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



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TITLE 70.5

REAL ESTATE TRUST ACCOUNT COMMITTEE

APRIL 2002

ARTICLE 70.5-01

REAL ESTATE TRUST ACCOUNT COMMITTEE GRANTS

Chapter

70.5-01-01 Real Estate Trust Account Committee Grant Procedures

CHAPTER 70.5-01-01

REAL ESTATE TRUST ACCOUNT COMMITTEE GRANT PROCEDURES

Section

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70.5-01-01-01. Definitions. As used in this title:

1. "Committee" means the real estate trust account committee as created by North Dakota Century Code chapter 43-23.4, and its members, officers, and duly authorized agents.
2. "RETA" means the real estate trust account program created by North Dakota Century Code chapter 43-23.4, or funds deriving from that program.

History: Effective April 1, 2002.

General Authority: NDCC 28-32-02, 43-23.4-02

Law Implemented: NDCC 43-23.4-02

70.5-01-01-02. Eligible grant applicants.

1. The committee may advertise, solicit, or promote the submission of appropriate applications if it determines such activities are needed or appropriate. The committee may request or suggest applications from potential providers of services in priority funding areas.
2. Grant applicants must demonstrate or provide the following to be eligible for consideration by the committee:
 - a. Qualify as an exempt organization under the Internal Revenue Code, as now defined or the corresponding provision of any future amendments thereto, or otherwise demonstrate the charitable purposes of the applicant organization and project.
 - b. Fiscal responsibility and integrity.
 - c. Compliance with all material requirements of the grant application process, as determined by a majority of the committee.

History: Effective April 1, 2002.

General Authority: NDCC 28-32-02, 43-23.4-02

Law Implemented: NDCC 43-23.4-02

70.5-01-01-03. Grant application minimum content and procedures.

1. Grant applications should be typed or legibly printed, except for minor corrections, on forms provided by the committee or in a manner prescribed by the committee. Applications should be directed to:

Executive Director
Real Estate Trust Account Committee
318 W. Apollo Avenue
Bismarck, ND 58503

Questions and requests for forms should be addressed to the same address or directed by telephone to (701) 355-1010.

2. Applications must be signed by an official who has authority to bind the organization to the proposed obligations. Applications must state that they are valid for a minimum period of sixty days from the date of submission.
3. The applicant must state that its financial records are open to review upon request of the committee both during the grant application review process and thereafter if a grant is awarded.
4. The applicant must state that it agrees that its application, upon receipt by the committee, becomes the property of the committee. The

committee reserves the right to use any ideas presented, whether or not the application is accepted for funding. All applications, once received by the committee, are open to public inspection and comment.

5. All grant applications must be submitted to the committee by October thirty-first of each year for grants effective on January first of the following year. Under special circumstances, the committee may award grants at other times during the year.
6. The committee will not be liable for any expenses incurred by any prospective grantee prior to the issuance of the grant.

History: Effective April 1, 2002.

General Authority: NDCC 28-32-02, 43-23.4-02

Law Implemented: NDCC 43-23.4-02

70.5-01-01-04. Grant award.

1. The committee may reject any or all applications, make inquiries regarding applications, request or suggest supplements to applications, interview any or all applicants, conduct preaward audits, and make onsite visits and inspections.
2. The following factors, among others, and only when applicable and appropriate, will be used to assist in the grant decisionmaking process:
 - a. Applications by groups or organizations shall be preferred over those of individuals.
 - b. Applications involving challenge grants, or other types of fund-matching arrangements to leverage RETA money shall be preferred.
 - c. Grant applicants with present or future sources of income other than RETA, or who can otherwise demonstrate an eventual ability to function without the assistance of the committee shall be preferred, although replacing stable funding sources with RETA funds shall not be preferred.
 - d. Grant applicants demonstrating a history of delivering quality services successfully shall be preferred.
 - e. Grant applicants including a reasonable plan to develop cooperative efforts between grantees in a given service area shall be preferred.
 - f. Grant applicants demonstrating community support shall be preferred.

- g. Grant applicants including a reasonable plan to achieve broad geographic and demographic distribution of RETA funds throughout the state shall be preferred.
 - h. Grant applicants primarily funded by governmental appropriations shall not be preferred and funding shall not be granted to state agencies to perform statutory duties.
 - i. Applications for seed money to establish new programs which contribute to increased availability of housing for the poor or will provide increased education about the needs of housing for the poor shall be especially preferred.
 - j. The committee shall not fund political campaigns, lobbying, or legislative advocacy with RETA funds.
3. The committee shall not disburse any funds until the grantee enters into a written contract in the form established by the committee. The contract may require any periodic written reports.
 4. In any one grant year the committee may make available up to ninety percent of its total funds, after operating costs.
 5. The committee may waive technicalities or irregularities in applications, or alternatively, find an error or omission to be material, by majority vote.

History: Effective April 1, 2002.

General Authority: NDCC 28-32-02, 43-23.4-02

Law Implemented: NDCC 43-23.4-02

70.5-01-01-05. Grantee accounting of funds expended. The grantee shall keep an accurate account of all RETA funds received, expended, and remaining that can be distinguished from the grantee's other financial affairs. At a minimum, the grantee shall record the recipient, amount, date, and general purpose of each expenditure, in addition to any specific requirements of the grant contract. Upon request of the committee, the grantee shall give further information about or explanation of any expenditure. Failure to provide reasonable information or explanations shall subject the grantee to repayment of the amount in question to the committee.

The grantee shall give the committee access to the grantee's books, documents, papers, and records that bear any reasonable relationship to the grant.

History: Effective April 1, 2002.

General Authority: NDCC 28-32-02, 43-23.4-02

Law Implemented: NDCC 43-23.4-02

TITLE 71
RETIREMENT BOARD

APRIL 2002

CHAPTER 71-01-03
CONFIDENTIAL INFORMATION REQUESTS

<u>Section</u>	
<u>71-01-03-01</u>	<u>Confidential Information Request</u>
<u>71-01-03-02</u>	<u>Review of the Request</u>
<u>71-01-03-03</u>	<u>Board Review</u>

71-01-03-01. Confidential information request. A request for confidential information is not a request pursuant to the open records laws, but instead is a request for information that has been determined to be confidential under state law but which may be disclosed pursuant to the invocation of an exception to the confidentiality requirements. All requests for confidential information must be made in writing to the executive director of the public employees retirement system. The request shall state the specific information requested, the reason for the request, the intended use of the information, and the applicable exception to the confidentiality requirements.

History: Effective April 1, 2002.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-06

71-01-03-02. Review of the request. The executive director shall review each request and determine if the information can be provided. If the request is not clear, the executive director shall write back within forty-five days indicating what additional information is needed. If no additional information is needed, the executive director shall provide the information or deny the request within forty-five days.

History: Effective April 1, 2002.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-06

71-01-03-03. Board review. If the executive director is unable to determine whether the information can be provided within forty-five days, the director shall

refer the request to the public employees retirement system board for its review. The board may approve the request, deny the request, or request additional information.

History: Effective April 1, 2002.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06

CHAPTER 71-02-01

71-02-01-01. Definitions. As used in North Dakota Century Code chapter 54-52 and this article:

1. "Accumulated contributions" means the total of all of the following:
 - a. The employee account fund balance accumulated under the prior plan as of June 30, 1977.
 - b. The vested portion of the employee's "vesting fund" accumulated under the prior plan as of June 30, 1977.
 - c. The member's mandatory contributions made after July 1, 1977.
 - d. The member's vested employer contributions made after January 1, 2000, pursuant to North Dakota Century Code section 54-52-11.1.
 - e. The interest on the sums determined under subdivisions a, b, c, and d, compounded annually at the rate of five percent from July 1, 1977, to June 30, 1981, six percent from July 1, 1981, through June 30, 1986, and one-half of one percent less than the actuarial interest assumption from July 1, 1986, to the member's termination of employment or retirement.
 - f. The sum of any employee purchase or repurchase payments.
2. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board.
3. "Alternative retirement system" means the teachers' fund for retirement, the highway patrolmen's retirement system, and the teachers' insurance and annuity association of America.
4. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
5. "Bonus" means cash compensation for services performed in addition to base salary excluding commission and shift differentials. Bonus does not include lump sum payments of sick leave provided under North Dakota Century Code section 54-06-14 or lump sum payments of annual leave or vacation pay.
6. "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.

7. "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period.
8. "Contribution" means the payment into the fund of nine and twelve-hundredths percent of the salary of a member.
9. "County judge" means a judge who was elected pursuant to North Dakota Century Code section 27-07.1-01 or an individual holding the position of county judge, county justice, or judge of county court prior to the general election in 1982, who meets all the eligibility requirements established under chapter 54-52.
10. "Interruption of employment" is when an individual is inducted (enlists or is ordered or called to active duty into the armed forces of the United States) and leaves an employment position with a state agency or political subdivision, other than a temporary position. The individual must have left employment to enter active duty and must make application for reemployment within ninety days of discharge under honorable conditions.
11. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years.
12. "Medical consultant" means a person or committee appointed by the board of the North Dakota public employees retirement system to evaluate medical information submitted in relation to disability applications, recertifications, and rehabilitation programs or other such duties as assigned by the board.
13. "Office" means the administrative office of the public employees retirement system.
14. "Participating employer" means an employer who contributes to the North Dakota public employees retirement system. For confidentiality purposes, "participating employer" means the person or group of persons with the ultimate authority over personnel decisions within the agency or political subdivision with which the member is employed or the person's or group's official designee.
15. "Pay status" means a member is receiving a retirement allowance from the fund.

16. "Permanent and total disability" for members of the main retirement system and the national guard retirement plan means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. For members of the judge's retirement plan, "permanent and total disability" is determined pursuant to subdivision e of subsection 3 of section 54-52-17 of the North Dakota Century Code.
17. "Plan administrator" means the executive director of the North Dakota public employees retirement system or such other person or committee as may be appointed by the board of the North Dakota public employees retirement system from time to time.
18. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.
19. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.
20. "Regularly funded" means a legislatively authorized full-time equivalent (FTE) position for state agencies. For all governmental units other than state agencies, regularly funded means a similar designation by the unit's governing board which is created through the regular budgeting process and receives traditional employee benefits such as sick leave and annual leave.
21. "Retiree" means an individual receiving a monthly allowance pursuant to chapter 54-52.
22. "Service credit" means increments of time to be used in the calculation of retirement benefits. Service credit may be earned as stated in section 71-02-03-01 or may be purchased or repurchased according to section 71-02-03-02.1.
23. "Substantial gainful activity" is to be based upon the totality of the circumstances including consideration of an individual's training, education, and experience; an individual's potential for earning at least seventy percent of the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.
24. "Termination of employment" means a severance of employment by not being on the payroll of a covered employer for a minimum of one month.

Approved leave of absence does not constitute termination of employment.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1991; January 1, 1992; September 1, 1992; June 1, 1993; July 1, 1994; June 1, 1996; July 1, 2000; April 1, 2002.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52

CHAPTER 71-02-03

71-02-03-02.5. Costs. The If purchasing under subdivision d of subsection 1 of North Dakota Century Code section 54-52-17.4, the cost will be the higher of the amount refunded to the member plus interest at the actuarial rate of return or the actuarial cost to provide the credit. All other types of service purchases must be actuarially determined. An actuarial cost must be calculated by applying actuarial factors to the amount of retirement and retiree health insurance credit being purchased by the member. The member's current age, average salary, and current credited service on record with the North Dakota public employees retirement system in the month in which the member's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit being purchased must be calculated using the benefit formulas in place at the time the written request is received from the member. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The member's average salary shall be calculated as follows:

1. For members working full time with more than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17.
2. For members working full time with less than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17, but disregarding any month in which the member was paid less than a full-month salary. A full-month salary is the compensation the member and the member's employer agreed the member would be paid for working a full month.
3. For members who have not yet received a full-month salary, the member's average salary shall equal the member's full-month salary, as defined in subsection 2.
4. For members working part time, by using the applicable calculations found in subsections 1 and 2, but using a monthly salary equal to the equivalent of the salary the member would have received if the member was working full time.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the member, and all required documentation, a written cost confirmation must be prepared and mailed to the

member. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter.

History: Effective July 1, 1994; amended effective June 1, 1996; July 1, 2000; April 1, 2002.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

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

Payments may be accepted from the member as early as six months prior to termination if the following requirements are met:

1. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
2. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
3. The sick leave conversion payment must be within the contribution limits of 26 U.S.C. 415 415(n) for the purchase of permissive service credit.
4. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of that date.

If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must

be refunded to the member and any underpayment must be collected from the member within sixty days of termination.

The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

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

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.8, 54-52-27

CHAPTER 71-02-04

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

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

History: Effective April 1, 2002.

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

Law Implemented: NDCC 54-52-17

71-02-04-05. Designation of beneficiary. A member may designate a beneficiary or beneficiaries by filing such designation with the office. Except in the case of the joint and survivor option, a member shall have the right to change the member's designation of beneficiary without the consent of the beneficiary, but no such change shall be effective or binding unless it is received by the office prior to the death of the member. If a vested, married member designates a beneficiary other than or in addition to a spouse, the member's spouse's consent must be obtained before benefits can be paid other than to the member's spouse.

History: Amended effective November 1, 1990; April 1, 2002.

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

Law Implemented: NDCC 54-52-17

71-02-04-07. Amount of early retirement benefit.

1. Except for members of the national guard security police and firefighters retirement system, the early retirement benefit shall be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than the age sixty-five at which the member would be at the member's normal retirement date on the date the member's early retirement benefit commences.
2. For members of the national guard security police and firefighters retirement system, the early retirement benefit must be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is

younger than age fifty-five on the date the member's early retirement benefit commences.

History: Amended effective September 1, 1982; June 1, 1996; April 1, 2002.

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

Law Implemented: NDCC 54-52-17

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

1. An "overpayment" means a payment of money by the public employees retirement system that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.
2. A person who receives an overpayment is liable to refund those payments upon receiving an a written explanation and ~~a written~~ request for the amount to be refunded ~~from the executive director~~. All overpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the amount of the overpayment is estimated to exceed the overpayment, the repayment is considered to be unrecoverable.
3. If the overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written request for refund. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.
4. If the overpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of six percent on the outstanding balance, from the time the erroneous benefit was paid through the time it has been refunded in full, plus applicable interest.
5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the public employees retirement system must make

application to the estate of the deceased to recover the remaining balance.

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

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

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

71-02-04-13. Reduced benefit option. A participating member may enter into an agreement with the retirement board to receive an actuarially adjusted monthly retirement benefit to accommodate the less than full payment for years of service credit necessary to meet the rule of eighty-five, if the following criteria are met:

1. The participating member is at least ~~forty~~ fifty-five years old and has twenty or more years of credited service in the retirement system.
2. The amount of time to be purchased, or sick leave to be converted under section 71-02-03-06, does not exceed one hundred twenty months.
3. The service cannot be purchased, or the sick leave cannot be converted, prior to the participating member drawing a retirement benefit because it would be in violation of 26 U.S.C. 415.

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

General Authority: NDCC 54-52-04

Law Implemented: NDCC 39-03.1-11.1, 54-52-17.8

CHAPTER 71-02-05

71-02-05-06. Determination of disability - Procedures.

1. Application.

- a. If the member is unable or unwilling to file an application, the member's legal representative may file the member's disability application.
- b. ~~The~~ For the main system and the national guard system, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience. For the judges' retirement plan, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to mentally or physically fulfill the duties and responsibilities of being a judge. A judge who is determined to be disabled pursuant to subdivision a of subsection 3 of North Dakota Century Code section 27-23-03 shall file an application documenting this determination and the effective date of the disability.
- c. The application must be filed with the executive director and may not be filed earlier than one hundred twenty days before the expected termination date.

2. Medical consultant.

- a. The board may retain a medical consultant to evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant is responsible to determine eligibility for disability benefits for applicants not approved for social security disability benefits or for judges not approved pursuant to subsection 3 of North Dakota Century Code section 27-23-03 and shall advise the executive director of the decision in writing. Applicants who become eligible for disability benefits under the Social Security Act and who meet the requirements of subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 are eligible for benefits under subdivision e of subsection 4 of North Dakota Century Code section 54-52-17 without submitting further

medical information to the medical ~~adviser~~ adviser, but are subject to recertification requirements specified in this chapter.

- d. (1) If the applicant has terminated employment, the executive director shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the executive director shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- (2) If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.

3. Medical examination.

- a. The applicant for disability retirement shall provide the medical examination reports as requested by the medical consultant.
- b. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports necessary for initial determination of eligibility for benefits.

If determined to be eligible for disability benefits, the member must be reimbursed up to four hundred dollars for the cost of medical examinations specifically requested by the medical adviser and the executive director.

4. Appeal.

- a. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the plan administrator mailed the decision.
- b. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical

examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.

- c. If the initial board decision is adverse to the applicant after exhausting the administrative procedure under subdivisions a and b, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law, and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.

5. **Payment of annuity.** If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment minus any early retirement benefits that have been paid.

6. **Redetermination and recertification.**

- a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant. The executive director may waive the necessity for a recertification, based on the recommendation of the medical consultant.
- b. The executive director will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant.

- c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the executive director.
- d. The medical consultant will make the recertification decision. The executive director may require additional recertifications, if the facts warrant this action. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
- e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The executive director shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective January 1, 1992; amended effective July 1, 1994; June 1, 1996; April 1, 2002.

General Authority: NDCC 54-52-17

Law Implemented: NDCC 54-52-17, 54-52-26

CHAPTER 71-02-06

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

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

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

General Authority: NDCC 54-52-04

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

CHAPTER 71-02-07

71-02-07-03. Return to service - Disabled member. If the recipient of a disability benefit under North Dakota Century Code chapter 54-52 returns to work, that member is responsible for reporting employment to the public employees retirement system.

1. If a member is working in a permanent full-time position and is eligible to participate in the public employees retirement system, monthly benefits from the public employees retirement system must be suspended. If the individual is not able to continue employment for a consecutive period of time resulting in nine months of service credit as a result of the disability and continues to meet eligibility requirements under the plan, that member may resume disability status with the public employees retirement system.
2. If a member returns to substantial gainful activity ~~or~~ in employment not covered under the public employees retirement system, the disability benefit may continue for up to nine consecutive months. If the individual is not able to continue employment for at least nine months as a result of the disability and continues to meet eligibility requirements under the plan, the member may continue disability status with the public employees retirement system.

History: Effective November 1, 1990; amended effective September 1, 1992; July 1, 1994; July 1, 2000; April 1, 2002.

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

Law Implemented: NDCC 54-52-17

CHAPTER 71-02-08

71-02-08-03. Transfer of funds. Pursuant to paragraph 4 of subdivision e a of subsection ~~43~~ 4 of North Dakota Century Code section 15-10-17, funds may be transferred on behalf of those persons who are eligible through their employment with the state board of higher education. The following requirements apply:

1. Applicant must file a completed application for the teachers insurance and annuity association-college retirement equities fund.
2. Notice of termination and verification of teachers insurance and annuity association-college retirement equities fund eligibility must be filed by either the applicant or appropriate payroll officer.
3. Interest at the rate of seven percent must be used in calculating interest on the employer contribution, beginning from the date of first contribution through the date of transfer to the teachers' insurance and annuity association of America-college retirement equities fund.

History: Effective November 1, 1990; amended effective June 1, 1996; April 1, 2002.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 15-10-17

CHAPTER 71-03-05

71-03-05-07. Erroneous payment of premiums - Overpayments.

1. An "overpayment" means a payment of money to the public employees retirement system for group insurance premiums that exceeds the premiums due for the level of coverage that should have been in effect.
2. If an overpayment occurs, the amount of the overpayment must be paid to the insured in a lump sum within thirty days of the discovery of the error.

History: Effective April 1, 2002.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

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

1. An "underpayment" means a payment of money to the public employees retirement system for group insurance premiums that is less than the premiums due for the level of coverage that should have been in effect.
2. An individual who underpays premiums is liable to pay those premiums upon receiving a request for repayment and an explanation of the amount due from the executive director. All underpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the underpayment is estimated to exceed the amount of the underpayment, the underpayment is considered to be unrecoverable.
3. If an underpayment is discovered in the first month it occurs, the individual must pay the amount due in a lump sum within thirty days of the discovery of the error.
4. If an underpayment is not discovered within the first month it occurs, the following will apply:
 - a. If not the result of any wrongdoing, negligence, misrepresentation, or omission by the individual, then the individual must make arrangements within sixty days of receiving written notification to either pay by lump sum or installments. The installment payment schedule is subject to approval by the executive director. If repayment arrangements are not in place within sixty days of the date of the written request for repayment, the executive director shall authorize payment to be made in three equal installments.

using the same payment method the individual has authorized for paying current monthly premiums.

b. If underpayment is the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the individual, underpayments must be made in full within sixty days of written notification.

5. If the individual dies prior to paying in full, then the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.

6. If the individual refuses to repay the underpayment, the public employees retirement system will notify the individual in writing that payment of claims will be suspended until payment is received in full. Coverage will be canceled if repayment is not made within thirty days of written notification.

History: Effective April 1, 2002.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-09. Erroneous payment of premiums - Appeals.

1. A person not satisfied with the repayment arrangements made under this policy may appeal the executive director's decision in writing to the board. The written request must explain the basis of the appeal and must be received in the office within sixty days of the executive director's written decision.

2. The board may release a person from liability to repay an underpayment, in whole or in part, if it determines:

a. The underpayment is not the fault of the recipient; or

b. It would be contrary to equity and good conscience to collect the underpayment.

History: Effective April 1, 2002.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

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

1. The amount of the health premium overpayment or underpayment will be determined by calculating the difference between the premium that

was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or July of the earliest contract period still open, whichever is more recent.

2. The amount of the life premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred.
3. The amount of the dental premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred.

History: Effective April 1, 2002.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-11. Failure to provide notification and errors.

1. If the individual fails to notify the public employees retirement system of a change that affects the level of coverage in force, upon learning of the change, the guidelines for premium overpayment or underpayment will apply.
2. If an individual fails to notify the public employees retirement system to establish coverage, the guidelines for premium overpayment or underpayment will not apply. Coverage will only be established prospectively.
3. If the public employees retirement system makes an error that affects the level of coverage in force for the individual, upon learning of the error, the guidelines for premium overpayment or underpayment will apply.
4. If the public employees retirement system makes an error and does not establish coverage for an individual, upon learning of the error, the guidelines for premium underpayment will apply.
5. If an individual does not receive timely notification of COBRA continuation rights, premiums must be paid in full before continuation coverage is established retroactively.

History: Effective April 1, 2002.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

CHAPTER 71-04-01

71-04-01-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code section 54-52.2-04, except:

1. "Beneficiary" means an individual designated by the participant in the participant agreement to receive benefits under the plan in the event the participant dies.
2. "Compensation" means the total annual remuneration for employment or contracted services received by the participant from the employer.
3. "Deferred compensation" means the amount of compensation not yet earned which the participant and the employer shall mutually agree shall be deferred from current monthly salary in accordance with the provisions of the plan.
4. "Eligible state deferred compensation plan" means a plan established and maintained by this state that complies with the Internal Revenue Code (IRC) 457(b).
5. "Employer" means the state of North Dakota or any of its political subdivisions, institutions, departments, or agencies.
6. ~~"Includible compensation" means compensation for service performed for the employer which is currently includible in gross income. Includible compensation is reduced by amounts deferred under any other salary reduction agreements under the 457 program or 403(b) TSA plans, 401(k), 125, or 414(h) plans.~~
7. "Participant" means is any permanent employee of an a participating employer ~~who the employer designates as eligible to participate, and who executes a participant agreement.~~
- 8: 7. "Participant agreement" means a written agreement between the employer and a participant setting forth certain provisions and elections relative to the plan, incorporating the terms of the plan and establishing the participant's deferral and participation in the plan.
- 9: 8. "Provider" means any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 authorized by the retirement board to provide investment vehicles to employees.
- 10: 9. "Retirement" means separation from service with the employer on a date coincidental with the normal, postponed, early, or disability

retirement dates as described in North Dakota Century Code chapter 54-52-17.3.

~~41.~~ 10. "Retirement board" means the seven persons described in North Dakota Century Code chapter 54-52-03.

~~42.~~ 11. "Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes severance of employment with the employer by reason of death, disability, retirement, resignation, or discharge.

~~43.~~ 12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.

~~44.~~ 13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2, 54-52.2-04

CHAPTER 71-04-03

71-04-03-05. Unforeseeable emergency. A participant who, prior to separation from service, experiences an unforeseeable emergency as defined in section 71-04-01-01 may apply for a partial distribution of the participant's deferred compensation account to the extent reasonably needed to satisfy the financial need. The participant may make application by completing a financial hardship form and delivering it to the retirement board offices.

~~The application will be reviewed by the deferred compensation committee of the board and the recommendation of the committee will be sent to the retirement board for a decision at the board's next regularly scheduled meeting.~~

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-03-06. Termination of participation. Participation in the plan may be terminated at any time by completion of a participant agreement indicating an elimination of monthly deferrals. Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05.

~~In the event of a separation from service, the participant shall complete a benefit selection form to apply for immediate or deferred benefits under the plan:~~

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

CHAPTER 71-04-04

71-04-04-04. Employer agreement. The retirement board shall establish a written agreement for all employers other than state departments, agencies, boards, or commissions which appoint the state to administer their deferred compensation plan. This agreement includes requirement for the employer to adopt the retirement board's rules, employers to make the requested payroll deductions upon proper application by the employee, send the retirement board monthly listings of employees and their deferred compensation deductions, submit all provider participant contracts to the retirement board, hold all participant account information as confidential, and notify the retirement board within thirty days of participant's termination of employment, ~~and acknowledge the assets invested under the plan are those of the employer and not the participant.~~

History: Effective April 1, 1989; amended effective April 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-05

71-04-05-07. Employer assets. Repealed effective April 1, 2002. ~~The employer must acknowledge that the income deferred by its employees are the assets of the employer until the employee has actually been paid the amounts deferred.~~

History: ~~Effective April 1, 1989.~~

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

Law Implemented: ~~NDCC 54-52.2-03; IRC 457(b)(6)~~

CHAPTER 71-04-06

71-04-06-10. Income tax withholding. The provider shall allow for the withholding of federal and state income taxes from the benefit payments and file the required reports of the withholdings with the appropriate federal and state agencies. ~~This includes the delivery of W2's to annuitants or terminated participants.~~

History: Effective April 1, 1989; amended effective July 1, 1998; April 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

**CHAPTER 71-04-07
BENEFITS**

[Repealed effective April 1, 2002]

CHAPTER 71-05-04

71-05-04-03. Repurchase of service credit and purchase of additional service credit. To purchase additional credit or repurchase past service, a contributor or participating member of an alternative retirement system must notify the public employees retirement system, in writing, of the service for which the person wishes to receive credit. ~~If the contributor is purchasing legislative service credit, a written request must be received from the contributor within one year after the adjournment of that legislative session.~~ In addition to the written request, the following information must be submitted, if applicable:

1. Documentation of military service by submitting a DD214 or NGB22.
2. Certification of approval by the member's employer of any leave of absence and length of that leave.

History: Effective October 1, 1991; amended effective June 1, 1996; April 1, 2002.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-03.1. Purchase of additional years of service. A participating member who is a vested, permanent employee is entitled to purchase additional years of service credit to enable the member to qualify for the normal retirement date defined by North Dakota Century Code section 39-03.1-11. The years of service purchased must be added to the years of service employment under subsection 4 of North Dakota Century Code section 39-03.1-11 for calculating the service benefit.

History: Effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-08.2, 39-03.1-10.1

71-05-04-08. Conversion of sick leave. To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment.

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

Payments may be accepted from the member as early as six months prior to termination if the following requirements are met:

1. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
2. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
3. The sick leave conversion payment must be within the contribution limits of 26 U.S.C. 415 415(n) for the purchase of permissive service credit.
4. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave, confirmed by the member's employer, and the member's final average salary as of that date.
5. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member within sixty days of termination.
6. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

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

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-30

CHAPTER 71-05-05

71-05-05-05. Designation of beneficiary. A member may designate a beneficiary or beneficiaries by filing such designation with the office. A member shall have the right to change the member's designation of beneficiary without the consent of the beneficiary, but no such change is effective or binding unless it is received by the office prior to the death of the member. If a vested, married member designates a beneficiary other than or in addition to a spouse, the consent of the member's spouse is required before benefits can be paid other than to the member's spouse.

History: Effective October 1, 1991; amended effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11(7)(8) 39-03.1-11(6),(7),(8)

71-05-05-09. Assignment or alienation of plan benefits. Benefits provided under the plan may not be assigned or alienated except as provided in North Dakota Century Code section 54-52-17.6.

History: Effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-14.2

71-05-05-10. Erroneous payment of benefits - Overpayments.

1. An "overpayment" means a payment of money by the public employees retirement system that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.
2. A person who receives an overpayment is liable to refund those payments upon receiving an explanation and a written request for the amount to be refunded from the executive director. All overpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the amount of the overpayment is estimated to exceed the overpayment, the repayment is considered to be unrecoverable.
3. If an overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written notice of overpayment. The executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial

equivalent of the overpayment is spread over the individual's benefit payment period.

4. If the overpayment was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of six percent on the outstanding balance to compensate the fund for lost earnings from the time the erroneous benefit was paid through the time it has been refunded in full. Recovered funds are first applied to interest, and if any amount is left over, that amount is applied to principal.
5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.

History: Effective April 1, 2002.

General Authority: NDCC 32-03-04, 39-03.1-06, 54-52-04(12), 54-52-14.2

Law Implemented: NDCC 39-03.1-25

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

1. An "underpayment" means a payment of money by the public employees retirement system that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.
2. If an underpayment occurs, the amount of the lump sum payment must be paid within thirty days of the discovery of the error, with interest at the rate of six percent from the time underpayment occurred.

History: Effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-25

71-05-05-12. Erroneous payment of benefits - Appeals.

1. A person not satisfied with repayment arrangements made under section 71-02-04-10 may appeal the executive director's decision in writing to the board. The written request must explain the basis of the appeal and must be received in the office within sixty days of the executive director's written decision.
2. The board may release a person from liability to refund an overpayment, in whole or in part, if it determines:
 - a. The receipt of overpayment is not the fault of the recipient.

b. It would be contrary to equity and good conscience to collect the refund.

History: Effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-25

CHAPTER 71-06-01

71-06-01-06. Erroneous crediting of the retiree health insurance credit.

If an error occurs in granting retiree health insurance credit, the error shall be corrected the first of the month following discovery of the error in accordance with sections 71-02-04-10 and 71-02-04-11, except any underpayment of the retiree health insurance credit under this chapter must be credited to the maximum amount of the monthly premium payable each month until the amount of the underpayment has been credited returned to the uniform group insurance program where it will be treated as an overpayment of premium and paid in a lump sum within sixty days of the discovery of the error.

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

General Authority: NDCC 54-52.1-03.2, 54-52.1-03.3

Law Implemented: NDCC 54-52.1-03.2, 54-52.1-03.3

CHAPTER 71-08-01

71-08-01-07. Late election opportunity. An eligible member who is not provided a timely opportunity to enroll in the defined contribution plan within the first six months of employment may be provided additional time to make an election if:

1. The executive director determines that the member was not given an election opportunity within the first six months of employment. The executive director shall then give the member a special enrollment opportunity of three months beginning from the date a new enrollment packet is mailed to the member.
2. The board determines that member was not given timely notice or the member was unable to make an election within the first six months. If the board determines that the member should have an additional election opportunity, the member shall have three months from the date a new enrollment packet is mailed to the member.

History: Effective April 1, 2002.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-02

CHAPTER 71-08-02

71-08-02-01. Membership of individuals who become employees of the judicial branch, the board of higher education or a state institution under the jurisdiction of the board, or the highway patrol; or a political subdivision that participates in the public employees retirement system or who become employed in a position subject to teachers' fund for retirement membership. If a member of the defined contribution retirement plan becomes an employee of the judicial branch, the board of higher education, a state institution under the jurisdiction of the board, or the highway patrol; or a political subdivision that participates in the public employees retirement system, or becomes employed in a position subject to teachers' fund for retirement membership, the member's status as a member of the defined contribution retirement plan is suspended and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution plan, the member's suspension is terminated, the member again becomes a member of the defined contribution plan, and the member's account shall resume accepting contributions. The contributions to the alternate retirement plan shall remain with that plan unless ~~the member was employed by a political subdivision that participates in the public employees retirement system. If the employee was employed by a political subdivision that participates in the public employees retirement system returns to service as a state employee, the employee's accumulated fund balance shall be transferred to the defined contribution retirement plan according to North Dakota Century Code section 54-52.6-03 and the employee shall resume membership in the defined contribution retirement plan~~ at the member's option, the member elects to transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account in the defined contribution retirement plan.

History: Effective July 1, 2000; amended effective April 1, 2002.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-01(3)

TITLE 75
DEPARTMENT OF HUMAN SERVICES

APRIL 2002

CHAPTER 75-02-02.2

AGENCY SYNOPSIS: The department proposed amendments to North Dakota Administrative Code Chapter 75-02-02.2, Children's Health Insurance Program, and conducted a public hearing on October 31, 2001, and received written comment on these proposed rules until the end of the day on November 30, 2001.

All the following will change:

75-02-02.2-06, Renewal of eligibility: This section is amended to change the wording from Recertification to Renewal.

75-02-02.2-10, Eligibility criteria: This section is amended regarding coverage for state employees who are not eligible for coverage or have to contribute toward coverage.

75-02-02.2-12, Income considerations: This section is amended to change wording from Job Training Partnership Act (JTPA) to Workforce Investment Act (WIA).

75-02-02.2-13, Determining household income: This section is amended to change recertification to renewal. It also added a section on computation of self-employment based on the lower of two calculations.

75-02-02.2-14, Eligibility period: This section is amended to change the wording from recertification to renewal.

75-02-02.2-06. Recertification Renewal of eligibility.

1. The department shall redetermine the eligibility of all enrollees at least annually and shall ~~recertify~~ renew those eligible.
2. An enrollee, or anyone acting on an enrollee's behalf, has the same responsibility to furnish information to the department during a ~~recertification~~ renewal of eligibility for coverage as an applicant has during the initial application and eligibility determination. All enrollees

shall cooperate fully with annual ~~recertifications~~ renewals and provide sufficient information to the department to ~~recertify~~ renew eligibility for coverage.

3. Plan coverage terminates on the last day of the month of the end of the annual ~~recertification~~ renewal period if an enrollee fails to provide sufficient information to ~~recertify~~ renew eligibility.
4. The department shall notify enrollees of termination of coverage within forty-five days of receipt of the information which led to the termination or denial of ~~recertification~~ renewal of a determination that the enrollee is no longer eligible for coverage or that ~~recertification~~ renewal of eligibility cannot be determined. The notice must include the reason for termination of coverage, the effective date of termination of coverage, and the enrollee's appeal rights as described in section 75-02-02.2-04.

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

General Authority: NDCC 50-29

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

75-02-02.2-10. Eligibility criteria.

1. Children ages birth through eighteen years of age are eligible for plan coverage provided all other eligibility criteria are met. Coverage for enrollees who are eighteen years of age will continue through the last day of the month in which the enrollee turns nineteen years of age.
2. A child who has current creditable health insurance coverage or has coverage which is available through a parent's or legal guardian's employer at no cost, as defined in section 2701(c) of the Public Health Service Act [42 U.S.C. 300gg(c)] is not eligible for plan coverage.
3. A child is not eligible for plan coverage if a family member voluntarily terminated either employer-sponsored or individual health insurance coverage of the child within six months of the date of application unless:
 - a. The health insurance coverage was terminated due to the involuntary loss of employment;
 - b. The health insurance coverage was terminated through no fault of the family member who had secured the coverage; or
 - c. The health insurance coverage was terminated by a household member who is actively engaged in farming in a county which is declared a federal disaster area.
4. A child residing in a public institution is not eligible for plan coverage.

5. A child who is a member of a family that is eligible for health benefits coverage under a state health benefits plan on the basis of a family member's employment with a public agency in the state of North Dakota is not eligible for plan coverage unless the state employee is not eligible for coverage or has to contribute toward coverage.
6. A child who meets current medicaid eligibility criteria is not eligible for plan coverage unless the child would otherwise be eligible for the medically needy medicaid program with a recipient liability. Such child may be enrolled in either the healthy steps program or the medically needy medicaid program.
7. A child who resides in an institution for mental disease at the time the child applies for plan coverage is not eligible for plan coverage. This exclusion does not apply to enrollees who enter an institution for mental disease while receiving plan coverage.
8. If the department estimates that available funds are insufficient to allow plan coverage for additional applicants, the department may take any action appropriate to avoid commitment of funds in excess of available funds including denying applications and establishing waiting lists not forbidden by title XXI of the Social Security Act [42 U.S.C. section 1397aa et seq.] or regulations adopted thereunder. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

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

General Authority: NDCC 50-29

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

75-02-02.2-12. Income considerations.

1. Only income that is actually available may be considered. Income is actually available when it is at the disposal of a child or household member or when the child or household member has a legal interest in a liquidated sum and has the legal ability to make the sum available.
2. It is presumed that all parental income is actually available to a child under nineteen years of age. This presumption may be rebutted by a showing that the child is:
 - a. Living independently without receiving support or income from a parent; or
 - b. Living with a parent who is separated from the child's other parent, with or without court order, if the parents did not separate for the

purpose of securing plan coverage and the parent with whom the child is not living has refused to furnish information about that parent's income sufficient to determine eligibility.

3. In order for a child to be eligible for plan coverage, the adjusted gross income of the child and the child's parents must be equal to or below one hundred forty percent of the federal poverty line based on the size of the household. Pursuant to North Dakota Century Code section 50-29-05, if federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.
4. All household members are counted in determining the size of the household except children over the age of twenty-one years. The size of the household is increased by one for each unborn child of a household member.
5. Except as specifically excluded, all income of the child applying for coverage and the child's parents must be considered in determining eligibility. The income of other household members shall not be considered in determining eligibility.
 - a. All earned income of the child and the child's parents must be considered in determining eligibility, including wages, salaries, commissions, tips, bonuses, self-employment income, and income received under a contract.
 - b. All gross unearned income of the child and the child's parents must be considered when calculating adjusted gross income, including child support, spousal support, social security benefits, pensions, unemployment compensation, workers' compensation, interest, dividends, and other similar income.
6. The following types of income must be disregarded in determining eligibility for plan coverage:
 - a. Income that is required to be excluded pursuant to federal law, including supplemental security income benefits provided by the social security administration.
 - b. Irregular small cash gifts or contributions;
 - c. In-kind earned income;
 - d. Educational loans, scholarships, fellowships, grants, awards, and work-study received by a student;

- e. Income earned by a child who is a full-time student or part-time student who is not employed more than one hundred hours per month, including volunteers in service to America (VISTA) and ~~Job Training Partnership Act (JTPA)~~ Workforce Investment Act (WIA) income;
- f. Money payments made by the department, including foster care or subsidized adoption, optional supplementation payments, vocational rehabilitation training funds, family subsidy program, and low-income home energy assistance program (LIHEAP);
- g. Loans from any source that are subject to a written agreement requiring repayment by a household member;
- h. Quality child care for meals;
- i. County general assistance payments;
- j. Income tax refunds, earned income tax credits, or homestead tax credits;
- k. Earned or unearned lump sum payments, including inheritance moneys;
- l. Earned or unearned ~~Job Training Partnership Act~~ Workforce Investment Act (WIA) payments;
- m. Housing allowance received from United States department of housing and urban development or rent supplements or utility payments provided through the housing assistance program;
- n. Refugee sponsorship income; or
- o. Americorps income.

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

General Authority: NDCC 50-29

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

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

- 1. Income other than self-employment income must be calculated as follows:
 - a. Gross household income must be determined prospectively for each twelve-month certification period at the time of application

and at each annual ~~recertification~~ renewal to determine continuation of eligibility.

- b. Gross income of all household members that is not excluded is counted as household income.
- c. An average monthly adjusted gross income must be calculated for the twelve-month eligibility period based on reported monthly income adjusted for any known changes in expected future income at the time of application.
- d. Income that is received more often than monthly must be prorated over the certification period to determine average monthly income.
 - (1) Income that is received weekly must be averaged and multiplied by 4.3 to arrive at a monthly amount.
 - (2) Income that is received every other week must be averaged and multiplied by 2.15 to arrive at a monthly amount.
- e. After all countable non-self-employment gross income is determined, the following deductions must be allowed to determine adjusted gross income:
 - (1) For household members with earned income: actual mandatory payroll deductions, including federal, state, social security taxes, mandatory retirement and mandatory union dues, or ninety dollars per month, whichever is greater;
 - (2) Reasonable child care expenses, not otherwise reimbursed by third parties if necessary to engage in employment or training; and
 - (3) Court-ordered child and spousal support payments if actually paid by a parent on behalf of an individual who is not a member of the household.

2. Self-employment income must be calculated as follows:

- a. The average net income after expenses of self-employment must be calculated based on the ~~average of the previous three years of~~ adjusted gross income or loss, which means adjusted gross income as computed for an individual for federal income tax purposes under the Internal Revenue Code: based on the lower of either:

(1) The previous year of adjusted gross income or loss, less any earned or unearned income on the tax return, plus any current earned or unearned income; or

(2) The average of the previous three years of adjusted gross income or loss, less the average of earned or unearned income for each of the previous three years, plus any current earned or unearned income.

b. If the self-employed individual does not have three years of self-employment history, the actual number of years of self-employment must be used to calculate the average yearly income.

c. If the self-employed individual has not been self-employed long enough to have filed any self-employment federal income tax return in the last year, the best information available must be used to estimate revenue and business expenses to calculate adjusted gross self-employment income.

d. The adjusted gross self-employment income must be divided by twelve to determine the monthly income for the upcoming recertification renewal period or the number of months the data represents.

3. If the household has self-employed income and other earned or unearned income, the two must be added together to arrive at total adjusted gross income. The monthly income from self-employment must be calculated first. If the average self-employment income is zero or less, no amount may be subtracted from other earned or unearned family income.

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

General Authority: NDCC 50-29

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

75-02-02.2-14. Eligibility period. The coverage effective date is the first day of the month following the determination of eligibility. The coverage period ends at the earliest of:

1. The last day of the twelfth month after enrollment, or if the enrollee is recertified renewed, the last day of the twelfth month after recertification renewal;

2. The end of the month the enrollee turned nineteen years of age;

3. The end of the month in which the child has obtained other health insurance coverage; or
4. The end of the month in which the child leaves the household unless waived by the department.

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

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-04; 42 USC 1397aa et seq.

TITLE 100
STATE SEED ARBITRATION BOARD

APRIL 2002

CHAPTER 100-01-01

100-01-01-01. Organization of state seed arbitration board.

1. **History and function.** The state seed arbitration board was established by the legislative assembly in 1989 as a state seed mediation board. It was reestablished as a state seed arbitration board by the legislative assembly in 1991. Its function is to arbitrate disputes between among seed labelers, seed dealers, and seed customers involving seed transactions.
2. **Board membership.** The board consists of five six members as designated in North Dakota Century Code section 4-09-03.1. Any three four members constitute a quorum for the transaction of business.
3. **Officers - Duties.** The board shall annually elect a chair from among its members. The chair shall conduct all meetings held by the board and direct all other activities of the board.
4. The board shall keep accurate and correct records on all meetings, hearings, and deliberations.
5. The meetings and hearings of the board shall be held at such times and places as the chair may determine.
- 6: ~~4.~~ Members of the seed arbitration board may be reimbursed for expenses pursuant to North Dakota Century Code section 54-06-09 (only those state officials who are entitled by law to this reimbursement) and section 44-08-04 (all board members). The department of agriculture shall collect fees related to the seed arbitration board. Such fees must be used to pay necessary expenses relating to the board. **Inquiries.** General inquiries regarding the state seed arbitration board may be addressed to:

State Seed Arbitration Board
Attn: Agriculture Commissioner
600 East Boulevard Avenue, Dept. 602
Bismarck, ND 58505-0020
Telephone: (701) 328-2231
(800) 242-7535
Fax: (701) 328-4567

History: Effective July 1, 1992; amended effective April 1, 2002.

General Authority: NDCC 4-09-20.2, 4-09-03.1

Law Implemented: NDCC 4-02-20.2, 4-09-03.1

CHAPTER 100-02-01

100-02-01-01. Seed arbitration process. Repealed effective April 1, 2002.

- ~~1. Any seed labeler or seed customer is eligible to request seed arbitration. The request shall be made in writing to the commissioner of agriculture (Attention: North Dakota Agricultural Mediation Service Administrator, 600 East Boulevard, Bismarck, North Dakota 58505). Such request must be filed within sixty days after the alleged defect or violation becomes or reasonably should have become apparent. Upon receipt of the request, the commissioner shall submit the dispute to the chair of the seed arbitration board.~~
- ~~2. The seed labeler must provide anyone who alleges damage with information regarding seed arbitration and that seed arbitration is a prerequisite to any civil action. The sixty-day filing requirement does not apply where the seed labeler fails to provide such information.~~
- ~~3. The chair shall convene a hearing of the seed arbitration board for the purpose of gathering information from all parties to the dispute.
 - ~~a. Such initial hearing must be held within sixty days of the date on which the petition was received by the commissioner, unless a party to the dispute requests and receives, for good cause, an extension of time from the chair.~~
 - ~~b. The seed arbitration board may hold additional hearings of the disputants and the board as deemed appropriate by the board, following the initial hearing and before submission of a final arbitration report.~~~~

~~History:~~ Effective July 1, 1992.

~~General Authority:~~ NDCC 4-09-20.2, 4-09-03.1

~~Law Implemented:~~ NDCC 4-02-20.2

100-02-01-01.1. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 4-09, except:

1. "Board" means the state seed arbitration board established under North Dakota Century Code section 4-09-03.1.
2. "Dispute involving a seed transaction" means an instance in which a seed customer suffers damage because seed does not produce or perform in conformance with the labeling or warranty or because of negligence by the seed dealer or seed labeler.

3. "Seed" has the same meaning as "agricultural seed" as defined in North Dakota Century Code chapter 4-09.

History: Effective April 1, 2002.

General Authority: NDCC 4-09-20.2

Law Implemented: NDCC 4-02-20.2

100-02-01-02. Petition procedure.

1. In the event of a dispute involving a seed transaction, a seed labeler, seed dealer, or seed customer may petition for seed arbitration by filing a written complaint with the agriculture commissioner. The complaint must be filed at the address listed in section 100-01-01-01. The petitioner shall, in addition to the written complaint, submit an initial fee of two hundred fifty dollars payable to the "state seed arbitration board". The petitioner shall serve a copy of the complaint upon each party to which the complaint is directed.
2. The filing of a petition for arbitration is not a prerequisite to a person's right to maintain a civil action.
3. If seed, which is the basis of the complaint, is labeled by a person other than a seed dealer who sells directly to the farmer or other purchaser of seed, the commissioner shall mail a copy of the complaint to the person responsible for labeling the seed in order for the person to have an opportunity to file an answer.

History: Effective April 1, 2002.

General Authority: NDCC 4-09-20.2

Law Implemented: NDCC 4-02-20.2

100-02-01-03. Content of complaint. The complaint shall be legibly typed or printed and, if available to the complainant, must contain the following information or attachments:

1. Any factual information relevant to the dispute such as purchase dates, planting dates, field location, seeding rates, mechanical planting method, soil tests, fertilizer applications, pesticide usage, rates and timing, weather conditions, germination or yield tests or comparisons, and audiovisual records such as photographs or videotape;
2. Information alleging the extent of the seed's failure to perform or to conform to the legal requirements of, or representation made about, the seed;
3. A seed tag or label sample showing the information required for labeling requirements of seed under North Dakota Century Code chapter 4-09

or 4-10 and applicable rules. A sample shall be attached to the complaint for each separate identifiable lot of seed if relevant to the complaint;

4. The names and addresses of any persons with factual knowledge related to the complaint; and

5. Any damages sustained or to be sustained.

History: Effective April 1, 2002.

General Authority: NDCC 4-09-20.2

Law Implemented: NDCC 4-02-20.2

100-02-01-04. Answer. Within twenty days after receiving a copy of the complaint, each party to which the complaint is directed may file with the commissioner an answer to the complaint and serve a copy of the answer on the complainant.

History: Effective April 1, 2002.

General Authority: NDCC 4-09-20.2

Law Implemented: NDCC 4-02-20.2

100-02-01-05. Arbitration hearing. Upon receipt of the complaint and filing fee and after the time allowed for the filing and service of an answer, the commissioner shall submit a dispute involving a seed transaction to the chair of the board along with all documents received from the parties. The chair shall convene a hearing of the board for the purpose of gathering information from all parties to the dispute. The initial hearing must be held within sixty days after the date the commissioner received the complaint, unless a party to the dispute requests and receives, for good cause, an extension of time from the chair. The board may, following the initial hearing, hold additional hearings if necessary before submission of a final arbitration report.

History: Effective April 1, 2002.

General Authority: NDCC 4-09-20.2

Law Implemented: NDCC 4-02-20.2

100-02-01-06. Nonbinding recommendation. The board shall issue a final report to the disputing parties within thirty days after the final hearing, unless otherwise determined by the board. The final report shall contain a nonbinding recommendation for the resolution of the dispute.

History: Effective April 1, 2002.

General Authority: NDCC 4-09-20.2

Law Implemented: NDCC 4-02-20.2

100-02-01-07. Procedural and evidentiary rules. The North Dakota rules of evidence and North Dakota rules of civil procedure do not apply in seed arbitration

hearings. The board shall mail to all parties to the dispute, at least thirty days before the hearing on the complaint, a copy of the arbitration hearing format and guidelines.

History: Effective April 1, 2002.

General Authority: NDCC 4-09-20.2

Law Implemented: NDCC 4-02-20.2

100-02-01-08. Witnesses - Fees. The board may, at its discretion, call any witnesses. When so called, any fees, if charged, must be shared equally among the parties to the dispute. Each party is responsible for all costs associated with presenting its case. If the cost of arbitration to the board exceeds the initial fee, it shall determine the additional fees to be paid by any of the parties.

History: Effective April 1, 2002.

General Authority: NDCC 4-09-20.2

Law Implemented: NDCC 4-02-20.2

**CHAPTER 100-02-02
DUTIES OF THE BOARD**

[Repealed effective April 1, 2002]

**CHAPTER 100-02-03
REPORT OF THE SEED ARBITRATION BOARD**

[Repealed effective April 1, 2002]

**CHAPTER 100-02-04
FEES**

[Repealed effective April 1, 2002]

TITLE 106
BOARD OF ATHLETIC TRAINERS

APRIL 2002

ARTICLE 106-01

GENERAL ADMINISTRATION

<u>Chapter</u>	
<u>106-01-01</u>	<u>Organization of the Board</u>
<u>106-01-02</u>	<u>Definitions</u>

CHAPTER 106-01-01
ORGANIZATION OF THE BOARD

<u>Section</u>	
<u>106-01-01-01</u>	<u>Organization of the Board of Athletic Trainers</u>

106-01-01-01. Organization of the board of athletic trainers.

- 1. History and function.** The 1983 legislative assembly passed legislation to license athletic trainers, codified as North Dakota Century Code chapter 43-39. That chapter requires the governor to appoint a board of athletic trainers. It is the responsibility of that board to license and regulate athletic trainers within the state of North Dakota.
- 2. Purpose.** The purpose of the board's rules is to safeguard the public's health, safety, and welfare, by establishing minimum qualifications and creating exclusive titles corresponding to the level of qualifications for individuals who wish to offer athletic trainer services to the public. Further, in order to ensure the highest degree of professional conduct by those engaged in offering athletic trainer services to the public, it is the purpose of these rules to provide for and impose disciplinary sanctions, be they civil or criminal, against persons who do not meet or adhere to the procedures, qualifications, and standards set out in North Dakota Century Code chapter 43-39 or in this title.

3. **Board membership.** The board consists of five members appointed by the governor. One member is a licensed physician, three members are licensed athletic trainers, and one member is a representative of the general public and may not be licensed in any health care field. Members serve staggered terms of four years. No member may serve more than two successive four-year terms on the board.
4. **Officers.** The board each year elects one of its members as chairman and one of its members as secretary-treasurer.
5. **Inquiries.** Inquiries regarding board activities may be addressed to:

Board of Athletic Trainers
P.O. Box 5545
Fargo, ND 58105-5545

History: Effective April 1, 2002.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 43-39-02

CHAPTER 106-01-02
DEFINITIONS

Section
106-01-02-01 Definitions

106-01-02-01. Definitions. As used in this title, unless the context otherwise requires:

1. "Athletic injury" means an injury sustained by a physically active individual as a result of the individual's participation in an exercise, sport, game, or recreational activity, which requires physical strength, agility, flexibility, range of motion, speed, or stamina. The term includes any comparable injury that impedes the individual's participation in any of the activities listed in the section.

2. "Student athletic trainer" means someone who is enrolled in a course of study leading to certification under the guidelines of the national athletic trainers association board of certification, incorporated, or its successor board.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-01, 43-39-04

ARTICLE 106-02

LICENSURE

Chapter
106-02-01 Initial Licensure and Renewals

CHAPTER 106-02-01
INITIAL LICENSURE AND RENEWALS

Section
106-02-01-01 Initial Licensure
106-02-01-02 Reciprocity
106-02-01-03 License Renewal
106-02-01-04 Continuing Education
106-02-01-05 Fees

106-02-01-01. Initial licensure. To apply for initial licensure, an applicant:

1. Must meet all requirements of certification established by the national athletic trainers association board of certification, incorporated;
2. Must submit an application along with the application fee and initial license fee provided in section 106-02-01-05;
3. Must have passed an examination approved by the board;
4. Must meet with the approval of the board; and
5. Must not have committed an act that constitutes grounds for denial of a license.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-05, 43-39-06, 43-39-08

106-02-01-02. Reciprocity. A person who holds a current license as an athletic trainer in another jurisdiction and who is in good standing in that jurisdiction may apply to receive a license from the board if the person satisfies the requirements for initial licensure.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-06

106-02-01-03. License renewal.

1. Licenses issued by the board expire on June thirtieth of each year. Renewal forms will be sent no later than May fifteenth of each year. A renewal application will be considered timely if it is postmarked before July first and if the application is accompanied by the proper fee and by proof of sufficient continuing education under section 106-02-01-04.
2. A person who previously held a license issued by the board and whose license has expired may have the license restored immediately upon payment of the appropriate late renewal fee; provided, however, that not more than one year has elapsed since the date of expiration and provided that the person has not provided athletic training during the time in which the license was expired.
3. This section does not relieve any person from criminal prosecution for practicing athletic training without a license as required by North Dakota Century Code chapter 43-39. Once a license has lapsed, the person who held the license may not practice athletic training until the license is renewed or until a new license is issued.
4. Any person who fails to renew a lapsed license within one year must reapply for a new license and provide proof of sufficient continuing education under section 106-02-01-04 for the time period during which the license was expired.
5. A license issued by virtue of the grandfather provision in North Dakota Century Code section 43-39-07 which has expired will not be renewed. Any person seeking to renew such a license after it has expired must meet all licensing requirements in effect at the time of the application for renewal, including eligibility for certification.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-07, 43-39-09

106-02-01-04. Continuing education.

1. To be eligible to apply for renewal of a license issued by the board, the licensee must provide sufficient proof of the accumulation of at least eighty continuing education units (CEUs) in the last three years.
2. As used in this section, "CEU" means one contact hour of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

3. A licensee who is also a certified athletic trainer may provide a photocopy of the licensee's current national athletic trainers association membership card or current national athletic trainers association board of certification, incorporated, card as proof of the completion of CEUs.
4. A licensee who is not also a certified athletic trainer must obtain approval of experiences intended to be used as CEUs. Approval is provided through the secretary-treasurer of the board and must be requested during the same timeframe in which the experience is to be used to satisfy the CEU requirements. Continuing education programs which have been approved by the national athletic trainers association board of certification, incorporated, or its successor need not receive prior approval for CEU credit for uncertified licensees.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-02

106-02-01-05. Fees. The board charges the following fees:

1. For applications for initial licensure, fifty dollars.
2. For an examination, three hundred seventy-five dollars.
3. For an initial annual license or a timely renewal of a current annual license, fifty dollars.
4. For renewal of an annual license which has expired within the last year, fifty dollars.
5. For a replacement certificate of licensure or renewal card, ten dollars.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-02, 43-39-06

ARTICLE 106-03

PRACTICE OF ATHLETIC TRAINING

Chapter
106-03-01 Athletic Training Practice

CHAPTER 106-03-01
ATHLETIC TRAINING PRACTICE

Section
106-03-01-01 Posting Licenses
106-03-01-02 Use of Titles and Abbreviated Titles
106-03-01-03 Complaints
106-03-01-04 Grounds for Discipline
106-03-01-05 Disciplinary Actions
106-03-01-06 Notice of Name or Address Change

106-03-01-01. Posting Licenses.

1. A person who is licensed by the board shall display the license at the location of the licensee's principal place of employment. A current renewal card must be displayed with the certificate or be in the possession of the licensee while practicing athletic training.
2. If the original license or current renewal card is lost, misplaced, stolen, or destroyed, the licensee shall immediately report that fact to the board in writing. Upon receipt of a statement from the licensee satisfactorily explaining the circumstances making replacement necessary, and upon payment of the proper fee, the board may issue a replacement license or card.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-02

106-03-01-02. Use of titles and abbreviated titles.

1. A person licensed by the board may use, so long as the use is appropriate and accurate, the titles "athletic trainer", "certified athletic trainer", "licensed athletic trainer", or "licensed athletic trainer, certified", and the abbreviations "LATC", "ATC", "AT", or "CAT".

2. A student athletic trainer may not use the title "student athletic trainer" or the abbreviation "SAT" unless the student is enrolled in an approved athletic trainer program.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-02, 43-39-04

106-03-01-03. Complaints. All complaints will be investigated and evaluated by the board. Complaints must be in writing and sent to the president of the board. A complaint must state, at a minimum, the name or names of the licensees against whom the complaint is made and a brief explanation of the complaint. The complaint must be dated and signed by the person making the complaint. The board may also investigate a complaint on its own motion. Following an investigation, the board may file charges against a licensee under North Dakota Century Code chapter 28-32.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-02

106-03-01-04. Grounds for discipline. In addition to the causes for disciplinary action in North Dakota Century Code section 43-39-10, the board may take disciplinary action against an applicant or licensee if the applicant or licensee:

1. Is unfit or incompetent by reason of gross ignorance, negligence, habits, or other causes of incompetency;
2. Is knowingly practicing while suffering from a contagious or infectious disease without taking sufficient precautions;
3. Is in violation of any of the applicable provisions of the code for professional practice of the national athletic trainers association, incorporated;
4. Is guilty of dishonest or unethical conduct;
5. Has practiced athletic training without a valid license; or
6. Has violated or aided or abetted others in violation of any provision of state law or this title.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-02, 43-39-10

106-03-01-05. Disciplinary actions. The disciplinary actions which may be taken by the board include:

1. Revocation of a license;
2. Suspension of a license, for any period of time;
3. Placing restrictions on the practice of a licensee;
4. Issuing a letter of reprimand to a licensee;
5. Placing a licensee on probationary status, which may include any of the following conditions:
 - a. Regular reports to the board upon matters that are the basis of probation;
 - b. Additional CEUs until a satisfactory degree of skill has been attained in those areas that are the basis of probation; or
 - c. Such other reasonable requirements or restrictions as are proper.
6. Refusing to renew a license;
7. Revoking probation that has been granted and imposing any other disciplinary action in this subsection when the requirements of probation have not been fulfilled or have been violated; or
8. Denying an application for a license.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-02, 43-39-10

106-03-01-06. Notice of name or address change. Applications for an initial license or renewal of a license must contain the current name and address of the applicant. If, for any reason, a change of name occurs, the applicant or licensee shall immediately notify the board. The board shall issue a replacement license upon surrender of the original or renewal license and upon payment of the proper fee.

History: Effective April 1, 2002.

General Authority: NDCC 43-39-02

Law Implemented: NDCC 43-39-02, 43-39-09

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