

# **NORTH DAKOTA ADMINISTRATIVE CODE**

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

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**TITLE 28**  
**ENGINEERS AND LAND SURVEYORS, BOARD OF REGISTRATION FOR**  
**PROFESSIONAL**



## OCTOBER 2021

### CHAPTER 28-02.1-04

#### 28-02.1-04-02. Experience.

The following describes what the board considers acceptable experience. The applicant must provide proof that the experience meets these requirements.

1. The experience gained through military service must be substantially equivalent in character to civilian experience in similar fields or disciplines. ~~Generally, military experience is not favored by the board unless the applicant served in a military engineering or surveying related component of the armed services.~~
2. Experience must be of a grade and character that indicates to the board that the applicant is competent to practice and preferably be gained under the supervision of a registered professional engineer or professional land surveyor.
3. Experience must be substantially related to engineering or land surveying. Dual registration must fulfill experience requirements for each application without duplicate credits for time of gaining experience.
4. The board requires progressive experience in applying the principles and methods of engineering analysis and design for an applicant in fulfilling experience requirements if the applicant is seeking professional engineering registration.
5. The board requires progressive experience on surveying projects to indicate that it is of increasing quality and requiring greater responsibility. A substantial portion of the experience must be spent in charge of work related to property conveyance or boundary line determination, or both. The experience must demonstrate adequate experience in the technical field aspects of the profession.
6. An engineering or land surveying applicant may be granted one year's experience for each postgraduate degree in the field of practice following a baccalaureate degree in the field of practice, not to exceed two years.
7. Military spouses. Military spouse applicants must satisfy the requirements located in North Dakota Century Code section 43-51-11.1.
  - a. The board shall grant on a case-by-case basis exceptions to the board's licensing standards to allow a military spouse to practice the profession of engineering if upon application to the board:

(1) The military spouse demonstrates competency in the profession through methods or standards determined by the board which must include experience in the profession for at least two of the four years preceding the date of application under this section; and

(2) The board determines the issuance of the license will not substantially increase the risk of harm to the public.

b. The board shall issue a provisional license or temporary permit to a military spouse for which the licensure requirements under subdivision a have been substantially met. No fees may be charged a military spouse for a provisional license or temporary permit. The provisional license or temporary permit may not exceed two years and remains valid while the military spouse is making progress towards satisfying the unmet licensure requirements. A military spouse may practice under a provisional license or temporary permit until any of the following occurs:

(1) The board grants or denies the military spouse a North Dakota license under subdivision a or grants a North Dakota license under the traditional licensure method;

(2) The provisional license or temporary permit expires;

(3) The military spouse fails to comply with the terms of the provisional license or temporary permit; or

(4) The board revokes the provisional license or temporary permit based on a determination revocation is necessary to protect the health and safety of the residents of the state.

c. A military spouse issued a license under this section has the same rights and duties as a licensee issued a license under traditional licensure methods.

d. If within thirty days of receipt of a completed application under subdivision a the board does not grant or deny a license or does not issue a provisional license or temporary permit under subdivision b, the board automatically shall issue a provisional license or temporary permit. A provisional license or temporary permit issued under this subdivision remains valid until the board grants or denies the application for licensure under subdivision a or issues a provisional license or temporary permit per the requirements under subdivision b.

e. On each licensure application and renewal form the board shall inquire and maintain a record of whether an applicant or licensee is a member of the military or a military spouse. If an applicant self-identifies as and provides the board with satisfactory proof of being a military spouse, the board immediately shall commence the process to issue a license, provisional license, or temporary permit.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2010; October 1, 2021.

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

**Law Implemented:** NDCC 43-19.1-14, 43-19.1-15, 43-19.1-16, 43-19.1-17, 43-51-11.1

## CHAPTER 28-02.1-05

### 28-02.1-05-02. Qualifications and requirements - Professional engineer by examination.

A person applying for registration as a professional engineer by examination must have an engineer intern certificate, and appropriate experience as required by North Dakota Century Code section 43-19.1-14. The experience must be subsequent to graduation, [verifiable](#), and prior to writing the principles and practice of engineering examination.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010; [October 1, 2021](#).

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

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

## CHAPTER 28-02.1-06

### 28-02.1-06-01. Qualifications and requirements - Land surveyor intern.

~~—Land surveyor intern applicants must satisfy the requirements located in North Dakota Century Code section 43-19.1-16.1.~~

1. Land surveyor intern applicants applying before July 1, 2028, must satisfy the requirements located in North Dakota Century Code section 43-19.1-16.1.

2. Land surveyor intern applicants applying after June 30, 2028, must satisfy the requirements located in North Dakota Century Code section 43-19.1-16.2.

a. A board-approved accredited program must consist of a minimum of twenty-four semester credits in surveying science and surveying practice courses consisting of a minimum of:

(1) Four semester credits in drafting/CAD/GIS;

(2) Ten semester credits in basic land surveying; and

(3) Ten semester credits in principles and practices of land surveying.

b. A board-approved accredited program also must consist of a minimum of six semester credits of oral and written communication.

c. Credits will be determined as follows:

(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out-of-class student work each week for a minimum of fifteen weeks equals one semester of credit.

(2) One hour of classroom or direct faculty instruction and a minimum of two hours of out-of-class student work each week for a minimum of ten weeks equals one quarter of credit.

(3) One quarter of credit equals two-thirds of one semester of credit.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2021.

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

**Law Implemented:** NDCC 43-19.1-16.1, 43-19.1-16.2

## CHAPTER 28-02.1-07

### 28-02.1-07-02. Issuance of certificate of commercial practice.

Certificates of commercial practice are not transferable and require the organization to:

1. Advise the board within thirty days ~~of any change of officers, directors, partners, business addresses, registered agents, or~~ of any disciplinary actions that impair the registration and right to practice of any employee or officer of record.
2. Renew and update annually the names ~~and addresses of the registered agent, officers, directors, or partners, and~~ of all employees licensed to practice engineering or land surveying in North Dakota.
3. Keep and maintain its annual filing requirements with the secretary of state's office current and provide a copy to the board office.
4. A certificate of commercial practice is subject to the same disciplinary actions by the board as any individual registrant.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2010; October 1, 2021.

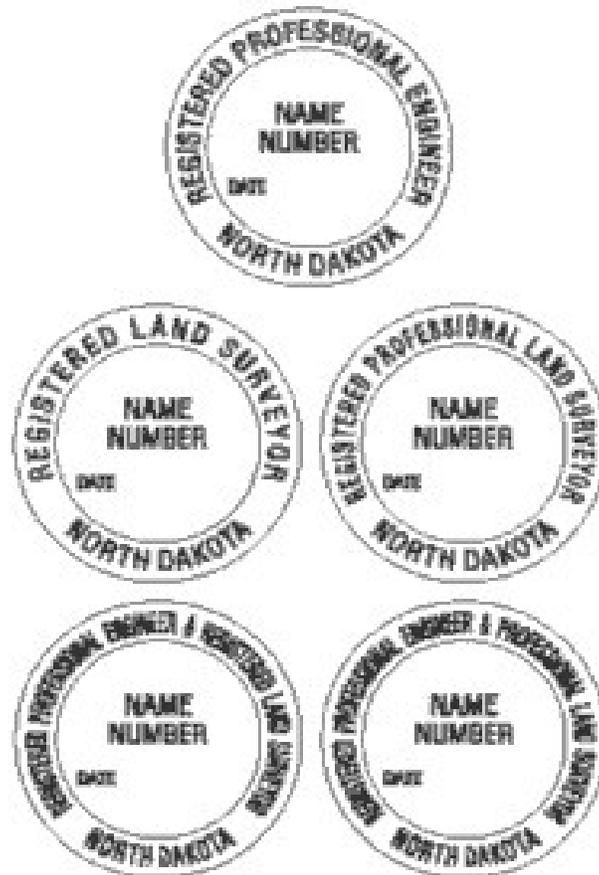
**General Authority:** NDCC 43-19.1-08

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

## CHAPTER 28-02.1-08

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

1. The board has adopted standard seals or stamps similar to those illustrated in this section for use by registered professional engineers and professional land surveyors as prescribed by law. The seal authorized by the state board of registration for professional engineers and land surveyors for registrants is of the crimp type or rubber stamp, or electronic. Seals prepared after July 1, 2005, shall be of a design so the seal consists of two concentric circles with the diameter of the outer circle being one and three-fourth inches [44.45 millimeters] and the diameter of the inner circle being one and one-fourth inches [31.75 millimeters]. The upper portion between the two circles shall bear whichever of the following phrases is applicable to the registrant: "Registered Professional Engineer", "Registered Professional Land Surveyor", or "Registered Professional Engineer & Land Surveyor". Professional land surveyors who purchased a seal with the phrase "Registered Land Surveyor" prior to January 1, 2011, are not required to purchase a new seal. At the bottom of the annular space between the two circles shall appear the inscription "North Dakota"; the inner circle shall contain the name of the registrant, registration number, and the word "Date". The registration number assigned should be centered in the inner area of the seal in the space occupied by the word "NUMBER" and the size of the numbers should not be larger than the word "NAME". The words and parentheses "(NUMBER)" and "(NAME)" should not appear on the seal.
2. Seals may be of rubber stamp, metal impression type, computer-generated, or electronically generated. ~~Electronic seals may not be used in any document unless the document contains a signature that meets the requirements of a digital signature.~~ Computer-generated and electronically generated seals are herein referred to as an "electronic seal".
3. A registrant shall also apply the registrant's signature across the face of the seals for a ~~nondigital~~ nonelectronic signature. ~~A digital~~ "Nonelectronic signature" means a handwritten identification containing the name of the person who applied it. An electronic signature is a signature that is computer-generated or electronically generated and must be unique to and under the sole control of the person using it, must be capable of verification, and must be linked to a document in such a way that the electronic signature is invalidated if any data on the document is changed. An electronic signature is not required to be across the face of the seal. A rubber stamp or facsimile signature is not allowed. The signature and seal must also be dated. ~~No further certification need accompany the seal and signature.~~
4. ~~The term "signature", as used herein, shall mean a handwritten identification containing the name of the person who applied it; or for electronic or digital documents shall mean a digital signature that shall include an electronic authentication process in a secure mode that is attached to or logically associated with the electronic document to which it is applied. The digital signature must be unique to, and under the sole control of, the person using it; it must also be capable of verification and be linked to a document in such manner that the digital signature is invalidated if any data on the document is altered.~~ The illustrated standard stamps and seals are as follows:



**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2014; [October 1, 2021](#).

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

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

### **28-02.1-08-03. Use of seals.**

1. The original copies of all drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product other than earthwork cross sections, each of which hereafter is referred to as a "document" in this section, must receive a seal and signature.
  - a. Studies, reports, and project specifications need the seal and signature only on a single introductory sheet.
  - b. Every sheet or drawing in an original set of engineering plans must receive a seal and signature.
  - c. If computer-generated or electronically generated seals or signatures are used on documents combined into a single file, they can be electronically applied by electronic process allowing the seal or signature to be computer-generated on all required documents by one computer action.

2. Registrants may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering and land surveying documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers or land surveyors who prepared the segment.
3. Registrants shall not affix their signatures or seals to any engineering or land surveying plan or document dealing with subject matter for which the registrant lacks competence by virtue of education or experience, nor to any such plan or document not prepared under the registrant's direct supervisory control.
4. A registrant shall not contract with a nonlicensed individual to provide these professional services.
5. A registrant may affix the seal and signature to drawings and documents depicting the work of two or more professionals, either from the same or different disciplines, provided it is designated by a note under the seal the specific subject matter for which each is responsible.
6. Any changes made to the final plans, specifications, drawings, reports, or other documents after final revision and sealing by the registrant are prohibited by any person other than the registrant, or another registered individual who assumes responsible charge for the directly related documents, except as provided herein. A duly registered individual making changes to final sealed documents must assume responsible charge and reseal the directly related final documents unless the changes are construction phase revisions, including record drawings, which do not affect the functional design, and such revisions adequately reflect that changes have been made and the original plans are available for review.
7. Mere review of work prepared by another person, even if that person is the registrant's employee, does not constitute responsible charge.
8. A registrant may not affix the registrant's seal or signature to documents having titles or identities excluding the registrant's name unless:
  - a. Such documents were developed by the registrant or under the registrant's responsible charge and the registrant has exercised full authority to determine their development.
  - b. A registrant who is required to use the standard drawings of a sponsoring agency need not affix the registrant's seal and signature to said standard drawings.
  - c. The registrant is providing the registrant's opinion as to the compliance of the document with specific identified rules or statutes and it is clearly identified that the registrant only reviewed the document and had no technical control over the contents of the document.
9. Electronic reproductions of drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product that are distributed to reviewing agencies, owners, clients, contractors, suppliers, and others must either contain the electronic seal and ~~digital~~electronic signature as required by this chapter, or ~~have a digital signed and electronic sealed statement from the registrant transmitting the same which shall read: "This document(s) was originally issued and sealed by (name), Registration Number (number) on (date)". The statement shall also include the statement that "The original documents are stored at (location)", or "The original documents have been destroyed and are no longer available", whichever is applicable. Sets of plans or drawings must have this statement attached to every sheet of the set. For specifications, reports, and studies, only the cover or introductory sheet need include this statement~~contain a reproduction of the seal and signature.
10. Paper or hard copy reproductions of drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product that are distributed to reviewing agencies, owners, clients, contractors, suppliers, and others shall contain a

reproduction of the seal and signature. A new seal and original signature will not be required with such paper distribution.

11. Working drawings and unfinished documents must comply with North Dakota Century Code section 43-19.1-21.

**History:** Effective October 1, 2004; amended effective October 1, 2010; October 1, 2014; [October 1, 2021](#).

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

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

## CHAPTER 28-02.1-09

### 28-02.1-09-02. Renewals.

Individual registrations and certificates of commercial practice may be renewed as follows:

1. Every other year, beginning with 1999, the board shall ~~mail~~provide renewal notices prior to December first to the last address of record for each registration and certificate holder. The renewal notice shall contain the amount of the renewal fee and the pending expiration date.
2. Every year, or every other year for biennial renewals, the board shall mail certificate of commercial practice renewal notices prior to December first to the last address of record for the organization. The renewal notice shall contain the amount of the renewal fee and the pending expiration date.

~~3. A late fee as determined by the board shall be imposed on renewals postmarked after December thirty-first.~~

**History:** Effective January 1, 1988; amended effective November 1, 1998; April 1, 1999; October 1, 2010; October 1, 2021.

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

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

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

1. An individual registration that has lapsed for more than one year, but less than five years, may become reinstated by paying the renewal fee for the current registration period plus two years' back renewal fee provided the lapsed registrant meets all other requirements. A holder of a certificate of commercial practice who has allowed the certificate to lapse for more than one year, but less than five years, may become reinstated by paying the current year renewal fee ~~plus one year back renewal fee~~, which must be prorated for middle of biennium renewals.
2. Registrations and certificates that have lapsed five years or more require reapplication updating all the required information of the applicant as if an original application. The board may require reexamination of registrants for all or a portion of the examination qualification requirements.
3. A retired registrant, upon written request to the board and payment of the current renewal fee, may resume active engineering or land surveying practice provided the retired registrant meets all other requirements. All rights and responsibilities of a valid or active registration will be in effect, including compliance with continuing professional competency requirements.
4. A registrant whose license has been lapsed or retired for one year or more and who meets all other requirements is required to file an interim continuing professional competency report within one year of the date of reinstatement verifying that a minimum of fifteen professional development hours have been accomplished.
5. A registrant whose license has been lapsed or retired for less than one year and who meets all other requirements must show compliance within the previous two years with the continuing professional competency requirements set forth in article 28-04.

**History:** Effective January 1, 1988; amended effective November 1, 1998; April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2021.

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

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

**CHAPTER 28-02.1-10**

**28-02.1-10-01. Examinations.**

1. The engineering and land surveying examinations are held when offered by the national council of examiners for engineering and surveying.
2. An examination for registration as a professional land surveyor pertaining to land surveying laws, procedures, and practices in North Dakota shall require a passing score determined by the board.
3. ~~An applicant failing to pass a professional examination may take the next scheduled examination after six months by payment of the examination fee.~~
4. The board may require one or more questions in examinations measuring familiarity with the code of ethics. Similarly, in furtherance of the board's determination of rehabilitation of a registrant whose registration has been subject to disciplinary action, an examination on the code of ethics may be required.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2010; October 1, 2021.

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

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

**28-02.1-10-02. Fees.**

The ~~following~~ fees ~~will be charged for an initial two-year period~~ may not exceed the following:

Registration Fees

Professional engineer	<u>2 year</u>	\$150.00
Professional land surveyor	<u>2 year</u>	\$150.00
Certificate of commercial practice	<u>1 year</u>	\$100.00
Temporary permit	<u>1 year</u>	<del>\$200.00</del> <u>\$100.00</u>

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

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

Biennial Renewal Fees

The fees charged may not exceed the following for biennial renewal ~~fees may not exceed the following:~~

	If Renewal Received Prior to December 31	If Renewal Received After December 31
Professional engineer	\$150.00	\$200.00
Professional land surveyor	\$150.00	\$200.00
Professional engineer and land surveyor	\$280.00	\$400.00

Retiree	\$20.00	\$20.00
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The following annual renewal fees will be charged:

Certificate of commercial practice	\$100.00
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**History:** Effective January 1, 1988; amended effective August 1, 1994; November 1, 1998; April 1, 1999; October 1, 2004; January 1, 2011; [October 1, 2021](#).

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

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

## CHAPTER 28-02.1-13

### 28-02.1-13-01. Survey requirements for preparation of legal descriptions and conveyance of property.

Any registrant preparing a description, including without limitation a legal, property, or boundary description for, or assisting in the filing of, a document that will, or may, be used to convey or acquire real property or any interest therein, other than easements, including without limitation an auditor's plat, outlot, deed, or conveyance of rights of way, must conduct a survey of the property being conveyed and comply with all the requirements related thereto contained in North Dakota Century Code sections 40-50.1-01 and 40-50.1-02.

Preliminary descriptions and documents used for negotiations for real property, interests in real property, rights of way, and easements are not subject to the requirements of this chapter; however, all such preliminary documents must bear a statement that the document is preliminary, it does not represent a complete boundary survey, and the document is not intended for construction, recording, or implementation. The statement must appear prominently on the face of the preliminary document.

Descriptions ~~used in conveyances of~~ prepared by a registrant which are, or may be used to acquire or convey rights of way in which possession of title is obtained may be prepared without the setting of all exterior monuments if all four of the following requirements are met:

1. The rights of way are retraceable by using established monuments;
2. Exterior monuments are set wherever there is a change of width to the rights of way;
3. Exterior monuments are set wherever there is a change in direction of the rights of way other than changes of direction at section corners; and
4. Monuments are set at intersections of rights of way with section lines or section line rights of way.

Descriptions ~~used in the conveyance of~~ prepared by a registrant which are, or may be used to acquire or convey easements having a term of five years or more must be retraceable in each section of land over which ~~they cross~~ the easement crosses by using established subdivision or public land survey system monuments existing or placed at the time of the easement conveyance.

**History:** Effective October 1, 2004; amended effective July 1, 2009; October 1, 2021.

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

**Law Implemented:** NDCC 43-19.1-01, 43-19.1-08

## CHAPTER 28-03.1-01

### 28-03.1-01-03. Standards of integrity.

Registrants shall be guided in all their professional relations by the highest standards of integrity. The registrant will act in professional matters as a faithful agent or trustee for each client or employer.

1. Registrants shall admit and accept their own errors when proven wrong and refrain from distorting or altering the facts in an attempt to justify their decisions.
2. Registrants shall advise their clients or employers when they believe a project will not be successful.
3. Registrants shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering or land surveying employment, registrants shall ~~notify~~receive written approval from their employer.
4. Registrants shall not employ or attempt to employ an individual by false or misleading pretenses.
5. Registrants shall not engage in any act tending to promote their own interests to the detriment of the profession.
6. Registrants shall be truthful in professional reports, statements, or testimony. Registrants shall include all relevant and pertinent information in such reports, statements, or testimony.
7. Registrants shall not willfully engage in any conduct or practice that intentionally deceives the public.
8. Registrants shall not use statements containing a material misrepresentation of fact or omitting a material fact necessary to keep statements from being misleading or statements intended or likely to create an unjustified expectation.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2021.

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

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

### 28-03.1-01-09. Disclosure of confidential information.

Registrants ~~shall~~may not disclose, or use for the purpose not related to their employment, or retain other than in connection with their employment, confidential information concerning the business affairs or technical processes of any present or former client or employer without the client's or employer's consent, as applicable. Confidential information concerning business affairs includes information that would be considered a trade secret or technical process. Confidential information also includes financial information, information regarding clients or vendors, information regarding market strategy, information regarding compensation paid to other employees, and any other information either not generally known to the public or designated by the client or employer as confidential. In addition:

1. Registrants in the employ of others, without the consent of all interested parties, shall not enter promotional efforts or negotiations for work or make arrangements for other employment as a principal or to practice in connection with a specific project for which the registrant has gained particular and specialized knowledge.
2. Without the consent of all interested parties, registrants shall not participate in or represent an adversary interest in connection with a specific project or proceeding in which the registrant has gained particular specialized knowledge on behalf of a former client or employer.

**History:** Effective January 1, 1988; amended effective October 1, 2004; October 1, 2021.

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

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

### **28-03.1-01-10. Disclosure of conflict of interest.**

Registrants shall make full prior disclosures to their employers or clients of all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services to either their employer or their clients.

1. If the employer or client objects to such an association or financial interest, the registrant shall either terminate the association or interest or offer to give up the employment.
2. Registrants serving as members, advisors, or employees of a governmental body or department, who are the principals or employees of a private concern, shall not participate in decisions with respect to professional services offered or provided by said concern to the governmental body that they serve.
3. Registrants shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member.
4. A registrant shall not accept employment when duty to the client or the public would conflict with the personal interest of the registrant or the interest of another client and would influence the registrant's judgment or the quality of the registrant's services.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010; October 1, 2021.

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

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

### **28-03.1-01-15. Proprietary interests of others.**

1. Whenever possible, the registrant will name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.
2. ~~When a registrant uses designs~~ Designs supplied by a client, ~~the designs~~ remain the property of the client and should not be duplicated by the registrant for others without express permission.
3. Before undertaking work for others in which the registrant may make improvements, plans, designs, inventions, or other records that may justify copyrights or patents, the registrant should enter into an agreement regarding the ownership of the improvements, plans, designs, inventions, or other records.
4. ~~Designs, data, records, and notes made by a registrant and referring exclusively to the employer's work are the employer's property.~~ All files of an employer of the registrant are the property of the employer and may not be retained, removed, or copied by the registrant upon termination of the registrant's employment unless the employer specifically consents otherwise in writing. The files of an employer include all of the employer's records; data; research materials; copies of contracts; requests for proposals; proposals; plans, including preliminary plans, specifications, and drawings; client lists; client information; billing or financial information; notes; research materials; historical or background materials; copies of sample specifications, contracts, or documents; and computer data banks of any kind. If the registrant has any of the employer's files before termination of employment in any form or format, including actual physical copies or on computer memory storage devices, the registrant shall return or destroy such files immediately upon termination of employment unless otherwise instructed or agreed upon by the employer.

**History:** Effective January 1, 1988; amended effective October 1, 2004; October 1, 2010; [October 1, 2021](#).

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

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

## CHAPTER 28-04-01

### 28-04-01-03. General requirements.

All individual registrants must acquire thirty professional development hours every two years before renewing their license.

1. At least twenty professional development hours must be in technical subjects that directly safeguard the public's health, safety, and welfare, including technical professional management subjects such as total quality process or technical engineering or land surveying software training.
2. A maximum of ten professional development hours may be in nontechnical ~~professional management subjects such as ethics-oriented or administration-oriented computer classes~~ professional-related subjects. At least one professional development hour must be in an ethics-oriented class.
3. All registrants will be required to submit a list of continuing professional development activities that they participated in and sign a statement that they have met this requirement as part of the renewal process.
4. Registrants holding both professional engineering and surveying registrations must earn a minimum of one-third, or ten professional development hours in each profession with a total of thirty professional development hours every two years. A dual registrant is not required to obtain more than thirty professional development hours per biennial renewal period because of dual registrations.
5. A maximum of fifteen qualifying professional development hours may be forwarded to the subsequent biennial renewal period.
6. Comity for continuing professional development is allowed if the registrant is currently licensed in a jurisdiction or state that requires mandatory continuing professional competency and meets the minimum requirements as established by the North Dakota state board of registration for professional engineers and land surveyors.
7. New registrants shall comply with continuing education requirements as follows: registrants who receive their license prior to the fourth quarter in an odd-numbered year shall report the full biennial requirement of thirty professional development hours at the time of next renewal; and registrants who receive their license prior to the fourth quarter in an even-numbered year shall report one-half of the biennial requirement, i.e., fifteen professional development hours, at the time of next renewal.

**History:** Effective October 1, 2004; amended effective October 1, 2021.

**General Authority:** NDCC 43-19.1-33

**Law Implemented:** NDCC 43-19.1-33

### 28-04-01-05. Qualifying activities.

The board may preapprove courses, providers, or activities. Until the board preapproves such courses or activities, it is the responsibility of the registrant to determine whether the activity qualifies under this board's requirements. The board has final approval of professional development hour credit. Examples of typical qualifying and nonqualifying activities are available by contacting the office of the board or visiting the board's web site. All professional development hour allowances stated in this section are biennial allowances. Qualifying activities include:

1. **College unit, semester, or quarter hour credit for college courses.** A course must be regularly offered and participants tested with a passing grade required. One semester hour

generally consists of fifteen class meetings of fifty to fifty-five minutes duration. It is assumed that twice as much study time is required as class contact time, thus equating to forty-five professional development hours. Similarly, a quarter hour qualifying course meets ten times and thus thirty professional development hours are allowed. Monitoring courses do not require a test, and therefore only the actual class contact hours are allowed. On occasion, educational institutions may offer a one-day seminar and award fractional quarter hour credit such as one-half of a quarter hour. These courses do not qualify on the quarter hour basis since they are not part of the regular curriculum of the educational institution, do not require testing, and have no provision for additional out-of-class requirements. For courses such as this, only actual contact hours will be allowed for professional development hour credit.

2. **Interactive activities.** Other qualifying courses, seminars, employer-sponsored educational activities, programs, and activities are allowed one professional development hour credit for each contact hour. A correspondence course, ~~videotaped~~recorded programs, and online courses (self-study) must require the participant to show evidence of achievement with a final graded test.
3. **Teaching credit for short courses.** Teaching credits for the instructor are twice that of the participants in qualifying courses and seminars. However, repetitive teaching of the same course will not earn additional credit.
4. **Published paper, article, or book.** A published paper, article, or book must be a serious effort to qualify. For example, a news article in a technical or professional bulletin is not considered a published paper. Although it is recognized that often many more hours are spent in being an author of a publication, ten professional development hours are allowed for publication. Only one publication may be claimed for professional development hours per renewal period. Repetitive publication of the same paper or article will not earn additional credit.
5. **Active participation in professional and technical societies.** Active participation in professional and technical societies is to encourage registrants to participate fully in appropriate technical and professional societies. Contact with one's peers at such meetings is considered one way to stay abreast of current topics, issues, technical developments, ethical situations, and learning opportunities. Two professional development hours per biennium can be earned for each organization with a maximum of six professional development hours per biennium allowed. All technical and professional societies are included, but this does not include civic or trade organizations.
6. **Patents.** Patents are allowed ten professional development hours after a patent is issued and the inventor submits details to the board. The invention must be related to the registrant's profession.

**History:** Effective October 1, 2004; amended effective October 1, 2021.

**General Authority:** NDCC 43-19.1-33

**Law Implemented:** NDCC 43-19.1-33

#### **28-04-01-07. Exemptions.**

A registrant may be exempt from the continuing education requirements for one of the following reasons:

1. A registrant serving on temporary active duty in the armed forces of the United States, or a registrant serving on regular active duty who is deployed for a period of time exceeding one hundred twenty consecutive days in a year, shall be exempt from obtaining the professional development hours required during that year.

2. Registrants experiencing physical disability, illness, temporary leave from professional activity, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board. In the event such a person elects to return to active practice of professional engineering or land surveying, fifteen professional development hours must be earned before returning to active practice for each year exempted not to exceed the biennial requirement of thirty professional development hours.
3. Professional engineer registrants exempt from registration by North Dakota Century Code section 43-19.1-29 but voluntarily registered are exempt from continuing professional competency requirements. A claim of exemption under this provision must be verified by the board. This exemption is based on the registrant's primary employment. If the registrant provides engineering services outside the scope of primary employment, the exemption will be voided and the registrant will be required to comply with the continuing professional competency requirements. A person who is registered because of a requirement in the person's job description or qualification for a pay grade is not voluntarily registered. Noncompliance with the provisions of this exemption shall be grounds for disciplinary action as allowed by North Dakota Century Code section 43-19.1-25.
4. Registrants who qualify for retired status on the board-approved renewal form shall be exempt from the continuing education requirements. A registrant whose license has been retired for one year or more and who meets all other requirements may reinstate a retired license. A registrant who has reinstated a license is required to file an interim continuing professional competency report within one year of the date of reinstatement verifying that a minimum of fifteen professional development hours have been accomplished. A registrant whose license has been retired for less than one year and who meets all other requirements may reinstate a retired license. A registrant who has reinstated a license must show compliance within the previous two years with the continuing professional competency requirements set forth in this chapter.
5. The board reserves the right to modify the requirements for continuing education based on extenuating circumstances that would prevent or restrict a registrant from obtaining the required professional development hours. This modification would not reduce the overall credits needed but allows for an extension in time to fulfill the requirements.

**History:** Effective October 1, 2004; amended effective October 1, 2021.

**General Authority:** NDCC 43-19.1-33

**Law Implemented:** NDCC 43-19.1-33



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



## OCTOBER 2021

### CHAPTER 67-01-01

#### 67-01-01-01.1. Organization of the department of public instruction.

1. **History.** From 1864 to statehood, North Dakota was served by a territorial school board and a superintendent. In 1889, the constitution of North Dakota provided for a state superintendent of public instruction. William Mitchell was the first state superintendent. The 1890 legislative assembly enacted a provision that the superintendent of public instruction must hold a teacher's certificate of highest grade issued in the state. Statutes were also enacted at that time to provide that the state superintendent of public instruction shall have general supervision of the common and secondary schools of the state and shall be an ex officio member of the board of university and school lands. Effective January of 1991, authority for the supervision of the state schools for the deaf and blind and the state library was transferred to the office of the superintendent.
2. **Superintendent.** The superintendent is an elected, constitutional officer who supervises the kindergarten through grade twelve education system in North Dakota. The superintendent must be a qualified elector of the state who is at least twenty-five years old. The superintendent is charged with responsibility for the general supervision of elementary and secondary schools and to assure that North Dakota public and nonpublic elementary, middle-junior high, and high schools comply with statutory minimum requirements. The superintendent administers the state accreditation and education improvement processes; manages the issuance of credentials to administrators, driver education instructors, counselors, library media personnel, and title I and special education personnel; administers summer school programs at both the elementary and high school levels; administers the statewide standardized achievement testing program; adopts and administers rules relevant to the accreditation process; and administers the school food programs and the federally funded technology grant program and is responsible for the administration and implementation of the federal Elementary and Secondary Education Act. In 1989 the legislative assembly provided that the office of the superintendent of public instruction was to be known as the department of public instruction.
3. **Administrative units.**
  - a. **Fiscal management.** This unit is responsible for maintaining the department's budget, accounting, preparation of financial statements and reports, maintaining grants and contracts, processing of payments and revenue, and payroll operations. This unit also interprets and implements state and federal program statutes, state and federal regulations, and policy directives. This unit is also responsible for activities in the area of school district finance. This unit supervises the distribution of state aid and assists with the implementation of the uniform accounting system. The unit provides technical

assistance to schools and school districts regarding annexation, reorganization, and dissolution procedures; provides support and technical assistance for open enrollment; approves school construction; and manages school construction loan programs.

- b. Human resources management and office services. This unit performs personnel services for the department, including recruitment, salary administration, performance management, training, and policy development.
- c. Child nutrition and food distribution. This unit administers United States department of agriculture's child nutrition programs, nutrition education and training programs, and commodity assistance for schools, institutions, and low-income individuals.
- d. Management information systems. This unit is responsible for collecting data from all North Dakota schools for state and federal reporting. This unit also is responsible for oversight of the external and internal websites. In addition, this unit provides technical assistance and support for department staff and its partners.
- e. School approval and opportunity. This unit assists kindergarten through grade twelve schools in providing quality education, administers the accreditation program, and reviews public and nonpublic schools for statutory compliance. The unit also administers the issuance of credentials for administrators, counselors, and library media personnel. This unit administers the twenty-first century community learning centers grant, a competitive grant that provides opportunities for student academic enrichment in an afterschool or out of school time setting. This unit also is responsible for administrative rules development and updates. In addition, this unit processes and approves student applications for the North Dakota academic and career and technical education scholarship program.
- f. Education equity and support. This unit provides financial and technical assistance to state and local educational agencies to meet the needs of all children. This office oversees title I, homeless education program, neglected and delinquent education program, and title IV. The purpose of title I is to provide instructional services and activities to meet the needs of disadvantaged children identified as failing, or most at risk of failing, the state's content standards. The purpose of title IV is to provide student support and academic enrichment, with the goal of creating safe, healthy, and well-rounded children. Multitiered systems of support, foster care programs, safe and healthy portfolios, etc. are coordinated through this office. This office also is responsible for the overall administration of school improvement grants to the lowest performing schools in the state, those identified as targeted support improvement, and comprehensive school improvement.
- g. Special education. This unit prescribes state and federal rules and regulations for special education and assists school districts and special education units in the development and administration of special education programs [for the IDEA B 611 and 619 programs](#).
- h. Academic support. This unit encompasses multiple facets of the division of student support and innovation providing students, and the schools that serve those students, with student-centered resources as well as professional learning and development opportunities for educators. This unit closely collaborates with other units throughout the division and department, and several education and social service agencies across North Dakota. Key initiatives the unit supports span across early childhood education programs through grade twelve and include projects supporting the transition to higher education and career. These projects include leveraging the senior year; advanced coursework opportunities, including advanced placement, dual credit, and early entry; college-ready English and math developmental coursework; multiple professional learning and development opportunities; early childhood education programs through grade twelve

standards development and implementation support; North Dakota comprehensive literacy program; dyslexia pilot; music education grants; leadership scholarships and opportunities; civics education supports; and the federal title II program.

- i. Assessment. This unit provides professional services and guidelines to administer the North Dakota state assessment, North Dakota alternate assessment, ACCESS for English language learners, and the ACT aspire in accordance with state and federal law. This unit also coordinates the national assessment of education progress in accordance with federal laws through the United States department of education. In providing the mentioned assessments, the office also plays a role in school accountability and measuring student learning. The adult education program, including GED testing program, provides funding and technical assistance to regional adult learning centers and monitors progress of each funded location and is also a part of this unit.
- ~~j. Early learning. This unit is responsible for the department's efforts on early childhood education programs, including early head start/head start and early childhood special education IDEA part b.~~
- ~~k. Indian and multicultural education. This unit administers the title III and migrant summer program funding and assists school districts in the development and administration of English language learner, migrant, and Indian education programs.~~
- ~~h.k. Outreach and engagement. This unit disseminates information about the department's initiatives and operations to families, students, educators, and other education stakeholders, as well as to legislators, policymakers, and the news media using a number of methods, including traditional and social media channels.~~

#### 4. Divisions.

- a. North Dakota state library. The state library was established as the public library commission in 1907 and occupied a single room in the state capitol. In 1909, the library's name was changed to the state library commission. The commission consisted of three members - the superintendent of public instruction, the president of the North Dakota library association, and a member appointed by the governor. In 1927 the library was removed from the board of regents; it came under the auspices of the director of institutions until administrative authority was transferred to the superintendent of public instruction in 1989, effective January 1, 1991. The state library commission occupied the liberty memorial building on the capitol grounds from 1936-70 and later moved to the Randal building north of Bismarck. The agency's name was changed to the North Dakota state library in 1979 and in 1982 the state library returned to the liberty memorial building, its present location.

Today the superintendent appoints the state librarian. The state library specializes in state-of-the-art information services to state agencies and the general public and assumes a leadership role in promoting the development of library service for all North Dakota residents. Major goals of the state library are to provide library services to state government officials and employees, provide library services to patrons without direct local library services and to persons who are blind and physically disabled, and to provide libraries with consulting services in areas of collection, development, and evaluation. The state library coordinates the sharing of resources, provides continuing educational opportunities for librarians and public trustees, and maintains the state document depository program.

- b. North Dakota vision services - school for the blind. The school for the blind was created by the constitution in 1889, established by the legislative assembly in 1895, and opened in Bathgate, North Dakota, in 1908. In 1952, a constitutional amendment authorized

selection of another location. An initiated measure adopted in 1958 provided funds for a new school located near the university of North Dakota in Grand Forks. The new facilities, administered by the director of institutions, opened in September of 1961. Authority for the supervision of the school was transferred to the department of public instruction in 1989, effective January 1, 1991. The 2001 legislative assembly changed its name to North Dakota vision services - school for the blind and it now functions as a statewide, comprehensive resource center and works cooperatively with related agencies in providing a full range of services to all persons who are blind or visually impaired, including those with multidisabilities. The superintendent of public instruction appoints the school superintendent. Land grant income and legislative appropriation support the school.

- c. North Dakota school for the deaf. The school for the deaf, created by the constitution in 1889 and established by the first legislative assembly in 1890, opened in 1890 and was located in Devils Lake, North Dakota. The school for the deaf was administered by the director of institutions until January 1, 1991, when supervision was transferred to the department of public instruction. The school provides a free educational program for deaf children between the ages of birth and twenty-one. In addition to the school's traditional role as an educational institution, North Dakota school for the deaf also has become a resource center on deafness, serving the needs of hearing-impaired citizens statewide. The school is supported by land grant income and legislative appropriation.

**History:** Amended effective January 1, 1982; September 1, 1983; November 1, 1985; January 1, 1986; May 1, 1988; September 1, 1988; December 1, 2003; April 1, 2021; [October 1, 2021](#).

**General Authority:** NDCC 15.1-37, 28-32-02(2)

**Law Implemented:** NDCC 15.1-37, 28-32-02(2)

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

Chapter

67-11-01	Driver Education Instructor's Credential [Repealed]
67-11-02	Elementary Principal's Credential [Repealed]
67-11-03	Reading Credentials [Repealed]
67-11-03.1	Reading and Mathematics Credentials [Repealed]
67-11-03.2	Reading and Mathematics Credentials [Repealed]
67-11-03.3	Title I Coordinator Credential [Repealed]
67-11-03.4	Title I Coordinator Credential
67-11-03.5	Reading and Mathematics Credentials
67-11-04	Library Media Credential
67-11-05	School Counselor Credentials
67-11-06	Secondary Principal's Credential [Repealed]
67-11-07	Superintendent's Credential
67-11-08	Special Education Director's Credential
67-11-09	Early Childhood Special Education Teacher Credential [Repealed]
67-11-10	Emotional Disturbance Teacher Credential [Repealed]
67-11-11	Gifted and Talented Teacher Credential [Repealed]
67-11-12	Physical Disabilities Teacher Credential [Repealed]
67-11-13	Specific Learning Disabilities Teacher Credential [Repealed]
67-11-14	Certificate of Completion for Paraprofessionals
67-11-15	School Psychology Intern Approval
67-11-16	Special Education Strategist Credential [Repealed]
67-11-17	Mental Retardation Teacher Credential [Repealed]
67-11-18	Credential Requirement for Teachers of the Visually Impaired [Repealed]
67-11-19	Credential Requirement for Teachers of Students Who Are Deaf or Hard of Hearing [Repealed]
67-11-20	Certificate of Completion for Speech-Language Pathology Paraprofessionals
67-11-21	Principal Credentials
67-11-22	Computer Science and Cybersecurity Credentials
<u>67-11-23</u>	<u>Certificates of Completion for Special Education Technicians</u>

**CHAPTER 67-11-23**  
**CERTIFICATES OF COMPLETION FOR SPECIAL EDUCATION TECHNICIANS**

Section

<u>67-11-23-01</u>	<u>Definitions</u>
<u>67-11-23-02</u>	<u>Certificate of Completion Required</u>
<u>67-11-23-03</u>	<u>Issuing Agency</u>
<u>67-11-23-04</u>	<u>Certificate of Completion Standards</u>
<u>67-11-23-05</u>	<u>Special Education Technician Services</u>
<u>67-11-23-06</u>	<u>Reconsideration</u>
<u>67-11-23-07</u>	<u>Use of Federal Rules and Policies</u>

**67-11-23-01. Definitions.**

For the purposes of this chapter:

1. "Special education technician" means an individual providing services as a technician who meets the requirements of this chapter and provides services authorized in this chapter in an educational setting.

2. "Supervising special education teacher" means an individual who:

- a. Holds a current educator's professional license issued by the education standards and practices board; and
- b. Has a minimum of two years experience providing special education services since receiving the individual's license.

**History:** Effective October 1, 2021.

**General Authority:** NDCC 15.1-02-16, 15.1-32-02, 15.1-32-09, 28-32-02

**Law Implemented:** NDCC 15.1-02-16

**67-11-23-02. Certificate of completion required.**

Individuals providing special education technician services in educational settings must hold the certificate of completion for special education or hold a current educator's professional license for special education issued by the education standards and practices board.

**History:** Effective October 1, 2021.

**General Authority:** NDCC 15.1-02-16, 15.1-32-02, 15.1-32-09, 28-32-02

**Law Implemented:** NDCC 15.1-02-16

**67-11-23-03. Issuing agency.**

The certificate of completion for the special education technician is issued by the:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Department 201  
Bismarck, ND 58505-0440

**History:** Effective October 1, 2021.

**General Authority:** NDCC 15.1-02-16, 15.1-32-02, 15.1-32-09, 28-32-02

**Law Implemented:** NDCC 15.1-02-16

**67-11-23-04. Certificate of completion standards.**

To obtain a certificate of completion as a special education technician, an individual must submit a completed application form and have completed:

1. Forty semester hours of college education or an equivalent under North Dakota Century Code section 15.1-13-10 in the area of special education that aligns with the council for exceptional children preparation standards for paraeducators, including learner development and individual differences, legal/ethical practices, behavior management, curricular content knowledge, assessment, instructional planning and strategies, and collaboration; and
2. A two-credit transcribable practicum minimum of one hundred clock-hours of fieldwork experience that is supervised by a licensed special education teacher.

**History:** Effective October 1, 2021.

**General Authority:** NDCC 15.1-02-16, 15.1-32-02, 15.1-32-09, 28-32-02

**Law Implemented:** NDCC 15.1-02-16

**67-11-23-05. Special education technician services.**

1. A special education technician may:

- a. Conduct academic and behavioral screenings following specified screening protocols developed by the supervising special education teacher;
- b. Perform documented tasks developed by the supervising special education teacher;
- c. Document student progress toward meeting goals and objectives and report this information to the supervising special education teacher;
- d. Assist the supervising special education teacher with regulatory paperwork as directed;
- e. Participate in multidisciplinary team meetings with a special education teacher or a special education provider;
- f. Prepare materials, assist with scheduling, and maintain space or equipment; and
- g. Complete other duties as assigned by the supervising special education teacher in consultation with the local administrator.

2. A special education technician may not:

- a. Make independent decisions regarding changes to a student's individualized education program;
- b. Conduct and interpret evaluations consisting of:
  - (1) Standardized or nonstandardized diagnostic tests; or
  - (2) Formal assessments unless otherwise qualified to do so; or
- c. Disclose confidential information orally or in writing unless authorized by the supervising special education teacher.

**History:** Effective October 1, 2021.

**General Authority:** NDCC 15.1-02-16, 15.1-32-02, 15.1-32-09, 28-32-02

**Law Implemented:** NDCC 15.1-02-16; 20 U.S.C. 1412(a)(14); 34 CFR 200.58

**67-11-23-06. Reconsideration.**

If an application for a special education technician certificate of completion is denied, the applicant must be notified of the opportunity for reconsideration. Upon receipt of a written denial, the applicant may request a reconsideration of the denial. A request for reconsideration must be in writing and must be received by the superintendent of public instruction within twenty-one days of the date the denial was mailed to the applicant by the superintendent of public instruction. Untimely requests may not be considered. The request for reconsideration must discuss:

- 1. The fact, law, or rule the applicant believes was interpreted or applied erroneously ; and
- 2. The applicant's arguments on how the fact, law, or rule should have been applied, giving specific reasons and a thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within twenty-one days after receiving a complete and timely reconsideration request. If the superintendent's written response denies the reconsideration request, the superintendent's written response must notify the applicant of the applicant's right to a hearing conducted pursuant to North Dakota Century Code chapter 28-32. The applicant shall request the hearing within thirty days.

**History:** Effective October 1, 2021.

**General Authority:** NDCC 15.1-02-16, 15.1-32-02, 15.1-32-09, 28-32-02

**Law Implemented:** NDCC 15.1-02-16

**67-11-23-07. Use of federal rules and policies.**

Unless otherwise specified in this chapter, applicable federal law and program regulations govern special education technicians.

**History:** Effective October 1, 2021.

**General Authority:** NDCC 15.1-02-16, 15.1-32-02, 15.1-32-09, 28-32-02

**Law Implemented:** NDCC 15.1-02-16; 20 U.S.C. 1412(a)(14); 34 CFR 200.58

## CHAPTER 67-23-01

### 67-23-01-01. Definitions.

As used in this article, the following definitions apply:

1. "Individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the IDEA section 614(d) [20 U.S.C. 1414(d)].
2. "Individuals With Disabilities Education Act" or "IDEA" means the Individuals With Disabilities Education Improvement Act of 2004, Public Law 108-446 [118 Stat. 2647; 20 U.S.C. 1400-1420].
3. "Least restrictive environment" means that to the maximum extent appropriate, children with disabilities are educated with children who are not disabled and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
4. "Local education agency" means a school district, multidistrict special education unit organized under North Dakota Century Code chapter 15.1-33, or other legally constituted public authority for administrative control or direction of, or to perform a service function for, public elementary or secondary schools.
5. "Multidisciplinary team" means a team of professionals and parents which develops an IEP for a student with disabilities.
6. "Multidistrict special education unit" means a public corporation organized under North Dakota Century Code chapter 15.1-33 for purposes of planning and delivering special education and related services.
7. "Nonsectarian" means not affiliated with or restricted to a particular religion.
8. "Organization" includes school districts, multidistrict local education agencies, child care centers, vocational education centers, private or public residential facilities, counties, and nonprofit agencies.
9. "Related services" means transportation and developmental, corrective, or supportive services needed to help a student with disabilities to benefit from special education.
10. "Resident district" means the school district of residence of the student as determined by law.
11. "Special education unit" means a single-district special education unit or a multidistrict special education unit.
12. "Student with disabilities" or "child with disabilities" means an individual who:
  - a. Is at least three years of age but who has not reached the age of twenty-one before August first of the year in which the individual turns twenty-one, and who because of mental, physical, emotional, or learning characteristics requires regular or special education and related services designed to meet the individual's educational needs; and
  - b. Is an individual with ~~mental retardation~~ **intellectual disability**, hearing impairment including deafness, speech or language impairment, visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, deaf-blindness, or multiple disabilities.

**History:** Effective February 1, 2000; amended effective January 1, 2008; January 1, 2020; [October 1, 2021](#).

**General Authority:** NDCC 15.1-32-09

**Law Implemented:** NDCC 15.1-32-09; 20 U.S.C 1400-1419

## CHAPTER 67-24-01 SUMMER ELEMENTARY SCHOOL PROGRAMS

Section	
67-24-01-01	Eligibility and Application
67-24-01-02	Application [Repealed]
67-24-01-03	Courses - Summer <del>Remedial</del> Elementary School <u>Grades Kindergarten Through Four</u> Program
67-24-01-03.1	Courses - Summer Elementary School Grades Five Through Eight Program
67-24-01-04	Scheduling
67-24-01-05	Students
67-24-01-06	Monitoring
67-24-01-07	Cooperative Programs
67-24-01-08	Payments

### **67-24-01-01. Eligibility and application.**

A school district must apply for and receive approval from the superintendent of public instruction for a summer ~~remedial~~ elementary grades kindergarten through four school program or summer elementary grades five through eight school program. To be considered by the superintendent, an application must be received by the department fifteen days prior to the start of the program.

**History:** Effective February 1, 2000; amended effective November 1, 2002; October 1, 2006; January 1, 2010; October 1, 2021.

**General Authority:** NDCC 15.1-27-19

**Law Implemented:** NDCC 15.1-21-16, 15.1-27-19

### **67-24-01-03. Courses - Summer ~~remedial~~ elementary school grades kindergarten through four program.**

The delivery of courses in the summer ~~remedial~~ elementary school grades kindergarten through four program must be developmentally appropriate instruction in ~~remedial~~ reading and ~~remedial~~ mathematics, which enables students to achieve challenging academic standards. All courses in the summer ~~remedial~~ elementary school grades kindergarten through four program must meet the following criteria:

1. Each course must be part of the elementary curriculum as adopted by the school board and must be offered and available to all ~~eligible~~ elementary students.
2. Each course must be selected from courses listed in the department of public instruction's course codes and descriptions available on the department's website.
3. Teachers must be licensed to teach or approved to teach in accordance with North Dakota Century Code section 15.1-06-06.

**History:** Effective February 1, 2000; amended effective November 1, 2002; October 1, 2006; January 1, 2010; October 1, 2021.

**General Authority:** NDCC 15.1-27-19

**Law Implemented:** NDCC 15.1-06-06, 15.1-21-16, 15.1-27-19

### **67-24-01-03.1. Courses - Summer elementary school grades five through eight program.**

~~After the 2009-10 school year, the~~ The delivery of courses provided to students enrolled in grades five through eight may include mathematics, reading, science, and social studies. All courses offered to students enrolled in grades five through eight must:

1. Be part of the grades five through eight school curriculum as adopted by the school board and must be offered and available to all grades five through eight school students.
2. Be selected from courses listed in the department of public instruction's course codes and descriptions available on the department's website.
3. Be taught by teachers licensed to teach or approved to teach in accordance with North Dakota Century Code section 15.1-06-06.

**History:** Effective January 1, 2010; amended effective October 1, 2021.

**General Authority:** NDCC 15.1-27-19

**Law Implemented:** NDCC 15.1-21-16, 15.1-27-19

#### **67-24-01-04. Scheduling.**

Summer ~~remedial~~-elementary school grades kindergarten through four programs and summer elementary grades five through eight school programs must be conducted between the closing date of the regular school year and the beginning date of the next regular school year.

1. ~~Eligible remedial elementary~~Elementary students must be enrolled:
  - a. For a minimum of sixty hours in ~~remedial~~-mathematics;
  - b. For a minimum of sixty hours in ~~remedial~~-reading; or
  - c. For a minimum of thirty hours in ~~remedial~~-mathematics and thirty hours in ~~remedial~~-reading.
2. Elementary grades five through eight school students must be enrolled:
  - a. For a minimum of sixty hours in mathematics;
  - b. For a minimum of sixty hours in reading;
  - c. For a minimum of sixty hours in science;
  - d. For a minimum of sixty hours in social studies; or
  - e. For a minimum of two 30-hour segments in mathematics, reading, science, or social studies.

**History:** Effective February 1, 2000; amended effective November 1, 2002; October 1, 2006; January 1, 2010; October 1, 2021.

**General Authority:** NDCC 15.1-27-19

**Law Implemented:** NDCC 15.1-21-16, 15.1-27-19

#### **67-24-01-05. Students.**

Students must be in kindergarten through grade eight based upon the grade they have actually attained at the time the course is taken for the district to qualify for proportionate payments.

1. ~~For remedial elementary students to be served, they must score:~~
  - ~~a. Below the sixtieth percentile on a standardized test;~~
  - ~~b. Below the sixtieth percentile on a teacher-developed test; or~~
  - ~~c. Have a grade of C or below in the school year that just ended.~~Any grade kindergarten through four student is eligible to attend summer school reading or mathematics.

2. Any grade five through eight student is eligible to attend summer school reading, mathematics, science, and social studies.
3. No more than ~~fifteen~~twenty-five students may be served by one licensed teacher in ~~remedial~~grades kindergarten through four courses.
4. No more than twenty-five students may be served by one licensed teacher in summer school grades five through eight reading, mathematics, science, or social studies courses.

**History:** Effective February 1, 2000; amended effective November 1, 2002; October 1, 2006; January 1, 2010; October 1, 2021.

**General Authority:** NDCC 15.1-27-19

**Law Implemented:** NDCC 15.1-21-16, 15.1-27-06(6), 15.1-27-19



**TITLE 67.1**  
**EDUCATION STANDARDS AND PRACTICES BOARD**



## OCTOBER 2021

### CHAPTER 67.1-02-02

#### 67.1-02-02-02. Initial licenses.

1. Initial teacher licensure for in-state graduates or graduates of out-of-state programs requires a minimum of a four-year bachelor's degree from a board-approved teacher education program. The approved program must include North Dakota standards for teacher education program approval:
  - a. General studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.
  - b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific kindergarten through grade twelve majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcribed by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors. Majors must include a minimum of thirty-two semester hours of coursework specific to the major beyond the introductory level.
    - (1) The secondary content-specific major must include a minimum of four semester hours in special methods of teaching at the secondary level and special methods of teaching in the specific content area. Effective July 1, 2008, all initial secondary licensure applicants grades five through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the content test as set by the education standards and practices board. Effective July 1, 2010, all initial secondary licensure applicants grades five through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the pedagogical test as set by the education standards and practices board. For purposes of this section, English, reading and language arts, mathematics, science, foreign languages, music, visual arts, history, civics and government, geography, and economics are considered core academic areas. All other areas are considered non-core academic areas.
    - (2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas at the middle level, and twenty-four semester hours of content coursework in one of the content areas of English and language arts, social studies, science, or mathematics meeting the teacher education program approval standards, and special methods of teaching at the

middle level. Study of these areas must total a minimum of thirty-two semester hours, which includes at least two semester hours of special methods of teaching at the middle level and middle level classroom field experience. Effective July 1, 2008, all initial middle level licensure applicants grades five through eight in the core and non-core academic areas will need to meet or exceed the cut scores for the content test as set by the education standards and practices board. Effective July 1, 2012, all initial middle level licensure applicants grades five through eight in the core and non-core academic areas will need to meet or exceed the cut scores for the pedagogical test as set by the education standards and practices board.

- (3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school mathematics, science, social studies, reading, and language arts. Effective July 1, 2006, all initial elementary licensure applicants for grades one through eight restricted licenses will need to meet or exceed the cut scores as set by the education standards and practices board for the elementary test and the pedagogical test. For the school year 2005-06 and beyond, all elementary teachers new to the profession, but previously licensed, will need to complete the elementary test and pedagogical test during the school year. Classroom teaching experience will be accepted from all other states toward the requirements of this paragraph.
  - (4) Prekindergarten through grade twelve preparation programs in special education, foreign language, art, music, physical education, business education, technology education, and computer education must include a minimum of four semester hours of special methods of teaching inclusive of kindergarten through grade twelve, special methods of teaching in the specific content area, and student teaching in elementary and secondary schools, grades prekindergarten through grade twelve. Effective July 1, 2006, all applicants in foreign language, art, and music will need to meet or exceed the cut scores for the content tests and the pedagogical tests grades seven through twelve as set by the education standards and practices board. Effective July 1, 2012, all initial prekindergarten through grade twelve licensure applicants grades seven through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the content test and the pedagogical test grades seven through twelve as set by the board.
  - (5) The early childhood major must include study of child development, birth through age eight, and include special methods of teaching at the early childhood level. Effective July 1, 2012, all initial early childhood licensure applicants birth through grade three will need to meet or exceed the cut scores for the state-identified principles of teaching and learning test and the state-identified early childhood education content specific cut score as set by the board.
  - (6) Effective July 1, 2008, all applicants in special education majors or endorsements must meet or exceed the state-approved test cut scores as set by the board.
- c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels. The professional education component, including student teaching, must be completed under the supervision of a teacher training

institution approved by the education standards and practices board in North Dakota or the appropriate state, provincial, or similar jurisdictional authority for out-of-state institutions.

- d. Student teaching exception - Internship. An applicant who graduated from a state-approved teacher education program, in-state or out-of-state, prior to January 1, 1988, which did not include a minimum of ten weeks of full-time student teaching may qualify under one of the two options under this subdivision. These options are available only if the applicant has met all other requirements for licensure of the board and North Dakota Century Code sections 15.1-18-02 and 15.1-18-03, except the requirement of ten weeks of student teaching.
  - (1) The applicant must document a minimum of eight full weeks of student teaching at the appropriate level in the major field of study under the supervision of a state-approved teacher education program and document five years of successful teaching within the last ten years; or
  - (2) An applicant who can document a minimum of eight weeks of successful student teaching but cannot document a minimum of five years of successful teaching experience must either complete the additional student teaching hours or may choose to complete an internship under the supervision of a state-approved college of teacher education to fulfill the additional hours.
    - (a) The internship contact hours in the classroom must consist of classroom time blocks not less than one-half day and when added to the applicant's existing student teaching hours total a minimum of ten weeks of full-time equivalent student teaching and supervised internship experience.
    - (b) The internship must occur in a regular kindergarten through grade twelve classroom setting and allow the intern to experience the full range of curriculum and classroom operations.
    - (c) The internship must be approved by the board and transcribed through a state-approved teacher education institution.
- e. Teaching minors. A teaching minor may only be earned or added to a teaching major. An individual may not be licensed or change grade levels of licensure with only a teaching minor.

A teaching minor is defined as a minimum of sixteen semester or twenty-four quarter credit hours in a single designated academic area and the methods of teaching the content area. These sixteen semester or twenty-four quarter credit hours must be in courses for which the institution gives credit toward graduation in the major and be included in the teacher education program approval process.

## 2. Grade point average.

- a. An applicant must have a minimum overall grade point average (GPA) of 2.50. The board will use the college-figured grade point average if all previous college coursework is on the transcript.
- b. An applicant must have a minimum GPA of 2.50 for all coursework required for the applicant's degree. Coursework not needed for a degree in teacher education need not be included in GPA calculations. Coursework used in any way for licensure or endorsements must be included in GPA calculations.

3. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.
4. Application form.
  - a. An application fee of ~~thirty-five~~thirty dollars must accompany an initial application form.
  - b. The completed application form, including the original signature of the applicant and recommendation by the state-approved teacher education program will be considered for licensure by the education standards and practices board.
  - c. A fee of seventy-five dollars must accompany the application for initial licensure for in-state and out-of-state graduates. An additional fee of one hundred seventy-five dollars for transcript review from out-of-state graduates must also accompany the licensure application.
  - d. The application will be kept on file at the education standards and practices board office for six months. Upon expiration of the six-month period, applicable fees will be refunded to the applicant if the license has not been issued.
5. All initial licenses are valid for at least two consecutive years and will expire on the applicant's birthday.
6. Fingerprinting. In addition to completing the licensure application process outlined in this section, an applicant applying for licensure in North Dakota for the first time after August 1, 1997, must submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14.
  - a. An applicant graduating from a North Dakota teacher preparation program may obtain the fingerprinting materials from college officials. Previous graduates and out-of-state graduates must contact the education standards and practices board directly for the fingerprinting materials. Fingerprint screening reports from other agencies are not available to the board. Applicants must complete the process with cards and release forms designating the board as the agency to receive the report.
  - b. The applicant must have the fingerprinting done by an authorized law enforcement agency such as a sheriff's office, police department, campus police, or private fingerprinting company. Both cards are to be completed with a ten-finger check. The criminal record inquiry authorization form must also be completed, including an original signature. The fingerprint cards and authorization form must be returned directly to the education standards and practices board office.
  - c. Unofficial, incomplete, altered, or damaged cards and forms will not be accepted.
  - d. The applicant is responsible for all local, state, and federal law enforcement agency fees related to the fingerprint background check.
  - e. The applicant is advised to allow a minimum of eight weeks for the fingerprint screening process. An applicant must hold a valid North Dakota license to be employed or permitted to teach in North Dakota. Individuals who have completed all requirements for the professional educator's license except final completion of the fingerprint background check may obtain a provisional license under section 67.1-02-04-04.
  - f. Fingerprint screening reports must be recent and may only be used for licensure for eighteen months from the date the report is received by the board.

7. Re-education for initial licensure. Applicants who hold nonteaching degrees in content areas taught in public schools may receive initial licensure by completing the professional education requirements at a state-approved program authorized through program approval to recommend applicants for licensure in the approved program area. This re-education may be completed at the undergraduate or graduate level. The institution with the approved program must document that the applicant's specialty area degree is equivalent to its approved program's specialty area requirements in subdivisions b and c of subsection 1, and recommend the applicant for licensure. Applicants applying under this section must file a completed application form as other initial applicants, comply with the fingerprint background check in subsection 9, complete all tests, and pay all applicable fees.
8. Preprofessional skills test. All applicants for initial licensure will need to submit either their test scores in reading, writing, and mathematics which meet or exceed the state cut score or composite score or their ACT aspire scores that meet or exceed a composite score of twenty-two, mathematics score of twenty-one, and English language arts score of twenty-one. Documentation of the scores must be submitted with the application form. Applicants also may submit their SAT scores that meet or exceed reading scores of five hundred forty-three, mathematics scores of five hundred thirty-two, and writing scores of five.
9. The board may issue an initial license to an individual with a documented disability, as determined by the board, which allows the individual to teach in areas where documented shortages of regularly licensed teachers exist, as determined by the board, if due to the documented disability, the individual is unable to meet all the requirements of the Praxis I, Praxis II PLT, or Praxis II content-specific test in the content area to be assigned but who is otherwise qualified to teach as determined by the board.
10. The board may issue a second alternative access license to an individual who is on an initial alternative access license and has attempted the content-specific test three times during the initial alternative access license period. If the applicant has attempted the Praxis II content-specific test an additional two times during the second alternative access license and provides documentation, during the third year following the applicant's receipt of the initial alternative access license the applicant will be issued an initial license when the following requirements are met and approved by the board:
  - a. A letter from the superintendent requesting an initial license for the applicant;
  - b. A letter from the applicant acknowledging financial responsibility for observation by a content expert;
  - c. Documentation of a positive observation;
  - d. Evidence of passing the pedagogy test; and
  - e. If required, a criminal history background check as required by North Dakota Century Code section 15.1-13-14.

**History:** Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998; April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010; April 1, 2012; July 1, 2012; October 1, 2014; January 1, 2015; April 1, 2018; January 1, 2020; October 1, 2020; October 1, 2021.

**General Authority:** NDCC 15.1-13-08, 15.1-13-09, 15.1-13-10

**Law Implemented:** NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12, 15.1-13-14

## CHAPTER 67.1-02-03

### 67.1-02-03-06. Minor equivalency endorsement.

1. Nothing in this section may be interpreted to affect the validity of minor equivalencies issued by the department of public instruction prior to September 1, 1998.
2. The applicant wishing to apply under the minor equivalency endorsement option must be licensed to teach under North Dakota Century Code section 15.1-18-02 or 15.1-18-03. The minor equivalency endorsement will be issued for the same grade levels as the individual's primary licensure, the same as for minors transcribed by colleges of teacher education. Those whose primary licensure is secondary may use the endorsement to teach the new content area in grades five through twelve. Those whose primary licensure is elementary grades one through eight or middle school (grades five through eight) may use the endorsement for additional content expertise at those levels but may not use it to teach at the high school level without a complete secondary endorsement.
3. The applicant must apply for the minor equivalency online using the NDTeach system, and submit transcripts and the review fee of seventy-five dollars.
4. Three levels of content area endorsements are available to be added to the existing North Dakota professional educator's license.
  - a. The ME16 requires a minimum of sixteen semester hours of content-specific coursework, including the areas of study approved and required by the education standards and practices board. The ME16 will be reviewed when the applicant applies for renewal licensure. The coursework for the ME24 must be completed within five years of the application date for the ME16. If the ME24 coursework is not completed within five years, the ME16 will be removed from the license.
  - b. The ME24 requires a minimum of twenty-four semester hours of content-specific coursework, including the areas of study approved and required by the education standards and practices board. The ME24 also must include the special methods of teaching in the content area. The ME24 is considered equivalent to a full teaching minor.
5. All coursework for the minor equivalency endorsement must be beyond the introductory level general studies courses as defined in section 67.1-02-02-02 and be transcribed by a state-approved college of teacher education program.
6. The minor equivalency endorsement must be completed prior to contracted teaching in the content area.
7. The following coursework and requirements must be completed for the specific minor equivalency:
  - a. Agriculture (01005) - A total of sixteen semester hours, including three semester hours each in agriculture economics, agriculture management, animal science, plant science, and elective; six semester hours in agriculture leadership, community development, or philosophy of career and technical education; and special methods of teaching agriculture education.
  - b. Art (02005) - A total of sixteen semester hours, including art history, design, drawing, painting, ceramics, and special methods of teaching art.
  - c. Biology (13010) - A total of sixteen semester hours, including biology I and II, botany, zoology, genetics, general chemistry I and II, and special methods of teaching biology or science.

- d. Business (03020) - A total of sixteen semester hours, including three semester hours in keyboarding, six semester hours in accounting, three semester hours in computer technology, general business, business communication, and special methods of teaching business.
- e. Chemistry (13020) - A total of sixteen semester hours, including general chemistry I and II with labs, organic chemistry I and II with labs, analytic chemistry, and special methods of teaching chemistry or science.
- f. Composite science (13047) - A total of twenty-four semester hours with eight semester hours with labs in biology, chemistry, physics, and earth science, and special methods of teaching science.
- g. Computer science (23000) - A total of sixteen semester hours, including six semester hours a year-long sequence of structured language, two semester hours in advanced assembler language, eight semester hours in computer-related coursework, microcomputing, data structures and algorithms, operating systems, and special methods of teaching computer science.
- h. CTE health careers (07000) - Criteria to meet this endorsement is available through the department of career and technical education.
- i. CTE trade, industry, and technical (17000) - Criteria to meet this endorsement is available through the department of career and technical education.
- j. CTE diversified occupations (25000) - Coordinating techniques. Criteria to meet this endorsement is available through the department of career and technical education.
- k. CTE resource educator (26000) - Philosophy and practices of career and technical education, vocational assessment, career development, competency-based career and technical education, cooperative education, special needs teaching methods, introduction to exceptional children, mental retardation, learning disabilities, or emotional disturbance, working with at-risk students, behavior problems, classroom strategies, and other courses or workshops as approved by the career and technical education supervisor.
- l. CTE information technology (27000) - Criteria to meet this endorsement is available through the department of career and technical education.
- m. CTE basic skills educator (28000) - Philosophy and practices of career and technical education, vocational assessment, career development, competency-based career and technical education, cooperative education, special needs teaching methods, introduction to exceptional children, mental retardation, learning disabilities, or emotional disturbance, working with at-risk students, behavior problems, remedial mathematics, remedial reading, and other courses or workshops as approved by the career and technical education supervisor.
- n. CTE teacher student mentor (29000) - Criteria to meet this endorsement is available through the department of career and technical education.
- o. CTE career clusters (37000) - Criteria to meet this endorsement is available through the department of career and technical education.
- p. Drama or theater (05015) - Sixteen semester hours of drama or theater coursework.
- q. Driver education (21005) - Valid operator's license not suspended or revoked. Provide by January first of each year a complete abstract of the applicant's driving record for the past thirty-six months from a state driver's licensing office evidencing a satisfactory

driving record free from any conviction that would constitute the basis for suspension or revocation on the instructor's operator's license, and not more than three moving traffic violations. Ten semester hours consisting of at least one course each in classroom driver and traffic education, in-car instruction, beginning driver problems, and organization and administration of safety education. Fourteen semester hours with no more than three semester hours in any one area: first aid; substance abuse education; equipment training, which may include simulator use and educational technology; classroom management; developmental psychology covering adolescent psychology; stress management; curriculum, planning, and assessment; teaching diverse learners; and educational psychology. Field experience required for elementary or middle school teachers provided by a driver's education mentor with a minimum of three years' experience in driver's education must include three clock-hours of in-car observation and three clock-hours of in-car instruction. This field experience must be documented with a letter from the school principal and driver education mentor. The renewal of the driver's education endorsement requires two semester hours every five years of driver and traffic safety coursework. It is the responsibility of the instructor to notify the education standards and practices board of any driving offense, suspension, revocation, or cancellation of the driving license. Applicants holding a lifetime teaching license with ten years of driver's education instruction in North Dakota shall complete two semester hours of re-education every six years.

- r. Earth science (13035) - A total of sixteen semester hours, including general chemistry I and II with labs, physical geology, historical geology, astronomy, meteorology, and special methods of teaching science.
- s. Economics (15010) - A total of sixteen semester hours, including principles of macroeconomics I and II, money and banking, computer applications in economics, and methods of teaching economics or social science.
- t. English (05020) - A total of sixteen semester hours, including three semester hours of grammar and usage, six semester hours of composition, three semester hours of speech, three semester hours of developmental reading, literary analysis and criticism, nine semester hours of American and English literature, media, and special methods of teaching English.
- u. Family and consumer science (09040) - A total of sixteen semester hours, including child development and family science, consumer education and resource management, food and nutrition, health and wellness, apparel and textiles, housing issues and interior design, and the special methods of teaching family and consumer science.
- v. Foreign languages (French 06010, German 06015, Greek 06020, Latin 06025, Spanish 06035, Chinese 06260) - Sixteen semester hours specific to the foreign language, including composition and conversational structure of the language, culture, customs, and civilization relative to the language, introduction to literature in the language, and the special methods of teaching foreign language.
- w. Geography (15015) - A total of sixteen semester hours, including physical geography, cultural geography, world geography, North American geography, and the special methods of teaching geography or social science.
- x. Government and political science (15007) - A total of sixteen semester hours, including American government, political thought, international or global politics, and the special methods of teaching social science.

- y. Health (18015) - Twenty-four semester hours in first aid, and safety, nutrition, exercise physiology or fitness, personal and community health, current issues in health education, and the special methods and curriculum in school health education.
- z. History (15020) - A total of sixteen semester hours, including United States history I and II, western civilization I and II or world history I and II, and the special methods of teaching.
- aa. Library science (50065) - Twenty-four semester hours in introduction to the role of the librarian in the school library, reference, selection of materials and collection development, classification and cataloging of library materials, library administration, conducting research following state and national library standards, current issues in school librarianship, a study of children's literature, young adult literature, and reading methods.
- bb. Marketing (04006) - A total of sixteen semester hours, including marketing, economics, promotion and advertising, management, student organizations, methods of teaching marketing or business education, philosophy of career and technical education, and nine credits in any of the following: accounting, advertising, business, business technology, economics, finance, promotion, and selling.
- cc. Mathematics (11010) - A total of sixteen semester hours, including calculus, abstract algebra, geometry (axiomatic), calculus I and II, linear algebra, abstract algebra, probability and statistics, and methods of teaching mathematics.
- dd. Music composite (12010) - Twenty-four semester hours in music theory (six semester hours), music history or literature, ear training or sight singing, conducting, keyboard proficiency, and methods of elementary and secondary music teaching.
- ee. Instrumental music (12005) - A total of sixteen semester hours, including music theory, ear training or sight singing, conducting, and eight semester hours of coursework in instrumental music, keyboard proficiency, and methods of elementary and secondary music teaching.
- ff. Choral or vocal music (12015) - A total of sixteen semester hours, including music theory, ear training or sight singing, conducting, and eight semester hours of coursework in vocal music, keyboard proficiency, and methods of elementary and secondary music teaching.
- gg. Physics (13050) - A total of sixteen semester hours, including general physics I and II, modern physics, electronics, mechanics, and methods of teaching science.
- hh. Physical education (08025) - A total of sixteen semester hours, including organization and administration of physical education and health, first aid and cardiopulmonary resuscitation, prevention and care of athletic injuries, health issues, physiology of exercise, foundations or curriculum of physical education, human physiology or anatomy, physical education for exceptional children, band, and methods of teaching sports activities, games, and dance.
- ii. Physical science (13045) - A total of sixteen semester hours, including eight semester hours each in general chemistry I and II with labs, general physics I and II, and methods of teaching science.
- jj. Psychology (15030) - A total of sixteen semester hours, including introduction to psychology, development psychology, abnormal psychology, personality theory, social psychology, and methods of teaching psychology or social science.

kk. [Reading \(58904\) - Sixteen semester hours of content specific coursework beyond the introductory level.](#)

ll. Social studies composite (15035) - Twenty-four semester hours in United States history, world civilization, world history, American government, world geography, physical geography, introduction to sociology, economics, psychology, and methods of teaching social science.

~~hh~~-mm. Sociology (15040) - A total of sixteen semester hours, including introduction to sociology, introduction to anthropology, social psychology, and methods of teaching social science.

~~mm~~-nn. Speech (05045) - Sixteen semester hours of speech or communication coursework.

~~nn~~-oo. Technology education (10007) - Coursework must include sixteen semester hours from the following list: principles or foundations of technology, technology and society, impacts of technology, history of technology, engineering design, design process, troubleshooting, invention and innovation, research and development, technology systems, modeling, i.e., three-dimensional modeling and prototyping, technology resources, and intelligent machines or robotics or automated systems. Coursework must include six semester hours from the following list: medical technology, agriculture and related biotechnologies, energy and power technologies, information and communication technologies, transportation technology, manufacturing technology, and construction technology. A minimum of three semester hours in study of methods of teaching technology education that must include curriculum and methods in standards-based instruction.

~~ee~~-pp. Native language endorsement (15046) - Coursework must include thirty semester hours in classroom management; theories of second language acquisition; methods of second language acquisition; introduction to the specific native language linguistic analysis I and II; native American studies I; the specific native language I, II, III, and IV; and native language history and culture.

~~pp~~-qq. STEM education (10300) - Coursework must include twelve semester hours in STEM (transdisciplinary coursework in science, technology, engineering, and mathematics) philosophy, STEM curriculum, STEM methods, STEM strategies, and a two-day field experience in a STEM business or industry or school-based setting.

~~qq~~-rr. Theology (50040) - Requirements needed for the theology endorsement include a letter from the nonpublic school administration and the documentation on official transcripts of the baccalaureate degree.

**History:** Effective March 1, 2000; amended effective August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010; July 1, 2012; October 1, 2014; April 1, 2018; October 1, 2020; [October 1, 2021](#).

**General Authority:** NDCC 15.1-13-09, 15.1-13-10

**Law Implemented:** NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-18-03

## CHAPTER 67.1-02-04

### 67.1-02-04-01. Alternative access licenses for teacher shortages.

Alternative access licenses will be issued under the following conditions:

1. Consideration for alternative access licenses will not be granted until after July first in any year.
2. Alternative access licenses may be issued only in areas where documented shortages of regularly licensed teachers exist as determined by the board. Shortage areas must be determined by the board based upon the ratio of regularly licensed teachers in the state who are qualified for the position to the number of schools with open positions requesting alternative access licensure. In cases where near shortages exist, the board must give additional consideration to whether the hiring school has made a diligent effort to attract and hire regularly licensed teachers.
3. The request for an alternative access license must be initiated by a school. The school board or administration must make the request in writing to the board for consideration of an alternative access license, indicating intent to offer a contract if licensure can be arranged. The request must document that a diligent effort has been made to employ a regularly licensed teacher to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified applicants, and whether these incentives are comparable to those offered by other schools of similar size and means.
4. The candidate must write a letter indicating willingness to accept the position if offered and complete all of the application requirements and fees prior to receiving the alternative access license.
5. Complete official college or state-approved alternative program transcripts must be sent to the board.
6. Renewal of alternative access licenses will be reviewed each year and will depend upon the supply of and demand for teachers as evidenced by documented efforts to obtain a licensed person for the position. The alternate access license will be issued only once to complete all testing requirements for regular licensure.
7. Renewal of the alternative access license, if permitted, is contingent upon presentation of at least one-third completion of the requirements for regular licensure as stated in section 67.1-02-02-02 and the North Dakota standards for teacher education program.
8. The fee for the alternative access license is one hundred ~~fifty-five~~ **five** dollars for each year the license is issued.
9. Alternative access licensure is to address documented shortage areas only. Alternative access licensure may not be issued to applicants who have failed to meet the deadlines or conditions of their regular licensure renewal.
10. Initial applicants for alternative access licensure must also submit to the fingerprint background check as stated in subsection 9 of section 67.1-02-02-02.
11. Upon completion of all of the requirements for regular licensure stated in section 67.1-02-02-02, an individual holding an alternative access license may apply for a regular

two-year initial license and begin accruing the eighteen months of successful teaching time required to move into the five-year cycle according to sections 67.1-02-02-02 and 67.1-02-02-04.

**History:** Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010; April 1, 2013; October 1, 2020; [October 1, 2021](#).

**General Authority:** NDCC 15.1-13-09, 15.1-13-10

**Law Implemented:** NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

#### **67.1-02-04-02. Interim licenses for substitute teachers.**

Interim licensure may be granted for substitute teachers who hold a minimum of two years of postsecondary education (forty-eight semester hours) when a shortage of regularly licensed substitutes exists. If the applicant for the interim substitute license does not hold a bachelor's degree, the applicant may not spend more than ~~ten~~[thirty](#) consecutive days in the same classroom as the substitute teacher. The applicant must complete all of the application requirements, fees, and submit to the fingerprint background check as stated in subsection 9 of section 67.1-02-02-02 prior to receiving the interim substitute license. The interim license fee for substitute teachers is eighty dollars for two years. The interim license is valid for a minimum of two years and will expire on the applicant's birthday.

**History:** Effective October 16, 1998-April 14, 1999; amended effective June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006; July 1, 2010; July 1, 2012; April 1, 2018; [October 1, 2021](#).

**General Authority:** NDCC 15.1-13-09, 15.1-13-10

**Law Implemented:** NDCC 15.1-13-10, 15.1-13-11

## CHAPTER 67.1-02-05

### 67.1-02-05-04. Endorsements, added degrees, and restrictions.

The North Dakota educator's professional license is issued as described in section 67.1-02-02-02. This license qualifies the holder for regular classroom teaching or for functioning in areas with the proper endorsements and restrictions as assigned. Degrees and endorsements in content areas of elementary, middle level, or secondary schools, educational pedagogy, or educational leadership must be obtained through regional or state-approved teacher education programs and meet North Dakota program approval standards for the content area.

1. **Endorsements.** An individual holding a valid North Dakota teaching license may request endorsements in early childhood, kindergarten, elementary, middle school, bilingual, secondary, or content area minor equivalency endorsements or any other endorsement issued by the board. Specific requirements appear in chapter 67.1-02-03, regarding re-education. A one-time, nonrefundable review fee of seventy-five dollars must accompany the request to add an endorsement.
2. **New degrees.** A newly acquired major, minor, or new degree may be added between renewal periods by submitting official transcripts, a complete application form, including part six, completed by the college or university, and paying the regular renewal fee for those renewing two-year licenses or five-year licenses. An additional two-year or five-year extension, respectively, is added to the license expiration date at the time of the addition of the new major, minor, or degree.
3. **Added qualifications on life certificates.** An individual who holds a life certificate under section 67.1-02-02-01 may add degrees or endorsements to the board licensure records by submitting official transcripts and paying the review fee pursuant to subsection 2. An official duplicate of the life certificate showing the added degree will be issued to the life certificate holder at the time of the addition. Official duplicate copies of lost life certificates or renewable licenses will be provided at a cost to the holder of twenty dollars.
4. **Restricted licenses.** Programs that include a specialized rather than a regular professional education core are issued initial two-year licenses that restrict the holder to teaching in that specialty area. Applicants must submit the completed application form, original transcripts, fees, and fingerprint cards to the education standards and practices board prior to licensure.
  - a. Restricted licenses are issued to applicants with specialist or master's degrees in:
    - (1) School psychology. The prekindergarten through grade twelve school psychology restricted license will be issued to those applicants who have:
      - (a) Obtained a specialist degree in school psychology from a national association of school psychology-accredited institution;
      - (b) Achieved the national certification of school psychologist certification. To qualify for the national certification of school psychologist license, the candidate must have successfully met the standards for training and field placement programs in school psychology, standards for the credentialing of school psychologist, standards for the provision of school psychological services, and principles of professional ethics; or
      - (c) Obtained a specialist degree in school psychology with the expectation of obtaining national certification within two years.

The board of psychologist examiners must be given, each year, a list of names of individuals with a school psychologist credential.

- (2) School psychologist intern. A school psychologist who does not have the school psychologist requirements in subparagraph a, b, or c of paragraph 1 may qualify for an intern license. The school psychologist intern license will be issued for one year, or on an annual basis until the specialist degree has been completed, for applicants who have:
  - (a) Obtained a master's degree in school psychology (minimum 30 credits) from a national association of school psychology-accredited institution;
  - (b) A recommendation of the advisor of an accredited school psychology training instruction stating the applicant is eligible for enrollment in the internship program; and
  - (c) An outline of remaining coursework with specified dates for completion, including completion of a thesis or equivalent.
- (3) Speech-language pathology. The prekindergarten through grade twelve speech-language pathology restricted license will be issued to those applicants who have a master's degree in speech-language pathology or communication disorders, one hundred hours of school-based practicum, and have graduated from a program accredited by the council on academic accreditation of the American speech and hearing association. Applications for renewal of the bachelor level speech-language pathology license will be denied after July 1, 2010.
- (4) School counseling. The prekindergarten through grade twelve professional school counseling restricted license will be issued to those applicants who have professional education coursework in educational psychology; instructional planning, methods, and assessment; classroom management; and school-based field experience or practicum and completed one of the following master's programs from a state-approved counselor education program:
  - (a) Master's degree in school counseling;
  - (b) Master's degree in counseling with emphasis in school counseling;
  - (c) Master's degree and graduate coursework equivalent to a master's degree in school counseling; or
  - (d) Master's degree in counseling and a program of study from an approved school counselor education program to complete the coursework requirements for the equivalent of a master's degree in school counseling, educational coursework in educational psychology, instructional planning, methods, and assessment, classroom management, and the school-based field experience or practicum within four years. Two 2-year licenses will be issued to those applicants while the requirements are being completed.
- b. Restricted licenses are issued to applicants with baccalaureate degrees in the following areas who do not also meet qualifications for regular early childhood, elementary, middle level, secondary, or kindergarten through grade twelve licenses as stated in section 67.1-02-02-02 that have completed the application form and submitted fees and transcripts, background investigation, and praxis II tests:
  - (1) Intellectual disabilities education (19006). The intellectual disabilities prekindergarten through grade twelve restricted license will be issued to those people qualifying for a valid North Dakota teaching license in special education who hold a bachelor of science degree major in intellectual disabilities. The applicant will only provide consultative services.

- (2) Hearing-impaired education (19920). The hearing-impaired prekindergarten through grade twelve restricted license will be issued to those applicants who have a bachelor of science degree major in education of the deaf with thirty-two hours of hearing-impaired qualifying coursework. The applicant will only provide consultative services.
- (3) Visually impaired education (19945). The visually impaired prekindergarten through grade twelve restricted license will be issued to those applicants who have a bachelor of science degree with a major in visually impaired and twenty-one through twenty-three semester hours in qualifying visually impaired coursework. The applicant will only provide consultative services.
- (4) Early childhood special education (19937). The early childhood special education restricted license birth through grade three will be issued to those applicants who have a baccalaureate degree in early childhood special education. The applicant will only provide consultative services.
- (5) All other special education categories require regular early childhood, elementary, middle, or secondary qualifications.
- (6) Career and technical education. The trade, industry, technical, and health occupations restricted license will be issued to applicants holding a baccalaureate level degree in career and technical education if that degree does not include the general education or regular professional education core as required for regular licensure under section 67.1-02-02-02, and is restricted to teaching in grades seven through grade twelve.
- (7) Reserve officers training corps. The reserve officers training corps license will be issued pursuant to section 67.1-02-05-03.
- (8) Native American language instruction.
  - (a) The native American language restricted kindergarten through grade twelve license will be issued to those applicants holding a baccalaureate level degree in native American language if that degree does not include the general education or regular professional education core as required for regular licensure under section 67.1-02-02-02 and has completed a three semester hour course in classroom instruction at a tribal college or other institution of higher education.
  - (b) The native American language restricted kindergarten through grade twelve licensed will be issued to those applicants holding a baccalaureate level degree and a native American language endorsement, including three semester hours in classroom instruction.
- (9) Theological studies instruction (50040). The theological studies kindergarten through grade twelve license will be issued to those applicants holding a baccalaureate degree and is recommended for approval as an instructor of theological studies by the governing board or administration of a nonpublic school offering a theological studies course.

c. Restricted licenses are issued to those nondegreed applicants in:

- (1) Career and technical education. Restricted licenses are issued for trade, industry, technical, and health occupations in accordance with section 67.1-02-04-06 and are restricted to teaching in grades nine through twelve.

- (2) North Dakota American Indian language as pursuant to North Dakota Century Code section 15.1-13-22 to those applicants who display competence in North Dakota American Indian languages and culture and are recommended for licensure to teach North Dakota native languages kindergarten through grade twelve by an indigenous language board created by a tribal government in this state and have completed a three semester hour course in classroom instruction at a tribal college or other institution of higher education.

- d. Teachers with restricted licenses may teach ~~or substitute teach~~ only in the restricted specified area.

**History:** Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010; July 1, 2012; October 1, 2020; [October 1, 2021](#).

**General Authority:** NDCC 15.1-13-09, 15.1-13-10

**Law Implemented:** NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12.1, 15.1-13-22, 15.1-18-02, 15.1-18-03; S.L. 2001, ch. 173, § 16

## CHAPTER 67.1-02-06

### 67.1-02-06-01. Out-of-state reciprocal licensure.

North Dakota has conditional reciprocity with other states. To receive out-of-state reciprocal licensure, an applicant must hold at least a bachelor's degree in education, which includes student teaching from an accredited university from another state, province, or similar jurisdiction, or have completed a state-approved teacher education program and submit a completed application.

1. **Out-of-state reciprocal entrance requirements.** Those who apply to the board, meet the minimum reciprocity requirements, and submit a satisfactory plan for competing the remaining North Dakota requirements will be issued a two-year out-of-state reciprocal license which has a fee of seventy dollars. The minimum reciprocity qualifications are:
  - a. A four-year bachelor's degree that includes a major that meets the issuing jurisdiction's requirements in elementary education, middle level education, or a content area taught in public high school;
  - b. Completion of a professional education sequence from a state-approved teacher education program, including supervised student teaching;
  - c. Fingerprint background check as required of all initial applicants; and
  - d. Submission and education standards and practices board approval of a plan to complete all remaining requirements for full North Dakota licensure as stated in section 67.1-02-02-02. That plan will include the successful completion of the state-approved test content test in the transcribed major area of early childhood, elementary, middle level, or the core academic areas. The state-approved test must be completed within the first two-year license period.
2. **Remaining North Dakota requirements.** An applicant will be notified of remaining requirements for full North Dakota licensure by the board. All out-of-state applicants shall submit transcripts for review by the same criteria as North Dakota applicants. The applicant must provide official copies of transcripts from all the institutions of higher education the applicant has attended. The nonrefundable fee for the transcript review process is one hundred seventy-five dollars.
3. **Renewals.** The out-of-state reciprocal license is valid for two years and is renewable ~~once~~twice for up to five years, provided adequate progress toward completing the remaining requirements is documented and approved by the education standards and practices board. The interim reciprocal license will expire on the applicant's birthdate.

**History:** Effective July 1, 2012; amended effective April 1, 2018; October 1, 2020; October 1, 2021.

**General Authority:** NDCC 15.1-13-09, 15.1-13-10

**Law Implemented:** NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14, 15.1-13-20, 15.1-13-21

### 67.1-02-06-03. Other state educator license (OSEL).

North Dakota other state educator licensure will be issued to those applicants who hold a regular teaching license or certificate in early childhood, elementary, middle, or secondary education from another state and submit the following:

1. A completed application pursuant to section 67.1-02-02-02 for the North Dakota professional educator's license;
2. Submission to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14;

3. Completion and documentation of a four-year bachelor's degree from a state-approved teacher education program in a North Dakota-recognized program area major, including the professional education sequence and a student teaching experience, submission of all fees for initial licensure pursuant to section 67.1-02-02-02 and renewal as pursuant to section 67.1-02-02-04; and
4. Documentation of a valid regular professional educator's license from the issuing state.

An applicant who holds a valid out-of-state license who has completed an alternate certification program will be issued an out-of-state license upon completion of the Praxis I, Praxis II PLT, and Praxis II content specific test.

A license granted under this section is valid for two years if the applicant has not been licensed in another state for at least eighteen months. If the applicant received a teaching license or certificate from another state on or after January 1, 2002, and if the issuing state did not require that the individual pass a state test as a condition of licensure or certification, the board shall require that the individual, within two years from the date of the license, pass all state licensure tests normally required of applicants from this state.

In all other cases, a license granted under this section is valid for five years and is renewable if the licenseholder meets the reeducation requirements established for all five-year license renewals.

A license granted under this section must include all of the applicant's endorsements issued or recognized by the applicant's other state of licensure.

**History:** Effective July 1, 2012; amended effective October 1, 2014; October 1, 2020; October 1, 2021.

**General Authority:** NDCC 15.1-13-09, 15.1-13-10

**Law Implemented:** NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-14, 15.1-13-25, 15.1-13-26

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



## OCTOBER 2021

### CHAPTER 75-03-15 RATESETTING FOR PROVIDERS OF SERVICES TO FOSTER CHILDREN - QUALIFIED RESIDENTIAL TREATMENT PROGRAMS

#### Section

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#### 75-03-15-01. Definitions.

- ~~1. "Accrual basis" means the recording of revenue in the period revenue is earned, regardless of when revenue is collected, and the recording of expenses in the period expenses are incurred regardless of when expenses are paid.~~
- ~~2.~~ "Administration" means the cost of activities performed by the facility employees in which the direct recipient of the activity is the organization itself. These include fiscal activities, statistical reporting, recruiting, and general office management which are indirectly related to services for which a rate is set.
- ~~3.~~2. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by this chapter.
- ~~4.~~3. "Base rate" means a fee for service granted to the facility as a combination of allowable administrative and maintenance costs, such as salaries, fringe benefits, property costs, and

other costs which allow the facility to operate and provide treatment and services to residents and their families.

4. "Bed hold" means a maximum fourteen-day reimbursable absence that is eligible to be included in census tracking when a resident absconds from placement or needs temporary hospitalization and the facility acknowledges acceptance of the resident back into placement when located or discharged from the hospital.

5. "Chain organization" means ~~a group of~~ two or more program entities which are owned, leased, or, through any other device, controlled by one business entity.

~~5-6.~~ "Department" means the North Dakota department of human services.

~~6-7.~~ "Depreciable asset" means a capital asset or other asset for which the cost must be capitalized for statement of costs purposes.

8. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.

9. "Difficulty of care" means the individual rate for each resident determined after the completion of the assessment administered by the department or designee.

10. "Facility" means a qualified residential treatment program.

~~7.~~ ~~"Historical cost" means those costs reported on the cost statement which were incurred and recorded in the facility's accounting records.~~

~~8.~~ ~~"Home office" means the single business entity that controls a group of two or more facilities owned, leased, or through any other device, including proprietary chains and chains operated by various religious or other charitable organizations. A chain organization may also include business organizations engaged in activities not directly related to residential care.~~

~~9.~~ ~~"Interest" means the cost incurred with the use of borrowed funds.~~

~~10.~~ ~~"Professional social services" means case management and therapeutic services offered by an employee directly to the children in placement in the facility.~~

11. "Property costs" means the allowable costs to operate the owned or leased property.

12. "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for ~~children~~ residents.

~~12.~~ ~~"Rate year" means the twelve-month period beginning the seventh month after the end of a facility's fiscal year.~~

13. "Reasonable cost" means the cost of providing food, clothing, shelter, daily supervision, school supplies, and personal incidentals for ~~children in placement~~ residents, employee liability insurance with respect to ~~children in placement~~ residents, travel of a ~~child in placement to the child's home~~ resident for visitation, and operation of the facility which must be incurred by an efficient and economically operated facility to provide services in conformity with applicable federal and state laws, regulations, rules, and quality and safety standards. Reasonable cost takes into account that the facility seeks to minimize costs and that actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or service.

~~14.~~ ~~"Related organization" means an organization which a facility is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the facility. Control exists if an individual or organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or~~

facility. "Resident" means an individual under the age of twenty-one admitted to and residing in the facility.

15. "Report year" means the facility's fiscal year.

~~16.~~ "Usable square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described for that cost category. "Room and board" means the cost associated with the provision of shelter, food, dietary supplies, and housekeeping services and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of residents, included in the facility base rate.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014; October 1, 2019; October 1, 2021.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

### **75-03-15-02. Eligibility for payment - Financial reporting requirements.**

1. Facilities are eligible for payment rates contingent upon the following:

- a. The facility has a current license, issued pursuant to the provisions of chapter 75-03-40;
- b. The facility has a contract with the department authorizing payment;
- c. The facility is in compliance with the terms of the contract; and
- d. The facility participates in the financial audit process established by the department.

2. Records.

- a. The facility shall maintain ~~on the premises~~ the required ~~child~~resident census records ~~and.~~
- b. The facility shall maintain financial information sufficient to provide a proper audit or review. ~~For any cost being claimed on the cost report, adequate data~~Financial records must be ~~available and~~ provided to the department in the form and manner requested by the department ~~as of the audit date, to fully support the report item.~~

~~b.~~ If several programs are associated with a group and the group's accounting and reports are centrally prepared, added information, for items known to be lacking support at the facility, must be submitted with the cost report or provided to the local program prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.

c. The facility shall maintain, financial records for a period of not less than ~~three~~six years following the submission date of the cost report to the department, financial and statistical records of the period covered by the cost report, which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit must be retained until final resolution. Each facility shall make the records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

~~2.3.~~ Accounting and reporting requirements.

- a. ~~The accrual basis of accounting, in accordance with generally~~Generally accepted accounting principles, must be used for ~~cost reporting purposes~~ of financial reporting. However, if conflicts occur between ~~ratesetting procedures and generally accepted~~

~~accounting principles, ratesetting procedures must prevail. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported.~~

- b. To properly facilitate auditing by the department, the facility accounting system must be maintained in a manner that ensures program cost accounts are grouped by cost category ~~and are readily traceable to the cost account.~~ If several programs are associated with the facilities' accounting system, the qualified residential treatment program costs must be separate.
- c. The facility shall submit ~~the cost report on or before the last day of the third month following the facility's report year. The report must contain all costs of the facility, adjustments for nonallowable costs, and child census days~~required financial information within ninety days of the request of the department.
- d. Upon request, the following information must be made available:
  - (1) A statement of ownership including the name, address, and proportion of ownership of each owner.
  - (2) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the facility, or a certification that the content of any of these documents remain unchanged since the most recent statement given pursuant to this subsection.
  - (3) Supplemental information reconciling the costs on the financial statements with costs on the ~~cost~~requested financial report.
  - (4) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services that are claimed as allowable costs.

~~e. If the facility fails to file the cost report on or before the due date, or any extension granted by the department in writing, whichever is later, the department may impose a nonrefundable penalty of ten percent of any amount claimed for payment. The penalty may be imposed after the last day of the first month following the later of the due date or the end of any written extension and, once imposed, continues through the month in which the statement or report is received.~~

~~f. The facility shall make all adjustments and allocations necessary to arrive at allowable costs. The department may reject any cost report if the information filed is incomplete or inaccurate. In the event that a cost report is rejected, the department may impose the penalties described in subdivision e.~~

~~g. The department may grant an extension of the reporting deadline to a facility. To receive an extension, a facility shall submit a written request to the division of children and family services.~~

~~3. The department shall perform an audit of the latest available report year of each facility as necessary and shall retain for at least three years all audit-related documents, including cost reports, working papers, and internal reports on rate calculations which are utilized and generated by audit staff in performing audits and in establishing rates. Audits must meet generally accepted governmental auditing standards.~~

~~4. Penalties for false reports.~~

- ~~a. A false report is one wherein a facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received, the department may:-~~
  - ~~(1) Immediately adjust the facility's payment rate to recover the entire overpayment within the rate year;~~
  - ~~(2) Terminate the department's agreement with the facility;~~
  - ~~(3) Prosecute under applicable state or federal law; or~~
  - ~~(4) Use any combination of the foregoing actions.~~
- ~~b. If a facility claims costs that have been previously adjusted as a nonallowable cost, the department may determine that the report is a false report. Previously adjusted costs that are the subject of a request for reconsideration or appeal must be identified as unallowable costs. The facility may indicate that the costs are not claimed, under protest, to perfect a claim if the request for reconsideration or appeal is successful.~~

**History:** Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014; October 1, 2021.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-03. ChildResident census.**

1. A facility shall maintain a daily childresident census record. The facility shall count any day for which services are provided ~~or payment is ordinarily sought for an available bed~~, including the day of discharge, as ~~a~~ one day for the childresident census. The day of admission or death must be counted.
2. A facility shall prepare and maintain childresident census records on a daily basis to allow for proper audittracking of ~~the childresident~~ census data. The daily childresident census records must include:
  - a. Identification of the ~~child in placement~~resident;
  - b. Entries for all days a childresident is in placement;
  - c. Identification of type of day: ~~general facility~~treatment programming, ~~shelter care~~bed hold, aftercare, or respite care; and
  - d. Monthly totals by childresident in placement and by type of day.

**History:** Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014; October 1, 2019; October 1, 2021.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-04. RatesettingPayment rate.**

1. ~~The department shall base the established rate on prospective ratesetting procedures. The establishment of a rate begins with historical costs. Adjustments are then made for claimed costs which are not includable in allowable costs. Adjustment factors are then applied to allowable costs. The department may not make retroactive settlements for actual costs incurred during the rate year which exceed the final rate unless specifically authorized in this chapter.~~The department shall determine the payment rates. Payment rates are developed in three parts:

a. A base rate:

b. Difficulty of care rate; and

c. Performance-based contracting options.

~~2. Desk-audit rate:~~

~~a. The department shall establish desk-audit rates for maintenance, based on the cost report, which will be effective the first day of the seventh month following the facility's fiscal yearend.~~

~~b. The desk rates will continue in effect until final rates are established.~~

~~c. The department shall review the cost report taking into consideration the prior year's adjustments. The department shall notify a facility by telephone, electronic mail, or mail of any desk adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why a desk adjustment should not be made. The department will review the submitted information, make appropriate adjustments, including adjustment factors, and issue the desk rates.~~

~~d. The department may not reconsider the desk rates unless the facility has been notified that the desk rates are the final rates.~~

~~3. Final rate:~~

~~a. The department may perform a field audit of the cost report to establish final rates. If no field audit is performed, the desk rates will become the final rates upon notification to the facility from the department.~~

~~b. The final rate for maintenance will be effective beginning the first day of the month in which notification of the rate is given to the facility.~~

~~c. The final rate will include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk rate of at least five cents per day.~~

~~d. Adjustments, errors, or omissions which are found after a final rate has been established will be included as an adjustment in the report year that the adjustments, errors, or omissions are found.~~

~~4. Special rates:~~

~~a. Facilities providing services for the first time:~~

~~(1) The department shall establish rates for a facility which is providing services which are purchased by the department using the following methodology for the first two fiscal years of the facility if such period is less than twenty-four months:~~

~~(a) The facility shall submit a budget for the first twelve months of operation. The department shall establish a final rate for a rate period which begins on the first of the month in which the facility begins operation. This rate will remain in effect for eighteen months. No adjustment factors will be included in the first-year final rate.~~

~~(b) Upon completion of the first twelve months of operation, the facility shall submit a cost report for the twelve-month period regardless of the fiscal yearend of the facility.~~

~~[1] The twelve-month cost report is due on or before the last day of the third month following the end of the twelve-month period.~~

~~[2] The department shall use a twelve-month cost report to establish a rate for the remainder of the second rate year. The department shall use appropriate adjustment factors to establish the rate.~~

~~(2) The facility shall submit a cost report that the department will use to establish rates in accordance with subsections 2 and 3 after the facility has been in operation for the entire twelve months of the facility's fiscal year.~~

~~b. Facilities changing ownership.~~

~~(1) For facilities changing ownership, the rate established for the previous owner will be retained until the end of the rate year in which the change occurred.~~

~~(2) The department shall establish the rate for the second rate year after a change in ownership occurs as follows:~~

~~(a) For a facility with four or more months of operation under the new ownership during the report year, the department shall use a cost report for the period since the ownership change occurred to establish the rate for the next rate year.~~

~~(b) For a facility with less than four months of operation under the new ownership in the reporting year, the department shall index forward the prior report year's costs as adjusted for the previous owner using appropriate adjustments.~~

~~c. Facilities having a capacity increase or major renovation or construction.~~

~~(1) For facilities which increase licensed capacity by twenty percent or more or have renovation or construction projects in excess of fifty thousand dollars, the department may adjust the rate established for the rate year in which the licensed increase occurs or the construction or renovation is complete to include projected property costs. The department shall calculate the adjusted rate based on a rate for historical costs, exclusive of property costs, as adjusted, divided by historical child census, plus a rate for property costs based on projected property costs divided by projected child census. The established rate for maintenance, including projected property costs, will be effective on the first day of the month in which notification of the rate is given to the facility after the renovation or construction is complete or the licensed capacity increased.~~

~~(2) For the rate year immediately following the rate year in which the capacity increase occurred or construction and renovation was completed, the department shall establish a rate based on historical costs, exclusive of property costs, as adjusted for the report year, divided by reported child census, plus a rate for property costs, based on projected property costs, divided by projected child census.~~

~~d. Facilities that have changes in services or employees.~~

~~(1) The department may provide for an increase in the established rate for additional costs that are necessary to add services or employees to the existing program.~~

~~(2) The facility shall submit information to the department supporting the request for the increase in the rate. Information must include a detailed listing of new or additional employees or costs associated with the increase in services.~~

~~(3) The department will review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the department shall adjust the established rate. The effective date of the rate increase will be on the first of the month following approval by the department. The adjustment will not be retroactive to the beginning of the rate year.~~

~~(4) For the rate year immediately following a rate year in which a rate was adjusted under paragraph 3, the facility may request that consideration be given to additional costs. The facility must demonstrate to the department's satisfaction that historical costs do not reflect twelve months of actual costs of the additional employees or added services in order to adjust the rate for the second rate year. The additional costs would be based on a projection of costs for the remainder of a twelve-month period.~~

~~5. The final rate must be considered as payment for all accommodations which include items identified in section 75-03-15-07. For any child in placement whose rate is paid in whole or in part by the department, the facility may not solicit or receive payment from the child in placement or any other person to supplement the rate as established.~~

~~6. For a facility terminating its participation in the program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until all children in placement can be relocated.~~

~~7. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. A facility may request any adjustments to provide appropriate compensation if major unforeseeable expenses are incurred. A facility shall make any request for rate adjustment to the department, which shall determine if the expense is child-related. Base rates established by the department include facility financial components of direct care wage, direct care fringe benefits, property, and administrative and other costs.~~

3. Difficulty of care is calculated by utilizing the individual resident assessment weighted score from the department-approved assessment tool. The difficulty of care rate is:

a. Effective the date of admission; and

b. Reassessed every ninety days in conjunction with the resident continued stay review.

4. Performance-based contracts will detail facility payment rates specific to admission and discharge and aftercare outcomes.

5. The daily rate for each resident accepted by the facility must follow the difficulty of care payment rates developed by the department. The daily rate charged must be consistent for all residents in placement regardless of the resident's custodian, parent, or guardian or payment source. The maximum authorized payment rate for a resident paid by the department will be determined by the resident's weighted score conducted by the qualified individual completing the assessment and the performance-based contracting options.

#### 8.6. Limitations.

a. The department may accumulate and analyze statistics on costs incurred by the facilities. The department may use these statistics to establish cost ceilings and incentives for efficiency and economy, based on a reasonable determination of the standards of operations necessary for efficient delivery of needed services. The department may establish ~~these~~ limitations and incentives on the basis of the cost of comparable facilities and services and the department may apply these limitations and incentives as ceilings on the overall costs of providing services or on specific areas of operations.

- b. When federal regulations establish a ceiling on foster care rates for these facilities, that ceiling must also be considered the maximum payment under title IV-E of the Social Security Act, [42 U.S.C. 670 et seq.].
- c. ~~A facility shall maintain an average annual occupancy rate of seventy five percent. Shelter and respite care beds designated by the facility and approved by the department are exempt from the occupancy rate percentage requirement. The computed child census days apply only to the following areas:~~

~~(1) Administrative costs;~~

~~(2) Plant operation costs; and~~

~~(3) Property costs.~~

~~The department may waive the minimum bed occupancy allowance for a facility. A facility requesting a waiver shall include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility also shall provide a rationale for the proposed allocation method. Based on the information provided, the department shall determine the allocation method used to report costs.~~

- ~~d. Administrative costs must be limited to the percent of total allowable costs exclusive of administrative costs, authorized by the department.~~

#### ~~9.7. Rate adjustments.~~

- ~~a. The department may apply adjustment factors to adjust historical costs. The department shall annually determine an appropriate adjustment factor to be applied to allowable costs exclusive of property costs~~ rate adjustments if required by state or federal law or regulation, appropriation, or as determined necessary by the department.

- ~~b. The department may make rate adjustments to correct departmental errors subsequently identified.~~

- ~~c. The department shall make an adjustment for those facilities which have terminated participation in the program, disposed of depreciable assets, or changed ownership.~~

- ~~10. The department shall continue to pay the established rate of a facility previously licensed as a residential child care facility prior to October 1, 2019, upon the facility's licensure as a qualified residential treatment program. The department may adjust the rate in accordance with this section.~~

**History:** Effective November 1, 1985; amended effective July 1, 1993; March 1, 1999; August 1, 2002; June 1, 2004; July 1, 2014; October 1, 2019; October 1, 2021.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-05. Cost allocation.**

~~Direct costing of allowable costs must be used whenever possible. If services of a facility are jointly used for maintenance, service, administration, or nonallowable activities, the facility shall allocate the cost by using a method which reflects the most reasonable cost based on the data available.~~ Allocation Cost allocation methods described in this section must be used.

- 1. Salaries that cannot be reported based on direct costs are to be allocated using time studies. Time studies must be preapproved by the department and must be conducted at least semiannually for a two-week period or quarterly for a one-week period. The time study must

represent a typical period of time when employees are performing normal work activities in each assigned area of responsibility. Allocation percentages based on the time studies are to be used starting with the next pay period following completion of the time study or averaged for the report year. The methodology used by the facility may not be changed without approval by the department.

2. Housekeeping costs must be allocated based on usable square footage.
3. Property and ~~plant~~ facility costs must be allocated based on usable square footage.
4. Administration costs must be allocated on the basis of percentage of the total direct cost of the activity to the total costs, excluding administration.
5. Fringe benefits must be allocated based on the ratio of salaries to total salaries.
6. Dietary costs and food must be allocated based on meals served.
7. Vehicle expenses must be allocated based on mileage logs. Mileage logs must include documentation for miles driven and the purpose of travel. If sufficient documentation is not available to determine to which cost category vehicle expenses are to be allocated, vehicle expenses must be assigned to administration.
8. Costs not direct costed, or allocable using methods identified in subsections 1 through 7, must be included as administration costs.

**History:** Effective November 1, 1985; amended effective March 1, 1999; October 1, 2021.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-06. Private pay rates.**

Repealed effective October 1, 2021.

- ~~1. The department's foster care maintenance rate may not exceed the rate charged to private pay or other public pay children in placement.~~
- ~~2. If the established rate exceeds the rate charged to nondepartmental or private pay children in placement for a service, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received from the department at the higher rate, the facility shall refund the overpayment within thirty days. The refund must be the difference between the established rate and the lowest rate charged to nondepartment or private pay children in placement times the number of department child census days paid during the period in which the established rate exceeded the nondepartmental or private rate, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not refunded within thirty days. Interest charges on these refunds are not allowable costs.~~

~~**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.~~

~~**General Authority:** NDCC 50-06-16, 50-11-03~~

~~**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2~~

#### **75-03-15-07. Allowable costs ~~for maintenance and administration.~~**

1. **Maintenance rate.** ~~Costs includable in the rate for room and board~~ Rates include those allowable costs described in this subsection, ~~unless limited by section 75-03-15-09.~~
  - a. Salary and fringe benefits for direct care employees, which must be limited to:

- (1) The direct care ~~workers' supervisor~~supervisors;
  - (2) Direct care ~~workers~~employees;
  - (3) ~~Relief direct care workers~~Family engagement specialists performing aftercare services;
  - (4) Cooks;
  - (5) Janitors and housekeepers;
  - (6) Laundry; and
  - (7) Nurses when performing daily supervision, ~~children in placement~~physical examinations, and medical care treatment for residents. If the nurse is providing ~~daily supervision, children in placement physical examinations, medical care treatment and~~ other services within the facility, a time study will need to be completed. The portion that is daily supervision, ~~children in placement~~resident physical examinations, and medical care treatment may be included in the calculation of the daily rate for maintenance.
- b. Food. Actual food costs. The value of donated food may not be included in food costs.
  - c. Operating supplies. The cost of supplies necessary to maintain the household for the ~~children in placement~~residents. Costs include cleaning supplies, paper products, and hardware supplies.
  - d. Personal supplies and allowances. The cost of supplies used by an individual ~~child in placement~~resident, including medicine chest supplies, personal hygiene items, sanitary needs, and moneys given periodically to ~~children in placement~~residents for personal use. Personal supplies and allowances do not include payment, whether in cash or in kind, for work performed by the ~~children in placement~~residents or for bonuses or rewards paid based on behavior.
  - e. School supplies. The cost of school supplies, books, activity fees, class dues, and transportation to school.
  - f. Clothing. The cost of clothing to maintain a wardrobe for any ~~child in placement~~resident.
  - g. Recreation. Costs incurred for providing recreation to ~~children in placement~~residents, including magazine and newspaper subscriptions, sports equipment, games, dues for clubs, and admission fees to sporting, recreation, and social events.
  - h. Utilities. The cost of heat, lights, water, sewage, garbage, and common area cable or satellite TV.
  - i. Telephone. The cost of local service to the living quarters. Long distance calls are allowable only if specifically identified as being related to maintenance and are not service or administrative in nature. Cellular telephones or electronic communication systems, including associated monthly service fees which are less than the capitalization threshold, and are purchased by the facility for use by direct care or aftercare employees to communicate for the purpose of ~~child~~resident safety, programming, transportation, and supervision while on shift are allowable telephone costs.
  - j. Repairs. The cost of routine repairs and upkeep of property and equipment used for the ~~children in placement~~residents. The facility shall capitalize and depreciate repair or maintenance costs in excess of five thousand dollars per project on equipment or over

the remaining useful life of the equipment or building or over one-half of the original estimated useful life, whichever is greater.

- k. Travel. All costs related to transporting ~~children in placement~~residents, exclusive of transportation for evaluations and social service activities. Transportation costs may include actual vehicle expenses or actual costs not to exceed the amount established by the internal revenue service.
  - l. Leases and rentals. The cost of leasing assets from a nonrelated organization. If the lease cost cannot be directly associated with a function, the department shall allocate the cost in accordance with section 75-03-15-05.
  - m. Depreciation expense. Depreciation expense on all capitalized equipment and property which was not purchased with funds made available through other government programs or grants is allowable.
  - n. Insurance. The cost of insuring property and equipment used in the maintenance of ~~children in placement~~residents and liability insurance for direct care employees.
  - o. Medical. Costs for necessary medical-related items for ~~children in placement~~residents which are not covered by the resident's private insurance or governmental medical care programs, provided that facility records demonstrate that the facility has made reasonable attempts to secure insurance or program benefits. Costs may include physical examinations, drugs, dental work, corrective appliances, and required medical care and treatment for ~~children in placement~~residents.
  - p. Administration. Costs of administration which do not exceed limitations, provided that the department, in its discretion, may exclude costs of administration based upon a lack of appropriated funds.
2. **Administration costs.** ~~Unless limited by section 75-03-15-09, administration costs are allocated in accordance with section 75-03-15-04, subsection 4 of section 75-03-15-05, and this subsection.~~ Costs for administration include only those allowable costs for administering the overall activities of the facility identified as follows:
- a. Compensation for employees, such as facility administrators, accounting employees, clerical employees, ~~secretaries, receptionists~~administrative support staff, data processing employees, purchasing employees, ~~and~~ security employees, clinical team members, such as social workers, treatment coordinators, psychologists, psychiatrists, nursing costs not covered under the maintenance rate, and other professional clinical or treatment employees;
  - b. Office supplies and forms;
  - c. Insurance, except property insurance directly identified to other cost categories, and insurance included as a fringe benefit;
  - d. The cost of telephone service not specifically included in other cost categories;
  - e. Postage and freight;
  - f. Professional fees for legal, accounting, and data processing;
  - g. Computer software costs, except costs that must be capitalized, and computer maintenance contracts;
  - h. Central or home office costs;

- i. Employee recruitment costs;
- j. Management consultants and fees;
- k. Dues, license fees, and subscriptions;
- l. Travel ~~and training~~—not specifically included in other costs categories;
- m. The cost of heating and cooling, electricity, and water, sewer, and garbage for space used to provide administration;
- n. The cost of routine repairs and maintenance of property and equipment used to provide administration;
- o. The cost of ~~plant~~facility operation ~~and housekeeping salaries and fringe benefits~~ associated with the space used to provide administration;
- p. Property costs. Depreciation, interest, taxes, and lease costs on equipment and buildings for space used to provide administration; or
- q. ~~Startup costs; or~~
- ~~r. Any costs that cannot be specifically classified or assigned as a direct cost to other cost categories~~Training. Staff professional development costs, excluding salary and fringe benefits, but including registration, travel, and per diem expenses when addressing allowable training topics noted in 45 CFR 1356.60.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014; October 1, 2019; October 1, 2021.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-08. Rehabilitation costs.**

Repealed effective October 1, 2021.

- ~~1. A facility may include the following costs for rehabilitation:-~~
  - ~~a. Salaries and fringe benefits for social workers, psychologists, psychiatrists, nursing costs not covered under the maintenance rate, and other professional social service employees;~~
  - ~~b. Professional development for the professional social service employees; and~~
  - ~~c. Travel and telephone costs related to evaluations and social service activities.~~
- ~~2. The department shall use these costs in determining a facility's administration limit.~~

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-09. Nonallowable costs.**

Repealed effective October 1, 2021.

- ~~Nonallowable costs include:~~

- ~~1. Administrative costs not identified in section 75-03-15-07, overhead, and other expenses paid on behalf of employees who are not direct care employees;~~
- ~~2. Advertising, except for reasonable advertising costs for employee recruitment, and public relations expenses;~~
- ~~3. Any cost which has not actually been incurred by the facility, including the value of donated goods and services;~~
- ~~4. Bad debt expenses;~~
- ~~5. Costs incurred solely to enhance income from investments;~~
- ~~6. Costs of securing contributions or donations;~~
- ~~7. Costs related to income-producing activities, including farms, rodeos, grass cutting services, or gaming, whether or not the activity is profitable;~~
- ~~8. Depreciation costs for idle facilities except when the facilities are necessary to meet caseload fluctuations;~~
- ~~9. Dues and subscriptions for employees;~~
- ~~10. Fines and penalties resulting from failure to comply with federal, state, and local laws;~~
- ~~11. Interest expense on borrowed funds or finance and late charges;~~
- ~~12. Recreational costs for activities, including employees only;~~
- ~~13. Religious salaries, space, and supplies;~~
- ~~14. Research and development costs;~~
- ~~15. Taxes, including federal and state income taxes, special assessments which must be capitalized, taxes from which exemptions are available, self-employment taxes, and taxes on property not used in providing maintenance for the child in placement;~~
- ~~16. Any telephone costs, including cellular telephone and beeper costs attributable to personal usage by employees;~~
- ~~17. Costs related to facility-operated schools or to correspondence courses; and~~
- ~~18. Any costs unrelated to providing services to children in placement.~~

**History:** Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

### **75-03-15-10. Revenue offsets.**

The department shall require facilities to submit financial records inclusive of revenue offsets for financial auditing and rate adjustments. Facilities shall identify income to offset costs, where applicable, so that state financial participation does not supplant or duplicate other funding sources. Any income, whether in cash or in any other form which is received by the facility, with the exception of the established rate and income from payment made under the Job Training Partnership Act, must be offset up to the total of the appropriate actual costs. If actual costs are not identifiable, income must be offset in total to the appropriate cost category. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Treatment appropriate to some sources of income is provided in this section:

1. **Clothing.** Facilities receiving initial clothing allowances separately from the state or other sources shall reduce costs by the amount of the reimbursement.
2. **Food income.** Facilities receiving revenue for food and related costs from other programs, including the United States department of agriculture or the department of public instruction or amounts from or paid on behalf of employees, guests, or ~~children not in placement~~nonresidents for meals or snacks shall reduce allowable food costs by the revenue received.
3. **Insurance recovery.** A facility shall offset any amount received from insurance for a loss incurred against the appropriate cost category, regardless of when the cost was incurred, if the facility did not adjust the basis for depreciable assets.
4. **Refunds and rebates.** A facility shall offset any refund or rebate received for a reported cost to the appropriate cost.
5. **Transportation income.** A facility shall offset any amount received for use of the facility's vehicles to transportation costs.
6. **Vending income.** A facility shall offset income from the sale of beverages, candy, or other items to the cost of the vending items or, if the cost is not identified, the facility shall offset all vending income to maintenance costs.
7. **Gain on the sale of assets.** A facility shall offset gain from the sale of an asset against depreciation expenses.
8. **Rental income.** A facility shall offset revenue received from outside sources for the use of facility buildings or equipment to property expenses.
9. **Grant income.** A facility shall offset grants, gifts, and awards from the federal, state, or local agencies to the costs which are allowed under the grant.
10. **Other cost-related income.** A facility shall offset miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, to the cost category where the item was expensed.
11. **Other income from government sources.** The department may determine that other income to the facility from local, state, or federal units of government is an offset to costs.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014; October 1, 2021.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-11. Related organization.**

1. Costs applicable to services, facilities, and supplies furnished to a facility by a related organization may not exceed the lower of the costs to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. The facility shall identify such related organizations and costs, and shall submit allocations with the ~~cost report~~requested financial record.
2. A facility may lease buildings or equipment from a related organization. In that case, the rent or lease expense paid to the lessor is allowable in an amount not to exceed the actual costs associated with the asset if the rental of the buildings or equipment is necessary to provide programs and services to ~~children in placement~~residents. The actual costs associated with the

asset are limited to depreciation, real estate taxes, property insurance, and plant operation expenses incurred by the lessor.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014; October 1, 2021.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-12.1. Startup costs.**

Repealed effective October 1, 2021.

~~—In the first stages of operation, a new facility incurs certain costs in developing the ability to care for children prior to admission. Employees are obtained and organized, and other operating costs are incurred during this time of preparation which cannot be allocated to facility direct care during that period because there are no children in placement receiving services. These costs are commonly referred to as startup costs. The startup costs are to be capitalized and must be recognized as allowable administration costs amortized over sixty consecutive months starting with the month in which the first child is admitted. This section does not apply to a facility transitioning from a residential child care facility on October 1, 2019, to a qualified residential treatment program.~~

~~**History:** Effective March 1, 1999; amended effective July 1, 2014; October 1, 2019.~~

~~**General Authority:** NDCC 50-06-16, 50-11-03~~

~~**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2~~

#### **75-03-15-13. Taxes.**

1. Taxes assessed against the facility in accordance with the levying enactments of several states and lower levels of government and for which the facility is liable for payment are allowable costs, ~~except for those taxes identified as unallowable in section 75-03-15-09.~~
2. Whenever exemptions to taxes are legally available, the facility shall take advantage of exemptions. If the facility does not take advantage of available exemptions, the expense incurred for taxes may not be recognized as an allowable cost under the program.
3. Special assessments in excess of one thousand dollars, which are paid in a lump sum, must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as billed by the taxing authority.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; October 1, 2021.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-13.1. Depreciation.**

1. **General principles.** Ratesetting principles require that payment for services must include depreciation on all depreciable type assets that are used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the facility, but are in use at the time the facility enters the program. ~~The useful lives of these assets are considered to be ongoing and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity.~~ If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and the facility shall include it as a gain or loss on the ~~cost report~~ requested financial record.

## 2. Depreciation methods.

- a. A facility shall use the straight-line method of depreciation. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, are unacceptable. The facility shall apply the method and procedure for computing depreciation on a basis consistent from year to year, and shall maintain detailed schedules of individual assets. If the books of account reflect depreciation different from that submitted on the ~~cost report~~ requested financial records, the facility shall prepare a reconciliation.
- b. A facility shall use a composite useful life of ten years for all equipment and land improvements and four years for vehicles. A facility shall depreciate buildings and improvements to buildings over the length of the mortgage or a minimum of twenty-five years, whichever is greater.

## 3. Acquisitions.

- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least five thousand dollars for each item, the facility shall capitalize and depreciate the cost over the estimated useful life of the asset, except as provided in subsection 3 of section 75-03-15-13. A facility shall capitalize costs, including architectural, consulting, legal fees, and interest, incurred during the construction of an asset, as a part of the cost of the asset.
- b. A facility shall capitalize and depreciate repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings over the remaining useful life of the equipment or building or one-half of the original estimated useful life, whichever is greater.

## 4. Recordkeeping.

Proper records must provide accountability for the fixed assets and must also provide adequate means by which depreciation may be computed and established as an allowable child-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.

## 5. Donated assets.

For purposes of this chapter, a facility may record and depreciate donated assets based on their fair market value. If the facility's records do not contain the fair market value of the donated asset as of the date of the donation, the donated item must be appraised. The appraisal must be performed by a recognized appraisal expert and must be accepted for depreciation purposes. The facility may elect to forego depreciation on donated assets, negating the need for a fair market value determination.

## 6. Basis for depreciation.

- a. Determination of the cost basis of a facility and its depreciable assets, which have not been involved in any programs which are funded in whole or in part by the department, depends on whether or not the transaction is a bona fide sale. If the issue arises, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.
  - (1) If the sale is bona fide, the cost basis must be the cost to the buyer.
  - (2) If the sale is not bona fide, the cost basis must be the seller's cost basis less accumulated depreciation.
- b. The cost basis of a facility, including depreciable assets which are purchased as an ongoing operation, must be the seller's cost basis less accumulated depreciation.

- c. The cost basis of a facility, including depreciable assets which have been used in any programs which are funded in whole or in part by the department, must be the cost basis used by the other program less accumulated depreciation.
- d. Sale and leaseback transactions must be considered a related party transaction. The cost basis of a facility, including depreciable assets purchased and subsequently leased to a provider who operates the facility, must be the seller's cost basis less accumulated depreciation.

**History:** Effective March 1, 1999; amended effective July 1, 2014; [October 1, 2021](#).

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-15. Variance.**

1. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from the provisions of this chapter upon terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of ~~children in placement~~[residents](#) and no variance may be granted except at the discretion of the department.
2. A facility may request excess maintenance cost variance specific to a resident need beyond the difficulty of care rate upon terms the department may prescribe. No variance may be granted except at the discretion of the department.
3. A refusal to grant a variance is not subject to a request for ~~reconsideration~~[review](#) or an appeal.

**History:** Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014; [October 1, 2021](#).

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-16. ~~Reconsiderations~~[Review](#) and appeals.**

1. **~~Reconsiderations~~[Review](#).**
  - a. A facility ~~dissatisfied with the final rate established shall request a reconsideration of the final rate before a formal appeal may be made. Any requests for administrative reconsideration must be filed with the department within thirty days of the date of the rate notification~~[may request a review of denial of payment by filing a written request for review with the department within thirty days of the date of the department's denial of payment. The written request for review must include the notice and a statement of each disputed item with the reason or basis for the dispute. A facility may not request review for a full or partial denial, recoupment, or adjustment of a claim due to required federal or state changes, payment system defects, or improper claims submission or of the rate paid for a particular service or difficulty of care rate.](#)
  - b. ~~The department shall make a determination regarding the reconsideration within forty five days of receiving the reconsideration filing and any requested documentation.~~[Within thirty days after requesting a review, a facility shall provide to the department all documents, written statements, exhibits, and other written information that support the facility's request for review, together with a computation and the dollar amount that reflects the facility's claim as to the correct computation and dollar amount for each disputed item.](#)
  - c. The department shall make and issue a decision within seventy-five days, or as soon thereafter as possible, of receipt of notice of request for review.

2. **Appeals.** A facility ~~dissatisfied with the final rate established~~ may appeal ~~upon completion of the reconsideration process as provided for in subsection 1. This appeal must be filed as provided under chapter 75-01-03~~ the final decision of the department to the district court in the manner provided in North Dakota Century Code section 28-32-42, and the district court shall review the department's final decision in the manner provided in North Dakota Century Code section 28-32-46. The judgment of the district court in an appeal from a request for review may be reviewed in the supreme court on appeal by any party in the same manner as provided in North Dakota Century Code section 28-32-49.
3. Upon receipt of notice that the facility has appealed its final decision to the district court, the department shall make a record of all documents, written statements, exhibits, and other written information submitted by the facility or the department in connection with the request for review and the department's final decision on review, which constitutes the entire record. Within thirty days after an appeal has been taken to district court as provided in this section, the department shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original and a certified copy of the entire record, and that record must be treated as the record on appeal for purposes of North Dakota Century Code section 28-32-44.

**History:** Effective March 1, 1999; amended effective October 1, 2021.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**CHAPTER 75-03-40**  
**LICENSING OF QUALIFIED RESIDENTIAL TREATMENT PROGRAM PROVIDERS**

Section

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**75-03-40-01. Definitions.**

As used in this chapter:

1. "Accredited" means to be accredited and in good standing by an independent, not-for-profit organization approved by the department. Accreditation organizations preapproved include the commission on accreditation of rehabilitation facilities, the joint commission, or the council on accreditation. Any other accrediting bodies must be approved by the federal health and human service office before the department can consider approval.
2. "Aftercare" means followup support and services provided to a resident and family after discharge from a facility.
3. "Assessment" means the ongoing process of identifying and reviewing a resident and the resident's family's strengths and needs based upon input from the resident, the resident's family, and others, including community members and health professionals.
4. "Behavior management" means techniques, measures, interventions, and procedures applied in a systematic fashion to prevent or interrupt a resident's behavior and promotes positive behavioral or functional change fostering resident self-control.
5. "Care plan" or "case plan" means the plan developed by the child and family team that incorporates formal and informal services and supports into a comprehensive, integrated plan that, using the identified strengths of the resident and the resident's family, addresses the needs of the resident and the resident's family across life domains to support the resident and the resident's family to remain in or return to the community.
6. "Child and family team" means an advisory or recommending group in relation to the resident's case plan. The custodial agency and child and family team, led by the resident and the resident's family, shall work cooperatively through multiagency and multidisciplinary approaches to provide a wider variety of support services to the resident, the resident's family, and foster care provider to carry out the permanency goals for the case plan.
7. "Contracted service providers" means a person or entity under contract or agreement with the facility to provide services and supports to residents.
8. "Custodian" means a person, other than a parent or guardian, to whom legal custody of the resident has been given by court order.
9. "Employee" means an individual compensated by the facility to work in a part-time, full-time, intermittent, or seasonal capacity for the facility. This definition is not inclusive to contracted service providers who come onsite to conduct trainings, treatment groups, individual therapy, or other program services.
10. "Facility" means a qualified residential treatment program.
11. "Guardian" means a person who stands in loco parentis to a resident or court appointed pursuant to North Dakota Century Code chapters 30.1-27 or 30.1-28.
12. "License" means a facility that is either licensed by the department or approved by the department if the facility is located within a tribal jurisdiction.

13. "Mechanical restraint" means any device attached or adjacent to the resident's body that the resident may not easily remove which restricts freedom of movement or normal access to the resident's body.
14. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern providing a specific service under the supervision of an employee.
15. "Normalcy" means a resident's ability to easily engage in healthy and age or developmentally appropriate activities that promote the resident's well-being, such as participation in social, scholastic, and enrichment activities.
16. "Nurse" means a nurse licensed in accordance with North Dakota Century Code chapter 43-12.1.
17. "Outcomes" means the results to which all performance targets must contribute, describing specific states or conditions that change, and which are influenced by the achievement of performance targets.
18. "Overnight hours" means a consecutive eight-hour period of time designated as resident sleep hours defined by the facility.
19. "Personnel" means employees hired and nonemployees placed with or present in the facility.
20. "Qualified individual" means a trained professional or licensed clinician designated by the department to complete the assessment, which will assist in determining the resident's appropriate level of care.
21. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a resident while at the same time encouraging the emotional and developmental growth of the resident participating in extracurricular, enrichment, cultural, and social activities.
22. "Resident" means an individual under the age of twenty-one admitted to and residing in the facility.
23. "Restraint" means a personal restraint, ~~mechanical restraint, or drug used as a restraint~~ that only involves an application of physical force without the use of any device, for the purpose of restraining the free movement of a resident's body.
24. "Seclusion" means involuntarily confining a resident alone in a room or area where the resident is prevented from leaving. ~~The immediate goal of seclusion is to defuse a dangerous situation, protect the resident and others from injury, and regain a safe and controlled environment.~~
25. "Trauma informed" is the services or programs to be provided to or on behalf of a resident and the resident's family under an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma in accordance with recognized principles of a trauma informed approach and trauma specific interventions to address trauma's consequences and facilitate healing.
26. "Trauma informed treatment" means a treatment model designed to address the identified needs, including clinical needs as appropriate, of the resident with serious emotional or behavior disorders or disturbances and is able to implement the treatment identified for the ~~child~~ resident by the assessment completed by the qualified individual.
27. "Treatment" means the use of interventions that prevent or cure disease, reducing symptoms, and restoring the resident to the highest practical functional level.

28. "Treatment plan" means a plan created by the facility which delineates goals, objectives, and therapeutic interventions regarding the appropriate level of care based on the uniqueness of each resident, which considers the perspectives of the resident, the resident's clinical treatment team, family and significant others, which builds on the resident's strengths, and which incorporates a discharge focus.

**History:** Effective October 1, 2019; [amended effective October 1, 2021.](#)

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-00.1, 50-11-03

#### **75-03-40-09. Facility closure.**

The facility shall have a policy to ensure proper and efficient procedure in the event a facility would close. Prior to closing, the facility administrator shall provide at least a sixty-day written notice to the department:

1. Detailing a plan for closure, including:
  - a. Date of closure;
  - b. Plan to notify each ~~resident's~~ custodian and parent or guardian;
  - c. Identification of a North Dakota depository to maintain the facility's case, fiscal, employee, and nonemployee records; and
  - d. Retention of all fiscal records for a period of ~~seven~~six years following account settlement.
2. Written notification must be given at least forty-five days prior to closure for each ~~resident's~~resident in placement to a custodian and parent or guardian. Notification also shall be given to all former residents currently receiving aftercare services.
3. A facility that does not follow the closure standards may be subject to fiscal sanctions.

**History:** Effective October 1, 2019; [amended effective October 1, 2021.](#)

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-40-10. Governance.**

1. Each facility shall have a governing body responsible for the operation, policies, activities, practice, and overall operations of the facility. The governing body shall:
  - a. Be composed of at least five members. A list of the names and contact information of members of the governing body must be maintained and submitted to the department annually. Each board member annually shall disclose conflicts of interest. Members of the board may not be family or have conflicts of interest with the facility administrator or employees with budget or accounting duties;
  - b. Meet at least every six months;
  - c. Maintain records of the governing body's meetings;
  - d. Develop and review policies for member selection and rotation;
  - e. Ensure each member understands the facility operation and program goals;
  - f. Ensure the facility is funded, housed, staffed, and equipped in a manner required for the provision of services;

- g. Provide the most recent fiscal year-end financial statements and audit records to the department for ~~reimbursement~~payment purposes, upon request;
  - h. Ensure the facility has an active strategic plan with a schedule to review annually;
  - i. Employ a qualified facility administrator and delegate responsibility to that facility administrator for the administration of the facility;
  - j. Evaluate the performance of the facility administrator at least annually;
  - k. Adopt a written statement of the purpose and philosophy of the facility; and
  - l. Adopt written policies for the facility regarding administration, personnel, buildings, grounds, and program services. Personnel policies for the recruitment and retention of employees necessary to operate the facility must indicate expectations of employees and nonemployees, detail job descriptions for each position, and ensure a process to review policies and procedures with employee participation at least every three years.
2. All statements and policies required by this chapter must be in writing to demonstrate the intent of the standards are integrated into facility practice. The facility policy must be up to date.

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-40-18. Nurse.**

- 1. The facility clearly shall define, in writing, the duties and responsibilities of the nurse which must be within the scope of North Dakota Century Code chapter 43-12.1.
- 2. A facility shall provide for an onsite nurse to accommodate the medical needs of residents.
- 3. The nursing employee may be an employee of the facility or a contracted provider available to provide onsite nursing services to residents.
- 4. The facility shall provide the nurse with a private office located on the property where the residents reside to allow for engagement during the day to meet residents' medical needs.

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-40-24. Child abuse and neglect.**

- 1. Upon hire and annually thereafter, all employees and nonemployees shall certify having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.
- 2. Each facility shall adopt written policies and procedures requiring employees and nonemployees to report cases of suspected child abuse or neglect. The procedures must include the following statement: "All employees and nonemployees will comply with North Dakota Century Code Chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this facility that if any employee or nonemployee who knows or reasonably suspects that a current resident or former resident receiving aftercare services whose health or welfare has been, or appears to have been, harmed as a result of abuse or neglect, that employee or nonemployee immediately shall report this information to the department. Failure to report this

information in the prescribed manner constitutes grounds for dismissal from employment or placement of nonemployee and referral of the employee or nonemployee to the office of the state's attorney for investigation of possible criminal violation."

3. The facility's policies and procedures must describe:
  - a. To whom a report is made;
  - b. When a report must be made;
  - c. The contents of the report;
  - d. The responsibility of each individual in the reporting chain;
  - e. The status and discipline of an employee or nonemployee who fails to report suspected child abuse or neglect; and
  - f. The status of the employee or nonemployee while the report is being assessed; if they are the subject of the report.
4. The facility shall cooperate fully with the department throughout the course of any assessment of any allegation of child abuse or neglect made concerning care furnished to a resident. The facility, at a minimum, shall provide the assessors with all documents and records available to the facility and reasonably relevant to the assessment and permit confidential interviews with employees, nonemployees, and residents. Internal facility interviews and investigations are not permitted to occur concurrent with a department assessment or law enforcement investigation.
5. In the case of an indicated determination, the facility shall notify the department licensing administrator, in writing, of the corrective action the facility has taken, or plans to take, to comply with any resulting recommendations from the ~~institutional~~state child protection team. The facility shall make assurances that revised facility practice will reduce the risk of the incident reoccurring. The facility shall respond within thirty days of receiving written notification of the ~~finding~~determination.
6. A facility shall establish written policies specific to how the facility will proceed when a current or former employee or nonemployee is known to be:
  - a. Involved in any capacity in a reported incident of institutional child abuse or neglect; ~~or~~
  - b. Involved in any capacity in a reported incident of suspected child abuse or neglect; or
  - c. The subject of a services required decision in a child abuse or neglect report that occurred outside of the facility, where the subject has been confirmed to have abused or neglected a child.

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02, 50-25.1-03

#### **75-03-40-28. Minimum employee requirements.**

1. For purposes of this section:
  - a. "Reside" means to sleep and keep personal belongings; and

- b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.
2. Each facility shall adopt a policy specific to employee coverage for facility operations, including holidays, weekends, on-call clinical team rotations, daytime and overnight hours. Policy must address:
  - a. Designated employees required for the facility on-call clinical team;
  - b. Number of qualified employees onsite to sufficiently meet the needs of residents and respond to emergency situations;
  - c. Evaluation of the number of employees necessary to meet the age, developmental level, length of treatment, and the service needs of the resident population;
  - d. Ability to schedule same gender or cross gender supervision if indicated by resident treatment needs; and
  - e. Employees hired specific to the onsite educational program may not be counted as direct care employees, treatment coordinator employee, family engagement specialist, facility administrator, or a clinical director during any time educational services are provided.
3. Each facility that operates more than one structure in which residents reside shall count the total number of residents admitted to the facility, residing in all structures collectively for purposes of determining the required number of clinical and treatment employees to meet employee-to-resident ratios.
4. Each facility shall comply with the following minimum employee-to-resident ratio requirements:
  - a. A rotating on-call clinical team must be available twenty-four hours a day, seven days a week to meet the needs of resident emergency and crisis situations. The on-call clinical team must include at a minimum one nurse and one clinical employee;
  - b. No less than one half-time facility administrator for a facility providing treatment for up to nine residents;
  - c. No less than one full-time facility administrator for a facility providing treatment for ten or more residents;
  - d. No less than one full-time clinical director;
  - e. No less than one full-time nurse;
  - f. No less than one full-time treatment coordinator employee for each ten residents; and
  - g. No less than one full-time family engagement specialist for each ~~eighteen~~twenty residents or aftercare clients.
5. During awake hours each facility shall ~~have no fewer than two employees qualified to provide direct care working on the property with at least one direct care employee on duty for each six residents~~meet the standards of the facility's accrediting body or the ratios set forth in this subsection, if the ratios set forth in this subsection are greater than the employee-to-resident ratios set by the accrediting body.
  - a. Two employees who are qualified to provide direct care for one to twelve residents; and

b. One additional employee who is qualified to provide direct care for every one through six additional children thereafter.

6. During overnight hours each facility shall have:

a. Awake employees at all times;

b. ~~No fewer than two employees qualified to provide direct care working on the property with at least one direct care employee on duty for each ten residents~~Employee-to-resident ratio at a rate not less than:

(1) Two employees who are qualified to provide direct care for one to twenty residents; and

(2) One additional employee who is qualified to provide direct care for every one through ten additional children thereafter; and

c. A policy that includes a requirement that an employee will check on residents during overnight hours at a minimum of every fifteen minutes, and more frequently if the acuity of the resident demands greater supervision. The overnight checks must be ~~conducted~~:

(1) Documented and available for review; and

(2) Conducted in the least invasive manner to not disrupt the residents.

7. The facility shall notify the department, in writing, if the minimum employee-to-resident ratios are not met based on position vacancies. An interim plan to cover the employee duties must be approved by the department.

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-40-29. Employee professional development.**

1. All employees in contact with residents shall receive at least twenty hours of training per year, with evidence of completion in the employee file.

2. Required trainings to prepare employees to meet the needs of residents served by the facility include:

a. Certified first aid;

b. Certified cardiopulmonary resuscitation and automated external defibrillator training;

c. Certified nonviolent crisis intervention training;

d. ~~Mental health technician training for direct care employees~~Institutional child abuse and neglect training;

e. Facility trauma informed care training;

f. Child abuse and neglect mandated reporter training;

g. Children's emotional and developmental needs; and

h. Suicide prevention training, including identification of signs and facility response measures.

3. A certified instructor shall provide training for nonviolent crisis intervention, first aid, cardiopulmonary resuscitation, and automated external defibrillator. A formal certificate must be provided to each employee demonstrating their competencies in the specific training area. A copy of the certificate must be placed in the employee file. Until a new employee has completed these required trainings, the facility administrator shall ensure that another employee, current in the required trainings, is scheduled to work on the same shift as the new employee pending training.
  
4. Prior to a new employee working independently with residents, the facility shall provide orientation training to the employee covering all of the following areas, with evidence of completion present in the employee file:
  - a. ~~Overall facility~~Facility philosophy and program goals;
  - b. ~~Review of administrative~~Administrative procedures, policy, and protocols;
  - c. ~~Review of personnel~~Personnel policies;
  - d. ~~Review of programs~~Programs and services, ~~policy, and protocols offered onsite to residents;~~
  - e. ~~Discuss the nature of residents'~~Residents' emotional and physical needs;
  - f. ~~Discuss the expected~~Facility daily routine, activities, transportation, treatment group schedules, and meals;
  - ~~g.~~ Expected employee conduct toward residents, ~~expected;~~
  - ~~h.~~ Expected resident conduct, ~~and the facility's while residing onsite;~~
  - ~~i.~~ Facility's behavior management, including de-escalation techniques;
  - ~~g-j.~~ ~~Provide an overview~~Overview of trauma and facility trauma informed treatment;
  - ~~h-k.~~ ~~Review protocol~~Protocol for observing and reporting resident behavior;
  - ~~i-l.~~ ~~Review resident~~Resident rights and grievance procedures;
  - ~~j-m.~~ ~~Identification~~Protocol for identifying and reporting of child abuse and neglect;
  - ~~k-n.~~ ~~Review suicide~~Suicide prevention, including identifying signs and facility response;
  - ~~l.~~ ~~Review disaster planning and evacuation procedures;~~
  - ~~m-o.~~ Disaster plan;
  - ~~p.~~ Resident search procedures and policies;
  - ~~n-q.~~ ~~Review confidentiality~~Confidentiality standards;
  - ~~o-r.~~ ~~Review facility procedures~~Procedures for reporting a runaway;
  - ~~p-s.~~ Fire safety and evacuation procedures;
  - ~~q-t.~~ ~~Emergency~~Protocol for emergency medical procedures ~~and;~~
  - ~~u.~~ Protocol for facility ~~emergency~~ security measures and ~~procedures~~access to visitors; and
  - ~~r-v.~~ Discuss interest in becoming certified for medication distribution; ~~and~~

~~s. Review facility daily routine, activities, cleaning, transportation, treatment group schedules, and meals.~~

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-40-30. Resident file.**

1. Upon placement, a resident's case record is confidential and must be protected from unauthorized examination unless permitted or required by law or regulation. The facility shall adopt a policy regarding the retention of resident records.
2. The resident record must include on file:
  - a. A file inventory with dates of admission, discharge, aftercare, referral source, and emergency contact information;
  - b. The resident's full name, date of birth, and other identifying information;
  - c. A photo of the resident;
  - d. The name and contact information of a ~~resident's~~ custodian and parent or guardian at the time of admission, as well as contact information of additional family members approved to engage in visitation and maintain family connections;
  - e. The date the resident was admitted and the referral source;
  - f. Signed care agreement or contract, including financial responsibility and expectations of all parties. The placement agreement must indicate a clear division of responsibility and authority between the facility and the custodian and parent or guardian;
  - g. Signed written consents, as applicable;
  - h. A copy of the initial and all ongoing assessment reports completed by the department approved qualified individual or documentation indicating placement approval or denial if the resident is ~~placed for thirty-day assessment period, documentation indicating the resident is placed for assessment must be on file~~accepted for an emergency placement;
  - i. A copy of required interstate compact forms, as applicable;
  - j. If the resident is in public custody, a current court order establishing the placement authority of a public agency;
  - k. ~~If the resident is in public custody, a copy of initial and any ongoing judicial reviews granting approval for the qualified residential treatment program placement;~~
  - ~~l. If the resident is in public custody, a copy of the quarterly child and family team meeting notes or foster care case plan must be in the resident's file;~~
  - ~~m. Progress~~Treatment progress reports must be provided to the resident, custodian and parent or guardian monthly, or upon request. ~~This must include~~Any progress reports received at the facility from an outside agency or professional providing services to the resident ~~outside of the facility~~must be summarized and embedded in the resident's treatment plan;
  - ~~n.l.~~ Ongoing documentation and case activity logs detailing progress;

- ~~e~~.m. Documentation of discharge planning;
- ~~p~~.n. Visitation records. The facility shall have a formal plan for visitation signed by the custodian and parent or guardian detailing opportunities for the resident to engage in onsite visitation and home visits with family;
- ~~r~~.o. Education records;
- ~~r~~.p. All incident reports involving the resident; and
- ~~s~~.q. Documentation the clinical director, facility administrator, or designated employee has reviewed the resident case record monthly.

3. Resident medical information, including:
  - a. Consent for medical care. The facility has obtained written, signed informed consent that gives the facility, resident's physician, or health care consultant the following authority to:
    - (1) Provide or order routine medical services and procedures;
    - (2) Delegate and supervise administration of medications by authorized employees and for such employees to handle, provide the medication to the resident, and provide monitoring of resident self-administration;
    - (3) Obtain medical information, as needed, on the resident; and
    - (4) Provide or obtain an order for medical services and procedures when there is a life-threatening situation, emergency medical procedures, including surgery, when it is not possible to reach the person or authority authorized immediately to give signed written specific informed consent;
  - b. Documentation about any special nutritional or dietary needs identified;
  - c. Documentation of health history;
  - d. Documentation of any medical treatments received while residing in the facility, including:
    - (1) Dates and person administering medical treatment;
    - (2) Immunizations;
    - (3) Laboratory tests;
    - (4) Routine and emergency health care examinations;
    - (5) Dental examinations and treatment; and
    - (6) Eye examinations and treatment;
  - e. Medication administration records; and
  - f. A copy of the treatment plan prepared by the facility.
4. The resident record must include aftercare supports for six months postdischarge. Information to include:
  - a. Contact information for the custodian and parent or guardian and others determined necessary for aftercare;

- b. Date of discharge and six-month aftercare date of completion;
- c. Documentation from the family engagement specialist detailing the aftercare or family treatment plan progress;
- d. Documentation of ongoing communication with the resident, ~~resident's~~ custodian and parent or guardian, and local providers; and
- e. Upon six-month completion of aftercare, the resident file must include:
  - (1) Summary of the six-month aftercare services provided; and
  - (2) A copy of the department-approved outcomes survey.

**History:** Effective October 1, 2019; [amended effective October 1, 2021](#).

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02, 50-11-05

### **75-03-40-32. Respite.**

A facility may operate an optional respite care program with approval of the department. Respite care is defined as temporary relief care for a [childresident](#) with special medical, emotional, or behavioral needs, which requires time-limited supervision and care by a licensed foster care provider. A respite care episode is a specified period of time during which respite care is provided by a licensed provider.

1. Eligibility. Residents eligible for respite care offered by an approved facility include a foster child in public custody and a former qualified residential treatment program resident engaged in the six-month aftercare.
2. Admission and discharge. A facility operating a respite care program shall have the written policies and procedures for admissions and discharge for respite care, including eligibility into the respite program, admissions criteria, required belongings, medications needed upon admission, required identification documentation, authorizations needed, written consents for emergency medical care, medications, and discharge planning.
3. Staffing. A facility shall assign an employee to have primary responsibility for the facility's respite care program. Employee-to-resident ratios at a minimum, must meet the ratio as described in this chapter for direct care.
4. Program and services. A facility respite program must be developed which allows for a short-term refocus of service delivery and supports for a community placement. Respite care placements are exempt from the medical examination requirements due to the short period of stay.
5. Respite care plan. A facility shall develop an abbreviated plan for each resident admitted to the facility for respite care. The abbreviated plan must provide for services to meet social, emotional, medical, and dietary needs. The respite plan must address daily routine, engagement in recreational activities, ongoing education, and discharge planning. The respite plan may include a list of facility-based and community-based services and supports the resident and family is currently receiving or will receive upon discharge.
6. Length of stay. A respite care placement may not extend beyond seven days per episode.
7. Discharge. When a resident is discharged from respite care, the facility shall document in the resident's respite file the dates of the resident's stay, a summary of the resident's stay, the name of the person to whom the resident was discharged, and a list of all personal belongings

and medications that went with the resident upon discharge. A final plan must be provided to the custodian and parent or guardian upon discharge.

8. Respite resident file. A facility with a respite care program shall include:
  - a. The resident's full name, date of birth, and other identifying information;
  - b. The contact information of the ~~resident's~~ custodian and parent or guardian at the time of admission;
  - c. The date the resident was admitted and discharged;
  - d. Signed respite care agreement;
  - e. Signed written consents, including consent to nonemergency use of psychotropic medication and consent for use of secured unit, if applicable;
  - f. If the ~~child~~resident is in public custody, a current court order establishing the facility's authority to accept and care for any resident under the custody of a public agency;
  - g. Copy of the abbreviated plan prepared by the facility; and
  - h. Medication administration records, if applicable.

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-40-33. Admissions and assessment.**

1. Admissions policies and procedures. A facility shall have written resident admission policies and procedures that describe the primary treatment offered onsite, range of presenting behaviors the facility shall treat, and procedures for admitting a resident.
2. Admissions and discharge committee. A facility shall have an admissions and discharge committee with written policy specific to employees on the committee, ~~how often the committee meets~~, and the timeliness the committee has in responding to referrals. The committee shall meet on at least a weekly basis. ~~Before a prospective resident is admitted to the facility, the committee shall evaluate the needs of the prospective resident using information and procedures described in policy and determine whether the facility can meet the identified needs of the prospective resident.~~
3. Admission determination. The admissions committee shall complete a written, dated, and signed admission determination on a prospective resident which includes a preadmission review and identification of the prospective resident's primary presenting needs. ~~The committee shall provide a written statement recommending reasons for or against admission based on the ability of the facility to meet the prospective resident's needs.~~ The facility shall provide the admission determination ~~and decision~~ to the referral within seven days of receipt of the completed application. Referral may be completed by:
  - a. A public agency, if a prospective resident is in foster care and a public agency is granted custody and given full placement authority pursuant to law or court order; or
  - b. A parent or guardian, if a prospective resident is preapproved by the department as a private placement.
4. ~~Preplacement visit. Whenever possible, a facility shall arrange with the custodial agency for a preplacement visit for the prospective resident and the parent or guardian, to provide them~~

~~with an orientation to the facility. If the ability to arrange onsite visitation is not possible, a virtual meeting is acceptable.~~

~~5.~~ Admission conditions. A facility may admit a prospective resident ~~if the facility can meet the prospective resident's needs~~, as determined by the admission determination and the following conditions are met:

- a. Qualified individual - Level of care assessment.
  - (1) Completed assessment. The facility has received documentation from the department-approved qualified individual granting approval for the resident to be admitted to a qualified residential treatment program based on the North Dakota level of care assessment; or
  - (2) ~~Thirty day assessment period approval. The facility has received documentation from the department approved qualified individual granting approval for the resident to be admitted for a thirty day assessment period~~Emergency placement. A resident may ~~not~~ be admitted to the facility for ~~the~~an emergency placement for a thirty-day level of care assessment period ~~without the approval of the qualified individual.~~Emergency placements denied for continued placement may not exceed thirty days from admission. For residents placed in the facility during the thirty-day level of care assessment period ~~to determine appropriateness of a qualified residential treatment program placement~~, the facility shall allow access to the qualified individual and collaborate in the completion of the required level of care assessment;
- b. Juvenile court approval. For foster children, custodial case managers must receive confirmation from the juvenile court ~~must be on file~~ approving the qualified residential treatment program placement within sixty days of the resident's date of entry into the facility. A facility is not required to have a copy of the confirmation on file;
- c. Interstate placements. In accepting a prospective resident from outside the state of North Dakota, the facility shall receive prior written approval under the interstate compact on the placement of children and meet all requirements of section 75-03-40-34;
- d. Nondiscrimination against a resident; and
- e. All documentation required for the resident record, including medical consent, medical history, family contact information, family history, placement care agreement, and financial responsibility.

6.5. Orientation. Upon admissions, each resident shall receive orientation to facility living. An employee shall:

- a. Orient the new resident and the ~~resident's~~ custodian and parent or guardian to the facility program, ~~if no preplacement visit occurred;~~
- b. Help the new resident to adjust to the effects of separation from family and to the residential placement; and
- c. Provide the new resident and the ~~resident's~~ custodian and parent or guardian copies of the ~~house~~facility rules, including rules on visiting, expected behavior and consequences for rule infractions, resident rights, and grievance and complaint procedures, with explanations of the documents.

7.6. Initial screenings. ~~Upon admissions, a~~A facility shall complete for each resident a:

- a. Suicide risk screening ~~within twenty-four hours;~~

- b. Mental health screening ~~within twenty-four hours~~; and
- c. Health screening completed by the facility nurse ~~within twenty-four hours~~. The health screening may include documenting height, weight, and identification of any distinct markings, such as a resident's birthmark, tattoos, bruises, or cuts.

**8.7.** Discharge date. Each admission must have preliminary plans for discharge.

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-40-34. Interstate compact on the placement of children.**

1. All placements of children made from out of state must follow the interstate compact on the placement of children or the interstate compact ~~on~~for juveniles and be in full compliance with the appropriate interstate compact. It is the responsibility of the facility to ensure, prior to the placement in the facility, all necessary procedures pursuant to the interstate compact on the placement of children or the interstate compact ~~on~~for juveniles have been completed.
2. Before admitting an out-of-state resident, a facility shall make arrangement with the referral to assure a lawful return of the resident to the sending state without regard to the circumstance under which the resident is discharged.
3. Out-of-state referrals must adhere to all requirements of this chapter.

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 12-66, 14-13, ~~27-22~~

#### **75-03-40-36. Discharge plan.**

Each resident must have their discharge plan developed upon admission and reviewed ongoing as part of the treatment plan.

1. Persons involved in discharge planning should include:
  - a. Resident;
  - b. Resident's parent or guardian;
  - c. Custodian, if applicable;
  - d. Psychiatrist, if applicable;
  - e. Therapist, if applicable;
  - f. Clinical director;
  - g. Treatment coordinator employee;
  - h. Facility nurse;
  - i. Facility educator or community teacher;
  - j. Direct care employee;
  - k. Foster parents, if applicable;

- l. Juvenile court, if applicable; and
  - m. Other individuals important to the resident and family.
2. The discharge plan must address the following:
    - a. The date of admission;
    - b. The anticipated date of discharge;
    - c. Details of the events and circumstances leading to the decision to discharge;
    - d. The name and address of the individual or agency to whom the resident must be discharged and the rationale for planning a discharge to that individual or agency;
    - e. A summary of services provided during placement;
    - f. A summary of goal achievement;
    - g. A summary of the resident's continuing needs, including health care, educational or vocational training, psychiatric, medical, psychological, social, behavioral, developmental, and chemical dependency treatment needs;
    - h. Appointments scheduled, including individual therapy, psychiatric services, educational services, and other services or supports as needed;
    - i. Medication plan, including a seven-day supply of needed medication and a prescription for medication to last through the first outpatient visit with a prescribing provider;
    - j. A summary of community-based service needs for the resident and resident's family;
    - k. A summary of efforts made by the facility to prepare the resident and the resident's family for discharge; and
    - l. The facility's plan for the six months of aftercare services for the resident and the resident's family.
  3. The discharge committee shall review and approve each anticipated discharge thirty days prior to the discharge and provide the completed discharge plan to the custodian at least seven days prior to the anticipated discharge. A discharge planning meeting involving the resident, custodian, parent or guardian, facility treatment team, additional family members, community service providers, and foster care provider ~~if the resident is being discharged to another level of foster care, if applicable~~ must take place at least seven days before discharge to review and sign the discharge plan to ensure the continuity of services consistent with the resident's treatment needs after discharge.
  4. ~~For discharges that were~~ if a discharge is not anticipated at least thirty calendar days ahead of time, the discharge is considered unplanned and the facility shall ~~finalize a discharge plan and provide a written copy to the:~~
    - a. Hold a discharge planning meeting involving the resident, custodian, parent or guardian, facility treatment team, additional family members, and any other relevant parties. This meeting must allow relevant parties time to review the discharge plan and aftercare engagement strategies while discussing services needed to best meet the needs of the resident.
    - b. Create and provide in writing a finalized discharge and aftercare plan to the custodian and parent or guardian ~~and custodial agency~~ at least seven days prior to the resident's

~~discharge. A discharge planning meeting to discuss efforts the facility engaged to maintain the placement must take place to review and sign the discharge plan to ensure the continuity of services consistent with the resident's treatment needs after discharge.~~

c. Provide the discharge plan and aftercare plan no greater than seven days postdischarge, if an immediate discharge occurred.

~~5. For unplanned discharges due to the emergency nature of the resident's needs, the facility verbally shall notify the parent or guardian and custodial agency as soon as possible and no longer than twenty-four hours after discharge from the facility. The facility shall send the written discharge plan within seven days after the resident's unplanned emergency discharge.~~

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-40-38. Aftercare.**

The facility shall have written policies and procedures regarding how the six-month aftercare requirements must be implemented to best meet the needs of residents and families. Aftercare policy applies to all residents accepted into the facility for treatment. If a resident is placed as an emergency placement and not approved for treatment, aftercare services are not required. The six-month followup period must begin the day following the resident's discharge from the facility. The facility shall implement the aftercare plan developed as part of the discharge planning process. The facility may directly provide aftercare services and supports or coordinate with local service providers. The facility shall conduct a department-approved postresidential outcomes survey at the conclusion of the six-month required aftercare period. Postdischarge aftercare services must be provided by the facility as follows:

1. If a resident discharged from the facility remains in foster care, the facility shall collaborate with the custodial agency to implement the six-month ~~followup period~~ postdischarge plan.

2. If a resident is discharged and no longer in foster care, the facility shall coordinate the ongoing six-month aftercare with the resident and resident's family. ~~The facility may directly provide aftercare services and supports or coordinate with local service providers. The facility shall conduct a department approved postresidential outcomes survey at the conclusion of the six-month required aftercare period.~~ If the resident's family declines continued engagement with the facility, the facility is required to continue to attempt to maintain at least monthly contact with the family for a period of six months.

3. If a resident is successfully discharged, but does require readmission to a facility, the aftercare services will discontinue and a new aftercare period will begin postdischarge from the current facility placement.

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-40-40. Incident and sentinel event reporting.**

The facility shall have written policy outlining the documentation of incidents and sentinel events that occur while the resident is in placement. Policy must include:

1. Description of an incident as an unplanned occurrence that resulted or could have resulted in injury to people or damage to property, specifically involving the general public, residents, or agency employees.

- a. Incidents involving law enforcement, including in the case of a runaway, criminal activity, behavior resulting in harm to others, or restraint injury. An incident also may involve issues, such as outbreak of a serious communicable disease, harassment, violence, and discrimination.
  - b. Notification must be made to the ~~resident's~~ custodian and parent or guardian immediately or no more than ~~twenty-four~~twelve hours.
2. Description of a sentinel event as an unexpected occurrence involving death or serious physical or psychological injury not related to the natural course of a resident's illness or underlying condition, including any process variation for which a reoccurrence would carry a significant chance of a serious adverse outcome.
    - a. Sentinel events include serious injury or trauma to a resident, attempted suicide by the resident, death of a resident, or inappropriate sexual contact.
    - b. Notification must be made to the ~~resident's~~ custodian and parent or guardian, and the department immediately or no more than twelve hours.
  3. Documentation of an incident or sentinel event must be completed and placed in the resident's record ~~within twenty-four hours~~. The report must include:
    - a. Resident's name, age, and sex;
    - b. A description of the incident or event;
    - c. The date, time, and location of the incident or event;
    - d. The name of each employee or nonemployee involved;
    - e. Methods used to address the resident's behavior, including duration of each intervention;
    - f. Detailed description of the technique or approach engaged with the resident at the time of the incident or event;
    - g. Results achieved from methods used to address resident behavior; and
    - h. Injuries received by either the resident or an employee in using physically enforced separation or ~~physical hold~~ restraint, how the injuries occurred, and any medical care provided.
  4. The facility shall maintain a log of written reports of incidents involving residents.
  5. Direct care employees must be given time at the beginning of each shift to be informed of or review incident reports occurring since their last shift.
  6. Employees, nonemployees, and residents must be given time to debrief the incident with clinical staff.

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-40-43. Medication management.**

1. For purposes of this section:

- a. "General supervision" means regular coordination, direction, and inspection of the exercise of delegation of medication administration by a physician or nurse of an employee not licensed to administer medications.
  - b. "Medication administration" means proper administration of medication to a resident by an employee designated and trained for the administration of medications.
  - c. "Monitoring of resident self-administration" means distributing the medication to the resident by a designated and trained employee according to physician and medication label instructions and observing and ensuring the proper ingestion, injection, application, or inhalation of the medication by the resident.
2. The facility shall adopt comprehensive written policies and procedures for medication administration and monitoring of resident self-administration. Each employee responsible for administering medication or monitoring of resident self-administration shall receive a copy of the facility policies and procedures for medication administration and monitoring of resident self-administration and shall be knowledgeable of them. The policies and procedures must include:
- a. Medications administration:
    - (1) Having written informed consent on file;
    - (2) Having information in each resident's health record about any health allergies or health-related restrictions;
    - (3) Having on file written authorization from a physician or nurse for each employee permitted to administer medications or to monitoring of resident self-administration;
    - (4) Instructions for employees concerning administration of medications and monitoring of resident self-administration of medications, secure storage of medications, and recording medication administration information in the resident's health record;
    - (5) Immediate notification to the facility nurse of all medication errors;
    - (6) Immediate notification of a physician in the event of a resident's adverse drug reaction; and
    - (7) Medications distributed onsite may only occur when an employee authorized by the facility is present;
  - b. For prescription medications, all of the following apply:
    - (1) Require the medication be administered by employees certified to distribute medication to a resident only when:
      - (a) The resident's attending physician or medical consultant provides employees with clear written instructions for administering the medication and authorizes the facility to administer the medication;
      - (b) The administration takes place under the general supervision of a physician or nurse. Employees certified to distribute medication are supervised by the facility nurse; and
      - (c) The label on the medication container gives clear instruction for administration of the medication and, if not clear, the facility shall contact the physician or pharmacy for clarification before administration of the medication; and

- (2) Allowing a medication to be self-administered onsite by a resident only while the resident is under direct supervision of an employee and if self-administration is authorized in writing from the prescribing physician or facility medical consultant;
- c. Information to employees, a resident, and the ~~resident's~~ custodian and parent or guardian about any medication prescribed for the resident and when a physician orders any changes to the resident's medication. Information must include expected benefits and potential adverse side effects that may affect the resident's overall treatment. Employees also shall be informed on procedures of what to do if the resident refuses medication;
- d. Instructions for employees on what to look for in monitoring physical or mental changes to a resident that may occur from a medication, what to do if physical or mental changes are observed, and documentation needed in the resident's health record;
- e. Arrangement for a second medical consultation when a resident or the ~~resident's~~ custodian and parent or guardian has concerns about any medication received by the resident or the resident's medication plan;
- f. The resident's physician or facility medical consultant review a resident's prescription when there are noted adverse effects from the medication. Documentation showing the date of review and reviewer's name must appear in the resident's health record;
- g. The use of any nonprescription medication is based on an assessment by a physician or nurse and is approved by either a physician or nurse;
- h. Arrangement for administration of prescribed medications to a resident when the resident is away from the facility. A resident may not be given access to medications if there is reason to believe the resident may harm themselves through abuse or overdose;
- i. Medications storage. A facility shall comply with all the following requirements for storage of medications:
  - (1) Medications must be kept in locked cabinets or containers and under proper conditions of sanitation, temperature, light, moisture, and ventilation to prevent deterioration;
  - (2) A facility immediately shall dispose properly of all outdated prescriptions, over-the-counter medication, and all prescription medication no longer in use; and
  - (3) The facility shall maintain a log of the medication properly disposed, which employee disposed of it, and what and how much was disposed;
- j. Medication administration record. A facility shall have in each resident's health record a written medications administration record which lists each prescribed and over-the-counter medication the resident receives. The record must contain the following information:
  - (1) For an over-the-counter medication, the resident's name, type of medicine, reason for use, times and day of administration, and employee authorizing its use; and
  - (2) For a prescription medication, all of the following apply:
    - (a) The name of the resident;
    - (b) The generic or commercial name of the medication;
    - (c) The date the medication was prescribed;

- (d) The name and telephone number of the prescriber to call in case of a medical emergency;
  - (e) The reason the medication was prescribed;
  - (f) The dosage;
  - (g) The time or times of day for administering the medication;
  - (h) Documentation of all medication administered with the date and time of administration or, if not administered, with the date and time of resident refusal to take it;
  - (i) The method of administration, such as orally or by injection;
  - (j) The name of the employee who administered or monitored resident self-administration of the medication;
  - (k) Any adverse effects observed; and
  - (l) Any medication administration errors and corrective or other action taken; and
- k. Psychotropic medications. In this subdivision, "psychotropic medication" means any drug that affects the mind and is used to manage behavior or psychiatric symptoms.
- (1) Nonemergency procedures. A facility serving a resident for whom psychotropic medications are prescribed shall ensure all of the following requirements are met:
    - (a) Arrangements have been made for a physician or medical consultant to complete a medical screening of the resident for the type of psychotropic medication to be prescribed;
    - (b) The resident, if fourteen years of age or older, and the ~~resident's~~ custodian ~~and parent or guardian~~ have signed written consent forms agreeing to the use of the psychotropic medication. The facility shall pursue consent from a parent or guardian with the final consent made by the custodian; and
    - (c) The facility has obtained from the prescribing physician or medical consultant a written report within the first forty-five days after the resident has first received a psychotropic medication and at least every sixty days thereafter. The report must state in detail all of the following:
      - [1] Reasons for the initial use of the medication;
      - [2] Reasons for continuing, discontinuing, or changing the medication;
      - [3] Any recommended change in treatment goals or program; and
      - [4] The method and procedures for administering or monitoring of resident self-administration of a psychotropic medication must have been approved by the prescribing physician or medical consultant.
  - (2) Emergency procedures. For emergency administration of a psychotropic medication to a resident, a facility shall:
    - (a) Have authorization from a physician;

- (b) Notify the ~~resident's~~ custodian and parent or guardian as soon as possible following emergency administration. The facility shall document the dates, times, and individuals notified in the resident's record; and
  - (c) Document the physician's reasons for ordering the emergency administration of psychotropic medication.
- (3) Revocation of consent or refusal. A resident, ~~or custodian, and parent or guardian~~ may at any time revoke consent for nonemergency use of psychotropic medications. The facility shall consider the consent or refusal of the resident's parent or guardian. When a consent is revoked, the facility shall do all of the following:
- (a) Document the reasons for refusal;
  - (b) Employee who personally witnessed the refusal shall sign a written statement indicating the event and place it in the file;
  - (c) Notify the resident's physician or medical consultant; and
  - (d) Notify the custodian and parent or guardian. Notification must be provided immediately if the resident's refusal threatens the resident's well-being and safety.

**History:** Effective October 1, 2019; amended effective October 1, 2021.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-40-45. Emergency safety interventions.**

The facility shall provide and administer emergency safety interventions as follows:

1. For purposes of this section:
  - a. "Drug used as a restraint" means any drug that:
    - (1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;
    - (2) Has the temporary effect of restricting the resident's freedom of movement; and
    - (3) Is not a standard treatment for the resident's medical or psychiatric condition.
  - b. "Emergency safety intervention" means the use of restraint ~~or seclusion~~ as an immediate response to an emergency safety situation involving unanticipated resident behavior that places the resident or others at threat of serious violence or serious injury if no intervention occurs.
  - c. "Emergency safety situation" means a situation where immediate risk of harm is present due to unanticipated resident behavior that places the resident or others at threat of serious violence or serious injury if no intervention occurs and that calls for an emergency safety intervention as defined in this section.
  - d. "Personal restraint" means the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident to calm or comfort him or her, or holding a resident's hand to safely escort a resident from one area to another, or a physical escort which means a temporary touching or holding of the

hand, wrist, arm, shoulder, or back for the purpose of inducing a resident who is acting out to walk to a safe location.

- e. "Tier ~~4~~<sup>2</sup> mental health professional" has the same meaning as the term defined in subsection ~~8~~<sup>9</sup> of North Dakota Century Code section 25-01-01.

2. Education and training related to emergency safety interventions:

- a. Individuals who are qualified by education, training, and experience shall provide employee education and training.
- b. Employees must be trained and demonstrate competency before participating in an emergency safety intervention.
- c. The facility shall document in the employee personnel records that the training and demonstration of competency were successfully completed.
- d. All training programs and materials used by the facility must be available for review by the accreditation body and the state agency.
- e. The facility shall require employees to have ongoing education, training, and demonstrated knowledge and competency of all of the following, no less than semiannually:
  - (1) Techniques to identify employee and resident behaviors, events, and environmental factors that may trigger emergency safety situations;
  - (2) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods, to prevent emergency safety situations;
  - (3) The safe use of restraint ~~and seclusion~~, including the ability to recognize and respond to signs of physical distress in residents who are restrained ~~or in seclusion~~; and
  - (4) Training exercises in which employees successfully demonstrate in practice the techniques they have learned for managing emergency safety situations.

3. Emergency safety intervention:

- a. Facilities shall have a policy for the safe use of emergency safety interventions;
- b. Restraint ~~and seclusion~~ may be used only when a resident poses an immediate threat of serious violence or serious injury to self or others and must be discontinued when the immediate threat is gone. The use of seclusion by a facility is prohibited;
- c. Employees shall document all interventions attempted to de-escalate a resident before the use of ~~seclusion or~~ a restraint ~~are implemented~~;
- d. When restraint is deemed appropriate, personal restraint is allowed. Mechanical restraints, prone restraints, and drugs used as a restraint are prohibited;
- e. Employee training requirements must include procedures:
  - (1) For when ~~seclusion or~~ restraint may and may not be used;
  - (2) That safeguard the rights and dignity of the resident;

- (3) For obtaining informed consent, including the right of the custodian and parent or guardian of the resident to be notified of any use of restraint ~~or seclusion use~~ or any change in policy or procedure regarding use;
- (4) Regarding documentation requirements of each restraint episode ~~of seclusion or restraint~~ and the use of such data in quality improvement activities; and
- (5) Regarding the debriefing of the resident and employees immediately after incidents of ~~seclusion or~~ restraint; and

f. Quality management activities must examine the following:

- (1) Available data on the use of these practices and their outcomes, including the frequency of the use of restraint ~~and seclusion~~, settings, authorized employees, and programs;
- (2) The accuracy and consistency with which restraint ~~and seclusion~~ data ~~are being~~ is collected, as well as the extent to which ~~these data are~~ restraint data is being used to plan behavioral interventions and employee training;
- (3) Whether policies and procedures for using these practices are being implemented with fidelity;
- (4) Whether procedures continue to protect residents; and
- (5) Whether existing policies for restraint ~~and seclusion~~ remain properly aligned with applicable state and federal laws.

4. Restraint:

- a. Personal restraint is the only form of restraint allowed.
- b. If an emergency safety situation occurs and a personal restraint is determined necessary, the following actions are prohibited:
  - (1) Any maneuver or techniques that do not give adequate attention and care to protection of the resident's head;
  - (2) Any maneuver that places pressure or weight on the resident's chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression;
  - (3) Any maneuver that places pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the resident's head or neck, or that otherwise obstructs or restricts the circulation of blood or obstructs an airway, such as straddling or sitting on the resident's torso;
  - (4) Any type of choke hold;
  - (5) Any technique that uses pain inducement to obtain compliance or control, including punching, hitting, hyperextension of joints, or extended use of pressure points for pain compliance; and
  - (6) Any technique that involves pushing on or into a resident's mouth, nose, or eyes, or covering the resident's face or body with anything, including soft objects, such as pillows, washcloths, blankets, and bedding.

5. **Seclusion:**

- ~~a. A resident may be maintained in seclusion only by one of the following means:~~
  - ~~(1) A room that does not use a key lock, pad lock, or other lock of similar design and remains unlocked;~~
  - ~~(2) A room equipped with a lock that only operates with an employee present such as a push-button lock that only remains locked while it is being pushed; or~~
  - ~~(3) A room or area where an employee is positioned to prevent the resident from leaving.~~
- ~~b. A resident placed in seclusion must be continuously observed by an employee.~~
- ~~c. A room used for seclusion must:~~
  - ~~(1) Hold only one resident at a time;~~
  - ~~(2) Have adequate ventilation;~~
  - ~~(3) If there is a door, a shatter-proof observation window on or adjacent to the door, which allows for observation of all parts of the room and allows for the resident to see out;~~
  - ~~(4) Be located within hearing or call to a living area or other area of activity;~~
  - ~~(5) Allow for auditory contact with the resident at all times;~~
  - ~~(6) Have at least sixty-four square feet [5.95 square meters] of floor space with a ceiling height of not less than eight feet [2.44 meters] and a width of at least eight feet [2.44 meters];~~
  - ~~(7) Be an architectural or permanent part of the building structure and may not include a box or other compartment that represents a stand-alone unit within the facility; and~~
  - ~~(8) Be free of any objects and materials that could represent a hazard to the resident or others.~~
- ~~6. OrdersAuthorization for the use of restraint or seclusion:~~
  - ~~a. OrdersAuthorization for restraint or seclusion must be orderedgiven by a tier 42 mental health professional and the ordering-tier 42 mental health professional must be trained in the use of the facility emergency safety interventions.~~
  - ~~b. The orderauthorization must indicate the least restrictive emergency safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with the clinical director.~~
  - ~~c. If the orderauthorization for restraint or seclusion is verbal, the verbal orderauthorization must be received by a nurse or clinical director team member, while the emergency safety intervention is being initiated by an employee or immediately after the emergency safety situation ends. The tier 42 mental health professional must verify the verbal orderauthorization in a signed written form in the resident's record and be available to the resident's treatment team for consultation, in person or through electronic means, throughout the period of the emergency safety intervention.~~
  - ~~d. Each orderauthorization for restraint or seclusion:~~
    - ~~(1) Must be limited to no longer than the duration of the emergency safety situation;~~

- (2) May not exceed ~~four hours for residents ages eighteen to twenty one; two hours for residents ages nine to seventeen; or one hour for residents under age nine~~the amount of time necessary to begin verbal de-escalation techniques with the resident; and
  - (3) Must be signed by the ~~ordering~~-tier 12 mental health professional no later than twelve hours from initiation of a verbal ~~order~~authorization.
- e. Within one hour of the initiation of ~~the emergency safety intervention~~a restraint, a face-to-face assessment of the physical and psychological well-being of the resident must be completed, documenting:
- (1) The resident's physical and psychological status;
  - (2) The resident's behavior;
  - (3) The appropriateness of the intervention measures; and
  - (4) Any complications resulting from the intervention.
- f. Each ~~order~~authorization for restraint-~~or seclusion~~ must include:
- (1) The name of the ~~ordering~~-tier 12 mental health professional;
  - (2) The date and time the ~~order~~authorization was obtained; and
  - (3) The emergency safety intervention ~~ordered~~authorized, including the length of time authorized.
- g. An employee shall document the intervention in the resident's record. That documentation must be completed by the end of the shift in which the intervention occurs. If the intervention does not end during the shift in which it began, documentation must be completed during the shift in which it ends. Documentation must include all of the following:
- (1) Each ~~order~~authorization for restraint-~~or seclusion~~ as required in subdivision f;
  - (2) The time the emergency safety intervention began and ended;
  - (3) The time and results of the one-hour assessment required in subdivision e;
  - (4) The detailed emergency safety situation that required the restraint-~~or seclusion~~; and
  - (5) The name of each employee involved in the ~~emergency safety~~restraint intervention.
- h. The facility must maintain a record of each emergency safety situation, the interventions used, and their outcomes.
- i. If a tier 12 mental health professional ~~orders~~authorizes the use of restraint-~~or seclusion~~, that person shall:
- (1) Consult with the resident's ~~treatment team~~prescribing physician as soon as possible and inform the resident's ~~treatment team~~-physician of the emergency safety situation that required the restraint-~~or seclusion~~; and
  - (2) Document in the resident's record the date and time the resident's ~~treatment team~~prescribing physician was consulted.

7.6. Monitoring of the resident in and immediately after restraint-~~or seclusion~~:

- a. An on-call clinical team member trained in the use of emergency safety interventions shall be physically present, continually assessing and monitoring the physical and psychological well-being of the resident and the safe use of restraint ~~or seclusion~~ throughout the duration of the emergency safety intervention.
- b. If the emergency safety situation continues beyond the time limit of the ~~order~~ authorization for the use of restraint ~~or seclusion~~, a nurse or other on-call clinical team member, immediately shall contact the ~~ordering~~ tier 42 mental health professional, to receive further instructions.
- c. Upon completion of the emergency safety intervention, the resident's well-being must be evaluated immediately after the restraint ~~or seclusion is removed or~~ has ended.

8.7. Notification of custodian and parent or guardian:

- a. The facility shall notify the custodian and parent or guardian of the resident who has been restrained ~~or placed in seclusion~~ as soon as possible after the initiation of each emergency safety intervention.
- b. The facility shall document in the resident's record that the custodian and parent or guardian has been notified of the emergency safety intervention, including the date and time of notification and the name of the employee providing the notification.

9.8. Postintervention debriefings:

- a. Within twenty-four hours after the use of restraint ~~or seclusion~~, employees involved in an emergency safety intervention and the resident shall have a face-to-face discussion. This discussion must include all employees involved in the intervention except when the presence of a particular employee may jeopardize the well-being of the resident. Other employees and the ~~resident's~~ custodian and parent or guardian may participate in the discussion when it is deemed appropriate by the facility. The facility shall conduct such discussion in a language understood by the ~~resident's~~ custodian and parent or guardian. The discussion must provide all parties the opportunity to discuss the circumstances resulting in the use of restraint ~~or seclusion~~ and strategies to be used by the facility, the resident, or others who could prevent the future use of restraint ~~or seclusion~~.
- b. Within twenty-four hours after the use of restraint ~~or seclusion~~, all employees involved in the emergency safety intervention, and appropriate supervisory and administrative leadership, shall conduct a debriefing session that includes, at a minimum, a review and discussion of:
  - (1) The emergency safety situation that required the emergency safety intervention, including a discussion of the precipitating factors that led up to the emergency safety intervention;
  - (2) Alternative techniques that might have prevented the use of the restraint ~~or seclusion~~;
  - (3) The procedures, if any, employees are to implement to prevent any recurrence of the use of restraint ~~or seclusion~~; and
  - (4) The outcome of the emergency safety intervention, including any injuries that may have resulted from the use of restraint ~~or seclusion~~.
- c. An employee shall document in the resident's record that both debriefing sessions took place and shall include in that documentation the names of employees who were present

for the debriefing, names of employees excused from the debriefing, and any changes to the resident's treatment plan that resulted from the debriefings.

**History:** Effective October 1, 2019; [amended effective October 1, 2021](#).

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-40-46. Use of special care unit.**

[Repealed effective October 1, 2021.](#)

- ~~1. For purposes of this section, "special care unit" means a separate secure area of the facility designated as a protective environment in which treatment and services are provided to residents. The special care unit is secured by means of a key lock that prevents residents from leaving at will. A special care unit is not seclusion, but rather a fully operational separate space located on the facility's grounds. A facility building locked for purposes of external security is not the special care unit, provided that residents may exit at will.~~
- ~~2. Conditions for use. A resident may not be placed in a special care unit unless the facility has first obtained department approval to operate the special care unit and the special care unit meets the requirements of this section.~~
- ~~3. If an emergency safety situation arises in the special care unit requiring the use of the emergency safety interventions of restraint or seclusion for a resident placed within the special care unit, then section 75-03-40-45 applies.~~
- ~~4. A facility's use of the special care unit must be part of a behavior management program and all of the following conditions must be met:
  - ~~a. The resident has exhibited chronic or recent severely aggressive or destructive behaviors that have been determined to place the resident or others at serious threat of violence or injury to self or others and the lack of the special care unit prevents the clinical team from being able to treat the resident.~~
  - ~~b. A tier 1 mental health professional knowledgeable about contemporary use of the special care unit treatment intervention gives written approval included in the resident's treatment record for its use.~~
  - ~~c. The goals, objectives, and approaches in the resident's treatment plan support the use of the special care unit, with goals and objectives directed at reducing or eliminating the need for use of the special care unit.~~
  - ~~d. The custodian, or if there is no court appointed custodian, the parent or guardian of the resident gives informed consent in writing to the use of a special care unit or the intervention is ordered by a court or other lawful authority.~~
  - ~~e. The resident has no known medical or mental health condition that would place the resident at risk or harm from being placed in a special care unit as evidenced by a statement from a tier 1 mental health professional.~~
  - ~~f. The clinical team conducts at least a weekly assessment for the continued need.~~~~
- ~~5. Appropriately trained employees shall supervise the use of a special care unit directly, with evidence of training in their employee file training record.~~
- ~~6. A facility with a special care unit shall have written policies and procedures that include the following:~~

- ~~a. A resident may be placed in the special care unit only if there is a written informed consent document signed by the resident's custodian, or if there is no court appointed custodian the parent or guardian or by an order of a court or other lawful authority. A copy of the informed consent document, court order, or document from another lawful authority shall be filed in the resident's treatment record.~~
- ~~b. Custodian's, or if there is no court appointed custodian, the parent or guardian's written informed consent for placement of a resident in the special care unit must be effective for no more than forty five days from the date of the informed consent and may be withdrawn sooner unless otherwise specified in a court order or by another lawful authority.~~
- ~~c. Custodian's, or if there is no court appointed custodian, the parent or guardian's written informed consent for continued use of the special care unit may be renewed for thirty day periods except as otherwise specified in a court order or by another lawful authority. Each renewal of informed consent must be through a separate written informed consent document.~~
- ~~d. Except as otherwise specified in a court order or by another lawful authority, the custodian, or if there is no court appointed custodian, the parent or guardian may withdraw their written informed consent to the resident being placed in the special care unit at any time, orally or in writing. The resident must be transferred out of the special care unit promptly following withdrawal of the informed consent.~~
- ~~e. All employees supervising residents in the special care unit shall have the means to unlock the unit immediately.~~
- ~~f. The special care unit must be furnished in a manner that minimizes the use of items by a resident in a harmful way.~~
- ~~g. A facility shall provide in each special care unit one resident care worker with no assigned responsibilities other than direct supervision of the residents. During hours when residents are awake, there must be one resident care worker for every two residents. During sleeping hours, there must be one resident care worker for every four residents. There must be a minimum of two workers always present in the special care unit. Employees shall be present in the special care unit with residents and shall have the means to immediately summon additional clinical support as needed.~~

**History:** Effective October 1, 2019.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02