

NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 28 through 34

December 1980
January 1981
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May 1981
June 1981
July 1981

Prepared by the Legislative Council staff
for the
Administrative Rules Committee



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INSTRUCTIONS FOR MULTI MONTH ARC

PRELIMINARY NOTE: All sections for ARC are stored individually (underscored and overstruck) in Operator 7, such as 69-01-01-01:7. They will have been proofed, corrected, and rechecked. The ARC folder will have a control sheet for each month which will show the sections affected and will be attached to the hard copy.

STAFF NOTE: Always check the master sheet Jay sends with the initial input. If there is staff comment or special notes for any section, it should be typed at the top of the section being amended (!mf00, STAFF COMMENT or AGENCY SYNOPSIS: text here, two bars, and !t=1.) When all the material is new, the staff comment won't be put in until actually pulling all new work into the combined ARC.

1. Sign on CICS.
2. Sign on ATMS.
3. g;Index1-AC:1;;t
4. Change date to date of meeting in TWO places.
5. rd;Index1-AC:1;Index for Adm Code at terminal;any;THINK
6. exec;AC-STANDARDS:1
7. Run storage report on Operator 7 (report:7). (This can be checked against the control sheet in ARC folder). The ARC will be put together in numerical order as to titles and sections within the months.
8. To start type !mhead. Then !tuc and 20 bars and first title number. Example:

TITLE 3

Accountancy, Board of Public

9. Type !tnp, !tnp, (this step explained in 12), !tuc, 15 bars, the month (in caps) and year within that title and !t=3.
10. Pull in all the sections within that month of that title in numerical order.
11. If there is more than one month for one title, separate the months by a !tnp, !tuc, month (in caps) and year, !t=3, and pull in those sections in numerical order, etc.
12. Check in ps to see how the page numbering is going. ALL TITLE PAGES AND THE START OF A ~~NEW~~ MONTH MUST BE ON AN ODD-NUMBERED PAGE, so it may be necessary to insert extra !tnp's to accomplish this. This step can be done whenever you wish, but seems easier if done as each title is entered.
13. The cover page and contents page are stored as: ARC TITLE PAGE:7. This is the last step when the page numbers are known, etc. This is run separately from the ARC as it is not numbered.
14. Print pjs on "E" setup card (high speed).

REFERENCE NOTE: Supplement 28 - 34 is stored in hard copy in folder.
This can be valuable help.

TITLE 3

Accountancy, Board of Public

JULY 1981

3-02-02-01. EXAMINATION FEES. The following examination fees have been established by the board for the certified public accountants examinations:

1. ~~Seventy-five~~ Not to exceed one hundred dollars at the time an applicant files an application to take the examination.
2. ~~Forty~~ Fifty dollars for each reexamination in accounting practice.
3. ~~Twenty~~ Twenty-five dollars for each reexamination in the other subjects provided the applicant has already passed accounting practice or two other parts of the examination.

History: Amended effective July 1, 1981.

General Authority
NDCC 43-02.1-02(6)(d)

Law Implemented
NDCC 43-02.1-03(3)

3-04-06-02. ADVERTISING AND OTHER FORMS OF SOLICITATION. An accountant shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading, or deceptive. ~~A-direct-uninvited--solicitation--of--a--specific--potential client-is-prohibited.~~

History: Amended effective July 1, 1981.

General Authority
NDCC 43-02.1-02(6)(d)

Law Implemented
NDCC 43-02.1-02(6)(e)

TITLE 13

Banking and Financial Institutions, Department of

DECEMBER 1980

STAFF COMMENT: Sections 13-02-01-10 and 13-02-01-11 are all new but are not underscored so as to improve readability. The sections were declared emergency measures and thus have an odd effective date.

x 13-02-01-10. DEPOSITS SUBJECT TO NEGOTIABLE ORDERS OF WITHDRAWAL. No state banking association shall pay interest at a rate in excess of five and one-fourth percent per annum on any deposit or account subject to negotiable or transferable orders of withdrawal that is authorized pursuant to 12 U.S.C. 1832(a).

History: Effective December 26, 1980.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-03-02,
6-03-63

x 13-02-01-11. FOURTEEN TO NINETY DAY TIME DEPOSIT OF LESS THAN ONE HUNDRED THOUSAND DOLLARS. State banking associations may pay interest on any time deposit with an original maturity or notice period of fourteen days or more, but less than ninety days, at a rate not to exceed five and one-fourth percent.

History: Effective December 26, 1980.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-03-02,
6-03-63

JANUARY 1981

X 13-03-06-01. ESTABLISHMENT OF SPECIAL RESERVE FUND --COMPUTATION OF-REQUIRED-AMOUNT.

1. All credit unions operating under a charter issued by the state of North Dakota shall; be required to establish a special reserve fund, whenever the reserve fund required by North Dakota Century Code section 6-06-21 shall--be is inadequate for past due loans; . be-required-to-establish-a special-reserve-fund:--The-amount-of-such-reserve--fund--shall be--determined-and-computed-as-follows: Adequacy for past due loans shall be computed in accordance with the formula in section 13-03-06-02. When the amounts calculated under section 13-03-06-02 exceed those required pursuant to North Dakota Century Code section 6-06-21, the reserves required by North Dakota Century Code section 6-06-21 shall be considered inadequate, and the excess shall be set aside in a special reserve fund.

2. All reserve funds shall be established and adjusted at the end of each quarter of the fiscal year. If the amount of special reserve carried forward from the previous quarter exceeds the amount of special reserve required for the current quarter, the excess may be returned to undivided profits. The commissioner of banking and financial institutions may require a credit union to adjust its reserves more often, or at different times, than quarterly. The commissioner may also require a credit union to put aside additional reserves under the formula provided in section 13-03-06-03.

1:--Current-and-less-than-sixty-days---no-reserves-required-

2:--Sixty--days--and--less--than-six-months---ten-percent-of-total balance-due-

3:--Six--months--and-less-than-twelve-months---twenty-five-percent of-total-balance-due-

4:--Twelve--months-and-more---eighty-percent-of-total-balance-due- This-special-reserve-fund-shall-be-established-and-adjusted-as of--December--thirty-first--of--each--year;--and-if-the-amount carried-forward-from-the--previous--year--exceeds--the--amount required--for-this-special-reserve-fund;--the-excess-amount-may be-returned-to-undivided-profits-

History: Amended effective January 1, 1981.

General Authority
NDCC 6-01-04,
6-06-21.1

Law Implemented
NDCC 6-06-21.1

X 13-03-06-02. ALLOWABLE--INVESTMENT-FOR-FUNDS CALCULATION. Funds established-pursuant-to-this-chapter-shall-be-invested--in--certificates of--deposit-in-insured-banks;-the-Bank-of-North-Bakota;-savings-and-loan associations-or--the--North--Bakota--central--credit--union;-government securities;-or--the--international--credit--union--services--government securities-program-

1. Installment notes.

- a. Current but less than sixty days - no reserve required.
- b. Sixty days but less than six months - ten percent of total balance due.
- c. Six months but less than twelve months - fifty percent of total balance due.
- d. Twelve months and over - one hundred percent of total balance due.

2. Single maturity notes.

- a. Current but less than thirty days - no reserve required.
- b. Thirty days but less than six months - ten percent of total balance due.
- c. Six months but less than twelve months - fifty percent of total balance due.
- d. Twelve months - one hundred percent of total balance due.

History: Amended effective June 1, 1979; amended effective January 1, 1981.

General Authority
NDCC 6-01-04,
6-06-21.1

Law Implemented
NDCC 6-06-21.1

X 13-03-06-03. ADDITIONAL SPECIAL RESERVES FOR CLASSIFIED LOANS. The commissioner of banking and financial institutions may require a credit union to put aside additional reserves on business and agricultural loans according to the following classification formula:

- 1. Substandard - no reserve required.

2. Doubtful - fifty percent of total balance due.

3. Loss - one hundred percent of total balance due.

History: Effective January 1, 1981.

General Authority
NDCC 6-01-04,
6-06-21.1

Law Implemented
NDCC 6-06-21.1

*13-03-06-04. ALLOWABLE INVESTMENT FOR FUNDS. Funds established pursuant to this chapter shall be invested in certificates of deposit in insured banks, the Bank of North Dakota, savings and loan associations, or the North Dakota central credit union; government securities; or the international credit union services government securities program.

History: Effective January 1, 1981.

General Authority
NDCC 6-01-04,
6-06-21.1

Law Implemented
NDCC 6-06-21.1

FEBRUARY 1981

* 13-03-05-01. PROCEDURE. Any state-chartered credit union planning to merge shall follow and comply with the following procedure:

1. The board of directors of each affected credit union shall pass a resolution in favor of the merger, stating specific terms, if any.
2. The resolution shall be submitted to the entire membership of the affected credit unions at the time of and accompanying the notice of a regular or special meeting, and must be approved by a majority of the membership of each affected credit union present at the meeting. ~~This subsection may be waived upon approval of the state examiner.~~ The commissioner, in the exercise of the commissioner's discretion, may suspend this subsection when such suspension is in the best interests of the affected credit unions and their members.
3. When subsections 1 and 2 have been completed, application to the state credit union board may be made, by letter, duly signed by the president and attested to by the secretary of the respective boards of directors, to consummate the merger.

History: Amended effective February 1, 1981.

General Authority
NDCC 6-01-04,
6-06-36,
6-06-37

Law Implemented
NDCC 6-06-36,
6-06-37

APRIL 1981

x 13-02-02-01. BANK RESERVES. All Each banking associations association shall have on hand at all times in available funds an amount a percentage of its deposits which shall equal eight-percent-of-its demand-deposits-and-amounts-due-to-other-banks;-plus-two-percent-of-its time--deposits the amount of reserves required of it by the board of governors of the federal reserve system.

History: Amended effective April 1, 1981.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-03-37

MAY 1981

^ 13-03-02-01. AGGREGATE LIMITED TO PERCENT OF PAID-IN SHARES AND DEPOSITS - TYPE OF LIEN. No credit union organized and operating under the laws of North Dakota, except the North Dakota central credit union, Bismarck, North Dakota, which is specifically exempted from the provisions of this section, shall make, purchase, own, or carry within its assets at any one time loans secured by mortgage liens on real property in an aggregate sum in excess of an amount equal to thirty percent of the paid-in shares and deposits of such credit union. Upon application in writing by a credit union, the state credit union board may authorize that credit union to exceed the thirty percent limitation. No credit union shall, under any circumstances, make, purchase, own, or carry within its assets at any time any loan to a member on real property security which is not secured by a first mortgage lien, except as otherwise provided.

History: Amended effective May 1, 1981.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-06-06

^ 13-03-02-03. LENGTH OF TERM - AMORTIZATION - LIMITATION ON AMOUNT OF PERCENT OF APPRAISED VALUE.

1. ~~No credit union organized and operating under the laws of North Dakota; except the North Dakota central credit union; Bismarck; North Dakota; which is specifically exempted from the provisions of this section; shall make any loan secured by real property for a longer term than twenty years; and all real property loans shall be on at least an annual payment direct reduction basis; and no loan under any circumstances shall be carried in the assets of a credit union in an amount greater than seventy-five percent of the appraised value of the real property and structures thereon being mortgaged as security therefor.~~ All amortized loans secured by real property shall be limited to a term of thirty years, and an amount of eighty percent of the appraised value of the real estate being mortgaged as security for the loan.
2. All unamortized loans secured by real property shall conform to either subdivision a or b.
 - a. Ninety percent of appraised value of the real estate being mortgaged and a term of one year.
 - b. Fifty percent of appraised value of the real estate being mortgaged and a term of five years.

3. When a loan specified in subsection 1 is insured by private mortgage insurance, ~~the permissible term shall be extended to no longer than thirty years and~~ the permissible amount shall be extended to no more than ninety ninety-five percent.

History: Amended effective June 1, 1979; amended effective May 1, 1981.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-06-06

X 13-03-06-04. ALLOWABLE INVESTMENT FOR FUNDS.

1. Funds established pursuant to this chapter shall be invested in certificates of deposit in insured banks, the Bank of North Dakota, savings and loan associations, or the North Dakota central credit union; government securities; or the international credit union services government securities program.
2. A credit union required to keep reserves imposed by the federal reserve system's universal reserve requirements, and required to keep a special reserve as provided in this chapter, may satisfy its special reserve requirement in the same manner as it may satisfy its federal reserve system reserve requirement, that being vault cash, an authorized pass-through account with a correspondent, or an account with a federal reserve bank.

History: Effective January 1, 1981; amended effective May 1, 1981.

General Authority
NDCC 6-01-04,
6-06-21.1

Law Implemented
NDCC 6-06-21.1

JUNE 1981

CHAPTER 13-02-03
LIMITATION ON BANK BORROWINGS ON A DAY-TO-DAY BASIS
[Repealed effective June 1, 1981]

TITLE 33
Health, Department of

FEBRUARY 1981

STAFF COMMENT: Chapter 33-03-12 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-03-12
HEMOPHILIA

Section	
33-03-12-01	Purpose
33-03-12-02	Definitions
33-03-12-03	Eligibility
33-03-12-04	Reasonable Cost for Blood Products
33-03-12-05	When Reimbursement Not Made
33-03-12-06	Recovery From Other Sources
33-03-12-07	Patients' Eligibility
33-03-12-08	Supplies and Services Covered in Home Care for Reimbursement

33-03-12-01. PURPOSE. The state health officer hereby establishes a hemophilia program for the purpose of providing financial assistance to persons suffering from hemophilia and other related congenital bleeding disorders. The program shall assist those persons to purchase the blood derivatives and supplies necessary for home care.

History: Effective February 1, 1981.

General Authority
NDCC 23-07.2-02

Law Implemented
NDCC 23-07.2-02

33-03-12-02. DEFINITIONS. The terms used throughout this chapter have the same meaning as in the North Dakota Century Code chapter 23-07.2, except:

1. "Home care" means the self-infusion of a plasmatic clotting factor on an outpatient basis by the patient, or the infusion of a plasmatic clotting factor to a patient on an outpatient basis by a person trained in such procedures.
2. "Income" means adjusted gross income as defined in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or contemplated.
3. "Individual liability" means the individual's own liability for treatment under this program less that amount paid for through this program.
4. "Net worth" means the sum of the value of liquid assets and real property, after excluding the full value of the home derived by dividing the assessed value by the assessment ratio of the taxation district.
5. "Patient's eligibility for assistance" means any individual eligible for financial assistance under section 33-03-12-03 who would suffer financial hardship, to be determined by the state health officer, if assistance were not forthcoming from this program.
6. "Permanent resident" means any person who becomes a resident in North Dakota with a permanent North Dakota mailing address.
7. "Person" means an individual human being.

History: Effective February 1, 1981.

General Authority
NDCC 23-07.2-01

Law Implemented
NDCC 23-07.2-01

33-03-12-03. ELIGIBILITY. Any permanent resident of this state who suffers from hemophilia or other related congenital bleeding disorder may participate in the program if that person meets the requirements and standards of this chapter. The person may enter into an agreement with the state health officer for a maintenance program to be followed by that person as a condition for eligibility, and who produces evidence that this condition has been diagnosed by a licensed physician. The state health officer shall at least once in each six-month period, review the maintenance program and verify that the person is complying with the program.

History: Effective February 1, 1981.

General Authority
NDCC 23-07.2-04

Law Implemented
NDCC 23-07.2-04

33-03-12-04. REASONABLE COST FOR BLOOD PRODUCTS.

1. The reasonable cost, as determined by the state health officer, for blood products and supplies used in home care for which reimbursement is not prohibited under section 33-03-12-05 may be reimbursed under this program after deduction of the patient's liability. Reasonable cost reimbursement shall be subject to availability of moneys for this program.
2. Moneys available for this program, will be used to assist individuals on a first-come, first-served basis. Moneys will only be used for current financial assistance to eligible persons. Moneys will not be used to assist someone retroactively.

History: Effective February 1, 1981.

General Authority
NDCC 23-07.2-04

Law Implemented
NDCC 23-07.2-04

33-03-12-05. WHEN REIMBURSEMENT NOT MADE.

1. Reimbursement shall not be made under this chapter for any blood products or supplies which are not purchased pursuant to the state health officer's agreement.
2. Reimbursement shall not be made under this chapter for any portion of the costs of blood products or supplies which are payable under any other state or federal program or under any grant, contract, or any other contractual arrangement.

History: Effective February 1, 1981.

General Authority
NDCC 23-07.2-03,
23-07.2-04

Law Implemented
NDCC 23-07.2-03,
23-07.2-04

33-03-12-06. RECOVERY FROM OTHER SOURCES. The state health officer may enter into agreements with third parties, including any

insurer, for payments for blood products and for supplies used in home care by persons participating in the program.

History: Effective February 1, 1981.

General Authority
NDCC 23-07.2-04

Law Implemented
NDCC 23-07.2-04

33-03-12-07. PATIENTS' ELIGIBILITY. In determining eligibility for reimbursement under this program, the severity of the hemophilia and the magnitude of medical expenses being encountered by the family may be considered as the sole criteria for eligibility for reimbursement regardless of income, family size, or net worth.

History: Effective February 1, 1981.

General Authority
NDCC 23-07.2-04

Law Implemented
NDCC 23-07.2-04

33-03-12-08. SUPPLIES AND SERVICES COVERED IN HOME CARE FOR REIMBURSEMENT. The following supplies and services used in home care are covered under this program:

1. Coagulation factor.
2. Diluent, if needed.
3. Syringes and intravenous needles.

History: Effective February 1, 1981.

General Authority
NDCC 23-07.2-04

Law Implemented
NDCC 23-07.2-04

JULY 1981

33-23-01-02. FEES CHARGED FOR LABORATORY MICROBIOLOGICAL ANALYSES.

1. Fees regarding diagnostic clinical microbiology, effective July 1, 1981, are as follows:

a.--Anaerobic-culture-----\$-7.00
b.--Antibiotic-susceptibility-test-----7.00
 (1)--Add-\$3.00-for-two-or-more-organisms--10.00
c.--Blood-culture-----5.00
d.--Enteric-culture-----5.00
e.--Fungus-culture-----5.00
f.--Lancefield-streptococcus-grouping-----4.00
g.--Legionnaires-disease-----10.00
h.--Miscellaneous-culture-----5.00
i.--Parasite-examination-----5.00
j.--Spinal-fluid-----5.00
k.--Throat-culture-----2.00
l.--Urine-culture-----5.00
 (1)--Colony-count-add-----1.00

a. Anaerobic culture	\$ 9.00
b. Blood, enteric, spinal fluid, urine, and miscellaneous culture	7.00
c. Culture and susceptibility test	9.00
d. Parasite examination	7.00
e. Lancefield streptococcus grouping	5.00
f. Legionnaires disease	15.00
g. Throat culture	3.00

2. Fees concerning serology, effective July 1, 1981, are as follows:

a.--Antistreptolysin-test-----\$-2.50
b.--Bacterial-agglutination-(typhoid;
 brucella,-heterophil)-----2.00
 (1)--Heterophil-screen-only-----1.00
 (2)--Heterophil-ox-cell-hemolysin-----5.00
c.--Blood-grouping-----1.00
d.--Syphilis-serology-(premarital-and

prenatal-test-excepted)-----2:00
 e.---Tularemia-----2:00

a. Antistreptolysin (ASO)	\$ 4.00
b. Bacterial agglutination	3.00
c. Blood grouping	2.00
d. Ox-cell hemolysin	6.00
e. Rubella screen	2.00
f. Syphilis serology excludes premarital and prenatal	3.00
g. Tularemia	3.00

3. Fees regarding viral tests are seven dollars for a single test or any combination of tests as shown with the exception of k, p, and r, effective July 1, 1981, are as follows:

Combination-(virology)

Any-two-tests-\$13:00

Any-three-tests-\$14:00

Any-four-tests-\$16:00

a.---Cytomegalovirus
 b.---Encephalitis,-Eastern
 c.---Encephalitis,-Western
 d.---Epstein-Barr
 e.---Herpes
 f.---Influenza-A
 g.---Influenza-B
 h.---Lymphocytic-choriomeningitis
 i.---Lymphogranuloma-venereum-(LGV)
 j.---Mumps
 k.---Mycoplasma-(Eaton-agent)-----\$-7:00
 l.---Polio-1
 m.---Polio-2
 n.---Polio-3
 o.---Psittacosis
 p.---Rabies-(out-of-state)-----20:00
 q.---Rubeola
 r.---Toxoplasmosis,-Rubella,
 Cytomegalovirus,-Herpes-(TORCH)-----16:00

a. Complex - two or more	\$14.00
b. Rabies - out of state	20.00
c. Simple - one test	7.00

4. Fees concerning Rickettsial tests, effective July 1, 1981, are as follows:

a.---Proteus,-OXK,-OX2,-OX19
 (Agglutination)-----\$-4:00

b.---Rocky-mountain-spotted-fever, complement-fixation-(CF)-----	7.00
a. <u>Proteus, OXK, OX2, and OX19</u> <u>(agglutination)</u>	<u>\$ 4.00</u>
b. <u>Rocky mountain spotted fever,</u> <u>complement fixation test</u>	<u>7.00</u>

5. Fees pertaining to water bacteriological tests, effective July 1, 1981, are as follows:

a.---Water;-private-supply-----	\$-3.00
b.---Water;-public:	
(1)---One-through-twenty-tests-per-month----	3.00-each
(2)---Over-twenty-tests-per-month-----	2.00-each
c.---Swimming-pool;-private-----	4.00
d.---Swimming-pool;-public-----	4.00
(1)---Contract-optional;-reduced-fee depending-on-number-of-samples	
a. <u>Water - private supply</u>	<u>\$ 4.00</u>
b. <u>Water - public - contract optional,</u> <u>reduced fee depending on number of</u> <u>samples</u>	<u>4.00</u>

6. Dairy products fees by contract, effective July 1, 1981, are as follows:

a.---Abnormal-milk-test-(WMT)-----	\$-1.07
b.---Coliform-count-----	.61
c.---Inhibitory-substance-(Penicillin)-----	1.40
d.---Manufacturing-grade-milk	
(1)---Inhibitory-substance-----	1.40
(2)---Standard-plate-count-(SPE)-----	1.00
	<u>\$-2.40</u>
e.---Pasteurized-milk-sample	
(1)---Coliform-----	\$---.61
(2)---Inhibitory-substance-(Penicillin)-----	1.40
(3)---Phosphatase-test-----	.90
(4)---Standard-plate-count-(SPE)-----	.74
	<u>\$-3.65</u>
f.---Phosphatase-----	\$---.90
g.---Raw-milk-sample;-grade-A	
(1)---Standard-plate-count-(SPE)-----	\$---.74
(2)---Abnormal-milk-test;-includes-cost----- of-direct-microscopic-somatic cell-count-(DMS66);-fifteen percent-of-samples	1.07
(3)---Inhibitory-substance-----	1.40
	<u>\$-3.21</u>
h.---Standard-plate-count-(SPE)-----	\$---.74
a. <u>Abnormal milk test (WMT)</u>	<u>\$ 1.00</u>
b. <u>Coliform count</u>	<u>1.00</u>

c. Inhibitory substance (penicillin, etc.)	2.00
d. Manufacturing grade milk (includes c and h)	3.50
e. Pasteurized milk sample, grade A (includes b, c, f, and h)	6.50
f. Phosphatase test	2.00
g. Raw milk, grade A, standard test (includes a, c, and h)	4.50
h. Standard plate count (SPC)	1.50

7. ~~No---charge---will---be---made---for---any---analysis---conducted---in connection with any public health incident affecting an entire region,---community,---or neighborhood:~~ Handling fee, effective July 1, 1981, is as follows:

<u>Handling fee for sending specimens to other laboratories</u>	\$ 2.00
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History: Effective March 1, 1979; amended effective July 1, 1981.

General Authority
NDCC 23-01-03,
28-32-02

Law Implemented
NDCC 23-01-09(6)

TITLE 37

Highway Department

JULY 1981

37-03-01-05. EPILEPTICS NOT TO BE LICENSED - EXCEPTION EXCEPTIONS AND REQUIREMENTS. ~~Persons who have a history of fainting spells or epilepsy will not be licensed. If such persons have one seizure free year and will submit to an internal medical report, such persons may be licensed. Medical reports will be used for a final determination by the director. Seizures which are medically induced by attending physicians will not be considered in determining whether or not a person should be licensed under this section.~~

1. The privilege of holding a motor vehicle operator's license shall be denied to any person who has experienced episodes of disturbance of or loss of consciousness due to epilepsy, convulsions, seizures, blackouts or fainting spells, or episodes of disturbance of or loss of body control caused by metabolic diseases, including diabetes mellitus, or by cardiovascular diseases. The denial shall be either by denial of licensing upon application, pursuant to North Dakota Century Code section 39-06-03, or through license cancellation pursuant to North Dakota Century Code section 39-06-24.
2. A person who has experienced the episodes described in subsection 1 may be issued a restricted operator's license or permit pursuant to North Dakota Century Code sections 39-06-06 and 39-06-17, if:
 - a. The person has been free of the episodes for at least six consecutive months and submits a sworn statement to that effect to the director; and
 - b. The person submits to the director a written certification from the person's treating physician indicating that:
 - (1) The condition causing the episodes is adequately controlled;
 - (2) The person has been free of episodes for at least six months; and

(3) Operation of a motor vehicle by the person will not be inimical to public safety or welfare.

Every permit or license issued under this subsection may be periodically reviewed by the director until the person has been free of episodes for at least twelve months.

3. A person who has been free of the episodes described in subsection 1 for at least twelve consecutive months will be granted an operator's license if:

 - a. The person submits a sworn statement to the director indicating that the person has been free of episodes for at least twelve consecutive months; and
 - b. The person submits to the director a written certification from the person's treating physician indicating that, based upon an examination of the person, the items required in paragraphs 1 and 3 of subdivision b of subsection 2 have been met by the person, the person has been free of episodes for at least twelve consecutive months, and that the physician is of the opinion that the person is able and willing to cooperate in the treatment of the conditions causing the episodes.
4. Any person issued an operator's license or permit pursuant to subsection 2 or 3 shall submit to the director a periodic reevaluation form available from the director. The reevaluation form shall be submitted to the director every twelve months, or more often if required by the director, after issuance of a license or permit under subsection 2 or 3. The form shall contain the information prescribed by the director, and the person shall be required to furnish all information requested. The form shall include provision for the opinion of the person's treating physician that the person's condition continues to be controlled and that the operation of a motor vehicle by the person will not be inimical to public safety or welfare.
5. A person having had the episodes described in subsection 1 will not be required to submit further periodic reevaluation forms if the person:

 - a. Submits to the director a sworn statement that the person has not taken any medication to control episodes for five consecutive years, and has had no episodes for five consecutive years; and
 - b. Submits to the director a written certification from the person's treating physician or physicians that, for five consecutive years, the person has not had any episodes, and that no medication was prescribed for the person's condition. The total of the treatment periods, if more

than one physician has treated the person, must equal five consecutive years without episodes or medication.

6. A single episode of the type described in subsection 1 shall be treated as only an isolated occurrence if the opinion of the treating physician establishes that it was an isolated incident and not likely to recur. The director shall consider the opinion of the treating physician in determining whether, upon all the evidence, it is safe to permit or license the person for the operation of a motor vehicle without the six-month waiting period.
7. The director shall use the reports required to be filed under this section to make determinations on licensure. Episodes medically induced shall not be considered in determining whether to license a person under this section. When the records of the director show lack of compliance with the requirements of this section by any person, the director may cancel forthwith the license of that person pursuant to North Dakota Century Code section 39-06-24.

History: Effective January 1, 1979; amended effective July 1, 1981.

General Authority
NDCC 28-32-02

Law Implemented
NDCC 39-06-03,
39-06-32
39-06-24

37-03-05-02. NOTICE OF INTENTION TO SUSPEND - CONTENT. If the director determines from any accident reports filed that the accident resulted in bodily injury or death, or damage to the property of any one person in excess of three-hundred-dollars the amount specified in North Dakota Century Code section 39-16-05, and the security or policy of insurance as required was not in force at the time of the accident, the director shall cause a notice of intention to suspend license to be sent to the driver not less than ten days prior to the proposed action of the director containing the following information:

1. That the license, or nonresident's operating privilege, of the driver will be suspended on a specified date;
2. That the driver may retain the driver's license, or nonresident's operating privileges, by filing with the director proof of compliance with the security requirements; or
3. That the driver may make a written request for a hearing within ten days from the date of the notice.

If the director does not receive a request for a hearing within the prescribed time and the driver fails to file with the director proof of compliance with the security requirements, the director may enter the proposed order of suspension.

History: Effective January 1, 1979; amended effective July 1, 1981.

General Authority
NDCC 28-32-02,
39-16-02

Law Implemented
NDCC 39-16-05

37-03-05-03. NOTICE OF HEARING - MATTERS CONSIDERED. If a driver makes a written request for a hearing as specified in section 37-03-05-02, the director shall send a notice of hearing to the driver specifying the time, date, and place for such hearing. The date set for such hearing shall be within fifteen days, but not earlier than five days, after the request for the hearing has been received, unless otherwise agreed to by both the director and the person requesting such hearing. The notice shall further specify that the matters considered at the hearing will be confined to the following:

1. Whether the accident resulted in bodily injury or death, or damage to the property of any one person in excess of three hundred--dollars the amount specified in North Dakota Century Code section 39-16-05;
2. Whether the accident involved circumstances to which the financial responsibility requirements and suspension do not apply;
3. Whether the possibility exists that liability for bodily injuries or death, or property damage in excess of three hundred dollars could be imposed against the driver;
4. If the possibility exists that liability may be imposed against the driver, the dollar amount of the potential liability and manner in which that amount may be secured by the driver in order to maintain the driver's license, or nonresident's operating privileges; and
5. Any other material matter relating to the suspension of the license deemed appropriate by the driver.

If a hearing is conducted with respect to a proposed suspension, the director shall give notice of the decision by mail to the driver.

History: Effective January 1, 1979; amended effective July 1, 1981.

General Authority
NDCC 28-32-02,
39-16-02

Law Implemented
NDCC 39-16-05

NOTE: There were no pages 33 and 34 in the original.

Karen -

There are 2 more sections (37-03-05-04 +
37-03-05-05) in this chapter but they
were created 1-1-79 and show no history of
Amendment so they should not be in an
ARC dated Dec 80 thru July 81. My best guess
is that these are blank pages.

Margan

TITLE 50
Medical Examiners, Board of

DECEMBER 1980

50-01-01-01. ORGANIZATION OF BOARD OF MEDICAL EXAMINERS.

1. HISTORY AND FUNCTION. The 1890 legislative assembly passed a medical practice act, codified as North Dakota Century Code chapter 43-17. This chapter requires the governor to appoint a state board of medical examiners. The board, generally speaking, stands between the medical school graduate and the public. It is the responsibility of the board to protect the public against poorly trained physicians.
2. BOARD MEMBERSHIP. The board consists of ten members appointed by the governor. Nine members are physicians and surgeons and one member is an osteopathic physician and surgeon. Members of the board serve three-year terms, and not more than four terms expire each year. No member may serve on the board more than two successive terms.
3. EXECUTIVE SECRETARY AND TREASURER. The executive secretary and treasurer of the board is appointed by the board and is responsible for administration of the board's activities.
4. CREDENTIALS COMMITTEE. A credentials committee is appointed by the chairman of the board and is responsible for issuing provisional temporary licenses authorizing the practice of medicine in the intervals between board meetings.
5. EXAMINING---COMMITTEE--FOR--PHYSICAL--THERAPISTS:---The--state examining-committee-for-physical-therapists-consists--of--five members;--with--three--being-physical-therapists-and-two-being licensed-physicians;--appointed-by-the-governor:--The-committee acts-in-an-advisory-capacity-to-the-board-of-medical-examiners in-matters-pertaining-to-physical-therapists:
6. INQUIRIES. Inquiries regarding the board may be addressed to the executive secretary and treasurer:

Mr. Lyle A. Limond

Executive Secretary-Treasurer
Board of Medical Examiners
Box 1198
Bismarck, North Dakota 58501

History: Amended effective December 1, 1980.

General Authority
NDCC 28-32-02.1

Law Implemented
NDCC 28-32-02.1

TITLE 55

Nursing Home Administrators, Board of Examiners for

JULY 1981

55-02-01-11. GRADING EXAMINATIONS. Every candidate for a nursing home administrator's license shall be required to pass the examination for the license with a grade of at least sixty seventy percent. The board shall determine a method of grading each section of the examination separately, and shall apply such method uniformly to all candidates taking that examination. If an oral examination is used, totally or as part of the examination process, the board, or the examiners designated for such purpose, shall use as a basis for the oral examination a written prepared outline of subject matter. The board shall designate weighted values to the subject matter for the oral examination.

History: Amended effective July 1, 1981.

General Authority
NDCC 43-34-09

Law Implemented
NDCC 43-34-09

TITLE 61.5

Physical Therapists, Examining Committee for

DECEMBER 1980

STAFF COMMENT:

Title 61.5 is all new material and is not underscored to improve readability.

TITLE 61.5

PHYSICAL THERAPISTS, EXAMINING COMMITTEE FOR

Article

- 61.5-01 General Administration
- 61.5-02 Examination, Registration, and Fees
- 61.5-03 Continuing Education
- 61.5-04 Violations

ARTICLE 61.5-01

GENERAL ADMINISTRATION

Chapter

- x 61.5-01-01 Organization of the Committee
- x 61.5-01-02 Definitions

CHAPTER 61.5-01-01
ORGANIZATION OF THE COMMITTEE

Section

61.5-01-01-01

Organization of the State Examining Committee for
Physical Therapists

61.5-01-01-01. ORGANIZATION OF THE STATE EXAMINING COMMITTEE FOR
PHYSICAL THERAPISTS.

1. History. The state examining committee for physical therapists was created in 1959 to assist the state board of medical examiners in the examination and registration of physical therapists in North Dakota. While it operated as a separate committee, it was by law an advisory committee to the state board of medical examiners. The Forty-sixth Legislative Assembly in 1979 revamped most of North Dakota Century Code chapter 43-26 on physical therapists, and in the process made the committee a separate entity with complete jurisdiction over the examination and registration of physical therapists.
2. Committee membership. The committee consists of six persons appointed by the governor. Three committee members must be registered physical therapists, two members must be licensed physicians, and one member must be a nonhealth care professional. The health care appointments are to be made from lists submitted by the North Dakota physical therapy association and the state board of medical examiners, and the citizen member is to be an at large appointment by the governor. Committee terms are to be staggered and are for five years. Possible nominations to the committee will be solicited by the committee's secretary from all registered physical therapists in the state at the time notices for registration renewal are sent out.
3. Meetings. The committee shall hold at least one annual meeting, and such other meetings as may be called by the president. Any committee member who fails to attend two consecutive annual meetings shall have been deemed to have resigned unless the member has reasons satisfactory to the committee for being unable to attend.
4. Compensation. Committee members shall receive expenses from committee funds for each day or a portion thereof spent in committee work as provided for other state officers in North Dakota Century Code chapter 44-08.
5. Secretary. North Dakota Century Code section 43-26-05 authorizes the committee to designate a secretary, who does not have to be a committee member, and to compensate any person it hires to administer the committee's duties.

The committee's secretary is:

Ms. Lynn G. Allen
211 Polk
Grand Forks, North Dakota 58201

History: Effective December 1, 1980.

General Authority
NDCC 28-32-02.1

Law Implemented
NDCC 28-32-02.1

CHAPTER 61.5-01-02
DEFINITIONS

Section
61.5-01-02-01 Definitions

61.5-01-02-01. DEFINITIONS. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "A school of physical therapy or a program of physical therapist assistant training approved by the committee" is a curriculum approved by the council on medical education of the American medical association or the American physical therapy association.
2. "Committee" means the North Dakota state examining committee for physical therapists.
3. "Direct or onsite supervision" means personal direction and observation and requires that the registered physical therapist be physically present with the assistant, the aide, or the student.
4. "Direction" means the requirement that the physical therapist maintain continuous verbal and written contact with the physical therapist assistant, including onsite supervision and instruction adequate to ensure the safety and welfare of the patient.
5. "Passing score on the professional examination service examination" is a score higher than 1.5 standard deviation below the national mean for the examination taken.
6. "Physical therapist" means a person who applies physical therapy.

7. "Physical therapist assistant" means a person who assists, under the onsite direction of a registered physical therapist, in the practice of physical therapy and who performs such delegated procedures commensurate with the assistant's education and training. No more than two physical therapist assistants may be supervised by one physical therapist.
8. "Physical therapy" means the art and science of a health specialty concerned with the prevention of disability and the physical rehabilitation for congenital or acquired disabilities resulting from, or secondary to, injury or disease. The practice of physical therapy means the practice of the health specialty, and encompasses physical therapy evaluation, treatment planning, instruction, and consultative services, including:
 - a. Performing and interpreting tests and measurements as an aid to physical therapy treatment.
 - b. Planning initial and subsequent treatment programs on the basis of test findings.
 - c. Administering treatment by therapeutic exercise, neurodevelopmental procedures, therapeutic massage, mechanical devices, and therapeutic agents which employ the physical, chemical, and other properties of air, water, heat, cold, electricity, sound, and radiant energy for the purpose of correcting or alleviating any physical or mental condition, or preventing the development of any physical or mental disability.
9. "Physical therapy aides" also known as health care aides, orderlies, etc., constitute the category of personnel not otherwise defined in this title who assist the physical therapy service as supportive personnel.
10. "Professional examination service examination" means the examination promulgated by the professional examination service of the American physical therapy association.
11. "Referral" means a requirement that the physical therapist has verbal or written contact with the physician who refers the patient to the physical therapist.
12. "Student" is an individual who is currently engaged in the fulfillment of a physical therapy or physical therapist assistant educational program approved by the committee.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-01,
43-26-04,
43-26-06,
43-26-10

ARTICLE 61.5-02

EXAMINATION, REGISTRATION, AND FEES

Chapter	
61.5-02-01	Examinations
61.5-02-02	Registration
61.5-02-03	Fees

CHAPTER 61.5-02-01
EXAMINATIONS

Section	
61.5-02-01-01	Frequency of Examinations
61.5-02-01-02	Location of Examinations
61.5-02-01-03	Repeating Examinations

61.5-02-01-01. FREQUENCY OF EXAMINATIONS. The committee shall administer examinations for physical therapists and physical therapist assistants at least once each year, or as often as deemed necessary.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-05,
43-26-10

Law Implemented
NDCC 43-26-05

61.5-02-01-02. LOCATION OF EXAMINATIONS. The committee shall designate locations within North Dakota, as it deems proper, at which to conduct its examinations.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-05,
43-26-10

Law Implemented
NDCC 43-26-05,
43-26-06

61.5-02-01-03. REPEATING EXAMINATIONS. An applicant who fails an examination may repeat the examination, but must pay another examination fee.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-05,
43-26-10

Law Implemented
NDCC 43-26-05,
43-26-06

CHAPTER 61.5-02-02
REGISTRATION

Section

61.5-02-02-01	General Registration Requirements for Graduates of Approved Curricula
61.5-02-02-02	Additional Registration Requirements for Graduates of Approved Curricula
61.5-02-02-03	Registration Requirements for Graduates of Foreign Curricula
61.5-02-02-04	Types of Registration
61.5-02-02-05	Renewal of Registration
61.5-02-02-06	Exceptions to Registration
61.5-02-02-07	Registration Refused, Revoked, or Suspended

61.5-02-02-01. GENERAL REGISTRATION REQUIREMENTS FOR GRADUATES OF APPROVED CURRICULA. The following requirements apply to all applicants for registration who are graduates of physical therapy or physical therapist assistant curricula approved by the committee:

1. A completed application form.
2. Payment of the appropriate application fee as set by the committee.
3. An official transcript giving evidence of graduation from a curricula approved by the committee.
4. At the committee's discretion, an interview with the committee or designees thereof.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-05,
43-26-06

61.5-02-02-02. ADDITIONAL REGISTRATION REQUIREMENTS FOR GRADUATES OF APPROVED CURRICULA.

1. Applicant must pay an examination fee for the professional examination service examination as established by the professional examination service.
2. Applicant must pass the professional examination service examination (1.5 standard deviation below the national mean is considered passing in this state).
3. The committee may waive the requirement to take the professional examination service examination if the applicant is currently licensed in another state and has satisfactorily passed the examination of the American registry of physical therapists.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-05,
43-26-06

61.5-02-02-03. REGISTRATION REQUIREMENTS FOR GRADUATES OF FOREIGN CURRICULA.

1. A completed application form.
2. An application fee as established by the committee.
3. A photocopy of an original certificate or diploma verifying graduation from a physical therapy or physical therapy assistant curricula which is approved in the country in which the applicant received the education and in which there was, at the time of graduation, a member organization of the world confederation for physical therapy.
4. Evidence satisfactory to the committee to substantiate that the school or course from which the applicant was graduated had educational requirements comparable to those approved by the council on medical education of the American medical association, or the American physical therapy association, or both.
5. Verification of eligibility for, or membership in, a member organization of the world confederation for physical therapy.
6. A letter from a physical therapist, registered and actively practicing in North Dakota, stating that the applicant will

work under that physical therapist's direct supervision for a period of six months.

7. Applicant must pay an examination fee for the professional examination service examination as established by the professional examination service.
8. Applicant must take the first professional examination service examination offered by the committee following the applicant's arrival in the state.
9. Applicant must receive a passing score on the professional examination service examination.
10. Applicant may have professional examination service scores transferred by the interstate reporting service if the applicant has taken the professional examination service examination in some other state within the United States.
11. If an applicant has satisfactorily completed the professional examination service examination and other requirements for registration in another state and has had at least six months physical therapy or physical therapist assistant working experience in the United States, the applicant will be excused from the requirement of working with a physical therapist who is registered in North Dakota prior to registration by the state of North Dakota.
12. At the committee's discretion, an interview with the committee or any designee or designees thereof may be required.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-05,
43-26-06

61.5-02-02-04. TYPES OF REGISTRATION.

1. Temporary registration.
 - a. Before beginning as a physical therapist or physical therapist assistant in North Dakota, an applicant must file with the committee a written application for registration and any other documents the committee may require. A temporary registration shall then be issued. The committee shall issue a temporary registration to a person who has applied for registration and is eligible to take the professional examination service examination.

- b. A temporary registration may be issued to:
- (1) United States trained applicants for registration by examination upon receipt of a satisfactory application, the professional examination service examination fee, and an official transcript of credits.
 - (2) United States trained applicants for registration by endorsement upon receipt of satisfactory application, fee, official transcript of credits, copy of current registration, verification of current registration, and a copy of the letter to the interstate reporting service requesting the transfer of scores.
 - (3) Foreign trained applicants for registration by examination upon receipt of all general requirements, providing all are satisfactory to the committee, and providing the application and professional examination service examination fees have been paid.
 - (4) Foreign trained applicants for registration by endorsement upon receipt of all requirements, providing all are satisfactory to the committee.
- c. The temporary registration may not exceed three months and may, at the committee's discretion, be renewed for an additional three months.
- d. With respect to the application of those foreign trained applicants who must serve a preceptorship, the committee cannot make a final determination until the preceptorship is completed, so the following provisions shall apply:
- (1) If the applicant passes the first examination, the temporary registration is extended until the completion of the required, continuous preceptorship.
 - (2) If the applicant fails the first examination, the applicant is required to apply to take another examination. If the applicant passes the next possible examination, the temporary registration is extended until completion of the required, continuous preceptorship.
 - (3) If the applicant fails the next possible examination, the temporary registration will be rescinded.
2. Official registration. When all requirements have been met, an official registration shall be issued giving each registrant a permanent registration number.
3. Additional requirements for registration by endorsement are:

- a. Copy of current registration from the state in which applicant was registered by examination.
- b. Verification of current registration from the physical therapy examining board from the state in which registration was received by examination.
- c. Copy of scores on the professional examination service examination transmitted by the interstate reporting service.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-05,
43-26-06,
43-26-08

61.5-02-02-05. RENEWAL OF REGISTRATION.

1. Registrations shall be renewed annually by January thirty-first.
2. If a registrant fails to receive the renewal notice, it is the responsibility of the registrant to contact the committee before the January thirty-first deadline.
3. Any registrant who fails to make application for renewal of registration by January thirty-first will, at the committee's discretion, pay a late renewal fee as prescribed in section 61.5-02-03-01.
4. A registration expires if not renewed by January thirty-first.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-09

61.5-02-02-06. EXCEPTIONS TO REGISTRATION.

1. North Dakota Century Code chapter 43-26 excludes from the necessity of registration physical therapy students and aides who work under the direct supervision of registered physical therapists.

2. If aides or students provide physical therapy services other than under direct supervision of a registered physical therapist, they are in violation of North Dakota Century Code chapter 43-26.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-05,
43-26-08

61.5-02-02-07. REGISTRATION REFUSED, REVOKED, OR SUSPENDED.

1. The committee may refuse, suspend, or revoke a registration on the grounds stated in North Dakota Century Code section 43-26-11.
2. The committee may refuse to grant registration to any applicant who begins practice as a physical therapist or as a physical therapist assistant prior to being registered to practice in North Dakota.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-11

CHAPTER 61.5-02-03
FEES

Section
61.5-02-03-01 Fees

61.5-02-03-01. FEES.

1. Application fee - not refundable - \$35.00.
2. Professional examination service examination fee - \$35.00.
3. Reexamination fee for professional examination service examination - \$35.00.
4. Annual renewal fee - \$10.00.
5. Late renewal fee - \$25.00.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-05,
43-26-06,
43-26-08,
43-26-09,
43-26-10

ARTICLE 61.5-03

CONTINUING EDUCATION

Chapter
61.5-03-01 Continuing Education

CHAPTER 61.5-03-01
CONTINUING EDUCATION

Section
61.5-03-01-01 Continuing Education

61.5-03-01-01. CONTINUING EDUCATION. The committee may establish, as it deems necessary, rules and regulations to require some form or system of continuing education as a requirement for registration or reregistration as a physical therapist or a physical therapist assistant.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-05,
43-26-09

ARTICLE 61.5-04

VIOLATIONS

Chapter
61.5-04-01 Violations

CHAPTER 61.5-04-01
VIOLATIONS

Section
61.5-04-01-01 Violations

61.5-04-01-01. VIOLATIONS. Complaints and problems about alleged violations of North Dakota Century Code chapter 43-26 shall be forwarded to the committee for its consideration. The committee shall review and, if necessary, investigate all complaints and allegations that come before it concerning North Dakota Century Code chapter 43-26 violations. The committee may seek the advice and assistance of legal counsel in this review and investigation process. The committee may direct its secretary, or other personnel, to act either directly, on its behalf, or to assist others, in filing complaints of North Dakota Century Code chapter 43-26 violations with state's attorneys, and to provide assistance and information as required by state's attorneys. The committee may seek the advice of legal counsel concerning the use of injunctions as a means of preventing or stopping North Dakota Century Code chapter 43-26 violations, and may direct legal counsel, on its behalf, to use such remedies.

History: Effective December 1, 1980.

General Authority
NDCC 43-26-10

Law Implemented
NDCC 43-26-13

TITLE 69
Public Service Commission

JANUARY 1981

STAFF COMMENT: Sections 69-09-01-18, 69-09-02-02, and 69-09-02-05 were superseded by sections 69-09-01-18.1, 69-09-02-02.1, and 69-09-02-05.1, which were effective October 1, 1980.

69-09-01-18. DISCONTINUANCE OF SERVICE. Superseded by section 69-09-01-18.1.

69-09-02-02. INFORMATION AVAILABLE TO CUSTOMERS. Superseded by section 69-09-02-02.1.

69-09-02-05. DISCONTINUANCE OF SERVICE. Superseded by section 69-09-02-05.1.

69-10-01-07. SALE OF LIQUID FUELS ON OTHER THAN GROSS VOLUME BASIS PROHIBITED. The sale of gasoline or other refined liquid fuels, excluding liquefied petroleum gases and residual fuel oils, on any basis other than the gross volume of gasoline or other refined liquid fuel actually delivered is prohibited unless sale on a temperature corrected basis is specifically agreed to by both buyer and seller.

History: Effective January 1, 1981.

General Authority
NDCC 28-32-02,
64-02-03

Law Implemented
NDCC 64-02-02,
64-02-04

JUNE 1981

STAFF COMMENT: Chapter 69-09-07 contains all new material, but is not underscored so as to improve readability.

Section	
69-09-07-01	Definitions
69-09-07-02	Scope - Applicability - Negotiated Rates or Terms
69-09-07-03	Qualifying Facilities - General Requirements for Qualification
69-09-07-04	Criteria for Qualifying Small Power Production Facilities
69-09-07-05	Criteria for Qualifying Cogeneration Facilities
69-09-07-06	Ownership Criteria
69-09-07-07	Procedures for Obtaining Qualifying Status
69-09-07-08	Electric Utility Obligations
69-09-07-09	Rates for Purchases
69-09-07-10	Rates for Sales
69-09-07-11	Interconnection Costs
69-09-07-12	System Emergencies
69-09-07-13	Exemption for Qualifying Facilities

69-09-07-01. DEFINITIONS. As used throughout this chapter, except where otherwise indicated:

1. "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.
2. "Backup power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.
3. "Biomass" means any organic material not derived from fossil fuels.
4. "Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for power production.
5. "Cogeneration facility" means equipment used to produce electric energy and forms of useful thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy.

6. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission.
7. "Electric utility" means an "electric public utility" as defined in subsection 1 of North Dakota Century Code section 49-03-01.5.
8. "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.
9. "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.
10. "Maintenance power" means electric energy or capacity supplied by an electric utility during the scheduled outages of the qualifying facility.
11. "Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas.
12. "Oil" means crude oil, residual fuel oil, natural gas liquids, or any refined petroleum products.
13. "Primary energy source" means the fuel or fuels used for the generation of electric energy, except that such term does not include the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and the minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages, and emergencies, directly affecting the public health, safety or welfare, which would result from electric power outages.
14. "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.
15. "Qualifying cogeneration facility" means a cogeneration facility that is a qualifying facility under subsection 2 of section 69-09-07-03.

16. "Qualifying cogenerator" means the owner or operation of a qualifying cogeneration facility.
17. "Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under section 69-09-07-03.
18. "Qualifying small power producer" means the owner or operator of a qualifying small power production facility.
19. "Qualifying small power production facility" means a small power production facility that is a qualifying facility under subsection 1 of section 69-09-07-03.
20. "Rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.
21. "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility.
22. "Small power production facility" means a facility which produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, or any combination thereof, and has a power production capacity which, together with any other facilities located at the same site, is not greater than eighty megawatts.
23. "Supplementary firing" means an energy input to the cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility, or only in the electric generating process of a bottoming-cycle cogeneration facility.
24. "Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.
25. "System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.
26. "Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful power output, and the reject heat from power production is then used to provide useful thermal energy.

27. "Total energy input" means the total energy of all forms supplied from external sources other than supplementary firings to the facilities.
28. "Total energy output" of a topping-cycle cogeneration facility is the sum of the useful power output and useful thermal energy output.
29. "Useful power output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process.
30. "Useful thermal energy output" of a topping-cycle cogeneration facility means the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application.
31. "Waste" means byproduct materials other than biomass.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-02. SCOPE - APPLICABILITY - NEGOTIATED RATES OR TERMS.

1. Applicability. This chapter applies to the regulation of sales and purchases between qualifying facilities and electric utilities.
2. Negotiated rates or terms. Nothing in this chapter:
 - a. Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this chapter; or
 - b. Affects the validity of any contract entered into between a qualifying facility and an electric utility for any purchase.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-03. QUALIFYING FACILITIES - GENERAL REQUIREMENTS FOR QUALIFICATION.

1. Small power production facilities. A small power production facility is a qualifying facility if it:
 - a. Meets the maximum size criteria specified in subsection 1 of section 69-09-07-04;
 - b. Meets the fuel use criteria specified in subsection 2 of section 69-09-07-04; and
 - c. Meets the ownership criteria specified in section 69-09-07-06.
2. Cogeneration facilities. Unless excluded under subsection 3, a cogeneration facility is a qualifying facility if it:
 - a. Meets any applicable operating and efficiency standards specified in subsections 1 and 2 of section 69-09-07-05; and
 - b. Meets the ownership criteria specified in section 69-09-07-06.
3. Any cogeneration facility which is a new diesel cogeneration facility may not be a qualifying facility. A new diesel cogeneration facility is a cogeneration facility:
 - a. Which derives its useful power output from a diesel engine; and
 - b. The installation of which began on or after March 13, 1980.
4. Any cogeneration facility which is a new dual-fuel cogeneration facility which seeks to obtain qualifying status must follow the procedures set forth in subsection 2 of section 69-09-07-06. A new dual-fuel cogeneration facility is a cogeneration facility:
 - a. Which derives its useful power output from an internal combustion piston engine capable of changing automatically between gas and oil operation; and
 - b. The installation of which began on or after May 15, 1980.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-04. CRITERIA FOR QUALIFYING SMALL POWER PRODUCTION FACILITIES.

1. Size of the facility.

a. Maximum size. The power production capacity of the facility for which qualification is sought, together with the capacity of any other facilities which use the same energy resource, are owned by the same person, and are located at the same site, may not exceed eighty megawatts.

b. Method of calculation.

(1) For purposes of this subsection, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile [1.61 kilometers] of the facility for which qualification is sought and, for hydroelectric facilities, if they use water from the same impoundment for power generation.

(2) For purposes of making the determination in paragraph 1, the distance between facilities shall be measured from the electric generating equipment of a facility.

c. Waiver. The commission may modify the application of subdivision b for good cause.

2. Fuel use.

a. The primary energy source of the facility must be biomass, waste, renewable resources, or any combination thereof, and more than seventy-five percent of the total energy input must be from these sources. Any primary energy source which, on the basis of its energy content, is fifty percent or more biomass shall be considered biomass.

b. Use of oil, natural gas, and coal by a facility may not, in the aggregate, exceed twenty-five percent of the total energy input of the facility during any calendar year period. Energy input in the case of energy in the form of natural gas or oil is to be measured by the lower heating value of the natural gas or oil.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-05. CRITERIA FOR QUALIFYING COGENERATION FACILITIES.

1. Operating standard for topping-cycle facilities. For any topping-cycle cogeneration facility, the useful thermal energy output of the facility must, during any calendar year period, be no less than five percent of the total energy output.
2. Efficiency standard for topping-cycle facilities.
 - a. For any topping-cycle cogeneration facility for which any of the energy input is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility plus one-half the useful thermal energy output, during any calendar year period, must:
 - (1) Subject to paragraph 2, be no less than forty-two and one-half percent of the total energy output of natural gas and oil to the facility; or
 - (2) If the useful thermal energy output is less than fifteen percent of the total energy output of the facility, be no less than forty-five percent of the total energy input of natural gas and oil to the facility.
 - b. For any topping-cycle cogeneration facility not subject to subdivision a, there is no efficiency standard.
3. Efficiency standard for bottoming-cycle facilities.
 - a. For any bottoming-cycle cogeneration facility for which any of the energy input as supplementary firing is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility must, during any calendar year period, be no less than forty-five percent of the energy input of natural gas and oil for supplementary firing.
 - b. For any bottoming-cycle cogeneration facility not covered by subdivision a, there is no efficiency standard.
4. Waiver. The commission may waive any of the requirements of this section upon a showing that the facility will produce significant energy savings.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-06. OWNERSHIP CRITERIA.

1. General rule. A cogeneration facility or small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration facilities or small power production facilities.
2. Ownership test. For purposes of this section, a cogeneration or small power production facility shall be considered to be owned by a person primarily engaged in the generation or sale of electric power, if more than fifty percent of the equity interest in the facility is held by an electric utility or utilities, or by a public utility holding company, or companies, or any combination thereof. If a wholly or partially owned subsidiary of an electric utility or public utility holding company has an ownership interest in a facility, the subsidiary's ownership interest shall be considered as ownership by an electric utility or public utility holding company.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-07. PROCEDURES FOR OBTAINING QUALIFYING STATUS.

1. Qualification. A small power production facility or cogeneration facility which meets the criteria for qualification set forth in section 69-09-07-03 is a qualifying facility. The owner or operator of any facility qualifying under this subsection shall furnish notice to the commission providing the information set forth in paragraphs 1 through 4 of subdivision b of subsection 2.
2. Optional procedure.
 - a. Application for commission certification. Pursuant to the provisions of this subsection, the owner or operator of the facility may file with the commission an application for commission certification that the facility is a qualifying facility.
 - b. General contents of application. The application shall contain the following information:
 - (1) The name and address of the applicant and the location of the facility;

- (2) A brief description of the facility, including a statement indicating whether such facility is a small power production facility or a cogeneration facility;
 - (3) The primary energy source used or to be used by the facility;
 - (4) The power production capacity of the facility; and
 - (5) The percentage of ownership by any electric utility or by any public utility holding company, or by any person owned by either.
- c. Additional application requirements for small power production facilities. An application by a small power producer for commission certification shall contain the following additional information:
- (1) The location of the facility in relation to any other small power production facilities located within one mile [1.61 kilometers] of the facility, owned by the applicant which use the same energy source; and
 - (2) Information identifying any planned usage of natural gas, oil, or coal.
- d. Additional application requirements for cogeneration facilities. An application by a cogenerator for commission certification shall contain the following additional information:
- (1) A description of the cogeneration system, including whether the facility is a topping or bottoming cycle and sufficient information to determine that any applicable requirements under section 69-09-07-05 will be met; and
 - (2) The date installation of the facility began or will begin.
- e. Commission action. Within ninety days of the filing of a complete application, the commission shall issue an order granting or denying the application, tolling the time for issuance of an order, or setting the matter for hearing. Any order denying certification shall identify the specific requirements which are not met. If no order is issued within ninety days of the filing of a complete application, the application shall be deemed to have been granted.
3. Notice requirements for facilities of five hundred kilowatts or more. An electric utility is not required to purchase electric energy from a facility with a design capacity of five

hundred kilowatts or more until ninety days after the facility notifies the utility that it is a qualifying facility, or ninety days after the facility has applied to the commission under subsection 2.

4. Revocation of qualifying status.
 - a. The commission may revoke the qualifying status of a qualifying facility which has been certified under this section if such facility fails to comply with any of the statements contained in its application for commission certification.
 - b. Prior to undertaking any substantial alteration or modification of a qualifying facility which has been certified under this section, a small power producer or cogenerator may apply to the commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-08. ELECTRIC UTILITY OBLIGATIONS.

1. Obligation to purchase from qualifying facilities. Each electric utility shall purchase, in accordance with section 69-09-07-09, any energy and capacity which is made available from a qualifying facility:
 - a. Directly to the electric utility; or
 - b. Indirectly to the electric utility in accordance with subsection 4.
2. Obligation to sell to qualifying facilities. Each electric utility shall sell to any qualifying facility, in accordance with section 69-09-07-10, any energy and capacity requested by the qualifying facility.
3. Obligation to interconnect. An electric utility shall make such interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under this chapter. The obligation to pay for any interconnection costs shall be determined in accordance with section 69-09-07-11.
4. Transmission to other electric utilities. If a qualifying facility agrees, an electric utility which would otherwise be

obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this chapter as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to subdivision d of subsection 6 of section 69-09-07-09.

5. Parallel operation. Each electric utility shall offer to operate in parallel with a qualifying facility.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-09. RATES FOR PURCHASES.

1. Rates for purchases shall:
 - a. Be just and reasonable to the electric consumer of the electric utility and in the public interest; and
 - b. Not discriminate against qualifying cogeneration and small power production facilities.
2. Nothing in this chapter requires any electric utility to pay more than the avoided costs for purchases.
3. Relationship to avoided costs.
 - a. For purposes of this subsection, "new capacity" means any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.
 - b. Subject to subdivision c, a rate for purchases satisfies the requirements of subsections 1 and 2 if the rate equals the avoided costs determined after consideration of the factors set forth in subsection 6.
 - c. A rate for purchases (other than from new capacity) may be less than the avoided cost if the commission determines that a lower rate is consistent with subsections 1 and 2, and is sufficient to encourage cogeneration and small power production.

- d. Rates for purchases from new capacity shall be in accordance with subdivision b, regardless of whether the electric utility making such purchase is simultaneously making sales to the qualifying facility.
 - e. In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for such purchases do not violate this chapter if the rates for such purchases differ from avoided costs at the time of delivery.
4. Standard rates for purchases.
- a. There shall be put into effect (with respect to each electric utility) standard rates for purchases from qualifying facilities with a design capacity of one hundred kilowatts or less.
 - b. There may be put into effect standard rates for purchases from qualifying facilities with a design capacity of more than one hundred kilowatts.
 - c. The standard rates for purchases under this subsection:
 - (1) Shall be consistent with subsections 1, 2, and 6; and
 - (2) May differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.
5. Purchases "as available" or pursuant to a legally enforceable obligation. Each qualifying facility shall have the option either:
- a. To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or
 - b. To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:
 - (1) The avoided costs calculated at the time of delivery; or
 - (2) The avoided costs calculated at the time the obligation is incurred.

6. Factors affecting rates for purchases. In determining avoided costs, the following factors shall, to the extent practicable, be taken into account:
 - a. The data provided pursuant to 18 C.F.R. 292.302, including commission review of any such data;
 - b. The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:
 - (1) The ability of the utility to dispatch the qualifying facility;
 - (2) The expected or demonstrated reliability of the qualifying facility;
 - (3) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirements and sanctions for noncompliance;
 - (4) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;
 - (5) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;
 - (6) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and
 - (7) The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities.
 - c. The relationship of the availability of energy or capacity from the qualifying facility, as derived in subdivision b, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and
 - d. The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.
7. Periods during which purchases not required.

- a. Any electric utility which gives notice pursuant to subdivision b will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself.
- b. Any electric utility seeking to invoke subdivision a of this subsection must notify, in writing, each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the electric utility, and must also send a copy of the notice to the commission.
- c. Any electric utility which fails to comply with the provisions of subdivision b will be required to pay the same rate for such purchase of energy or capacity as would be required had the period described in subdivision a of this subsection not occurred.
- d. A claim by an electric utility that such a period has occurred or will occur is subject to such verification by the commission as the commission determines necessary or appropriate, either before or after the occurrence.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-10. RATES FOR SALES.

1. General rules.

a. Rates for sales:

- (1) Shall be just and reasonable and in the public interest; and
- (2) Shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility.

- b. Rates for sales which are based on accurate data and consistent systemwide costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other

customers with similar load or other cost-related characteristics:

2. Additional services to be provided to qualifying facilities.
 - a. Upon request of a qualifying facility, each electric utility shall provide:
 - (1) Supplementary power;
 - (2) Backup power;
 - (3) Maintenance power; and
 - (4) Interruptible power.
 - b. The commission may waive any requirement of subdivision a if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the commission finds that compliance with such requirement will:
 - (1) Impair the electric utility's ability to render adequate service to its customers; or
 - (2) Place an undue burden on the electric utility.
3. Rates for sales of backup and maintenance power. The rate for sales of backup power or maintenance power:
 - a. Shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both; and
 - b. Shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-11. INTERCONNECTION COSTS.

1. Obligation to pay. Each qualifying facility shall be obligated to pay any interconnection costs which the

commission may assess against the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics.

2. Reimbursement of connection costs. The commission shall determine the manner for payments of interconnection costs, which may include reimbursement over a reasonable period of time.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-12. SYSTEM EMERGENCIES.

1. Qualifying facility obligation to provide power during system emergencies. A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:
 - a. Provided by agreement between such qualifying facility and electric utility; or
 - b. Ordered under section 202(c) of the Federal Power Act [16 U.S.C. 824a(c)].
2. Discontinuance of purchases and sales during system emergencies. During any system emergency, an electric utility may discontinue:
 - a. Purchases from a qualifying facility if such purchases would contribute to such emergency; and
 - b. Sales to a qualifying facility; provided, that such discontinuance is on a nondiscriminatory basis.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

69-09-07-13. EXEMPTION FOR QUALIFYING FACILITIES.

1. Applicability. This section applies to:
 - a. Any qualifying cogeneration facility;

- b. Any qualifying small power production facility which has a power production capacity which does not exceed thirty megawatts; and
 - c. Any qualifying small power production facility which has a power production capacity over thirty megawatts if such facility produces electric energy solely by the use of biomass as a primary energy source.
- 2. A qualifying facility described in subsection 1 shall not be considered to be an "electric public utility" as defined in subsection 1 of North Dakota Century Code section 49-03-01.5.
 - 3. Any qualifying facility shall be exempted, except as provided in subsection 4, from any state law or regulation respecting:
 - a. The rates of electric utilities; and
 - b. The financial and organizational regulation of electric utilities.
 - 4. A qualifying facility may not be exempted from the provisions of this chapter.

History: Effective June 1, 1981.

General Authority
NDCC 49-02-02

Law Implemented
NDCC 49-02-02

TITLE 73
Securities Commissioner

JULY 1981

73-02-03-01. LIMITED OFFEREE EXEMPTION.

1. Application form. Except as otherwise specifically provided, application for approval of the limited offeree exemption under subsection 9 of North Dakota Century Code section 10-04-06 shall be made on the form attached to this section, which is incorporated herein by reference.
2. Supplemental filings. In addition to the information specified in the application, the commissioner may require the filing of such supplemental schedules, projections, appraisals, opinions, documents, memoranda, briefs, or other matter as the commissioner deems convenient, appropriate, or necessary to determine whether the application should be approved.
3. Filing fee. Except as otherwise specifically provided, the application form shall be accompanied by a nonrefundable filing fee of fifty dollars.
4. Term of effectiveness. Unless earlier suspended or revoked or unless otherwise limited or restricted by the commissioner, approval under this section shall be effective for the period of twelve consecutive months beginning with the date of the letter by which approval is granted. A new application must be filed with and approved by the commissioner if offers or sales will extend beyond the twelve-month period.
5. Conditions. The commissioner may place such conditions, limitations, or restrictions on this exemption as the commissioner deems appropriate or necessary to carry out the purposes of the Securities Act of 1951.
6. Reports. Within thirty days after the end of any quarter of the issuer's fiscal year during which offers or sales of securities are effected in reliance upon this exemption, the

offeror shall file a report of such offers or sales on a form prescribed by the commissioner.

7. Waiver.

- a. Except as otherwise provided under subdivision c, if the number of offerees in connection with all offers of securities, whether of the same or of a different issue, in this state during a consecutive twelve-month period is three or fewer and if the conditions in subdivisions a and b of subsection 9 of North Dakota Century Code section 10-04-06 are met, the application, approval, filing fee, and reporting requirements prescribed under this section are waived.
- b. In addition to the waiver of the filing fee provided under subdivision a, the commissioner may also waive the filing fee in any other case where the commissioner determines that the time and effort involved in processing the application do not justify the imposition of the fee.
- c. The waiver provided under subdivision a shall not apply where any person involved in the offering, either directly or indirectly, as promoter, issuer, underwriter, broker-dealer, salesman, investment adviser, partner, officer, director, manager, controlling shareholder, or in any similar capacity or position:
 - (1) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by any securities, insurance, banking, real estate, or commodities agency, jurisdiction, or organization; or been refused membership therein or withdrawn an application for such membership; or been refused or denied a license or registration or had one suspended or revoked by any such agency, jurisdiction, or organization or by any other business or profession; or has knowledge of being the subject of any investigation or proceeding by any such agency, jurisdiction, or organization or by any other business or profession.
 - (2) Has been the subject of or has been associated in any capacity with another person against whom a temporary restraining order, temporary or permanent injunction, cease and desist order, or similar order has been issued either by a court or by an administrative agency.
 - (3) Has been arrested for, complained against, informed against, or indicted for, convicted of, or pleaded nolo contendere to any felony or misdemeanor, except minor traffic offenses.

- (4) Is now or has been a defendant or respondent in any litigation or proceeding alleging the violation of any securities, insurance, banking, real estate, or commodities law or regulation.
- (5) Has been associated with any firm, corporation, or association which has failed in business, made a compromise with creditors, filed or been declared bankrupt under any bankruptcy acts, or for which a trustee has been appointed under the Securities Investor Protection Act of 1970 [Pub. L. 91-598; 84 Stat. 1636; 15 U.S.C. 78aaa et seq.], as amended, or which has been liquidated under any other circumstances.
- (6) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by an employer in the securities, insurance, banking, real estate, or commodities industry; or in previous business connections or employment has been a subject of a major complaint or legal proceeding or has been discharged or requested to resign by an employer because of dishonest or unethical acts.

History: Amended effective August 1, 1980; amended effective July 1, 1981.

General Authority
NDCC 10-04-06(9)

Law Implemented
NDCC 10-04-06(9)

73-02-06-03. REGISTRATION AND RENEWAL.

1. Every salesman registration effected through the central registration depository expires on December thirty-first in each year unless renewed in accordance with the procedure prescribed by the central registration depository.
2. Every salesman registration not effected through the central registration depository and the registration of dealers and investment advisers expire on the first day of May in each year unless renewed. Registration may be renewed under this subsection each year at any time not less than fifteen nor more than sixty days before expiration by the payment of the proper renewal fee and in the case of a dealer or investment adviser, by the filing of a financial statement prepared in accordance with generally accepted accounting principles and certified to by an independent certified public accountant or by a responsible officer or member, as the commissioner may require, showing the financial condition of such dealer or investment adviser as of the most recent practicable date.

History: Effective July 1, 1981.

General Authority
NDCC 10-04-10

Law Implemented
NDCC 10-04-10

TITLE 75
Social Service Board

DECEMBER 1980

AGENCY SYNOPSIS OF § 75-01-02-02:

Provides, via six subsections, a manner in which certain records and information of the Social Service Board of North Dakota may be used by a person engaged in a bona fide research project, and imposes certain confidentiality requirements on the researcher.

X 75-01-02-02. CONFIDENTIALITY IN RESEARCH PROJECTS.

Notwithstanding any other provision of this title, a person engaged in a bona fide research project may have made available to that person records and information concerning persons applying for or receiving assistance or services under any program administered by or under the supervision and direction of the social service board of North Dakota when such information is derived directly or indirectly from records, files, or communications received in the course of the administration of any such program or in the performance of official duties provided that all of the following conditions are met:

1. No identifying information shall appear in any report, summation, thesis, or other document arising out of the research project.
2. No identifying information shall be provided to a person engaged in a bona fide research project until that person shall submit a written proposal explaining and justifying the need to examine such information satisfactory to the director of the division of management services.
3. All documents received by the researcher and all documents containing identifying information made by or on behalf of the researcher, by whatever means, including, but not limited to handcopies, typewritten copies, or photocopies, shall be returned to the custodian of records who is responsible for the care of the documents on or before a date to be set by the custodian.

4. The researcher shall submit a written plan, explaining how all identifying information in the researcher's possession will be kept secure, to the director of management services, who shall have the authority to determine if the plan is satisfactory, and who shall require written assurance that the plan will be implemented.
5. The researcher shall agree to provide to the social service board of North Dakota a copy of any report, summation, thesis, or other document arising out of the research project, and shall, in writing, consent to the use and reproduction of the document by the board, for purposes of training and informing the board and the board's employees, agents, consultants, and volunteer staff members.
6. The researcher shall, in writing, agree to pay all costs of the board, or any county social service board, incurred in the provision of copy or search services by such board.

History: Effective December 1, 1980.

General Authority
NDCC 50-06-15

Law Implemented
NDCC 50-06-15,
45 CFR 205.50

STAFF COMMENT:

The amendment to § 75-02-02-08 was declared to be an emergency and thus became effective on September 2, 1980, instead of on December 1, 1980.

AGENCY SYNOPSIS OF § 75-02-02-08:

Adds a new subsection which permits the deduction, from an applicant's countable income, of expenses incurred in procuring certain types of remedial services.

x 75-02-02-08. AMOUNT, DURATION, AND SCOPE OF MEDICAL ASSISTANCE.

1. Within the limits of legislative appropriations, eligible recipients may obtain the following medical and remedial care and services:
 - a. Inpatient hospital services (other than services in an institution for mental diseases). "Inpatient hospital services" are those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially

designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.

- b. Outpatient hospital services. "Outpatient hospital services" are those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction, of a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- d. Skilled nursing home services (other than services in an institution for mental diseases) for individuals twenty-one years of age or older. "Skilled nursing home services" means those items and services furnished by a licensed and otherwise eligible skilled nursing home maintained primarily for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- e. Intermediate nursing care (other than services in an institution for mental diseases). "Intermediate nursing care" means those items and services furnished by a currently licensed intermediate care facility maintained for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of

the healing arts within the scope of the physician's or practitioner's practice as defined by state law.

- f. Early and periodic screening and diagnosis of individuals under twenty-one years of age, and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.
- g. Physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home or elsewhere. "Physician's services" are those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. This term means any medical or remedial care or services other than physicians' services, provided within the scope of practice as defined by state law, by an individual licensed as a practitioner under state law.
- i. Home health care services. "Home health care services" in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in these definitions, are any of the following items and services when they are provided on recommendation of a licensed physician to a patient in the patient's place of residence, but not including as a residence a hospital or a skilled nursing home:
 - (1) Intermittent or part-time nursing services furnished by a home health agency.
 - (2) Intermittent or part-time nursing services of a professional registered nurse or a licensed practical nurse when under the direction of the patient's

physician, when no home health agency is available to provide nursing services.

- (3) Medical supplies, equipment, and appliances recommended by the physician as required in the care of the patient and suitable for use in the home.
 - (4) Services of a home health aide who is an individual assigned to give personal care services to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and the home health agency which assigns a professional registered nurse to provide continuing supervision of the aide on the aide's assignment. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- j. Private duty nursing services. "Private duty nursing services" are nursing services provided by a professional registered nurse or a licensed practical nurse, under the general direction of the patient's physician, to a patient in the patient's own home or extended care facility when the patient requires individual and continuous care beyond that available from a visiting nurse or that routinely provided by the nursing staff of the hospital, nursing home, or extended care facility.
- k. Dental services. "Dental services" are any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession. Such services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. "Dentist" means a person licensed to practice dentistry or dental surgery.
- l. Physical therapy and related services. "Physical therapy and related services" means physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders, and the use of such supplies and equipment as are necessary.
- (1) "Physical therapy" means those services prescribed by a physician and provided to a patient by or under the supervision of a qualified physical therapist. A qualified physical therapist is a graduate of a program of physical therapy approved by the council on medical education of the American medical association in collaboration with the American

physical therapy association, or its equivalent, and where applicable, is licensed by the state.

- (2) "Occupational therapy" means those services prescribed by a physician and provided to a patient and given by or under the supervision of a qualified occupational therapist. A qualified occupational therapist is registered by the American occupational therapy association or is a graduate of a program in occupational therapy approved by the council on medical education of the American medical association and is engaged in the required supplemental clinical experience prerequisite to registration by the American occupational therapy association.
 - (3) "Services for individuals with speech, hearing, and language disorders" are those diagnostic, screening, preventive or corrective services provided by or under the supervision of a speech pathologist or audiologist in the practice of the pathologist's or audiologist's profession for which a patient is referred by a physician. A speech pathologist or audiologist is one who has been granted the certificate of clinical competence in the American speech and hearing association, or who has completed the equivalent educational requirements and work experience necessary for such a certificate, or who has completed the academic program and is in the process of accumulating the necessary supervised work experience required to qualify for such a certificate.
- m. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select.
- (1) "Prescribed drugs" are any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law. With respect to "prescribed drugs" federal financial participation is available in expenditures for drugs dispensed by licensed pharmacists and licensed authorized practitioners in accordance with North Dakota Century Code chapter 43-17. When dispensing, the practitioner must do so on the practitioner's written prescription and maintain records thereof.

- (2) "Dentures" are artificial structures prescribed by a dentist to replace a full or partial set of teeth and made by, or according to the directions of, a dentist.
 - (3) "Prosthetic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
 - (4) "Eyeglasses" are lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision.
- n. Other diagnostic, screening, preventive, and rehabilitative services.
- (1) "Diagnostic services" other than those for which provision is made elsewhere in these definitions, include any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.
 - (2) "Screening services" consist of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.
 - (3) "Preventive services" are those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability and other health deviations or their progression, prolong life and promote physical and mental health and efficiency.
 - (4) "Rehabilitative services" in addition to those for which provision is made elsewhere in these definitions, include any medical remedial items or

services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.

- o. Care and services in a certified mental institution for individuals under twenty-one years of age or sixty-five years of age or over.
- p. Any other medical care and any other type of remedial care recognized under state law, specified by the secretary. This term includes but is not limited to the following items:
 - (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the agency to be necessary in the individual case. "Travel expenses" are defined to include the cost of transportation for the individual by ambulance, taxicab, common carrier or other appropriate means; the cost of outside meals and lodging en route to, while receiving medical care, and returning from a medical resource; and the cost of an attendant may include transportation, meals, lodging, and salary of the attendant, except that no salary may be paid a member of the patient's family.
 - (2) Family planning services, including drugs, supplies, and devices, when such services are under the supervision of a physician. There will be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals can choose in accordance with the dictates of their consciences.
 - (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician and when it is not available to the patient from other sources.
 - (4) Skilled nursing home services, as defined in subdivision d, provided to patients under twenty-one years of age.
 - (5) Emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which

is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act, or definitions of inpatient or outpatient hospital services set forth in subdivisions a and b.

2. The following limitations exist with respect to medical and remedial care and services covered or provided under the medical assistance program.
 - a. Coverage will not be extended and payment will not be made for diet remedies prescribed for eligible recipients.
 - b. Coverage will not be extended and payment will not be made for alcoholic beverages prescribed for eligible recipients.
 - c. Coverage will not be extended and payment will not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
 - d. Coverage and payment for eye examinations and eyeglasses for eligible recipients shall be limited to examinations and eyeglass replacements necessitated because of visual impairment. There shall also be an allowance for the replacement of one pair of eyeglasses per year, such replacement occasioned by loss or breakage. However, a recipient is responsible for copayment of three dollars for such replacement.

3. Remedial services provided by licensed homes for the aged and infirm, licensed foster care homes or facilities, and specialized facilities are not covered services but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility.

History: Amended effective September 1, 1978; amended effective September 2, 1980.

General Authority
NDCC 50-24.1-04

Law Implemented
NDCC 50-24.1-04,
45 CFR 249.10,
45 CFR 435.732

STAFF COMMENT:

The amendment to § 75-02-03-02 was declared to be an emergency and thus became effective on September 2, 1980, instead of on December 1, 1980.

AGENCY SYNOPSIS OF § 75-02-03-02:

Adds a new subsection which defines "remedial services" in terms of the type of care provided in a licensed home for the aged and infirm.

λ 75-02-03-02. MINIMUM STANDARDS FOR HOMES FOR THE AGED AND INFIRM.
For the purpose of this chapter, the following definitions apply:

1. "Administrator" means the person responsible for the administration of the home for the aged and infirm.
2. "Aged" means persons who are sixty-five years of age or over.
3. "Approved" means licensed by the social service board.
4. "Dietary staff" means an employee who is responsible for cooking, preparing, and serving meals to residents. This person shall provide no personal care in the course of performing dietary duties.
5. "Home for the aged and infirm facility" means a facility or a designated part thereof used to provide care for aged or infirm persons who require personal care or protective care or both in accordance with this chapter.
6. "Housekeeping staff" means an employee who is responsible for doing cleaning and laundry. This responsibility shall not be performed concurrently with other responsibilities.
7. "Infirm" means poor or deteriorated vitality and not firm or sound physically or mentally regardless of age.
8. "License authority" means the social service board of North Dakota.
9. "Licensee" means the person, institution, organization, public or private corporation to whom the license is issued.
10. "Personal care aide" means an employee who is responsible for providing personal care to residents, such as bathing, dressing, and motivating residents for a more meaningful life. This responsibility shall not be performed concurrently with other responsibilities.
11. "Remedial services" means those services, provided in a licensed home for the aged and infirm, which produce the maximum reduction of physical or mental disability and restoration of a resident to the resident's best possible functional level.
12. "Resident" means any individual cared for in a home for the aged and infirm.

- ~~12-~~ 13. "Resident care" means care incident to old age or infirmity required by a person who because of advancing age or infirmity is not able to properly care for oneself.
- ~~13-~~ 14. "Shall" means mandatory.
- ~~14-~~ 15. "Social services" means any activity of the social workers and related specialists that in any way assists the resident in solving problems and generally improves the quality of life through improved adjustment and functioning.
- ~~15-~~ 16. "Social worker" means a professionally trained person who assists another in the delivery of social services.

History: Amended effective September 2, 1980.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-02

STAFF COMMENT:

The amendment to § 75-02-03-05 was declared to be an emergency and thus became effective on September 2, 1980, instead of on December 1, 1980.

AGENCY SYNOPSIS OF § 75-02-03-05:

Amends one subsection to describe certain services already required as "remedial" services.

X 75-02-03-05. SERVICES FOR THE LEVEL OF CARE.

1. The following remedial services are required under resident care:
 - a. Physician's services.
 - (1) Physical examination, medical history, and diagnosis.
 - (2) Physician's services and arrangements for emergency care as needed.
 - b. Social services. Prior to or at the time of admission, the social needs of the resident shall be identified and social services be made available to the residents.
 - c. Dietary.
 - (1) Preparation of nutritious and well-balanced meals in accordance with the standards of the American dietetic association.

- (2) There shall be provision for special diets when required.
 - (3) A record of menus shall be kept for at least thirty days.
 - (4) No more than a fourteen-hour span shall exist between a substantial evening meal and breakfast.
- d. Activities. There shall be a designated employee who is trained or experienced in the supervision of a planned and meaningful activities program for each resident. There shall be one activity employee hour per week per occupied licensed bed. Volunteers may be used to assist but not to replace required said staff.
2. There shall be a written record on at least a quarterly basis of the resident's participation in the activity program. This record shall be retained in the resident's record.

History: Amended effective September 2, 1980.

General Authority
 NDCC 50-18-02,
 50-18-06

Law Implemented
 NDCC 50-18-02

STAFF COMMENT:

Chapter 75-03-02.1 replaces chapter 75-03-02 and contains all new material. The chapter is not underscored to improve readability.

CHAPTER 75-03-02.1
 DAY CARE CENTERS

Section

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AGENCY SYNOPSIS OF § 75-03-02.1-01:

Sets forth the purpose for the regulation.

75-03-02.1-01. PURPOSE. The purpose underlying licensing and regulation of day care centers providing supplemental parental care to children is to assure that such children be provided food, shelter, safety, comfort, supervision, and learning experiences commensurate to their ages and capabilities so as to safeguard the health, safety, and development of those children.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01

AGENCY SYNOPSIS OF § 75-03-02.1-02:

Identifies generally the authority for the creation of these regulations.

75-03-02.1-02. AUTHORITY AND OBJECTIVE. Under the authority vested in the social service board of North Dakota pursuant to North Dakota Century Code section 50-11.1-08, the social service board of North Dakota is the official state agency charged with the regulation of supplemental care activities in the state with exclusive authority to issue licenses for day care centers and is empowered to prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1 and to qualify for the receipt of federal funds.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-03,
50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-03:

Defines fourteen terms used in the regulations.

75-03-02.1-03. DEFINITIONS. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the facility.
2. "Attendant" means any caregiver who is not a center director, operator, or day care supervisor.
3. "Board" means the social service board of North Dakota.
4. "Caregiver" means any person whose prime responsibility is the direct provision of supplemental parental care in facilities subject to this chapter.
5. "Day care attendant" means any person with the responsibility for providing direct care, supervision, and guidance to children in a day care center.
6. "Day care center" means any facility, other than an occupied private residence, which regularly receives one or more children for supplemental parental care; or any facility, including an occupied private residence, which regularly provides supplemental parental care for thirteen or more children or which is advertised by its operators as, or held out to be, a day care center.
7. "Day care center director" means any person with the responsibility for overseeing the day-to-day operation of a day care center.

8. "Day care center operator" means any person in whom inheres the legal responsibility and the administrative authority for a day care center. The day care center operator is the applicant for license or the licensee pursuant to this chapter.
9. "Day care supervisor" means any person with the responsibility for organizing, and supervising daily program activities.
10. "Full day program center" means any day care center which serves any child or children for more than four hours per day.
11. "Half day program center" means any day care center which serves each child enrolled for less than four hours per day, and which serves no child less than two years of age.
12. "License" means the legal sanction to operate for a period of one year when minimum standards have been met.
13. "Parent" means any person bearing the legal relationship of father or mother to a child enrolled in a day care center, including those persons who legally stand in place of such parent, such as legal guardians or custodians.
14. "Supplemental parental care" means the provision of food, shelter, security and safety, guidance and direction, nurture and comfort, and a learning experience commensurate to a child's age and capabilities, so as to safeguard the child's growth and development on a supplemental basis, when the supplemental care is provided by a person or persons other than the parent or guardian of the child.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-02,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-04:

Identifies several areas of prohibited discrimination in the operation of day care centers.

75-03-02.1-04. NONDISCRIMINATION. Day care centers shall provide in the written admission requirements and enrollment procedures, a statement that the facility does not discriminate on the basis of race, color, creed, national origin, religion, or sex of a child, or marital status or age of the parents. Operators shall ensure that the intent of such statement is adhered to at all times.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-08,
45 CFR 228.70

AGENCY SYNOPSIS OF § 75-03-02.1-05:

Opens day care centers to investigation at reasonable times.

75-03-02.1-05. INSPECTIONS. Any day care center operating within the purview of this chapter or any premises proposed to be operated as a day care center shall be open to investigation or inspection at any time by the board or its agents. Any such investigation or inspection may encompass the total planned operation of the center, including but not limited to staff; environmental sanitation and health program; and physical plant.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-07

AGENCY SYNOPSIS OF § 75-03-02.1-06:

States that a license shall be evidence of compliance with all the standards in the regulations.

75-03-02.1-06: EFFECT OF LICENSING AND DISPLAY OF LICENSE.

1. The issuance of a license to operate a day care center shall be evidence of compliance with the standards contained herein. No person, partnership, firm, corporation, association, or organization shall operate a day care center without first obtaining a license to do so. Violations of the provisions of these minimum standards are subject to class B misdemeanor.
2. The license shall be on display in the facility in a conspicuous place.
3. The license shall specify the maximum number of children who may be cared for by the center, and the center shall at no time admit a greater number of children.

History: Effective December 1, 1980.

AGENCY SYNOPSIS OF § 75-03-02.1-07:

In two subsections, states the process which the board must undertake if it would deny or revoke a day care center license.

75-03-02.1-07. DENIAL OR REVOCATION OF LICENSE.

1. The right to provide supplemental care in a day care center is dependent upon compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the required minimal standards set forth in this chapter.
2. The board may revoke or deny a license to operate a day care center pursuant to the North Dakota Century Code section 50-11.1-09 provided the operator of the day care center has been informed in writing of the reasons for revocation or denial. The operator shall be afforded an administrative hearing in the manner prescribed by North Dakota Century Code chapter 28-32 if written request for the hearing is made within ten days of receipt of the notice of intent to revoke and the reasons therefor. Upon timely appeal, the board may, in its discretion, order the suspension of such revocation until the administrative hearing on such appeal.
 - a. The board may revoke or refuse to renew the license of any center or refuse to issue a license to the holder of a provisional license should that holder:
 - (1) Fail to maintain standards prescribed and published herein;
 - (2) Violate any of the provisions of the license issued;
 - (3) Furnish or make any misleading or any false statements or report to the board;
 - (4) Refuse to submit to the board any reports or refuse to make available to the board any records which the holder is required, by this chapter to keep;
 - (5) Fail or refuse to submit to an investigation by the board;
 - (6) Fail or refuse to admit authorized representatives of the board at any reasonable time for the purpose of investigation;

(7) Fail to provide, maintain, equip, or keep in a safe and sanitary condition premises established or used for child care as required under standards prescribed herein, or as otherwise required by any law, regulation, or ordinance applicable to the location of such facility; or

(8) Fail to comply with the provisions of the Child Abuse and Neglect Reporting Act, North Dakota Century Code chapter 50-25.1.

b. Persons operating day care centers in violation of these statements are subject to fine or imprisonment, or both, as stated in North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-09,
50-11.1-10

AGENCY SYNOPSIS OF § 75-03-02.1-08:

Describes the process by which an application is made.

75-03-02.1-08. APPLICATION FOR DAY CARE CENTER LICENSE.

1. Any person, corporation, partnership, or voluntary association desiring to provide supplemental parental care through the operation of a day care center shall file an application for a day care center license with the county social service board of the county in which the facility is located.
2. The application shall be signed by the day care operator.
3. Any person whose license has been revoked or denied may not reapply for at least six months after the effective date of the revocation or denial.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04

AGENCY SYNOPSIS OF § 75-03-02.1-09:

States certain information requirements which must be provided with a license application, obligates the board to issue a license upon

compliance with the regulations, sets a time limit on the length of the license, and requires a new application for license if the facility changes operators or location.

75-03-02.1-09. REQUIREMENTS FOR DAY CARE CENTER LICENSE.

1. The name, address, and telephone number of the operator as well as the name, address, and telephone number of the director shall be provided to the board upon application for license and shall be provided to the parents of enrolled children when the center is in operation.
2. Upon a finding by the board of the operator's compliance with this chapter, the operator shall be licensed by the board to operate a day care center and shall be entitled to a license to be issued by the board. The license shall be in force and effect for a period of one year. The license shall be nontransferable and shall be valid only on such premises as are indicated on the license.
3. A new application for a license must be filed by any licensed facility upon change of operator or location.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-03,
50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-10:

Provides a procedure whereby a facility may be given a limited period of time to bring areas of noncompliance into compliance.

75-03-02.1-10. PROVISIONAL LICENSE.

1. Day care center operators who apply for a day care center license in regard to a newly opened facility, or for a facility previously licensed, where the facility fails to comply with all applicable standards and regulations of the board, may, at the discretion of the administrator of the area social service center/human service center, be issued a provisional license.
2. A provisional license shall:
 - a. Prominently state that the center has failed to comply with all applicable standards and regulations of the board.

- b. State that the items of noncompliance are set forth on a document available upon request made to the day care center's operator or director.
 - c. Expire at a set date, not to exceed six months from the date of issuance.
 - d. Be exchanged for an unrestricted license, of like issuance date, upon demonstrating compliance, satisfactory to the board, with all applicable standards and regulations.
3. A provisional license shall be issued only to an applicant who has, in writing, waived:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license either at the time of application or during the period of operation under a provisional license.
 4. Any provisional license issued shall be accompanied by a written statement of violations signed by the administrator of the area social service center/human service center and in writing acknowledged by the operator.
 5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-11:

Waives certain regulatory requirements for day care centers which provide no more than a half-day's care for any child in any day, and which additionally meet more strict requirements for the education of caregivers.

75-03-02.1-11. HALF DAY PROGRAM CENTER REQUIREMENTS.

1. The provisions of subdivision k of subsection 3 of section 75-03-02.1-12, sections 75-03-02.1-13, 75-03-02.1-15, subsection 7 of section 75-03-02.1-21, subsection 5 of section 75-03-02.1-29, section 75-03-02.1-30, subsection 18 of section

75-03-02.1-31, and section 75-03-02.1-32 are waived for the operation of a half day program center which meets all nonexempted provisions of this chapter and which additionally complies with the requirements of subsection 2 through 4 of this section.

2. No group of children shall be supervised by a caregiver unless the caregiver has:
 - a. Been elementary education certified;
 - b. A bachelor's degree and certification from a Montessori training program;
 - c. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology or fields directly related thereto;
 - d. A bachelor's degree in the field of early childhood education; or
 - e. An associate's degree in the field of early childhood education with at least one year's experience in a day care center or similar setting.
3. Care shall not be provided to any child during mealtimes.
4. A comfortable place shall be provided for any child who wishes to rest or nap.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-07,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-12:

Sets forth, in four subsections, certain responsibilities that the day care operator is required to assume in order that proper care will be provided to children and that compliance with the regulations will be ensured.

75-03-02.1-12. MINIMUM QUALIFICATIONS AND DUTIES OF OPERATOR.

1. The operator of a day care facility is responsible to the board for compliance with requirements set forth in the standards.

2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the facility.
3. The operator shall ensure that all standards are complied with and shall:
 - a. Be responsible for establishing the day care program.
 - b. Make application for a license for each day care center operated.
 - c. Outline a plan of operation for each day care center.
 - d. Notify the board of any major changes in the operation or in the ownership or governing body of the facility.
 - e. Carry liability insurance for the center.
 - f. Ensure the formulation of written policies and procedures relating to the children's activities and care, enrollment, the responsibilities and rights of staff and of parents.
 - g. Maintain required enrollment, attendance, health, financial, and related records.
 - h. Be responsible for all center staff, volunteers, or others who provide services in the facility and for notifying the board of any change of directors.
 - i. Ensure that no individual shall be employed or retained in the day care center who has been judicially determined to have abused or neglected a child, or is awaiting a court hearing on such charges or allegations.
 - j. Cooperate with the board and other appropriate agencies in all reasonable efforts to improve the quality of care and the competence of caregivers.
 - k. Designate a qualified center director.
 - l. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies and procedures, and content of the day care center's day care program.
 - m. Ensure that the center is staffed sufficiently to provide physical care to each child, to offer individual attention to children as needed and to provide time to interact with children for the benefit of their social competence, emotional well-being, and intellectual development.

- n. Ensure that the day care center shall have sufficient qualified staff provided to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty.
 - o. Ensure that parents of enrolled children are advised of the center's program, service fees, operating policies, procedures, location, and of any significant changes in the services offered by the center. Written notice shall be provided to the parents and the board of such changes and their effective date, duration, scope, and impact on the center.
 - p. Ensure that written agreements with the parent or parents of each enrollee specify the fees to be paid, methods of payment, and policies regarding delinquency of fees.
 - q. Ensure that written policies are established which provide for emergency medical care, the care of children with special physical, emotional, or mental needs (if children with these needs are in care) and the treatment of illness and accident.
 - r. Ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the day care center by enrollees or others on their behalf.
 - s. Provide parents with opportunities to observe the center and to discuss their children's needs before enrollment; regularly offer parents opportunities to observe their children, to meet with caregivers to advise and comment on their children's needs.
 - t. Provide parents upon request any monitoring reports or evaluations of the center prepared by and received from federal, state, or local authorities.
4. If the operator of the day care center is also the center director, the operator must also meet the qualifications of the day care center director set forth in section 75-03-02.1-13.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-07,
50-11.1-08,
45 CFR 228.13,
45 CFR 228.42

AGENCY SYNOPSIS OF § 75-03-02.1-13:

Sets forth certain minimum qualifications for that person given active management responsibilities in a day care center.

75-03-02.1-13. MINIMUM QUALIFICATIONS OF DAY CARE CENTER DIRECTOR.

1. A day care center director shall be an adult of good mental and physical health, capable of mature judgment and possessing knowledge and experience in management and interpersonal relationships.
2. The director shall certify that the director has the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a day care center or similar setting;
 - b. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or fields directly related thereto, with at least one year experience in a day care center or similar setting;
 - c. An associate of arts degree in the field of early childhood development with at least one year experience in a day care center or similar setting;
 - d. Certification as a child development associate or similar status where such a local, state, or federal certification program exists, with at least two years experience in a day care center or similar setting;
 - e. Certification from a Montessori teacher training program with at least one year experience in a Montessori school, day care center or similar setting; or
 - f. Qualification under regulations in force and effect prior to November 1, 1980, and continuous employment as a director from that time, and at all times subsequent, at the same center.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-07,
50-11.1-08,
45 CFR 228.13,

AGENCY SYNOPSIS OF § 75-03-02.1-14:

Sets forth, in seven subsections, certain duties of a person with general management responsibilities in a day care center.

75-03-02.1-14. DUTIES OF DAY CARE CENTER DIRECTOR. The day care center director shall, coextensive with the day care center operator:

1. Be responsible for program planning, supervision, and activity.
2. Be responsible for maintaining adequate enrollment, health, attendance, financial, and other related records as required by this chapter.
3. Be responsible for screening, scheduling, supervision, and conduct of staff members.
4. Cooperate with the board and other agencies designated by the board in efforts to improve the quality of care and the competence of personnel in the center.
5. At no time shall a day care center be without a director or a designated acting director. The director of a center shall be present at the center at least sixty percent of the time that the center is open.
6. Any person designated as an acting director for an ongoing period of less than thirty days must meet the requirements of a day care supervisor.
7. Any person designated as an acting director for an ongoing period of more than thirty days must meet the requirements of a day care director.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-07,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-15:

Sets forth, in four subsections, certain minimum qualifications of persons in second-tier management positions in a day care center.

75-03-02.1-15. MINIMUM QUALIFICATIONS OF DAY CARE SUPERVISOR.
Caregivers shall:

1. Have had training and demonstrated ability in working with children.
2. Meet the following qualifications:
 - a. An associate of arts degree in the field of early childhood development;
 - b. Certification as a child development associate or similar status where such local, state, or federal certification program exists;
 - c. Certification from a Montessori teacher training program;
 - d. A high school diploma with at least two years experience in a day care or similar setting; or
 - e. High school equivalency with at least two years experience in a day care or similar setting.
3. Possess the capacity and willingness to increase skills and competence through experience, training, and supervision.
4. Be of sufficiently good health so as to be able to provide adequate care for children in a day care center environment.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-07,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-16:

Sets forth, in two subsections, certain minimum qualifications for those persons who actually provide care to children.

75-03-02.1-16. MINIMUM QUALIFICATIONS FOR DAY CARE ATTENDANTS.

1. Attendants shall:
 - a. Be at least fourteen years of age, provided that any employee under age sixteen has written parental consent for such employment, and the employment arrangements are in conformance with North Dakota Century Code chapter 34-07; and

- b. Receive training related to child care within six months after employment and have demonstrated ability in working with children.
2. The day care center shall provide to newly hired attendants a two day onsite orientation to the day care program during the first week of employment. The orientation must address all of the following:
- a. Emergency health and fire and safety procedures at the center.
 - b. Any special health or nutrition problems of the children assigned to the caregiver.
 - c. Any special needs of the children assigned to the caregiver.
 - d. The planned program of activities at the center.
 - e. Rules and policies of the center.
 - f. Child abuse and neglect laws.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-17:

Requires that volunteers meet the same minimum qualifications as day care attendants if the volunteers are actually involved in providing direct care to children.

75-03-02.1-17. MINIMUM QUALIFICATIONS FOR VOLUNTEERS. Volunteers shall meet qualifications of attendants if providing child care and receive orientation as needed for all assigned tasks.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-18:

Sets forth, in four subsections, certain duties of all persons who provide direct care to children.

75-03-02.1-18. DUTIES OF ALL CENTER CAREGIVERS. Each caregiver shall:

1. Be mentally, physically, and emotionally able to provide care for the children in the caregiver's charge.
2. Provide direct care, supervision, and guidance to children in a day care center.
3. Certify attendance at a minimum of ten hours of board approved in-service training for Montessori, preschool, or day care centers annually as of January 1, 1982.
4. Caregivers under the age of eighteen must have adult supervision in the center at all times.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-19:

Requires that center staff meet certain minimum health standards in order that the health of other staff, and of children in care, will not be adversely affected.

75-03-02.1-19. MINIMUM HEALTH REQUIREMENTS FOR DAY CARE CENTER STAFF.

1. All personnel shall certify, within thirty days of employment, that they do not have health problems that would interfere with their functioning as child caregivers or that would be detrimental to the health of the children or other staff.
2. There shall be provision for adequate substitution for child caregivers who are too ill to function effectively or who present a serious health hazard to others in the day care center.
3. If the physical or mental health of a caregiver appears questionable, the board may require the day care center employing the caregiver to present evidence of such capabilities based on a formal evaluation. Where appropriate,

the board may provide for an evaluation through the use of professional staff.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-20:

Establishes, in six subsections, the minimum number of caregivers which must be provided for delivering adequate care to any given number of children, and describes a simple way of calculating the total caregiver staff required.

75-03-02.1-20. DAY CARE CENTER MINIMUM STATE STAFFING REQUIREMENTS.

1. The number of staff and their utilization shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings where necessary. Service personnel that are engaged in housekeeping and food preparation shall not be counted in the child/staff ratio for periods of time when they are so engaged.
2. The minimum ratio of personal care or program staff to children in full day program centers shall be:
 - a. Children less than two years of age, one staff per four children.
 - b. Children two years of age to three years of age, one staff per five children.
 - c. Children three years of age to four years of age, one staff to seven children.
 - d. Children four years of age to five years of age, one staff per ten children.
 - e. Children five years of age to six years of age, one staff per twelve children.
 - f. Children six to ten years of age, one staff per sixteen children.
 - g. Children ten to fourteen years of age, one staff per twenty children.

3. Where one or more children is a child with a mentally handicapping condition, and requires more than usual care, the evaluated developmental age level, rather than the chronological age of the child, shall be used in determining appropriate staff ratios.
4. Children with special conditions requiring more than usual care and supervision must have provided to them adequate care and supervision without adversely affecting care provided to the remaining children in the facility.
5. The minimum ratio of personal care or program staff to children in half day program centers shall be one staff to twelve children.
6. Numbers of necessary caregivers for all age categories are added, and any fractional caregiver count then rounded to the nearest whole number, in order to determine the number of caregivers necessary to staff the center at any given time.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-21:

Requires the day care center to keep certain records on each child in care.

75-03-02.1-21. MINIMUM STANDARDS FOR ENROLLEE'S RECORDS. The following information shall be kept and maintained in the records concerning each individual child enrolled in the day care center and shall be updated as appropriate. Such information shall include:

1. The child's full name, birthdate, and current home address.
2. The names and addresses of the parents or other persons legally responsible for the child.
3. Home and business telephone numbers of persons legally responsible for the child.
4. Names and addresses and telephone numbers of persons who can assume responsibility for the child if the persons legally responsible for the child cannot be reached immediately in an emergency. The written consent of parent or legally responsible party for emergency care shall also be obtained.

5. Names and addresses of persons authorized to take the child from the day care center.
6. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the North Dakota department of health.
7. A licensed health practitioner's statement based upon a health assessment shall be obtained at the time of initial enrollment of the child. No more than six months shall have elapsed between the date of the health assessment and the date of initial enrollment. The statement shall indicate any special precautions for diet, medication, or activity. This statement shall serve as evidence that a child is physically able to take part in the day care program. The statement for each child must be on record within sixty days of enrollment, and must be updated annually.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-22:

Requires that records concerning children be kept confidential.

75-03-02.1-22. CONFIDENTIALITY OF CHILD'S RECORDS. Information pertaining to the admission, progress, health, or discharge of a child shall be confidential and access shall be limited to staff and parents and to the following:

1. Authorized board representatives.
2. Officers of the law or other legally constituted boards or agencies.
3. Persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the board, are in a position to serve their interests should that be necessary.
4. Persons who possess a written authorization from the child's parent. The day care center shall have a release of information form available and shall have such forms signed prior to the release of information.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07

AGENCY SYNOPSIS OF § 75-03-02.1-23:

Requires that a center have written plans for dealing with illness or injury to children, or emergencies affecting the day care center.

75-03-02.1-23. MINIMUM PROVISIONS REGARDING EMERGENCY CARE FOR CHILDREN. A day care center shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison. These plans shall be in writing. Plans shall include:

1. The conspicuous posting of emergency response procedures. At least one staff member with a standard first aid and personal safety certificate should be available at all times at the center.
2. All staff members shall receive training concerning emergency procedures to ensure they are aware of the hazards of infection and accidents and how such problems can be minimized.
3. At least one department of health approved first-aid kit shall be maintained and kept in a designated location, so as to be inaccessible to children yet readily accessible to staff members.
4. The placement of a private telephone line immediately accessible to the center staff with a list of emergency telephone numbers conspicuously posted adjacent to such telephone.
5. When health policies of the facility allow ill children to be admitted or to remain in the day care center, medical consultation shall be available regarding special care and medication. Children with infectious or contagious diseases shall be placed in isolation to protect the health of other children in the center.
6. If children in the center require medication, written permission to dispense medication must be obtained from the parent, and proper instructions as to the administration of such medication shall be given by the parent or physician.
 - a. Any medication prescribed by a physician shall be accompanied by the doctor's written instructions as to its

dosage and storage, and labeled with the child's name and dated.

- b. All medication shall be kept in secure storage so that it is out of the reach of children.
7. A supervised temporary isolation area shall be provided for a child who is too ill to remain in the group, and the following procedures shall be followed when such signs or symptoms are observed:
 - a. Parents shall be notified immediately.
 - b. First aid shall be provided and medical care shall be sought as necessary.
8. All children who remain at the center who are ill shall be well supervised.
9. A source of emergency health services shall be readily available to the center.
 - a. There shall be a prearranged plan for emergency medical care. Parents of enrollees shall be advised of this arrangement.
 - b. When a child is brought to another place for emergency care, the child shall be accompanied by an adult staff member who shall remain with the child until medical personnel assume the responsibility for the child's care.
10. A day care center shall provide information to parents as needed concerning child health and social services available in the community, and shall assist parents in obtaining such services.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-07,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-24:

Requires that the center have emergency evacuation plans, and requires that fire drills be performed.

75-03-02.1-24. MINIMUM EMERGENCY EVACUATION AND DISASTER PLAN.

1. Each center shall have an approved and posted disaster plan for the safety of the children in care in case of an emergency.
2. Fire inspections shall be completed by local or state fire authorities. Written disaster plans shall be developed in cooperation with such authorities.
3. Fire evacuation drills shall be performed in accordance with the local fire department's guidelines.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-25:

Requires the day care center to submit to an annual fire safety inspection.

75-03-02.1-25. FIRE INSPECTION AND MINIMUM FIRE SAFETY STANDARDS. Any and all premises housing day care center shall be in compliance with the applicable provisions of the most recently issued life safety code, of the national fire prevention association. Reports of such inspections shall be filed with the board upon initial inspection and annually thereafter while the center is in operation.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-26:

Establishes minimum cleanliness standards in certain areas of day care centers.

75-03-02.1-26. MINIMUM HYGIENE REQUIREMENTS.

1. Day care center bathroom lavatories, toilets, tables, chairs, and floors shall be cleaned daily and cots and sleeping mats shall be cleaned at least weekly.

2. Routine maintenance and cleaning procedures shall be established to protect the health of the children and the staff.
3. Staff members shall wash hands before meals and after using toilet facilities.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-27:

Requires, in 17 subsections, that the day care facility meet minimum standards concerning the condition of the facility and its equipment, including play equipment, light, ventilation and heating equipment, and structural surfaces.

75-03-02.1-27. MINIMUM SANITATION AND SAFETY REQUIREMENTS.

1. The day care center's building, grounds, and equipment shall be located, cleaned, and maintained to protect the health and safety of children.
2. The facility shall have an annual health and sanitation inspection. Reports of such inspections shall be filed with the board.
3. Indoor and outdoor equipment and supplies shall be safe, strong, and in good repair for children.
4. There shall be adequate light, ventilation, and heating in the center. During the heating season when the facility is occupied by children, the room temperature shall not be less than sixty-eight degrees Fahrenheit [20 degrees Celsius] and not more than seventy-four degrees Fahrenheit [23.33 degrees Celsius] measured three feet [91.44 centimeters] above the floor.
5. The day care center ground areas shall be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards or attractive nuisances.
6. Garbage shall be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning shall not be permitted.

7. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the day care center shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
8. Hazardous or potentially injurious or poisonous substances should be kept in locked storage in a space designed solely for this purpose and shall be inaccessible to children.
9. Indoor floors and steps shall not be slippery or have splinters. All steps and walkways shall be kept free from accumulations of water, ice, or snow.
10. Elevated areas such as stairs or porches shall have railings and safety gates where necessary to prevent falls.
11. All heating devices shall be approved by the local fire authorities.
12. Centers shall take steps to keep the facility free of insects and rodents. Chemicals for insect and rodent control shall not be applied in areas accessible to children when children are present in the facility.
13. The center shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the center.
14. Combustible materials shall be kept away from light bulbs and other heat sources.
15. Doors and pathways shall not be blocked.
16. All center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped or chipped condition in any area where children may be present, shall have such surfaces repainted or shall submit evidence that such surfaces do not contain hazardous levels of lead bearing substances. For the purposes of this chapter, "hazardous levels of lead bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead detecting instrument approved by the department of health.
17. If wading pools are used by the center, they shall be strictly supervised and shall not be filled with more than six inches [15.24 centimeters] of water. Any swimming pools must be approved by the state department of health's division of water supply and pollution control and operational practices as established by that department shall be followed.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-28:

Requires a minimum of 35 square feet of indoor activity area per child in care, and requires access to 75 square feet of outdoor play area for each child in care.

75-03-02.1-28. MINIMUM REQUIREMENTS REGARDING SPACE.

1. Each center shall provide adequate space for all children in attendance.
2. There shall be a minimum of thirty-five square feet [3.25 square meters] of indoor activity area per child. Work areas, unused space, and areas which are not exclusively used for day care center purposes shall not be considered when computing minimum space. Every child shall have daily access to at least seventy-five square feet [6.97 square meters] of outdoor play space. If available outdoor play space cannot accommodate the licensed capacity of the center at one time, the center operator must prepare a written schedule of outdoor play times which limits use of the play area to its capacity.
3. The day care center shall have sufficient space and appropriate furniture and equipment to provide for support functions necessary to the program and to provide for the reasonable comfort and convenience of the staff and parents.
4. There shall be no open flames, open fireplaces, or portable space heaters in use on the premises of the center. All heating elements shall be insulated so as never to be hot to the touch, or shall be installed in such a manner that children cannot come in contact with them.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-29:

Requires the day care center to comply with state and local codes relating to health, sanitation, electrical wiring, plumbing, fire safety, and any other applicable building code. Also, sets minimum standards for office, kitchen, and laundry facilities, as such facilities are part of a center; requires specific minimum amounts of light in certain areas; requires appropriate resting facilities for children; sets minimum water supply standards; and sets minimum standards for toilet and diapering facilities.

75-03-02.1-29. MINIMUM REQUIREMENTS FOR DAY CARE CENTER FACILITIES AND EQUIPMENT.

1. The day care center shall meet state and local codes relating to health, sanitation, electrical wiring, plumbing, fire safety, and other applicable building code regulations.
2. If any of the following activities are conducted on the premises, the center shall provide sufficient storage and work areas, exclusive of indoor activity areas for children:
 - a. Office facilities:
 - (1) Office space separated from areas used by children, other than for isolation purposes, shall be provided for staff use in interviewing, conferences, and other accommodations as needed for administrative responsibilities.
 - (2) There shall be provision for maintenance and storage for records of children and staff, and business records of the facility.
 - b. Kitchen and food preparation areas:
 - (1) A separate area shall be provided for food preparation, equipped with adequate equipment and cleanup facilities appropriate to the size of the child care center.
 - (2) If the children are allowed to assist in any food preparation, their activity shall be limited to use of equipment and appliances that do not present a safety hazard.
 - c. Laundry:
 - (1) Laundry facilities shall be installed and used to safeguard the health of the children.
 - (2) Laundry facilities shall not be used during the time that the children are in care unless they are inaccessible to the children.

3. The day care center shall have sufficient space and appropriate furniture and equipment to provide for support functions necessary to the program and to provide for the reasonable comfort and convenience of the staff and parents.
4. The day care center and all rooms therein shall be properly lighted. The following technical requirements shall be met:
 - a. Sixty-five foot-candles of light for all general use and play areas.
 - b. Twenty-five foot-candles of light for all bathrooms.
 - c. Fifty foot-candles of light for any kitchen, laundry, and office facilities.
 - d. Fifteen foot-candles of light for corridors and storage areas.
5. Safe and comfortable arrangements for naps for enrolled children shall be provided.
 - a. There should be a minimum space of two feet [58.42 centimeters] between each crib or cot. Aisles between cots and cribs shall be kept free of all obstructions while they are occupied.
 - b. There shall be a room available, separate from the nap room, where individual children can go if they are unable to nap, for supervised play so as not to disrupt the other children's rest.
6. Water supply:
 - a. Drinking water shall be from an approved community water system or from a noncommunity water system and in compliance with article 33-17.
 - b. Drinking water shall be easily accessible to the children and shall be provided by either an angle jet drinking fountain with mouthguard or by a running water supply with individual single service drinking cups.
 - c. Hot and cold running water and of sufficient pressure from an approved community system, must be available in the center.
7. Toilet and lavatory facilities:
 - a. Toilet and lavatory facilities shall be provided and shall be convenient to the areas used by the children and staff.

- b. Toilet and lavatory facilities shall meet requirements of the local health department authorities.
 - c. Toilets shall be located in rooms separate from those used for cooking, sleeping, and eating. A minimum of one lavatory and one flush toilet shall be provided for each fifteen children.
 - d. Separate restrooms shall be provided for boys and girls six years of age and over. Partitions shall be installed to separate toilets in these restrooms.
 - e. Training chairs (potty chairs) shall be provided for use by children who require them. These shall be emptied promptly and thoroughly washed after each use.
 - f. At least one handwashing lavatory shall be provided per toilet room facility or diapering area.
 - g. A designated diapering area shall be established in centers caring for children requiring diapering.
 - h. After rinsing, cloth diapers shall be stored in a sanitary airtight container until they are removed or washed. Disposable diapers shall also be disposed in a sanitary container. A flush toilet or flush sink shall be provided for rinsing soiled diapers.
 - i. Safe step stools shall be provided to allow standard sized toilets and lavatories to be used by the children in care or child-size toilets and lavatories shall be provided.
 - j. Sanitary hand-drying equipment or materials shall be provided near handwashing lavatories.
8. Sewage and waste water disposal:
- a. A day care center must meet the requirements of the State Plumbing Code [article 62-03].
 - b. The sewage and waste water disposal system must be approved by the local health authority.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-30:

Requires food supplied to children should be nutritious, to be prepared in accordance with a posted menu, and to be prepared in a manner which is consistent with the provisions of the "Food Service Sanitation Manual" as adopted and printed by the North Dakota Department of Health. Also, permits inspections, by the State Health Department, of any facility providing food service.

75-03-02.1-30. MINIMUM STANDARDS FOR FOOD AND NUTRITION.

1. Food supplied to children shall be nutritious, of a quality which meets United States department of agriculture standards, properly prepared, sufficient in amount, varied according to diets of the children enrolled, and served at appropriate hours.
2. Where such services are available in the community free of charge to the day care center, a dietician or other food service professional shall be used as a consultant.
3. Children shall be served a nutritious morning and afternoon snack, as well as a nourishing lunch if they are to be in care throughout the day.
 - a. Children in care for more than three hours during the time cited above shall receive either a snack or lunch, whichever is appropriate by the time of the day.
 - b. Children in care during any normal mealtime hour shall be served food appropriate to that time of the day.
 - c. Children in care in after school day care center programs who have not had any food since lunch shall be provided with a snack.
 - d. Children receiving evening or overnight care shall be provided with an evening meal.
4. Menus shall be prepared on a weekly basis and shall be printed or written in such a manner that either the parents, the board, or other appropriate persons may review them.
5. Information provided by the children's parents as to their eating habits, food preferences, or special needs shall be considered in the day care center's feeding schedules and menus.
6. Children shall be served in a manner commensurate with their age using appropriate dishes and eating utensils.
7. Children shall be encouraged to eat the food served, but shall not be subjected to coercion or forced feeding.

8. When food is prepared, served, or stored in a day care center, such shall be governed by the provisions of the United States Public Health Service Food Service Sanitation Ordinance and Code (Part V), Food Service Sanitation Manual, Public Health Publication Number 934, as adopted and printed by the North Dakota department of health, environmental health and engineering services, or by a subsequent publication similarly adopted and printed. In day care centers without kitchen facilities, the foods and dishes shall be transported by means acceptable to the department of health from an approved food preparation source, and served within thirty minutes of receipt or shall be provided by the parents of a child.
 - a. The center must be inspected by a department of health representative if it is providing a food service.
 - b. Food service personnel must meet the established requirements established by the regulatory health agency.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-31:

Establishes, in 18 subsections, certain minimum components of the program of care to be furnished to children.

75-03-02.1-31. MINIMUM DAY CARE CENTER PROGRAM REQUIREMENTS.

1. A day care center shall establish a planned program of developmentally appropriate activities which promote intellectual, social, emotional, and physical development and enhance a child's cognitive, creative, and communication skills.
2. The program of the day care center shall be based upon the developmental needs of the children enrolled. It shall be flexible and subject to modification for individual child differences in the characteristics of the groups in the day care center.
3. The planned program shall be written and shall be varied in order to promote the physical and emotional well-being of the children, to encourage the acquisition of information and knowledge, and to foster the development of language skills, concepts, self-discipline, and problem solving activities. The plan shall describe how the activities planned will meet

the children's developmental needs, including the special needs of children in the center who are multilingual or handicapped. The written program shall be made available to parents.

4. The program shall include firsthand experiences for children to learn about the world in which they live. Opportunities shall be provided for older children to participate in supervised visits and recreational activities in the community.
5. Learning experiences shall be conducted in consultation with parents in order to ensure harmony with the lifestyle and cultural background of the children.
6. The program shall provide a balance of quiet and active indoor and outdoor group and individual activities. Within the schedule, a time for supervised child-initiated and self-selected activity shall be established.
7. A variety of games, toys, books, crafts, and other activities and materials shall be provided to enhance the child's intellectual and social development and to broaden the child's life experience. Each center shall have enough play materials and equipment so that at any one time, each child for which the center is licensed can be individually involved.
8. The cultural diversity of the children shall be reflected in the program through incorporation of their language, food, celebration, and lifestyles, where appropriate.
9. Equipment and furniture shall be durable and safe and shall be appropriately adapted for children's use.
10. Sufficient space accessible to children shall be provided for each child to have the child's own clothes and to keep other personal items.
11. The center shall supplement, augment, and reinforce the child's activities at home, and where applicable, at school.
12. At the time of enrollment, the day care center personnel shall discuss with the parents the children's habits, activities, and schedules while at home and in school and their parent's special concern about their past and future behavior and development. The schedule and activities in day care shall be designed to complement and supplement the children's experiences at home and in school.
13. Parents shall be encouraged to visit the facility, observe, and participate in the care of their children.

14. The day care center personnel shall be responsible for contacting parents to exchange information concerning the child and the day care program as well as to offer them meaningful opportunities to participate in general program policymaking.
15. Personal hygiene practices appropriate for a child's age and development shall be stressed.
16. Any concerns about the health, development, or behavior of any child in the day care center on the part of center personnel, the administering or operating agency shall be communicated to the parent promptly and directly.
17. Each child's cultural and ethnic background and primary language or dialect shall be respected by the day care personnel.
18. Each facility shall have a designated area where a child can sit quietly or lie down to rest. Napping schedules shall be set for children according to their ages and needs. For children unable to sleep, time and space for quiet play must be available.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-07,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-32:

Identifies certain additional requirements for centers providing care to infants, care to children at night, and care to children who are not regularly enrolled.

75-03-02.1-32. SPECIALIZED TYPES OF CARE AND MINIMUM REQUIREMENTS THEREFORE.

1. Infant care:

- a. A day care center serving children from birth to twenty-four months shall provide an environment which protects the children from physical harm and one which is not so restricted so as to inhibit physical, intellectual, emotional, and social development.

- b. Nonwalking children shall have the opportunity during each day for freedom of movement, such as creeping or crawling in a safe, clean, open, uncluttered area.
 - c. Each infant shall have an individual sleeping space. The sheets shall be changed whenever they become soiled or wet.
 - d. Children shall be taken out of doors or to other areas within the facility for a part of each day to provide some change of physical surroundings and to be with other children. No child shall be confined to a crib or playpen during the entire time at the center, unless the child is preparing to sleep or sleeping for the duration of the care.
 - e. Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked or sung to.
 - f. Low chairs and tables or infant seats with trays shall be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, shall have a wide base and a safety strap.
 - g. Children shall never be shaken or jostled in a moderate or severe manner.
 - h. All cries of infants shall be investigated.
 - i. Infants shall be fed or supervised individually and their diet and pattern of feeding shall be appropriate to their individual developmental needs.
 - j. At no time shall infants be left unattended while feeding.
 - k. Prepackaged, presterilized formula shall be used for each child's feeding, and any excess shall be discarded in a safe, sanitary manner, if it has been unrefrigerated for a total of four or more hours.
 - l. Diapers shall be changed promptly when needed and in a sanitary manner. Infants shall be changed on a cleanable surface which is thoroughly cleaned with detergent after each diapering.
2. Night care:
- a. Any day care center offering night care shall provide program modifications for the special needs of children during the night.

- b. In consultation with parents, special attention shall be given by the caregiver to providing for a transition into this type of care appropriate to the child's emotional needs.
 - c. When possible, children shall be left for care and picked up before and after their normal sleeping period so that there is minimal disturbance of the child during sleep.
 - d. Bathing facilities shall be provided and preschool age children shall be supervised when bathing.
 - e. Comfortable beds or cribs complete with a mattress or pad shall be available.
 - (1) Pillows and mattresses shall have fitted plastic coverings.
 - (2) Sheets and pillowcases shall be changed as often as necessary for cleanliness and hygiene, but not less than weekly. If beds are used by different children, sheets and pillowcases shall be laundered before use by other children.
 - (3) Each bed or cot shall have at least one blanket available.
 - f. The center shall require each child in night care to have:
 - (1) Night clothing.
 - (2) A toothbrush marked for identification.
 - g. Sufficient staff shall be available to assist children during eating and prebedtime hours and during the morning period when dressing.
 - h. During sleeping hours, the staff shall be awake and within listening distance in order to provide for the needs of children and respond to an emergency.
3. Drop-in centers:
- a. If a day care center serves drop-in children, school children, or before and after school children, it shall be sufficiently staffed to effectively handle admission records, and explain the policies of the center. Admission records secured must comply with all enrollment requirements contained in section 75-03-02.1-21 except the immunization record requirement.
 - b. The program of the center shall reflect the special needs of the children who are provided drop-in service.

- c. Admittance procedures shall provide for a period of individual attention for the child in order to acquaint the child with the facility, its equipment, and the people who can assist the child.
- d. No day care center shall receive drop-in or part-time children who, when added to the children in regular attendance, cause the center to exceed the total number of children for which the center is licensed.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-33:

Provides additional minimum standards for centers who provide care to children with special needs due to disability or health status.

75-03-02.1-33. MINIMUM REQUIREMENTS FOR CARE OF CHILDREN WITH SPECIAL NEEDS. When children with special needs are admitted to a day care center, there shall be appropriate provisions to meet those needs. The center shall document how the child's special needs shall be met.

- 1. When children with special needs are admitted, the responsible individual in the center shall consult with the child's parents, the child's source of professional health care, or, when appropriate, other health and professional consultants.
- 2. The appropriate staff of the center shall receive proper instructions as to the nature of the child's disability, potential for growth and development and the child's relationship to the center, family, and others around the child.
- 3. Where the nature of the special need or the number of children with special needs warrants added care, the center shall add sufficient staff and equipment as deemed necessary by the board to compensate for these needs.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-34:

Forbids punishing physically or in a manner which humiliates or frightens, or causes more than minor transient physical or emotional discomfort. Prohibits punishment by force feeding or withholding food, and forbids punishment for a child's failure of toilet habits.

75-03-02.1-34. REGARDING PUNISHMENT OF ENROLLEES.

1. No child of any age shall be shaken or physically punished.
2. Brief, supervised separation from the group for no longer than ten minutes may be used if necessary.
3. No method of punishment which humiliates or frightens the child, or causes more than minor transient physical or emotional discomfort, or both, shall be used.
4. No child shall be punished by withholding or force-feeding food, requiring or prohibiting rest or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits.
5. Profane, threatening, unduly loud or abusive language shall not be used when addressing children, or in the presence of children.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-35:

Sets certain minimum requirements for the provision of transportation to children in centers which provide such transportation.

75-03-02.1-35. MINIMUM STANDARDS FOR PROVISION OF TRANSPORTATION.

1. The operator shall establish a written policy governing the transportation of children to and from the day care center, if the center provides transportation. Such a policy shall specify who may pick up children from the day care center and how parental permission is to be obtained for special field trips and related activities which occur outside the day care center. When the day care center provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children

shall be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided by a day care center, children shall be protected by adequate staff supervision, safety precautions, and liability/medical insurance.
 - a. Child/staff ratios shall be maintained to assure the safety of children while being transported.
 - b. No child shall be left unattended in a vehicle.
3. Children shall be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The vehicle and driver shall be in compliance with all relevant state and local laws.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-04,
50-11.1-08

AGENCY SYNOPSIS OF § 75-03-02.1-36:

Requires that a center which is found to be out of compliance receive written notice of the areas of noncompliance.

75-03-02.1-36. NOTICES OF VIOLATIONS. Any day care center which, after inspection, is not in compliance with minimum standards and regulations shall receive written notice of the violations revealed by the inspection. Notice given in any of the following ways is sufficient.

1. A statement of deficiencies, which shall identify each violation and advise the day care center operator that prompt action to correct the violation is expected.
2. A statement of violations, which shall include a date certain by which each violation will be corrected. Such a statement shall be issued only if:
 - a. The operator of the day care center has, in writing, waived the operator's right to a written statement of charges and the operator's right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, should the operator's license be revoked for failure to correct the stated violations within the time set for correction; and

- b. The operator of the day care center has, in writing, acknowledged the violations and provided assurances of the operator's ability and intention to correct the violations within the time set for their correction.
- 3. Written charges as to the reasons for the denial or revocation of a license.

History: Effective December 1, 1980.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-08,
50-11.1-09,
50-11.1-10

FEBRUARY 1981

STAFF COMMENT: Sections 75-02-02-02, 75-02-02-05, 75-02-02-06, 75-02-02-09, and 75-02-02-10 are not included in this material to save space. The following synopsis from the Social Service Board describes the changes to these sections:

NOTE: Technical amendments are made to sections 75-02-02-02, 75-02-02-05, 75-02-02-06, 75-02-02-09, and 75-02-02-10, correcting federal regulatory references with regard to the law implemented. These changes are necessary because of a reorganization and renumbering of certain portions of the Code of Federal Regulations.

AGENCY SYNOPSIS OF 75-02-02-04:

Amends two subsections to permit persons to make application on behalf of another person and to require the provision of information to applicants and recipients.

X 75-02-02-04. APPLICATION AND DECISION.

1. Application.

- a. All individuals wishing to make application for medical assistance under the medical assistance program shall have the opportunity to do so, without delay.
- b. An application is a written request made to a county social service board by a person desiring assistance under the medical assistance program or by a proper person seeking such assistance on behalf of another person. A proper person means any person of sufficient maturity and understanding to act responsibly on behalf of the applicant.
- c. An application must be in writing and signed on the prescribed application form.

- d. The prescribed application form must be signed by each applicant if the applicant is physically and mentally able to do so. For those applicants adjudged incompetent by a court, it shall be signed on behalf of the applicant by a legally appointed guardian.
- e. An--application--signed--as--provided--for--above--by--a--person--other--than--the--applicant--will--be--replaced--by--an--application--signed--by--the--applicant--as--soon--as--the--applicant's--physical--or--mental--condition--permits--Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients shall be furnished to all who require it.
- f. A relative or other interested party may file an application in behalf of a deceased person to cover medical costs incurred prior to the deceased person's death.
- g. Each applicant must reasonably provide the applicant's social security number.

2. Decision.

- a. A decision as to eligibility will be made promptly on applications, within forty-five days, or sixty days in disability cases, except in unusual situations.
- b. Immediately upon determination of eligibility, applicants for medical assistance will be notified by the county social service board on the prescribed form (form 600) as provided for in other public assistance programs.

History: Amended effective February 1, 1981.

General Authority
 NDCC 50-06-05.1,
 50-24.1-04

Law Implemented
 NDCC 50-24.1-02,
~~45-CFR-206-10~~
42 CFR 435.905,
42 CFR 435.906,
42 CFR 435.907,
42 CFR 435.908,
42 CFR 435.909,
42 CFR 435.910,
42 CFR 435.911,
42 CFR 435.912,
42 CFR 435.914

AGENCY SYNOPSIS OF 75-02-02-07:

Makes several technical corrections, ends the practice of deeming income except in regard to residents of certain specialized facilities, reorganizes resource limitation provisions, adds a presumption that a holder's interest in contractual rights is salable, and describes a method whereby that presumption may be rebutted.

X 75-02-02-07. CONDITIONS OF ELIGIBILITY.

1. No age, residence, citizenship, or other requirements will be imposed that is prohibited by title XIX of the Social Security Act.
2. Financial eligibility.
 - a. Persons receiving aid to families with dependent children or technically eligible to receive aid to families with dependent children on the basis of categorical relatedness shall be subject to the income levels set out below in paragraph 1 of subdivision c and to the resource eligibility standards set out under North Dakota Century Code chapter 50-09 and the resource rules and policies of the social service board pertaining to aid to families with dependent children eligibility except that those resource rules set out below in subdivision d which are more liberal in any particular case than the aid to families with dependent children rules and policies shall be applicable in the case of aid to families with dependent children recipients and those categorically related to the aid to families with dependent children program.
 - b. Persons receiving supplemental security income or technically eligible therefor on the basis of age, disability, or blindness shall be subject to the income levels set out below as well as the resource standards set out below.
 - c. The following levels of income and resources for maintenance, in total dollar amounts, will be used as a basis for establishing financial eligibility for medical assistance; ~~and are in accordance with 45-GFR-248-21:~~
 - (1) The income levels applicable to families of various sizes in determining eligibility for medical assistance will be according to income levels established by the social service board of North Dakota.
 - (2) ~~None--of--the--income--of--the--spouse--of--an--aged--blind--or--disabled--individual--who--enters--a--long--term--care--facility--will--be--deemed--as--available--to--the--aged--blind--or--disabled--individual--in--determining--the~~

eligibility---of---the---aged;---blind;---or---disabled individual--for--medical--assistance--while--in--such long-term--care--facility:---For-the-purposes-of-this paragraph,--the-state-hospital-for-the-mentally-ill-at Jamestown--shall--be--treated--as--a--long-term--care facility: Only twenty-five percent of that income of the ineligible medical assistance unit in the home which exceeds the appropriate medical assistance income level will be deemed to be available to an eligible individual residing in a specialized facility. Income is not otherwise deemed to be available to persons who live outside of the home of the medical assistance unit on other than a temporary basis.

(3) ~~Only--twenty-five--percent--of--the-net-income-of-the parent-or-parents-of-a-blind-or--disabled--individual under--twenty-one--years--of--age--will--be-deemed-as available-when-the-individual-resides-away--from--the home--of--the--individual's--parents--on--more-than-a temporary-basis;-e.g.;;-the-child-is--in--a--long-term care--facility:---For-the-purposes-of-this-paragraph; the-term--"net--income"--means--the--income--(whether earned---or---unearned)--of--the--parent--or--parents remaining-after-deduction-therefrom-of-the-following:~~

~~(a)--Payment--made--for--noncovered-necessary-medical care:~~

~~(b)--Payments--made--for--necessary--health-insurance coverage:~~

~~(c)--Reasonable--work-related--expenses-for-producing any-earned-income:~~

~~(d)--Set--aside--of--income-for-the-parent-or-parents and--their--valid--dependents--based--upon--the protected-income-levels-set-out-above:~~

(4) All spousal resources or parental resources will be deemed as available to those aged, blind, or disabled individuals as set out in subsections subdivisions b and c.

d. Resources. The following property provisions will be applied in determining eligibility for medical assistance. In all instances, including determinations of equity, property must be realistically evaluated in accord with current market value. Any reasonable costs which may be associated with liquidation of excess property must be taken into account:

(1) The home. The home of occupied by the individual or family will be exempt in determining eligibility for medical assistance. The home is defined as including the land on which it is located, providing the acreage does not exceed one hundred sixty contiguous acres [64.75 hectares] if rural or two acres [.81 hectares] if located in town. Acreage in excess of these amounts would be declared "real property other than home". The home will be considered occupied and exempt if the individual or family is temporarily absent but actually intends and is able to return within a reasonable length of time.

(2) Real property other than the home. Real Nonexempt real property other than the home may not exceed an equity of two thousand five hundred dollars except ~~that real property which is essential to earning a livelihood shall be exempt from the limitation, if the liquidation of such assets would cause undue hardship. The criteria of undue hardship is met when transfer of an income-producing asset would result in reduction of the periodic net income of the transferor and the transferor's valid dependents below the appropriate income level set out in paragraph 1 of subdivision c of subsection 2 of section 75-02-02-07. If undue hardship is not a consideration, equity in excess of the two thousand five hundred dollars would be considered available for meeting medical costs, providing the property is saleable. The person would have the option of liquidating the excess property or borrowing funds on it. It is intended that the provision for exemption of income-producing real or personal property above the two thousand five hundred dollar amount be applied only when the property owners are actively engaged in utilizing the property to earn income and derive the total benefit of such income for their maintenance needs. Thus, for example. The following exemptions apply to real property other than the home:~~

(a) An individual who is merely receiving rent income from property would not be eligible for the additional exemption. Property which is essential to earning a livelihood shall be exempt, provided that the property owners are actively engaged in utilizing the property to earn income and derive the total benefit of such income for their own needs. An individual who is merely receiving rental or lease income from property is not eligible for this exemption. An individual is actively engaged in utilizing property if the individual contributes

significant current personal labor in utilizing the property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active utilization of the property.

(b) Similarly,--an--individual--receiving--income--from--stocks,--bonds,--savings--accounts,--etc.,--would--not--be---eligible---for--the--additional--exemption--Property which is not salable without working an undue hardship.

(c) However, an individual would be actively engaged in utilizing such property if the individual contributed significant current personal labor in utilizing such property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active utilization of such property.

(3) Personal property resources.

(a) Personal property is defined as including cash; savings;--and--redeemable--stocks---and---bonds, surrender value of life insurance policies, vehicles, machinery, livestock, etc.;--but--does not--include--personal--effects,--wearing--apparel, household--goods,--furniture,--or--trailer--homes being--used--for--living--quarters:--Cash--surrender value--of--life--insurance--policies---will---be considered--personal--property--but--not--cash and other types of movable property.

(b) The following types, kinds, and amounts of personal property are exempt from consideration under the medical assistance program. All nonexempt property owned by the medical assistance unit is an available resource.

[1] Personal effects, wearing apparel, household goods, furniture, and trailer homes being used as living quarters.

(b) [2] Term insurance is-exempt-personal-property: Burial and burial insurance, the terms of which specifically provide that the proceeds can be used only to pay the burial expenses of the insured, is also exempt. Other "prepaid" burial arrangements are considered-as liquid assets.

(e) [3] One motor vehicle owned by the applicant or recipient medical assistance unit is exempt regardless of its value. Any other motor vehicle must be considered as personal property and is subject to the limitations on personal property set out below.

(d) (c) Personal Nonexempt, nonliquid personal property may not exceed an equity of two thousand five hundred dollars except that when such property which is essential to the earning of a livelihood shall be exempt from the limitation if or when the liquidation of such excess assets would cause undue hardship. ~~Liquidation of income-producing personal property which would result in reducing annual income below the established income levels would be considered undue hardship. If undue hardship is not found to be a consideration, equity in excess of the two thousand five hundred dollars would be considered available for meeting medical costs providing the property is saleable. The person would have the option of liquidating the excess property or borrowing funds on it. It is intended that the provision for exemption of income-producing personal property above the two thousand five hundred dollar amount be applied only when the property owners are actively engaged in utilizing the property to earn income and derive the total benefit of such income for their maintenance needs.~~ The descriptive definitions definition of the phrases "undue hardship" and "actively engaged in utilizing the property" phrase "essential to the earning of a livelihood" as set out in paragraph 2 of subdivision d of subsection 2 of section 75-02-02-07 are is fully applicable also in instances involving personal property.

~~(e) In all instances, real and personal property must be realistically evaluated in accord with current market value, and in considering net equity, any possible costs which may be associated with liquidation of the excess property must be taken into account.~~

(4) Cash reserve exemption. With respect to cash, savings, redeemable stocks and bonds, and other liquid assets, the following levels will be applicable to families of various sizes; one person, one three thousand five hundred dollars; two persons, two four thousand two five hundred fifty dollars; and for each additional person, an amount of twenty-five

dollars shall be added. These amounts will not be considered as being available for medical expenses.

(5) There is a presumption that the holder's interest in contractual rights to receive payment, including, but not limited to, the seller's interest in a long-term contract for the sale of real property, promissory notes, mortgages, and accounts receivable, is salable without working an undue hardship. This presumption may be rebutted by evidence demonstrating all of the following:

(a) The holder's interest was publicly advertised for sale in a newspaper of general circulation, the circulation area of which includes any real property underlying the holder's interest, which advertisement was published successively for two weeks if the newspaper is a weekly publication, and for one week if the newspaper is a daily publication.

(b) The advertisement included, at a minimum, a legal description of any real property underlying the holder's interest; a statement of a minimum price at which the holder's interest will be sold, which price shall not exceed seventy-five percent of the determined discounted value of that interest or thirty thousand dollars, whichever is less; and the name, address, and telephone number of a person who will answer inquiries and receive offers.

(c) The sworn statement of the applicant, recipient, or the applicant's or recipient's representative, that no offers were received which equaled or exceeded the minimum amount identified in subparagraph b.

e. Disqualifying transfers.

(1) Every person who before or after making application for medical assistance gives an assignment or makes a transfer of the person's property (whether real or personal ~~or both~~ property or liquid assets, or a combination thereof) for the purpose of rendering oneself eligible for medical assistance is thereby rendered ineligible.

(2) The intent of the person making such a transfer is the basis for determining eligibility for medical assistance.

- (3) There are legitimate instances when property transfers may be valid when related to a particular set of circumstances. The applicant or recipient should be given full opportunity to state the reasons for having made the transfer of property and this evidence should in turn be considered in relation to the following questions:
- (a) Was adequate consideration received?
 - (b) How recent was the transfer? Caution on this point is advised since very recent transfers may in some instances be entirely acceptable insofar as eligibility for medical assistance is concerned.
 - (c) Is the applicant's or recipient's stated purpose reasonable in view of the circumstances prevailing at the time of transfer?
 - (d) Would it have been reasonable to anticipate that the transfer of property at the time it occurred would result in an earlier need for assistance?
 - (e) Were benefits available to the applicant or recipient from the transferee that were contingent upon the transfer of the property?
 - (f) Did the transferee have a legal or otherwise equitable interest in the property transferred to the transferee?
- (4) A transfer of property for less than adequate consideration, made either within two years prior to the application for medical assistance or after a previous application has been made and denied because of excess property resources, shall be presumed to have been made for the purpose of rendering the applicant eligible for medical assistance. This presumption may be rebutted by substantial evidence of an intent which is inconsistent with the presumed intent.
- f. There shall be a flexible measurement of available income which will be applied in the following order or priority:
- (1) First, for maintenance, so that any income in an amount at or below the established level will be protected for maintenance.
 - (2) Next; -payments Payments made for noncovered necessary current medical and remedial care will be deducted.

- (3) Reasonable work-related expenses for producing any earned income will be deducted.
 - (4) Finally, payments made for necessary health insurance coverage will be deducted.
 - (5) All of the remaining excess income will be applied to costs of medical assistance included in the state plan.
- g. All income and resources will be considered in establishing eligibility and in the flexible application of income to medical costs not in the state plan, and payment toward the medical assistance costs.
- (1) The state agency or local agency under supervision of the state agency will take reasonable measures to ascertain any legal liability of third parties arising after March 31, 1968, for the medical care and services included under the plan, the need for which arises out of injury, disease, or disability of applicants for or recipients of medical assistance.
 - (2) The state or local agency, in determining whether medical assistance is payable, will treat any third party liability as a current resource when such liability is found to exist and payment by the third party has been made or will be made within a reasonable time.
 - (3) The state or local agency will not withhold reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed but was not treated as a current resource. In such cases, the state and local agency shall require the applicant or recipient to execute all necessary documents to protect rights to subsequent reimbursements. Failure of any applicant or recipient to execute any such documents shall be considered adequate grounds for ineligibility for medical assistance.
 - (4) The state or local agency will seek reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed, but was not treated as a current resource.
 - (5) Each applicant or recipient shall execute all necessary documents to protect his, or the state

agency's, rights to subsequent reimbursement as a condition of eligibility.

- h. Only such income and resources as are actually available will be considered; income and resources will be reasonably evaluated.
- i. The financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse, and parents for children a child under age twenty-one, or blind, or permanently and totally disabled. Such responsibility is imposed on applicants and recipients of medical assistance as a condition of eligibility under the state plan.
- j. An applicant or recipient must take all necessary steps to obtain any annuities, pensions, unemployment compensation, veteran's benefits, and retirement and disability benefits to which the applicant or recipient may be entitled, unless the applicant or recipient can show good cause for not doing so.

3. Blindness and disability.

- a. The federal definition of the terms "blind" and "disabled" as used by the social security administration in the supplemental security income program shall be used in all applicable eligibility determinations.
- b. The following is the state's definition of blindness in terms of ophthalmic measurement:

An individual is considered blind if the individual has central vision acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than twenty degrees.

- c. In any instance in which a determination is to be made whether an individual is blind according to the state's definition, there will be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.
- d. Each eye examination report form will be reviewed by a state supervising ophthalmologist who is responsible for the agency's decision that the applicant does or does not meet the state's definition of blindness.

- e. The following is the state's definition of permanent and total disability, showing that: (1) "permanently" is related to the duration of the impairment or combination of impairments; (2) "totally" is related to the degree of disability; and (3) "permanently and totally disabled" means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, that substantially precludes the individual from engaging in useful occupations within the individual's competence, such as holding a job.

Under this definition: "Permanently" refers to a condition which is not likely to improve or which will continue throughout the lifetime of the individual; it may be a condition which is not likely to respond to any known therapeutic procedures, or a condition which is likely to remain static or to become worse unless certain therapeutic measures are carried out, where treatment is unavailable, inadvisable, or is refused by the individual on a reasonable basis; "permanently" does not rule out the possibility of vocational rehabilitation or even possible recovery in light of future medical advances or changed prognosis; in this sense the term refers to a condition which continues indefinitely, as distinct from one which is temporary or transient. "Totally" involves considerations in addition to those verified through the medical findings, such as age, training, skills, and work experience, and the probable functioning of the individual in the individual's particular situation in light of the individual's impairment; an individual's disability would usually be tested in relation to ability to engage in remunerative employment; the ability to keep house or to care for others would be the appropriate test for (and only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment; eligibility may continue, even after a period of rehabilitation and readjustment, if the individual's work capacity is still very considerably limited (in comparison with that of a normal person) in terms of such factors as the speed with which the individual can work, the amount the individual can produce in a given period of time, and the number of hours the individual is able to work.

- f. Each medical report form and social history will be reviewed by technically competent persons, not less than a physician and a social worker qualified by professional training and pertinent experience, acting cooperatively, who are responsible for the agency's decision that the applicant does or does not meet the appropriate definition of blindness or disability. The agency shall decline to determine blindness or disability when such determination can be made pursuant to the processing of a supplemental

security income benefit's application by the social security administration or its contractee for that purpose.

History: Amended effective January 1, 1980; amended effective February 1, 1980; amended effective February 1, 1981.

General Authority
NDCC 50-24.1-04

Law Implemented
NDCC 50-24.1-02,
45-CFR-248-3;
45-CFR-248-10;
45-CFR-248-70;
45-CFR-248-80
42 CFR, Part 435

AGENCY SYNOPSIS OF 75-02-02-08:

Amends one subsection to limit payment for certain eyeglass services and supplies, and amends a second subsection to provide a definition for the term "remedial services."

X 75-02-02-08. AMOUNT, DURATION, AND SCOPE OF MEDICAL ASSISTANCE.

1. Within the limits of legislative appropriations, eligible recipients may obtain the following medical and remedial care and services:
 - a. Inpatient hospital services (other than services in an institution for mental diseases). "Inpatient hospital services" are those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.
 - b. Outpatient hospital services. "Outpatient hospital services" are those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state

standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.

- c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction, of a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- d. Skilled nursing home services (other than services in an institution for mental diseases) for individuals twenty-one years of age or older. "Skilled nursing home services" means those items and services furnished by a licensed and otherwise eligible skilled nursing home maintained primarily for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- e. Intermediate nursing care (other than services in an institution for mental diseases). "Intermediate nursing care" means those items and services furnished by a currently licensed intermediate care facility maintained for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- f. Early and periodic screening and diagnosis of individuals under twenty-one years of age, and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of

twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.

- g. Physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home or elsewhere. "Physician's services" are those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. This term means any medical or remedial care or services other than physicians' services, provided within the scope of practice as defined by state law, by an individual licensed as a practitioner under state law.
- i. Home health care services. "Home health care services" in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in these definitions, are any of the following items and services when they are provided on recommendation of a licensed physician to a patient in the patient's place of residence, but not including as a residence a hospital or a skilled nursing home:
 - (1) Intermittent or part-time nursing services furnished by a home health agency.
 - (2) Intermittent or part-time nursing services of a professional registered nurse or a licensed practical nurse when under the direction of the patient's physician, when no home health agency is available to provide nursing services.
 - (3) Medical supplies, equipment, and appliances recommended by the physician as required in the care of the patient and suitable for use in the home.
 - (4) Services of a home health aide who is an individual assigned to give personal care services to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and the home health agency which assigns a professional registered nurse to provide continuing supervision of the aide on the aide's assignment. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which

is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.

- j. Private duty nursing services. "Private duty nursing services" are nursing services provided by a professional registered nurse or a licensed practical nurse, under the general direction of the patient's physician, to a patient in the patient's own home or extended care facility when the patient requires individual and continuous care beyond that available from a visiting nurse or that routinely provided by the nursing staff of the hospital, nursing home, or extended care facility.
- k. Dental services. "Dental services" are any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession. Such services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. "Dentist" means a person licensed to practice dentistry or dental surgery.
- l. Physical therapy and related services. "Physical therapy and related services" means physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders, and the use of such supplies and equipment as are necessary.
 - (1) "Physical therapy" means those services prescribed by a physician and provided to a patient by or under the supervision of a qualified physical therapist. A qualified physical therapist is a graduate of a program of physical therapy approved by the council on medical education of the American medical association in collaboration with the American physical therapy association, or its equivalent, and where applicable, is licensed by the state.
 - (2) "Occupational therapy" means those services prescribed by a physician and provided to a patient and given by or under the supervision of a qualified occupational therapist. A qualified occupational therapist is registered by the American occupational therapy association or is a graduate of a program in occupational therapy approved by the council on medical education of the American medical association and is engaged in the required supplemental clinical experience prerequisite to registration by the American occupational therapy association.

- (3) "Services for individuals with speech, hearing, and language disorders" are those diagnostic, screening, preventive or corrective services provided by or under the supervision of a speech pathologist or audiologist in the practice of the pathologist's or audiologist's profession for which a patient is referred by a physician. A speech pathologist or audiologist is one who has been granted the certificate of clinical competence in the American speech and hearing association, or who has completed the equivalent educational requirements and work experience necessary for such a certificate, or who has completed the academic program and is in the process of accumulating the necessary supervised work experience required to qualify for such a certificate.
- m. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select.
- (1) "Prescribed drugs" are any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law. With respect to "prescribed drugs" federal financial participation is available in expenditures for drugs dispensed by licensed pharmacists and licensed authorized practitioners in accordance with North Dakota Century Code chapter 43-17. When dispensing, the practitioner must do so on the practitioner's written prescription and maintain records thereof.
- (2) "Dentures" are artificial structures prescribed by a dentist to replace a full or partial set of teeth and made by, or according to the directions of, a dentist.
- (3) "Prosthetic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.

- (4) "Eyeglasses" are lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision.
- n. Other diagnostic, screening, preventive, and rehabilitative services.
- (1) "Diagnostic services" other than those for which provision is made elsewhere in these definitions, include any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.
- (2) "Screening services" consist of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.
- (3) "Preventive services" are those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability and other health deviations or their progression, prolong life and promote physical and mental health and efficiency.
- (4) "Rehabilitative services" in addition to those for which provision is made elsewhere in these definitions, include any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
- o. Care and services in a certified mental institution for individuals under twenty-one years of age or sixty-five years of age or over.
- p. Any other medical care and any other type of remedial care recognized under state law, specified by the secretary.

This term includes but is not limited to the following items:

- (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the agency to be necessary in the individual case. "Travel expenses" are defined to include the cost of transportation for the individual by ambulance, taxicab, common carrier or other appropriate means; the cost of outside meals and lodging en route to, while receiving medical care, and returning from a medical resource; and the cost of an attendant may include transportation, meals, lodging, and salary of the attendant, except that no salary may be paid a member of the patient's family.
 - (2) Family planning services, including drugs, supplies, and devices, when such services are under the supervision of a physician. There will be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals can choose in accordance with the dictates of their consciences.
 - (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician and when it is not available to the patient from other sources.
 - (4) Skilled nursing home services, as defined in subdivision d, provided to patients under twenty-one years of age.
 - (5) Emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act, or definitions of inpatient or outpatient hospital services set forth in subdivisions a and b.
2. The following limitations exist with respect to medical and remedial care and services covered or provided under the medical assistance program.
- a. Coverage will not be extended and payment will not be made for diet remedies prescribed for eligible recipients.

- b. Coverage will not be extended and payment will not be made for alcoholic beverages prescribed for eligible recipients.
 - c. Coverage will not be extended and payment will not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
 - d. Coverage and payment for eye examinations and eyeglasses for eligible recipients shall be limited to examinations and eyeglass replacements necessitated because of visual impairment. ~~There shall also be an allowance for the replacement of one pair of eyeglasses per year, such replacement occasioned by loss or breakage. However, a~~ Coverage and payment for eyeglass frames shall not exceed forty-four dollars per pair. A recipient is responsible for copayment of three dollars for such the replacement of eyeglasses when the replacement is occasioned by loss or breakage.
3. Remedial services provided by licensed homes for the aged and infirm, licensed foster care homes or facilities, and specialized facilities are not covered services but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility. For the purposes of this section, "remedial services" means those services, provided in the above-identified facilities, which produce the maximum reduction of physical or mental disability and restoration of a recipient to the recipient's best possible functional level.

History: Amended effective September 1, 1978; amended effective September 2, 1980; amended effective February 1, 1981.

General Authority
NDCC 50-24.1-04

Law Implemented
NDCC 50-24.1-04,
~~45-6FR-249.10,~~
42 CFR 431.53,
42 CFR 431.110,
42 CFR 435.732,
42 CFR 435.1009,
42 CFR Part 440,
42 CFR Part 441,
subparts A, B,
& D

ARTICLE 75-03
COMMUNITY SERVICES

Chapter	
75-03-01	Supplemental Parental Child Care and Family Day Care [Superseded]
75-03-01.1	Supplemental Parental Care and Family Day Care
75-03-02	Day Care Centers [Superseded]
75-03-02.1	Day Care Centers
75-03-03	Foster Care Group Homes
75-03-04	Residential Child Care Facilities
75-03-05	Family Boarding Homes for Special Education Students
75-03-06	Family Subsidy Program

CHAPTER 75-03-01.1
SUPPLEMENTAL PARENTAL CARE AND FAMILY DAY CARE

Section	
75-03-01.1-01	Purpose
75-03-01.1-02	Objective of Rules
75-03-01.1-03	State Organization
75-03-01.1-04	In-Home Supplemental Parental Care - In-Home Care Providers
75-03-01.1-05	Family Day Care Home Supplemental Parental Care
75-03-01.1-06	Inspections
75-03-01.1-07	Registration Certificate
75-03-01.1-08	Denial or Revocation of Registration Certificate
75-03-01.1-09	Notices of Violations
75-03-01.1-10	Family Day Care Homes Registered Prior to Effective Date

75-03-01.1-01. PURPOSE. The purpose for the regulation of in-home care and family day care homes is to set minimum standards of care which must be maintained by child care providers so that children receiving such care be provided food, shelter, safety, comfort, supervision, and learning experiences commensurate with their ages and capabilities so as to safeguard the health, safety, and development of those children.

History: Effective February 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-01

75-03-01.1-02. OBJECTIVE OF RULES. Under the authority vested in the social service board of North Dakota pursuant to North Dakota Century Code section 50-11.1-08, the social service board of North Dakota is empowered to prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1 and to qualify for the receipt of federal funds.

History: Effective February 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-08

75-03-01.1-03. STATE ORGANIZATION. The social service board of North Dakota is the official state agency charged with the regulation of supplemental parental care activities in the state with exclusive authority to register in-home supplemental parental care and family day care providers.

History: Effective February 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-02(8)

75-03-01.1-04. IN-HOME SUPPLEMENTAL PARENTAL CARE - IN-HOME CARE PROVIDERS.

1. Application for registration certificate and issuance by the social service board:
 - a. Any person, corporation, partnership, or voluntary association desiring to receive public funds in consideration for providing in-home supplemental parental care shall apply for a registration certificate, therein certifying compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the standards for such care established by the social service board of North Dakota and shall secure a registration certificate from the board.
 - b. Application shall be made to the county social service board office in the county wherein the applicant proposes to provide in-home supplemental parental care services.
 - c. Upon approval and acceptance by the social service board of North Dakota of the applicant's application, the applicant shall, subject to the provision of section 75-03-01.1-08, be registered by the board as an in-home

child care provider, and shall be entitled to a registration certificate to be issued by the social service board of North Dakota.

- d. Any registration certificate issued by the social service board of North Dakota shall serve as public documentation that the provider of in-home child care services has in writing certified to the board compliance with the provisions of North Dakota Century Code chapter 50-11.1 and the requirements contained in subsection 2. Registration certificates are valid for a period of one year when minimum standards have been met.
2. Affidavit of standard compliance - standards. Applicants for an in-home supplemental parental care registration certificate shall be directly responsible for the care, supervision and guidance of the child or children in the child or children's home and shall comply with the following standards, certifying in an affidavit that the applicants shall:
- a. Be at least fourteen years of age.
 - b. Be mentally, physically, and emotionally able to provide adequate care for the children in the applicant's charge.
 - c. Be able to devote adequate time and attention to the children in the applicant's charge.
 - d. Participate in specialized training related to child care as provided by or approved by the social service board.
 - e. Provide food of sufficient quantity and nutritious quality which satisfies the dietary needs of the children while in the applicant's charge.
 - f. Provide proper health care and protection for children in the applicant's charge.
 - g. Not use any drugs or alcoholic beverages except for medical purposes while children are in care.
 - h. Never leave children without supervision.
 - i. Provide care to no more than five children at any given time, with a further restriction that no more than two be under the age of two years, or provide care to no more than six children all of whom are the age of two years or older. An additional three children of school age may be provided care before and after school and during school holiday vacations.
 - j. Provide care on a continuing basis for less than a twenty-four-hour period.

3. If the physical or mental health capabilities of an in-home provider appear to be questionable, the board may request that the provider present evidence of capability based on a formal evaluation.

History: Effective February 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-06

75-03-01.1-05. FAMILY DAY CARE HOME SUPPLEMENTAL PARENTAL CARE.

1. Application for registration certificate and issuance by the social service board.
 - a. Any person, corporation, partnership, or voluntary association desiring to provide supplemental parental care in a family day care home shall apply for a registration certificate, therein certifying compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the standards for such care established by the social service board of North Dakota and shall secure a registration certificate from the board.
 - b. Application shall be made to the county social service board office in the county wherein the applicant proposes to provide family day care home services.
 - c. Upon the approval of the application the applicant shall, subject to the provisions of section 75-03-01.1-08, be entitled to a registration certificate issued by the social service board of North Dakota.
 - d. Any registration certificate issued by the social service board of North Dakota shall serve as public documentation that the provider of the family day care home has in writing certified compliance with the provisions of North Dakota Century Code chapter 50-11.1 and the requirements contained in subsection 2.
 - e. An applicant for a registration certificate may be required to verify any claim of compliance with standards.
 - f. A day care home shall be sufficiently staffed at all times to meet the child/staff ratios for children in attendance.
2. Affidavit of standard compliance - standards for provision of supplemental parental care in family day care home.

a. Staffing. The staffing requirements are determined on the basis of the number of children physically in care at a given time, rather than total enrollment.

- (1) Family day care homes staffed by one caregiver may:
 - (a) Provide care to no more than three children under the age of two years and no more than a total of six children; or
 - (b) Provide care to no more than four children under the age of two years but to no other children except the caregiver's own children over the age of six years; or
 - (c) Provide care to seven children, all of whom are the age of two years or older; and
 - (d) Provide care for three additional children of school age before and after school and during school holiday vacations.

Where one or more children is a child with a handicapping condition which requires more than usual care, the child's evaluated developmental age level, rather than chronological age level, will be used in determining the number of children for which care can be provided.

- (2) Family day care homes staffed by two or more caregivers may:
 - (a) Provide care to no more than six children under the age of two years and a total of no more than twelve children; or
 - (b) Provide care to no more than eight children under the age of two years but to no other children except the caregiver's own children over the age of six years.

Where one or more children is a child with a handicapping condition which requires more than usual care, the child's evaluated developmental age level, rather than chronological age level, will be used in determining the number of children for which care can be provided.

- (3) The children of any caregiver present in the home, under the age of six years and not in school shall be counted among the children for whom care is provided.

- b. Minimum qualifications of family day care providers. Family day care providers are persons who are primarily responsible for the child caregiving. They shall:
- (1) Be at least eighteen years of age.
 - (2) Certify attendance at a minimum of four hours of board-approved training related to child care annually when made available in the provider's community.
- c. Minimum qualifications of all caregivers who provide direct care, supervision, and guidance to children. All caregivers must:
- (1) Be at least fourteen years of age or, if a member of the immediate family of the family day care provider, be at least twelve years of age.
 - (2) Be mentally, physically, and emotionally able to provide adequate care for the children in the applicant's charge.
- d. All volunteers, including family members providing direct care for children, shall meet the minimum requirements of caregivers.
- e. Health factors.
- (1) Family day care home providers shall complete a health statement to certify that they do not have health problems that would interfere with their functioning as caregivers or that would be detrimental to the health of the children or other staff.
 - (2) If the physical or mental health of a provider appears questionable, the social service board of North Dakota may require the provider to be evaluated by appropriate professionals, with the results provided to the board.
 - (3) Providers shall not use any drugs or alcoholic beverages except for medical purposes while children are in care.
 - (4) The provider shall at no time place children in an environment that would be harmful or dangerous to their physical or emotional health. Children under care shall never be left without supervision by a person meeting the minimum qualifications of a caregiver.

f. Physical facilities.

- (1) The home shall meet the requirements of applicable local and state laws and ordinances for sanitation, health, fire, building construction, safety, and all other applicable state laws and local ordinances.
- (2) The family day care home shall provide adequate space, indoors and out, for the daily activities of the children. This shall include a minimum of thirty-five square feet [3.25 square meters] of play space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered shall exclude bathrooms, pantries, and passageways leading to outdoor exits.
- (3) The home shall be clean, and free of clutter and maintained in a sanitary condition. Rubbish shall be regularly removed.
- (4) The home shall have adequate heating, ventilation, and lighting facilities for the comfort and protection of the health of the children. During the heating season, a temperature of not less than sixty-eight degrees Fahrenheit [20 degrees Celsius] shall be maintained in all rooms occupied by children.
- (5) The home shall have been inspected by the local fire department. The provider shall have corrected any code violations noted by the fire inspector.
- (6) The home shall be equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department.
- (7) Elevated areas such as stairs or porches shall have railings and safety gates where necessary to prevent falls.
- (8) The home shall have a drinking water supply from an approved community water system. If water is from another source, a sample shall be tested and approved by the local health department.
- (9) Each child shall have a comfortable and clean place to sleep or rest. The floor shall be used only when carpeted or padded, warm, and free from drafts. A child who is in care between the hours of eight p.m. and six a.m. shall have an individual sleeping place. Children under twelve months of age and any child

unable to walk unassisted shall sleep in a crib, bed with side rails and a firm mattress, or playpen.

- (10) Exterior play areas in close proximity to busy streets and other unsafe areas shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
- (11) Potential hazards such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways must not be accessible to young children.
- (12) Equipment and toys shall be in good repair.

g. Admission procedures.

- (1) The provider shall request a preadmission visit by the child and the child's parents to acquaint the child and the parent with the home and its surroundings, the other children, and the family day care provider.
- (2) The provider shall inform parents about the day care program, policies, and emergency procedures, and discuss information concerning the child so that the child's needs can be identified and accommodated. An explanation of how accidents and illnesses will be dealt with shall be provided.
- (3) Parents shall be notified of the payment rates and the time of payment.
- (4) The provider shall regularly offer parents opportunities to observe their children while in care.
- (5) A licensed health practitioner's statement based upon a health assessment shall be obtained at the time of initial admittance of the child to the day care home. No more than six months shall have elapsed between the examination and the date of initial admittance. The statement shall indicate any special precautions for diet, medication, or activity. This statement must be on record within sixty days of admittance to the home and be updated annually.

h. Program.

- (1) There shall be a program of daily activities appropriate to the ages and needs of the children in the family day care home. The program shall include

activities which foster sound social, intellectual, emotional, and physical growth.

- (2) The program shall be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest. The daily routine should foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep with sufficient time and opportunities for various experiences.
- (3) The program shall provide children in the day care home with opportunities for individual and small group activities.
- (4) The program shall provide for a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity.
- (5) Areas used for napping shall provide an opportunity for undisturbed rest. Napping schedules should be set for children according to their ages, needs, and parent's wishes.

i. Nutrition.

- (1) All children present at mealtime shall be served a nutritious meal, including a food from each of the four basic food groups. Adequate amounts of food shall be available. A nourishing midmorning and midafternoon snack shall be provided.
- (2) If sack lunches are sent by parents, the day care provider must set guidelines for parents regarding content, and if necessary supplement sack lunches, so that minimum standards of nutritive quality are maintained.

j. Health protection.

- (1) All children shall receive all immunizations appropriate for their age, as prescribed by the North Dakota department of health.
- (2) Family day care providers shall be familiar with emergency first aid techniques.
- (3) A copy of a statement signed by the child's parents authorizing emergency medical care for each child shall be in possession of the provider.

- (4) Sufficient first aid supplies shall be available for minor emergencies.
- (5) The day care provider shall have plans to respond to illness and to emergencies including evacuation in case of fire, serious injury, and ingestion of poison.
- (6) At least one person who may be called upon for child care assistance in emergencies shall be designated.
- (7) Plans shall be made to respond to minor illnesses when children can be cared for in the provider's home.
- (8) Hazardous or potentially injurious or poisonous substances should be kept in a space inaccessible to children.
- (9) The home shall have a telephone.
- (10) If transportation is provided, liability/medical insurance coverage should be obtained by the day care provider.
- (11) The family day care provider shall release a child only to the child's parent, guardian, or person in loco parentis, or to an individual authorized in writing by such person to take the child from the day care home.
- (12) No child shall be allowed to play outdoors without clothing appropriate to the climatic conditions.
- (13) No child shall be bathed, permitted to use wading pool, or to play outdoors without adequate supervision.

k. Records.

- (1) The current registration certificate for the family day care home must be available in the premises to which it applies.
- (2) A copy of the current standards for family day care homes shall be kept in the premises.
- (3) The following records shall be kept and maintained for each child:
 - (a) The child's full name, birthdate, current home address, names of the child's parents or legal

guardian and business phone and home telephone numbers where those persons can be reached.

- (b) A health practitioner's health assessment statement completed annually.
 - (c) A written statement from the parents or legal guardian authorizing emergency medical care.
 - (d) Names and addresses of persons authorized to take the child from the home.
 - (e) Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the North Dakota department of health.
- (4) All records which are maintained with respect to children receiving day care services shall be deemed confidential and access shall be limited to the provider, the provider's staff, and parents, and to the following:
- (a) Authorized social service board representatives.
 - (b) Officers of the law or other legally constituted boards or agencies.
 - (c) Persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the board are in a position to serve their interests should that be necessary.
 - (d) Persons who possess a written authorization from the child's parent.

1. Punishment.

- (1) No child shall be punished by withholding or force-feeding food, requiring or prohibiting rest, or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits.
- (2) Brief, supervised separation from the rest of the children may be used if necessary.
- (3) No method of punishment which humiliates or frightens the child or causes more than minor transient physical or emotional discomfort, or both, shall be used.

- (4) No child of any age may be shaken, hit, spanked, bitten, pinched, or otherwise physically punished, except that a parent may give written permission to the registrant to spank the child with an open hand on the buttocks. A registrant may refuse to permit physical punishment of any kind.
- (5) Profane, threatening, unduly loud or abusive language shall not be used when addressing children or in the presence of children.

History: Effective February 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-05

75-03-01.1-06. INSPECTIONS. In-home and family day care providers functioning within the purview of this chapter, or any premises proposed to be operated for in-home child care or a family day care home shall be open to investigation and inspection at any time by the social service board of North Dakota or its authorized agents. An inspection will be made upon receipt by the social service board, or its designee, of a complaint concerning the provider or the facility. The board may request the assistance of fire and sanitation inspectors.

History: Effective February 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-07

75-03-01.1-07. REGISTRATION CERTIFICATE. No person, partnership, firm, corporation, association, or nongovernmental organization desiring to obtain a registration certificate to either provide in-home or family day care shall hold out or represent such registration as evidence of compliance with the applicable standards contained herein. Registration certificates are not transferable and are valid for the person registered and in the designated location only.

History: Effective February 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-05,
50-11.1-06

75-03-01.1-08. DENIAL OR REVOCATION OF REGISTRATION CERTIFICATE.

1. The right to provide in-home supplemental parental care or operate a family day care home is dependent upon compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the applicable standards contained herein.
2. The social service board of North Dakota may revoke or deny a registration certificate issued to an in-home child care provider family day care home; provided that any person aggrieved by revocation or denial of a registration certificate has been informed in writing of the charges and reasons for revocation or denial and is afforded an administrative hearing in a manner prescribed by North Dakota Century Code chapter 28-32, if written request for the hearing is made within ten days of receipt of the written charges.
3. The board may revoke or deny registration of a family day care home or in-home care provider should that provider:
 - a. Fail to comply with these regulations;
 - b. Furnish or make any misleading or false statements or reports to the board;
 - c. Refuse to submit to the board any reports or refuse to make available to the board any records which the holder is required, by this chapter, to keep;
 - d. Refuse to submit to an investigation by the board;
 - e. Refuse to admit authorized representatives of the board at any reasonable time for the purpose of investigation;
 - f. Fail to provide, maintain, equip, or keep in safe and sanitary condition premises established or used for child care as required under standards prescribed herein, or as otherwise required by law, regulation, or ordinance applicable to the location of such facility; or
 - g. Fail to comply with the provisions of the Child Abuse and Neglect Reporting Act, North Dakota Century Code chapter 50-25.1.

History: Effective February 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-09,
50-11.1-10

75-03-01.1-09. NOTICES OF VIOLATIONS. Any day care home which, after inspection, is found to be in violation of minimum standards and regulations shall receive written notice of the violations revealed by the inspection. Notice given in any of the following ways is sufficient.

1. A statement of deficiencies, which shall identify each violation and advise the day care provider that prompt action to correct the violation is expected.
2. A statement of violations, which shall include a date certain by which each violation will be corrected. Such a statement shall be issued only if:
 - a. The day care provider has, in writing, waived the provider's right to a written statement of charges and the provider's right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, should the provider's registration be revoked for failure to correct the state violations within the time set for correction; and
 - b. The day care provider has, in writing, acknowledged the violations and provided assurances of the provider's ability and intention to correct the violations within the time set for their correction.
3. Written charges as to the reasons for the denial or revocation of a registration certificate.

History: Effective February 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-10

75-03-01.1-10. FAMILY DAY CARE HOMES REGISTERED PRIOR TO EFFECTIVE DATE. Any family day care home registered prior to January 1, 1981, shall retain a valid registration certificate until such registration shall expire or be revoked by the board.

History: Effective February 1, 1981.

General Authority
NDCC 50-11.1-08

Law Implemented
NDCC 50-11.1-08

APRIL 1981

STAFF COMMENT:

Chapter 75-02-07 is all new material but is not underscored in order to improve readability.

AGENCY SYNOPSIS OF § 75-02-07-01: Section 1 defines seven terms used in this chapter.

75-02-07-01. DEFINITIONS. As used in this chapter:

1. "Allowable costs" means the facility's actual costs, adjusted according to regulations, which are reimbursable under the general assistance program.
2. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or type of activity into which functions of an institution are divided for purposes of cost allocation.
3. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
4. "Interest" means cost incurred from the use of borrowed funds generally paid at fixed intervals by the user.
5. "Reasonable cost" means a necessary and proper cost incurred in rendering the services subject to the principles established for revenue and costs. Reasonable cost includes both direct and indirect costs of providers of services. The actual cost shall be related to resident care and shall not exceed what a prudent and cost-conscious buyer pays for a given item or services. Resident care costs are those costs incurred for common and expected occurrences in the field of the provider's activity.
6. "Related organization" means an organization furnishing services, facilities, or supplies which the provider is

associated or affiliated with, has control of, or is controlled by. Control can be obtained either through ownership, management, or contractual arrangements.

7. "Resident day" means any day for which the facility has received payment. Hospital days, therapeutic days, and reserved bed days shall be included. The day of admission shall be counted as a resident day but not the day of discharge. The day of death shall be counted.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-02: Sets forth, in eight subsections, the recordkeeping, accounting, reporting, and auditing requirements of those homes for aged and infirm who seek reimbursement through the "Optional Supplementation" program.

75-02-07-02. FINANCIAL REPORTING REQUIREMENTS.

1. The facility shall establish and maintain on the premises the required census records and financial information which will be sufficient to provide for a proper audit review.
2. A cost report shall be filed with the provider audit unit of the management services division on or before the last day of the third month following the facility's fiscal year end.
3. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report form to the state agency, financial and statistical records, of the period covered by such cost reports, which are accurate and in sufficient detail to substantiate the cost data reported. Such records shall be available upon demand to representatives of the state agency.
4. Skilled and intermediate care facilities which provide custodial-type care shall submit their cost data on form 674, and the audit and establishment of all rates will be completed with a single audit.
5. Each facility shall maintain a formal set of accounting records which shall be maintained in accordance with generally accepted accounting principles. A double entry form of accounting system is recommended for all facilities. However, a single entry accounting system, properly maintained, will

also be considered acceptable. (Suggested headings for a simple single entry system are contained in Appendix A.)

6. The accounting system must be maintained in such a manner that cost accounts will be grouped by cost center and be readily traceable to the reporting form. Organizations which maintain more than one facility must also maintain separate cost records identifiable with each facility.
7. If a facility fails to file the required statistical report on or before the due date, total allowable costs, for rate calculation purposes, shall be reduced by ten dollars for each calendar day of delinquency. This fiscal sanction may be waived by the director of economic assistance of the social service board upon a showing of good cause for the delinquency.
8. In order to properly validate the accuracy and reasonableness of cost information reported by the facility, the state will provide for an onsite audit each year.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-03: Sets forth, in five subsections, allowable compensation for managerial, administrative, professional, or other services when those services are rendered by sole proprietors, partners, and corporate employees charged with the responsibility of administration in a home for the aged and infirm, establishes recordkeeping requirements related to salaries, and requires the Social Service Board staff to make a survey of administrator compensation every two years.

75-02-07-03. SALARIES.

1. The facility must provide, within their accounting records, adequate detail to show salaries as follows:
 - a. Administrative.
 - b. Plant.
 - c. Services, including personal care, dietary, laundry, housekeeping, and any other service-related salary.

2. The allowance of compensation for services of sole proprietors and partners is the amount determined to be the reasonable value of the services rendered regardless of whether there is any actual distribution of the profits of the business. The limits set forth in subsection 5 will be allowable for sole proprietors and partners except that operator compensation may not exceed the facility's net profit for the period.
3. The allowance of compensation for managerial, administrative, and other services related to resident care is limited to the reasonable value regardless of the form in which it is paid. Compensation of this type must be documented. Any salaries accrued at year end must be paid within the first seventy-five days of the new fiscal year to be considered an allowable cost of the previous year.
4. Services which are not related either directly or indirectly to resident care (those provided primarily for the purpose of managing or improving the owner's financial investment) will not be recognized as an allowable cost.
5. Administrator compensation shall be determined, by survey, every two years. Survey data will be revised, at least annually, to reflect changes in the consumer price index (all items - U.S. City Average). Reasonable administrator compensation shall be limited to the least of (a) the compensation actually paid, (b) the ninetieth percentile cost per licensed bed per year, or (c) the ninetieth percentile salary.

History: Effective April 1, 1981.

General Authority
 NDCC 50-18-02,
 50-18-06

Law Implemented
 NDCC 50-18-06.1,
 NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-04: Sets forth, in five subsections, the methods of depreciation and amounts of depreciation which will be recognized as costs to the home for the aged and infirm.

75-02-07-04. DEPRECIATION.

1. The principles of reimbursement for provider costs require that payment for services should include depreciation on all depreciable type assets that are used to provide covered service to general assistance recipients. Costs acceptable for depreciation purposes shall be based on actual cost of the fixed assets. Proper records shall be maintained by the facility to provide accountability for the fixed assets and

also provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternative records must exist to satisfy audit verification of the existence and location of the assets. Lack of adequate records will result in depreciation costs being excluded from the rate computation. A depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity.

2. The straight-line method of depreciation must be used. All accelerated methods of depreciation are unacceptable. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets shall be maintained. If the books of account reflect depreciation different than that submitted on the form 19, a reconciliation shall be prepared.
3. The depreciable life of an asset is its expected useful life to the provider; not necessarily the inherent useful or physical life. If a difference is considered, a salvage value should be established prior to the application of the depreciation rate. The useful life is determined in the light of the provider's experience and the general nature of the asset and other pertinent data. In projecting a useful life, providers may follow the useful life guidelines published by the American hospital association. A different useful life may be used; however, when the useful life selected differs significantly from that established by the guidelines, the deviation must be based on convincing reasons supported by adequate documentation, generally describing the realization of some unexpected event. Depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used for purposes of reimbursement. A composite useful life may be used for a class or group of assets.
4. If a depreciable asset has, at the time of its acquisition, an estimated useful life of at least two years and historical cost of at least one hundred fifty dollars, or if it is acquired in quantity and the cost of the quantity is at least three hundred dollars, its cost must be capitalized and written off ratably over the estimated useful life of the asset. Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.
5. Major repair costs on equipment or buildings must be capitalized if the repairs have increased the useful life of the asset by at least two years.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-05: Sets forth, in four subsections, the types of interest expense which will be treated as costs to the home for the aged and infirm.

75-02-07-05. INTEREST EXPENSE.

1. To be allowable, interest must be supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required, identifiable in the provider's accounting records, related to the reporting period in which the costs are incurred, necessary and proper for the operation, maintenance, or acquisition of the provider's facilities and used therein.
2. In such cases where it was necessary to issue bonds for financing, any bond premium or discount shall be accounted for and written off over the life of the bond issue.
3. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost. Where the owner's funds are used in a business, the funds are considered invested funds or capital, rather than borrowed funds.
4. Where the provider has invested funds from gifts or grants which are unrestricted as to use, and these funds are commingled with other funds, the provider's allowable interest expense is reduced by the amount of investment income earned by the funds. Any investment income in excess of interest expense will not be used to offset other operating expenses. However, if the gifts and grants are not commingled with other funds, the investment income earned by the fund does not reduce allowable interest expense.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-06: Disallows consideration of rental expense paid to a related organization, but allows the cost of ownership of the facility to be treated as an expense.

75-02-07-06. RENTAL EXPENSE. A provider may lease a facility from a related organization within the meaning of the principles of reimbursement. In such case, the rent paid to the lessor by the provider is not allowable as cost. The provider, however, would include the cost of ownership of the facility. Generally, these would be costs such as depreciation, interest on the mortgage, real estate taxes, and other expenses attributable to the leased facility. The effect is to treat the facility as though it were owned by the provider. Therefore, the owner's equity in the leased assets is includable in the equity capital of the provider and is further used in the calculation of return on investment for proprietary homes.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-07: Provides, in two subsections, for the allowance or disallowance of various kinds of taxes as costs to the home for the aged and infirm.

75-02-07-07. TAXES.

1. Except as provided in subsection 2, taxes assessed against the provider, in accordance with the levying enactments of the several states and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense does not include fines and penalties. Whenever exemptions to taxes are legally available, the provider is to take advantage of them. If the provider does not take advantage of available exemptions, the expense incurred for such taxes are not recognized as allowable costs under the program.
2. The following taxes, which are levied on providers, are not allowable as costs:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon.
 - b. State or local income and excess profit taxes.

- c. Taxes in connection with financing, refinancing, or refunding operations, such as taxes in the issuance of bonds, property transfers, issuance or transfers of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.
- d. Special assessments on land which represents capital improvements such as sewers, water, and pavements, should be capitalized.
- e. Taxes on property which is not used in the rendering of covered services.
- f. Taxes, such as sales taxes, levied against the resident and collected and remitted by the provider.
- g. Self-employment (FICA) taxes applicable to individual proprietors, partners, members of a joint venture, etc.

History: Effective April 1, 1981.

General Authority
 NDCC 50-18-02,
 50-18-06

Law Implemented
 NDCC 50-18-06.1,
 NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-08: Requires reporting of actual costs when services are rendered to a facility by a parent organization.

75-02-07-08. HOME OFFICE COSTS. Facilities which are directly related to a parent organization and have services provided to them for legal, accounting, and management assistance will be allowed to report the cost for these services only if the facility provides, with the cost report 19, the actual computation of the cost to the facility by the parent organization. Actual cost to the parent organization is the only cost which will be allowed for reimbursement purposes to the facility preparing the cost report. If the documentation does not accompany the cost report, this cost item will be eliminated from the reimbursement rate until such time as the cost data is received by the provider audit unit.

History: Effective April 1, 1981.

General Authority
 NDCC 50-18-02,
 50-18-06

Law Implemented
 NDCC 50-18-06.1,
 NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-09: Establishes limits on fees to be paid to a facility's board of directors consistent with those limits set on legislative council members.

75-02-07-09. BOARD OF DIRECTORS' FEES. The fees paid to members of a board of directors for meetings attended shall be allowable in an amount not to exceed the maximum permitted compensation to members of the legislative council pursuant to subsection 1 of North Dakota Century Code section 54-35-10, with additional compensation for mileage and travel expense not to exceed the maximum allowed for state officials pursuant to North Dakota Century Code section 54-06-09. In addition, a maximum of twenty-four meetings per fiscal year will be considered reasonable. One meeting shall consist of any number of days required to transact the required business of the home. Any exceptions to the stated number of meetings shall be considered by the auditor in charge during the onsite audit and a determination made at that time.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-10: Allows certain formal annuity or pension plan costs to be treated as an allowable cost for reimbursement purposes.

75-02-07-10. ANNUITIES AND PENSIONS. Annuity and pension cost will be considered an allowable cost for reimbursement purposes if the facility formally adopts a plan and this plan is conveyed and open to all eligible employees. An eligible employee is anyone that has been employed by the facility for the required minimum period of time that is called for in the established plan.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-11: Limits costs of dues, subscriptions, and advertising to those directly related to resident care.

75-02-07-11. DUES, SUBSCRIPTIONS, PUBLIC RELATIONS, AND ADVERTISING. Costs of dues, subscriptions, and advertising are allowable only if directly related to resident care. Dues to fraternal organizations are not allowable. Subscriptions should be those of a type which will benefit the residents of the facility or which will keep administration on a current level with facilities of this type in their area. Public relations costs will not be considered as an allowable cost for reimbursement. Advertising costs will be considered for those items which include soliciting for employees. Other advertising costs will not be considered allowable for reimbursement purposes.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-12: Permits capitalized startup costs to be recognized as allowable costs when depreciated over 60 consecutive months starting with the month in which the first resident is admitted for care.

75-02-07-12. STARTUP COSTS.

1. In the first stages of operation, a new institution incurs certain costs in developing its ability to care for residents prior to admissions of residents. Staff is obtained, organized, and other operating costs are incurred during this time of preparation which cannot be allocated to resident care during the period because there are no residents receiving services. These costs are commonly referred to as startup costs. These costs must be capitalized and amortized over sixty consecutive months starting with the month in which the first resident is admitted for treatment.
2. In establishing the rate for the facility in the first twelve months of operation, budgeted costs for services will be considered and administrative costs, plant costs, and property costs shall be considered at eighty-five percent of licensed beds times the number of days in the first twelve months of operation.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-13: Establishes a profit allowance for proprietary homes for the aged and infirm.

75-02-07-13. RETURN ON INVESTMENT. In order to provide for a return on investment for proprietary homes, an allowance of eight and one-half percent of net investment of fixed assets relating to resident care will be established. To compute the amount on which the percentage of return is applied, begin with the costs of fixed assets relating to resident care. Deduct therefrom the accumulated depreciation. This will produce the net fixed assets relating to resident care. From this amount deduct the balance of notes and mortgages payable pertaining to the fixed assets relating to resident care. The result will be the net investment which is eligible for the percentage of return. This allowance of the return on an investment will be made on form 19, annual statement of reimbursable cost.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-14: Provides, in two subsections, for the keeping of a daily census record at the facility, and establishes guidelines for the keeping of that census.

75-02-07-14. RESIDENT CENSUS.

1. A resident day is any day that the facility has received remuneration for the available bed. The amount of remuneration has no bearing on whether a day should be counted or not.
2. A daily census record must be maintained by the facility to allow for proper audit of the census data. A suggested form would be a register allowing for listing of all rooms available and their occupants. The register would allow for a daily tally of in-house residents, hospital residents (when paid for), and therapeutic leave days. This register would provide for a daily census total and also a resident total which could be used as a billing at month end. Examples of days that must be included in census, providing they have been paid for, are hospital days and therapeutic leave days. In the case where a private room has been made of a previously utilized double room and a rate has been charged that does not correspond to a normal private room rate, two resident days would be counted for this room.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

AGENCY SYNOPSIS OF § 75-02-07-15: Provides, in 13 subsections, for the treatment of certain income items which will offset costs.

75-02-07-15. ADJUSTMENT TO COST. Several items of income to the home must be considered as offsets against various costs as recorded in the books of the facility. Basically, any income which is received by the home for reimbursements of cost, with the exception of the basic daily rate and income from charges to private pay residents for care items which are included in the rate, will be offset against costs reported. The following list details many of the items which must be offset, but any reimbursement not so listed which may be classified as an offset must be shown as such on form 19 and costs reduced accordingly.

1. Activities income - Income from activities department and the gift shop to the extent that it does not exceed the expenses as reported.
2. Confections - All income from the sale of pop, candy, or other items.
3. Dietary - Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks.
4. Drugs or supplies - All revenues received from employees, doctors, or other not admitted as residents.
5. Insurance recoveries - Any amount received from insurance for a loss incurred shall be offset against costs reported in the current year to the extent of costs allowed in prior or current year.
6. Interest or investment income - Interest received on investment to the extent that it does not exceed the total cost for the year.
7. Laundry - All amounts received for services rendered on behalf of employees, doctors, or others.
8. Maintenance of personnel - The cost (to be determined) of providing meals and lodging on premises to home personnel.
9. Nonrelated depreciation expenses - All depreciation reported in costs which is not related to resident care.

10. Purchase discounts - All discounts received from vendors on purchase included in costs.
11. Rebates and refunds - Any refund received on expense or cost item shall be offset against the appropriate cost.
12. Rental of home space - Any revenues received from outside sources for the use of home space or equipment.
13. Telegraph and telephone - All revenues received from residents, guests, or employees.

History: Effective April 1, 1981.

General Authority
NDCC 50-18-02,
50-18-06

Law Implemented
NDCC 50-18-06.1,
NDAC 75-02-03-09

APPENDIX A

EXPENSES

Salaries - administrative

Salaries - bookkeeper-accountant

Salaries - dietary

Salaries - personal care aide

Salaries - housekeeping

Salaries - other

Supplies

Food

Linen

Utilities

Repair & maintenance

Depreciation

Interest

Insurance

Taxes

Rent

Telephone

Printing & postage

Dues & subscription

Legal & audit

Payroll taxes

Travel & education

Miscellaneous

INCOME

Resident income - welfare

Resident income - private

Interest income

Telephone income

Meal income

Activity income

Purchase discount

Other income

MAY 1981

AGENCY SYNOPSIS OF § 75-02-02-11 - Lock-in: In four subsections, permits the Social Service Board of North Dakota to require a medical assistance recipient, who has been found to be abusing the program by using several medical providers to provide the same service, to choose and stick to a single provider of that type of medical service. Also creates exceptions for medical referrals and emergencies, and grants a right to appeal the imposition of a "lock-in".

75-02-02-11. LOCK-IN.

1. For the purpose of this section:

- a. "Lock-in" means the process used to limit a particular aspect or aspects of an individual recipient's medical care and treatment to a single physician or other provider in order to prevent the continued misutilization of benefits.
- b. "Medical emergency" means the sudden and unexpected onset of a medical condition for which the recipient secures care after onset, or as soon thereafter as care is reasonably available.
- c. "Misutilization" means the incorrect, improper, or excessive utilization of medical care and services, at the recipient's instance and request, which may, in some instances, increase the possibility of adverse reactions, interactions, or disadvantageous effects.
- d. "Primary physician/provider" means the physician or provider selected by the locked-in recipient to provide care and treatment to the recipient.
- e. "Provider" means any individual or entity furnishing medical or remedial care or service under a provider agreement with the division of medical services.

2. Lock-in may be imposed by the division of medical services on an individual recipient who has demonstrated misutilization including, but not limited to:
 - a. Excessive visitations to more than one physician or other practitioner where there is little or no evidence of a need for medical care.
 - b. Excessive drug acquisition whether or not detrimental to health, which results from seeing more than one physician or prescribing practitioner.
 - c. Excessive utilization of outpatient services where no medical emergency is present.

3. Lock-in shall be imposed using the following procedures:
 - a. The determination of the need to lock-in a recipient shall be made by the division of medical services. Such a determination shall be made only after consultation with a person with professional expertise in the provision of that aspect of medical care or service which the recipient is suspected of misutilizing.
 - b. The following factors shall be considered in determining if lock-in is to be imposed:
 - (1) Seriousness and extent of misutilization;
 - (2) The historical utilization pattern of the recipient;
 - (3) The recipient's willingness to adhere to voluntary utilization controls; and
 - (4) The availability of a primary physician/provider.
 - c. Upon a determination to impose a lock-in, the appropriate county social service board will:
 - (1) Provide the recipient with written notice of the lock-in, of the recipient's right to choose the primary physician/provider, of the recipient's responsibility for payment for medical care rendered by providers other than the primary physician/provider, and of the recipient's right to appeal;
 - (2) Obtain the recipient's selection of primary physician/provider; and
 - (3) Document the interview in the case record.

- d. A lock-in may be imposed only on individual recipients and cannot be imposed on the entire medical assistance unit. If more than one individual within a unit is misutilizing medical care, each individual must be treated separately.
 - e. A lock-in will be imposed for the next twelve months of the recipient's liability, whether those twelve months occur consecutively or otherwise, unless the case requires an unrestricted time period.
 - f. No medical assistance payment will be made for medical care or services of the misutilized type furnished to the lock-in recipient by any provider other than the recipient's primary physician/provider, except for:
 - (1) Medical care rendered in a medical or surgical emergency; or
 - (2) Medical care rendered by a provider upon referral by the primary physician/provider.
4. A recipient has the right to appeal the decision to impose a lock-in. The appeal may be made in the manner provided by chapter 75-01-03.

History: Effective May 1, 1981.

General Authority
NDCC 50-24.1-02

Law Implemented
42 CFR Part 455

JUNE 1981

AGENCY SYNOPSIS OF § 75-02-02-07 (paragraph 3 of subdivision c of subsection 2): Creates a presumption that spousal and parental resources are available to married Medical Assistance recipients, and Medical Assistance recipients under age 21, and identifies, in four subparagraphs, specific ways in which this presumption may be rebutted.

75-02-02-07. CONDITIONS OF ELIGIBILITY.

1. No age, residence, citizenship, or other requirements will be imposed that is prohibited by title XIX of the Social Security Act.
2. Financial eligibility.
 - a. Persons receiving aid to families with dependent children or technically eligible to receive aid to families with dependent children on the basis of categorical relatedness shall be subject to the income levels set out in paragraph 1 of subdivision c and to the resource eligibility standards set out under North Dakota Century Code chapter 50-09 and the resource rules and policies of the social service board pertaining to aid to families with dependent children eligibility except that those resource rules set out in subdivision d which are more liberal in any particular case than the aid to families with dependent children rules and policies shall be applicable in the case of aid to families with dependent children recipients and those categorically related to the aid to families with dependent children program.
 - b. Persons receiving supplemental security income or technically eligible therefor on the basis of age, disability, or blindness shall be subject to the income levels set out below as well as the resource standards set out below.
 - c. The following levels of income and resources for maintenance, in total dollar amounts, will be used as a

basis for establishing financial eligibility for medical assistance:

- (1) The income levels applicable to families of various sizes in determining eligibility for medical assistance will be according to income levels established by the social service board of North Dakota.
- (2) Only twenty-five percent of that income of the ineligible medical assistance unit in the home which exceeds the appropriate medical assistance income level will be deemed to be available to an eligible individual residing in a specialized facility. Income is not otherwise deemed to be available to persons who live outside of the home of the medical assistance unit on other than a temporary basis.
- (3) All It is presumed that all spousal resources or parental resources will-be--deemed--as are actually available to those aged, blind, or disabled individuals as-set-out identified in subdivisions b and c. In order to rebut this presumption, the applicant or recipient must demonstrate that the spousal or parental resources are unavailable despite reasonable and diligent efforts to access such resources. The rebuttal of this presumption shall not preclude the board from exercising the powers granted to it by North Dakota Century Code section 50-24.1-02.1. Except as provided in subparagraphs a, b, c, and d, no applicant or recipient who has a statutory or common-law cause of action for support out of the resources of a spouse or parent, but who has failed to diligently pursue that cause of action, may rebut the presumption. Any applicant or recipient who documents any of the following circumstances will have rebutted the presumption without further proof:
 - (a) A court order, entered following a contested case, determines the amounts of support that a parent or spouse must pay to the applicant or recipient.
 - (b) The parent or spouse from whom support could ordinarily be sought, and the property of such parent or spouse, is outside the jurisdiction of the courts of the United States.
 - (c) The applicant or recipient has been subject to marital separation, with or without court order, for at least two years prior to making application for medical assistance benefits, and

there has been no contact whatever between the applicant or recipient and his or her spouse for the same two-year period.

(d) The applicant or recipient has lived separately and apart from a noninstitutionalized spouse for at least six months, and the value of all resources, not otherwise disregarded, and separately owned by that spouse do not exceed resource limitations in subdivision d by more than twenty-five thousand dollars.

. . . .

History: Amended effective January 1, 1980; amended effective February 1, 1980; amended effective February 1, 1981; amended effective June 1, 1981.

General Authority
NDCC 50-24.1-04

Law Implemented
NDCC 50-24.1-02,
42 CFR, Part 435

JULY 1981

AGENCY SYNOPSIS OF § 75-02-06-05 (subdivision b of subsection 3): Ties the compensation pay to boards of directors to that paid to members of the Legislative Council under North Dakota Century Code § 54-75-10.

x 75-02-06-05. COMPENSATION.

1. The allowance of compensation for services of sole proprietors and partners is the amount determined to be the reasonable value of the services rendered regardless of whether there is any actual distribution of the profits of the business. Subdivision b of subsection 2 shall be used in determining reasonableness.
2. Compensation in corporate facilities.
 - a. For purposes of determining whether the total compensation paid is reasonable, compensation as defined herein means remuneration paid regardless of the form in which it is paid. Compensation may be included in allowable provider costs only to the extent that it represents reasonable remuneration for managerial, administrative, professional, and other services related to the operation of the facility and rendered in connection with patient care. Services rendered in connection with patient care include both direct and indirect activities in the provision and supervision of patient care, such as administration, management, and supervision of the overall institution. Compensation of this type must be documented, especially in circumstances where there is an administrator of the facility that would normally be charged with the direct and indirect activities. Services which are not related to either direct or indirect patient care are those primarily for the purpose of managing or improving the owners financial investment, and will not be recognized as an allowable cost.
 - b. Reasonableness requires that the compensation allowance be such an amount as would ordinarily be paid for comparable

services by comparable institutions depending upon the facts and circumstances of each case. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, an institution would have had to employ another person to perform them. The services must be pertinent to the operation and sound conduct of the institution. The social service board shall determine reasonable administrator compensation by survey, every two years, to be the least of (1) the compensation actually paid, (2) the ninetieth percentile cost per licensed bed per year, or (3) the ninetieth percentile salary. Percentiles shall be calculated separately for facilities of less than seventy-five beds, and those of seventy-five or more beds. Reasonable compensation data will be revised at least annually to reflect changes in the consumer price index (all items - U.S. city average).

- c. Items which are considered compensation and includable in the test for reasonable compensation received by an administrator include, but are not limited to, the following:
- (1) Salary amounts paid for managerial, administrative, professional, and other services.
 - (2) Amounts paid by the institution for the personal benefits of the administrator or owner-administrator, e.g., housing allowance, flat-rate automobile allowance.
 - (3) The cost of assets and services which the owner-administrator or administrator receives from the institution.
 - (4) Deferred compensation (pension and annuities).
 - (5) Supplies and services for the personal use of the administrator or owner-administrator.
 - (6) The wages of a domestic or other employee who works in the home of the administrator or owner-administrator.
 - (7) Insurance premiums paid for the owner-administrator or administrator (life and health insurance).
3. Travel costs which are incurred in the course of normal operations of the nursing facility and result in providing the required transportation of the residents of the home will be considered. The cost must be patient related and reasonable. All travel costs not related to local transportation needs

will require documentation to justify the cost and to indicate how the expenditure is patient related.

- a. Travel costs for administrators will be allowed in order that they may attend meetings which pertain to patient care, home office visits, and board meetings for associations. Allowable travel costs shall not exceed the maximum allowed pursuant to North Dakota Century Code section 54-06-09.
 - b. The fees paid to members of a board of directors for meetings attended shall be allowed in an amount not to exceed fifty--two--dollars-per-day the compensation paid, per day, to members of the legislative council, pursuant to North Dakota Century Code section 54-35-10, plus travel at a rate not to exceed the maximum allowed pursuant to North Dakota Century Code section 54-06-09. Normally, no more than twenty-four meetings per fiscal year will be considered reasonable. Any exceptions to the stated number of meetings must be presented for the consideration of the auditor in charge during the onsite audit. A determination of the reasonableness of any additional meeting expenses will be made at that time.
4. All plans within the definition of deferred compensation and pension plans set forth in HIM-15 sections 2140.1 and 2142.1, respectively, shall be considered in the determination of allowable costs. No provisions of these plans may discriminate in favor of certain employees, such as employees who are officers, stockholders, supervisors, or highly paid personnel. In order to be considered an allowable cost, the payment reported must benefit all eligible employees and be based on the same payment structure.

History: Effective September 1, 1980; amended effective July 1, 1981.

General Authority
NDCC 50-24.1-04

Law Implemented
42 USC 1396a(a)(32),
42 CFR 447.276

AGENCY SYNOPSIS OF § 75-02-06-13 (subsection 3): Requires the use of cost allocation procedures set forth in this chapter in calculating rates for nursing homes combined with hospitals.

x 75-02-06-13. COST ALLOCATION.

1. Where services of the various cost centers are jointly used by any combination of facilities not related to a hospital or in the event that services are provided which result in costs that are not includable in allowable costs, the following cost

allocation methods must be used. In cases where more than one method of allocation is available within a cost center, management services shall have discretion to apply the method which, in its opinion, reflects the most reasonable cost based upon the data available at the time of audit.

- a. Nursing service. Nursing salaries must be reported on actual costs. Other nursing service costs shall be allocated on patient days.
 - b. Dietary costs shall be allocated on the basis of meals served to patients.
 - c. Housekeeping costs shall be allocated on the basis of patient days or on usable square footage.
 - d. Laundry and linen costs shall be allocated on the basis of patient days or on pounds [kilograms] of laundry if records are maintained to reflect a study which is performed at regular intervals on an ongoing basis.
 - e. Plant operation costs shall be allocated on the basis of available bed days, or on the basis of usable square footage of space.
 - f. Property costs shall be allocated on the basis of available bed days, or on the basis of usable square footage of space.
 - g. Administration costs shall be allocated on the basis of percentage of total cost, other than administration, in each facility. Administrative cost shall be limited to fifteen percent of total allowable nursing home costs.
2. If certain costs within a particular cost center can be directly identified with the nursing home, then they shall not be subject to allocation procedures as previously outlined. The remaining costs within that cost center shall be allocated according to cost allocation methods as described previously. In no case shall the costs allocated by the methods above exceed those costs which are nursing home costs on the medicare report.
 3. Allocation procedures for nursing homes combined with a hospital shall be those set forth in ~~the appropriate medicare regulations~~ this chapter. ~~However, no cost shall be charged to the nursing home which does not directly or indirectly benefit nursing home patients, e.g., equipment leased for hospital use only.~~

History: Effective September 1, 1980; amended effective July 1, 1981.

General Authority

Law Implemented

AGENCY SYNOPSIS OF § 75-02-06-16 (subdivision a of subsection 3): Establishes a retrospective mechanism for determining salary costs in long-term care facilities, and provides an incentive for facilities to reduce salary costs.

75-02-06-16. REIMBURSEMENT.

1. The method of determining the reimbursement rate per day will be through the use of the prospective ratesetting system. The system requires that the rate be established during the year in which it will be effective with retroactive adjustment to the beginning of the facility's fiscal year.
2. The determination of a prospective rate for all accommodations begins with the actual cost of the facility's operations for the previous fiscal year. Once it has been determined that the costs from the previous year are, in fact, reasonable patient-related costs, adjustments are then applied to the historical cost to determine the prospective rate. Reasonable patient-related costs will be determined with reference to health insurance manual 15 (HIM-15).
3. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. Costs which are incurred to meet certification standards shall be allowable and included in the determination of the rate. Rate adjustments to provide appropriate compensation may be requested where major unforeseeable expenses are incurred. Such requests may be made to the director of medical services, who shall determine if the expense is patient-related and beyond the control of those responsible for the management of the facilities. The following adjustment methods will be used:
 - a. ~~Salary and fringe benefit costs will be anticipated-based upon-actual-data-recorded-in-the-financial-records--during the--first--two--months--of-the-current-fiscal-year-of-the facility:~~ determined as follows:
 - (1) Establish an upper salary limit by dividing the basic salary for the first two months by the number of days in the payroll period, multiplying by the number of days in the fiscal year, and adding salary costs for replacements due to prior year vacations.
 - (2) Add a percentage of any increase over the prior year's salary costs to reflect costs of fringe

benefits. The percentage used will be determined by the agency on an annual basis.

(3) At the end of a facility's fiscal year, a calculation will be made to determine the actual salary costs. Any facility which limits salary cost to less than the upper limit, but not less than ninety-five percent of the upper limit, will be permitted to treat salary costs as being at the upper limit. If a facility limits its salary cost to less than ninety-five percent of the upper limit, the facility will be permitted to treat salary costs as actual costs plus five percent of the upper limit, and the paid rate will be adjusted to reflect this cost figure.

- b. Property costs will be included in the rate at the historical amount unless there has been a major change in ownership or construction of the facility requiring certificate of need procedures.
- c. The other costs of the facility will be projected based upon the historical cost plus the annual percent of increase in the consumer price index as of the facility's fiscal year end. The consumer price index (CPI-U) percentage used is that considered as "all items." (United States city average.)

4. Limitations.

- a. The appropriate division of the social service board shall accumulate and analyze statistics on costs incurred by the nursing facilities. These statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. These limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. It shall be the option of the social service board to implement the ceilings so mentioned at any time based upon the statistics available and under guidelines required within the regulations of title XIX. The methods used in determining limitations will be consistent for any or all classes of facilities. Approval will be received from health and human services regional office prior to implementation of additional limitations.
- b. At such time as federal regulations establish a ceiling on medical rates for skilled nursing facilities, that ceiling

shall also be considered the maximum for title XIX payment.

- c. A facility is expected to maintain an average annual occupancy rate which is based upon its size. Facilities with zero to forty licensed beds should maintain an eighty-five percent occupancy rate; facilities with forty-one to sixty licensed beds should maintain a ninety percent occupancy rate; and facilities with sixty-one and more licensed beds should maintain a ninety-five percent occupancy rate. For facilities with less than the stated percentage for the period under consideration, the number of patient days for rate computation will be computed using the required percentage instead of the lower actual percentage of occupancy. The computed patient days will apply only to the following areas:

- (1) Administrative costs;
- (2) Plant operation costs; and
- (3) Property costs.

A reserved paid bed will be counted as an occupied bed. A waiver to the minimum bed occupancy allowance may be made for new facilities or existing facilities which add new beds under a certificate of need during the first year of operation. Consideration will be given in these circumstances to the facts available.

- d. Administrative cost shall be limited to fifteen percent of total allowable nursing home costs.
- e. For facilities which do not have an adequate accounting system to allocate costs to the various levels of care, the following methodology is used:
 - (1) In calculating nursing care cost per day, total patient days are rated at a ratio of 1.0 for total skilled care days, .67 for total intermediate care days, and .12 for total custodial care days.
 - (2) Costs other than nursing are prorated over total patient days. (Subject to occupancy requirement.)

5. Rate payments.

- a. The rate as established shall be considered as payment for all accommodations and includes all items designated as routine services for each level of care. No payments may be solicited or received from the patient or any other person to supplement the rate as established.

- b. The rate as established shall only be paid if the private pay patients rates for semiprivate accommodations equal or exceed the established rate for medical services patients. The rate being charged private pay patients at the time the services are being or were provided shall govern. In cases where private pay patients are not charged a daily rate, the daily charge will be computed by dividing the total private pay charges for each month by the private pay census for each month. At no time shall the rate paid by medical services exceed the lesser of cost or private pay charges as previously defined. If at any time the facility discounts the private pay patients rate for those periods of time that the patient is not in the facility, the discounted rate may not be lower than the rate as established for medical services patients. If the discounting policy does create a situation in which the private rate is less, then all medical assistance patients shall be afforded a discount in the amount of the difference between the discounted private patient rate and the established medical assistance rate.
- c. If the medical assistance reimbursement rate exceeds the private payment rate for a particular level of care, on any given date, the social service board shall request a refund from the provider. The refund requested shall be the difference between the private pay rate and medical assistance rate times the number of medical assistance patient days paid during the period in which the medical assistance reimbursement rate exceeded the private pay rate. It shall be the responsibility of the facility to notify medical services if the rate paid is more than that charged private pay patients.
- d. Overpayments found in audits will be accounted for on the HCFA-64 report no later than the second quarter following the quarter in which found, as provided for in federal regulations.
- e. Participation in the program will be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the rate structure.
- f. Rate payments to the facility will be made on a schedule detailed as follows:
- (1) During the last month of each facility's (LTC) fiscal year a letter will be mailed to them indicating the estimated amount of increase for all homes whose fiscal year ends that month. The home, by responding to this statement in writing, may indicate any amount of increase up to and including the amount specified in the letter. The amount specified in the letter will be based upon the percent of increase in rates

determined from the audits of the prior six-month period ending December thirty-first or June thirtieth. In accepting the amount the facility should consider the private pay rate in the facility at that time and their best estimate of cost to be reflected in the ratesetting procedure for the next fiscal year. The rate so indicated by the facility will then be implemented effective the first of that facility's fiscal year. This rate is only an interim rate.

- (2) Each facility must file an annual report 674 within three months of the end of its fiscal year. Within one month of the receipt of each form 674 it will be reviewed for completeness and accuracy. If the report is filed in a timely manner and if all information requested is present on the report, it will be used as a basis for establishing an interim rate for the facility. The rate so calculated will be based upon the costs as reported plus the percentage of increase in the consumer price index during the twelve-month period ended with the facility's fiscal year. The rate so calculated will be placed in effect as of the start of that facility's fiscal year and shall be considered an interim rate as the result of a desk review.
- (3) An onsite audit of the facility will be done as a final step in the procedure. At that time the actual rate will be established retroactive to the start of the home's fiscal year. The rate so calculated will be considered the final rate.

6. Adjustments and appeal procedures.

- a. Rate adjustments may be made to correct errors subsequently determined and shall also be retroactive to the beginning of the facility's fiscal year.
- b. A final adjustment shall be made for those facilities which have terminated participation in the program and have disposed of all its depreciable assets. In this case the regulations pertaining to gains and losses on disposable assets shall be effective.
- c. Any requests for reconsideration of the rate should be filed with the division of management services for administrative consideration within thirty days of the date of the rate notification.
- d. An appeal may be initiated by indicating a desire for an appeal hearing to the appeals referee supervisor, social

service board of North Dakota, state capitol. The appeal will be governed by the provisions of chapter 75-01-03.

History: Effective September 1, 1980; amended effective July 1, 1981.

General Authority
NDCC 50-24.1-04

Law Implemented
42 USC 1396a(a)(32),
42 CFR 447.276,
42 CFR 447.279,
42 CFR 447.290,
42 CFR 447.291,
42 CFR 447.292,
42 CFR 447.293,
42 CFR 447.294,
42 CFR 447.295,
42 CFR 447.296,
42 CFR 447.301 - 306