the greatest of:

- a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.
- b. An amount equal to one hundred percent of this state's statewide average earnings for persons with similar work history and occupational qualifications.
- c. An amount equal to ninetyone hundred percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided.

~~10. If the obligor fails, upon reasonable request made in any proceeding to review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, and if that information cannot be reasonably obtained from sources other than the obligor, income must be imputed based on the greatest of:~~

~~a. Subdivisions a through c of subsection 3; or~~

~~b. The obligor's net income, at the time the child support order was entered or last modified, increased at the rate of ten percent per year.~~

~~41.7.~~ Notwithstanding subsections 4, 5, and 6, and 7, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed. For purposes of this subsection, a voluntary change in employment is a change made for the purpose of reducing the obligor's child support obligation and may include becoming unemployed, taking into consideration the obligor's standard of living, work history, education, literacy, health, age, criminal record, barriers to employment, record of seeking employment, stated reason for change in employment, likely employment status if the family before the court were intact, and any other relevant factors. The burden of proof is on the obligor to show that the change in employment was not made for the purpose of reducing the obligor's child support obligation.

~~42.8.~~ Imputed income based on earning capacity is an example of gross income and is subject to the deductions from gross income set forth in subsection 6 of section 75-02-04.1-01.

9. For purposes of paragraph 5 of subdivision f of subsection 4, "pension benefits" means only needs-based payments made by the veterans benefits administration to war-time veterans whose income is below a yearly limit set by Congress and who are age sixty-five or older or have a total and permanent disability.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011; September 1, 2015; January 1, 2018.

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

#### **75-02-04.1-10. Child support amount.**

The amount of child support payable by the obligor is determined by the application of the following schedule to the obligor's monthly net income and the number of children for whom support is being sought in the matter before the court.

| <b>Obligor's<br/>Monthly Net<br/>Income</b> | <b>One<br/>Child</b>     | <b>Two<br/>Children</b>  | <b>Three<br/>Children</b> | <b>Four<br/>Children</b> | <b>Five<br/>Children</b> | <b>Six or<br/>More<br/>Children</b> |
|---|--------------------------|--------------------------|---------------------------|--------------------------|--------------------------|-------------------------------------|
| <del>100</del> <u>700</u> or less           | <del>14</del> <u>140</u> | <del>17</del> <u>170</u> | <del>20</del> <u>200</u>  | <del>22</del> <u>220</u> | <del>24</del> <u>240</u> | <del>26</del> <u>260</u>            |
| 200   | 28                       | 34                       | 40                        | 44                       | 48                       | 52                                  |
| 300   | 42                       | 51                       | 60                        | 66                       | 72                       | 78                                  |
| 400   | 56                       | 68                       | 80                        | 88                       | 96                       | 104                                 |
| 500   | 82                       | 100                      | 117                       | 130                      | 143                      | 155                                 |
| 600   | 108                      | 131                      | 155                       | 172                      | 189                      | 207                                 |
| 700   | 134                      | 163                      | 192                       | 214                      | 236                      | 258                                 |
| 800   | 160                      | 195                      | 229                       | 256                      | 283                      | 309                                 |
| 900   | 186                      | 226                      | 267                       | 298                      | 329                      | 361                                 |
| 1000  | 212                      | 258                      | 304                       | 340                      | 376                      | 412                                 |

|      |     |      |      |      |      |      |
|------|-----|------|------|------|------|------|
| 1100 | 238 | 290  | 341  | 382  | 423  | 463  |
| 1200 | 264 | 321  | 379  | 424  | 469  | 515  |
| 1300 | 290 | 353  | 416  | 466  | 516  | 566  |
| 1400 | 316 | 385  | 453  | 508  | 563  | 617  |
| 1500 | 342 | 416  | 491  | 550  | 609  | 669  |
| 1600 | 368 | 448  | 528  | 592  | 656  | 720  |
| 1700 | 384 | 476  | 562  | 630  | 696  | 761  |
| 1800 | 400 | 505  | 596  | 668  | 736  | 803  |
| 1900 | 416 | 533  | 631  | 706  | 776  | 844  |
| 2000 | 431 | 562  | 665  | 744  | 816  | 885  |
| 2100 | 447 | 590  | 699  | 781  | 856  | 926  |
| 2200 | 463 | 619  | 733  | 819  | 896  | 968  |
| 2300 | 479 | 647  | 767  | 857  | 936  | 1009 |
| 2400 | 495 | 676  | 802  | 895  | 976  | 1050 |
| 2500 | 511 | 704  | 836  | 933  | 1017 | 1091 |
| 2600 | 527 | 733  | 870  | 971  | 1057 | 1133 |
| 2700 | 542 | 761  | 904  | 1009 | 1097 | 1174 |
| 2800 | 558 | 789  | 939  | 1047 | 1137 | 1215 |
| 2900 | 574 | 818  | 973  | 1084 | 1177 | 1257 |
| 3000 | 590 | 846  | 1007 | 1122 | 1217 | 1298 |
| 3100 | 606 | 875  | 1041 | 1160 | 1257 | 1339 |
| 3200 | 622 | 903  | 1075 | 1198 | 1297 | 1380 |
| 3300 | 637 | 932  | 1110 | 1236 | 1337 | 1422 |
| 3400 | 653 | 960  | 1144 | 1274 | 1377 | 1463 |
| 3500 | 669 | 989  | 1178 | 1312 | 1417 | 1504 |
| 3600 | 685 | 1017 | 1212 | 1350 | 1457 | 1545 |
| 3700 | 701 | 1045 | 1246 | 1387 | 1497 | 1587 |
| 3800 | 717 | 1074 | 1281 | 1425 | 1537 | 1628 |
| 3900 | 733 | 1102 | 1315 | 1463 | 1577 | 1669 |
| 4000 | 748 | 1131 | 1349 | 1501 | 1617 | 1710 |
| 4100 | 764 | 1159 | 1383 | 1539 | 1658 | 1752 |
| 4200 | 780 | 1188 | 1417 | 1577 | 1698 | 1793 |
| 4300 | 796 | 1216 | 1452 | 1615 | 1738 | 1834 |
| 4400 | 812 | 1245 | 1486 | 1653 | 1778 | 1876 |
| 4500 | 828 | 1273 | 1520 | 1691 | 1818 | 1917 |
| 4600 | 844 | 1302 | 1554 | 1728 | 1858 | 1958 |
| 4700 | 859 | 1330 | 1589 | 1766 | 1898 | 1999 |

|      |      |      |      |      |      |      |
|------|------|------|------|------|------|------|
| 4800 | 875  | 1358 | 1623 | 1804 | 1938 | 2041 |
| 4900 | 891  | 1387 | 1657 | 1842 | 1978 | 2082 |
| 5000 | 907  | 1415 | 1691 | 1880 | 2018 | 2123 |
| 5100 | 923  | 1444 | 1725 | 1918 | 2058 | 2164 |
| 5200 | 939  | 1472 | 1760 | 1956 | 2098 | 2206 |
| 5300 | 954  | 1501 | 1794 | 1994 | 2138 | 2247 |
| 5400 | 970  | 1529 | 1828 | 2031 | 2178 | 2288 |
| 5500 | 986  | 1558 | 1862 | 2069 | 2218 | 2330 |
| 5600 | 1002 | 1586 | 1896 | 2107 | 2258 | 2371 |
| 5700 | 1018 | 1614 | 1931 | 2145 | 2298 | 2412 |
| 5800 | 1034 | 1643 | 1965 | 2183 | 2339 | 2453 |
| 5900 | 1050 | 1671 | 1999 | 2221 | 2379 | 2495 |
| 6000 | 1065 | 1700 | 2033 | 2259 | 2419 | 2536 |
| 6100 | 1081 | 1728 | 2067 | 2297 | 2459 | 2577 |
| 6200 | 1097 | 1757 | 2102 | 2334 | 2499 | 2618 |
| 6300 | 1113 | 1785 | 2136 | 2372 | 2539 | 2660 |
| 6400 | 1129 | 1814 | 2170 | 2410 | 2579 | 2701 |
| 6500 | 1145 | 1842 | 2204 | 2448 | 2619 | 2742 |
| 6600 | 1161 | 1871 | 2239 | 2486 | 2659 | 2784 |
| 6700 | 1176 | 1899 | 2273 | 2524 | 2699 | 2825 |
| 6800 | 1192 | 1927 | 2307 | 2562 | 2739 | 2866 |
| 6900 | 1208 | 1956 | 2341 | 2600 | 2779 | 2907 |
| 7000 | 1224 | 1984 | 2375 | 2638 | 2819 | 2949 |
| 7100 | 1240 | 2013 | 2410 | 2675 | 2859 | 2990 |
| 7200 | 1256 | 2041 | 2444 | 2713 | 2899 | 3031 |
| 7300 | 1271 | 2070 | 2478 | 2751 | 2939 | 3072 |
| 7400 | 1287 | 2098 | 2512 | 2789 | 2979 | 3114 |
| 7500 | 1303 | 2127 | 2546 | 2827 | 3020 | 3155 |
| 7600 | 1319 | 2155 | 2581 | 2865 | 3060 | 3196 |
| 7700 | 1335 | 2183 | 2615 | 2903 | 3100 | 3237 |
| 7800 | 1351 | 2212 | 2649 | 2941 | 3140 | 3279 |
| 7900 | 1367 | 2240 | 2683 | 2978 | 3180 | 3320 |
| 8000 | 1382 | 2269 | 2717 | 3016 | 3220 | 3361 |
| 8100 | 1398 | 2297 | 2752 | 3054 | 3260 | 3403 |
| 8200 | 1414 | 2326 | 2786 | 3092 | 3300 | 3444 |
| 8300 | 1430 | 2354 | 2820 | 3130 | 3340 | 3485 |
| 8400 | 1446 | 2383 | 2854 | 3168 | 3380 | 3526 |

|       |      |      |      |      |      |      |
|-------|------|------|------|------|------|------|
| 8500  | 1462 | 2411 | 2888 | 3206 | 3420 | 3568 |
| 8600  | 1478 | 2440 | 2923 | 3244 | 3460 | 3609 |
| 8700  | 1493 | 2468 | 2957 | 3281 | 3500 | 3650 |
| 8800  | 1509 | 2496 | 2991 | 3319 | 3540 | 3691 |
| 8900  | 1525 | 2525 | 3025 | 3357 | 3580 | 3733 |
| 9000  | 1541 | 2553 | 3060 | 3395 | 3620 | 3774 |
| 9100  | 1557 | 2582 | 3094 | 3433 | 3661 | 3815 |
| 9200  | 1573 | 2610 | 3128 | 3471 | 3701 | 3857 |
| 9300  | 1588 | 2639 | 3162 | 3509 | 3741 | 3898 |
| 9400  | 1604 | 2667 | 3196 | 3547 | 3781 | 3939 |
| 9500  | 1620 | 2696 | 3231 | 3585 | 3821 | 3980 |
| 9600  | 1636 | 2724 | 3265 | 3622 | 3861 | 4022 |
| 9700  | 1652 | 2752 | 3299 | 3660 | 3901 | 4063 |
| 9800  | 1668 | 2781 | 3333 | 3698 | 3941 | 4104 |
| 9900  | 1684 | 2809 | 3367 | 3736 | 3981 | 4145 |
| 10000 | 1699 | 2838 | 3402 | 3774 | 4021 | 4187 |
| 10100 | 1715 | 2847 | 3412 | 3785 | 4034 | 4202 |
| 10200 | 1730 | 2857 | 3423 | 3797 | 4047 | 4218 |
| 10300 | 1745 | 2866 | 3434 | 3808 | 4061 | 4233 |
| 10400 | 1760 | 2875 | 3444 | 3820 | 4074 | 4248 |
| 10500 | 1775 | 2885 | 3455 | 3831 | 4087 | 4264 |
| 10600 | 1789 | 2894 | 3466 | 3843 | 4100 | 4279 |
| 10700 | 1804 | 2904 | 3476 | 3854 | 4113 | 4295 |
| 10800 | 1819 | 2913 | 3487 | 3866 | 4127 | 4310 |
| 10900 | 1833 | 2923 | 3498 | 3878 | 4140 | 4325 |
| 11000 | 1848 | 2932 | 3508 | 3889 | 4153 | 4341 |
| 11100 | 1863 | 2941 | 3519 | 3901 | 4166 | 4356 |
| 11200 | 1877 | 2951 | 3529 | 3912 | 4179 | 4372 |
| 11300 | 1892 | 2960 | 3540 | 3924 | 4193 | 4387 |
| 11400 | 1906 | 2970 | 3551 | 3935 | 4206 | 4403 |
| 11500 | 1921 | 2979 | 3561 | 3947 | 4219 | 4418 |
| 11600 | 1935 | 2988 | 3572 | 3958 | 4232 | 4433 |
| 11700 | 1949 | 2998 | 3583 | 3970 | 4245 | 4449 |
| 11800 | 1964 | 3007 | 3593 | 3981 | 4258 | 4464 |
| 11900 | 1978 | 3017 | 3604 | 3993 | 4272 | 4480 |
| 12000 | 1992 | 3026 | 3615 | 4004 | 4285 | 4495 |
| 12100 | 2006 | 3035 | 3625 | 4016 | 4298 | 4511 |

|       |      |      |      |      |      |      |
|-------|------|------|------|------|------|------|
| 12200 | 2020 | 3045 | 3636 | 4027 | 4311 | 4526 |
| 12300 | 2034 | 3054 | 3647 | 4039 | 4324 | 4541 |
| 12400 | 2048 | 3064 | 3657 | 4050 | 4338 | 4557 |
| 12500 | 2063 | 3073 | 3668 | 4062 | 4351 | 4572 |
| 12600 | 2076 | 3083 | 3679 | 4073 | 4364 | 4588 |
| 12700 | 2090 | 3092 | 3689 | 4085 | 4377 | 4603 |
| 12800 | 2104 | 3101 | 3700 | 4096 | 4390 | 4618 |
| 12900 | 2118 | 3111 | 3711 | 4108 | 4404 | 4634 |
| 13000 | 2132 | 3120 | 3721 | 4119 | 4417 | 4649 |
| 13100 | 2146 | 3130 | 3732 | 4131 | 4430 | 4665 |
| 13200 | 2160 | 3139 | 3743 | 4142 | 4443 | 4680 |
| 13300 | 2173 | 3148 | 3753 | 4154 | 4456 | 4696 |
| 13400 | 2187 | 3158 | 3764 | 4165 | 4469 | 4711 |
| 13500 | 2201 | 3167 | 3775 | 4177 | 4483 | 4726 |
| 13600 | 2214 | 3177 | 3785 | 4188 | 4496 | 4742 |
| 13700 | 2228 | 3186 | 3796 | 4200 | 4509 | 4757 |
| 13800 | 2241 | 3196 | 3806 | 4211 | 4522 | 4773 |
| 13900 | 2255 | 3205 | 3817 | 4223 | 4535 | 4788 |
| 14000 | 2268 | 3214 | 3828 | 4234 | 4549 | 4803 |
| 14100 | 2281 | 3224 | 3838 | 4246 | 4562 | 4819 |
| 14200 | 2295 | 3233 | 3849 | 4257 | 4575 | 4834 |
| 14300 | 2308 | 3243 | 3860 | 4269 | 4588 | 4850 |
| 14400 | 2321 | 3252 | 3870 | 4280 | 4601 | 4865 |
| 14500 | 2335 | 3261 | 3881 | 4292 | 4615 | 4881 |
| 14600 | 2348 | 3271 | 3892 | 4303 | 4628 | 4896 |
| 14700 | 2361 | 3280 | 3902 | 4315 | 4641 | 4911 |
| 14800 | 2374 | 3290 | 3913 | 4326 | 4654 | 4927 |
| 14900 | 2387 | 3299 | 3924 | 4338 | 4667 | 4942 |
| 15000 | 2400 | 3308 | 3934 | 4349 | 4681 | 4958 |
| 15100 | 2413 | 3318 | 3945 | 4361 | 4694 | 4973 |
| 15200 | 2426 | 3327 | 3956 | 4372 | 4707 | 4989 |
| 15300 | 2439 | 3337 | 3966 | 4384 | 4720 | 5004 |
| 15400 | 2452 | 3346 | 3977 | 4395 | 4733 | 5019 |
| 15500 | 2465 | 3356 | 3988 | 4407 | 4746 | 5035 |
| 15600 | 2477 | 3365 | 3998 | 4418 | 4760 | 5050 |
| 15700 | 2490 | 3374 | 4009 | 4430 | 4773 | 5066 |
| 15800 | 2503 | 3384 | 4020 | 4442 | 4786 | 5081 |

|       |      |      |      |      |      |      |
|-------|------|------|------|------|------|------|
| 15900 | 2515 | 3393 | 4030 | 4453 | 4799 | 5096 |
| 16000 | 2528 | 3403 | 4041 | 4465 | 4812 | 5112 |
| 16100 | 2541 | 3412 | 4051 | 4476 | 4826 | 5127 |
| 16200 | 2553 | 3421 | 4062 | 4488 | 4839 | 5143 |
| 16300 | 2566 | 3431 | 4073 | 4499 | 4852 | 5158 |
| 16400 | 2578 | 3440 | 4083 | 4511 | 4865 | 5174 |
| 16500 | 2591 | 3450 | 4094 | 4522 | 4878 | 5189 |
| 16600 | 2603 | 3459 | 4105 | 4534 | 4892 | 5204 |
| 16700 | 2615 | 3468 | 4115 | 4545 | 4905 | 5220 |
| 16800 | 2628 | 3478 | 4126 | 4557 | 4918 | 5235 |
| 16900 | 2640 | 3487 | 4137 | 4568 | 4931 | 5251 |
| 17000 | 2652 | 3497 | 4147 | 4580 | 4944 | 5266 |
| 17100 | 2664 | 3506 | 4158 | 4591 | 4958 | 5282 |
| 17200 | 2676 | 3516 | 4169 | 4603 | 4971 | 5297 |
| 17300 | 2688 | 3525 | 4179 | 4614 | 4984 | 5312 |
| 17400 | 2700 | 3534 | 4190 | 4626 | 4997 | 5328 |
| 17500 | 2713 | 3544 | 4201 | 4637 | 5010 | 5343 |
| 17600 | 2724 | 3553 | 4211 | 4649 | 5023 | 5359 |
| 17700 | 2736 | 3563 | 4222 | 4660 | 5037 | 5374 |
| 17800 | 2748 | 3572 | 4233 | 4672 | 5050 | 5389 |
| 17900 | 2760 | 3581 | 4243 | 4683 | 5063 | 5405 |
| 18000 | 2772 | 3591 | 4254 | 4695 | 5076 | 5420 |
| 18100 | 2784 | 3600 | 4265 | 4706 | 5089 | 5436 |
| 18200 | 2796 | 3610 | 4275 | 4718 | 5103 | 5451 |
| 18300 | 2807 | 3619 | 4286 | 4729 | 5116 | 5467 |
| 18400 | 2819 | 3629 | 4297 | 4741 | 5129 | 5482 |
| 18500 | 2831 | 3638 | 4307 | 4752 | 5142 | 5497 |
| 18600 | 2842 | 3647 | 4318 | 4764 | 5155 | 5513 |
| 18700 | 2854 | 3657 | 4328 | 4775 | 5169 | 5528 |
| 18800 | 2865 | 3666 | 4339 | 4787 | 5182 | 5544 |
| 18900 | 2877 | 3676 | 4350 | 4798 | 5195 | 5559 |
| 19000 | 2888 | 3685 | 4360 | 4810 | 5208 | 5574 |
| 19100 | 2899 | 3694 | 4371 | 4821 | 5221 | 5590 |
| 19200 | 2911 | 3704 | 4382 | 4833 | 5235 | 5605 |
| 19300 | 2922 | 3713 | 4392 | 4844 | 5248 | 5621 |
| 19400 | 2933 | 3723 | 4403 | 4856 | 5261 | 5636 |
| 19500 | 2945 | 3732 | 4414 | 4867 | 5274 | 5652 |

|       |      |      |      |      |      |      |
|-------|------|------|------|------|------|------|
| 19600 | 2956 | 3741 | 4424 | 4879 | 5287 | 5667 |
| 19700 | 2967 | 3751 | 4435 | 4890 | 5300 | 5682 |
| 19800 | 2978 | 3760 | 4446 | 4902 | 5314 | 5698 |
| 19900 | 2989 | 3770 | 4456 | 4913 | 5327 | 5713 |
| 20000 | 3000 | 3779 | 4467 | 4925 | 5340 | 5729 |
| 20100 | 3011 | 3789 | 4478 | 4936 | 5353 | 5744 |
| 20200 | 3022 | 3798 | 4488 | 4948 | 5366 | 5760 |
| 20300 | 3033 | 3807 | 4499 | 4959 | 5380 | 5775 |
| 20400 | 3044 | 3817 | 4510 | 4971 | 5393 | 5790 |
| 20500 | 3055 | 3826 | 4520 | 4982 | 5406 | 5806 |
| 20600 | 3065 | 3836 | 4531 | 4994 | 5419 | 5821 |
| 20700 | 3076 | 3845 | 4542 | 5005 | 5432 | 5837 |
| 20800 | 3087 | 3854 | 4552 | 5017 | 5446 | 5852 |
| 20900 | 3097 | 3864 | 4563 | 5029 | 5459 | 5867 |
| 21000 | 3108 | 3873 | 4574 | 5040 | 5472 | 5883 |
| 21100 | 3119 | 3883 | 4584 | 5052 | 5485 | 5898 |
| 21200 | 3129 | 3892 | 4595 | 5063 | 5498 | 5914 |
| 21300 | 3140 | 3902 | 4605 | 5075 | 5512 | 5929 |
| 21400 | 3150 | 3911 | 4616 | 5086 | 5525 | 5945 |
| 21500 | 3161 | 3920 | 4627 | 5098 | 5538 | 5960 |
| 21600 | 3171 | 3930 | 4637 | 5109 | 5551 | 5975 |
| 21700 | 3181 | 3939 | 4648 | 5121 | 5564 | 5991 |
| 21800 | 3192 | 3949 | 4659 | 5132 | 5577 | 6006 |
| 21900 | 3202 | 3958 | 4669 | 5144 | 5591 | 6022 |
| 22000 | 3212 | 3967 | 4680 | 5155 | 5604 | 6037 |
| 22100 | 3222 | 3977 | 4691 | 5167 | 5617 | 6053 |
| 22200 | 3232 | 3986 | 4701 | 5178 | 5630 | 6068 |
| 22300 | 3242 | 3996 | 4712 | 5190 | 5643 | 6083 |
| 22400 | 3252 | 4005 | 4723 | 5201 | 5657 | 6099 |
| 22500 | 3263 | 4014 | 4733 | 5213 | 5670 | 6114 |
| 22600 | 3272 | 4024 | 4744 | 5224 | 5683 | 6130 |
| 22700 | 3282 | 4033 | 4755 | 5236 | 5696 | 6145 |
| 22800 | 3292 | 4043 | 4765 | 5247 | 5709 | 6160 |
| 22900 | 3302 | 4052 | 4776 | 5259 | 5723 | 6176 |
| 23000 | 3312 | 4062 | 4787 | 5270 | 5736 | 6191 |
| 23100 | 3322 | 4071 | 4797 | 5282 | 5749 | 6207 |
| 23200 | 3332 | 4080 | 4808 | 5293 | 5762 | 6222 |

|               |      |      |      |      |      |      |
|---------------|------|------|------|------|------|------|
| 23300         | 3341 | 4090 | 4819 | 5305 | 5775 | 6238 |
| 23400         | 3351 | 4099 | 4829 | 5316 | 5788 | 6253 |
| 23500         | 3361 | 4109 | 4840 | 5328 | 5802 | 6268 |
| 23600         | 3370 | 4118 | 4850 | 5339 | 5815 | 6284 |
| 23700         | 3380 | 4127 | 4861 | 5351 | 5828 | 6299 |
| 23800         | 3389 | 4137 | 4872 | 5362 | 5841 | 6315 |
| 23900         | 3399 | 4146 | 4882 | 5374 | 5854 | 6330 |
| 24000         | 3408 | 4156 | 4893 | 5385 | 5868 | 6345 |
| 24100         | 3417 | 4165 | 4904 | 5397 | 5881 | 6361 |
| 24200         | 3427 | 4174 | 4914 | 5408 | 5894 | 6376 |
| 24300         | 3436 | 4184 | 4925 | 5420 | 5907 | 6392 |
| 24400         | 3445 | 4193 | 4936 | 5431 | 5920 | 6407 |
| 24500         | 3455 | 4203 | 4946 | 5443 | 5934 | 6423 |
| 24600         | 3464 | 4212 | 4957 | 5454 | 5947 | 6438 |
| 24700         | 3473 | 4222 | 4968 | 5466 | 5960 | 6453 |
| 24800         | 3482 | 4231 | 4978 | 5477 | 5973 | 6469 |
| 24900         | 3491 | 4240 | 4989 | 5489 | 5986 | 6484 |
| 25000 or more | 3500 | 4250 | 5000 | 5500 | 6000 | 6500 |

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 2003; July 1, 2011; September 1, 2015; [January 1, 2018](#).

**General Authority:** NDCC 50-06-16, 50-09-25

**Law Implemented:** NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

## CHAPTER 75-03-23

### 75-03-23-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-06.2. In addition, as used in this chapter:

1. "Activities of daily living" means the daily self-care personal activities that include bathing, dressing or undressing, eating or feeding, toileting, continence, transferring in and out of bed or chair or on and off the toilet, and mobility inside the home.
2. "Adaptive assessment" means an evaluation to identify adaptive devices, equipment, or modifications that enhance the independence and functional capabilities of an individual who may otherwise be unable to remain in the individual's home.
3. "Aged" means sixty-five years of age or older.
4. "Client" means an individual who meets the eligibility requirements and is receiving services reimbursed under North Dakota Century Code chapter 50-06.2 or this chapter.
5. "Congenital disability" means a disability that exists at birth or shortly thereafter, and is not attributable to a diagnosis of either mental retardation or a closely related condition of mental retardation.
6. "Department" means the North Dakota department of human services.
7. "Disability due to trauma" means a disability that results from an injury or assault to the body by an external force.
8. "Disability that is acquired" means a disability that results from an assault that occurs internally within the body.
9. "Disabled" means under age sixty-five with a congenital disability, a disability due to trauma, or a disability that is acquired.
10. "Functional assessment" means an instrument used to record basic demographic and medical information about an individual, including age, date of birth, spoken language, marital status, individuals residing with, emergency contacts, medical resources, health care coverage, and source and reason for referral; and to secure measurable information regarding:
  - a. Physical health;
  - b. Cognitive and emotional functioning;
  - c. Activities of daily living;
  - d. Instrumental activities of daily living;
  - e. Informal supports;
  - f. Need for twenty-four-hour supervision;
  - g. Social participation;
  - h. Physical environment;
  - i. Financial resources;
  - j. Adaptive equipment;

k. Environmental modification; and

l. Other information about the individual's condition not recorded elsewhere.

11. "Functional impairment" means the inability to perform, either by oneself or with adaptive aids or with human help, specific activities of daily living or instrumental activities of daily living.

12. "Home and community-based services" means the array of services under the SPED program and medicaid waiver defined in the comprehensive human service plan and the other services the department determines to be essential and appropriate to sustain individuals in their homes and in their communities, and to delay or prevent institutional care.

13. "Institution" means a hospital, swing bed facility, nursing facility, or other provider-operated living arrangement receiving prior approval from the department.

14. "Instrumental activities of daily living" means activities requiring cognitive ability or physical ability, or both. Instrumental activities of daily living include preparing meals, shopping, managing money, housework, laundry, taking medicine, transportation, using the telephone, and mobility outside the home.

~~14.15.~~ "Medicaid waiver program" means the federal medicaid waiver for the aged and disabled program, as defined in subpart G of 42 CFR 441, under which the department is authorized to provide specific home and community-based services to aged and disabled persons who are at risk of being institutionalized.

~~15.16.~~ "Service fee" means the amount a SPED client is required to pay toward the cost of the client's SPED services.

~~16.17.~~ "Service payment" means the payment issued by the department to a qualified service provider for the provision of authorized home and community-based services to eligible aged and disabled persons.

~~17.18.~~ "SPED program" means the service payments for elderly and disabled program, a state program which authorizes the department to reimburse qualified service providers for the provision of covered home and community-based services to eligible aged and disabled individuals.

~~18.19.~~ "SPED program pool" means the list maintained by the department which contains the names of clients for whom SPED program funding is available when the clients' names are transferred from the SPED program pool to SPED program active status.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; January 1, 2018.

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-01(3), 50-06.2-03(5)

#### **75-03-23-02. Eligibility criteria.**

1. An applicant must be entered in the SPED program pool before service payments may be authorized. The department shall allow entry into the SPED program pool to occur:
  - a. When the department's designee submits a form in the manner prescribed by the department; or
  - b. When the applicant meets the special circumstances provided in subsection 4, 5, or 6 of section 75-03-23-03.

2. An applicant's resources may not exceed fifty thousand dollars for the applicant to be eligible for services under the SPED program. For purposes of this section, resources are cash or similar assets that can be readily converted to cash and include residences owned by the applicant other than the applicant's primary residence.
3. An applicant eighteen years of age or older is eligible for the SPED program pool if:
  - a. The applicant has a functional impairment as specified by the department in policies and procedures to indicate applicant eligibility;
  - b. The applicant's functional impairment has lasted, or can be expected to last, three months or longer;
  - c. The applicant's functional impairment is not the result of a mental illness or a condition of mental retardation, or a closely related condition;
  - d. The applicant is living in North Dakota in a housing arrangement commonly considered a private ~~family dwelling~~ residence and not in an institution;
  - e. The applicant is not eligible for services under the medicaid waiver program or the medicaid state plan option of personal care services unless the applicant's estimated monthly benefits under this chapter, excluding the cost of case management, are between the current medically needy income level for a household of one plus the disregard established in North Dakota Century Code section 50-24.1-02.3, and the lowest level of the fee schedule for services under North Dakota Century Code chapter 50-06.2, or unless the individual is receiving a service that is not available under medicaid or the medicaid waiver;
  - f. The applicant would receive one or more of the covered services under department policies and procedures for the specific service;
  - g. The applicant agrees to the plan of care developed for the provision of home and community-based services;
  - h. The applicant is not responsible for one hundred percent of the cost of the covered service provided, under the SPED program sliding fee scales based on family size and income; and
  - i. The applicant has not made a disqualifying transfer of assets.
4. An applicant under eighteen years of age is eligible for the SPED program pool if the applicant is determined to need nursing facility level of care as provided for in section 75-02-02-09 and the applicant's care need is not the result of a mental illness or the condition of mental retardation, or a closely related condition.
5. An applicant under eighteen years of age:
  - a. Must meet the eligibility requirements of subsections 3 and 4.
  - b. Is not eligible to receive personal care services under this chapter.
  - c. Is not eligible for service payments unless:
    - (1) Care provided to the applicant by the applicant's parent or the applicant's spouse is provided under family home care.
    - (2) The applicant is unable to regularly attend school or is severely limited in the amount of time the applicant is able to attend school.

6. An applicant must be capable of directing self-care or must have a legally responsible party to act on the applicant's behalf.
7. An applicant is not eligible for service payments if the care provided is court-ordered.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; [January 1, 2018](#).

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-01(3), 50-06.2-03(5), 50-06.2-04(3)

**75-03-23-06. Services covered under the medicaid waiver program - Programmatic criteria.**

Room and board costs may not be included in the medicaid waiver service payment. The following services are covered under the medicaid waiver program and may be provided to a client:

1. The department may provide adult day care services to a client:
  - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
  - b. Who is able to participate in group activities; and
  - c. If the client does not live alone, the client's primary caregiver will benefit from the temporary relief of care giving.
2. The department may provide adult foster care, using a licensed adult foster care provider, to a client who resides in a licensed adult foster care home who:
  - a. Is eighteen years of age or older;
  - b. Requires care or supervision;
  - c. Would benefit from a family environment; and
  - d. Requires care that does not exceed the capability of the foster care provider.
3. The department may provide residential care to a client who:
  - a. Has chronic moderate to severe memory loss; or
  - b. Has a significant emotional, behavioral, or cognitive impairment.
4. The department may provide attendant care to a client who:
  - a. Is ventilator-dependent a minimum of twenty hours per day;
  - b. Is medically stable as documented at least annually by the client's primary care physician;
  - c. Has identified an informal caregiver support system for contingency planning; and
  - d. Is competent to participate in the development and monitoring of the care plan as documented at least annually by the client's primary care physician.
5. The department may provide chore services to a client for one-time, intermittent, or occasional activities that would enable the client to remain in the home, such as heavy housework and periodic cleaning, professional extermination, and snow removal. The activity must be the responsibility of the client and not the responsibility of the landlord.

6. The department may provide an emergency response system to a client who lives alone or with an incapacitated adult, or who lives with an individual whose routine absences from the home present a safety risk for the client, and the client is cognitively and physically capable of activating the emergency response system.
7. When no alternative community resource is available, the department may provide environmental modification to a client, if the client owns the home to be modified and when the modification will enable the client to complete the client's own personal care or to receive care and will allow the client to safely stay in the home for a period of time that is long enough to offset the cost of the modification.
8. a. The department may provide family personal care to a client who:
  - (1) Lives in the same residence as the care provider on a twenty-four-hour basis;
  - (2) Agrees to the provision of services by the care provider; and
  - (3) Is the legal spouse of the care provider.b. Family personal care payments may not be made for assistance with the activities of communication, community integration, housework, laundry, meal preparation, money management, shopping, social appropriateness, or transportation.
9. The department may provide home and community-based services case management services to a client who needs a comprehensive assessment and the coordination of cost-effective delivery of services. Case management services provided under this subsection must be provided by a social worker licensed under North Dakota Century Code section 43-41-04.
10. The department may provide home-delivered meals to a client who lives alone and is unable to prepare an adequate meal for himself or herself or who lives with an individual who is unable or not available to prepare an adequate meal.
11. The department may provide homemaker services to a client who needs assistance with environmental maintenance activities, including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis when the client lives alone or with an adult who is unable or is not obligated to complete homemaking activities. The department may not pay a provider for laundry, shopping, housekeeping, meal preparation, money management, or communication, if the provider lives with the client and is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02, or is a former spouse of the client; except the department may provide essential homemaking activities such as meal preparation if the responsible adult not receiving care who resides in the home is unavailable due to employment. Shopping assistance may be provided only if at least one other activity is performed and no other shopping assistance is available through informal networks or other community providers. The homemaker service funding cap applies to a household and may not be exceeded regardless of the number of clients residing in that household.
12. a. The department may provide extended personal care services to a client who:
  - (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and
  - (2) Has a cognitive or physical impairment that prevents the client from completing the required activity.

- b. Extended personal care services do not include assistance with activities of daily living and instrumental activities of daily living.
13. The department may provide nonmedical transportation services to a client who is unable to provide his or her own transportation and who needs transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.
  14. The department may provide up to twenty-four hours per day of supervision to a client who has a cognitive or physical impairment that results in the client needing monitoring to assure the client's continued health and safety, if the client lives alone or with an individual who is not a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02.
  15.
    - a. The department may provide respite care services to a client in the client's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:
      - (1) The client has a full-time primary caregiver;
      - (2) The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
      - (3) The primary caregiver's need for the relief is intermittent or occasional; and
      - (4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.
    - b. A client who is a resident of an adult foster care home may choose a respite provider and is not required to use a relative of the adult foster care provider as the client's respite provider.
  16. The department may provide specialized equipment and supplies to a client, if:
    - a. The client's need for the items is based on an adaptive assessment;
    - b. The items directly benefit the client's ability to perform personal care or household activities;
    - c. The items will reduce the intensity or frequency of human assistance required to meet the client care needs;
    - d. The items are necessary to prevent the client's institutionalization;
    - e. The items are not available under the medicaid state plan; and
    - f. The client is motivated to use the item.
  17. The department may provide supported employment to a client who is unlikely to obtain competitive employment at or above the minimum wage; who, because of the client's disabilities, needs intensive ongoing support to perform in a work setting; and who has successfully completed the supported employment program available through the North Dakota vocational rehabilitation program.
  18. The department may provide transitional living services to a client who needs supervision, training, or assistance with self-care, communication skills, socialization, sensory and motor development, reduction or elimination of maladaptive behavior, community living, and mobility. The department may provide these services until the client's independent living skills

development has been met or until an interdisciplinary team determines the service is no longer appropriate for the client.

19. The department may provide community transition services to a client who is transitioning from an institution or another provider-operated living arrangement to a living arrangement in a private residence where the client is directly responsible for his or her own living expenses and needs nonrecurring set-up expenses. Community transition services include one-time transition costs and transition coordination.

a. Allowable expenses are those necessary to enable a client to establish a basic household that do not constitute room and board and may include:

(1) Security deposits that are required to obtain a lease on a private residence;

(2) Essential household furnishings required to occupy and use a private residence, including furniture, window coverings, food preparation items, and bed and bath linens;

(3) Setup fees or deposits for utility or service access, including telephone, electricity, heating, and water;

(4) Services necessary for the client's health and safety, such as pest eradication and one-time cleaning prior to occupancy;

(5) Moving expenses;

(6) Necessary home accessibility adaptations; and

(7) Activities to assess need and to arrange for and procure need resources.

b. Community transition services do not include monthly rental or mortgage expenses, escrow, specials, insurance, food, regular utility or service access charges, household appliances, or items that are intended for purely diversional or recreational purposes.

c. Community transition services are furnished only to the extent the services are reasonable and necessary as determined through the service plan development process, clearly identified in the service plan and the client is unable to meet such expense, or when the services cannot be obtained from other sources.

20. The department may provide a nurse assessment to a client who requires an evaluation of his or her health care needs to ensure the health, welfare, and safety of the client. The service is limited to a nurse assessment, consultation, and recommendations to address the health-related need for services that are necessary to support a client in a home- or community-based setting. The service must be provided by an advanced practice registered nurse or a registered nurse who is in good standing.

21. The department may provide other services as permitted by an approved waiver.

22. Subsections 19 and 20 become effective on the effective date of approved amendments to the 1915(c) Medicaid waiver sufficient to secure federal financial participation in the cost of services provided to individuals found eligible under subsections 19 and 20, remain effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2018.

**General Authority:** NDCC 50-06.2-03(6)

**75-03-23-07. Qualified service provider standards and agreements.**

1. An individual or agency seeking designation as a qualified service provider shall complete and return the applicable forms supplied by the department in the form and manner prescribed. The qualified service provider, including any employees of an agency designated as a qualified service provider, shall meet all licensure, certification, or competency requirements applicable under state or federal law and departmental standards necessary to provide care to clients whose care is paid by public funds. An application is not complete until the individual or agency submits all required information and required provider verifications to the department.
2. A provider or an individual seeking designation as a qualified service provider:
  - a. Must have the basic ability to read, write, and verbally communicate;
  - b. Must not be an individual who has been found guilty of, pled guilty to, or pled no contest to:
    - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; North Dakota Century Code section 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; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code section 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering a vulnerable adult; 12.1-31-07.1, exploitation of a vulnerable adult; subsection 1 of section 26.1-02.1-02.1, fraudulent insurance acts; 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; except that a person found guilty of misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction may be considered rehabilitated if the requirements of subparagraph a or b of paragraph 2 of subdivision b of subsection 2 are met; or
    - (2) An offense, other than a direct-bearing offense identified in paragraph 1 of subdivision b of subsection 2, if the department determines that the individual has not been sufficiently rehabilitated.
      - (a) The department may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment without subsequent charge or conviction has elapsed, or sufficient evidence is provided of completion of any relevant rehabilitation program.
      - (b) An individual's completion of a period of three years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation;

- c. Must not have an infectious or contagious disease, according to the centers for disease control and prevention's personnel health guidelines, and shall demonstrate any related infection control skills;
  - d. Shall maintain confidentiality;
  - e. Shall submit a request to be a qualified service provider every twenty-four months using applicable forms and shall provide documentation as required by the department;
  - f. Must be physically capable of performing the service for which they were hired;
  - g. Must be at least eighteen years of age; and
  - h. Must not have been the subject of a child abuse or neglect assessment for which a services required decision was made unless the program administrator, after appropriate consultation with persons qualified to evaluate the capabilities of the provider, documenting criteria used in making the decision, and imposing any restrictions necessary, approves the request, provided the provider can demonstrate:
    - (1) The successful completion of an appropriate therapy; or
    - (2) The elimination of an underlying basis precipitating the neglect or abuse.
3. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require the applicant or provide to present evidence of the applicant's or provider's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
  4. The offenses enumerated in paragraph 1 of subdivision b of subsection 2 have a direct bearing on an individual's ability to be enrolled as a qualified service provider.
    - a. An individual enrolled as a qualified service provider prior to January 1, 2009, who has been found guilty of, pled guilty to, or pled no contest to, an offense considered to have a direct bearing on the individual's ability to provide care may be considered rehabilitated and may continue to provide services if the individual has had no other offenses and provides sufficient evidence of rehabilitation to the department.
    - b. The department may not approve, deny, or renew an application for an individual or employee of an agency who is applying to enroll or re-enroll as a qualified service provider and who has been charged with an offense considered to have a direct bearing on the individual's ability to provide care or an offense in which the alleged victim was under the applicant's care, until final disposition of the criminal case against the individual.
  5. Evidence of competency for adult foster care providers serving clients eligible for the developmental disability waiver must be provided in accordance with subdivision b of subsection 2 of section 75-03-21-08.
  6. A provider of services for adult day care, adult foster care, attendant care, extended personal care, family personal care, nurse assessment, personal care, residential care, respite care, supervision, and transitional living care shall provide evidence of competency in generally accepted procedures for:
    - a. Infection control and proper handwashing methods;
    - b. Handling and disposing of body fluids;
    - c. Tub, shower, and bed bathing techniques;

- d. Hair care techniques, sink shampoo, and shaving;
  - e. Oral hygiene techniques of brushing teeth and cleaning dentures;
  - f. Caring for an incontinent client;
  - g. Feeding or assisting a client with eating;
  - h. Basic meal planning and preparation;
  - i. Assisting a client with the self-administration of medications;
  - j. Maintaining a kitchen, bathroom, and other rooms used by a client in a clean and safe condition, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks;
  - k. Laundry techniques, including mending, washing, drying, folding, putting away, ironing, and related work;
  - l. Assisting a client with bill paying and balancing a check book;
  - m. Dressing and undressing a client;
  - n. Assisting with toileting;
  - o. Routine eye care;
  - p. Proper care of fingernails;
  - q. Caring for skin, including giving a back rub;
  - r. Turning and positioning a client in bed;
  - s. Transfer using a belt, standard sit, or bed to wheelchair;
  - t. Assisting a client with ambulation; and
  - u. Making wrinkle-free beds.
7. An applicant for qualified service provider status for attendant care, adult foster care, extended personal care, family personal care, nurse assessment, personal care, residential care, supervision, transitional living care, respite care, or adult day care must secure written verification that the applicant is competent to perform procedures specified in subsection 5 from a physician, chiropractor, registered nurse, licensed practical nurse, occupational therapist, physical therapist, or an individual with a professional degree in specialized areas of health care. Written verification of competency is not required if the individual holds one of the following licenses or certifications in good standing: physician, physician assistant, chiropractor, registered nurse, licensed practical nurse, registered physical therapist, registered occupational therapist, or certified nurse assistant. A certificate or another form of acknowledgment of completion of a program with a curriculum that includes the competencies in subsection 5 may be considered evidence of competence.
  8. The department may approve global and client-specific endorsements to provide particular procedures for a provider based on written verification of competence to perform the procedure from a physician, chiropractor, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in a specialized area of health care or approved within the scope of the individual's health care license or certification.
  9. Competence may be demonstrated in the following ways:

- a. A demonstration of the procedure being performed;
  - b. A detailed verbal explanation of the procedure; or
  - c. A detailed written explanation of the procedure.
10. The department shall notify the individual or the agency of its decision on designation as a qualified service provider.
  11. The department shall maintain a list of qualified service providers. Once the client's need for services has been determined, the client selects a provider from the list and the department's designee issues an authorization to provide services to the selected qualified service provider.
  12. A service payment may be issued only to a qualified service provider who bills the department after the delivery of authorized services.

**History:** Effective June 1, 1995; amended effective March 1, 1997; January 1, 2009; October 1, 2014; April 1, 2016; [January 1, 2018](#).

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-03(5)



**TITLE 92**  
**WORKFORCE SAFETY AND INSURANCE**



**JANUARY 2018**

**CHAPTER 92-01-02  
RULES OF PROCEDURE - NORTH DAKOTA WORKERS' COMPENSATION ACT**

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**92-01-02-02.5. Contributing cause of mental or psychological condition defined.**

As used in subparagraph 6 of subdivision a of subsection 10 of North Dakota Century Code section 65-01-02:

1. "A mental or psychological condition" must be directly caused by a physical injury. To be directly caused it must be shown with objective medical evidence that the mental or psychological condition is the physiological product of the physical injury.
2. "Other contributing causes" include emotional circumstances that generally accompany work-related injuries, such as the loss of function, loss of self-esteem, loss of financial independence, divorce, loss of career or employment position, disruption to lifestyle or family units, anxiousness, uncertainty, or compromised ability to participate in lifestyles, hobbies, or pastimes.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-01-02

#### **92-01-02-11.1. Attorney's fees.**

Upon receipt of a certificate of program completion from the decision review office, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The organization shall pay attorneys at one hundred ~~fifty~~sixty dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at ~~seventy-five~~eighty dollars per hour.
2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to ninety dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at forty-five dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.
3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:
  - a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.
  - b. Three thousand ~~six~~seven hundred seventy-five dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the hearing is called to order.
  - c. Five thousand ~~seven~~nine hundred ~~seventy-five~~fifty dollars, plus reasonable costs incurred, if the employee prevails after the hearing is called to order by the administrative law judge. ~~If the employee prevails after the hearing, and the organization appeals the final order, the organization shall pay attorney's fees at a rate of one hundred twenty-five percent of the maximum fees specified in subdivisions d and e when the employee prevails on appeal, as defined by North Dakota Century Code section 65-02-08, to the~~

~~district court or to the supreme court. However, the organization may not pay attorney's fees if the employee prevails at the district court but the organization prevails at the supreme court in the same appeal.~~

- d. Six thousand ~~four~~six hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Eight thousand ~~six~~eight hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.
  - e. Ten thousand ~~three~~six hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. Eleven thousand ~~three~~six hundred fifty dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.
  - f. One thousand seven hundred fifty dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.
  - g. Should a settlement or order amendment offered during the DRO process be accepted after the DRO certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.
4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.
  5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).
  6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.
  7. The following costs will be reimbursed:
    - a. Actual postage, if postage exceeds three dollars per parcel.
    - b. Actual toll charges for long-distance telephone calls.
    - c. Copying charges, at eight cents per page.
    - d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.
    - e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other reasonable and necessary costs in excess of one hundred fifty dollars may be

reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.

8. The following costs will not be reimbursed:
  - a. Facsimile charges.
  - b. Express mail.
  - c. Additional copies of transcripts.
  - d. Costs incurred to obtain medical records.
  - e. Online computer-assisted legal research.
  - f. Copy charges for documents provided by the organization.

The organization shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

**History:** Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014; April 1, 2016; [January 1, 2018](#).

**General Authority:** NDCC 65-02-08, 65-02-15

**Law Implemented:** NDCC 65-02-08, 65-02-15, 65-10-03

#### **[92-01-02-13.1. General contractors.](#)**

[For purposes of application of North Dakota Century Code section 65-04-26.2, the relationship between a general contractor and subcontractor may be identified by the organization in any industry.](#)

**History:** Effective [January 1, 2018](#).

**General Authority:** [NDCC 65-02-08, 65-04-26.2](#)

**Law Implemented:** [NDCC 65-04-26.2](#)

#### **92-01-02-14. Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.**

1. The organization shall bill each employer annually for premiums as provided by North Dakota Century Code chapter 65-04. If an employer has an open account with the organization, the organization may send to the employer annually a [form payroll report](#) on which the employer shall [report submit](#) payroll expenditures from the preceding payroll year. [The employer shall provide on the payroll report all information requested by the organization, including the name, social security number, rate classification, and gross payroll for each employee.](#) An electronic report of payroll information in a format approved by the organization is acceptable. The employer shall complete the report and send it to the organization either by regular mail or electronic transmission. The report must be received by the organization by the last day of the month following the expiration date of the employer's payroll period. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report.
2. The organization shall send the first billing statement to the employer by regular mail to the employer's last-known address or by electronic transmission. The first billing statement must identify the amount due from the employer. The statement must explain the installment payment option. The payment due date for an employer's account is thirty days from the date of billing indicated on the premium billing statement. If a previous delinquency exists on the employer account, the billing statement indicates a past-due status.

3. If the organization does not receive full payment or the minimum installment payment indicated on the premium billing statement, on or before the payment due date, the organization shall send a second billing statement.
4. If the minimum installment payment remains unpaid thirty days after the organization sends the second billing statement to the employer, the organization shall notify the employer by regular mail to the employer's last-known address or by electronic transmission that:
  - a. The employer is in default and may be assessed a penalty of two hundred fifty dollars plus two percent of the amount of premium, penalties, and interest in default;
  - b. The employer's account has been referred to the collections unit of the policyholder services department; and
  - c. Workforce safety and insurance may cancel the employer's account.
5. The organization may extend coverage by written binder if the organization and the employer have agreed in writing to a payment schedule on a delinquent account. If the employer is in default of the agreed payment schedule, however, that employer is not insured.
6. If the employer's payroll report is not timely received by the organization, the organization shall notify the employer, by electronic transmission or regular mail addressed to the last-known address of the employer of the delinquency. The notification must indicate that the organization may assess a penalty of up to two thousand dollars against the employer's account.
7. If the payroll report is not received within forty-five days following the expiration of the employer's payroll year, the organization shall assess a penalty of fifty dollars. The organization shall notify the employer of the penalty by electronic transmission or regular mail addressed to the employer's last-known address ~~that the employer is uninsured~~.
8. At any time after sixty days following the expiration of the employer's payroll year, when the employer has failed to submit a payroll report, the organization may bill the employer ~~at the wage cap per employee using the number of employees reported per rate classification from a previous year of actual or estimated payroll reported to the organization. The organization may also bill an employer account using data obtained from job service North Dakota to bill an employer who has failed to submit a payroll report~~consistent with North Dakota Century Code section 65-04-19. An employer whose premium has been calculated under this subsection may submit actual wages on an employer payroll report for the period billed and the organization shall adjust the employer's account. The organization may also cancel the employer's account.
9. If the organization receives an employer payroll report more than sixty days after the expiration of the employer's payroll period, the employer's premium billing statement may have a past-due premium billing due date. Any employer account billed without benefit of the employer payroll report may have a past-due premium billing due date.
10. If the employer does not have an open account with the organization, the organization shall send the employer an application for coverage by regular mail or by electronic transmission. The organization shall notify the employer of the penalties provided by North Dakota Century Code chapter 65-04 and this section.
11. Upon receipt of an incomplete or unsigned payroll report, the employer shall submit the completed payroll report within fifteen days of the organization's request. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report. If the payroll report is not timely received by the organization, the organization may

assess a penalty of up to two thousand dollars and shall notify the employer that the employer is uninsured.

**History:** Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002; March 1, 2003; July 1, 2006; April 1, 2009; July 1, 2010; April 1, 2016; January 1, 2018.

**General Authority:** NDCC 65-02-08, 65-04-06, 65-04-33

**Law Implemented:** NDCC 65-04-33

### 92-01-02-23.2. Employers to provide security instrument.

The organization may require an employer to provide a bond, letter of credit, cash deposit, or other security instrument approved by the organization to guarantee payment of workers' compensation premium. The required security instrument is in addition to any other required installment payment obligations.

1. A security instrument or cash deposit may be required if:

a. The employer does not have a permanent place of business in this state;

b. The employer is not a resident of this state;

c. The employer does not have a payment history or previously underwritten account with the organization; or

d. The employer has a previous delinquency with the organization.

2. The security required by an employer may be the amount of premium calculated for the applicable premium year. The security amount may be adjusted by the organization based on changes in premium and anticipated payroll. The organization may consider all aspects of an employer's account, including premium, rate classifications, and premium and assessment delinquencies to determine the security required.

3. Failure to provide a security instrument as required by the organization results in the employer being deemed uninsured and in default.

4. The organization may permit withdrawal of the security if the employer has made all premium and assessment payments timely for two policy periods and complied with all requirements of the organization.

5. Once an employer account is in a closed status, and any balance due on the account is paid, the security instrument will be released.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 65-02-08, 65-04-22

**Law Implemented:** NDCC 65-04-22

### **92-01-02-25. Permanent impairment evaluations and disputes.**

1. Definitions:

a. Amputations and loss as used in subsection 11 of North Dakota Century Code section 65-05-12.2.

"Amputation of a thumb" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the second or distal phalanx of the thumb" means disarticulation at or proximal to the interphalangeal joint.

"Amputation of the first finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the first finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the third or distal phalanx of the first finger" means disarticulation at or proximal to the distal interphalangeal joint.

"Amputation of the second finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the second finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the third or distal phalanx of the second finger" means disarticulation at or proximal to the distal interphalangeal joint.

"Amputation of the third finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the third finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the fourth finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the fourth finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the leg at the hip" means disarticulation at or distal to the hip joint (separation of the head of the femur from the acetabulum).

"Amputation of the leg at or above the knee" means disarticulation at or proximal to the knee joint (separation of the femur from the tibia).

"Amputation of the leg at or above the ankle" means disarticulation at or proximal to the ankle joint (separation of the tibia from the talus).

"Amputation of a great toe" means disarticulation at the metatarsal phalangeal joint.

"Amputation of the second or distal phalanx of the great toe" means disarticulation at or proximal to the interphalangeal joint.

"Amputation of any other toe" means disarticulation at the metatarsal phalangeal joint.

"Loss of an eye" means enucleation of the eye.

- b. "Maximum medical improvement" means the injured employee's recovery has progressed to the point where substantial further improvement is unlikely, based on reasonable medical probability and clinical findings indicate the medical condition is stable.
- c. "Medical dispute" means an employee has reached maximum medical improvement in connection with a work injury and has been evaluated for permanent impairment, and there is a disagreement between doctors arising from the physical evaluation that affects the amount of the award. The dispute to be reviewed must clearly summarize the underlying medical condition. It does not include disputes regarding proper interpretation or application of the American medical association guides to the evaluation of permanent impairment, sixth edition. It does not include disputes arising from an impairment

percentage rating or an impairment opinion given by a doctor when the doctor is not trained in the American medical association guides to the evaluation of permanent impairment, sixth edition, and when the doctor's impairment percentage rating or impairment opinion do not meet the requirements of subsection 5 of North Dakota Century Code section 65-05-12.2.

- d. "Potentially eligible for an impairment award" means the medical evidence in the claim file indicates an injured employee has reached maximum medical improvement and has a permanent impairment caused by the work injury that will likely result in a monetary impairment award.
  - e. "Treating doctor" means a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license who has physically examined or provided direct care or treatment to the injured employee.
2. Permanent impairment evaluations must be performed in accordance with the American medical association guides to the evaluation of permanent impairment, sixth edition, and modified by this section. All permanent impairment reports must include the opinion of the doctor on the cause of the impairment and must contain an apportionment if the impairment is caused by both work-related and non-work-related injuries or conditions.
  3. The organization shall ~~establish a list of medical specialists~~schedule an evaluation with a doctor who ~~have~~has the training and experience necessary to conduct an evaluation of permanent impairment and apply the American medical association guides to the evaluation of permanent impairment, sixth edition. ~~When an employee requests an evaluation of impairment, the organization shall schedule an evaluation with a doctor from the list.~~ The organization may not schedule a permanent impairment evaluation with the employee's treating doctor. ~~The organization and employee may agree to an evaluation by a doctor not on the current list~~ or a doctor who has treated the injured employee for the work-related injury. In the event of a medical dispute, the organization will identify qualified specialists and submit all objective medical documentation regarding the dispute to specialists who have the knowledge, training, and experience in the application of the American medical association guides to the evaluation of permanent impairment, sixth edition. ~~To the extent more than one doctor is identified, the organization will consult with the employee before appointment of the doctor.~~
  4. Upon receiving a permanent impairment rating report from the doctor, the organization shall audit the report and shall issue a decision awarding or denying permanent impairment benefits.
    - a. Pain impairment ratings. A permanent impairment award may not be made upon a rating solely under chapter 3 of the sixth edition.
    - b. Mental and behavioral disorder impairment ratings. Any evaluating doctor determining permanent mental or behavioral disorder impairment per chapter 14 of the sixth edition shall include a written summary of the mental evaluation in the evaluation report.
    - c. In chapters that include assessment of the functional history as one of the nonkey factors to adjust the final impairment rating within a class by using a self-report tool, the examining doctor is to score the self-report tool and assess results for consistency and credibility before adjusting the impairment rating higher or lower than the default value. The evaluating doctor must provide rationale for deciding that functional test results are clinically consistent and credible.
    - d. A functional history grade modifier may be applied only to the single, highest diagnosis-based impairment.

e. All permanent impairment reports must include an apportionment if the impairment is caused by both work and non-work injuries or conditions.

5. Pollicization procedures will be rated as an impairment under subsection 11 of North Dakota Century Code section 65-05-12.2, relating to scheduled injury, and may not be rated as a whole body impairment, unless otherwise specified under subsection 11 of North Dakota Century Code section 65-05-12.2.

6. Errata sheets and guides updates. Any updates, additions, or revisions by the editors of the sixth edition of the guides to the evaluation of permanent impairment as of April 1, 2012, are adopted as an update, addition, or revision by the organization.

**History:** Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; May 1, 1998; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2009; July 1, 2010; April 1, 2012; July 1, 2017; January 1, 2018.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05-12.2

### **92-01-02-31. Who may be reimbursed.**

1. Only treatment that falls within the scope and field of the treating medical service provider's license to practice is reimbursable.
2. Paraprofessionals who are not independently licensed must practice under the direct supervision of a licensed medical service provider whose scope of practice and specialty training includes the service provided by the paraprofessional, in order to be reimbursed.
3. Health care providers may be refused reimbursement to treat cases under the jurisdiction of the organization.

4. Any entity operating under the authority of the federal government and granted authority to receive direct reimbursement for payments made for medical treatment determined to be related to the workers' compensation injury.

5. Reasons for holding a medical service provider ineligible for reimbursement include one or more of the following:

- a. Failure, neglect, or refusal to submit complete, adequate, and detailed reports.
- b. Failure, neglect, or refusal to respond to requests by the organization for additional reports.
- c. Failure, neglect, or refusal to respond to requests by the organization for drug testing.
- d. Failure, neglect, or refusal to observe and comply with the organization's orders and medical service rules, including cooperation with the organization's managed care vendors.
- e. Failure to notify the organization immediately and prior to burial in any death if the cause of death is not definitely known or if there is question of whether death resulted from a compensable injury.
- f. Failure to recognize emotional and social factors impeding recovery of claimants.
- g. Unreasonable refusal to comply with the recommendations of board-certified or qualified specialists who have examined the claimant.
- h. Submission of false or misleading reports to the organization.

- i. Collusion with other persons in submission of false or misleading information to the organization.
- j. Pattern of submission of inaccurate or misleading bills.
- k. Pattern of submission of false or erroneous diagnosis.
- l. Billing the difference between the maximum allowable fee set forth in the organization's fee schedule and usual and customary charges, or billing the claimant any other fee in addition to the fee paid, or to be paid, by the organization for individual treatments, equipment, and products.
- m. Failure to include physical conditioning in the treatment plan. The medical service provider should determine the claimant's activity level, ascertain barriers specific to the claimant, and provide information on the role of physical activity in injury management.
- n. Failure to include the injured worker's functional abilities in addressing return-to-work options during the recovery phase.
- o. Treatment that is controversial, experimental, or investigative; which is contraindicated or hazardous; which is unreasonable or inappropriate for the work injury; or which yields unsatisfactory results.
- p. Certifying disability in excess of the actual medical limitations of the claimant.
- q. Conviction in any court of any offense involving moral turpitude, in which case the record of the conviction is conclusive evidence.
- r. The excessive use, or excessive or inappropriate prescription for use, of narcotic, addictive, habituating, or dependency inducing drugs.
- s. Declaration of mental incompetence by a court of competent jurisdiction.
- t. Disciplinary action by a licensing board.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; July 1, 2010; July 1, 2017; [January 1, 2018](#).

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

## CHAPTER 92-01-03

### 92-01-03-02. Definitions.

In this chapter:

1. "Act" means the North Dakota Workers Compensation Act.
2. "Attempt to resolve" means a prompt, active, honest, good-faith effort by the claimant to settle disputes with the organization, through the office.
3. "Benefits" means an obligation of the organization to provide a claimant with assistance as required by the Act.
4. "Certificate of completion" means the form sent to the claimant when the office closes its file, which acknowledges the claimant made a good-faith effort to resolve the dispute.
5. "Claimant" means an employee who has filed a claim for benefits with the organization.
6. ~~"Constructive denial" occurs when sixty days have passed since all elements of filing under subsection 2 of section 92-01-02-48 have been satisfied, but the organization has not made the decision to accept or deny the claim.~~
- ~~7.~~ "Decision review specialist" means a person employed by the office to assist a claimant in a disputed claim.
- ~~8.7.~~ "Disputed claim" means a challenge to an order issued by the organization.
- ~~9.8.~~ "Interested party" means:
  - a. The claimant.
  - b. The claims adjuster assigned to that claimant's claim.
  - c. A claims supervisor.
  - d. The claimant's employer or immediate supervisor.
  - e. The claimant's treating doctor.
  - f. A member of the organization's legal department.
  - g. Any other person the decision review specialist determines appropriate.
- ~~10.9.~~ "Office" means the decision review office.
- ~~11.10.~~ "Order" means an administrative order issued pursuant to North Dakota Century Code chapter 28-32 or section 65-01-16.
- ~~12.11.~~ "Organization" means workforce safety and insurance, or the director, or any department heads, assistants, or employees of the organization designated by the director to act within the course and scope of their employment in administering the policies, powers, and duties of the Act.
- ~~13.~~ ~~"Vocational consultant's report" means the report issued by the rehabilitation consultant outlining the most appropriate rehabilitation option identified for the claimant.~~

**History:** Effective April 1, 1996; amended effective May 1, 2000; July 1, 2004; July 1, 2010; January 1, 2018.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-27

**92-01-03-04. Procedure for dispute resolution.**

1. A claimant may contact the office for assistance at any time. The claimant shall contact the office to request assistance with a dispute arising from an order within thirty days of the date of service of the order. ~~The claimant may also contact the office for assistance when a claim has been constructively denied or when a vocational consultant's report is issued.~~ A claimant must make an initial request in writing for assistance with an order, ~~a constructively denied claim, or a vocational consultant's report.~~
2. In an attempt to resolve the dispute, the decision review specialist may contact any interested parties. After oral or written contact has been made with the appropriate interested parties, the decision review specialist will attempt to accomplish a mutually agreeable resolution of the dispute between the organization and the claimant. The decision review specialist may facilitate the discussion of the dispute but may not modify a decision issued by the organization.
3. If a claimant has attempted to resolve the dispute and an agreement cannot be reached, the decision review specialist shall issue a certificate of completion. The decision review specialist will send the certificate of completion to the claimant and will inform the claimant of the right to pursue the dispute through hearing. To pursue a formal rehearing of the claim, the claimant shall file a request for rehearing with the organization's legal department within thirty days after the certificate of completion is mailed.
4. If a claimant has not attempted to resolve the dispute, the office shall notify the claimant by letter, sent by regular mail, of the claimant's nonparticipation in the office and that no attorney's fees shall be paid by workforce safety and insurance should the claimant prevail in subsequent litigation. The decision review specialist shall inform the claimant of the right to pursue the dispute through hearing. To pursue a formal rehearing of the claim, the claimant shall file a request for rehearing with the organization's legal department within thirty days after the letter of noncompliance is mailed.
5. If an agreement is reached, the organization must be notified and an order or other legal document drafted based upon the agreement.
6. The office will complete action within thirty days from the date that the office receives a claimant's request for assistance. This timeframe can be extended if the decision review specialist is in the process of obtaining additional information.

**History:** Effective April 1, 1996; amended effective May 1, 1998; May 1, 2000; July 1, 2004; July 1, 2006; July 1, 2010; April 1, 2012; [January 1, 2018](#).

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-27



**TITLE 101**  
**REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD**



**JANUARY 2018**

**ARTICLE 101-05**  
**APPRAISAL MANAGEMENT COMPANIES**

Chapter  
101-05-01 Appraisal Management Companies

**CHAPTER 101-05-01**  
**APPRAISAL MANAGEMENT COMPANIES**

Section  
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**101-05-01-01. Statutory definitions.**

Unless otherwise defined, or made inappropriate by context, all terms are defined in North Dakota Century Code chapters 43-23.3 and 43-23.5.

**History:** Effective January 1, 2018.  
**General Authority:** NDCC 43-23.5-02  
**Law Implemented:** NDCC 43-23.5-02

### **101-05-01-02. Registration application requirements.**

1. An applicant for registration as an appraisal management company and an entity that is exempt from the state registration requirements, but is subject to the federal registry if the federal government requires, shall submit a written application on the prescribed form. The application must include the following information and certifications in addition to the requirements found in North Dakota Century Code chapter 43-23.5:
  - a. The name, business address, telephone number, and email address of the person or entity seeking registration.
  - b. Designation of an agent for service of process within the state and an irrevocable uniform consent to service of process.
  - c. If the entity is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state.
  - d. The name, address, and contact information for any individual or entity owning ten percent or more of the appraisal management company.
  - e. The name, address, and contact information for an individual designated as the controlling person.
  - f. Name and contact information of each individual authorized by the appraisal management company to contract with clients or independent appraisers for performance of appraisals.
  - g. Certification that the controlling person had never been convicted of a criminal act involving moral turpitude nor had a license or certificate to act as an appraiser refused, revoked, or surrendered in lieu of disciplinary action in any state, unless such license or certificate was not declined, revoked, or suspended, for a substantive cause and has been reinstated by the state or states in which the individual was licensed or certified, substantive cause to be determine by the board.
  - h. Certification that the appraisal management company is not owned in whole or in part, directly or indirectly, by an individual who has had an appraiser license or certificate denied, revoked, or suspended subject to a disciplinary proceeding in any state.
2. An application for registration must be accompanied by the registration fee plus the applicable national registry fee.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-03, 43-23.5-04, 43-23.5-05, 43-23.5-06, 43-23.5-08, 43-23.5-09, 43-23.5-10; 12 USC 3353, 12 CFR 1102.403

### **101-05-01-03. Term of registration.**

The board shall issue a certificate of registration to an applicant who qualifies in accordance with this article. Any registration issued under this article expires on September thirtieth of each year, unless otherwise revoked or suspended during said term.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-06

#### **101-05-01-04. Surety bond.**

The applicant shall provide evidence of a surety bond with one or more corporate sureties authorized to do business in this state or an irrevocable letter of credit issued by an insured institution in the amount of twenty-five thousand dollars at the time of application.

1. The surety bond, subject to investigation or review by a court of record, must be conditioned that the applicant pays:
  - a. All amounts owing to persons who perform real estate appraisal services for the appraisal management company.
  - b. All amounts adjudged against the appraisal management company by reason of negligent or improper real estate appraisal services or appraisal management services or breach of contract in performing real estate appraisal services or appraisal management services.
  - c. Amounts owed to the board for national registry fees, initial registration and annual renewal fees, late filing fees, and change of information fees.
2. The surety bond must require the surety company to provide written notice to the board by registered or certified mail at least thirty days before the surety company cancels or revokes the bond, and within thirty days after the surety company pays for a loss under the bond.
3. The surety bond required by this section must be continuously on file with the board in the amount of twenty-five thousand dollars and is for the exclusive purpose of payment of the obligations listed in subsection 1. Upon termination or cancellation of the bond or reduction of the bond amount to less than twenty-five thousand dollars, a registered appraisal management company alternatively shall:
  - a. File a replacement bond within the time period established by the board by rule; or
  - b. Surrender the company's registration to the board and cease operating as an appraisal management company.
4. Any person damaged by an appraisal management company's failure to pay an obligation listed in subsection 1 of this section has a right of action against the bond.
5. Termination or cancellation of the surety bond does not terminate, cancel, or limit the liability of the issuer of the surety bond or letter of credit for any and all claims against the surety bond to satisfy a final order of a court of competent jurisdiction in an action that was commenced prior to the cancellation of the surety bond.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-19; 12 CFR 1102.403

#### **101-05-01-05. Roster of appraisal management companies.**

The board shall maintain a roster of appraisal management companies registered under the provisions of this article. The board shall transmit the roster to the appraisal subcommittee. The roster must include investigations initiated and disciplinary actions taken.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-18; 12 USC 3338

#### **101-05-01-06. Notice of change of address.**

Each appraisal management company registered under the provisions of this article, within thirty calendar days, shall give written notice of any change of physical and mailing address, change of company name, telephone number, website, facsimile, or email address to the board office.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-18

#### **101-05-01-07. Notice of change of designated officer.**

Each appraisal management company registered under the provisions of this article, within fifteen days, shall give written notice of change of designated officer of the appraisal management company, as required under subsection 6 of section 101-05-01-15, to the board office.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-05, 43-23.5-09

#### **101-05-01-08. Notice of change of controlling person.**

Each appraisal management company registered under the provisions of this article, within thirty calendar days, shall give written notice of change of controlling person of the appraisal management company to the board office.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-09

#### **101-05-01-09. Denial of registration.**

1. An appraisal management company denied registration must be notified in writing by the board of such denial and the reasons therefore.
2. An applicant may request an informal meeting with the board to reconsider the denial at the board's next scheduled meeting. The request must be sent to the board office within thirty calendar days of the date of the notice of denial.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 28-32-21, 28-32-22, 43-23.5-03, 43-23.5-04, 43-23.5-22

#### **101-05-01-10. Registration renewal.**

1. To obtain renewal of a registration, the holder of a current, valid registration shall make application on the prescribed form no later than sixty calendar days prior to the expiration of the registration.
2. An application for renewal must be accompanied by the registration renewal fee plus the applicable national registry fee.
3. Failure to renew a registration prior to expiration results in the loss of authority to operate as an appraisal management company in North Dakota until a request for reinstatement has been approved by the board. A late filing fee must be assessed for each month, or portion thereof, that elapses between expiration and reinstatement. Late filing fees and any national registry fee assessed by the board must be paid prior to reinstatement in addition to the annual renewal fees.

4. A registered appraisal management company may renew an expired registration at any time prior to three months after its date of expiration by satisfying all of the requirements for renewal, including paying the annual renewal and late filing fees prescribed in section 101-05-01-12.

5. Payment of annual renewal or late filing fees does not excuse a registrant from disciplinary action or criminal penalties for operating in violation of North Dakota Century Code section 43-23.5-03.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-04, 43-23.5-06; 12 CFR 1102.403

**101-05-01-11. Federal appraiser registry.**

Registrants who are qualified for enrollment in the federal roster or registry of appraisal management companies shall apply for enrollment or reinstatement of such enrollment in same upon a form approved by the board accompanied by the fee established for that purpose by the appropriate federal agency or instrumentality.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-07, 43-23.5-18; 12 USC 3341, 12 USC 3346, 12 USC 3353, 12 CFR 1102.403

**101-05-01-12. Filing fees.**

Fees may not be prorated.

1. The following application fees, and the national registry fee if the federal government requires, must be charged for an appraisal management company that is subject to registration under North Dakota Century Code chapter 43-23.5:

- |                                    |  |
|------------------------------------|--|
| a. <u>Initial registration fee</u> | <u>\$2,500 + national registry fee</u> |
| b. <u>Annual renewal fee</u>       | <u>\$2,000 + national registry fee</u> |
| c. <u>Late filing fee</u>          | <u>\$100 per month</u>                 |
| d. <u>Change of information</u>    | <u>\$25</u>                            |

2. If required by federal law, the board may collect the following fees, as well as any information the state is required to collect and submit to the appraisal subcommittee, from each appraisal management company that is exempt from registration under North Dakota Century Code chapter 43-23.5:

- |                                     |                                      |
|-------------------------------------|--------------------------------------|
| a. <u>Administrative fee</u>        | <u>\$500 + national registry fee</u> |
| b. <u>Late filing fee</u>           | <u>\$100 per month</u>               |
| c. <u>Change of information fee</u> | <u>\$25</u>                          |

The administrative fee may be waived if the federal government provides funding to the board for this function.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

Law Implemented: NDCC 43-23.5-04, 43-23.5-19; 12 USC 3346, 12 CFR 1102.403

**101-05-01-13. Refund of fees.**

Each fee is nonrefundable.

History: Effective January 1, 2018.

General Authority: NDCC 43-23.5-02

Law Implemented: NDCC 43-23.5-04, 43-23.5-19

**101-05-01-14. Payment of fees.**

Checks given to the board in payment of fees which are returned unpaid may be considered cause for denial, suspension, or revocation.

History: Effective January 1, 2018.

General Authority: NDCC 43-23.5-02

Law Implemented: NDCC 43-23.5-04, 43-23.5-19, 43-23.5-22

**101-05-01-15. Responsibilities and duties.**

An appraisal management company registered under this article shall:

1. Have a system in place to verify that utilized appraisers are licensed or certified and in good standing by this state.
2. Require each utilized appraiser who performs appraisals in this state to be independent from the transaction and certify in writing the area of geographic competency and the specific appraisal assignments competent to appraise.
3. Have a system in place to review the work of utilized appraisers who perform appraisal services to validate that the services were conducted in conformity with the uniform standards of professional appraisal practice.
4. Have a system in place to verify that any employee or independent contractor the appraisal management company utilizes to perform an appraisal review on a completed appraisal on property located in North Dakota, be licensed or certified with the same or higher qualifications required to perform the appraisal being reviewed, and holding a permit in good standing in North Dakota.
5. File a referral with the board if there is evidence that a utilized appraiser is in violation of the laws, rules, or uniform standards of professional appraisal practice, including grounds for disciplinary action as prescribed in North Dakota Century Code section 43-23.5-22.
6. Authorize a designated officer who is responsible for accepting the responsibilities for compliance with North Dakota Century Code chapter 43-23.5 and this article. The appraisal management company shall notify the board office, within fifteen calendar days, of any change in its designated officer.
7. Maintain with the board the name and address of a registered agent for service of process, and notify the board office, within fifteen calendar days, of any change to the information.
8. Disclose to its client the actual fees paid to an appraiser for appraisal services, separate from any other fees or charges for appraisal management services, and make the information available to the board office upon request.
9. Disclose its registration number within its engagement document with each utilized appraiser.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-11, 43-23.5-12, 43-23.5-13, 43-23.5-14, 43-23.5-16, 43-23.5-17, 43-23.5-18, 43-23.5-20; 12 USC 3353, 12 CFR 1102.403

#### **101-05-01-16. Retention of records.**

An appraisal management company registered under the provisions of this article shall retain the following records:

1. A detailed record of each service request it receives for appraisals of real property located in North Dakota, which must include:
  - a. Letter of engagement with the utilized appraiser.
  - b. Appraisal report received from the utilized appraiser, including the original report, any revised reports, and any addenda or other material furnished subsequent to the delivery of the original report.
  - c. Any and all material assignment-related correspondence sent to and received from the utilized appraiser.
  - d. Letter of engagement with the utilized reviewing appraiser for the purpose of reviewing the requested appraisal, if applicable.
  - e. Records related to the review of the requested appraisal, if applicable, including the original review report, any and all correspondence sent to and received from the utilized reviewing appraiser, and each subsequent revised review report.
  - f. Requests received from the client, all documentation supplied to that client, and any and all material correspondence sent to and received from the client.
  - g. Fees paid to utilized appraisers and the fees received from the client.
2. Records must be retained for the period required by North Dakota Century Code section 43-23.5-15. Records may be retained as a photocopy or electronic copy type of media.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-15

#### **101-05-01-17. Inspection and copying.**

An appraisal management company registered under the provisions of this article shall make all records required to be maintained or records deemed to be pertinent to an investigation of a complaint under this article available for inspection and copying upon request of the board. It is the duty of the registrant to provide requested records at no expense to the board.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-15

#### **101-05-01-18. Complaints and investigations.**

The board shall, upon written and signed complaint or referral, or may, upon the board's own motion, initiate an investigation of any registration holder or applicant for registration.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 43-23.5-02

**Law Implemented:** NDCC 43-23.5-21, 43-23.5-22; 12 USC 3347

**TITLE 111**  
**MARRIAGE AND FAMILY THERAPY LICENSURE BOARD**



## JANUARY 2018

### CHAPTER 111-02-01

#### 111-02-01-01. Definitions.

Unless the context otherwise requires, the following terms have the meanings given:

1. "Accredited institutions or programs" means institutions or programs that hold accreditation or candidacy status from an accreditation organization recognized by the council for higher education accreditation or postgraduate academic programs in marriage and family therapy accredited by the commission on accreditation of the American association for marriage and family therapy.
2. "Applicant" means an individual seeking licensure by the marriage and family therapy licensure board as a marriage and family therapist.
- ~~2.3.~~ "Certified professions or occupations" means those professions or occupations that have a certification process based upon specific criteria identified as necessary for effective performance of the profession or occupation. The certification process must include:
  - a. Eligibility requirements established through education or experience, or both;
  - b. Successful completion of a competency-based written examination;
  - c. Successful demonstration of competent clinical skills; and
  - d. Assurance of practitioner competencies through mandatory recertification and continuing education requirements.
- ~~3.4.~~ "Dual relationship" means a relationship between a therapist and another person with whom such relationships are prohibited by law or rule that is both professional and one or more of the following: cohabitational, familial, or supervisory, or that includes significant personal involvement or financial involvement other than legitimate payment for therapeutic services rendered.
- ~~4.5.~~ "Emeritus" means retired from active practice but retaining one's license and title.
- ~~5.6.~~ "Family system" means an open, ongoing, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality, and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality,

gender, fertility, health, and temperament) and its sociocultural and historic position in its larger environment.

6.7. "Fee splitting" means the practice of paying commissions to colleagues for referrals.

7.8. "LAMFT" are the initials permitted to be used by an associate marriage and family therapist licensee to designate that the individual has completed the educational requirements for a marriage and family therapy license, has successfully passed the licensing examination, and is in the process of completing postgraduate supervision for the licensing requirements.

8.9. "Licensee" means a licensed marriage and family therapist.

9.10. "LMFT" are the initials permitted to be used by a licensed marriage and family therapist to designate that the individual is licensed by the marriage and family therapy licensure board.

10.11. "Postgraduate supervised experience" means supervised experience occurring after the accredited educational institution grants the degree for licensure as shown on the applicant's transcript and all educational requirements specified in section 111-02-02-02.

~~11. "Regionally accredited" means that an educational institution has been accredited by the north central association of schools and colleges, middle states association of colleges and schools, New England association of schools and colleges, northwest association of schools and colleges, southern association of colleges and schools, western association of schools and colleges, or a postgraduate academic program in marriage and family therapy accredited by the commission on accreditation of the American association for marriage and family therapy.~~

12. "Sexual contact" means any of the following, whether or not occurring with the consent of a person with whom such conduct is prohibited by law or rule:

- a. Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the genital or anal openings of the body by any part of the therapist's body or by any object used by the therapist for this purpose, or any intrusion, however slight, into the genital or anal openings of the therapist's body by any part of another person's body or by any object used by another person for this purpose, if agreed to by the therapist;
- b. Kissing of, or the intentional touching by the therapist of another person's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts; or
- c. Kissing of, or the intentional touching by another person of the therapist's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts if the therapist agrees to the kissing or intentional touching.

Sexual contact includes requests by the therapist for conduct described in subdivisions a to c.

Sexual contact does not include conduct described in subdivision a or b that is a part of standard medical treatment of a patient.

13. "Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature when:

- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;

- b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
  - c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.
14. "Supervisee" means an individual who is engaged in postgraduate, supervised experience under the direction of a supervisor.
  15. "Supervision" means taking full professional responsibility for training, work experience, and performance in the practice of marriage and family therapy of a supervisee, including planning for and evaluation of the work product of the supervisee, and including face-to-face contact between the supervisor and supervisee.
  16. "Supervisor" means an individual who has met the requirements in section 111-02-02-04 and takes responsibility for the practice of the supervisee during a specific time to enable the supervisee to meet the requirements of licensing.
  17. "Therapeutic deception" means a representation by a therapist that sexual contact or unethical conduct with the therapist is consistent with or part of the professional work with a client, student, or supervisee or former client, student, or supervisee.
  18. "Therapist" means a licensee of the board.
  19. "Variance" means permission from the board to comply with a rule in a manner other than that generally specified.

**History:** Effective July 1, 2010; [amended effective January 1, 2018.](#)

**General Authority:** NDCC 28-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-01, 43-53-02

**111-02-01-05. Code of ethics.**

1. The code of ethics applies to all licensees and applicants who practice marriage and family therapy and applies to their conduct during the period of education and training required for licensure.
2. The code of ethics constitutes the standards by which the professional conduct of a marriage and family therapist is measured.
3. A violation of the code of ethics is unprofessional or unethical conduct and is a sufficient reason for disciplinary action or denial of licensure [or revocation of license.](#)
4. A marriage and family therapist must act in accordance with the highest standards of professional integrity and competence. A marriage and family therapist must be honest in dealing with clients, students, trainees, colleagues, and the public.
  - a. A therapist must not perform, nor pretend to be able to perform, professional services beyond the therapist's field or fields of competence.

- b. A therapist must not permit a trainee or intern under the therapist's supervision to perform, nor pretend to be competent to perform, professional services beyond the trainee's or intern's level of training.
- c. A therapist must recognize the potentially influential position the therapist may have with respect to students, interns, employees, and supervisees, and must avoid exploiting the trust and dependency of these persons. A therapist must make every effort to avoid dual relationships that could impair the therapist's professional judgment or increase the risk of exploitation. Sexual contact between the therapist and students, employees, independent contractors, colleagues, or supervisees is prohibited for two years after the date that the relationship is terminated, whether or not the party is informed that the relationship is terminated. Sexual contact after two years with a former student, intern, employee, or supervisee is prohibited:
  - (1) If the former student, intern, employee, or supervisee was emotionally dependent upon the therapist; or
  - (2) If the sexual contact occurred by means of therapeutic deception.
- d. A therapist must not engage in sexual contact or other harassment, therapeutic deception, or exploitation of students, trainees, interns, employees, independent contractors, colleagues, research subjects, or actual or potential witnesses or complainants in ethical proceedings.
- e. A therapist must not use or exploit the professional relationship with a student, trainee, intern, employee, independent contractor, colleague, research subject, or actual or potential witness or complainant in ethical proceedings in any manner for the therapist's emotional, financial, sexual, religious, political, or personal advantage or benefit.
- f. A therapist must recognize that there are other professional, technical, and administrative resources available to clients. The therapist must make referrals to those resources when it is in the best interest of clients to be provided with alternative or complementary services. The therapist must make a reasonably prompt referral when requested to do so by the client, without consideration of limitation of third-party payers.
- g. A therapist must not offer, nor accept, payment for referrals.
- h. A therapist must not knowingly offer services to a client who is in treatment with another professional without consultation among the parties involved. If a client refuses to allow consultation, the therapist should delay the administration of service until the client gives written consent to consultation. The exception to the consultation requirement would be if the client reports ethical violations by the other professional.
- i. A therapist must understand the areas of competence of related professions and act with due regard for the need, special competencies, and obligations of their colleagues in other allied professions, and must not disparage the qualifications of any colleague.
- j. A therapist must seek appropriate professional assistance for the therapist's own personal problems or conflicts that are likely to impair the therapist's work performance and clinical judgment.
- k. A therapist must not practice under the influence of alcohol or any controlled substance not lawfully prescribed.
- l. A therapist must not allow an individual or agency that is paying for the professional services of a client to exert undue influence over the therapist's evaluation or treatment of the client.

- m. A therapist must file a complaint with the board when the therapist has reason to believe that another therapist is or has been engaged in conduct which violates this section, North Dakota criminal statutes, or which is grounds for disciplinary proceedings in North Dakota Century Code section 43-53-10.
  - n. A therapist must not engage in any conduct likely to deceive or defraud the public or the board.
  - o. A therapist must not advertise in a way that is false, fraudulent, or misleading to the public.
  - p. A therapist shall use only academic degrees from regionally accredited institutions that are related to the practice of marriage and family therapy in any situation or circumstance related to the practice of marriage and family therapy. Those therapists holding current North Dakota mental health professional licenses issued by other North Dakota licensing boards may also use degrees and titles directly related to these licenses as permitted by the other boards when the other licensure is cited with the marriage and family licensure.
  - q. A therapist must correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the therapist's qualifications, services, or products.
  - r. A therapist must make certain that the qualifications of a person in a therapist's employ as a student, independent contractor, or an intern are represented in a manner that is not false, misleading, or deceptive.
  - s. A therapist must not engage in any unprofessional conduct. Unprofessional conduct is any conduct violating this section or violating those standards of professional behavior that have become established by consensus of the expert opinion of marriage and family therapists as reasonably necessary for the protection of the public interest.
5. A marriage and family therapist's primary professional responsibility is to the client. A marriage and family therapist must make every reasonable effort to advance the welfare and best interests of families and individuals. A marriage and family therapist must respect the rights of those persons seeking assistance and make reasonable efforts to ensure that the therapist's services are used appropriately. A marriage therapist is bound by these ethics primarily. These ethics supersede any policies of an employer or contractor that may be contrary.
- a. Once a client has been accepted into therapy, a therapist must not discriminate on the basis of age, sex, race, national origin, religion, physical disability, political affiliation, or social or economic status. In addition, a therapist must not discriminate on the basis of affectional preference, or choice of lifestyle. When unable to offer services for any reason, a therapist shall make an appropriate referral.
  - b. A therapist must recognize the potentially influential position the therapist may have with respect to clients, and must avoid exploiting the trust and dependency of clients. A therapist must make every effort to avoid dual relationships with clients that could impair the therapist's professional judgment or increase the risk of exploitation.
  - c. A therapist must be careful to truthfully represent to clients facts regarding services rendered.
  - d. A therapist must recognize the importance of clear understandings on financial matters with clients. Arrangements for fees and payments must be made at the beginning of the therapeutic relationship.

- e. A therapist must not engage in sexual contact or other physical intimacies with a client. Sexual contact with a former client is prohibited ~~for two years after termination of services whether informed or not that the relationship is terminated. Sexual contact after two years with a former client is prohibited:~~
- ~~(1) If the former client was emotionally dependent upon the therapist; or~~
- ~~(2) If the sexual contact occurred by means of therapeutic deception.~~
- f. A therapist must not engage in sexual or other harassment of a client, nor in any verbal or physical behavior that is sexually seductive or sexually demeaning to the client. For purposes of this item, sexual harassment has the meaning given it in subsection 15 of section 111-02-01-01.
- g. A therapist must not use or exploit the professional relationship with a client in any manner for the therapist's emotional, financial, sexual, religious, political, or personal advantage or benefit.
- h. A therapist must not use any confidence of a client to the client's disadvantage.
- i. A therapist must terminate a client relationship when it is reasonably clear that the treatment no longer serves the client's needs or interests.
- j. A therapist must not provide services to a client when the therapist's objectivity or effectiveness is impaired. Whenever a therapist's objectivity or effectiveness becomes impaired during a professional relationship with a client, the therapist must notify the client orally and in writing that the therapist can no longer see the client professionally and must assist the client in obtaining services from another professional.
- k. A therapist must respect the right of a client to make decisions and must help the client understand the consequences of the decisions. A therapist must advise a client that a decision on marital status is the responsibility of the client.
- l. A therapist must inform a client of a divergence of interests, values, attitudes, or biases between a client and the therapist that is sufficient to impair their professional relationship. Either the client or the therapist may terminate the relationship.
- m. In the course of professional practice, a therapist must not violate any law concerning the reporting of abuse of children under North Dakota Century Code chapter 50-25 and vulnerable adults under North Dakota Century Code chapter 50-25.2.
- n. A therapist must display prominently on the premises of the therapist's professional practice or make available as a handout the bill of rights of clients, including a statement that consumers of marriage and family therapy services offered by marriage and family therapists licensed by the state of North Dakota have the right to:
- (1) Expect that a therapist has met the minimal qualifications of training and experience required by state law;
  - (2) Examine public records maintained by the marriage and family therapy licensure board which contain the credentials of a therapist;
  - (3) Obtain a copy of the code of ethics from the marriage and family therapy licensure board;
  - (4) Report complaints to the marriage and family therapy licensure board;
  - (5) Be informed of the cost of professional services before receiving the services;

- (6) Privacy as defined by rule and law;
  - (7) Be free from being the object of discrimination on the basis of race, religion, gender, or other unlawful category while receiving services;
  - (8) Have access to their records; and
  - (9) Be free from exploitation for the benefit or advantage of a therapist.
- o. A therapist must, upon request from the client, provide information regarding the procedure for filing a complaint with the board.
6. A marriage and family therapist must hold in confidence all information obtained in the course of professional services. A marriage and family therapist must safeguard client confidences as required by law.
- a. A therapist, and employees and professional associates of the therapist, must not disclose any private information that the therapist, employee, or associate may have acquired in rendering services except as provided by law. All other private information must be disclosed only with the informed consent of the client.
  - b. A therapist must be responsible for informing clients of the limits of confidentiality.
  - c. For purposes of safeguarding confidentiality, when seeing a couple or a family, a therapist must define who the "client" is as soon as it is possible to determine the client. For example, a therapist must define whether the couple or family, as a unit, is the client or whether the individuals who make up the couple or family are the clients.
  - d. When seeing a couple or a family, a therapist must inform the client, at the beginning of the relationship, what the therapist's procedures are for handling confidences from individual members of the family and for protecting individuals' privacy while safeguarding the integrity of the therapy process.
  - e. Whenever marriage and family therapy services are requested or paid for by one client for another, the therapist must inform both clients of the therapist's responsibility to treat any information gained in the course of rendering the services as private information.
  - f. A therapist must limit access to client records and must inform every individual associated with the agency or facility of the therapist, such as a staff member, student, or volunteer, that access to client records must be limited to only the therapist with whom the client has a professional relationship, an individual associated with the agency or facility whose duties require access, and an individual authorized to have access by the informed written consent of the client.
  - g. A therapist must continue to maintain as private information the records of a client for ten years after the professional relationship between the therapist and the client has ceased. The therapist must store and dispose of records in ways that maintain confidentiality.
  - h. A therapist must disclose to the board and its agents client records that the board and its agents consider to be germane to a disciplinary proceeding.
  - i. A therapist must obtain written, informed consent from each client before electronically recording sessions with that client or before permitting third-party supervisory observation of their sessions. The consent form should specify the purpose and proposed audience for the recording.

- j. A therapist must disguise adequately the identity of a client when using material derived from a counseling relationship for purposes of training, research, professional meetings, or publications.
- k. A client who is the recipient of marriage and family therapy services has the right to access the records related to the service maintained by the licensee on that client, provided the records are not classified as confidential by North Dakota law.
- l. A marriage and family therapist must maintain an accurate record for each client. Each record must minimally contain:
  - (1) A client personal data record which shall include the presenting problem;
  - (2) A treatment plan with a diagnosis and justification for it and treatment goals;
  - (3) An accurate chronological listing of all client contacts and a summary of each;
  - (4) Records of any consultation or supervision received in relation to the client;
  - (5) A termination statement indicating the date and reason for termination, the client's condition at the time, and any recommendations made to the client;
  - (6) Copies of all client authorization for release of information and any other legal forms pertaining to the client; and
  - (7) A chronological listing of all fees or charges for services related to the client and to whom the fees were charged. This record may be kept separate from the client's clinical file.
- 7. A marriage and family therapist must conduct research activities with full respect for the rights and dignity of participants and with full concern for their welfare according to the requirements of the "Ethical Principles of Psychologists, General Principle 9: Research With Human Participants", American psychological association, as amended June 2, 1989. These requirements are incorporated by reference. The requirements were published in "American Psychologist", March 1990, volume 45, number 3, pages 390-395. Participation in research is voluntary.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-05, 43-53-10, 43-53-11

#### **111-02-01-06. Continuing education.**

- 1. A licensee must regularly engage in continuing education related to the practice of marriage and family therapy as defined in this section.
- 2. ~~Licensees~~Licensed marriage and family therapists must complete a minimum of thirty hours of continuing education every two years, of which six hours must be ethics. Licensed associates must complete fifteen hours of continuing education every ~~two years~~year, of which ~~six~~three hours must be ethics. A board approved supervisor or American association for marriage and family therapy approved supervisor shall dedicate ten percent, three continuing education units, of continuing education in courses on supervision. The required number of hours shall be prorated for persons who are initially licensed during a given reporting period. ~~Proof of completion of the required hours must be submitted to the board by December thirty-first of each odd-numbered year. The initial two-year period begins on January first of each even-numbered year.~~Licensed marriage and family therapists shall attest to the board as to completion of the required hours upon renewal of the license in each odd-numbered year.

Licensed associate marriage and family therapists shall attest to the board as to completion of the required hours upon renewal of the license each year. At the time of license renewal in each odd-numbered year or at the time of application for reinstatement of a license, a licensed marriage and family therapist shall attest to completion of a minimum of thirty approved continuing education hours since last renewal or the minimum number required for reinstatement. Failure to complete the attestation required results in nonrenewal of licensure.

3. When the licensee applies for renewal of the license in the odd-numbered year or is audited, the licensee must submit documentation of the licensee's completion of the required hours of continuing education on an appropriate form furnished by the board. A receipt for payment of the fees for the course is not sufficient evidence of completion of the required hours of continuing education. Licensees shall keep attendance certificates for at least five years as the board may conduct random audits to verify compliance with subsection 2.
4. A course may not be counted toward a licensee's continuing education requirements unless it has been approved by the board according to the procedures in this subsection and subsections 5 to 910. Courses may be approved for all attendees when submitted by the sponsor as prescribed in subsection 611 or a licensee may request individual approval as prescribed in subsection 76. The board shall consider the following factors in determining whether a course should be approved:
  - a. The course's relevance to the therapeutic practices of marriage and family therapy.
  - b. Whether the course is structured on sound educational principles and fits into one of the following categories:
    - (1) Structured educational programs with an instructor as a part of conventions, workshops, seminars, lectures, interactive media, and graduate and postgraduate courses from regionally accredited institutions. All coursework must include the areas described in subdivision d; and
    - (2) Home study courses related to marriage and family therapy as described in subdivision d. Programs must have an independently graded test component. No more than one-fourth one-half, or fifteen continuing education unit hours, of the required thirty continuing education hours may be earned by this method.
  - c. Whether the course is at least one hour in length. "One hour" means at least fifty minutes spent as a student in direct participation in a structured educational format. Time for home study courses shall be based on developer's research on average time to complete.
  - d. Whether the subject of the course is related to marriage and family therapy with an emphasis upon systemic approaches or the theory, research, or practice of psychotherapeutic work with couples or families. Continuing education for marriage and family therapy generally evolves from the following areas:
    - (1) Historical, theoretical foundations, and contemporary conceptual directions of the field of marriage and family therapy;
    - (2) Assessment, diagnosis, and treatment in marriage and family therapy including both dysfunctional relationship patterns and nervous and mental disorders, whether cognitive, affective, or behavioral;
    - (3) Family studies including the life cycle of the family, the process and modification of family structures over time, and issues related to ethnicity, race, socioeconomic status, culture, gender, and sexuality;

- (4) Human development including human behavior, personality theory, sexuality, psychopathology, behavior pathology, and physical and mental impairments and disabilities that affect normal development;
  - (5) Ethics and professional studies covering legal responsibilities and liabilities of licensure, clinical practice, research, family law, and confidentiality issues; and
  - (6) Supervision in marriage and family therapy including theories and practices.
- e. Whether the course's instructors or developers are qualified by practical or academic experience to teach, lecture, make presentations, or develop courses.
5. The board may use a committee, which may include nonboard members, to evaluate applications for course approval.

~~6. Individuals, organizations, associations, corporations, educational institutions, or groups intending to offer courses for approval must submit to the board a completed application on a form provided by the board. The course sponsor must meet the requirements in subdivisions a to d to receive and maintain course approval.~~

~~a. The application for course approval must be submitted at least sixty days before the course is scheduled to begin and must include the sponsor's application and an annual nonrefundable continuing education course fee of seventy-five dollars.~~

~~b. The application for course approval must include the following information to enable the board to determine whether the course meets the standards for board approval specified in subsection 4:~~

~~(1) A statement of the objectives of the course and the knowledge the participants will have gained upon completion of the course;~~

~~(2) A description of the content and methodology of the course which will allow the participants to meet the objectives;~~

~~(3) A description of the method to be used by the participants to evaluate the course;~~

~~(4) A listing of the qualifications of each instructor or developer which shows the instructor's or developer's current knowledge and skill in the course's subject; and~~

~~(5) A description of the certificate or other form of verification of attendance distributed to each participant upon successful completion of the course.~~

~~c. If the board approves a course, it shall assign a number to the course. The approval remains in effect for one year from the date of initial approval. The board shall compile a list of approved courses at least once per calendar year. To retain course approval, a course sponsor must submit to the board a new application for course approval required in subdivisions a and b and the application fee for approval of a continuing education course required before the expiration of the one-year period.~~

~~(1) Each sponsor of an approved course may announce, as to a course that has been approved by the board, that: "This course has been approved by the North Dakota Marriage and Family Therapy Licensure Board for \_\_\_\_\_ hours of credit".~~

~~(2) The course sponsor must submit proposed changes in an approved course to the board for its approval.~~

~~d. The board shall approve or disapprove a sponsor's application for course approval.~~

- ~~e. The board shall deny approval of a course if it does not meet the standards in subsection 4. The board shall notify the course sponsor in writing of its reasons for denying approval of a course.~~
- ~~f. The board shall revoke its approval of a course if a course sponsor fails to comply with subdivision c and any part of subsection 4, or if a course sponsor falsifies information requested by the board in the application for approval of a course.~~

~~7-6.~~ A licensee's application for course approval:

- a. A licensee must apply individually for approval of continuing education courses that have not been approved by the board in subsection ~~6~~11. The licensee must submit information required in subdivision b, as well as other information the board reasonably requires to evaluate the course for approval. An application fee of ten dollars per course for approval must be assessed by the board for non-preapproved continuing education units in subsection 11 for licensed marriage and family therapists. An application fee of five dollars per course for approval must be assessed by the board for non-preapproved continuing education units in subsection 11 for licensed associate marriage and family therapists.
- b. The following information must be submitted to the board, in addition to the form required in subsection 3, by the licensee:
  - (1) The name and address of the organization sponsoring the course;
  - (2) A detailed description of the course content;
  - (3) The name of each instructor or presenter and the instructor's or presenter's credentials; and
  - (4) The location, including the name and address of the facility, at which the course will be conducted.
- c. Licensees seeking approval for a course not previously approved by the board are strongly encouraged to seek board approval before attending the course. Licensees have sixty days following the continuing education event to seek approval for a course not preapproved in advance by the board.
- d. All American association for marriage and family therapy approved continuing education are deemed approved by the North Dakota marriage and family therapy licensure board. All individual state marriage and family therapy board approved continuing education must be approved by the North Dakota marriage and family therapy licensure board.
- ~~e. The board shall deny approval for a course if it does not meet the standards in subsection 4. The board shall notify the applicant in writing of its reasons for denying approval of a course under this subsection.~~

~~8-7.~~ Continuing education credit may not be applied for marketing the business aspects of one's practice, time management, supervisory sessions, staff orientation, agency activities that address procedural issues, personal therapy, or other methods not structured on sound education principles or contrary to the code of ethics. Continuing education credit may be applied for the following programs that comply with the requirements of subsection 4:

- a. Programs specifically listed in paragraphs 1 and 2 of subdivision b of subsection 4;

- b. Teaching a marriage and family course in an institution accredited by a regional accrediting association. Continuing education hours may be earned only for the first time the licensee teaches the course. The course must be related to marriage and family therapy as described in subdivision d of subsection 4. Ten continuing education hours may be earned for each semester credit-hour taught;
- c. Research of an original nature directly related to marriage and family therapy as described in paragraphs 1 to 6 of subdivision d of subsection 4. This activity must be preapproved by the board. Hours of credit for this activity shall be negotiated based on the nature of the project. Contact the board for appropriate preapproval forms;
- d. Authoring, editing, or reviewing in an area of marriage and family therapy as described in subdivision d of subsection 4. Continuing education hours may be earned only in the year of publication. The maximum hours earned are as follows:
  - (1) Author of a professional book, thirty hours;
  - (2) Author of a professional book chapter or journal article, fifteen hours;
  - (3) Editor of a professional book or journal, twenty-five hours; and
  - (4) Journal article review, one hour per manuscript;
- e. Presentations at workshops, seminars, symposia, meetings of professional organizations, or postgraduate institutes. The presentation must be related to marriage and family therapy as described in subdivision d of subsection 4. One hour of development time equals one continuing education hour and up to three hours of development time may be claimed for each hour of presentation. Continuing education hours may be earned only for the licensee's first presentation on the subject developed; and
- f. Individually designed continuing education activity. Licensees may submit proposals for continuing education activities which do not meet other guidelines established within this section. The proposal request must include the following:
  - (1) The rationale for pursuing an individually designed activity;
  - (2) Specific goals and objectives, and an explanation of how the goals and objectives are related to the enhancement of the licensee's professional skills;
  - (3) An outline of the topics to be covered;
  - (4) A description of related resources and activities;
  - (5) The proposed documentation of completion of activity; and
  - (6) The estimate of time to be expended on the activity and the number of continuing education hours requested. The board shall have final say in the number of hours credited for completion of such activity. Subdivisions d to f require preapproval. The applicant must obtain preapproval forms from the board.

9:8. Continuing education shall be credited on an hour-for-hour basis except as noted in subsection 87. "One hour" means at least fifty minutes spent as a student in direct participation in a structured educational format.

10:9. A licensee whose license has not expired and who meets any of the following conditions is exempt from continuing education requirements in this section if the licensee files with the board an affidavit specifying that the licensee:

- a. Is retired from practice and does not perform marriage and family therapy services on a volunteer or free basis;
- b. Is permanently disabled and unable to practice marriage and family therapy, accompanied by a statement from the licensee's physician;
- c. Has been granted emeritus status as specified in section 111-02-04-05; or
- d. Has been called to active duty in the armed forces of the United States.

44.10. A licensee claiming exemption under subsection 409 who later decides to resume practice must submit to the board, before resuming practice, a written notice that the licensee intends to resume practice. The licensee must also submit evidence that the licensee has completed continuing education requirements that are equivalent to what the requirements would have been without the exemption for the five years or any portion of the five years immediately preceding the date of the notice of intent to resume practice.

11. Individuals, organizations, associations, corporations, educational institutions, or groups intending to offer courses for approval shall submit to the board a completed application on a form provided by the board. The course sponsor must meet the requirements in subdivisions a through d to receive and maintain course approval.

a. The application for course approval must be submitted at least sixty days before the course is scheduled to begin and must include the sponsor's application and an annual nonrefundable continuing education course fee of one hundred dollars.

b. The application for course approval must include the following information to enable the board to determine whether the course meets the standards for board approval specified in subsection 4:

(1) A statement of the objectives of the course and the knowledge the participants will have gained upon completion of the course;

(2) A description of the content and methodology of the course which will allow the participants to meet the objectives;

(3) A description of the method to be used by the participants to evaluate the course;

(4) A listing of the qualifications of each instructor or developer which shows the instructor's or developer's current knowledge and skill in the course's subject; and

(5) A description of the certificate or other form of verification of attendance distributed to each participant upon successful completion of the course.

c. If the board approves a course, the board shall assign a number to the course. The approval remains in effect for one year from the date of initial approval. The board shall compile a list of approved courses at least once per calendar year. To retain course approval, a course sponsor must submit to the board a new application for course approval required in subdivisions a and b and the application fee for approval of a continuing education course required before the expiration of the one-year period.

(1) Each sponsor of an approved course may announce, as to a course that has been approved by the board, that: "This course has been approved by the North Dakota Marriage and Family Therapy Licensure Board for \_\_\_ hours of credit."

(2) The course sponsor shall submit proposed changes in an approved course to the board for its approval.

- d. The board shall approve or disapprove a sponsor's application for course approval.
- e. The board shall deny approval of a course if it does not meet the standards in subsection 4. The board shall notify the course sponsor in writing of its reasons for denying approval of a course.
- f. The board shall revoke its approval of a course if a course sponsor fails to comply with subdivision c and any part of subsection 4, or if a course sponsor falsifies information requested by the board in the application for approval of a course.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-05, 43-53-09

## CHAPTER 111-02-02

### 111-02-02-02. Educational requirements - Determination of equivalent degree.

1. In determining whether an applicant holds a master's or doctoral degree that is equivalent to degrees described in North Dakota Century Code section 43-53-06, the board shall evaluate the applicant's transcripts, documentation from the educational institution that describes the substance and purpose of the applicant's academic training, accreditation and other professional recognition of the educational institution by regional accrediting bodies, and other necessary information as determined by the board. All requested documentation must be sent directly from the educational institution to the board.
2. A master's or doctoral degree is equivalent to a master's or doctoral degree in marriage and family therapy if the degree is from a regionally accredited institution, if the degree is in a related subject field, and if the degree contains the following coursework of fifty-four semester hours minimum:
  - a. Nine semester hours in human development covering human development, human behavior, personality theory, human sexuality, psychopathology, including the etiology and diagnosis of mental illness, and behavior pathology;
  - b. Three semester hours required in systemic/relational assessment and mental health diagnosis and treatment, covering the development of competency in traditional psychodiagnostic categories, assessment, diagnosis, and treatment of major mental health issues as well as a wide variety of common presenting problems, including addiction; suicide; trauma; abuse; intrafamilial violence; and therapy for individuals, couples, and families managing acute chronic medical conditions, utilizing a systemic/relational philosophy.
  - c. Six semester hours in marital and family studies covering theories of family development, theories of family functioning, the family life cycle, sociology of the family, families under stress, contemporary family forms, family subsystems, theories of marital and family interaction, theories of child development, lifespan, and theories of gerontology;
  - ~~e.d.~~ Twelve semester hours in marital and family therapy covering marital and family communication, family psychology, family therapy, methods of intervention, family assessment, treatment planning, sex therapy, major theories of marital and family therapy such as structural, strategic, transgenerational, experiential, object relations, contextual, systemic therapy, solution-focused therapy, narrative, and biofeedback methodologies;
  - ~~d.e.~~ Three semester hours in research covering research design, methods, statistics, and special issues research in marital and family studies or a related field;
  - ~~e.f.~~ Three semester hours in professional studies covering professional socialization, professional organizations, legal issues, interprofessional cooperation, professional ethics, and family law;
  - ~~f.g.~~ Applicants are Nine semester hours required to demonstrate courses which include content on issues of diversity (race, gender, sexual orientation, spirituality, class, etc.) and psychopharmacology; and
  - ~~g.h.~~ A Nine semester hours in a clinical practicum in marriage and family therapy efor at least five hundred hours or twelve months ~~or nine semester hours~~ of clinical client contact with individuals, couples, and families for the purpose of assessment and intervention. Of the five hundred hours, no more than two hundred fifty hours may be with individuals. This

clinical experience must be supervised onsite or at the academic institution by a licensed and family therapist or an American association for marriage and family therapy-approved supervisor.

3. Four quarter credit-hours shall be equivalent to three semester hours in meeting the requirements in subdivisions a to ~~eh~~ of subsection 2. This curriculum may be completed during the qualifying master's or doctoral degree programs; or additional coursework may be taken at a college or university accredited by a regionally accredited educational institution after receiving the graduate degree in order to fulfill the requirements for each of the areas described in subdivisions a to ~~fh~~ of subsection 2 . An applicant may not use a course for more than one area described in subdivisions a to ~~fh~~ of subsection 2.
4. A professional track may give credit for experience with a minimum of five years providing the applicant had a valid equivalent degree as described in subsection 1 during the time of working with couples and families. The applicant will take twelve semester hours from coursework requirements described in subdivision c of subsection 2 and three semester hours in subdivision e of subsection 2. The clinical client contact requirements will remain the same.
5. The burden is on the applicant to prove by a preponderance of the evidence that the coursework is equivalent to the requirements in subsection 2.
6. An applicant for licensed associate marriage and family therapy must be enrolled before August 15, 2018, to be eligible to apply under the old section 111-02-02-02 section rules. On August 16, 2018, the new educational requirement rules apply.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-06

#### **111-02-02-03. Experience requirements.**

1. The two years (full time, or up to forty-eight months part time) of supervised, postgraduate experience required by subsection 3 of North Dakota Century Code section 43-53-06 must meet the following:
- ~~1.2.~~ In calculating two years of supervised postgraduate experience in marriage and family therapy, the board shall accept a minimum of three thousand hours, of which one thousand five hundred hours of direct clinical client contact, including the assessment, diagnosis, and treatment of mental illness as specified in subsection 3 with two hundred hours of postgraduate supervision by a North Dakota or other approved jurisdiction licensed marriage and family therapist supervisor over a period of not less than twenty-four months, full time, and no more than forty-eight months, part time. All additional work used to complete this two-year experience may be supervised in a legal and ethical manner by a licensed marriage and family therapist credentialed for supervision or a licensed mental health professional listed as specified in the North Dakota Century Code ~~title 43~~ chapter 43-53 approved supervisor definition.
- ~~2.3.~~ The applicant must demonstrate at least five hundred hours of the direct clinical client contact required in each of the following categories of cases:
  - a. Unmarried couples, married couples, and separating and divorcing couples;
  - b. Family groups, including children; and
  - c. Individual services.

This contact shall include experience in the assessment, diagnosis, and treatment of mental illness. The board may consider waiving part of this requirement for good cause shown.

~~3.4.~~ The supervision by a North Dakota or other jurisdiction licensed marriage and family therapist shall take place in individual and group settings, according to the following:

- a. The individual supervision shall take place in a setting in which a supervisor and not more than two supervisees are present.
- b. The group supervision shall take place in a setting in which a supervisor and not more than six supervisees, but not less than three supervisees, are present.

~~4.5.~~ Supervision must involve:

- a. At least two hundred hours of face-to-face contact between the supervisor and supervisee of which at least one hundred hours must be in individual settings.
- b. One hundred hours of supervision per year full time or fifty hours per year part time.
- c. A focus on the raw data from the supervisee's clinical work that is made directly available to the supervisor through means of written clinical materials, direct observation, and audio or video recordings.
- d. During the period of supervised experience, an associate may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.
- e. During the postgraduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the act or administrative rules.
- f. Supervision must be conducted under a supervision agreement, which must be submitted to the board on the official form within sixty days of the initiation of supervision.
- g. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is ~~forty-five~~fifty minutes. Up to ~~fiftyone~~one hundred hours of the two hundred hours of face-to-face supervision may occur via secured telephonic or other electronic media, as approved by the supervisor.
- h. An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.
- i. The associate may receive credit for up to ~~two~~five hundred ~~fifty~~ clock-hours toward the required ~~two~~three thousand hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.

~~5.6.~~ A supervisee must verify the required supervised experience by completing a form supplied by the board. The form must be signed by the applicant's supervisor and be deemed truthful subject to penalties for making a false statement under North Dakota Century Code section 12.1-11-02. The form must include the setting, nature, and extent of the supervised experience, the time period involved, the number of hours of clinical client contact, the number of hours of supervision, and the name and qualifications of each supervisor.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 23-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-06

#### 111-02-02-04. Requirements for supervisor.

1. Supervisors are recognized by the board when subsection 1 or 2 is met by submitting an application which includes the following four documents:
  - a. A graduate degree in marriage and family therapy or a graduate degree in a related mental health field, such as counseling and guidance, psychology, psychiatry, or clinical social work, from a recognized educational institution;
  - b. A license, which is not a provisional or an associate license, issued by the board or a license as a marriage and family therapist in another jurisdiction;
  - c. One of the following:
    - (1) Successful completion of a one semester graduate course in marriage and family therapy supervision from an accredited institution; or
    - (2) A ~~forty-hour~~thirty-hour continuing education course in clinical supervision offered by a board-approved provider; and
  - d. At least three thousand hours of direct client contact in the practice of marriage and family therapy over a minimum of three years as a licensed marriage and family therapist.
2. In lieu of meeting the qualifications set forth in ~~subdivision a of~~ subsection 1, a person is an acceptable supervisor if the person has been designated as an approved supervisor or supervisor-in-training by the American association for marriage and family therapy before the person provides any supervision.
3. A supervisor may not be employed by the person whom the supervisor is supervising.
4. A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to the person whom the supervisor is supervising.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-06

## CHAPTER 111-02-03

### 111-02-03-02. Examination.

1. To be admitted to written examination, an applicant must submit to the board the following information:
  - a. The applicant must submit a completed application for admission to written examination on a form provided by the board. The application must include an affirmation by the applicant that the statements made in the application are true and correct to the best knowledge of the applicant:
  - b. The applicant must submit the required nonrefundable fee for application for admission to written examination specified in subdivision c of subsection 3 of North Dakota Century Code section 43-53-06 made payable to the North Dakota marriage and family therapy licensure board.
  - c. The applicant must submit official transcripts of all graduate education of the applicant, including verification of the degree granted. The transcripts must be sent directly to the board from the institution granting the degree.
    - (1) The applicant must demonstrate to the board, by a preponderance of the evidence, that the degreed program documented by the applicant's transcripts meets the requirements of subdivisions a and b of subsection 3 of North Dakota Century Code section 43-53-06.
    - (2) The institution granting the degree must be regionally accredited at the time the degree is granted.
  - d. An applicant for licensure must inform the board within thirty days of any changes in name, residential address, or cell, business, and residential telephone numbers.
2. The board has authority to investigate or contact persons to verify the authenticity of the information in the application for admission to written examination and to require the applicant to provide verification.
3. An applicant's file shall be closed if the applicant fails to complete the application for admission to written examination and provide all information required within six months from the date the board receives the application.
4. An applicant shall be admitted to the first regularly scheduled written, objective part of the examination that occurs ~~sixty days or more~~ in the next testing window after the applicant has met the requirements of subsection 1, unless admission is denied under subsection 5. Admission to the examination shall be complete only after receipt of the examination fee by the board from the applicant.
5. The board shall deny an applicant admission to written examination if the applicant has not met the education requirements of subdivision a of subsection 3 of North Dakota Century Code section 43-53-06. The board shall notify the applicant of the denial in writing and state the reasons for the denial. ~~Any applicant who fails an examination conducted by the board may not be admitted to a subsequent examination for a period of at least six months.~~
6. An application for admission to written examination submitted after denial shall be considered a new application for admission to written examination which must be accompanied by the fee for application for admission to written examination.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-06, 43-53-07, 43-53-09

**111-02-03-03. Procedures for admission to licensure.**

1. To be eligible for admission to licensure, an applicant must submit to the board the following information:
  - a. The applicant must submit evidence of having passed the written part of the examination in subdivision c of subsection 3 of North Dakota Century Code section 43-53-06.
  - b. The applicant must submit a completed application for licensure on a form provided by the board. The application must include an affirmation by the applicant that the statements in the application are true and correct to the best knowledge of the applicant and an agreement by the applicant that the applicant will conduct all professional activities as a licensed marriage and family therapist according to the code of ethics in section 111-02-03-02.
  - c. The applicant must submit the required, nonrefundable application for initial licensure fee specified in subsection 4 of section 111-02-04-01, payable to the North Dakota marriage and family therapy licensure board.
  - d. The applicant must submit a completed form provided by the board, verifying the applicant's postgraduate, supervised experience, conforming to the requirements for primary source verification of subsection 3 of North Dakota Century Code section 43-53-06.
  - e. The applicant must submit twothree endorsements attesting to the applicant's good moral character. The endorsements must be completed and signed by individuals who meet the requirements for endorsers under subsection 2. The endorsements must be truthful, and are subject to the penalties of perjury.
2. Requirements for endorsement.
  - a. For an endorsement to meet the requirements of subdivision e of subsection 1, the endorser must:
    - (1) Be licensed by the board; or
    - (2) Be licensed to practice marriage and family therapy by another jurisdiction whose licensure standards are at least equivalent to or exceed the requirements for licensure in North Dakota.
  - b. An endorser must not be an employee, independent contractor, patient, or former patient, or be related in any way to the applicant.
3. The board has authority to investigate or contact persons to verify the authenticity of the information in the application for licensure and to require the applicant to provide verification.
4. An applicant who fails to meet all the requirements in subsection 1 shall be denied licensure. An applicant who is denied licensure shall be informed in writing of the denial and the reasons for it. An application for licensure submitted following denial is a new application for licensure which must be accompanied by the fee for application for licensure specified in subsection 3 of North Dakota Century Code section 43-53-06.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-06, 43-53-07, 43-53-08, 43-53-09

**111-02-03-06. License by endorsement.**

1. The board shall issue a marriage and family therapist license to an applicant who holds a current license as a marriage and family therapist from another state or country if the board determines that the standards for licensure in effect when the individual was licensed in the other state or country are at least equivalent to or exceed the current requirements for licensure in North Dakota. If an applicant for licensure by endorsement was licensed in another state or country without passing the written examination specified in section 111-02-03-02, but meets all other North Dakota requirements, the applicant may submit an application for licensure by endorsement after passing the examination under subsections 1 through 3 of section 111-02-03-05. All applicants for licensure by endorsement must pass the state examination specified in subsection 4 of section 111-02-03-05.
2. An individual who holds a current license as a marriage and family therapist from another state or country must file a completed application for licensure by endorsement and must pay the fee for an original license in North Dakota. The application must be on a form provided by the board. The application must include a statement that the information in the application is true and correct to the best knowledge of the applicant and an agreement by the applicant that the applicant will conduct all professional activities according to the code of ethics in section 111-02-01-05.
3. If an applicant for licensure by endorsement has been licensed continuously as a marriage and family therapist in a United States jurisdiction for the five years preceding the application, the educational requirements for licensure are considered satisfied. If licensed for any period less than five years, the board shall determine whether educational requirements are satisfied.
4. The applicant must direct the board of examiners of the state or country in which the license is held to send to the board directly a statement that the license is in effect and in good standing on a form provided by the board, and a copy of the state's current licensing law and rules.
- 4.5. The board may refuse to grant a license or may impose disciplinary action for:
  - a. Revocation, suspension, restriction, limitation, or other disciplinary action against the applicant's license in another state or jurisdiction;
  - b. Failure to report to the board that charges regarding the applicant's license have been brought in another state or jurisdiction; or
  - c. Having been refused a license by another state or jurisdiction.
- 5.6. The burden is on the applicant to establish, by a preponderance of the evidence, that the standards for licensing in effect when the individual was licensed in the other state or jurisdiction are at least equivalent to or exceed the current licensing requirements in North Dakota.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-08

**CHAPTER 111-02-04**  
**LICENSEE - RENEWAL OF LICENSE AND FEES**

Section

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**111-02-04-01. Renewal of license and fees.**

1. Licenses issued by the board must be renewed biennially upon the payment of the renewal fee required in subsection 4, completion of a renewal application, and the ~~fulfilled~~attested reporting of continuing education requirements in section 111-02-01-06. Licensed associates renew on an annual basis up to forty-eight months.
2. The board shall send the licensee a written renewal notice identifying the amount of the renewal fee. The notice shall be sent to the licensee's last-known address on record with the board. A licensee must notify the board in writing of any change of name, address, and cell, residential, or business telephone numbers within thirty days after any change. Failure to receive the renewal notice does not relieve the licensee of the obligation to renew the license.
3. The licensee must submit to the board a completed renewal application on a form provided by the board. The licensee must submit the renewal application so that the application is postmarked on or before December thirty-first. If the postmark is illegible, the renewal application is timely if received in the board office by mail on the first workday after December thirty-first.
4. The original license fee is ~~one~~four hundred ~~ninety~~fifty dollars. The renewal license fee is ~~one~~three hundred ~~forty~~sixty dollars. These fees must accompany the original and renewal applications to be complete. The licensed associate original fee is ~~seventy-five~~one hundred eighty dollars per year. The renewal associate fee is ~~fifty~~ninety dollars per year.

Other fees:

- a. Application for admission to the written examination fee shall be the current rate as established by the association of marriage and family therapy regulatory boards and a written examination fee in accordance with the current contracted examination fee.
- b. Application for original licensure by endorsement fee, ~~three~~five hundred fifty dollars.
- c. Oral examination fee, seventy-five dollars.
- ~~d.~~ Duplicate license fee, ~~twenty-five~~thirty dollars. Duplicate wallet renewal card, fifteen dollars.
- ~~d.e.~~ Sponsor's application for approval of a continuing education course fee, ~~seventy-five~~one hundred dollars.
- ~~e.f.~~ Late fee for renewal, ~~two~~three hundred ~~fifty~~ dollars postmarked one through ninety days late, ~~three~~four hundred ~~fifty~~ dollars postmarked ninety-one through three hundred sixty-five days late. Licensed associate late fee, one hundred dollars postmarked one through three hundred sixty-five days late.

- f.g. ~~Application~~ Renewal application fee for a licensed associate marriage and family therapy license fee, ~~seventy-five dollars, plus fifty dollar application fee~~ forty dollars. Renewal application fee for a licensed marriage and family therapist, forty dollars.
- g.h. Renewal of associate marriage and family therapy license annual fee, ~~fifty~~ ninety dollars. May be renewed up to four years or three renewals.
- h.i. The cost of background checks are the burden of the applicant.
- j. The one-time emeritus license fee, two hundred dollars.
- k. License verification fee, twenty-five dollars.

5. Failure to renew.

- a. The following procedure applies if a licensee fails to submit the renewal application according to subsection 3 or fails to fulfill or report continuing education requirements in section 111-02-01-06.
- b. If the licensee fails to submit to the board the renewal application, information about continuing education requirements, and the renewal fees specified in subsection 4, on or before December thirty-first, the license expires and the licensee's right to practice terminates on December thirty-first. The board shall mail to the former licensee a written notice that the licensee's license has expired and the licensee's right to practice has terminated. The board shall send the notice to the licensee's last-known address on record with the board. The board shall instruct the former licensee to promptly return the licensee's board-issued license certificate, written in calligraphy, to the board office.
- c. A license that expired under this section may be reinstated under section 111-02-04-03.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-06, 43-53-09

**111-02-04-02. Term of license.**

- 1. An original license is effective after:
  - a. The board notifies the applicant in writing that the applicant has been approved for licensure;
  - b. The applicant has paid the original license fee in subsection 4 of section 111-02-04-01; and
  - c. The board assigns a license number to the applicant.
- 2. An original license granted by the board is valid for a two-year period beginning with the effective date in subsection 1 and ending on December thirty-first of the biennial year in which the license was initially granted. For example, an original license granted on May 6, ~~2008~~ 2017, is valid from May 6, ~~2008~~ 2017, to December 31, ~~2010~~ 2019. A subsequent renewal license is valid for a two-year period ending on December thirty-first, and shall prorate the fees per month which are not covered in the original license fee. For example, an original license which was granted on May 6, ~~2008~~ 2017, expires on December 31, ~~2010~~ 2019. The months not covered by the original license fees are seven, from May through December. The license must be renewed for a two-year period according to the procedures in section 111-02-04-01.
- 3. A licensed marriage and family therapist or an associate marriage and family therapist must display the therapist's license and evidence of current renewal in a conspicuous place in the

therapist's office or place of business or employment. Evidence of current renewal will be provided by the board upon renewal of the license. A duplicate license shall be issued to a licensee after the licensee requests a duplicate license from the board and the fee is paid.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 43-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-06, 43-53-09

**111-02-04-04. ~~Voluntary termination~~ Termination of license.**

1. A license may be terminated at any time upon written request by the licensee to the board, unless a complaint is pending against the licensee. If a complaint is pending against a licensee, a license may not be voluntarily terminated until any indicated action relative to the complaint is concluded. The board must receive the request to terminate before expiration of the license for failure to renew under subsection 5 of section 111-02-04-01. A licensee who has voluntarily terminated the license may be relicensed by complying with the requirements for reinstatement of an expired license in section 111-02-04-03, except that payment of the renewal fees shall not be required.

2. Involuntary termination of license. A license may be temporarily suspended by the board under North Dakota Century Code section 43-53-10.1 if after investigation of misconduct the board deems a licensee to be in violation of ethical and professional standards and disciplinary action proceedings are in process.

**History:** Effective July 1, 2010; amended effective January 1, 2018.

**General Authority:** NDCC 28-32-02, 43-53-05

**Law Implemented:** NDCC 43-53-06, 43-53-10.1