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# TITLE 75

# DEPARTMENT OF HUMAN SERVICES

## CHAPTER 75-02-02

**75-02-02-03.2. Definitions.** For purposes of this chapter:

1. "Certification of need" means a regulatory review process that requires specific health care providers to obtain prior authorization for provision of services for medicaid applicants or eligible recipients. Certification of need applications are required for all residential treatment center applicants or recipients of a psychiatric hospital or an inpatient psychiatric program in a hospital and a psychiatric facility, including residential treatment centers to determine the medical necessity of the proposed services. The certification of need evaluates the recipient's capacity to benefit from proposed services, the efficacy of proposed services, and consideration of the availability of less restrictive services to meet the individual's needs.

2. "County agency" means the county social service board.

3. "Department" means the North Dakota department of human services.

4. "Drug use review board" means the board established pursuant to North Dakota Century Code chapter 50-24.6.

5. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for participation.

~~5.~~ 6. "Medical emergency" means a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson acting reasonably and possessing an average knowledge of health and medicine to believe that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily function, serious dysfunction of any bodily organ or part, or would place

the person's health, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

~~6.~~ 7. "Medically necessary" includes only medical or remedial services or supplies required for treatment of illness, injury, diseased condition, or impairment; consistent with the patient's diagnosis or symptoms; appropriate according to generally accepted standards of medical practice; not provided only as a convenience to the patient or provider; not investigational, experimental, or unproven; clinically appropriate in terms of scope, duration, intensity, and site; and provided at the most appropriate level of service that is safe and effective.

~~7.~~ 8. "Provider" means an individual, entity, or facility furnishing medical or remedial services or supplies pursuant to a provider agreement with the department.

~~8.~~ 9. "Recipient" means an individual approved as eligible for medical assistance.

~~9.~~ 10. "Rehabilitative services" means any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.

~~10.~~ 11. "Remedial services" includes those services, including rehabilitative services, which produce the maximum reduction in physical or mental disability and restoration of a recipient to the recipient's best possible functional level.

~~11.~~ 12. "Residential treatment center for children" means a facility or a distinct part of a facility that provides to children and adolescents a total, twenty-four hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting.

~~12.~~ 13. "Secretary" means the secretary of the United States department of health and human services.

~~13.~~ 14. "Section 1931 group" includes individuals whose eligibility is based on the provisions of section 1931 of the Social Security Act [42 U.S.C. 1396u-1].

**History:** Effective May 1, 2000; amended effective August 29, 2000; November 1, 2001; September 1, 2003.
**General Authority:** NDCC 50-24.1-04
**Law Implemented:** NDCC 50-24.1-01

**75-02-02-08. Amount, duration, and scope of medical assistance.**

1. Within any limitations which may be established by rule, regulation, or statute and within the limits of legislative appropriations, eligible recipients may obtain the medically necessary medical and remedial care and services which are described in the approved state plan for medical assistance in effect at the time the service is rendered and which may include:

   a. Inpatient hospital services (other than services in an institution for mental diseases). "Inpatient hospital services" means those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.

   b. Outpatient hospital services. "Outpatient hospital services" means those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation and emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act.

c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction of, a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.

d. Nursing facility services (other than services in an institution for mental diseases). "Nursing facility services" means those items and services furnished by a licensed and otherwise eligible nursing facility or swing-bed hospital maintained primarily for the care and treatment which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for individuals who need or needed on a daily basis nursing care, provided directly or requiring the supervision of nursing personnel, or other rehabilitation services which, as a practical matter, may only be provided in a nursing facility on an inpatient basis.

e. Intermediate care facility for the mentally retarded services. "Intermediate care" means those items and services which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. "Intermediate care facility for the mentally retarded" has the same meaning as provided in chapter 75-04-01.

f. Early and periodic screening and diagnosis of individuals under twenty-one years of age and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and provide health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.

g. Physician's services, whether furnished in the office, the patient's home, a hospital, nursing facility, or elsewhere. "Physician's services" means those services provided, within the scope of

practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.

h. Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. This term means any medical or remedial care or services other than physicians' services, provided within the scope of practice as defined by state law, by an individual licensed as a practitioner under state law.

i. Home health care services. "Home health care services", in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in these definitions, means any of the following items and services when they are provided, based on certification of need and a written plan of care by a licensed physician, to a patient in the patient's place of residence, but not including as a residence a hospital or a skilled nursing facility:

(1) Intermittent or part-time skilled nursing services furnished by a home health agency;

(2) Intermittent or part-time nursing services of a registered nurse, or a licensed practical nurse, or which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law or under the supervision of a registered nurse, when no home health agency is available to provide nursing services;

(3) Medical supplies, equipment, and appliances ordered or prescribed by the physician as required in the care of the patient and suitable for use in the home; and

(4) Services of a home health aide provided to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and in collaboration with the home health agency.

j. Hospice care. "Hospice care" means the care described in 42 U.S.C. 1395x(dd)(1) furnished by a "hospice program", as that term is defined in 42 U.S.C. 1395x(dd)(2), to a terminally ill individual who has voluntarily elected to have hospice care. Hospice care may be provided to an individual while the individual is a resident of a nursing facility, but only the hospice care payment may be made. An individual's voluntary election must be made in accordance with procedures established by the department which are consistent with procedures established under 42 U.S.C.

1395d(d)(2), for such periods of time as the department may establish, and may be revoked at any time.

k. Private duty nursing services. "Private duty nursing services" means nursing services provided, based on certification of need and a written plan of care which is provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and by a registered nurse or a licensed practical nurse under the supervision of a registered nurse to a patient in the patient's own home.

l. Dental services. "Dental services" means any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession and not excluded from coverage. Dental services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual.

m. Physical therapy. "Physical therapy" means those services prescribed by a physician and provided to a patient by or under the supervision of a qualified physical therapist.

n. Occupational therapy. "Occupational therapy" means those services prescribed by a physician and provided to a patient and given by or under the supervision of a qualified occupational therapist.

o. Services for individuals with speech, hearing, and language disorders. "Services for individuals with speech, hearing, and language disorders" means those diagnostic, screening, preventive, or corrective services provided by or under the supervision of a speech pathologist or audiologist in the scope of practice of the speech pathologist's or audiologist's profession for which a patient is referred by a physician.

p. Prescribed drugs. "Prescribed drugs" means any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law.

q. Durable medical equipment and supplies. "Durable medical equipment and supplies" means those medically necessary items suitable for use in the home and used to treat disease, to promote healing, to restore bodily functioning to as near normal as possible,

or to prevent further deterioration, debilitation, or injury which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. Durable medical equipment includes prosthetic and orthotic devices, eyeglasses, and hearing aids. For purposes of this subdivision:

(1) "Eyeglasses" means lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision;

(2) "Hearing aid" means a specialized orthotic device individually fitted to correct or ameliorate a hearing disorder; and

(3) "Prosthetic and orthotic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.

r. Other diagnostic, screening, preventive, and rehabilitative services.

(1) "Diagnostic services", other than those for which provision is made elsewhere in these definitions, includes any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.

(2) "Preventive services" means those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability, and other health deviations or their progression, prolong life, and promote physical and mental health and efficiency.

(3) "Rehabilitative services", in addition to those for which provision is made elsewhere in these definitions, includes any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the

physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.

(4) "Screening services" consists of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.

s. Inpatient psychiatric services for individuals under age twenty-one, as defined in 42 CFR 440.160, provided consistent with the requirements of 42 CFR part 441 and section 75-02-02-10.

t. Services provided to persons age sixty-five and older in an institution for mental diseases, as defined in 42 U.S.C. 1396d(i).

u. Any other medical care and any other type of remedial care recognized under state law and specified by the secretary, including:

(1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the department to be medically necessary.

(2) Family planning services, including drugs, supplies, and devices, when such services are under the medical direction of a physician. There must be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals may choose in accordance with the dictates of their consciences.

(3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician and when it is not available to the patient from other sources.

2. The following limitations apply to medical and remedial care and services covered or provided under the medical assistance program:

a. Coverage may not be extended and payment may not be made for diet remedies prescribed for eligible recipients.

b. Coverage may not be extended and payment may not be made for alcoholic beverages prescribed for eligible recipients.

c. Coverage may not be extended and payment may not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.

d. Coverage and payment for eye examinations and eyeglasses for eligible recipients are limited to examinations and eyeglass replacements necessitated because of visual impairment. Coverage and payment for eyeglass frames are available for a reasonable number of frames, and in a reasonable amount, not to exceed limits set by the department. No coverage exists, and no payment may be made, for eyeglass frames which exceed the limits.

e. Coverage and payment for home health care services and private duty nursing services are limited to a monthly amount determined by taking the monthly charge, to the medical assistance program, for the most intensive level of nursing care in the most expensive nursing facility in the state and subtracting therefrom the cost, in that month, of all medical and remedial services furnished to the recipient (except physician services and prescribed drugs). For the purposes of determining this limit, remedial services include home and community-based services, service payments to the elderly and disabled, homemaker and home health aide services, and rehabilitative services, regardless of the source of payment for such services. This limit may be exceeded, in unusual and complex cases, if the provider has submitted a prior treatment authorization request describing each medical and remedial service to be received by the recipient, stating the cost of that service, describing the medical necessity for the provision of the home health care services or private duty nursing services, and explaining why less costly alternative treatment does not afford necessary medical care, and has had the request approved.

f. Coverage may not be extended and payment may not be made for transportation services except as provided in sections 75-02-02-13.1 and 75-02-02-13.2.

g. Coverage may not be extended and payment may not be made for any abortion except when necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.

h. Coverage may not be extended and payment may not be made for ambulance services that are not medically necessary, as determined by the department, and provided in response to a medical emergency.

i. Coverage may not be extended and payment may not be made for emergency room services that are not medically necessary,

as determined by the department under section 75-02-02-12, and provided in response to a medical emergency.

j. Coverage may not be extended and payment may not be made for medically necessary chiropractic services exceeding twenty-four treatments for spinal manipulation services and eight radiologic examinations per year, per recipient, unless the provider requests and receives prior authorization from the department.

3. a. Except as provided in subdivision b, remedial services are covered services.

b. Remedial services provided by residential facilities such as licensed basic care facilities, licensed foster care homes or facilities, and specialized facilities are not covered services, but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility.

4. a. The department may refuse payment for any covered service or procedure for which a prior treatment authorization request is required but not secured.

b. The department may consider making payment if the provider demonstrates good cause for the failure to secure the required prior treatment authorization request within twelve months of the time the services or procedures were furnished.

5. A provider of medical services who provides a covered service, but fails to receive payment due to the operation of subsection 4, and who attempts to collect from the eligible recipient or the eligible recipient's responsible relatives any amounts which would have been paid by the department but for the operation of subsection 4, has by so doing breached the agreement referred to in subsection 4 of section 75-02-02-10.

6. a. Effective January 1, 1994, and for so long thereafter as the department may have in effect a waiver (issued pursuant to 42 U.S.C. 1396n(b)(1)) of requirements imposed pursuant to 42 U.S.C. chapter 7, subchapter XIX, no payment may be made, except as provided in this subsection, for otherwise covered services provided to otherwise eligible recipients:

(1) Who are required by this subsection to select, or have selected on their behalf, a primary care physician, but who have not selected, or have not had selected on their behalf, a primary care physician; or

(2) By a provider who is not the primary care physician selected by or on behalf of the recipient or who has not received a referral of such a recipient from the primary care physician.

b. A primary care physician must be selected by or on behalf of the members of a medical assistance unit which includes:

(1) Persons who are members of the section 1931 group.

(2) Families who were in the section 1931 group in at least three of the six months immediately preceding the month in which they became ineligible as a result (wholly or partly) of the collection or increased collection of child or spousal support, and continue to be eligible for medicaid for four calendar months following the last month of section 1931 group eligibility.

(3) Families who were in the section 1931 group in at least three of the six months immediately preceding the month in which the family became ineligible solely because of hours of, or income from, employment of the caretaker relative; or which became ineligible because a member of the family lost the time-limited disregards (the percentage disregard of earned income).

(4) Children born to eligible pregnant women who have applied for and been found eligible for medicaid on or before the day of the child's birth, for sixty days after the day of the child's birth and for the remaining days of the month in which the sixtieth day falls.

(5) Eligible caretaker relatives and individuals under the age of twenty-one who qualify for and require medical services on the basis of insufficient income and assets, but who do not qualify as categorically needy, but not including children in foster care.

(6) Pregnant women whose pregnancies have been medically verified and who, except for income and assets, would be eligible as categorically needy.

(7) Pregnant women whose pregnancies have been medically verified and who qualify on the basis of financial eligibility.

(8) Pregnant women whose pregnancies have been medically verified and who meet the nonfinancial and asset requirements of the medicaid program and whose family incomes are at or below one hundred thirty-three percent of the poverty level.

(9) Eligible women, who applied for medicaid during pregnancy, for sixty days after the day each pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.

(10) Children under the age of six who meet the nonfinancial and asset requirements of the medicaid program and whose family incomes are at or below one hundred thirty-three percent of the poverty level.

(11) Children, age six through eighteen, who meet the nonfinancial and asset requirements of the medicaid program and whose family incomes are at or below one hundred percent of the poverty level.

c. Physicians practicing in the following specialties, practices, or locations may be selected as primary care physicians:

(1) Family practice;

(2) Internal medicine;

(3) Obstetrics;

(4) Pediatrics;

(5) Osteopathy;

(6) General practice;

(7) Rural health clinics;

(8) Federally qualified health centers; and

(9) Indian health clinics.

d. A recipient identified in subdivision b need not select, or have selected on the recipient's behalf, a primary care physician if:

(1) Aged, blind, or disabled;

(2) The period for which benefits are sought is prior to the date of application;

(3) Receiving foster care or subsidized adoption benefits; or

(4) Receiving home and community-based services.

e. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care physician:

(1) Certified family nurse practitioner services;

(2) Certified pediatric nurse practitioner services;

(3) Early and periodic screening, diagnosis, and treatment of recipients under twenty-one years of age;

(4) Family planning services;

(5) Certified nurse midwife services;

(6) Podiatric services;

(7) Optometric services;

(8) Chiropractic services;

(9) Clinic services;

(10) Dental services, including orthodontic services only upon referral from early and periodic screening, diagnosis, and treatment;

(11) Intermediate care facility services for the mentally retarded;

(12) Emergency services;

(13) Transportation services;

(14) Case management services;

(15) Home and community-based services;

(16) Nursing facility services;

(17) Prescribed drugs except as provided in section 75-02-02-27;

(18) Psychiatric services;

(19) Ophthalmic services;

(20) Obstetrical services;

(21) Psychological services;

(22) Ambulance services;

(23) Immunizations;

(24) Independent laboratory and radiology services; and

(25) Public health unit services.

f. Except as provided in subdivision d, and if the department exempts the recipient, a primary care physician must be selected for each recipient.

g. Primary care physicians may be changed at any time within ninety days after the recipient is informed of the requirements of this subsection, at redetermination of eligibility, and once every six months with good cause. Good cause for changing primary care physicians less than six months after a previous selection of a primary care physician exists if:

(1) The recipient relocates;

(2) Significant changes in the recipient's health require the selection of a primary care physician with a different specialty;

(3) The primary care physician relocates or is reassigned;

(4) The selected physician refuses to act as a primary care physician or refuses to continue to act as a primary care physician; or

(5) The department, or its agents, determine, in the exercise of sound discretion, that a change of primary care physician is necessary.

7. Covered medical or remedial services or supplies are medically necessary when determined so by the medical provider unless the department has:

a. Required a prior treatment authorization request that was not granted;

b. Imposed a limit that is exceeded;

c. Imposed a condition that was not met;

d. Specifically reserved authority to make determinations of medical necessity; or

e. Upon review, determined that the service or supplies are not medically necessary.

**History:** Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July 1, 1993; January 1, 1994; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; November 8, 2002; September 1, 2003.
**General Authority:** NDCC 50-24.1-04
**Law Implemented:** NDCC 50-24.1-04; 42 USC 1396n(b)(1); 42 CFR 431.53; 42 CFR 431.110; 42 CFR 435.1009; 42 CFR Part 440; 42 CFR Part 441, subparts A, B, D

**75-02-02-09.1. Cost sharing.**

1. Copayments provided for in this section may be imposed unless:

   a. The recipient receiving the service:

      (1) Lives in a nursing facility, intermediate care facility for the mentally retarded, or the state hospital;

      (2) Receives swing-bed services in a hospital;

      (3) Has not reached the age of twenty-one years; or

      (4) Is pregnant; ~~or~~.

      ~~(5) Is entitled to have a portion of the cost of the visit paid for by medicare; or~~

   b. The service is:

      (1) Emergency room services; or

      (2) Family planning services.

2. Copayments are:

   a. ~~Fifty~~ Seventy-five dollars for each inpatient hospital admission except admissions to hospitals paid as psychiatric, rehabilitative, or long-term hospitals;

   b. ~~Three dollars for the first monthly nonemergency outpatient visit to a hospital, except visits to hospitals paid as psychiatric, rehabilitative, or long-term hospitals;~~

   ~~c.~~ Three dollars for each nonemergency service provided in a hospital emergency room;

~~d.~~ c. Two dollars for each physician visit;

~~e.~~ d. ~~Two~~ Three dollars for each office visit to a rural health clinic or federally qualified health center;

~~f.~~ e. One dollar for each chiropractic visit;

~~g.~~ f. Two dollars for each preventive dental office visit; ~~and~~

~~h.~~ g. Three dollars for each brand name prescription filled~~.~~;

h. Two dollars for each optometric examination;

i. Three dollars for each podiatric office visit;

j. Two dollars for each occupational therapy visit;

k. Two dollars for each physical therapy visit;

l. One dollar for each speech therapy visit;

m. Three dollars for each hearing aid dispensing fee service;

n. Two dollars for each audiology testing visit;

o. Two dollars for each psychological visit; and

p. One dollar per laboratory or x-ray procedure.

**History:** Effective January 1, 1997; amended effective November 8, 2002; September 1, 2003.
**General Authority:** NDCC 50-24.1-04
**Law Implemented:** NDCC 50-24.1-04

**75-02-02-09.3. Limitations on payment for dental services.**

1. No payment will be made for single crowns on posterior teeth for individuals twenty-one years of age and older except for stainless steel crowns. Payment for other crowns may be allowed by the department for the anterior portion of the mouth for adults if the crown is necessary and has been previously approved by the department.

2. No payment will be made for single crowns on posterior teeth for individuals less than twenty-one years of age except for stainless steel crowns. Payment may be made if a dental condition exists that makes stainless steel crowns impracticable and the provider has secured the prior approval of the department.

3. No payment will be made for partial dentures except for upper and lower temporary partial stayplate dentures. Payment may be made for other types of partial dentures designed to replace teeth in the anterior portion of the mouth if the provider secures prior approval from the department. This limitation does not apply to individuals eligible for the early, periodic screening, diagnosis, and treatment program.

**History:** Effective September 1, 2003.
**General Authority:** NDCC 50-24.1-04
**Law Implemented:** NDCC 50-24.1-04

**75-02-02-09.4. General Limitations on Amount, Duration, and Scope.**

1. Limitations on payment for occupational therapy, physical therapy, and speech therapy.

   a. No payment will be made for occupational therapy provided to an individual except for twenty visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination to services delivered by independent occupational therapists and in outpatient hospital settings. This limit does not apply to school-based services for children.

   b. No payment will be made for physical therapy provided to an individual except for fifteen visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination to services delivered by independent physical therapists and in outpatient hospital settings. This limit does not apply to school-based services for children.

   c. No payment will be made for speech therapy provided to an individual except for thirty visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination to services delivered by independent speech therapists and in outpatient hospital settings. This limit does not apply to school-based services for children.

2. Limitation on payment for eye services.

   a. No payment will be made for eyeglasses for individuals twenty-one years of age and older except for one pair of eyeglasses no more often than once every three years. No payment will be made for the repair or replacement of eyeglasses during the three-year period unless the provider has secured the prior approval of the department and the department has found that the repair or replacement is medically necessary.

b. No payment will be made for refractive examinations for individuals twenty-one years of age and older except for one refractive examination no more often than every three years after an initial examination paid by the department unless the provider has secured the prior approval of the department.

3. No payment will be made for physician or nurse practitioner office visits except for twelve office visits per individual per calendar year unless the provider requests and receives the prior approval of the department. Prenatal office visits and well child office visits are exempt from this limitation.

4. Limitation on chiropractic services.

   a. No payment will be made for spinal manipulation treatment services except for twelve spinal manipulation treatment services per individual per calendar year unless the provider requests and receives the prior approval of the department.

   b. No payment will be made for radiologic examinations performed by a chiropractor except for two radiologic examinations per individual per year unless the provider requests and receives the prior approval of the department.

5. No payment will be made for psychological visits except for forty visits per individual per calendar year unless the provider requests and receives the prior approval of the department.

**History:** Effective September 1, 2003.
**General Authority:** NDCC 50-24.1-04
**Law Implemented:** NDCC 50-24.1-04

**75-02-02-13.1. Travel expenses for medical purposes - Limitations.**

1. For purposes of this section:

   a. "Family member" means spouse, sibling, parent, stepparent, child, stepchild, grandparent, stepgrandparent, grandchild, stepgrandchild, aunt, uncle, niece, or nephew, whether by half or whole blood, and whether by birth, marriage, or adoption; and

   b. "Travel expenses" means fares, mileage, meals, lodging, and driver and attendant care.

2. General requirements.

   a. A transportation service provider shall be enrolled as a provider in the medical assistance program and may be an individual, taxi, bus, or airline service or other commercial form of transportation.

b. The county agency may determine the most efficient, economical, and appropriate means of travel to meet the medical needs of the recipient. The county agency may authorize travel and issue the necessary billing forms.

c. The cost of travel provided by a parent, spouse, or any other member of the recipient's medical assistance unit may be allowed as an expense of necessary medical or remedial care for recipient liability purposes. No parent, spouse, ~~or any other~~ friend, household member, or family member of the ~~recipient's medical assistance unit~~ recipient may be paid as an enrolled provider for transportation ~~to~~ for that recipient.

d. Travel services may be provided by the county agency as an administrative activity.

e. Emergency transport by ambulance is a covered service.

f. Nonemergency transport by ambulance is a covered service only when medically necessary and ordered by the attending physician.

g. A recipient may choose to obtain medical services outside the recipient's community. If similar medical services are available within the community and, without a referral from a primary physician the recipient chooses to seek medical services elsewhere, travel expenses are not covered services and are the responsibility of the recipient.

3. Out-of-state travel expenses. Travel expenses for nonemergency out-of-state medical services, including followup visits, may be compensated only if the out-of-state medical services are first approved by the department under section 75-02-02-13 or if prior approval is not required under that section.

4. Limitations.

a. Private vehicle mileage compensation is limited to an amount set by the department no less than twenty cents per mile. This limit applies even if more than one recipient is transported at the same time. Mileage is determined by map miles from the residence or community of the recipient to the medical facility. When necessary to ensure volunteer drivers continue to provide transportation services to a recipient, the county agency may authorize payment for additional mileage. Private vehicle mileage may be billed to medical assistance only upon completion of the service. Private vehicle mileage may be allowed if the recipient or a household member does not have a vehicle that is in operable condition or if the health of the recipient or household member does not permit safe operation of the vehicle. Private vehicle mileage will not be

allowed if free or low-cost transportation services are available, including transportation that could be provided by a friend, family member, or household member.

b. Meals compensation is allowed only when medical services or travel arrangements require a recipient to stay overnight. Compensation is limited to an amount set by the department no less than three dollars and fifty cents for breakfast, five dollars for lunch, and eight dollars and fifty cents for dinner.

c. Lodging expense is allowed only when medical services or travel arrangements require a recipient to stay overnight. Lodging compensation is limited to an amount set by the department, provided the department may set no limit lower than thirty-five dollars per night, plus taxes, for in-state travel and fifty dollars per night, plus taxes, for out-of-state travel. Lodging receipts must be provided when lodging is not billed directly by an enrolled lodging provider. Enrolled lodging providers shall bill medicaid directly.

d. Travel expenses may be authorized for a driver. No travel expenses may be authorized for an attendant unless the referring physician determines an attendant is necessary for the physical or medical needs of the recipient. Travel expenses may not be authorized for both a driver and an attendant unless the referring physician determines that one individual cannot function both as driver and attendant. No travel expenses may be allowed for a driver or an attendant while the recipient is a patient in a medical facility unless it is more economical for the driver or attendant to remain in the service area.

e. Travel expenses may be authorized for one parent to travel with a child who is under eighteen years of age. No additional travel expenses may be authorized for another driver, attendant, or parent unless the referring physician determines that person's presence is necessary for the physical or medical needs of the child.

f. Compensation for attendant services, provided by an attendant who is not a family member, may be allowed at a rate determined by the department.

**History:** Effective July 1, 1996; amended effective May 1, 2000; September 1, 2003.
**General Authority:** NDCC 50-24.1-04
**Law Implemented:** NDCC 50-24.1-04

**75-02-02-27. Scope of drug benefits - Prior authorization.**

1. Prior authorization means a process requiring the prescriber or the dispenser to verify with the department or the department's contractor

that proposed medical use of a particular drug for a medical assistance program recipient meets predetermined criteria for coverage by the medical assistance program.

2. A prescriber or a dispenser must secure prior authorization from the department or its designee as a condition of payment for those drugs subject to prior authorization.

3. A prescriber or a dispenser must provide to the department or its designee in the format required by the department the data necessary for the department or its designee to make a decision regarding prior authorization. The department shall deny a claim for coverage of a drug requiring prior authorization if the prescription was dispensed prior to authorization or if the required information regarding the prior authorization is not provided by the prescriber or the dispenser.

4. A prescriber or dispenser must submit a request for prior authorization to the department or its designee by telephone, facsimile, electronic mail, or in any other format designated by the department. The department or its designee must respond to a prior authorization request within twenty-four hours of receipt of a complete request that contains all of the data necessary for the department to make a determination.

5. Emergency supply.

   a. If a recipient needs a drug before a prescriber or dispenser can secure prior authorization from the department, the department shall provide coverage of the lesser of a five-day supply of a drug or the amount prescribed if it is not feasible to dispense a five-day supply because the drug is packaged in such a way that it is not intended to be further divided.

   b. The department will not provide further coverage of the drug beyond the five-day supply unless the prescriber or dispenser first secures prior authorization from the department.

6. The department must authorize the provision of a drug subject to prior authorization if:

   a. Other drugs not requiring prior authorization have not been effective or with reasonable certainty are not expected to be effective in treating the recipient's condition;

   b. Other drugs not requiring prior authorization cause or are reasonably expected to cause adverse or harmful reactions to the health of the recipient; or

   c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there

is a therapeutically equivalent drug that is available without prior authorization.

7. If a recipient is receiving coverage of a drug that is later subject to prior authorization requirements, the department shall continue to provide coverage of that drug until the prescriber must reevaluate the recipient.

**History:** Effective September 1, 2003.
**General Authority:** NDCC 50-24.6-10
**Law Implemented:** NDCC 50-24.6; 42 U.S.C. 1396r-8

**75-02-02-28. Drug use review board, grievances, and appeals.**

1. The department shall implement a prospective and retrospective drug use review program for outpatient prescription drugs and determine which drugs shall be subject to prior authorization before payment will be approved. The department shall consider the advice and recommendations of the drug use review board before requiring prior authorization of any drug.

2. The drug use review board shall:

   a. Cooperate with the department to implement a drug use review program;

   b. Receive and consider information regarding the drug use review process which is provided by the department and interested parties, including prescribers who treat significant numbers of recipients;

   c. Review and make recommendations to the department regarding drugs to be included on prior authorization status;

   d. Review no less than once each year the status of the drugs that have been deemed to require prior authorization and make recommendations to the department regarding any suggested changes;

   e. Review and approve the prior authorization program process used by the department, including the process to accommodate the provision of a drug benefit in an emergency situation;

   f. Advise and make recommendations to the department regarding any rule proposed for adoption by the department to implement the provisions of state and federal law related to drug use review; and

   g. Propose remedial strategies to improve the quality of care and to promote effective use of medical assistance program funds or recipient expenditures.

3. The drug use review board may establish a panel of physicians and pharmacists to provide guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

4. The drug use review board shall make a recommendation to the department regarding prior authorization of a drug based on:

   a. Consideration of medically and clinically significant adverse side effects, drug interactions and contraindications, assessment of the likelihood of significant abuse of the drug, and any other medically and clinically acceptable analysis or criteria requested by the drug use review board; and

   b. An assessment of the cost-effectiveness of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a clinically meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication.

5. Drug use review board meeting procedures.

   a. Any interested party may address the drug use review board at its regular meetings if the presentation is directly related to an agenda item.

   b. The drug use review board may establish time limits for presentations.

   c. The department shall post on its web site the proposed date, time, location, and agenda of any meeting of the drug use review board at least thirty days before the meeting.

6. Within thirty days of the date the drug use review board's recommendation is received by the department, the department shall review the recommendations and make the final determination as to whether a drug requires prior authorization and, if so, when the requirement for prior authorization will begin. If the department's final determination is different from the recommendation of the drug use review board, the department shall present, in writing, to the drug use review board at its next meeting the basis for the final determination.

7. The department shall post on its web site the list of drugs subject to prior authorization and the date on which each drug became subject to prior authorization.

8. Grievances.

a. An interested party may file a grievance with the department regarding a decision of the department to place a drug on prior authorization. In order to be considered by the department, the grievance must:

(1) Be in writing;

(2) State the specific reasons the interested party believes the decision to be erroneous or not, based on the facts available to the department at the time of the decision;

(3) Provide any supporting documentation; and

(4) Be received by the department within forty-five days of the department's final determination to include the drug on prior authorization.

b. The department shall consider all grievances that were filed in a timely manner. Within thirty days after the time for filing grievances has expired, the department shall determine whether to change its decision regarding placing a drug on prior authorization. The requirement for prior authorization shall not be suspended during the department's review of timely filed grievances.

9. A recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug based upon application of this section as authorized under North Dakota Century Code chapter 28-32.

**History:** Effective September 1, 2003.
**General Authority:** NDCC 50-24.6-10
**Law Implemented:** NDCC 50-24.6; 42 U.S.C. 1396r-8

**75-04-01-23. Safety codes.**

1. Applicant's intermediate care facilities for the mentally retarded shall meet the provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code of the national fire protection association, ~~1985~~ 2000 edition, as determined by the department.

2. Applicant's residential service facilities which are not intermediate care facilities for the mentally retarded shall meet the applicable life safety standards established by the local governing municipality's ordinances. If the local governing municipality has no ordinances establishing life safety standards, the residential service facilities shall meet the one-family and two-family dwellings chapter of the Life Safety Code of the national fire protection association, ~~1985~~ 2000 edition, as determined by the department.

3. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from any specific requirement of the Life Safety Code, upon terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of the facility.

4. Applicant's facilities housing individuals with multiple physical disabilities or impairments of mobility shall conform to American National Standards Institute Standard No. A117.1 (1980), or, if remodeled or newly constructed after July 1, 1995, with appropriate standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336.

5. Applicant's and licensee's buildings used to provide day services must conform to the appropriate occupancy chapters of the Life Safety Code of the national fire protection association, ~~1985~~ 2000 edition, as determined by the department and must meet applicable accessibility standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336. The selection of an appropriate Life Safety Code chapter shall be determined considering:

   a. Primary activities in the facility;

   b. The ability of clients occupying the facility to take action for self-preservation in an emergency; and

   c. Assistance available to clients occupying the facility for evacuation in an emergency.

6. All licensed day service facilities must be surveyed for Life Safety Code compliance at least annually. The department must be notified and a resurvey may be required if any of the following conditions are present between annual inspections:

   a. Occupancy increases of ten percent or more;

   b. Primary usage of the facility changes;

   c. Hazardous materials or processes are introduced into the facility;

   d. Building alterations or modifications take place;

   e. Clients requiring substantial assistance to evacuate in an emergency are enrolled;

   f. There are public or client concerns about safety conditions; or

   g. Other changes occur in physical facilities, activities, materials and contents, or numbers and capabilities of clients enrolled which may affect safety in an emergency.

**History:** Effective April 1, 1982; amended effective June 1, 1986; August 1, 1987; December 1, 1995; April 1, 2000; May 1, 2004.
**General Authority:** NDCC 25-16-06, 50-06-16
**Law Implemented:** NDCC 25-16-06

## CHAPTER 75-04-02

**75-04-02-03. Insurance and bond requirements.** Repealed effective May 1, 2004.

~~1. Providers shall secure and maintain insurance and bonds appropriate for the size of the programs including, but not limited to:~~

~~a. Blanket fidelity bond equal to not less than ten percent of the total operating costs of the program.~~

~~b. Property insurance covering all risks at replacement costs and costs of extra expense of loss of use.~~

~~c. Liability insurance covering bodily injury, property damage, personal injury, teacher liability, professional liability, and umbrella liability as applicable.~~

~~d. Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.~~

~~2. The department shall determine the adequacy of the insurance coverages maintained by the applicant.~~

**History:** ~~Effective April 1, 1982.~~
**General Authority:** ~~NDCC 25-16-06, 50-06-16~~
**Law Implemented:** ~~NDCC 25-16-10~~

**75-04-02-04. Disclosure of ownership and interest.** Repealed effective May 1, 2004. ~~Providers shall disclose to the department the identity and interest of any owners of the program and facilities of the provider including, but not limited to the requirements of section 75-04-01-21, and:~~

~~1. The names, addresses, and telephone numbers of the owners or board of directors of related organizations.~~

~~2. The amount of any payments made to any member or members of the governing board of the applicant or board of directors of a related organization exclusive of reimbursement for actual and reasonable personal expenses.~~

**History:** ~~Effective April 1, 1982.~~
**General Authority:** ~~NDCC 25-16-06, 50-06-16~~
**Law Implemented:** ~~NDCC 25-16-10~~

**75-04-02-09. Recording and reporting abuse, neglect, and use of restraint.** Repealed effective May 1, 2004.

1. Providers shall implement policies and procedures to assure that incidents of alleged abuse and neglect:

   a. Are reported to the governing board, administrator, parent, guardian, and advocate;

   b. Are thoroughly investigated, the findings reported to the governing board, parent, guardian, and advocate, and that the report and the action taken are recorded in writing and retained for three years; and

   c. Are immediately reported to the department.

2. Providers shall record and report to the governing board any and all incidents of restraint utilized to control or modify the behavior of developmentally disabled persons.

3. Incidents resulting in injury to the staff of the provider or a developmentally disabled person, requiring medical attention or hospitalization, shall be recorded and reported to the chairman of the governing board immediately, and as soon thereafter as possible to the parent, guardian, or advocate.

4. Incidents resulting in injury to the staff of the provider or a developmentally disabled person which require extended hospitalization, endanger life, or result in a permanent disability shall also be immediately reported to the department.

**History:** Effective April 1, 1982.
**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16
**Law Implemented:** NDCC 25-01.2-18, 25-16-10, 50-25.1-02

**75-04-02-10. Wages of developmentally disabled persons.** Repealed effective May 1, 2004. Providers generating income from the direct labor of developmentally disabled persons and paying subminimum wages shall submit to the department a true, correct, and current copy of a certificate from the United States department of labor authorizing the payment of subminimum wages.

**History:** Effective April 1, 1982.
**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16
**Law Implemented:** NDCC 25-01.2-06, 25-16-10

## 75-04-05-15. Depreciation.

1. The principles of reimbursement for provider costs require that payment for services include depreciation on depreciable assets that are used to provide allowable services to clients. This includes assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of these assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. Depreciation is recognized as an allocation of the cost of an asset over its estimated useful life. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.

2. Special assessments on land which represent capital improvements, such as sewers, water, and pavements, should be capitalized and may be depreciated.

3. Depreciation methods:

   a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared.

   b. For all assets obtained prior to August 1, 1997, depreciation will be computed using a useful life of ten years for all items except vehicles, which must be four years, and buildings, which must be twenty-five years or more. For assets other than vehicles and buildings obtained after August 1, 1997, a provider may use the American hospital association guidelines as published by the American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 1998 edition, to determine the useful life or the composite useful life of ten years. Whichever useful life methodology is chosen, the provider may not thereafter use the other option without the department's prior written approval. A useful life of ten years must be used for all

equipment not identified in the American hospital association depreciation guidelines.

c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:

(1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and

(2) (a) A composite remaining useful life for movable equipment, determined from the seller's records; or

(b) The remaining useful life for movable equipment, determined from the seller's records.

(3) Movable equipment means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the American hospital association depreciation guidelines.

4. Acquisitions are treated as follows:

a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated in accordance with subdivision b of subsection 3. Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.

b. Major repair and maintenance costs on equipment or buildings must be capitalized if they exceed five thousand dollars per project and will be depreciated in accordance with subdivision b of subsection 3.

5. Proper records will provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable client-related cost.

6. The basis for depreciation is the lower of the purchase price or fair market value at the time of purchase.

In the case of a trade-in, fair market value will consist of the sum of the book value of the trade-in plus the cash paid.

7. For depreciation and reimbursement purposes, donated depreciable assets may be recorded and depreciated based on their fair market value. If the provider's records do not contain the fair market value

of the donated asset, as of the date of the donation, an appraisal must be made. An appraisal made by a recognized appraisal expert will be accepted for depreciation.

8. Provision for increased costs due to the sale of a facility may not be made.

9. Providers which finance facilities pursuant to North Dakota Century Code chapter 6-09.6, subject to the approval of the department, may elect to be reimbursed based upon the mortgage principal payments rather than depreciation. Once an election is made by the provider, it may not be changed without department approval.

~~10. Recapture of depreciation.~~

~~a. At any time that the operators of a facility sell an asset, or otherwise remove that asset from service in or to the facility, any depreciation costs asserted after June 1, 1984, with respect to that asset, are subject to recapture to the extent that the sale or disposal price exceeds the undepreciated value except:~~

~~(1) If the facility has been owned for twenty years or longer, no recapture of depreciation may be allowed; or~~

~~(2) If the facility has been owned for more than ten years but for less than twenty years, the depreciation recapture amount must be reduced by ten percent times the number of years the facility is owned after the tenth year.~~

~~If the department determines that a sale or disposal was made to a related party, or if a facility terminates participation as a provider of services in a department program, any depreciation costs asserted after June 1, 1984, with respect to that asset or facility, are subject to recapture to the extent that the fair market value of the asset or facility exceeds the depreciated value.~~

~~b. The seller and the purchaser may, by agreement, determine which shall pay the recaptured depreciation. If the parties to the sale do not inform the department of their agreement, the department will offset the amount of depreciation to be recaptured against any amounts owed, or to be owed, by the department to the seller and buyer. The department will first exercise the offset against the seller, and shall only exercise the offset against the buyer to~~

~~the extent that the seller has failed to repay the amount of the recaptured depreciation.~~

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2004.
**General Authority:** NDCC 25-01.2-18, 50-06-16
**Law Implemented:** NDCC 25-16-10, 25-16-15, 50-24.1-01

**JUNE 2004**

## CHAPTER 75-02-02.1

**75-02-02.1-05. Coverage groups.** Within the limits of legislative appropriation, the department may provide medicaid benefits to coverage groups described in the approved medicaid state plan in effect at the time those benefits are sought. These coverage groups do not define eligibility for medicaid benefits. Any person who is within a coverage group must also demonstrate that all other eligibility criteria are met.

1. The categorically needy coverage group includes:

   a. Children for whom adoption assistance maintenance payments are made under title IV-E;

   b. Children for whom foster care maintenance payments are made under title IV-E;

   c. Children who are living in North Dakota and are receiving title IV-E adoption assistance payments from another state;

   d. Children in a foster care placement in North Dakota and receiving a title IV-E foster care payment from another state;

   e. Caretakers, pregnant women, and children who meet the family coverage eligibility criteria;

   f. Families who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which the family became ineligible because of the caretaker relative's earned income or because a member of the unit has a reduction in the time-limited earned income disregard;

   g. Families who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which they became ineligible as a result, wholly or partly, of

the collection or increased collection of child or spousal support continue eligible for medicaid for four calendar months;

h. Eligible pregnant women who applied for and were eligible for medicaid as categorically needy during pregnancy continue to be eligible for sixty days beginning on the last day of the pregnancy, and for the remaining days of the month in which the sixtieth day falls;

i. Children born to categorically needy eligible pregnant women who applied for and were found eligible for medicaid on or before the day of the child's birth, for sixty days beginning on the day of the child's birth and for the remaining days of the month in which the sixtieth day falls;

j. Aged, blind, or disabled individuals who are receiving supplemental security income payments or who appear on the state data exchange as zero payment as a result of supplemental security income's recovery of an overpayment or who are suspended because the individuals do not have a protective payee, provided that the more restrictive medicaid criteria is met; and

k. Individuals who meet the more restrictive requirements of the medicaid program and qualify for supplemental security income benefits under section 1619(a) or 1619(b) of the Act [42 U.S.C. 1382h(a) or 1382h(b)].

2. The optional categorically needy coverage group includes:

a. Individuals under age twenty-one whose income is within the family coverage group levels, but who are not otherwise eligible under the family coverage group;

b. Individuals under age twenty-one who are residing in adoptive homes and who have been determined under the state-subsidized adoption program to be eligible as provided in state law and in accordance with the requirements of the department; and

c. Uninsured women under age sixty-five, who are not otherwise eligible for medicaid, who have been screened for breast and cervical cancer under the centers for disease control and prevention breast and cervical cancer early detection program, and who need treatment for breast or cervical cancer, including a precancerous condition of the breast or cervix.

d. Gainfully employed individuals with disabilities age eighteen to sixty-five who meet medically needy nonfinancial criteria, have countable assets within the medically needy asset levels, have income below two hundred twenty-five percent of the poverty

level, and are not eligible for medicaid under any other provision except as a qualified medicare beneficiary or a special low-income medicare beneficiary. Coverage under this group ends on the last day of the month before the month in which the individual attains the age of sixty-five.

3. The medically needy coverage group includes:

   a. Eligible caretaker relatives and individuals under age twenty-one in families with deprived children who do not meet income or age family coverage group requirements, but meet medically needy income and asset standards;

   b. Individuals under the age of twenty-one who qualify for and require medical services on the basis of insufficient income, but who do not qualify as categorically needy, including children in common in stepparent families who are ineligible under the family coverage group and foster care children who do not qualify as categorically needy;

   c. Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility;

   d. Eligible pregnant women who applied for medicaid during pregnancy, and for whom recipient liability for the month was met no later than on the date each pregnancy ends, continue to be eligible for sixty days beginning on the last day of pregnancy and for the remaining days of the month in which the sixtieth day falls;

   e. Children born to eligible pregnant women who have applied for and been found eligible for medicaid on or before the day of the child's birth, for sixty days, beginning on the day of the child's birth, and for the remaining days of the month in which the sixtieth day falls;

   f. Aged, blind, or disabled individuals who are not in receipt of supplemental security income; and

   g. Individuals under age twenty-one who have been certified as needing the service, or age sixty-five and over in the state hospital who qualify on the basis of financial eligibility.

4. The poverty level coverage group includes:

   a. Pregnant women whose pregnancy has been medically verified and who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level;

b. Eligible pregnant women who applied for and were poverty level eligible for medicaid during their pregnancy continue to be eligible for sixty days beginning on the last day of pregnancy, and for the remaining days of the month in which the sixtieth day falls;

c. Children under the age of six who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level;

d. Children, age six to nineteen, who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred percent of the poverty level;

e. Qualified medicare beneficiaries who are aged, blind, or disabled individuals entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have assets no greater than twice the supplemental security income resource standards, and have income at or below one hundred percent of the poverty level;

f. Qualified disabled and working individuals who are individuals entitled to enroll in medicare part A under section 1818a of the Social Security Act [42 U.S.C. 1395i-2(a)], who have income no greater than two hundred percent of the federal poverty level and assets no greater than twice the supplemental security income resource standard, and who are not eligible for medicaid under any other provision;

g. Special low-income medicare beneficiaries who are aged, blind, or disabled individuals entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have assets no greater than twice the supplemental security income resource standards, and have income above one hundred percent of the poverty level, but not in excess of one hundred twenty percent of the poverty level; and

h. Qualifying individuals who are aged, blind, or disabled individuals entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have assets no greater than twice the supplemental security income resource standards, have income above one hundred twenty percent of the poverty level, but not in excess of one hundred thirty-five percent of the poverty level, and are not eligible for medicaid under any other provision.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; January 1, 1994; January 1, 1997; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-08.1. Caretaker relatives.**

1. A caretaker relative who is not a child's parent may be eligible for medicaid as a caretaker relative only if:

   a. Age sixteen or older;

   b. Actually living in the same home as the dependent child;

   c. Unmarried, or married and not residing with the spouse; and

   d. The dependent child is not only temporarily absent from the home of the child's parent.

2. An individual may be a caretaker relative only if the individual is the dependent child's parent, stepparent, grandparent, brother, sister, stepbrother, stepsister, great-grandparent, aunt, uncle, niece, nephew, great-great-grandparent, great-aunt, great-uncle, first cousin, grandniece, grandnephew, great-great-great-grandparent, great-great-aunt, great-great-uncle, second cousin (a great-aunt's or great-uncle's child), first cousin once removed (an aunt's or uncle's grandchild), great-grandniece, or great-grandnephew, whether by birth or adoption, and whether by whole or half-blood.

3. A child is considered to be living with a caretaker relative when away at school or when otherwise temporarily absent from the home. A child is not considered to be living with a caretaker relative when residing in a nursing care facility, an intermediate care facility for the mentally retarded, or a specialized facility.

4. A child may not be considered to be living with more than one caretaker relative in more than one medicaid unit for the same time period.

**History:** Effective July 1, 2003; amended effective June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-12. Age and identity.**

1. An eligible categorically or medically needy aged applicant or recipient is eligible for medicaid for the entire calendar month in which that individual reaches age sixty-five.

2. Except as provided in subsection 3, an individual who is eligible upon reaching age twenty-one remains eligible for medicaid through the month in which the individual reaches that age.

3. An individual who attains age twenty-one while receiving treatment and continues to receive treatment as an inpatient in an institution for mental diseases remains eligible through the month the individual reaches age twenty-two.

4. Blind individuals and disabled individuals are not subject to any age requirements for purposes of medicaid eligibility.

5. The identity of each applicant must be ~~verified~~ established.

**History:** Effective December 1, 1991; amended effective July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-18. Citizenship and alienage.**

1. An applicant or recipient must be a United States citizen or an alien lawfully admitted for permanent residence.

2. For purposes of qualifying as a United States citizen, the United States includes the fifty states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands. Nationals from American Samoa or Swain's Island are also regarded as United States citizens for purposes of medicaid.

3. In the absence of evidence that an individual is a citizen or lawfully admitted alien, an individual may be presumed to be lawfully admitted if the individual provides proof, documented and entered in the case file, that the individual has resided in the United States continuously since January 1, 1972.

4. American Indians born in Canada, who may freely enter and reside in the United States, are considered to be lawfully admitted for permanent residence if at least one-half American Indian blood. A spouse or child of such an Indian, or a noncitizen individual whose membership in an Indian tribe or family is created by adoption, may not be considered to be lawfully admitted under this subsection unless the individual is of at least one-half American Indian blood by birth.

5. The following categories of aliens, while lawfully admitted for a temporary or specified period of time, are not eligible for medicaid because of the temporary nature of their admission status:

   a. Foreign government representatives on official business and their families and ~~services~~ servants;

   b. Visitors for business or pleasure, including exchange visitors;

   c. Aliens in travel status while traveling directly through the United States;

   d. Crewmen on shore leave;

e. Treaty traders and investors and their families;

f. Foreign students;

g. International organization representatives and personnel and their families and servants;

h. Temporary workers, including agricultural contract workers; and

i. Members of foreign press, radio, film, or other information media and their families.

6. Aliens who are not lawfully admitted for permanent residence in the United States are not eligible for medicaid, except for emergency services.

7. Aliens who lawfully entered the United States for permanent residence before August 22, 1996, and who meet all other medicaid criteria may be eligible for medicaid.

8. The following categories of aliens who entered the United States for permanent residence on or after August 22, 1996, and who meet all other medicaid criteria may be eligible for medicaid as qualified aliens:

   a. Honorably discharged veterans, aliens on active duty in the United States armed forces, and the spouse or unmarried dependent children of such individuals may be eligible at any time;

   b. Refugees and asylees ~~for seven years from the date they entered the United States, and thereafter, other than for emergency services, only if the individual has been credited with forty qualifying quarters of social security coverage~~;

   c. Aliens whose deportation was withheld under section 243(h) of the Immigration and Naturalization Act ~~for seven years from the date they were granted withholding, and thereafter, other than for emergency services, only if the individual has been credited with forty qualifying quarters of social security coverage~~; and

   d. All other aliens, other than for emergency services, only after five years from the date they entered the United States, and then only if the individual is a lawful permanent resident who has been credited with forty qualifying quarters of social security coverage.

9. An alien who is not eligible for medicaid because of the time limitations or lack of forty qualifying quarters of social security coverage may be eligible to receive emergency services that are not related to an organ transplant procedure if:

a. The alien has a medical condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(1) Placing health in serious jeopardy;

(2) Serious impairment to bodily functions; or

(3) Serious dysfunction of any bodily organ or part;

b. The alien meets all other eligibility requirements for medicaid except the requirements concerning furnishing social security numbers and verification of alien status; and

c. The alien's need for the emergency service continues.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-19.1. Family coverage group.**

1. Caretakers, pregnant women, and children who meet the medically needy technical requirements and the requirements of this section are eligible under the family coverage group.

2. Families eligible under the family coverage group must include a child, who may be an unborn child, who is deprived of a biological or adoptive parent's support or care.

a. The child described in this subsection must be:

(1) Living with a caretaker relative; and

(2) Under age eighteen, or age eighteen and a full-time or part-time student in high school or an equivalent level of vocational or technical training if the student can reasonably be expected to complete the high school, general equivalency diploma, or vocational curriculum prior to or during the month the student turns age nineteen. A child who does not meet this age requirement is not included in any eligibility determinations for the family coverage group.

b. The parents of a caretaker who is at least age eighteen, or if under age eighteen is married or is not residing with the parents, may not be included in the same family unit as the caretaker.

c. If the only deprived child, including a disabled child in receipt of supplemental security income benefits, is age eighteen and is a student anticipated to graduate prior to or during the month of the child's nineteenth birthday, the parent remains eligible under the family coverage group if all other criteria are met.

d. An individual in receipt of social security or supplemental security income disability or retirement benefits may choose to be eligible as a disabled or aged individual under the medically needy coverage group, or may choose to be considered a caretaker, or child, under the family coverage group. These individuals are included in the unit as follows:

(1) An individual in receipt of social security disability or retirement benefits is included in the family unit for determining income eligibility regardless of whether the disabled individual chooses medicaid eligibility under the medically needy coverage group or the family coverage group.

(2) A supplemental security income recipient who chooses to be eligible as aged, blind, or disabled is not eligible for coverage under the family coverage group. The supplemental security income recipient is considered part of the family unit.

(a) A caretaker receiving supplemental security income benefits is included in the family unit for budget purposes due to the caretaker's financial responsibility for spouse and children; and

(b) A child receiving supplemental security income benefits is not included in the family unit for budget purposes.

(3) A supplemental security income recipient who chooses to be eligible as a caretaker or child may be eligible under the family coverage group, and the individual's supplemental security income is considered other unearned income.

3. A family may establish deprivation, for purposes of the family coverage group, if the family's countable income is within the family coverage income levels and the caretaker who is the primary wage earner is:

a. Employed less than one hundred hours per month; or

b. Employed more than one hundred hours in the current month, but was employed less than one hundred hours in the previous month and is expected to be employed less than one hundred hours in the following month.

4. The primary wage earner is the caretaker with greater current income unless the family or the agency establishes that the other caretaker had the greater total earnings in the twenty-four-month period ending immediately before the month the family establishes eligibility for the family coverage group. A primary wage earner, once established, remains the primary wage earner as long as the family remains eligible.

5. Except as specifically provided in this section, sections 75-02-02.1-34, 75-02-02.1-36, 75-02-02.1-37, 75-02-02.1-38, 75-02-02.1-39, 75-02-02.1-40, and 75-02-02.1-41.2 apply to the family coverage group.

6. When a caretaker does not live with the caretaker's parents, the parents' income is not considered.

7. a. The following deductions are not allowed:

   (1) The work training allowance of ~~up to~~ thirty dollars ~~per week~~ provided under section ~~75-02-02.1-36~~ 75-02-02.1-39; and

   (2) Any earned income deduction available to applicants or recipients who are not aged, blind, or disabled.

   b. The following disregards and deductions are allowed from earned income:

   (1) An employment expense allowance equal to one hundred twenty dollars of earned income is deducted from the gross earned income of each employed member of the medicaid unit.

   (2) For each employed member of the unit, a disregard equal to thirty-three and one-third percent of the balance of earned income, after deducting the employment expense allowance, is disregarded.

   c. The following deductions are allowed from earned or unearned income:

   (1) The cost of an essential service considered necessary for the well-being of a family is allowed as a deduction as needed. The service must be of such nature that the family, because of infirmity, illness, or other extenuating circumstance, may not perform independently. An essential service is intended to refer to such needs as housekeeping duties or child care during a parent's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family unit to a distant medical or rehabilitation facility.

(2) When the family includes a stepparent who is not eligible, or when a caretaker who is under age eighteen lives at home with both parents and the parents are not eligible under the family coverage group, a deduction is allowed for amounts actually being paid by the stepparent or parents to any other persons not living in the home who are, or could be, claimed by the stepparent or parents as dependents for federal income tax purposes.

**History:** Effective January 1, 2003; amended effective September 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** 42 USC 1396u-1

**75-02-02.1-20. Transitional and extended medicaid benefits.** Families that cease to be eligible under the family coverage group and who meet the requirements of this section may continue to be eligible for medicaid benefits without making further application for medicaid.

1. a. Families that include at least one individual who was eligible under the family coverage group in at least three of the six months immediately preceding the month in which the family became ineligible because of the relative's earned income or because a member of the unit has a reduction in the time-limited earned income disregard, may continue to be eligible for transitional medicaid benefits for up to twelve months if:

   (1) In the first six-month period:

      (a) The family has a child living in the home who meets the family coverage group age requirements; and

      (b) The caretaker relative remains a resident of the state; or

   (2) In the second six-month period:

      (a) The family has a child living in the home who meets the family coverage group age requirements;

      (b) The caretaker relative remains a resident of the state;

      (c) The caretaker relative remains employed or shows good cause for not being employed if family coverage ineligibility resulted from the caretaker relative's earned income; and

      (d) The gross earned income, less child care expenses the caretaker relative is responsible for, which, in either

of the three-month periods consisting of the fourth, fifth, and sixth months or the seventh, eighth, and ninth months, when totaled and divided by three, does not exceed one hundred eighty-five percent of the poverty level.

b. Families eligible for transitional medicaid benefits include:

(1) Children who are born, adopted, or who enter the home of a caretaker relative during the first or second six-month period; and

(2) Parents who were absent from the family when the family became ineligible under the family coverage group, but who return during either period.

c. A recipient who seeks eligibility under this subsection must report and verify income and child care expenses for the fourth, fifth, and sixth months by the twenty-first day of the seventh month, and for the seventh, eighth, and ninth months by the twenty-first day of the tenth month. Failure to report income in the seventh month and the tenth month, or receipt of income in excess of one hundred eighty-five percent of the poverty level, causes ineligibility effective on the last day, respectively, of the seventh month or the tenth month.

2. Families that include at least one individual who was eligible under the family coverage group in at least three of the six months immediately preceding the month in which the family became ineligible wholly or partly as a result of the collection or increased collection of child or spousal support continue to be eligible for <u>extended</u> medicaid for four calendar months:

a. The family has a child living in the home who meets the family coverage group age requirements; and

b. The caretaker relative remains a resident of the state.

3. A family that seeks to demonstrate eligibility in at least three of the six months immediately preceding the month in which the family became ineligible must have been eligible in this state in the month immediately preceding the month in which the family became ineligible.

4. Children who no longer meet the age requirements under the family coverage group are not eligible for transitional or extended medicaid benefits.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-22. Medicare savings programs.**

1. Qualified medicare beneficiaries are entitled only to medicare cost-sharing benefits described in subsection 19 of section 75-02-02.1-01, beginning in the month following the month in which the eligibility determination is made.

2. Special low-income medicare beneficiaries are entitled only to medicare cost-sharing benefits described in paragraph 2 of subdivision a of subsection 19 of section 75-02-02.1-01. Eligibility may be established for as many as three calendar months prior to the month in which the application was received.

3. Qualifying individuals are entitled only to medicare cost-sharing benefits described in paragraph 2 of subdivision a of subsection 19 of section 75-02-02.1-01. Eligibility may be established for as many as three calendar months prior to the month in which the application was received unless the individual was in receipt of any other medicaid benefits for the same period. Eligibility shall be established on a first-come, first-served basis to the extent of funding allocated for coverage of this group under section 1933 of the Act [42 U.S.C. 1396u-3].

4. All medically needy technical eligibility factors apply to the medicare savings programs except as identified in this section.

5. No person may be found eligible for the medicare savings programs unless the total value of all nonexcluded assets does not exceed:

   a. Four thousand dollars for a one-person unit; or

   b. Six thousand dollars for a two-person unit.

6. Provisions of this chapter governing asset considerations at section 75-02-02.1-25, valuation of assets at section 75-02-02.1-32, excluded assets at section 75-02-02.1-28.1, and forms of asset ownership at section 75-02-02.1-29 apply to eligibility determinations for medicare savings programs except:

a. Half of a liquid asset held in common with another medicare savings program is presumed available;

b. Assets owned by a child, under age twenty-one, in the unit are not considered available in determining eligibility for the child's parent, except that all liquid assets held in common by the child and the parent are considered available to the parent; and

c. Assets owned by a spouse who is not residing with an applicant or recipient are not considered available ~~in determining qualified medicare beneficiary eligibility or special low-income medicare beneficiary eligibility~~ unless the assets are liquid assets held in common.

7. a. Income calculations must consider income in the manner provided for in section 75-02-02.1-34, income considerations; section 75-02-02.1-37, unearned income; section 75-02-02.1-38, earned income; section 75-02-02.1-38.2, disregarded income; and section 75-02-02.1-39, income deductions; except:

(1) Married individuals living separate and apart from a spouse are treated as single individuals.

(2) Income disregards in section 75-02-02.1-38.2 are allowed regardless of the individual's living arrangement.

(3) The deductions described in subsections 2, 3, 5, 8, and 9 of section 75-02-02.1-39, income deductions, are not allowed.

(4) The deductions described in subsection 10 and subdivision e of subsection 11 of section 75-02-02.1-39, income deductions, are allowed regardless of the individual's living arrangement.

(5) ~~Where a blind or disabled, but not an aged, supplemental security income recipient has a plan for achieving self-support which has been approved by the secretary of the United States department of health and human services, amounts of income necessary to and actually contributed to the plan are deducted.~~

~~(6)~~ Annual title II cost of living allowances effective in January shall be disregarded when determining eligibility for medicare savings programs for January, February, and March.

b. A qualified medicare beneficiary is eligible if countable income is equal to or less than one hundred percent of the poverty level applicable to a family of the size involved, and if the individual meets all of the requirements described in this section.

c. A special low-income medicare beneficiary is eligible if countable income is more than one hundred percent but equal to or less than one hundred twenty percent of the poverty level applicable to a family of the size involved, and if the individual meets all of the requirements described in this section.

d. A qualifying individual is income eligible if countable income is more than one hundred twenty percent, but equal to or less than one hundred thirty-five percent of the poverty level applicable to a family of the size involved, and if the individual meets all of the requirements described in this section.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-24. Spousal impoverishment prevention.**

1. For purposes of this section:

   a. "Community spouse" means the spouse of an institutionalized spouse or the spouse of a home and community-based services spouse.

   b. "Family member" means only minor or dependent children, dependent parents, or dependent siblings of the institutionalized spouse, home and community-based services spouse, or community spouse who are residing with the community spouse. For purposes of applying this definition, a family member is dependent only if that family member is, and may properly be, claimed as a dependent on the federal income tax return filed by the institutionalized spouse or home and community-based services spouse, or the community spouse, or filed jointly by both.

   c. "Home and community-based services spouse" means an individual who:

      (1) Requires care of the type provided in a nursing facility, but chooses to receive home and community-based services in the community; and

      (2) Is married to a spouse who resides in the community at least one day of each month.

   d. "Institutionalized spouse" means an individual who:

      (1) Requires care in a medical institution, a nursing facility, a swing bed, or the state hospital and, at the beginning of the

individual's institutionalization, was likely to be in the facility for at least thirty consecutive days even though the individual does not actually remain in the facility for thirty consecutive days; and

(2) Is married to a spouse who ~~is not receiving swing-bed care in a hospital or care in the state hospital or a nursing facility~~ resides in the community at least one day of each month.

e. "Monthly maintenance needs allowance" means for a community spouse, the greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under section 1924(d)(3) of the Act [42 U.S.C. 1396r-5(d)(3)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].

2. a. At the request of an institutionalized spouse, a home and community-based services spouse, or a community spouse, at the beginning of the first continuous period of institutionalization of the institutionalized spouse, or the beginning of the first continuous period of receipt of home and community-based services by a home and community-based services spouse, and upon receipt of relevant documentation of assets, the total value described in subdivision b shall be assessed and documented.

b. There shall be computed, as of the beginning of the first continuous period of institutionalization of the institutionalized spouse, or as of the beginning of the first continuous period of receipt of home and community-based services by a home and community-based services spouse:

(1) The total value of the countable assets to the extent either the institutionalized spouse or the community spouse, or the home and community-based services spouse and the community spouse, has an ownership interest; and

(2) A spousal share, which is equal to one-half of all countable assets, but not less than the minimum amount permitted under section 1924(f)(2)(A)(i) of the Act [42 U.S.C. 1396r-5(f)(2)(A)(i)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)], and not more than the maximum amount permitted under section 1924(f)(2)(A)(ii)(II) of the Act [42 U.S.C. 1396r-5(f)(2)(A)(ii)(II)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].

c. In determining the assets of the institutionalized spouse at the time of application, all countable assets held by the institutionalized spouse, the community spouse, or both, must be considered available to the institutionalized spouse to the extent they exceed the community spouse countable asset allowance.

d. In determining the assets of the home and community-based services spouse at the time of application, all countable assets held by the home and community-based services spouse, the community spouse, or both, must be considered available to the home and community-based services spouse to the extent they exceed the community spouse asset allowance.

e. During the continuous period in which the spouse is in an institution or receiving home and community-based services, and after the month in which an institutionalized spouse or a home and community-based services spouse is determined to be eligible for benefits under this chapter, no countable assets of the community spouse may be deemed available to the institutionalized spouse or home and community-based services spouse. Assets owned by the community spouse are not considered available to the institutionalized spouse or home and community-based services spouse during this continuous period of eligibility. A transfer of assets or income by the community spouse for less than fair market value is governed by section 75-02-02.1-33.1 and shall be considered in determining continuing eligibility of the institutionalized spouse or home and community-based services spouse.

f. The institutionalized spouse or home and community-based services spouse is not ineligible by reason of assets determined under subdivision c or d to be available for the cost of care if:

(1) The institutionalized spouse or the home and community-based services spouse has assigned to the state any rights to support from the community spouse; or

(2) It is determined that a denial of eligibility would work an undue hardship because the presumption described in subsection 3 of section 75-02-02.1-25 has been rebutted.

g. An institutionalized spouse or home and community-based services spouse is allowed the medically needy asset limit of three thousand dollars.

h. An institutionalized spouse or a home and community-based services spouse is asset eligible if the total value of all countable assets owned by both spouses is less than the total of the community spouse countable asset allowance and the institutionalized spouse asset limit or home and community-based services asset limit, as applicable. The assets may be owned by either spouse provided that the requirements of subdivision i are complied with.

i. Within the limits provided by this subdivision, transfers from an institutionalized spouse or a home and community-based services spouse to a community spouse do not disqualify the institutionalized spouse or home and community-based services spouse from receipt of medicaid benefits. Such transfers, when made by an individual who has otherwise qualified for medicaid benefits, must be completed before the next regularly scheduled redetermination of eligibility. During this period, such assets are not counted as available to the institutionalized spouse even though the assets are not yet transferred.

(1) An institutionalized spouse or a home and community-based services spouse may transfer an amount equal to the community spouse countable asset allowance, but only to the extent the assets of the institutionalized spouse are transferred to, or for the sole benefit of, the community spouse.

(2) When an eligible institutionalized spouse or home and community-based services spouse exceeds the asset limits due to an increase in the value of assets or the receipt of assets not previously owned, the institutionalized spouse or home and community-based services spouse may transfer additional assets to the community spouse equal to no more than the current community spouse countable asset allowance less the total value of assets <u>owned by the community spouse,</u> transferred to, or for the sole benefit of, the community spouse under paragraph 1, or previously transferred under this paragraph.

(3) If a transfer made under paragraph 1 or 2 causes the total value of all assets owned by the community spouse immediately prior to the transfer under paragraph 1, plus the value of all assets transferred under paragraph 1, plus the value of all assets transferred under paragraph 2, to equal or exceed the current ~~maximum~~ community spouse asset allowance, no further transfer may be made under paragraph 2.

(4) If a court has entered an order against an institutionalized spouse for the support of a community spouse, assets required by such order to be transferred, by the institutionalized spouse to the community spouse, may not be counted as available to the institutionalized spouse even though the assets are not yet transferred.

3. A community spouse may retain or receive assets, which do not exceed the community spouse countable asset allowance, for purposes of determining the medicaid eligibility of the institutionalized spouse. The

community spouse countable asset allowance means the spousal share determined under paragraph 2 of subdivision b of subsection 2, as adjusted pursuant to section 1924(g) of the Act [Pub. L. 105-33; 111 Stat. 549; 42 U.S.C. 1396r-5(g)] plus:

a. Any additional amount transferred under a court order in the manner and for the purpose described in paragraph 4 of subdivision i of subsection 2; or

b. Any additional amount established through a fair hearing conducted under subsection 6.

4. Countable assets include all assets that are not specifically excluded. The provisions of section 75-02-02.1-28.1 governing asset exclusions apply to this section.

5. a. Income calculations must consider income in the manner provided for in section 75-02-02.1-34, income considerations, section 75-02-02.1-37, unearned income, section 75-02-02.1-38, earned income, section 75-02-02.1-38.2, disregarded income, section 75-02-02.1-39, income deductions, and section 75-02-02.1-40, income levels, except no income of the community spouse may be deemed available to an institutionalized spouse during any month in which an institutionalized spouse is in the institution, or to a home and community-based services spouse during any month in which that spouse receives home and community-based services.

b. After an institutionalized spouse is determined or redetermined to be eligible for medicaid, in determining the amount of the institutionalized spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the institutionalized spouse's monthly income the following amounts in the following order:

(1) A personal needs allowance;

(2) A community spouse monthly income allowance, but only to the extent income of the institutionalized spouse is made available to, or for the benefit of, the community spouse; and

(3) A family allowance, for each family member, equal to one-third of an amount, determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member.

6. The provisions of this section describing the treatment of income and assets for the community spouse do not describe that treatment for the

purposes of determining medicaid eligibility for the community spouse or for children of the community spouse.

7. a. Notice must be provided of the amount of the community spouse income allowance, of the amount of any family allowances, of the method of computing the amount of the community spouse countable asset allowance, and of the right to a fair hearing respecting ownership or availability of income and assets, and the determination of the community spouse monthly income or countable asset allowance. The notice must be provided, upon a determination of medicaid eligibility of an institutionalized spouse, to both spouses, and upon a subsequent request by either spouse or a representative acting on behalf of either spouse, to the spouse making the request.

   b. A community spouse, or an institutionalized spouse or a home and community-based services spouse, is entitled to a fair hearing under chapter 75-01-03 if application for medicaid has been made on behalf of the institutionalized spouse or home and community-based services spouse and either spouse is dissatisfied with a determination of:

      (1) The community spouse monthly income allowance;

      (2) The amount of monthly income otherwise available to the community spouse as determined in calculating the community spouse monthly income allowance;

      (3) The computation of the spousal share of countable assets;

      (4) The attribution of countable assets; or

      (5) The determination of the community spouse countable asset allowance.

   c. Any hearing respecting the determination of the community spouse countable asset allowance must be held within thirty days of the request for the hearing.

   d. If either spouse establishes that the community spouse needs income, above the level provided by the monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, the monthly maintenance needs allowance for that spouse must be increased to an amount adequate to provide necessary additional income.

   e. (1) If either spouse establishes that the assets included within the community spouse countable asset allowance generate an amount of income inadequate to raise the

community spouse's income to the monthly maintenance needs allowance, to the extent that total assets permit, the community spouse countable asset allowance for that spouse must be increased to an amount adequate to provide such a monthly maintenance needs allowance.

(2) To establish a need for an increased asset allowance under this subdivision, the applicant, recipient, or the community spouse must provide verification of all income and assets of the community spouse.

(3) The amount of assets adequate to provide a monthly maintenance needs allowance for the community spouse must be based on the cost of a single premium lifetime annuity selected by the department that provides monthly payments equal to the difference between the monthly maintenance needs allowance and other income of both spouses not generated by either spouse's countable assets.

(4) The monthly maintenance needs allowance amount upon which calculations under this subdivision are made must be the amount in effect upon filing of the appeal.

(5) The estimate of the cost of an annuity described in paragraph 3 must be substituted for the amount of assets attributed to the community spouse if the amount of assets previously determined is less than the estimate. If the amount of assets attributed to the community spouse prior to the hearing is greater than the estimate of the cost of an annuity described in paragraph 3, the attribution of assets to the community spouse made prior to the hearing must be affirmed.

(6) No applicant, recipient, or community spouse is required to purchase an annuity as a condition of the applicant or recipient's eligibility for medicaid benefits.

8. Any transfer of an asset or income is a disqualifying transfer under section 75-02-02.1-33.1, whether made by a community spouse, a home and community-based services spouse, or an institutionalized spouse, unless specifically authorized by this section. The income that may be received by or deemed provided to an ineligible community spouse, and the asset amounts that an ineligible community spouse may retain, are intended to allow that community spouse to avoid impoverishment. They are not intended to allow the community spouse to make transfers of assets or income, for less than adequate consideration, which would disqualify the institutionalized spouse or home and community-based services spouse, if made by the

institutionalized spouse or home and community-based services spouse.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396r-5

**75-02-02.1-24.2. Eligibility for workers with disabilities.**

1. An individual shall be enrolled as a member of the workers with disabilities coverage if that individual:

   a. Is gainfully employed;

   b. Is at least eighteen, but less than sixty-five, years of age;

   c. Meets the requirements of this section; and

   d. Is not in receipt of any other medicaid benefits under this chapter other than coverage as a qualified medicare beneficiary or a special low-income medicare beneficiary.

2. An individual may be regarded as gainfully employed only if, taking all factors into consideration, the individual shows that the activity asserted as employment:

   a. Produces a product or service that someone would ordinarily be employed to produce and for which payment is received;

   b. Reflects a relationship of employer and employee or producer and customer;

   c. Requires the individual's physical effort for completion of job tasks, or, if the individual has the skills and knowledge to direct the activity of others, reflects the outcome of that direction; and

   d. The employment setting is not primarily an evaluative or experiential activity.

3. Asset considerations provided under section 75-02-02.1-25, asset limits provided under section 75-02-02.1-26, exempt assets provided under section 75-02-02.1-27, and excluded assets provided under section 75-02-02.1-28.1 are applicable to the workers with disabilities coverage. Funds maintained under an approved plan to achieve self-support are also excluded while an eligible individual is enrolled under this section.

4. No individual who has not paid a one-time enrollment fee of one hundred dollars may be enrolled.

5. Any individual who fails to pay the premium established under this section for three consecutive months shall be disenrolled and may not be reenrolled thereafter without first reestablishing eligibility under this section and paying all outstanding enrollment fees and premiums. Any month in which no premium is due shall not be counted as a month in which the individual failed to pay a premium.

6. Payments received by the department from an individual claiming eligibility under this section shall be credited first to unpaid enrollment fees and then to the oldest unpaid premium. The department shall credit payments on the day received, provided that credit for any payment made by an instrument that is not honored shall be reversed. The department may require any individual who has attempted payment by a dishonored instrument to make subsequent payments in a specified manner.

7. A monthly premium is due on the tenth day of each month for which coverage is sought and shall be equal to five percent of the individual's gross income.

8. No individual may be found eligible under this section if the individual and the individual's family have total net income equaling or exceeding two hundred twenty-five percent of the poverty level.

9. A written plan for achieving self-support shall be approved, and shall remain approved, for so long as the plan:

   a. Describes a purpose consistent with self-support;

   b. Provides for the disposition of an account containing no more than ten thousand dollars that is funded exclusively with sums earned while receiving medicaid benefits under this section or interest earned on deposits to that account; and

   c. Is followed by the individual.

10. This section becomes effective on the effective date of approved amendments to the medicaid state plan sufficient to secure federal financial participation in the cost of services provided to individuals found eligible under this section, remains effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.

**History:** Effective June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02.7, 50-24.1-18.1

**75-02-02.1-28. Excluded assets.** Except as provided in section 75-02-02.1-28.1, the following types of assets will be excluded in determining if the available assets of an applicant or recipient exceed asset limits:

1. Property which is essential to earning a livelihood.

   a. Property may be excluded as essential to earning a livelihood only during months in which a member of the medicaid unit is actively engaged in using the property to earn a livelihood, or during months when the medicaid unit is not actively engaged in using the property to earn a livelihood, if the medicaid unit shows that the property has been in such use and there is a reasonable expectation that the use will resume:

      (1) Within twelve months of the last use; or

      (2) If the nonuse is due to the disabling condition of a member of the medicaid unit, within twenty-four months of the last use.

   b. Property consisting of an ownership interest in a business entity that employs anyone whose assets are used to determine eligibility may be excluded as property essential to earning a livelihood if:

      (1) The individual's employment is contingent upon ownership of the property; or

      (2) There is no ready market for the property.

   c. A ready market for property consisting of an ownership interest in a business entity exists if the interest may be publicly traded. A ready market does not exist if there are unreasonable limitations on the sale of the interest, such as a requirement that the interest be sold at a price substantially below its actual value or a requirement that effectively precludes competition among potential buyers.

   d. Property currently enrolled in the conservation reserve program is considered to be property essential to earning a livelihood.

   e. Property from which a medicaid unit is receiving only rental or lease income is not essential to earning a livelihood.

   f. Liquid assets, to the extent reasonably necessary for the operation of a trade or business, are considered to be property essential to earning a livelihood. Liquid assets may not otherwise be treated as essential to earning a livelihood.

2. Property which is not saleable without working an undue hardship. Such property may be excluded no earlier than the first day of the month

in which good-faith attempts to sell are begun, and continues to be excluded only for so long as the asset continues to be for sale.

a. Persons seeking to establish retroactive eligibility must demonstrate that good-faith efforts to sell were begun and continued in each of the months for which retroactive eligibility is sought. Information concerning attempts to sell, which demonstrate that an asset is not saleable without working an undue hardship, are relevant to establishing eligibility in the month in which the good-faith efforts to sell are begun, but are not relevant to months prior to that month and do not relate back to prior months.

b. Property may not be shown to be not saleable without working an undue hardship if the owner of the property fails to take action to collect amounts due and unpaid with respect to the property or otherwise fails to assure the receipt of regular and timely payments due with respect to the property.

3. a. Any prepayments or deposits which total three thousand dollars or less, which are designated ~~and maintained~~ by an applicant ~~for the applicant's~~ or recipient for the burial of the applicant or recipient. Earnings accrued on the total amount of the designated burial fund are excluded.

(1) The burial fund must be identifiable and may not be commingled with other funds. Checking accounts are considered to be commingled.

(2) The value of an irrevocable burial arrangement shall be considered toward the burial exclusion.

(3) The prepayments on a whole life insurance policy or annuity are the premiums that have been paid.

(4) At the time of application, the value of a designated burial fund shall be determined by identifying the value of the prepayments which are subject to the burial exclusion and asset limit amounts.

(5) Designated burial funds which have been decreased prior to application for medicaid shall be considered redesignated as the date of last withdrawal. The balance at that point shall be considered the prepayment amount and earnings from that date forward shall be disregarded.

(6) Reductions made in a designated burial fund after eligibility is established must first reduce the amount of earnings.

(7) An applicant shall be determined eligible for the three-month prior period when a burial fund is established at the time of application if the value of all assets are within the medicaid burial fund exclusion and asset limit amounts for each of the three prior months. Future earnings on the newly established burial fund must be excluded.

b. A burial plot for each family member.

4. Home replacement funds, derived from the sale of an excluded home, and if intended for the purchase of another excluded home, until the last day of the third month following the month in which the proceeds from the sale are received. This asset must be identifiable and not commingled with other assets.

5. Unspent assistance, and interest earned on unspent assistance, received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288] or some other federal statute, because of a presidentially declared major disaster, and comparable disaster assistance received from a state or local government, or from a disaster assistance organization. This asset must be identifiable and not commingled with other assets.

6. Payments, interest earned on the payments, and in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets are excluded for nine months, and may be excluded for an additional twenty-one months, if circumstances beyond the person's control prevent the repair or replacement of the lost, damaged, or stolen assets, and keep the person from contracting for such repair or replacement. This asset must be identifiable and not commingled with other assets.

7. For nine months, beginning with the month of receipt, unspent assistance received from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient demonstrates that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.

8. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.

9. Payments made pursuant to the Confederate Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, [Pub. L. 103-436; 108 Stat. 4577 et seq.]. This asset must be identifiable and not commingled with other assets.

10. Stock in regional or village corporations held by natives of Alaska issued pursuant to section 7 of the Alaska Native Claims Settlement Act, [Pub. L. 92-203; 42 U.S.C. 1606].

11. Unspent financial assistance provided for attendance costs to graduate and undergraduate students under programs in title IV of the Higher Education Act [20 U.S.C. 1071-1 et seq.] or for attendance costs under bureau of Indian affairs student assistance programs are excluded for the period of time they are intended to cover. This asset must be identifiable and not commingled with other assets.

12. For the month following the month of receipt, any earned income tax credit refund or any advance payment of earned income tax credit.

13. Assets set aside, by a blind or disabled, but not an aged, supplemental security income recipient, as a part of a plan to achieve self-support which has been approved by the social security administration.

14. The value of a life estate.

15. Allowances paid to children of Vietnam veterans who are born with spina bifida. This asset must be identifiable and not commingled with other assets.

16. The value of mineral acres.

17. Assets received from a decedent's estate, other than from the estate of a deceased spouse or from the estate of a deceased parent who was providing support, until the earlier of:

    a. The first day of the month after the month in which the assets are received; or

    b. The first day of the month beginning at least six months after the decedent's death.

18. Funds, including interest accruing, maintained in an individual development account established under title IV of the Assets for Independence Act, as amended [Pub. L. 105-285; 42 U.S.C. 604, note].

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02, 50-24.1-02.3

**75-02-02.1-28.1. Excluded assets for medicare savings programs, qualified disabled and working individuals, and spousal impoverishment prevention.**

1. An asset may be excluded for purposes of medicare savings programs, qualified disabled and working individuals, and spousal impoverishment prevention only if this section provides for the exclusion. An asset may be excluded under this section only if the asset is identified.

2. The assets described in subsections 2 through 5 of section 75-02-02.1-27 and subsections 1, 2, and 4 through 18 of section 75-02-02.1-28 are excluded.

3. A residence occupied by the individual, the individual's spouse, or the individual's dependent relative is excluded for medicare savings programs and qualified disabled and working individuals. A residence occupied by the community spouse is excluded for spousal impoverishment prevention cases. The residence may include a mobile home suitable for use, and being used, as a principal place of residence. The residence remains excluded during temporary absence of the individual from the residence so long as the individual intends to return. Renting or leasing part of the residence to a third party does not affect this definition. For purposes of this subsection:

   a. "Dependent" means an individual who relies on another for medical, financial, and other forms of support, provided that an individual is financially dependent only when another individual may lawfully claim the financially dependent individual as a dependent for federal income tax purposes;

   b. "Relative" means the parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, aunt, uncle, niece, nephew, or first cousin, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse; and

   c. "Residence" includes all contiguous lands, including mineral interests, upon which it is located.

4. Burial funds of up to one thousand five hundred dollars each, plus earnings on excluded burial funds, held for the individual and for the individual's spouse, are excluded from the date of application. Burial funds may consist of revocable burial accounts, revocable burial trusts, other revocable burial arrangements including the value of installment sales contracts for burial spaces, cash, financial accounts such as savings or checking accounts, or other financial instruments with definite cash value, such as stocks, bonds, or certificates of deposit. The fund must be unencumbered and available for conversion to cash on very short notice. The fund may not be commingled with non-burial-related assets, and must be identified as a burial fund by title of account or a signed statement. Life or burial insurance designated under subsection 10 must be considered at face value toward meeting the burial fund exclusion. Cash surrender value of an individual's life

insurance not excluded under subsection 10 may be applied toward the burial fund exclusion.

5. A burial space or agreement which represents the purchase of a burial space, paid for in full, for the individual, the individual's spouse, or any other member of the individual's immediate family is excluded. The burial space exclusion is in addition to the burial fund exclusion set forth in subsection 4. Only one item intended to serve a particular burial purpose, per individual, may be excluded. For purposes of this subsection:

   a. "Burial space" means a burial plot, gravesite, crypt, or mausoleum; a casket, urn, niche, or other repository customarily and traditionally used for a deceased's bodily remains; a vault or burial container; a headstone, marker, or plaque; and prepaid arrangements for the opening and closing of the gravesite or for care and maintenance of the gravesite; and

   b. "Other member of the individual's immediate family" means the individual's parents, minor or adult children, siblings, and the spouses of those individuals, whether the relationship is established by birth, adoption, or marriage, except that a relationship established by marriage ends when the marriage ends.

6. At the option of the individual, and in lieu of, but not in addition to, the burial fund described in subsection 4 and the burial space described in subsection 5, the medicaid burial described in subsection 3 of section 75-02-02.1-28 may be excluded. This optional exclusion is not available to qualified disabled and working individuals or to community spouses.

7. Property essential to self-support is excluded.

   a. Up to six thousand dollars of the equity value of nonbusiness, income-producing property, which produces annual net income at least equal to six percent of the excluded amount, may be excluded. Two or more properties may be excluded if each property produces at least a six percent annual net return ~~and~~, but no more than a total of six thousand dollars of the combined equity value ~~does not exceed six thousand dollars~~ of the properties may be excluded. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars. Equity in such property is a countable asset if it produces an annual net income of less than six percent of equity.

   b. Up to six thousand dollars of the equity value of nonbusiness property used to produce goods and services essential to daily activities is excluded. Such nonbusiness property is used to produce goods and services essential to daily activities when,

for instance, it is used to grow produce or livestock solely for consumption in the individual's household. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars.

c. To be excluded, property essential for self-support must be in current use, or, if not in current use, must have been in such use, and there must be a reasonable expectation that the use will resume, and, with respect to property described in subdivision a, the annual return test must be met:

(1) Within twelve months of the last use;

(2) If the nonuse is due to the disabling condition of the applicant or recipient, or, with respect to spousal impoverishment prevent cases, the community spouse, within twenty-four months of the last use; or

(3) With respect to property described in subdivision a, if the property produces less than a six percent return for reasons beyond the control of the applicant or recipient, and there is a reasonable expectation that the property shall again produce a six percent return within twenty-four months of the tax year in which the return dropped below six percent.

d. Liquid assets are not property essential to self-support.

8. Lump sum payments of title II or supplemental security income benefits are excluded for six consecutive months following the month of receipt.

9. Real property, the sale of which would cause undue hardship to a co-owner, is excluded for so long as the co-owner uses the property as a principal residence, would have to move if the property were sold, and has no other readily available housing. This exclusion is not available in spousal impoverishment cases.

10. Life or burial insurance that generates a cash surrender value is excluded if the face value of all such life and burial insurance policies on the life of that individual total one thousand five hundred dollars or less. This exclusion is not available for applicants or recipients who select the medicaid burial described in subsection 3 of section 75-02-02.1-28.

11. The value of assistance is excluded if paid with respect to a dwelling unit occupied by the applicant or recipient, or by the applicant's or recipient's spouse, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s],

title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)].

12. Relocation assistance is excluded if provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 [42 U.S.C. 4621 et seq.], which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636]. Relocation assistance provided by a state or local government that is comparable to the described federal relocation assistance is excluded, but only for nine months following the month of receipt.

13. Agent orange payments are excluded.

14. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [50 U.S.C. App. 1989 et seq.] are excluded.

15. German reparations payments to survivors of the holocaust, and reparations payments made under sections 500 through 506 of the Austrian General Social Insurance Act are excluded.

**History:** Effective July 1, 2003; amended effective June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02, 50-24.1-02.3

**75-02-02.1-33.1. Disqualifying transfers.**

1. a. Except as provided in subsections 2 and 10, an individual is ineligible for nursing care services if the individual or the spouse of the individual disposes of assets or income for less than fair market value on or after the look-back date specified in subdivision b.

   b. The look-back date specified in this subdivision is a date that is the number of months specified in paragraph 1 or 2 before the first date on which the individual is both receiving nursing care services and has applied for benefits under this chapter, without regard to the action taken on the application.

      (1) Except as provided in paragraph 2, the number of months is thirty-six months, or if approved by waiver, sixty months.

      (2) The number of months is sixty months:

         (a) In the case of payments from a revocable trust that are treated as income or assets disposed of by an individual pursuant to paragraph 3 of subdivision a of subsection 3 of section 75-02-02.1-31.1;

(b) In the case of payments from an irrevocable trust that are treated as income or assets disposed of by an individual pursuant to subparagraph b of paragraph 1 of subdivision b of subsection 3 of section 75-02-02.1-31.1; and

(c) In the case of payments to an irrevocable trust that are treated as income or assets disposed of by an individual pursuant to paragraph 2 of subdivision b of subsection 3 of section 75-02-02.1-31.1.

c. The period of ineligibility begins the first day of the month in which income or assets have been transferred for less than fair market value, or if that day is within any other period of ineligibility under this section, the first day thereafter that is not in such a period of ineligibility.

d. The number of months and days of ineligibility for an individual shall be equal to the total cumulative uncompensated value of all income and assets transferred by the individual, or individual's spouse, on or after the look-back date specified in subdivision b, divided by the average monthly cost, or average daily cost as appropriate, of nursing facility care in North Dakota at the time of application.

2. Except as limited by subdivision e of subsection 2 of section 75-02-02.1-24, an individual shall not be ineligible for medicaid by reason of subsection 1 to the extent that:

a. The assets transferred were a home, and title to the home was transferred to:

(1) The individual's spouse;

(2) The individual's son or daughter who is under age twenty-one, blind, or disabled;

(3) The individual's brother or sister who has an equity interest in the individual's home and who was residing in the individual's home for a period of at least one year immediately before the date the individual became an institutionalized individual; or

(4) The individual's son or daughter, other than a child described in paragraph 2, who was residing in the individual's home for a period of at least two years immediately before the date the individual began receiving nursing care services, and who provided care to the individual which permitted the individual to avoid receiving nursing care services;

b. The income or assets:

(1) Were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;

(2) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

(3) Were transferred to, or to a trust established solely for the benefit of, the individual's child who is blind or disabled; or

(4) Were transferred to a trust established solely for the benefit of an individual under sixty-five years of age who is disabled;

c. The individual makes a satisfactory showing that:

(1) The individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;

(2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid; or

(3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the individual; or

d. The asset transferred was an asset excluded or exempted for medicaid purposes other than:

(1) The home or residence of the individual or the individual's spouse;

(2) Property ~~that~~ which is not saleable without working an undue hardship;

(3) Excluded home replacement funds;

(4) Excluded payments, excluded interest on those payments, and excluded in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets;

(5) Life estate interests;

(6) Mineral interests; or

(7) An asset received from a decedent's estate during any period it is excluded under subdivision b of subsection 17 of section 75-02-02.1-28.

3. An individual shall not be ineligible for medicaid by reason of subsection 1 to the extent the individual makes a satisfactory showing that an undue hardship exists.

   a. An undue hardship exists only if the total cumulative uncompensated value of all income and assets transferred for less than fair market value by the individual or the individual's spouse is less than the total of all unpaid nursing care bills for services:

      (1) Provided after the last such transfer was made which are not subject to payment by any third party; and

      (2) Incurred when the individual and the individual's spouse had no assets in excess of the appropriate asset levels.

   b. If the individual shows that an undue hardship exists, the individual shall be subject to an alternative period of ineligibility that begins on the first day of the month in which the individual and the individual's spouse had no excess assets and continues for the number of months determined by dividing the total cumulative uncompensated value of all such transfers by the average monthly unpaid charges incurred by the individual for nursing care services provided after the beginning of the alternative period of ineligibility.

4. There is a presumption that a transfer for less than fair market value was made for purposes that include the purpose of qualifying for medicaid:

   a. In any case in which the individual's assets (and the assets of the individual's spouse) remaining after the transfer produce income which, when added to other income available to the individual (and to the individual's spouse) totals an amount insufficient to meet all living expenses and medical costs reasonably anticipated to be incurred by the individual (and by the individual's spouse) in the month of transfer and in the thirty-five months (or fifty-nine months in the case of a transfer from a revocable or irrevocable trust that is treated as assets or income disposed of by the individual (or the individual's spouse) or in the case of payments to an irrevocable trust that are treated as assets or income disposed of by the individual (or the individual's spouse)) following the month of transfer;

   b. In any case in which an inquiry about medicaid benefits was made, by or on behalf of the individual to any person, before the date of the transfer;

   c. In any case in which the individual or the individual's spouse was an applicant for or recipient of medicaid before the date of transfer;

d. In any case in which a transfer is made by or on behalf of the individual or the individual's spouse, if the value of the transferred income or asset, when added to the value of the individual's other countable assets, would exceed the asset limits at section 75-02-02.1-26; or

e. In any case in which the transfer was made, on behalf of the individual or the individual's spouse, by a guardian, conservator, or attorney-in-fact, to the individual's relative, or to the guardian, conservator, or attorney-in-fact or to any parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew, whether by birth, adoption, and whether by whole or half-blood, of the guardian, conservator, or attorney-in-fact or the spouse or former spouse of the guardian, conservator, or attorney-in-fact.

5. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid must show that a desire to receive medicaid benefits played no part in the decision to make the transfer and must rebut any presumption arising under subsection 4. The fact, if it is a fact, that the individual would be eligible for the medicaid coverage for nursing care services, had the individual or the individual's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid.

6. If a transfer results in a period of ineligibility under this section for an individual receiving nursing care services, and if the individual's spouse ~~becomes~~ is otherwise eligible for medicaid and requires nursing care services, the remaining period of ineligibility shall be apportioned equally between the spouses. ~~Any~~ If one such spouse dies or stops receiving nursing care services, any months remaining in ~~the~~ that spouse's apportioned period of ineligibility must be assigned or reassigned to the spouse who continues to receive nursing care services ~~if one spouse dies or stops receiving nursing care services~~.

7. No income or asset transferred to a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, stepsister, stepbrother, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew of the individual or the individual's spouse, purportedly for services or assistance furnished by the transferee to the individual or the individual's spouse, may be treated as consideration for the transferred income or asset unless:

a. The transfer is made pursuant to a valid written contract entered into prior to rendering the services or assistance;

b. The contract was executed by the individual or the individual's fiduciary who is not a provider of services or assistance under the contract;

c. Compensation is consistent with rates paid in the open market for the services or assistance actually provided; and

d. The parties' course of dealing included paying compensation upon rendering services or assistance, or within thirty days thereafter.

8. A transfer is complete when the individual or the individual's spouse making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.

9. For purposes of this section:

a. "Annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future, but does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals must begin by age seventy and one-half.

b. "Average monthly cost of nursing facility care" means the cost determined by the department under section 1917(c)(1)(E)(i)(II) of the Act [42 U.S.C. 1396p(c)(1)(E)(i)(II)].

c. "Fair market value" means:

(1) In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;

(2) In the case of real or personal property that is subject to reasonable dispute concerning its value:

(a) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or

(b) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and

(3) In the case of income, one hundred percent of apparent fair market value.

d. "Major medical policy" includes any policy, certificate, or subscriber contract issued on a group or individual basis by any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization, which provides a plan of health insurance or health benefit coverage including medical, hospital, and surgical care, approved for issuance by the insurance regulatory body in the state of issuance, but does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance.

e. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1965, as amended [42 U.S.C. 1395, et seq.; Pub. L. 92-603; 86 Stat. 1370].

f. "Medicare supplement policy offering plan F benefits" means a policy, group, or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract under section 1876 or 1833 of the Social Security Act [42 U.S.C. 1395, et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act that:

(1) Is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;

(2) Is not a policy or contract of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization;

(3) Is approved for issuance by the insurance regulatory body in the state of issuance; and

(4) Includes:

(a) Hospitalization benefits consisting of medicare part A coinsurance plus coverage for three hundred sixty-five additional days after medicare benefits end;

(b) Medical expense benefits consisting of medicare part B coinsurance;

(c) Blood provision consisting of the first three pints of blood each year;

(d) Skilled nursing coinsurance;

(e) Medicare part A deductible coverage;

(f) Medicare part B deductible coverage;

(g) Medicare part B excess benefits at one hundred percent coverage; and

(h) Foreign travel emergency coverage.

g. "Nursing care services" means nursing care provided in a medical institution, a nursing facility, a swing bed, the state hospital, or a home and community based services setting.

h. "Relative" means a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew, great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse.

i. "Someone in a confidential relationship" includes an individual's attorney-in-fact, guardian, conservator, legal custodian, caretaker, trustee, attorney, accountant, or agent, and may include a relative or other person with a close and trusted relationship to the individual.

j. "Uncompensated value" means the difference between fair market value and the value of any consideration received.

10. The provisions of this section do not apply in determining eligibility for medicare savings programs.

11. An individual disposes of assets or income when the individual, or anyone on behalf of the individual or at the request of the individual, acts or fails to act in a manner that effects a transfer, conveyance, assignment, renunciation, or disclaimer of any asset or income in which the individual had or was entitled to claim an interest of any kind.

12. An individual who disposes of assets or income to someone in a confidential relationship is presumed to have transferred the assets

or income to an implied trust in which the individual is the beneficiary and which is subject to treatment under section 75-02-02.1-31.1. The presumption may be rebutted only if the individual shows:

a. The compensation actually received by the individual for the assets or income disposed of was equal to at least one hundred percent of fair market value, in which case this section has no application; or

b. The individual, having capacity to contract, disposed of the assets or income with full knowledge of the motives of the transferee and all other facts concerning the transaction which might affect the individual's own decision and without the use of any influence on the part of the transferee, in which case the transaction is governed by this section.

13. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home care and long-term care coverage, purchased on or before July 31, 2003, with a daily benefit at least equal to 1.25 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1095 times that daily benefit, and:

    a. For each such month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and

    b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.

14. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage, purchased on or after August 1, 2003, with a daily benefit at least equal to 1.57 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1095 times that daily benefit, and:

    a. For each month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million

dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and

b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.

15. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid, if the asset was used to acquire an annuity, only if:

a. The annuity is irrevocable and cannot be assigned to another person;

b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;

c. The annuity provides substantially equal monthly payments such that the total annual payment in any year varies by five percent or less from the total annual payment of the previous year and does not provide for a balloon or deferred payment of principal or interest;

d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the department; and

e. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly maintenance needs allowance provided under subsection 1 of section 75-02-02.1-24.

**History:** Effective October 1, 1993; amended effective December 1, 1996; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396p(c)

**75-02-02.1-34. Income considerations.**

1. All income that is actually available shall be considered. Income is actually available when it is at the disposal of an applicant, recipient, or responsible relative; when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance, or medical care; or when the applicant, recipient, or responsible relative has the lawful power to make the income available or to cause the income to be made available. Income shall be reasonably evaluated. This subsection does not supersede other provisions of this chapter which describe or require

specific treatment of income, or which describe specific circumstances which require a particular treatment of income.

2. The financial responsibility of any individual for any applicant or recipient of medicaid will be limited to the responsibility of spouse for spouse and parents for a child under age twenty-one. Such responsibility is imposed as a condition of eligibility for medicaid. Except as otherwise provided in this section, the income of the spouse and parents is considered available to the applicant or recipient, even if that income is not actually contributed. Biological and adoptive parents, but not stepparents, are treated as parents.

3. All spousal income is considered actually available unless:

   a. A court order, entered following a contested case, determines the amounts of support that a spouse must pay to the applicant or recipient;

   b. The spouse from whom support could ordinarily be sought, and the property of such spouse, is outside the jurisdiction of the courts of the United States or any of the United States; or

   c. The applicant or recipient is subject to marital separation, with or without court order, and there has been no collusion between the applicant or recipient and that person's spouse to render the applicant or family member eligible for medicaid.

4. All parental income is considered actually available to a child under age twenty-one unless the child is:

   a. Disabled and at least age eighteen;

   b. Living independently; or

   c. 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 medicaid benefits.

5. Income may be received weekly, biweekly, monthly, intermittently, or annually. However income is received, a monthly income amount must be computed.

6. Payments from any source, which are or may be received as a result of a medical expense or increased medical need, are not income, but are considered to be medical payments which must be applied toward the recipient's medical costs. These payments include health or long-term care insurance payments, veterans administration aid and attendance, veterans administration reimbursements for unusual medical expenses,

and veterans administration homebound benefits intended for medical expenses.

a. Health or long-term care insurance payments must be considered as payments received in the months the benefit was intended to cover and must be applied to medical expenses incurred in those months.

b. Veterans administration aid and attendance benefits must be considered as payments received in the months the benefit was intended to cover and must be applied to the medical expense incurred in those months;

c. Veterans administration reimbursements for unusual medical expenses must be considered as payments received in the months in which the increased medical expense occurred and must be applied to the medical expense incurred in those months; and

d. Veterans administration homebound benefits intended for medical expenses must be considered as payments received in the months the benefit was intended to cover and must be applied to the medical expenses incurred in those months. This does not apply to homebound benefits which are not intended for medical expenses.

7. a. In determining ownership of income from a document, income must be considered available to each individual as provided in the document, or, in the absence of a specific provision in the document:

(1) If payment of income is made solely ~~toone~~ to one individual, the income shall be considered available only to that individual; and

(2) If payment of income is made to more than one individual, the income shall be considered available to each individual in proportion to the individual's interest.

b. In the case of income available to a couple in which there is no document establishing ownership, one-half of the income shall be considered to be available to each spouse.

c. Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent that the applicant or recipient can establish that the ownership interests are otherwise than as provided in those rules.

8. Countable income from a business entity that employs anyone whose income is used to determine eligibility is:

   a. If the applicant or recipient and other members of the medicaid unit, in combination, own a controlling interest in the business entity, an amount determined as for a self-employed individual or family under section 75-02-02.1-38;

   b. If the applicant or recipient and other members of the medicaid unit, in combination, own less than a controlling interest, but more than a nominal interest, in the business entity, an amount determined by:

      (1) Subtracting any cost of goods for resale, repair, or replacement, and any wages, salaries, or guarantees (but not draws) paid to all owners of interests in the business entity who are actively engaged in the business to establish the business entity's adjusted gross income, from the business entity's gross income;

      (2) Establishing the applicant or recipient's share of the business entity's adjusted gross income, based on the medicaid unit's proportionate share of ownership of the business entity;

      (3) Adding any wages, salary, or guarantee paid to the applicant's or recipient's share of the business entity's adjusted gross income; and

      (4) Applying the disregards appropriate to the type of business as described in section 75-02-02.1-38; or

   c. If the applicant or recipient and other members of the medicaid unit, in combination, own a nominal interest in the business entity, and are not able to influence the nature or extent of employment by that business entity, the individual's earned income as an employee of that business entity, plus any unearned income gained from ownership of the interest in the business entity.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-37. Unearned income.** Unearned income is income that is not earned income. Unearned income received in a fixed amount each month shall be applied in the month in which it is normally received.

1. Recurring unearned lump sum payments received after application for medicaid shall be prorated over the number of months the payment

is intended to cover. When a payment is received and prorated in an ongoing case, or after a period of medicaid eligibility, and the case is closed and then reopened during the prorated period, or within the following proration period, the lump sum payment proration must continue. All other recurring unearned lump sum payments received before application for medicaid are considered income in the month received and are not prorated.

2. All nonrecurring unearned lump sum payments, except health or long-term care insurance payments, veterans administration aid and attendance, veterans administration reimbursements for unusual medical expenses, and veterans administration homebound benefits intended for medical expenses shall be considered as income in the month received and assets thereafter.

3. Interest and dividend income earned on a liquid asset that is paid directly to the applicant or recipient is income in the month received. Interest accrued but not paid and dividends earned but not paid are assets.

4. ~~The first two thousand dollars per year of lease payments deposited in individual Indian moneys accounts is disregarded as income for an applicant or recipient residing in the individual's own home or a specialized facility and in determining eligibility for the medicare savings programs. This disregard is not allowed in establishing the application of income to the cost of care for an individual residing in a nursing facility, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital.~~ One-twelfth of the annual amount of lease payments, not otherwise required to be disregarded under section 75-02-02.1-38.2, deposited in individual Indian moneys accounts by the bureau of Indian affairs is income in each month and may be determined:

   a. By totaling all payments in the most recent full calendar year and dividing by twelve;

   b. By totaling all payments in the twelve-month period ending with the previous month and dividing by twelve; or

   c. If the applicant or recipient demonstrates, by furnishing lease documents or reports, that the deposit amount will be substantially different than the annual amount which would be determined under subdivision a or b, by totaling all payments likely to be made in the twelve-month period beginning with the month in which the lease arrangement changed and dividing by twelve.

5. One-twelfth of annual conservation reserve program payments, less expenses, such as seeding and spraying, necessary to maintain the

conservation reserve program land in accordance with that program's requirements, is unearned income in each month.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-38. Earned income.** Earned income is ~~determined by adding monthly net income from~~ income ~~which~~ that is currently received as wages, salaries, commissions, or profits from activities in which an individual or family is engaged through either employment or self-employment. Income is "earned" only if the individual or family contributes an appreciable amount of personal involvement and effort. Earned income shall be applied in the month in which it is normally received.

1. If earnings from more than one month are received in a single payment, the payment must be divided by the number of months in which the income was earned, and the resulting monthly amounts shall be attributed to each of the months with respect to which the earnings were received.

2. If a self-employed individual's business does not require the purchase of goods for sale or resale, net income from self-employment is seventy-five percent of gross earnings from self-employment.

3. If a self-employed individual's business requires the purchase of goods for sale or resale, net income from self-employment is seventy-five percent of the result determined by subtracting cost of goods purchased from gross receipts.

4. If a self-employed individual's business furnishes room and board, net income from self-employment is monthly gross receipts less one hundred dollars per room and board client.

5. If a self-employed individual is in a service business that requires the purchase of goods or parts for repair or replacement, net income from self-employment is twenty-five percent of the result determined by subtracting cost of goods or parts purchased from gross earnings from self-employment.

6. If a self-employed individual receives income other than monthly, and the most recently available federal income tax return accurately predicts income, net income from self-employment is twenty-five percent of gross annual income, plus any net gain resulting from the sale of capital items, plus ordinary gains or minus ordinary losses, divided by twelve. If the most recent available federal income tax return does not accurately predict income because the business has been recently established, because the business has been terminated or subject to a severe change, such as a decrease or increase in the size of the operation,

or an uninsured loss, net income from self-employment is an amount determined by the county agency to represent the best estimate of monthly net income from self-employment. A self-employed individual may be required to provide, on a monthly basis, the best information available on income and cost of goods. Income statements, when available, shall be used as a basis for computation. If the business is farming, or any other seasonal business, the annual net income, divided by twelve, is the monthly net income.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-38.1. Post-eligibility treatment of income.** This section prescribes specific financial requirements for determining the treatment of income and application of income to the cost of care for an individual screened as requiring nursing care services who resides in a nursing facility, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or an intermediate care facility for the mentally retarded, or who receives swing-bed care in a hospital.

1. The following types of income may be disregarded in determining medicaid eligibility:

   a. Occasional small gifts;

   b. For so long as 38 U.S.C. 5503 remains effective, ninety dollars of veterans administration improved pensions paid to a veteran, or a surviving spouse of a veteran, who has neither spouse nor child, and who resides in a medicaid-approved nursing facility;

   c. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [50 U.S.C. App. 1989 et seq.];

   d. Agent orange payments;

   e. German reparation payments made to survivors of the holocaust, and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

   f. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note]; and

   g. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note].

2. The mandatory payroll deductions under the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.] and medicare are allowed from earned income.

3. In establishing the application of income to the cost of care, the following deductions are allowed in the following order:

   a. The nursing care income level;

   b. Amounts provided to a spouse or family member for maintenance needs; ~~and~~

   c. The cost of premiums for health insurance in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage;

   d. The cost of premiums for long-term care insurance carried by an individual or the individual's spouse in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage;

   e. Medical expenses for necessary medical or remedial care that are each:

      (1) Documented in a manner which describes the service, the date of the service, the amount of cost incurred, and the name of the service provider;

      (2) Incurred in the month for which eligibility is being determined;

      (3) Provided by a medical practitioner licensed to furnish the care;

      (4) Not subject to payment by any third party, including medicaid and medicare;

      (5) Not incurred for nursing facility services, swing-bed services, or home and community-based services during a period of ineligibility because of a disqualifying transfer; and

      (6) Claimed.; and

   f. The cost of services of an applicant's or recipient's guardian or conservator, up to a maximum equal to five percent of countable gross monthly income excluding nonrecurring lump sum payments.

4. For purposes of this section, "premiums for health insurance" include any payments made for insurance, health care plans, or nonprofit health

service plan contracts which provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage which is:

a. Limited to disability or income protection coverage;

b. Automobile medical payment coverage;

c. Supplemental to liability insurance;

d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or

e. Credit accident and health insurance.

**History:** Effective July 1, 2003; amended effective June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-38.2. Disregarded income.**

1. This section applies to an individual residing in the individual's own home or in a specialized facility, and to the medicare savings programs, but does not apply to ~~transitional medicaid benefits or to~~ an individual receiving nursing care services in a nursing facility, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital. The following types of income shall be disregarded in determining medicaid eligibility:

   a. Money payments made by the department in connection with foster care, subsidized guardianship, or the subsidized adoption program;

   b. Occasional small gifts;

   c. County general assistance that may be issued on an intermittent basis to cover emergency-type situations;

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

   e. Income of an individual living in the parental home if the individual is not included in the medicaid unit;

f. Educational loans, scholarships, grants, awards, workers compensation, vocational rehabilitation payments, and work study received by a student;

g. In-kind income except in-kind income received in lieu of wages;

h. Per capita judgment funds paid to members of the Blackfeet Tribe and the Gross Ventre Tribe under Pub. L. 92-254, to any tribe to pay a judgment of the Indian claims commission or the court of claims under Pub. L. 93-134, or to the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe of Rocky Boy's Reservation, the Minnesota Chippewa Tribe, or the Little Shell Tribe of Chippewa Indians of Montana under Pub. L. 97-403;

i. Compensation received by volunteers participating in the action program as stipulated in the Domestic Volunteer Service Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4950 et seq.], including foster grandparents, older American community service program, retired senior volunteer program, service corps of retired executives, volunteers in service to America, and university year for action;

j. Benefits received through the low income home energy assistance program;

k. Training funds received from vocational rehabilitation;

l. Training allowances of up to thirty dollars per week provided through a tribal native employment works program, or the job opportunity and basic skills program;

m. Income tax refunds and earned income credits;

n. Needs-based payments, support services, and relocation expenses provided through programs established under the Workforce Investment Act [29 U.S.C. 2801 et seq.], and through the job opportunities and basic skills program;

o. Income derived from submarginal lands, conveyed to Indian tribes and held in trust by the United States, as required by section 6 of Pub. L. 94-114 [42 U.S.C. 301, note];

p. Income earned by a child who is a full-time student or a part-time student who is not employed one hundred hours or more per month;

q. Payments from the family subsidy program;

r. The first fifty dollars per month of current child support, received on behalf of children in the medicaid unit, from each budget unit that is budgeted with a separate income level;

s. Payments made to recipients under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646, 42 U.S.C. 4621 et seq.];

t. Payments made tax exempt as a result of section 21 of the Alaska Native Claims Settlement Act [Pub. L. 92-203];

u. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [Pub. L. 100-383; 50 U.S.C. App. 1989 et seq.];

v. Agent orange payments;

w. A loan from any source that is subject to a written agreement requiring repayment by the recipient;

x. The medicare part B premium refunded by the social security administration;

y. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime;

z. Temporary assistance for needy families benefit and support service payments;

aa. Lump sum supplemental security income benefits in the month in which the benefit is received;

bb. German reparation payments made to survivors of the holocaust and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

cc. Assistance received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288; 42 U.S.C. 5121 et seq.], or some other federal statute, because of a presidentially declared major disaster, and interest earned on that assistance;

dd. Refugee cash assistance or grant payments;

ee. Payments from the child and adult food program for meals and snacks to licensed families who provide day care in their home;

ff. Extra checks consisting only of the third regular payroll check or unemployment benefit payment received in a month by an individual who is paid biweekly, and the fifth regular payroll check received in a month by an individual who is paid weekly;

gg. All income, allowances, and bonuses received as a result of participation in the job corps program;

hh. Payments received for the repair or replacement of lost, damaged, or stolen assets;

ii. Homestead tax credit;

jj. Training stipends provided to victims of domestic violence by private, charitable organizations for attending their educational programs;

kk. Allowances paid to children of Vietnam veterans who are born with spina bifida, or to children of women Vietnam veterans who are born with certain covered birth defects, under 38 U.S.C. 1805 or 38 U.S.C. 1815;

ll. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note]; ~~and~~

mm. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note]~~.~~; and

nn. The first two thousand dollars per year of lease payments deposited in individual Indian moneys accounts.

2. For purposes of this section:

a. "Full-time student" means a person who attends school on a schedule equal to a full curriculum; and

b. "Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general equivalency diploma classes, home school program recognized or supervised by the student's state or local school district, college, university, or vocational training, including summer vacation periods if the individual intends to return to school in the fall.

**History:** Effective July 1, 2003; amended effective June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-39. Income deductions.** This section applies to an individual residing in the individual's own home or in a specialized facility and to the medicare savings programs, but does not apply to ~~transitional medicaid benefits or to~~ an individual receiving nursing care services in a nursing facility, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital. No deduction not described in subsections 1 through 14 may be allowed in determining medicaid eligibility.

1. Except in determining eligibility for the medicare savings programs, the cost of premiums for health insurance may be deducted from income in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage. For purposes of this subsection, "premiums for health insurance" include payments made for insurance, health care plans, or nonprofit health service plan contracts which provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage which is:

   a. Limited to disability or income protection coverage;

   b. Automobile medical payment coverage;

   c. Supplemental to liability insurance;

   d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or

   e. Credit accident and health insurance.

2. Except in determining eligibility for the medicare savings programs, medical expenses for necessary medical or remedial care may be deducted only if each is:

   a. Documented in a manner which describes the service, the date of the service, the amount of the cost incurred, and the name of the service provider;

   b. Incurred by a member of a medicaid unit in the month for which eligibility is being determined;

   c. Provided by a medical practitioner licensed to furnish the care;

   d. Not subject to payment by any third party, including medicaid and medicare;

e. Not incurred for nursing facility services, swing-bed services, or home and community-based services during a period of ineligibility determined under section 75-02-02.1-33.1; and

f. Claimed.

3. Reasonable expenses such as food and veterinarian expenses necessary to maintain a service animal that is trained to detect seizures for a member of the medicaid unit.

4. Except for a support payment withheld from an extra check that is disregarded, nonvoluntary child and spousal support payments may be deducted if actually paid by a member of the medicaid unit.

5. The cost of premiums for long-term care insurance carried by an individual or the individual's spouse may be deducted from income in the month the premium is paid or prorated and deducted from income the months for which the premium affords coverage. No premium deduction may be made in determining eligibility for the medicare savings programs.

6. Reasonable child care expenses, not otherwise reimbursed, may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training.

7. With respect to each individual in the medicaid unit who is employed or in training, but who is not aged, blind, or disabled, thirty dollars may be deducted as a work or training allowance, but only if the individual's income is counted in the eligibility determination.

8. Except in determining eligibility for the medicare savings programs, transportation expenses may be deducted if necessary to secure medical care provided for a member of the medicaid unit.

9. Except in determining eligibility for the medicare savings programs, the cost of remedial care for an individual residing in a specialized facility, limited to the difference between the recipient's cost of care at the facility and the regular medically needy income level, may be deducted.

10. A disregard of twenty dollars per month is deducted from any income, except income based on need, such as supplemental security income and need-based veterans' pensions. This deduction applies to all aged, blind, and disabled applicants or recipients, provided that:

a. When more than one aged, blind, or disabled person lives together, no more than a total of twenty dollars may be deducted;

b. When both earned and unearned income is available, this deduction must be made from unearned income; and

c. When only earned income is available, this deduction must be made before deduction of sixty-five dollars plus one-half of the remaining monthly gross income made under subdivision b of subsection 13.

11. Reasonable adult dependent car expenses for an incapacitated or disabled adult member of the medicaid unit may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training.

12. The cost to purchase or rent a car safety seat for a child through age ten is allowed as a deduction if a seat is not otherwise reasonably available.

13. The deductions described in this subsection may be allowed only on earned income.

    a. For all individuals except aged, blind, or disabled applicants or recipients, deduct:

        (1) Mandatory payroll deductions and union dues withheld, or ninety dollars, whichever is greater;

        (2) Mandatory retirement plan deductions;

        (3) Union dues actually paid; and

        (4) Expenses of a nondisabled blind person, reasonably attributable to earning income.

    b. For all aged, blind, or disabled applicants or recipients, deduct sixty-five dollars plus one-half of the remaining monthly gross earned income, provided that, when more than one aged, blind, or disabled person lives together, no more than sixty-five dollars, plus one-half of the remaining combined earned income, may be deducted.

14. A deduction may be made for the cost of services of an applicant's or recipient's guardian or conservator, up to a maximum equal to five percent of countable gross monthly income excluding nonrecurring lump sum payments.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-40. Income levels.**

1. Levels of income for maintenance shall be used as a basis for establishing financial eligibility for medicaid. The income levels applicable to individuals and units are:

   a. Categorically needy income levels.

      (1) ~~For~~ Family coverage income levels established in the medicaid state plan are applied to the family coverage group~~, the income level is equal to forty percent of the poverty level, applicable to a family of the size involved~~. The family size is increased for each unborn child when determining the appropriate family size.

      (2) Except for individuals subject to the nursing care income level, the income level for categorically needy aged, blind, or disabled recipients is that which establishes supplemental security income eligibility.

   b. Medically needy income levels.

      (1) Medically needy income levels established in the medicaid state plan are applied when a medicaid individual or unit resides in the individual's or the unit's own home or in a specialized facility, and when a medicaid individual has been screened as requiring nursing care, but elects to receive home and community-based services. The family size is increased for each unborn child when determining the appropriate family size.

      (2) The nursing care income level shall be fifty dollars per month and applied to a resident receiving care in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or receiving swing-bed care in a hospital.

      (3) The community spouse income level for a medicaid eligible community spouse is subject to subdivision a, paragraph 1 of subdivision b, or subdivision c. The level for an ineligible community spouse is the greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under section 1924(d)(3)(c) of the Act [42 U.S.C. 1396r-5(d)(3)(C)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].

      (4) The income level for each ineligible family member in a spousal impoverishment prevention case is equal to one-third of an amount determined in accordance with section

1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member. For purposes of this paragraph, "family member" has the meaning given in subsection 1 of section 75-02-02.1-24.

c. Poverty income level.

(1) The income level for pregnant women and children under age six is equal to one hundred and thirty-three percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.

(2) Qualified medicare beneficiaries. The income level for qualified medicare beneficiaries is equal to one hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.

(3) The income level for children aged six to nineteen is equal to one hundred percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.

(4) The income level for transitional medicaid benefits is equal to one hundred and eighty-five percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.

(5) The income level for qualified working and disabled individuals is equal to two hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.

(6) The income level for specified low-income medicare beneficiaries is equal to one hundred twenty percent, of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

(7) The income level for qualified individuals is equal to one hundred thirty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

2. Determining the appropriate income level in special circumstances.

a. A child who is away at school is not treated as living independently, but shall be allowed the appropriate income level for one during all full calendar months. This is in addition to the income level applicable for the family unit remaining at home.

b. A child who is living outside of the parental home, but who is not living independently, or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse, shall be allowed a separate income level during all full calendar months during which the child or spouse lives outside the home. No separate income level is otherwise available.

c. During a month in which an individual enters a specialized facility or leaves a specialized facility to return home, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate income level. An individual residing in a specialized facility shall be allowed the medically needy income level for one during all full calendar months in which the individual resides in the facility.

d. During a month in which an individual with eligible family members in the home enters or leaves a nursing facility to return home, or elects to receive home and community-based services or terminates that election, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate medically needy income level. An individual in a nursing facility shall be allowed fifty dollars to meet maintenance needs during all full calendar months in which the individual resides in the nursing facility. A recipient of home and community-based services shall be allowed the medically needy income level for one during all full calendar months in which the individual receives home and community-based services.

e. For an institutionalized spouse with an ineligible community spouse, the fifty dollar income level is effective in the month of entry, during full calendar months, and in the month of discharge. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.

f. For a spouse electing to receive home and community based services, who has an ineligible community spouse, the medically needy income level for one is effective in the month the home and community-based services begin, during full calendar months, and in the month the home and community-based services are terminated. The ineligible community spouse and any other family

members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.

g. An individual with no spouse, disabled adult child, or child under age twenty-one at home who enters a nursing facility may receive the medically needy income level for one if a physician certifies that the individual is likely to return to the individual's home within six months. The six-month period begins with the first full calendar month the individual is in the nursing facility. If, at any time during the six-month period, the individual's status changes and the stay in the nursing facility is expected to exceed the six months, the individual may have only the nursing care income level beginning in the month following the month of the status change. An individual may receive the medically needy income level for only one six-month period per stay in a nursing facility. If an individual is discharged, then readmitted to a nursing facility, there must be a break of at least one full calendar month between the periods of institutionalization in order for the new stay to be considered a new period of institutionalization.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-41. Deeming of income.** Excess income is the amount of net income remaining after allowing the appropriate disregards, deductions, and medicaid income level.

1. Twenty-five percent of the excess income of an ineligible medicaid unit shall be deemed available during any full calendar month an eligible member of the medicaid unit receives services in a specialized facility.

2. No income may be deemed to a supplemental security income recipient in a specialized facility or receiving home and community-based services as such a recipient's maintenance needs are met by the supplemental security income grant.

3. If subdivision a or b applies, the excess income of an individual in nursing care, an intermediate care facility for the mentally retarded, the state hospital, or the Anne Carlsen facility, receiving swing bed care in a hospital or receiving home and community-based services may be deemed to the individual's legal dependents to bring their income up to the appropriate medically needy ~~or poverty level~~ income level.

   a. The legal dependents who are also eligible for medicaid do not receive a temporary assistance for needy families payment or supplemental security income. In these circumstances, income may be deemed only to the extent it raises the legal dependents'

income to the appropriate medically needy ~~or poverty level~~ income level.

b. The legal dependents are ineligible for medicaid or choose not to be covered by medicaid. In these circumstances, income may be deemed only to the extent it raises the legal dependents' net income to the appropriate community spouse or family member income level.

(1) Income of the institutionalized or home and community-based spouse may be deemed to an ineligible community spouse only to the extent that income is made available to the community spouse.

(2) Excess income shall be deemed to family members in spousal impoverishment cases, up to the family members' income level.

4. The excess income of a spouse or parent may not be deemed to a recipient to meet medical expenses during any full calendar month in which the recipient receives nursing care services in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, the Anne Carlsen facility, or a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, receives swing bed care in a hospital, or receives home and community-based services. Income of any eligible spouse or parent shall be deemed to an individual who is ineligible for supplemental security income, up to the appropriate income level.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-24.1-04
**Law Implemented:** NDCC 50-24.1-01

## CHAPTER 75-03-15

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

1. "Accrual basis" means the recording of revenue in the period revenue is earned, regardless of when revenue is collected, and the recording of expenses in the period expenses are incurred regardless of when expenses are paid.

2. "Administration" means the cost of activities performed by the facility staff in which the direct recipient of the activity is the organization itself. These include fiscal activities, statistical reporting, recruiting, and general office management which are indirectly related to services for which a rate is set.

3. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by this chapter.

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

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

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

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

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

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

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

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

12. "Usable square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described for that cost category.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-11-03
**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-04. Ratesetting.**

1. ~~The method of determining the reimbursement rate per day must be through the use of the prospective ratesetting system. The ratesetting system requires that the rate be established during the six months following the facility's previous fiscal year and be effective the first day of the seventh month following the end of the facility's fiscal year.~~ The established rate is based on prospective ratesetting procedures. The establishment of a rate begins with historical costs. Adjustments are then made for claimed costs which are not includable in allowable costs. Adjustment factors are then applied to allowable costs. No retroactive settlements for actual costs incurred during the rate year which exceed the final rate will be made unless specifically provided for in this chapter.

2. ~~The determination of a prospective rate for all accommodations begins with the actual cost of the facility's operations for the previous fiscal year. Once the reasonable resident-related costs from the previous year are determined, adjustments are applied to the historical cost to determine the prospective rate. Reasonable resident-related costs must be determined with reference to instructions issued by the department.~~ Desk audit rate.

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

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

   c. The cost report will be reviewed taking into consideration the prior year's adjustments. Facilities will be notified by telephone or mail of any desk adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why a desk adjustment should not be made. The department will review the submitted information, make

appropriate adjustments, including adjustment factors, and issue the desk rates.

d. No reconsideration will be given by the department for the desk rates unless the facility has been notified that the desk rates are the final rates.

3. Final rate.

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

b. The final rate for rehabilitation will be effective beginning the first day of the seventh month following the facility's fiscal yearend.

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

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

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

4. Special rates.

a. Facilities providing services for the first time.

(1) Rates for a facility which is providing services which are purchased by the department will be established using the following methodology for the first two fiscal years of the facility if such period is less than twenty-four months.

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

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

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

[2] The twelve-month cost report will be used to establish a rate for the remainder of the second rate year. Appropriate adjustment factors will be used to establish the rate.

(2) The facility must submit a cost report which will be used to establish rates in accordance with subsections 2 and 3 after the facility has been in operation for the entire twelve months of the center's fiscal year.

b. Facilities changing ownership.

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

(2) The rate for the second rate year after a change in ownership occurs will be established as follows:

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

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

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

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

renovation or construction is complete or when the capacity increase is approved if no construction or renovation is necessary. The established rate for maintenance, including projected property costs, will be effective on the first day of the month in which notification of the rate is given to the facility after the renovation or construction is complete or the licensed capacity increased.

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

d. Facilities that have changes in services or staff.

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

(2) The facility must submit information to the division of children and family services supporting the request for the increase in the rate. Information must include a detailed listing of new or additional staff or costs associated with the increase in services.

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

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

5. The final rate must be considered as payment for all accommodations which include items identified in section 75-03-15-07. For any client whose rate is paid in whole or in part by the department, no payment

may be solicited or received from the client or any other person to supplement the rate as established.

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

~~3.~~ 7. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. Rate adjustments to provide appropriate compensation may be requested if major unforeseeable expenses are incurred. A request for rate adjustment may be made to the department, which shall determine if the expense is resident-related.

~~4.~~ 8. Limitations.

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

b. When federal regulations establish a ceiling on foster care rates for these facilities, that ceiling must also be considered the maximum payment under title IV-E of the Social Security Act, [42 U.S.C. 670 et seq.].

c. A facility is expected to maintain an average annual occupancy rate of seventy-five percent. The computed resident days apply only to the following areas:

(1) Administrative costs;

(2) Plant operation costs; and

(3) Property costs.

A reserved paid bed is counted as an occupied bed. A waiver of the minimum bed occupancy allowance may be made for new facilities or existing facilities at the discretion of the department.

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

~~5.~~ 9. Rate adjustments.

a. Adjustment factors may be applied to adjust historical costs. The department shall annually determine an appropriate adjustment factor to be applied to allowable costs exclusive of property costs.

b. Rate adjustments may be made to correct departmental errors subsequently determined.

c. An adjustment must be made for those facilities which have terminated participation in the program, disposed of depreciable assets, or changed ownership.

**History:** Effective November 1, 1985; amended effective July 1, 1993; March 1, 1999; August 1, 2002; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-11-03
**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

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

1. The department's foster care maintenance rate and ~~service~~ rehabilitation rate, combined, must not exceed the usual and customary rate charged to private pay or other public pay residents.

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

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-11-03
**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

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

1. **Maintenance rate.** Costs includable in the rate for room and board include those described in this subsection, unless limited by section 75-03-15-09.

a. Salary and fringe benefits for direct care personnel, which must be limited to:

(1) The child care workers' supervisor;

(2) Child care workers;

(3) Relief child care workers;

(4) Cooks;

(5) Janitors and housekeepers; and

(6) Laundry.

b. Food. Actual food costs. The value of donated food may not be included in food costs.

c. Operating supplies. The cost of supplies necessary to maintain the household for the residents. Costs include cleaning supplies, paper products, and hardware supplies.

d. Personal supplies and allowances. The cost of supplies used by an individual resident, including medicine chest supplies, personal hygiene items, sanitary needs, and moneys given periodically to residents for personal use. Personal supplies and allowance does not include payment, whether in cash or in kind, for work performed by the resident or for bonuses or rewards paid based on behavior.

e. School supplies. The cost of school supplies, books, activity fees, class dues, and transportation to school.

f. Clothing. The cost of clothing to maintain a resident's wardrobe.

g. Recreation. Costs incurred for providing recreation to the residents, including magazine and newspaper subscriptions, sports equipment, games, dues for clubs, and admission fees to sporting, recreation, and social events.

h. Utilities. The cost of heat, lights, water, sewage, garbage, and common area cable TV.

i. Telephone. The cost of local service to the living quarters. Long distance calls are allowable only if specifically identified as being related to maintenance and are not service or administrative in nature. Vehicular telephone costs are not allowable.

j. Repairs. The cost of routine repairs and upkeep of property and equipment used for the residents. All repair or maintenance costs

in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building or one-half of the original estimated useful life, whichever is greater.

k. Travel. All costs related to transporting residents, exclusive of evaluations and social service activities. Transportation costs may include actual vehicle expenses or actual costs not to exceed the amount established by the internal revenue service.

l. Leases and rentals. The cost of leasing assets from a nonrelated organization. If the lease cost cannot be directly associated with a function, an allocation must be made in accordance with section 75-03-15-05.

m. Depreciation expense. Depreciation expense on all capitalized equipment and property which was not ~~donated or~~ purchased with funds made available through other government programs or grants is allowable.

n. Insurance. The cost of insuring property and equipment used in the maintenance of residents and liability insurance for direct care staff.

o. Medical. Costs for necessary medical-related items for residents which are not covered by insurance or governmental medical care programs, provided that facility records demonstrate that reasonable attempts have been made to secure insurance or program benefits. Costs may include resident physical examinations, drugs, dental work, corrective appliances, and required medical care and treatment.

p. Administration. Costs of administration which do not exceed limitations, provided that the department, in its discretion, may exclude costs of administration based upon a lack of appropriated funds.

2. **Administration costs.** Unless limited by section 75-03-15-09, administration costs are allocated in accordance with section 75-03-15-04, subsection 4 of section 75-03-15-05, and this subsection. Costs for administration include only those allowable costs for administering the overall activities of the facility identified as follows:

a. Compensation for administrators, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing personnel, and security personnel;

b. Office supplies and forms;

c. Insurance, except property insurance directly identified to other cost categories, and insurance included as a fringe benefit;

d. The cost of telephone service not specifically included in other cost categories;

e. Postage and freight;

f. Professional fees for legal, accounting, and data processing;

g. Central or home office costs;

h. Personnel recruitment costs;

i. Management consultants and fees;

j. Dues, license fees, and subscriptions;

k. Travel and training not specifically included in other costs categories;

l. The cost of heating and cooling, electricity, and water, sewer, and garbage for space used to provide administration;

m. The cost of routine repairs and maintenance of property and equipment used to provide administration;

n. The cost of plant operation and housekeeping salaries and fringe benefits associated with the space used to provide administration;

o. Property costs. Depreciation, interest, taxes, and lease costs on equipment and buildings for space used to provide administration;

p. Startup costs; or

q. Any costs that cannot be specifically classified or assigned as a direct cost to other cost categories.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-11-03
**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-08. ~~Service~~ Rehabilitation rate.**

1. A ~~service~~ rehabilitation rate for the facility must be established based on census and allowable social service costs. Costs which may be included in the ~~social service~~ rehabilitation rate determination are:

a. Salaries and fringe benefits for social workers, psychologists, psychiatrists, nursing, and other professional social service staff;

b. Staff development for the professional social service staff; and

c. Travel and telephone costs related to evaluations and social service activities.

2. The established rate must be the lesser of the actual costs of providing the social services in the facility or the monthly amount authorized by the department.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-11-03
**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-10. Revenue offsets.** Facilities shall identify income to offset costs, where applicable, so that state financial participation does not supplant or duplicate other funding sources. Any income, whether in cash or in any other form which is received by the facility, with the exception of the established rate and income from payment made under the Job Training Partnership Act, must be offset up to the total of the appropriate actual costs. If actual costs are not identifiable, income must be offset in total to the appropriate cost category. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Treatment appropriate to some sources of income ~~are~~ is provided in this section:

1. **Clothing.** Facilities receiving initial clothing allowances separately from the state or other sources shall reduce costs by the amount of the reimbursement.

2. **Food income.** Facilities receiving revenue for food and related costs from other programs, including the United States department of agriculture or the department of public instruction or amounts from or paid on behalf of employees, guests, or other nonclients for meals or snacks shall reduce allowable food costs by the revenue received.

3. **Insurance recovery.** Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when the cost was incurred, if the facility did not adjust the basis for depreciable assets.

4. **Refunds and rebates.** Any refund or rebate received for a reported cost must be offset against the appropriate cost.

5. **Transportation income.** Any amount received for use of the facility's vehicles must be offset to transportation costs.

6. **Vending income.** Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to maintenance costs.

7. **Gain on the sale of assets.** Gain from the sale of an asset must be offset against depreciation expenses.

8. **Rental income.** Revenue received from outside sources for the use of facility buildings or equipment must be offset to property expenses.

9. **Grant income.** Grants, gifts, and awards from the federal, state, or local agencies must be offset to the costs which are allowed under the grant.

10. **Other cost-related income.** Miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, must be offset to the cost category where the item was expensed.

11. **Other income from government sources.** Other income to the facility from local, state, or federal units of government may be determined by the department to be an offset to costs.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-11-03
**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

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

1. Costs applicable to services, facilities, and supplies furnished to a facility by a related organization may not exceed the lower of the costs to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. The facility shall identify such related organizations and costs, and allocations must be submitted with the cost report.

2. A facility may lease buildings or equipment from a related organization. In that case, the rent or lease expense paid to the lessor is allowable in an amount not to exceed the actual costs associated with the asset if the rental of the buildings or equipment is necessary to provide programs and services to clients. The actual costs associated with the asset are limited to depreciation, ~~interest,~~ real estate taxes, property insurance, and plant operation expenses incurred by the lessor.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-11-03
**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

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

1. Taxes assessed against the facility in accordance with the levying enactments of several states and lower levels of government and for which the facility is liable for payment are allowable costs, except for those taxes identified as unallowable in section ~~75-03-20-08~~ 75-03-15-09.

2. Whenever exemptions to taxes are legally available, the facility shall take advantage of exemptions. If the facility does not take advantage of available exemptions, the expense incurred for taxes may not be recognized as an allowable cost under the program.

3. Special assessments in excess of one thousand dollars, which are paid in a lump sum, must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as billed by the taxing authority.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.
**General Authority:** NDCC 50-06-16, 50-11-03
**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

# TITLE 82

# BOARD OF TRUSTEES OF THE TEACHERS' FUND FOR RETIREMENT

**MAY 2004**

## CHAPTER 82-02-01

**82-02-01-01. Definitions.** Unless made inappropriate by context, all words used in this title have the meanings given to them under North Dakota Century Code chapter 15-39.1. The following definitions are not established by statute and apply for the purpose of this title:

1. "Account balance" or "value of account" means the ~~teacher's~~ member's accumulated contributions or assessments, plus the sum of any member purchase or repurchase payments, plus interest at an annual rate of six percent compounded monthly.

2. "Administrative" means to manage, direct, or superintend a program, service, or school district or other participating employer.

3. "Benefit service credit" means employment service used to determine benefits payable under the fund.

4. "Cessation of employment" means severance or termination of employment.

5. "Contributions" means the assessments or payments made to the fund.

6. "Covered employment" means employment as a teacher.

~~5.~~ 7. "Eligibility service credit" means employment service used to determine vesting and benefit eligibility for dual members and qualified veterans under the Uniformed Services Employment and Reemployment Rights Act of 1994. Eligibility service credit is not used for benefit calculation purposes.

~~6.~~ 8. "Extracurricular services" means outside of the regular curriculum of a school district or other participating employer which includes advising, directing, monitoring, or coaching athletics, music, drama, journalism, and other supplemental programs.

~~7.~~ 9. "Participating employer" means the employer of a teacher.

10. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent year.

~~8.~~ 11. "Salary reduction or salary deferral amounts under 26 U.S.C. section 125, 401(k), 403(b), or 457" means amounts deducted from a member's salary, at the member's option, to these plans. These reductions or deferrals are part of salary when calculating retirement contributions. Employer contributions to plans specified in 26 U.S.C. section 125, 401(k), 403(b), or 457 which are made for the benefit of the member will not be counted as retirement salary when calculating retirement contributions. Member contributions paid by the employer under IRC section 414(h) pursuant to a salary reduction agreement do not reduce salary when calculating retirement contributions.

~~9.~~ 12. "Special teachers" include licensed special education teachers, guidance counselors, speech therapists, social workers, psychologists, librarians, audio visual or media coordinators, technology coordinators, and other staff members licensed by the education standards and practices board provided they are under contract with a school district or other participating employer to provide teaching, supervisory, administrative, or extracurricular services.

~~10.~~ 13. "Supervisory" means to have general oversight or authority over students or teachers, or both, of a school district or other participating employer.

~~11.~~ 14. "Teaching" means to impart knowledge or skills to students or teachers, or both, by means of oral or written lessons, instructions, and information.

~~12.~~ 15. "Vested" means the status attained by a teacher when the teacher has paid assessments to earn three years of service credit for covered employment in this state.

~~13.~~ 16. "Written agreement" means a teaching contract, school board minutes, or other official document evidencing a contractual relationship between a teacher and participating employer.

**History:** Effective September 1, 1990; amended effective May 1, 1992; May 1, 1998; May 1, 2000; May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC 15-39.1, 15-39.1-07

**82-03-01-08. Dual membership - Receipt of retirement benefits while contributing to the public employees retirement system or the highway patrolmen's retirement system.**

1. Dual members may select one of the following options at retirement eligibility:

   a. Begin receiving retirement benefits from one plan prior to ceasing employment covered by the alternate plan, unless the continued employment is with the same employer.

   b. Begin receiving retirement benefits from one plan and begin work in a job covered by the alternate plan if for a different employer.

   c. Continue participating as a dual member and begin receiving retirement benefits from both plans after ceasing employment.

2. The following limitations apply when a member elects an option under subsection 1:

   a. Eligible service credit may be used for vesting purposes and determining when the dual member may begin drawing normal retirement benefits. A member may begin drawing retirement benefits from one fund and use the same years, and any additional years, for reaching retirement from the alternate fund so long as service credit does not exceed one year in any fiscal year.

   b. If a dual member elects to receive retirement benefits as provided in subdivision a or b of subsection 1, the final average salary, service credit, and member's age used to calculate the benefit that is applicable at the time retirement benefits begin may not be adjusted after the benefit effective date.

   c. The salary used in calculating the retirement benefit must be certified in writing by the alternate retirement system.

**History:** Effective May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC 15-39.1-10.3

**82-03-01-09. Employer service purchase.** An employer may elect to purchase up to three years of service credit for an active employee. In order to make the purchase, an employer must develop an employer service purchase program as outlined below:

1. The program must be in writing and meet all the conditions and member eligibility requirements in North Dakota Century Code section 15-39.1-33.

2. The program must be in compliance with the federal Age Discrimination in Employment Act and other federal and state laws.

3. The program must include specific guidelines for determining for whom the employer will purchase service credit.

4. The employer must not give the employee the option of a cash payment in lieu of the employer service purchase.

5. The employer must certify in writing that the program meets the necessary legal requirements prior to making the employer service purchase.

6. The teachers' fund for retirement will provide the purchase price amount to the employer.

7. If the service is purchased, the teachers' fund for retirement will credit the service to the member.

**History:** Effective May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC 15-39.1-33

**82-04-01-04. Rollover contributions permitted for service purchases.** Teachers are permitted to roll over or transfer to the fund any tax-deferred moneys from other ~~qualified~~ eligible retirement plans that meet the requirements of IRC section ~~408~~ 402(c) to repurchase ~~previously withdrawn~~ refunded service credit and to purchase additional service credit. ~~Under IRS requirements:~~

~~1. The rollover must come from a 401(a) plan (including 401(k) and 401(c) Keogh plans) or a conduit IRA whose deposits came only from a qualified 401(a).~~

~~2. The fund may not accept rollovers from regular IRA plans, 403(b) tax-deferred annuity plans, 457 deferred compensation plans, or other non-401(a) qualified retirement plans.~~

The amount rolled over or transferred to TFFR cannot exceed the cost of the credit to be purchased. ~~The rollover distribution must be received directly from the section 401(a) qualified plan or conduit IRA.~~ The transferring trustee or custodian and the teacher must complete authorization forms provided by the fund prior to transfer or rollover. Copies of the original distribution paperwork must be submitted with rollover funds received from a member.

**History:** Effective September 1, 1990; amended effective May 1, 1998; May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC ~~15-39.1-15~~ 15-39.1-24(11)

## CHAPTER 82-05-01

**82-05-01-03. Designation of beneficiary.** The teacher shall designate a survivor or a beneficiary in writing on forms provided by the fund prior to the beginning of benefit payments.

If the teacher is married, the teacher's spouse must be named as the primary beneficiary or the teacher must provide written spousal approval to name an alternate beneficiary. If the teacher is not married, or if the teacher has written spousal consent, the teacher may name any person, organization, church, or charity as beneficiary of the teacher's retirement account. If more than one beneficiary is named, the beneficiaries are not eligible to receive a monthly annuity for life. Multiple beneficiaries receiving a survivor benefit must select the same form of payment.

After benefit payments have begun, the teacher may not change the designated survivor or beneficiary, except under the following circumstances:

1. Teachers who select the single life, five-year term certain and life (option no longer available to new retirees), twenty-year term certain and life, or ten-year term certain and life annuity plans may change their beneficiary at any time.

2. Teachers who select the one hundred percent joint and survivor or fifty percent joint and survivor annuity plans may only name one beneficiary and may not change their beneficiary after retirement, except under the following circumstances:

   a. If the teacher's designated beneficiary precedes the teacher in death; or

   b. If the marriage of a teacher and the designated beneficiary is dissolved and the divorce decree provides for sole retention of the retirement benefits by the teacher.

   In these cases, the form of benefits shall automatically revert to the standard form of benefit payment under section 82-05-02-01 and a new beneficiary may be designated. The teacher, upon remarriage, may designate the new spouse as the primary beneficiary and may elect a joint and survivor benefit option under section 82-05-02-02.

**History:** Effective September 1, 1990; amended effective April 1, 1994; May 1, 2000; May 1, 2002; May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC 15-39.1-16

## CHAPTER 82-05-02

### 82-05-02-02. Optional forms of benefit payments.

1. A teacher may elect to receive benefits under article 82-05 in any one of the following forms:

   a. ~~**Option I.**~~ A one hundred percent joint and survivor annuity.

   b. ~~**Option II.**~~ A fifty percent joint and survivor annuity.

   c. ~~**Option III.**~~ An annuity payable to the teacher or the teacher's designated beneficiary for the life of the teacher or ~~sixty~~ two hundred forty months, whichever is longer.

   d. ~~**Option IV.**~~ An annuity payable to the teacher or the teacher's designated beneficiary for the life of the teacher or one hundred twenty months, whichever is longer.

2. A married member's spouse, if designated as beneficiary, must consent in writing to the form of payment option elected by the member at retirement. If spousal consent is not obtained, the form of benefit payment option will be the fifty percent joint and survivor option.

3. Benefits under the optional forms of payment must be determined on an actuarially equivalent basis. The teacher's choice of benefit under this section is irrevocable once the teacher has begun receiving benefits except under the following circumstances:

   a. Under the single life, five-year term certain and life (option no longer available to new retirees), twenty-year term certain and life, and ten-year term certain and life annuity options, if a retired teacher marries, that teacher may change that teacher's beneficiary under section 82-05-01-03 and form of benefit payment to a joint and survivor option.

   b. Under the one hundred percent joint and survivor and fifty percent joint and survivor annuity options, if a retired teacher's designated beneficiary precedes the teacher in death, or if the marriage of a teacher and the designated beneficiary is dissolved and the divorce decree provides for sole retention of the retirement benefits by the teacher, the form of benefits shall automatically revert to the standard form of benefit payment under section 82-05-02-01 and a new beneficiary may be designated under section 82-05-01-03. The teacher, upon remarriage, may designate the new spouse as the primary beneficiary and may elect a joint and survivor option.

4. The teacher must provide proof of the teacher's good health before the board can permit a change in the designated beneficiary under the joint

and survivor options. A medical examination conducted by a licensed medical doctor is required.

5. The teacher is required to provide proof of age for the new beneficiary. The board must adjust the monthly retirement benefit to the actuarially equivalent amount based on the new designated beneficiary's age.

**History:** Effective September 1, 1990; amended effective April 1, 1994; May 1, 2000; May 1, 2002; May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC 15-39.1-16

**82-05-02-05. Partial lump sum distribution option.** A member who is eligible for an unreduced service retirement annuity may receive a portion of the retirement annuity paid in a lump sum distribution as provided in North Dakota Century Code section 15-39.1-16. The lump sum distribution may be paid in a direct rollover as outlined in North Dakota Century Code section 15-39.1-20.

**History:** Effective May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC 15-39.1-16

## CHAPTER 82-05-04

**82-05-04-02. Actuarial factors - Optional payment forms.** Under North Dakota Century Code section 15-39.1-16, the actuarial factors used to determine benefit amounts under the optional joint and survivor, term certain and life, and level income forms of annuity payment shall be based on the following actuarial assumptions:

1. Interest rate - 8.00 percent per year, compounded annually.

2. Member's mortality (used for nondisabled members) - a mortality table constructed by blending forty percent of the mortality rates under the 1983 group annuity mortality table for males, without margins, setback four years, with sixty percent of the mortality rates under the 1983 group annuity mortality table for females, without margins, setback three years.

3. Beneficiary's mortality - a mortality table constructed by blending sixty percent of the mortality rates under the 1983 group annuity mortality table for males, without margins, setback four years, with forty percent of the mortality rates under the 1983 group annuity mortality table for females, without margins, setback three years.

4. Disabled member's mortality - a mortality table constructed by blending forty percent of the mortality rates under pension benefit guaranty corporation table Va for disabled males, with sixty percent of the mortality rates under pension benefit guaranty corporation table VIa for disabled females.

In addition, the above actuarial assumptions shall be used to determine actuarial equivalence for other purposes not covered by sections 82-05-04-01, 82-05-04-03, and 82-05-04-04, such as the determination of the reduction to a member's benefit because of the existence of a qualified domestic relations order.

**History:** Effective May 1, 2000; amended effective May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC 15-39.1-16, 15-39.1-24

**82-05-04-03. Actuarial factors - Maximum benefits under section 415.** In computing the maximum benefits under Internal Revenue Code section 415, as required under North Dakota Century Code section 15-39.1-10.6, the following actuarial assumptions must be used:

1. Interest rate - the interest rate assumption must be the same as the rate that is used in computing actuarially equivalent optional payment forms under section 82-05-04-02 except that:

a. The interest rate assumption may not be less than five percent for the purposes of converting the maximum retirement income to a form other than a straight life annuity with no ancillary benefits;

b. The interest rate assumption may not be greater than five percent for the purposes of adjusting the maximum retirement income payable to a member who is over age sixty-five so that it is actuarially equivalent to such a retirement income commencing at age sixty-five; and

c. The factor for adjusting the maximum permissible retirement income to a member who is less than age sixty-two years so that it is actuarially equivalent to such a retirement income commencing at age sixty-two years shall be equal to the factor for determining actuarial equivalence for early retirement under section 82-05-04-01 or an actuarially computed reduction factor determined using an interest rate assumption of five percent and the mortality assumptions specified in this section (except that the mortality decrement must be ignored if a death benefit at least equal to the single-sum value of the member's accrued benefit would be payable under the fund on behalf of the member if the member remained in service and the member's service was to be terminated by reason of the member's death prior to the member's normal retirement date), whichever factor will provide the greater reduction. The factor for determining actuarial equivalence for early retirement under the fund for any given age below age sixty-two years must be determined by dividing the early retirement adjustment factor that applies under section 82-05-04-01 at such given age by the early retirement adjustment factor that applies under the fund at age sixty-two years. ~~Provided, however, that the adjustment under this subdivision to the maximum permissible retirement income for a member who is less than age sixty-two years may not reduce such maximum permissible retirement income below $75,000, if the member's monthly retirement income commences at or after age fifty-five, or if such monthly retirement income commences prior to age fifty-five, an amount which is the actuarial equivalent of the $75,000 limitation for age fifty-five, using the actuarial assumptions specified in this subdivision. Provided further, that the~~ The actuarial adjustment provided in this subdivision does not apply for limitation years beginning after 1994 to income received as a pension, annuity, or similar allowance as a result of a member's disability due to personal injuries or sickness, or amounts received as a result of a member's death by the member's beneficiaries, survivors, or estate.

2. Mortality - the mortality assumptions must be based upon the mortality table prescribed by the secretary of the treasury of the United States pursuant to Internal Revenue Code section 415(b)(2)(E).

**History:** Effective May 1, 2000; amended effective May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC 15-39.1-16, 15-39.1-24

## CHAPTER 82-08-01

**82-08-01-02. Qualified domestic relations order procedures.** Upon receipt of a domestic relations order, the ~~executive director~~ plan shall:

1. Send an initial notice to each person named therein, together with an explanation of the procedures followed by the fund.

2. If the teacher or alternate payee receives any distribution that should not have been paid per the order, the teacher or alternate payee is designated a constructive trustee for the amount received and shall immediately notify the retirement and investment office and comply with written instructions as to the distribution of the amount received.

3. Review the domestic relations order to determine if it follows the model language format in section 82-08-01-03.

4. Forward the domestic relations order to the fund's legal counsel and actuarial consultant for their review and recommendation to the board.

5. The board shall review the domestic relations order and make the final determination of a qualified order.

6. The domestic relations order must be considered a qualified order when the ~~executive director~~ plan notifies the parties the order is approved by the board and a certified copy of the court order has been submitted to the fund office.

7. If the order is determined to be qualified within eighteen months of receipt:

   a. Send notice to all persons named in the order and any representatives designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.

   b. Comply with the terms of the order.

   c. Distribute the amounts as outlined in the order.

8. In the event that the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order:

   a. Send written notification of such to all parties.

   b. Apply the qualified domestic relations order prospectively only if determined after the expiration of the eighteen-month period the

order as modified, if applicable, is a qualified domestic relations order.

**History:** Effective September 1, 1990; amended effective May 1, 1992; April 1, 1994; May 1, 1998; May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC 15-39.1-12.2

**82-08-01-03. Format for a qualified domestic relations order.** A qualified domestic relations order must be substantially in the following form:

ACTIVE OR INACTIVE MEMBERS

| | |
|---|---|
| STATE OF NORTH DAKOTA | IN DISTRICT COURT |
| COUNTY OF _____ | _____ JUDICIAL DISTRICT |
| _____, ) | |
| ) | |
| Plaintiff, ) | |
| ) | QUALIFIED DOMESTIC |
| ) | RELATIONS ORDER |
| -vs- ) | |
| ) | Case No. _____ |
| ) | |
| _____, ) | |
| Defendant. ) | |

.....

This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota Teachers' Fund for Retirement, hereafter referred to as the "Plan". The Order is made pursuant to North Dakota Century Code section 15-39.1-12.2. The Order is an integral part of the judgment entered on [DATE OF DIVORCE] granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] or [This Order is drawn pursuant to the laws of the state of North Dakota relating to the provision of child support to a minor child in actions for dissolution of a marriage.]

**BACKGROUND INFORMATION**

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last-known address is [MEMBER'S ADDRESS]. The member's date of birth is [MEMBER'S D.O.B.].

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last-known address is [ALTERNATE PAYEE'S ADDRESS]. The alternate payee's date of birth is [ALTERNATE PAYEE'S D.O.B.].

The participating member and the alternate payee were married on [DATE OF MARRIAGE].

IT IS HEREBY ORDERED THAT:

**I. BENEFITS**

Benefits under the plan are distributed as follows: (Choose one)

1. The alternate payee is awarded [_____%] of the member's accrued annuity benefit as of [DATE OF DIVORCE]; (OR)

2. The alternate payee is awarded [$_____] of the member's accrued annuity benefit as of [DATE OF DIVORCE].

If payments to the alternate payee begin prior to the member's sixty-fifth birthday, such benefits shall be reduced actuarially, except that if the member retires or dies prior to the member's sixty-fifth birthday, the alternate payee shall receive a commensurate share of any early retirement subsidy, beginning as of the date of the member's retirement or death. Such increase shall be determined actuarially.

**II. TIME OF BENEFIT RECEIPT**

Benefit payments to the alternate payee will begin: (Choose one)

1. When the participating member ~~reaches~~ qualifies for normal retirement ~~age~~ benefits under the plan. (OR)

2. When the participating member qualifies for early retirement. ~~(Note: Benefits in this event are payable even if the member has not separated from covered employment.)~~ (OR)

3. When the alternate payee reaches [DATE OR EVENT]. The date or event must be after the date participating member would qualify for early retirement ~~but payment will not be later than when the participating member retires~~. (OR)

4. When the participating member retires and begins receiving retirement benefits from the plan.

Benefits to the alternate payee are payable even if the member has not separated from covered employment. In all cases, the payment will not begin later than when the participating member retires.

If the participating member begins receiving disability retirement benefits, the alternate payee will also begin receiving the benefits awarded in section I of this Order. The alternate payee's benefit will begin when the member's benefits begin and will be actuarially reduced to reflect the earlier disability payment start date.

**III. DURATION OF PAYMENTS TO ALTERNATE PAYEE OVER THE LIFE OF THE ALTERNATE PAYEE** (Choose one)

~~The benefits to the alternate payee are to be paid over the alternate payee's life.~~

1. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and shall cease upon the alternate payee's death and will not revert back to the member. The payment shall be calculated on the basis of a single life annuity and will be actuarially adjusted based upon the plan's assumptions to reflect the life expectancy of the alternate payee.

(OR)

2. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and calculated on the basis of:

   (Choose one)

   (a) a ~~5-year~~ 20-year term certain and life option; (OR)

   (b) a 10-year term certain and life option.

   The payment will be actuarially adjusted based upon the plan's assumptions to reflect the life expectancy of the alternate payee.

   Upon the alternate payee's death, payments will not revert back to the member, but will continue to the alternate payee's designated beneficiary under the term certain and life option identified above.

**IV. MEMBER WITHDRAWS FROM RETIREMENT SYSTEM** (Choose one)

A. If the participating member discontinues employment and withdraws the member account in a lump sum, the alternate payee shall receive [___%] of the member's account balance as of [DATE OF DIVORCE] accumulated with interest as required by the Plan from the divorce date until the refund is paid; (OR)

B. If the participating member discontinues employment and withdraws the member account in a lump sum, the alternate payee shall receive [$___] from the member's account balance accumulated with interest as

required by the Plan from [DATE OF DIVORCE] until the refund is paid. [Note: The dollar amount in this option cannot exceed the member's account balance.]

**V. LIMITATIONS OF THIS ORDER** (Order must reflect all provisions of this section.)

A. This Order recognizes the existence of the right of the alternate payee to receive all OR a portion of the benefits payable to the participating members as indicated above.

B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:

1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.

2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.

3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.

4. ~~To apply the provisions of this Order to disability benefits that the participating member may be entitled to receive.~~ To provide to the alternate payee any increased benefit due to the participating member under the disability provisions of this plan.

C. If the alternate payee dies prior to beginning receipt of benefits under this Order, the entire amount that may be due to the alternate payee reverts to the participating member.

D. If the participating member dies prior to retirement and before the alternate payee begins benefits, the alternate payee will receive [___%] share of the member's survivor benefits based on service as of [DATE OF DIVORCE]. The alternate payee and any other beneficiaries will each select their own form of survivor benefit.

If the alternate payee is already in payment, the benefits will continue and the value of the benefits to the alternate payee will reduce any survivor payment to other beneficiaries.

E. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this Order.

F. If participant or alternate payee receives any distribution that should not have been paid per this Order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify RIO and comply with written instructions as to the distribution of the amount received.

G. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by RIO. The plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with Internal Revenue Code and any applicable regulations.

H. Alternate payee is ORDERED to provide the plan prompt written notification of any changes in alternate payee's mailing address. RIO shall not be liable for failing to make payments to alternate payee if RIO does not have current mailing address for alternate payee at time of payment.

I. Alternate payee shall furnish a certified copy of this Order to RIO.

J. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If RIO determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

Signed this _____ day of _____, 20_____.

_____

(Judge Presiding)

**OR**

RETIRED MEMBERS

This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota Teachers' Fund for Retirement, hereafter referred to as the "Plan". The Order is made pursuant to North Dakota Century Code section 15-39.1-12.2. The Order is an integral part of the judgment entered on [DATE OF DIVORCE] granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] or [This Order is drawn pursuant

to the laws of the state of North Dakota relating to the provision of child support to a minor child in actions for dissolution of a marriage.]

**BACKGROUND INFORMATION**

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last-known address is [MEMBER'S ADDRESS]. The member's date of birth is [MEMBER'S D.O.B.].

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last-known address is [ALTERNATE PAYEE'S ADDRESS]. The alternate payee's date of birth is [ALTERNATE PAYEE'S D.O.B.].

The participating member and the alternate payee were married on [DATE OF MARRIAGE].

IT IS HEREBY ORDERED THAT:

**I. BENEFITS**

Benefits to the participating member under the plan are distributed as follows: (Choose one)

1. The alternate payee is awarded [___%] of the monthly retirement benefit as of [DATE OF DIVORCE]; (OR)

2. The alternate payee is awarded [$___] of the monthly retirement benefit as of [DATE OF DIVORCE].

**II. TIME OF BENEFIT RECEIPT.**

The benefits are payable to the alternate payee in the month following receipt of this signed Order by the plan or plan administrator as the participating member is currently retired and receiving benefits under the Plan.

**III. DURATION OF BENEFITS TO ALTERNATE PAYEE OVER THE LIFE OF THE PARTICIPATING MEMBER**

The payments shall be made to the alternate payee on a monthly basis over the life of the participating member and, if applicable, a continuing monthly annuity will be payable to the surviving alternate payee after the member's death. The amount of the payments to the alternate payee will be calculated on the basis of: (Choose the annuity option in existence at the time of the divorce or legal separation.)

(1) Single life annuity option (OR)

(2) 100% joint and survivor option (OR)

(3) 50% joint and survivor option (OR)

(4) ~~5-year~~ 20-year term certain and life option (OR)

(5) 10-year term certain and life option.

If the alternate payee is the designated beneficiary, the alternate payee must remain as the beneficiary under the joint and survivor options.

**IV. LIMITATIONS OF THIS ORDER** (Order must reflect all provisions of this section.)

A. This Order recognizes the existence of the right of the alternate payee to receive all OR a portion of the benefits payable to the participating members as indicated above.

B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:

1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.

2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.

3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.

~~4. To apply the provisions of this Order to disability benefits that the participating member may be entitled to receive.~~

C. If the provisions of this Order are applied to disability benefits, the benefits will cease to all parties upon the member's recovery. The parties will then need to submit a new order to allow for the equitable distribution of any future benefits payable from the plan.

D. Upon the alternate payee's death, if the member is still surviving, the entire amount that may be due to the alternate payee reverts to the participating member ~~or to the alternate payee's beneficiary, if applicable~~. Upon the member's death, if the alternate payee is still surviving, the entire benefit will cease under a single life option. Under a joint and survivor option, the alternate payee will receive the one hundred percent or fifty percent survivor benefit for the remainder of the alternate payee's life, since the alternate payee is the joint annuitant. If a term certain option was selected, and the member passes away before the term certain period has expired while the alternate payee is

still living, then the benefit to the alternate payee will continue and the member's portion will continue to the member's designated beneficiary to complete the term certain period. If in the last case, the alternate payee dies before all payments due under the certain period have been made, the alternate payee's share will continue to the alternate payee's designated beneficiary.

~~D.~~ E. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this Order.

~~E.~~ F. If the participant or alternate payee receives any distribution that should not have been paid per this Order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify RIO and comply with written instructions as to the distribution of the amount received.

~~F.~~ G. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by RIO. The plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with the Internal Revenue Code and any applicable regulations.

~~G.~~ H. Alternate payee is ORDERED to provide the plan prompt written notification of any changes in alternate payee's mailing address. RIO shall not be liable for failing to make payments to alternate payee if RIO does not have current mailing address for alternate payee at time of payment.

~~H.~~ I. Alternate payee shall furnish a certified copy of this Order to RIO.

~~I.~~ J. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If RIO determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

Signed this _____ day of _____, 20 _____.

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(Judge Presiding)

**History:** Effective April 1, 1994; amended effective January 1, 1998; May 1, 1998; May 1, 2002; May 1, 2004.
**General Authority:** NDCC 15-39.1-07
**Law Implemented:** NDCC 15-39.1-12.2

# TITLE 92

# WORKFORCE SAFETY AND INSURANCE

**JULY 2004**

## CHAPTER 92-01-01

**92-01-01-01. Organization and functions of workforce safety and insurance.**

1. ~~**Organization.**~~

   ~~a.~~ **History.** The Workmen's Compensation Act was passed in 1919 and is codified as North Dakota Century Code title 65. ~~Effective July 1, 1987, the workmen's compensation bureau was changed to the workers compensation bureau. The Act requires the governor to appoint an executive director to administer the Act.~~ The workers' compensation fund is an exclusive state fund which contracts with employers in this state to provide "no fault" insurance for workers injured in the course of employment.

   ~~b. Structure. The organization is administered by the executive director and consists of six departments:~~

      ~~(1) Claims and rehabilitation.~~

      ~~(2) Legal.~~

      ~~(3) Loss prevention.~~

      ~~(4) Administrative services.~~

      ~~(5) Policyholder services.~~

      ~~(6) Medical and technical services.~~

2. ~~**Organization**~~ **Workforce safety and insurance functions.** The executive director and the executive director's staff in the executive office are responsible for the traditional management functions of planning, programming, budgeting, staffing, evaluating, and reviewing.

Some aspects of each of these functions are delegated to department directors and other managers.

~~Department functions are as follows:~~

~~a. Claims and rehabilitation. This department investigates and manages individual workers' compensation claims for medical, disability, and rehabilitation benefits payments. Vocational rehabilitation services are provided through private vendors under contract to the organization and managed by this department.~~

~~b. Legal. This department provides support services to legal counsel provided to the organization by the attorney general. The department provides administrative hearings and binding arbitration as options for dispute resolution.~~

~~c. Loss prevention. This department assists employers with loss prevention program design, implementation and training, conducts workplace safety inspections and investigates industrial accidents. The department certifies safety programs for employers' qualification for premium discounts.~~

~~d. Administrative services. This department coordinates basic administrative support for all departments and units. Its responsibilities include the monitoring of revenue, expenditures, and assets for the bureau. The department prepares bureau financial statements and apprises the executive director and department heads of the fiscal status of each of the units. It also has the responsibility for the personnel and payroll functions.~~

~~e. Policyholder services. This department manages employer insurance accounts, develops annual rate and classification structures (in consultation with the bureau's actuarial consultant), rates employer loss experience, determines coverage status, and manages extraterritorial agreements with other states. The department's field representatives audit employer accounts and investigate uninsured employers.~~

~~f. Medical and technical services. This department administers the managed care and medical bill audit programs and the medical and hospital fee schedules. The department administers the medical dispute resolution process for disputes arising out of managed care recommendations. The department also provides technical support to the claims and rehabilitation department in the processing of medical bills and in computer and claim form functions.~~

3. **Inquiries.** Inquiries regarding functions of ~~the workers compensation bureau~~ workforce safety and insurance may be directed to the executive director, or to the respective ~~operating~~ department.

**History:** Amended effective February 1, 1982; October 1, 1983; August 1, 1987; October 1, 1987; January 1, 1992; January 1, 1994; December 1, 1996; October 1, 1997; July 1, 2004.
**General Authority:** NDCC 28-32-02.1
**Law Implemented:** NDCC 28-32-02.1

## CHAPTER 92-01-02

**92-01-02-11.1. Attorney's fees.** Upon receipt of a certificate of program completion from the office of independent review, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to binding arbitration, administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The organization shall pay attorneys at one hundred fifteen dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at ~~fifty~~ fifty-five dollars per hour.

2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to fifty-five dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at thirty dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.

3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:

   a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.

   b. Two thousand ~~one~~ three hundred ten dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the administrative hearing is held.

   c. Four thousand ~~two~~ six hundred twenty dollars, plus reasonable costs incurred, if the employee prevails after an evidentiary hearing is held.

d. ~~Four~~ Five thousand ~~seven~~ one hundred ~~twenty-five~~ ninety-eight dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Six thousand ~~three~~ nine hundred thirty dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.

e. ~~Seven~~ Eight thousand ~~six~~ four hundred ~~sixty-five~~ thirty-two dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. ~~Eight~~ Nine thousand ~~five~~ three hundred ~~five~~ fifty-six dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.

f. Six hundred sixty dollars, plus reasonable costs incurred, for services in connection with binding arbitration, if the employee prevails.

g. One thousand ~~one~~ two hundred ~~fifty-five~~ seventy-one dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.

h. Four hundred forty dollars for review of a proposed settlement, if the employee to whom the settlement is offered was not represented by counsel at the time of the offer of settlement.

i. Should a settlement or order amendment offered during the OIR process be accepted after the OIR certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.

4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.

5. ~~Upon application of the employee's attorney and a finding by the organization that the legal or factual issues involved in the dispute are unusually complex, the organization may approve payment of reasonable fees in excess of the maximum fees provided by subdivisions b, c, d, and e of subsection 3. All applications for fees in excess of the maximum fees must contain a concise statement of the reasons for the request, including a summary of any factual or legal issues, justifying the request, and an explanation of why the~~

~~issues are unusually complex. The organization's denial of a request to exceed the attorney's fee cap is not a "dispute relating to payment or denial of an attorney's fee" under North Dakota Century Code section 65-02-08 which requires submission to a hearing officer or arbitrator for a decision. In determining whether the factual or legal issues are unusually complex, the organization shall consider factors including the following:~~

~~a. The extent of the prehearing and posthearing discovery;~~

~~b. The number of depositions;~~

~~c. The number of legal or factual issues in dispute; and~~

~~d. Whether the legal issues or relevant statutes have been previously interpreted by the North Dakota supreme court.~~

~~6.~~ All time must be recorded in increments of no more than six minutes (one-tenth of an hour).

~~7.~~ 6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The signature of the attorney constitutes a certificate by the attorney that the attorney has not sought or obtained payment, and will not seek payment of any fees or costs from the employee relative to the same dispute regarding an administrative order. The organization may deny fees and costs that are determined to be excessive or frivolous.

~~8.~~ 7. The following costs will be reimbursed:

a. Actual postage.

b. Actual toll charges for long-distance telephone calls.

c. Copying charges, at twenty cents per page.

d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.

e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.

~~9.~~ 8. The following costs will not be reimbursed:

a. Facsimile charges.

b. Express mail.

c. Additional copies of transcripts.

d. Costs incurred to obtain medical records.

e. On-line computer-assisted legal research.

f. Copy charges for documents provided by the organization.

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

**History:** Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004.
**General Authority:** NDCC 65-02-08, 65-02-15
**Law Implemented:** NDCC 65-02-08, 65-02-15, 65-10-03

**92-01-02-13. Merger, exchange, or transfer of business.**

1. **Definitions.** In this section:

a. "Business entity" means any form of business organization, including proprietorships, partnerships, limited partnerships, cooperatives, limited liability companies, and corporations.

b. "Constituent business" means a business entity of which a surviving entity is composed.

c. "Surviving entity" means the business entity resulting from a merger, exchange, or transfer of business assets from one or more constituent businesses.

2. **Experience rating.** The surviving entity resulting from a merger, exchange, or transfer of business assets will be assigned an experience rating derived from the ~~averaged~~ combined premium, payroll, and loss history of all the accounts involved in the merger, exchange, or transfer.

The organization may change the experience rating of the surviving entity.

If the organization determines a business entity is a continuation or extension of an already existing business entity and not a surviving entity composed of one or more constituent businesses, and the existing business entity is already experience-rated, the experience rate of the existing business entity will transfer to its continuation or extension. Future experience rates will be calculated using the combined premium, payroll and loss history from the existing business entity and its continuations or extensions.

3. **Compensation coverage.**

   a. The organization may transfer compensation coverage of any constituent business to the surviving entity. The organization may require the surviving entity to provide information on the constituent businesses of which it is comprised and its owners, officers, directors, partners, and managers. If the organization determines a surviving entity is merely a continuation of the constituent business or businesses, the organization may transfer the premium liability to the surviving entity or decline coverage until the delinquency is resolved.

   b. Factors the organization may consider in determining if a surviving entity is a mere continuation of a constituent business include:

      (1) Whether there is basic continuity of the constituent business in the surviving entity as shown by retention of key personnel, assets, and general business operations.

      (2) Whether the surviving entity continues to use the same business location or telephone numbers.

      (3) Whether employees transferred from the constituent business to the surviving entity.

      (4) Whether the surviving entity holds itself out as the effective continuation of the constituent business.

   c. The organization shall calculate premium based on actual taxable payroll for the period of time involved. The organization may prorate the payroll cap based on one-twelfth of the statutory

payroll cap per month per employee at the beginning of the period of time involved.

**History:** Effective June 1, 1990; amended effective January 1, 1992; April 1, 1997; May 1, 2002; July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-04-01

**92-01-02-17. Reporting payroll for period of noncompliance.** If the noncompliance period of a new account is less than twelve months, the following procedure will apply: The payroll will be prorated on a basis of the maximum of one-twelfth of the statutory payroll cap per month per employee for the period of time involved. If the salary paid is less than the amount of one-twelfth of the statutory payroll cap per month, the full amount is reportable. ~~If an employee ceased employment during the noncompliance period, the gross payroll of the employee is prorated over the period of noncompliance up to a maximum of one-twelfth of the statutory payroll cap per month for the period of noncompliance.~~ An account in noncompliance is uninsured until a completed application for workers' compensation insurance coverage pursuant to North Dakota Century Code chapter 65-04 is received by the organization.

**History:** Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002; July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-09-01

**92-01-02-19. Employer relief after third-party recovery.** Upon third-party recovery pursuant to North Dakota Century Code section 65-01-09 in claims which have been accepted by the organization and when the employer's experience rating has been affected, relief will be given to the employer from the date of injury to the balance of the experience rating period. Relief will be given to the extent of the actual net recovery made by or on behalf of the organization, after deduction from the gross recovery of the costs and attorney fees allowable under North Dakota Century Code section 65-01-09.

"Relief will be given" indicates that the amount of money recovered by the organization in a third-party action will be deducted from the amount charged against the employer's experience rating. This may result in a decreased premium for ~~that employer in the future~~ policy periods impacted by the revised experience rates. An account that has been canceled is not entitled to relief under this section.

Relief will also be given to the extent of the employer reimbursement paid by the employer pursuant to North Dakota Century Code section 65-05-07.2, provided that the net recovery made by or on behalf of the organization is equal to or exceeds the total chargeable expenditures made by the organization on the claim plus the reimbursement made by the employer. An employer who has not

timely paid reimbursement under North Dakota Century Code section 65-05-07.2 forfeits any right to relief for that reimbursement.

**History:** Effective June 1, 1990; amended effective January 1, 1996; May 1, 2002; July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-01-09, 65-04-04.3, 65-04-17, 65-05-07.2

**92-01-02-25. Permanent impairment evaluations and disputes.**

1. Definitions:

   a. Amputations and loss as used in subsection 11 of North Dakota Century Code section 65-05-12.2.

      "Amputation of a thumb" means disarticulation at the metacarpal phalangeal joint.

      "Amputation of the second or distal phalanx of the thumb" means disarticulation at or proximal to the interphalangeal joint.

      "Amputation of the first finger" means disarticulation at the metacarpal phalangeal joint.

      "Amputation of the middle or second phalanx of the first finger" means disarticulation at or proximal to the proximal interphalangeal joint.

      "Amputation of the third or distal phalanx of the first finger" means disarticulation at or proximal to the distal interphalangeal joint.

      "Amputation of the second finger" means disarticulation at the metacarpal phalangeal joint.

      "Amputation of the middle or second phalanx of the second finger" means disarticulation at or proximal to the proximal interphalangeal joint.

      "Amputation of the third or distal phalanx of the second finger" means disarticulation at or proximal to the distal interphalangeal joint.

      "Amputation of the third finger" means disarticulation at the metacarpal phalangeal joint.

      "Amputation of the middle or second phalanx of the third finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the fourth finger" means disartriculation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the fourth finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the leg at the hip" means disarticulation at or distal to the hip joint (separation of the head of the femur from the acetabulum).

"Amputation of the leg at or above the knee" means disarticulation at or proximal to the knee joint (separation of the femur from the tibia).

"Amputation of the leg at or above the ankle" means disarticulation at or proximal to the ankle joint (separation of the tibia from the talus).

"Amputation of a great toe" means disarticulation at the metatarsal phalangeal joint.

"Amputation of the second or distal phalanx of the great toe" means disarticulation at or proximal to the interphalangeal joint.

"Amputation of any other toe" means disarticulation at the metatarsal phalangeal joint.

"Loss of an eye" means enucleation of the eye.

b. "Maximum medical improvement" means the injured employee's recovery has progressed to the point where substantial further improvement is unlikely, based on reasonable medical probability and clinical findings indicate the medical condition is stable.

~~b.~~ c. "Medical dispute" means an employee has reached maximum medical improvement in connection with a work injury and has been evaluated for permanent impairment, and there is a disagreement between doctors arising from the evaluation that affects the amount of the award. It does not include disputes regarding proper interpretation or application of the American medical association guides to the evaluation of permanent impairment, fifth edition.

~~c.~~ d. "Potentially eligible for an impairment award" means the medical evidence in the claim file indicates an injured employee has reached maximum medical improvement and has a permanent impairment caused by the work injury that will likely be in excess of fifteen percent whole body.

2. Permanent impairment evaluations must be performed in accordance with the American medical association guides to the evaluation of permanent impairment, fifth edition, and modified by this section. All permanent impairment reports must include the opinion of the doctor on the cause of the impairment and must contain an apportionment if the impairment is caused by both work-related and non-work-related injuries or conditions.

3. The organization shall establish a list of medical specialists within the state who have the training and experience necessary to conduct an evaluation of permanent impairment. The organization may include in the list medical specialists from other states if there is an insufficient number of specialists in a particular specialty within the state who agree to be listed. When an employee requests an evaluation of impairment, the organization shall schedule an evaluation with a physician from the list. The organization and employee may agree to an evaluation by a physician not on the current list. In the event of a medical dispute, the organization shall furnish the list of appropriate specialists to the employee. The organization and the employee, if they cannot agree on an independent medical specialist, shall choose a specialist by striking names of medical specialists from the appropriate specialty until a name is chosen.

4. Upon receiving a permanent impairment rating report from the doctor, the organization shall audit the report and shall issue a decision awarding or denying permanent impairment benefits.

5. A permanent impairment award may not include a rating due solely to pain, including chronic pain; chronic pain syndrome; pain that is rated under section 13.8, table 13-22, or chapter 18 of the American medical association guides to the evaluation of permanent impairment, fifth edition; or pain beyond the pain associated with injuries and illnesses of specific organ systems rated under other chapters of the fifth edition.

6. Permanent mental and behavioral disorder impairment ratings.

    a. Any physician determining permanent mental or behavioral disorder impairment shall:

        (1) Include in the rating only those mental or behavioral disorder impairments not likely to improve despite medical treatment;

        (2) Use the instructions contained in the American medical association guides to the evaluation of permanent impairment, fifth edition, giving specific attention to:

            (a) Chapter 13, "central and peripheral nervous system"; and

(b) Chapter 14, "mental and behavioral disorders"; and

(3) Complete a full psychiatric assessment following the principles of the American medical association guides to the evaluation of permanent impairment, fifth edition, including:

(a) A nationally accepted and validated psychiatric diagnosis made according to established standards of the American psychiatric association as contemplated by the American medical association guides to the evaluation of permanent impairment, fifth edition; and

(b) A complete history of the impairment, associated stressors, treatment, attempts at rehabilitation, and premorbid history and a determination of causality and apportionment.

b. If the permanent impairment is due to organic deficits of the brain and results in disturbances of complex integrated cerebral function, emotional disturbance, or consciousness disturbance, then chapter 13, "central and peripheral nervous system", must be consulted and may be used, when appropriate, with chapter 14, "mental and behavioral disorders". The same permanent impairment may not be rated in both sections. The purpose is to rate the overall functioning, not each specific diagnosis. The impairment must be rated in accordance with the "permanent mental impairment rating work sheet" incorporated as appendix A to this chapter.

c. The permanent impairment report must include a written summary of the mental evaluation and the "report work sheet" incorporated as appendix A to this chapter.

d. If other work-related permanent impairment exists, a combined whole-body permanent impairment rating may be determined.

**History:** Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; May 1, 1998; May 1, 2000; May 1, 2002; July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-05-12.2

**92-01-02-29.1. Medical necessity.**

1. A medical service or supply necessary to diagnose or treat a compensable injury, which is appropriate to the location of service, is medically necessary if it is widely accepted by the practicing peer group and has been determined to be safe and effective based on published, peer-reviewed, scientific studies.

2. Services that present a hazard in excess of the expected medical benefits are not medically necessary. Services that are controversial, obsolete, experimental, or investigative are not reimbursable unless specifically preapproved or authorized by the organization. Requests for authorization must contain a description of the treatment and the expected benefits and results of the treatment.

3. The organization will not authorize or pay for the following treatment:

   a. Massage therapy or acupuncture unless specifically preapproved or otherwise authorized by the organization.

   b. Chemonucleolysis; acupressure; reflexology; rolfing; injections of colchicine except to treat an attack of gout precipitated by a compensable injury; injections of chymopapain; injections of fibrosing or sclerosing agents except where varicose veins are secondary to a compensable injury; synvisc injections; viscosupplementation injections; and injections of substances other than cortisone, anesthetic, or contrast into the subarachnoid space (intrathecal injections).

   c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking) unless specifically preapproved or otherwise authorized by the organization. Over-the-counter medications may be allowed in lieu of prescription medications when approved by the organization and prescribed by the attending doctor. Dietary supplements, including minerals, vitamins, and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.

   d. Articles such as beds, hot tubs, chairs, Jacuzzis, vibrators, heating pads, home furnishings, waterbeds, exercise equipment, cold

packs, and gravity traction devices are not compensable except at the discretion of the organization under exceptional circumstances.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-34. Treatment requiring authorization, preservice review, and retrospective review.**

1. Certain treatment procedures require prior authorization or preservice review by the organization or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; their relationship to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, and expected prognosis.

2. Requesting prior authorization or preservice review is the responsibility of the medical service provider who provides or prescribes a service for which prior authorization or preservice review is required.

3. Medical service providers shall request prior authorization directly from the claims analyst for the items listed in this subsection. The claims analyst shall respond to requests within fourteen days.

   a. Durable medical equipment.

      (1) The organization will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The claims analyst shall grant or deny authorization for reimbursement of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the claims analyst. If the equipment is needed on a long-term basis, the organization may purchase the equipment. The claims analyst shall base its decision to purchase the equipment on a comparison of the projected rental costs of the equipment to its purchase price. The organization shall purchase the equipment from the most cost-efficient source.

      (2) The claims analyst will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the attending doctor. If those items are furnished by the attending

doctor or another provider, the organization will reimburse the doctor or the provider pursuant to its fee schedule. Providers and doctors shall supply the organization with a copy of their original invoice showing actual cost of the item upon request of the organization. The organization will repair or replace originally provided damaged, broken, or worn-out prosthetics, orthotics, or special equipment devices upon documentation from the attending doctor that replacement or repair is needed. Prior authorization for replacements is required.

(3) If submitted charges for supplies and implants exceed the usual and customary rates, charges will be reimbursed at the provider's purchase invoice plus twenty percent.

(4) Equipment costing less than five hundred dollars does not require prior authorization. This includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics, but specifically excludes ten units.

b. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and work hardening programs; chronic pain management programs; and other programs designed to treat special problems.

c. Concurrent care. In some cases, treatment by more than one medical service provider may be allowed. The claims analyst will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the claims analyst with the name, address, discipline, and specialty of all other medical service providers assisting in the treatment of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the organization will recognize one primary attending doctor, who is responsible for prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved medical service providers; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The claims analyst will approve concurrent care on a case-by-case basis. Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.

d. Telemedicine. The organization may pay for audio and video telecommunications instead of a face-to-face "hands on"

appointment for the following appointments: office or other outpatient visits that fall within CPT codes 99241 through 99275, inclusive; new and established evaluation and management visits that fall within CPT codes 99201 through 99215, inclusive; individual psychotherapy visits that fall within CPT codes 90804 through 90809, inclusive; and pharmacologic management visits that fall within CPT code 90862. As a condition of payment, the patient must be present and participating in the telemedicine appointment. The professional fee payable is equal to the fee schedule amount for the service provided. The organization may pay the originating site a facility fee, not to exceed twenty dollars.

4. Notwithstanding the requirements of subsection 5, the organization may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.

5. Medical service providers shall request preservice review from the utilization review department for:

   a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery and outpatient surgical procedures. For an inpatient stay that exceeds fourteen days, the provider shall request, on or before the fifteenth day, additional review of medical necessity for a continued stay.

   b. All nonemergent major surgery. When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the utilization review department actual notice at least twenty-four hours prior to the proposed surgery. Notice must give the medical information that substantiates the need for surgery, an estimate of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed. When elective surgery is recommended, the utilization review department may require an independent consultation with a doctor of the organization's choice. The organization shall notify the doctor who requested approval of the elective surgery, whether or not a consultation is desired. When requested, the consultation must be completed within thirty days after notice to the attending doctor. Within seven days of the consultation, the organization shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the organization may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the organization believes the proposed surgery is excessive, inappropriate, or ineffective and the organization cannot resolve the dispute with the attending doctor, the requesting doctor may

request binding dispute resolution in accordance with section 92-01-02-46.

c. All imaging procedures, including CAT scan, magnetic resonance imaging, myelogram, discogram, bonescans, and arthrograms. Tomograms are subject to preservice review if requested in conjunction with one of the above imaging procedures. The organization may waive preservice review requirements for these procedures when requested by a physician who is performing an independent medical examination or permanent partial impairment evaluation at the request of the organization.

d. Physical therapy and occupational therapy treatment beyond the first ten treatments or beyond thirty days after first prescribed, whichever occurs first. The organization may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.

e. Electrodiagnostic studies, which may only be performed by board-certified or board-eligible electromyographers. Nerve conduction study reports must include normal values in addition to the test values.

f. Thermography.

g. Vertebral axial decompression therapy (Vax-D treatment).

h. Intradiscal electrothermal annuloplasty (IDET).

i. Trigger point injections if more than three injections are required in a two-month period. No more than twenty injections may be paid over the life of a claim. If a trigger point injection is administered, the organization may not pay for additional modalities such as cryotherapy and osteopathic manipulations performed in conjunction with the trigger point injection. For purposes of this paragraph, injections billed under CPT code 20552 or 20553 will count as a single injection. Only injections administered on or after May 1, 2002, will be applied toward the maximum number of injections allowed under this subdivision.

j. Facet joint injections.

k. Sacroiliac joint injections.

l. Facet nerve blocks.

m. Epidural steroid injections.

n. Nerve root blocks.

o. Peripheral nerve blocks.

p. Botox injections.

q. Stellate ganglion blocks.

r. Cryoablation.

s. Radio frequency lesioning.

t. Facet rhizotomy.

u. Prolotherapy.

v. Implantation of stimulators and pumps.

6. Chiropractic providers shall request preservice review from the organization's chiropractic managed care vendor for chiropractic treatment beyond the first twelve treatments or beyond ninety days after the first treatment, whichever occurs first. The evaluation to determine a treatment plan is not subject to review. The organization may waive this subsection in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.

7. Concurrent review of emergency admissions is required within twenty-four hours, or the next business day, of emergency admission.

8. The organization may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting.

9. The utilization review department or managed care vendor must respond orally to the medical service provider within twenty-four hours, or the next business day, of receiving the necessary information to complete a review and make a recommendation on the service. Within that time, the managed care vendor must either recommend approval or denial of the request, request additional information, request the claimant obtain a second opinion, or request an examination by the claimant's doctor. A recommendation to deny medical services must specify the reason for the denial.

10. Retrospective review is limited to those situations when the provider can prove, through a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not in fact know, that the condition was, or likely would be, covered under

workers' compensation. All medical service providers are required to cooperate with the managed care vendor for retrospective review and are required to provide, without additional charge to the organization or the managed care vendor, the medical information requested in relation to the reviewed service.

11. The organization must notify provider associations of the review requirements of this section prior to the effective date of these rules.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; March 1, 2003; July 1, 2004.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-40. Palliative care.**

1. After the employee has become medically stationary, palliative care is compensable without prior approval from the organization only when it is necessary to monitor administration of prescription medication required to maintain the claimant in a medically stationary condition or to monitor the status of a prosthetic device.

2. If the organization or its managed care vendor believes palliative care provided under subsection 1 is excessive, inappropriate, ineffectual, or in violation of the rules regarding the performance of medical services, review must be performed according to section 92-01-02-46.

3. ~~When~~ After the ~~claimant's doctor believes that palliative care after the~~ claimant has reached medically stationary status and the claimant's doctor believes that palliative care is necessary, the doctor shall request authorization~~, in writing,~~ for palliative care~~. The written request must be in a form prescribed by the organization and must be submitted to the organization~~ through the managed care vendor prior to the commencement of the treatment. If the palliative care request is approved, services are payable from the date the approved treatment begins. The request must:

   a. Contain all objective findings, and specify if there are none.

   b. Identify the medical condition by ICD-9-CM diagnosis for which the palliative treatment is proposed.

   c. Provide a proposed treatment plan that includes the specific treatment modalities, the name of the provider who will perform the treatment, and the frequency and duration of the care to be given~~, not to exceed one hundred eighty days~~.

   d. Describe how the requested palliative care is related to the accepted compensable condition.

e. Describe how the proposed treatment will enable the claimant to continue employment or to perform the activities of daily living, and what the adverse effect would be to the claimant if the palliative care is not approved.

f. Any other information the organization or managed care vendor may request.

4. The ~~organization~~ managed care vendor shall approve palliative care only when:

a. Other methods of care, including patient self-care, structural rehabilitative exercises, and lifestyle modifications are being utilized and documented;

b. Palliative care reduces both the severity and frequency of exacerbations that are clinically related to the compensable injury; and

c. Repeated attempts have been made to lengthen the time between treatments and clinical results clearly document that a significant deterioration of the compensable condition has resulted.

5. If the attending doctor does not receive written notice from the organization within thirty days of the receipt of the request for palliative care, which approves or disapproves the care, the request will be considered approved.

6. When the request for palliative care is not approved, the organization shall provide, in writing, specific reasons for not approving the care.

7. When the organization approves or disapproves the requested palliative care, the attending doctor, employer, or claimant may request binding dispute resolution under section 92-01-02-46.

8. For the purposes of this section only, a claimant's condition must be determined to be medically stationary when the attending doctor or a preponderance of medical evidence indicates the claimant is "medically stationary" or uses other language meaning the same thing. When there is a conflict in the medical opinions, more weight must be given to medical opinions that are based on the most accurate history, on the most objective findings, on sound medical principles, and on clear and concise reasoning. When expert analysis is important, deference must be given to the opinion of the doctor with the greatest expertise in the diagnosed condition. The date a claimant is medically stationary is the earliest date that a preponderance is established under this section. The date of the examination, not the date of the report, controls the medically stationary date. When a specific date is not indicated but the medical opinion states the claimant is medically stationary, the claimant

is presumed medically stationary on the date of the last examination. This subsection does not govern determination of maximum medical improvement relating to a permanent impairment award.

**History:** Effective January 1, 1994; amended effective October 1, 1998; May 1, 2002; July 1, 2004.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-46. Medical services disputes.**

1. This rule provides the procedures followed for managed care disputes. Restrospective review is the procedure provided for disputing the denial of payment for a medical service charge based on failure to request prior authorization or preservice review. Binding dispute resolution is the procedure provided for disputing managed care recommendations, including palliative care recommendations and bill audit and review. Disputes not arising from managed care follow the reconsideration and hearing procedures provided by North Dakota Century Code ~~sections~~ section 65-01-16 ~~and 65-02-15~~.

2. When the organization denies payment for a medical service charge because the provider did not properly request prior authorization or preservice review for that service, the provider may request a retrospective review of that service. Requests for retrospective review must be made in writing, within thirty days after the notice that payment for the service is denied, addressed to the organization claims analyst assigned to handle the claimant's claim. Requests for retrospective review should not be sent to the managed care vendor. The request must contain:

   a. The claimant's name.

   b. The claim number.

   c. The date of service.

   d. A statement of why the provider did not know and should not have known that the injury or condition may be a compensable injury.

   e. The information required to perform a preservice review or prior authorization of the service.

   If the provider knew or should have known that the patient may have a compensable work injury when the medical services for that injury were provided, the request for retrospective review must be denied. If the provider did not know and should not have known that the patient may have a compensable work injury when the medical services for that injury were provided, a retrospective preservice review or

preauthorization must be done in accordance with this chapter. If the organization continues to deny payment for the service, the provider may request binding dispute resolution under this rule.

3. A party who wishes to dispute a utilization review recommendation first shall exhaust any internal dispute resolution procedures provided by the managed care vendor or the utilization review department. A party who wishes to dispute a final recommendation of a managed care vendor or a prior authorization or preservice review decision under section 92-01-02-34 shall file a written request for binding dispute resolution with the organization within thirty days after the final recommendation or decision. The request must contain:

   a. The claimant's name.

   b. The claim number.

   c. All relevant medical information and documentation.

   d. A statement of any actual or potential harm to the claimant from the recommendation.

   e. The specific relief sought.

4. A party who wishes to dispute a denial or reduction of a service charge arising from bill audit and review must file a written request for binding dispute resolution with the organization within thirty days after the date of the organization's remittance advice reducing or denying the charge. The request must contain:

   a. The claimant's name.

   b. The claim number.

   c. The specific code and the date of the service in dispute.

   d. A statement of the reasons the reduction or denial was incorrect, with any supporting documentation.

   e. The specific relief sought.

5. The organization shall review the request for binding dispute resolution and the relevant information in the record. The organization may request additional information or documentation. If a party does not provide the requested information within fourteen days, the organization may decide the dispute on the information in the record.

6. The organization may request review by medical service providers, at least one of whom must be licensed or certified in the same profession as the medical service provider whose treatment is being reviewed, or by an external expert in medical coding or other aspects of medical treatment or billing, to assist with its review of the request. The organization may request an independent medical examination to assist with its review of a request.

7. At the conclusion of its review, the organization shall issue its binding decision. The organization shall issue its decision by letter or notice, or for a decision that is reviewable by law, the organization may issue its decision in an administrative order instead of a letter or notice.

**History:** Effective January 1, 1994; amended effective April 1, 1997; October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004.
**General Authority:** NDCC 65-02-08, 65-02-20
**Law Implemented:** NDCC 65-02-20

**92-01-02-50. Other states' coverage.**

1. The terms used in this section have the same meaning as in North Dakota Century Code title 65 and in North Dakota Administrative Code title 92, except:

   a. "Covered employment" means hazardous employment principally localized in this state which involves incidental operations in another state. The term "covered employment" does not include employment in which the employer is required by the laws of that other state to purchase workers' compensation coverage in that other state.

   b. "Employee" means any North Dakota employee as that term is defined in North Dakota Century Code section 65-01-02 who engages in covered employment and who is eligible to file for workers' compensation benefits in another state if the employee suffers a work-related illness or injury or dies as a result of work activities in that state. The term "employee" also includes a person with optional workers' compensation coverage in this state under North Dakota Century Code section 65-04-29 or 65-07-01 who engages in covered employment and is eligible to file for workers' compensation benefits in another state if that person suffers a work-related illness or injury or dies as a result of work activities in that state.

   c. "Employer" means an employer as defined in North Dakota Century Code section 65-01-02, who is not materially delinquent in payment of premium, and who has employees engaged in covered employment. An employer is not materially delinquent in payment of premium if the premium is no more than thirty days delinquent.

d. "Incidental operations" in a state other than a qualified state means business operations of an employer for fewer than thirty consecutive days in ~~a state where~~ which the employer has no ~~other significant~~ contacts sufficient, under the workers' compensation laws of that other state to subject the employer to liability for payment of workers' compensation premium in that other state and which operations do not require the employer to purchase workers' compensation insurance under the laws of that state. ~~"Significant contacts" means contacts defined as significant by the workers' compensation laws of that other state which are sufficient to subject the employer to liability for payment of workers' compensation premium in that other state.~~

e. "Incidental operations" in a qualified state means operations of an employer for fewer than thirty days in a state in which the employer has no other significant contacts. "Significant contacts" in a qualified state means operations of an employer in that state for thirty or more consecutive days.

f. "Qualified state" means a state in which an insurance company, formed pursuant to North Dakota Century Code chapter 65-08.1, is qualified to sell, and does sell, workers' compensation insurance.

2. If an employee, hired in this state for covered employment by an employer covered by the Workers' Compensation Act of this state, receives an injury while employed in incidental operations outside this state, the injury is subject to the provisions of this section if the employee elects to receive benefits under the workers' compensation laws of that other state in lieu of a claim for benefits in this state. This section applies only if the workers' compensation laws of the other state allow the employee to elect to receive benefits under the laws of that state. If the employee does not or cannot elect coverage under the laws of another state, the injury is subject to the provisions of North Dakota Century Code chapter 65-08.

The provisions of this section do not apply to:

a. States having a monopolistic state fund.

b. States having a reciprocal agreement with this state regarding extraterritorial coverage.

c. Compensation received under any federal act.

d. Foreign countries.

e. Maritime employment.

f. Employer's liability or "stop-gap" coverage.

3. An employee who elects to receive benefits under the workers' compensation laws of another state waives the right to seek compensation under North Dakota Century Code title 65.

4. The organization will pay on behalf of an employer any regular workers' compensation benefits the employer is obligated to pay under the workers' compensation laws of a state other than North Dakota, with respect to personal injury, illness, or death sustained as a result of work activities by an employee engaged in covered employment in that state, if the employee or the employee's dependents elect to receive benefits under the other state's laws in lieu of benefits available under the North Dakota Workers' Compensation Act. The term "dependents" includes an employee's spouse. The organization will pay benefits on behalf of an employer but may not act nor be deemed as an insurer, nor may the organization indemnify an employer for any liabilities, except as specifically provided in this section.

   The benefits provided by this section are those mandated by the workers' compensation laws of the elected state. This includes benefits for injuries that are deemed compensable in that other state but are not compensable under North Dakota Century Code chapters 65-05 and 65-08. Medical benefits provided pursuant to this section are subject to any fee schedule and other limitations imposed by the workers' compensation law of the elected state. The North Dakota fee schedule does not apply to this section.

   The organization may reimburse an employer covered by this section for legal costs and for reasonable attorney's fees incurred, at a rate of no more than eighty-five dollars per hour, if the employer is sued in tort in another state by an injured employee or an injured employee's dependents relative to a work-related illness, injury, or death; or if the employer is alleged to have failed to make payment of workers' compensation premium in that other state by the workers' compensation authorities of that state. This reimbursement may be made only if it is determined by the organization or by a court of competent jurisdiction that the employer is subject to the provisions of this section and was not required to purchase workers' coverage in that other state relative to the employment of the injured employee.

   The organization may not reimburse any legal costs, attorney's fees, nor any other costs to a coemployee sued in tort by an injured employee.

5. The organization may contract with a qualified third-party administrator to adjust and administer claims arising under this chapter. The organization shall pay the costs of the third-party administrator from the general fund.

6. Benefits paid on behalf of an employer pursuant to this section will be charged against the employer's account for experience rating

purposes. The experience rating loss will be equal to the actual claim costs. The assessment charge plus appropriate penalties and interest, if any, levied pursuant to North Dakota Century Code section 65-05-07.2, will be assessed on all claims brought under this section.

7. The employer shall notify the organization when a claim is filed in another state by an employee covered by this section. The employer shall notify the organization of the claim in writing. The employer has thirty days after actual knowledge of the filing of a claim in which to notify the organization. That time can be extended for thirty days by the organization if the employer shows good cause for failing to timely notify the organization. If the employer fails to timely notify the organization when a claim is filed in another state by an employee covered under this section, the organization may not pay benefits under this section.

   The organization may not pay costs, charges, or penalties charged against an employer for late reporting of an injury or claim to the workers' compensation authorities of the state of injury.

8. The exclusive remedy provisions of North Dakota Century Code sections 65-01-01, 65-01-08, 65-04-28, and 65-05-06 apply to this section.

**History:** Effective January 1, 1994; amended effective April 1, 1997; July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-08.1-02, 65-08.1-05

**92-01-02-54. Deductible programs.** The organization and an employer may contract for a deductible program. When a deductible program contract is entered, the employer shall reimburse the organization for benefits payable on individual claims up to the agreed deductible amount. The organization shall provide a reduced premium to participating employers based on an actuarial analysis of the contracted deductible and the rate classification of the employer. For purposes of calculating premiums, the experience rate utilized will exclude actual and expected primary losses.

For an additional premium, the organization may provide aggregate excess coverage limiting the maximum liability for losses of the employer during a policy period. Premiums will be derived from actuarial analysis and a selected aggregate limit. The aggregate limit will be agreed upon by the employer and the organization.

1. **Eligibility.** Eligibility for participation in a deductible program is based on the financial stability and resources of the employer. Participating employers must be in good standing with the organization and maintain a risk management program approved by the organization. However, participating employers are not eligible for any other premium discount offered by the organization, including the discounts associated with an approved risk management program. Any deductible contract must

require the employer to report any work injury to the organization ~~within twenty-four hours of its occurrence~~ immediately. Absent good cause, failure to comply with this reporting requirement may result in nonrenewal of the deductible program.

The organization may require participating employers to undergo a financial audit to ensure financial stability. The audit may include a credit check and review of company financial reports.

The organization shall analyze each proposed contract based on risk analysis and sound business practices. The organization may refuse any deductible program if it determines that the proposed contract does not represent a sound business practice or decision. Past participation in a deductible program does not guarantee continued eligibility. The organization may decline renewal of any deductible program.

2. **Claim payment.** The organization shall process and pay claims in accordance with North Dakota Century Code title 65. The employer shall reimburse the organization for all costs paid by the organization on individual claims up to the amount of the contractually agreed deductible.

   If a third-party recovery on a claim is made, the recovery will be allocated according to the terms of the contractual agreement between the organization and the employer, subject to North Dakota Century Code section 65-04-19.3.

   The organization shall deduct any delinquent deductible reimbursements from any subrogation amounts recovered on any claim.

3. **Premium payment.** Premium is due at policy inception pursuant to the terms of the contractual agreement between the organization and the employer.

4. **Financial security.** The organization may require an employer to provide ~~security in a form and amount acceptable to the organization~~ a bond, letter of credit, or other security approved by the organization to guarantee payment of future employer obligations incurred by a deductible contract.

**History:** Effective May 1, 2000; amended effective May 1, 2002; July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-04-19.3

**92-01-02-55. Dividend programs.** The organization may offer dividends to qualifying employers. Eligibility and distribution:

1. Dividends are not guaranteed. Dividends may only be declared by the workforce safety and insurance board of directors.

2. To be eligible, employers shall have an account in effect for the entire year for which a dividend is declared. All employers shall report work injuries to the organization ~~within forty-eight hours of their occurrence~~ immediately. Absent good cause, failure to comply with this reporting requirement may disqualify an employer from the dividend program. Premiums paid and losses incurred during a dividend review period defined by the organization, and employer participation in loss control and other programs identified by the organization, will be used to determine the amount of the dividend. Minimum premium accounts are not eligible for dividend payments.

3. The organization shall offset past-due balances on any account by the dividend earned on that account.

**History:** Effective May 1, 2000; amended effective July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-04-19.3

**92-01-02-56. Retrospective rating program.** The organization and an employer may elect to contract for a retrospective rating program. Under a retrospective rating program, the employer's retrospective rating premium is calculated using factors including claims costs and actual standard premium and basic premium factors. The organization shall calculate basic premium factors for each level of premium and maximum employer liability.

Retrospective rating contracts may provide for the calculation of employer or organization interest credits and debits pertaining to claims payments, deposits, or premium balances.

1. **Eligibility**. Eligibility for participation in a retrospective rating program is based on the financial stability and resources of the employer. Participating employers must be in good standing with the organization and shall maintain a risk management program approved by the organization. ~~However, participating~~ Participating employers are not eligible for any other premium discount offered by the organization, including the discounts associated with an approved risk management program. Any retrospective rating contract must require the employer to immediately report any work injury to the organization ~~within twenty-four hours of its occurrence~~. Absent good cause, failure to comply with this reporting requirement may disqualify an employer from the retrospective rating program.

   The organization may require participating employers to have a financial audit performed to ensure financial stability. The audit may include a credit check and review of company financial reports.

The organization shall analyze each proposed contract based on risk analysis and sound business practices. The organization may refuse a retrospective rating program if it is determined that the proposed contract does not represent a sound business practice or decision. Past participation in a retrospective rating program does not guarantee continued eligibility. The organization may decline renewal of any retrospective rating program.

2. **Retrospective rating program.** A participating employer chooses one maximum liability limit per account. The retrospective rating program applies to the account's entire premium period. The retrospective rating program option is based on aggregate claims costs for all claims for injury or death occurring in the contract year.

3. **Claim payment.** The organization shall process and pay claims in accordance with North Dakota Century Code title 65. If a third-party recovery on a claim is made, the organization's subrogation interest must first be applied to the amounts paid on the claim by the organization. If the subrogation recovery reduces the retrospective premium, the organization shall provide a refund to the employer.

4. **Premium payment.** Premium is due at policy inception.

5. **Financial security.** The organization may require an employer to provide ~~security in a form and amount acceptable to the organization~~ a bond, letter of credit, or other security approved by the organization to guarantee payment of future employer obligations incurred by a retrospective rating contract. The amount of the security may not exceed the initial nonpaid portion of the maximum possible retrospective premium.

**History:** Effective May 1, 2000; amended effective May 1, 2002; July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-04-17.1

APPENDIX A

## WORKFORCE SAFETY AND INSURANCE

## PERMANENT MENTAL IMPAIRMENT RATING REPORT

## WORK SHEET

Since the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, does not provide a quantified method for assigning permanent impairment percentages under Chapter 14, "Mental and Behavioral Disorders", the evaluating physician shall utilize this form. When using this form, the evaluating physician shall:

a. Become familiar with the content of the work sheet and develop an understanding of the percentages and categories listed in "I. Level of Permanent Mental Impairment" and Table 14-1 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition;

b. Enter the permanent mental category rating associated with each item in all sections of "II. Areas of Function" as it applies to the injured worker; and

c. Enter a rating for the "Overall Permanent Impairment Rating" provided within this appendix. The "Overall Permanent Impairment Rating" must be based upon the categories provided in Table 14-1.

d. All permanent impairment reports must include the cause of the impairment and must contain an apportionment if the impairment is caused by both work and non-work injuries or conditions.

**The various degrees of permanent impairment from "II. Areas of Function" on within this appendix are not added, combined, or averaged. The overall mental rating should be based upon clinical judgment and Table 14-1, and be consistent with other chapters of the AMA guides.**

--PLEASE PHOTOCOPY AS NEEDED--

PERMANENT MENTAL IMPAIRMENT RATING

REPORT WORK SHEET

Patient Name _____ DOB _____

WC# _____ SSN _____

I. LEVELS OF PERMANENT MENTAL IMPAIRMENT - as identified in Table 14-1 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition:

| Percent | Category |
|---|---|
| 0% | Class 1. No Impairment |
| 1-15% | Class 2. Mild Permanent Impairment |
| 16-25% | Class 3. Moderate Permanent Impairment |
| 26-50% | Class 4. Marked Permanent Impairment |
| 51-100% | Class 5. Extreme Permanent Impairment |

II. AREAS OF FUNCTION

**1. Activities of Daily Living**

_____ Self-care personal hygiene (urinating, defecating, brushing teeth, combing hair, dressing oneself, bathing, eating, preparing meals, and feeding oneself)

_____ Communication (writing, typing, seeing, hearing, speaking)

_____ Physical activity (standing, sitting, reclining, walking, climbing stairs)

_____ Travel (driving, riding, flying)

_____ Nonspecialized hand activities (grasping, lifting, tactile discrimination)

_____ Sexual function (orgasm, ejaculation, lubrication, erection)

_____ Sleep (restful, nocturnal sleep pattern)

**2. Social Functioning**

_____ Get along with others

_____ Initiate social contacts

_____ Communicate clearly with others

_____ Interact and actively participate in group activities

_____ Cooperative behavior, consideration for others, and awareness of others' sensitivities

_____ Interacts appropriately with the general public

_____ Asks simple questions or requests assistance

_____ Accepts instructions and responds appropriately to criticism from supervisors

_____ Gets along with coworkers and peers without distracting them or exhibiting behavioral extremes

_____ Maintains socially appropriate behavior

_____ Adheres to basic standards of neatness and cleanliness

**3. Memory, Concentration, Persistence, and Pace**

_____ Comprehend/follow simple commands

_____ Works with or near others without being distracted

_____ Sustains an ordinary routine without special supervision

_____ Ability to carry out detailed instructions

_____ Maintain attention and concentration for specific tasks

_____ Makes simple work-related decisions

_____ Performs activities within a given schedule

_____ Maintains regular attendance and is punctual within customary tolerances

_____ Completes a normal workday and workweek without interruptions from psychologically based symptoms

_____ Maintains regular attendance and is punctual within customary tolerances

**4. Deterioration or Decompensation in Complex or Worklife Settings (Adaptation to Stressful Circumstances)**

_____ Withdraws from the situation or experiences exacerbation of signs and symptoms of a mental disorder

_____ Decompensates and has difficulty maintaining performance of activities of daily living (ADLs), continuing social relationships, or completing tasks

_____ Able to make good autonomous decisions/exercises good judgment

_____ Perform activities on schedule

_____ Interacts appropriately with supervisors and peers

_____ Responds appropriately to changes in work setting

_____ Aware of normal hazards and takes appropriate precautions

_____ Able to use public transportation and can travel to and within unfamiliar places

_____ Sets realistic goals

_____ Makes plans independent of others

**OVERALL PERMANENT IMPAIRMENT RATING** _____

**IMPAIRMENT CAUSED BY WORK** _____

**Physician** _____ **Date** _____

(signature)

**PERMANENT WORK-RELATED MENTAL IMPAIRMENT RATING REPORT WORK SHEET**

## CHAPTER 92-01-03

**92-01-03-02. Definitions.** In this chapter:

1. "Act" means the North Dakota Workers Compensation Act.

2. "Advocate" means a person employed by the program to assist a claimant in a disputed claim.

3. "Attempt to resolve" means a prompt, active, honest, good-faith effort by the claimant to settle disputes with the organization, through the program.

4. "Benefits" means an obligation of the organization to provide a claimant with assistance as required by the Act.

5. "Certificate of completion" means the form sent to the claimant when the program closes its file, which acknowledges the claimant made a good-faith effort to resolve the dispute.

6. "Claimant" means an employee who has filed a claim for benefits with the organization.

7. "Constructive denial" occurs when sixty days have passed since all elements of filing under subsection 2 of section 92-01-02-48 have been satisfied, but the organization has not made the decision to accept or deny the claim.

8. "Disputed claim" means a challenge to an order issued by the organization.

9. "Interested party" means:

   a. The claimant.

   b. The claims analyst assigned to that claimant's claim.

   c. A claims supervisor.

   d. The claimant's employer or immediate supervisor.

   e. The claimant's treating doctor.

   f. A member of the organization's legal department.

   g. Any other person the advocate determines appropriate.

10. ~~"Notice of noncompliance" means the form sent when the program closes its file and the claimant has not made a good-faith effort to resolve the dispute.~~

~~11.~~ "Order" means an administrative order issued pursuant to North Dakota Century Code chapter 28-32 or section 65-01-16.

~~12.~~ 11. "Organization" means workforce safety and insurance, or the director, or any department heads, assistants, or employees of the organization designated by the director to act within the course and scope of their employment in administering the policies, powers, and duties of the Act.

~~13.~~ 12. "Program" means the office of independent review.

~~14.~~ 13. "Vocational consultant's report" means the report issued by the rehabilitation consultant outlining the most appropriate rehabilitation option identified for the claimant.

**History:** Effective April 1, 1996; amended effective May 1, 2000; July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-02-27

**92-01-03-04. Procedure for dispute resolution.**

1. A claimant may contact the program for assistance at any time. The claimant shall contact the program to request assistance with a dispute arising from an order within thirty days of the date of service of the order. The claimant may also contact the program for assistance when a claim has been constructively denied or when a vocational consultant's report is issued. A claimant must make an initial request in writing for assistance with an order, a constructively denied claim, or a vocational consultant's report.

2. In an attempt to resolve the dispute, the advocate may contact any interested parties. After oral or written contact has been made with the appropriate interested parties, the advocate will attempt to accomplish a mutually agreeable resolution of the dispute between the organization and the claimant. The advocate may facilitate the discussion of the dispute but may not modify a decision issued by the organization.

3. If a claimant has attempted to resolve the dispute and an agreement cannot be reached, the advocate shall issue a certificate of completion. The advocate will send the certificate of completion to the claimant and will inform the claimant of the right to pursue the dispute through hearing. To pursue a formal rehearing of the claim, the claimant shall file a request for rehearing with the organization's legal department within thirty days after the certificate of completion is mailed.

4. If a claimant has not attempted to resolve the dispute, the program shall ~~issue a notice of noncompliance~~ notify the claimant by letter, sent by regular mail, of the claimant's nonparticipation in the program and that no attorney's fees shall be paid by workforce safety and insurance should the claimant prevail in subsequent litigation. The advocate shall ~~send the notice of noncompliance to the claimant and shall~~ inform the claimant of the right to pursue the dispute through hearing. To pursue a formal rehearing of the claim, the claimant shall file a request for rehearing with the organization's legal department within thirty days after the ~~notice~~ letter of noncompliance is mailed.

5. If an agreement is reached, a written copy of that agreement will be sent to the organization's legal department for the drafting of an order or other legal document based upon the agreement.

6. The program will complete action within thirty days from the date that the program receives a claimant's request for assistance. This timeframe can be extended if the advocate is in the process of obtaining additional information.

**History:** Effective April 1, 1996; amended effective May 1, 1998; May 1, 2000; July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-02-27

## CHAPTER 92-02-01

**92-02-01-01. References to other standards.** Title 29 of the Code of Federal Regulations, part 1910, occupational safety and health standards for general industry, with amendments as of ~~February 3, 1997~~ July 1, 2003, and, part 1926, occupational safety and health standards for the construction industry, with amendments as of ~~February 3, 1997~~ July 1, 2003, both promulgated by the occupational safety and health administration of the United States department of labor are the standards of safety and conduct for the employers and employees of the state of North Dakota.

**History:** Amended effective August 1, 1987; June 1, 2000; July 1, 2004.
**General Authority:** NDCC 65-03-01
**Law Implemented:** NDCC 65-03-01

## CHAPTER 92-05-01

**92-05-01-07. Organization program approval committee.** Repealed effective July 1, 2004. ~~A committee shall meet to approve the program submitted. The committee must include an organization policyholder services representative, an organization claims department representative, and the organization's loss prevention director.~~

**History:** ~~Effective January 1, 1994; amended effective April 1, 1997.~~
**General Authority:** ~~NDCC 65-02-08~~
**Law Implemented:** ~~NDCC 65-04-19.1~~

**92-05-01-22. Designated medical provider and early reporting discount.** An employer who is receiving the five percent premium discount under this article may receive an additional two percent discount for selecting a designated medical provider pursuant to North Dakota Century Code section 65-05-28.1 and for immediately reporting all claims to workforce safety and insurance. Absent good cause, failure to comply with this reporting requirement may result in nonrenewal of the program. The employer must provide written documentation that all employees have been notified of the designated medical provider selection and also the employee's option to add additional providers to the employer's selection. The employer must provide written documentation that the employer has notified the designated medical provider that it has been selected for this program.

**History:** Effective July 1, 2004.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-05-28.1

# TITLE 99

# STATE GAMING COMMISSION

**JULY 2004**

## CHAPTER 99-01.3-01

**99-01.3-01-01. Ineligible organizations.** An organization or a closely related organization is ineligible for a license or permit if either organization has failed to resolve an imbalance involving its gaming or trust account according to section 99-01.3-03-05, ~~either organization~~ has deals or games with state gaming stamps that are not accounted for, ~~it~~ is delinquent in paying any tax, interest, penalty, or monetary fine due, has failed to comply with the terms and conditions of an administrative order, or ~~either organization~~ was convicted of violating this article or North Dakota Century Code chapter 12.1-28 or 53-06.1. An auxiliary that is not a closely related organization is eligible for a permit. An organization that is first licensed or first issued a permit on or after July 1, 2002, must have its principal executive office in North Dakota. Except for an educational organization, a county, city, state, political subdivision, or federal entity is not eligible for a license or permit. A nonprofit social, hobby, trade, business, professional, similar club or association, or organization whose primary purpose mainly provides a direct benefit to its officers, is not a public-spirited organization eligible for a license.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01, 53-06.1-01.1

**99-01.3-01-03. License.**

1. An organization may not conduct games at a site unless the attorney general first approves a site authorization and license for that city or county. A separate license is required for each city or county. If the attorney general determines that an organization's actual primary purpose does not qualify it as an eligible organization, the attorney general shall deny the application or revoke the license.

2. An application must include information prescribed by the attorney general and is subject to approval by the attorney general. A license is effective for one year beginning July first and ending June thirtieth. If an organization plans to conduct a raffle on or after July first, a license

cannot be issued before January first. If an organization received a charity local permit during the fiscal year, it may not receive a state license.

3. When an organization first applies for a license to conduct a game, the license may not be issued to the organization until after its gaming manager satisfactorily demonstrates to the attorney general that the organization is capable of properly managing and controlling the game that it intends to conduct.

4. If an organization only conducts a raffle or calcutta in two or more cities or counties, the organization may apply for a consolidated license prescribed by the attorney general and remit a one hundred fifty dollar license fee for each city or county in which a site is located.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-03

**99-01.3-01-05. Permits.**

1. A permit is issued by a city or county governing body and may be for a site located on public or private property. It may be restricted, including types of games, days of the week, and designation of an area at a site where games will be conducted. A governing body may revoke or suspend a permit based on good cause.

2. A permit is required for each site at which games have been authorized. An organization may be issued two or more local permits at the same time. The primary prize under a permit may not exceed two thousand five hundred dollars and total prizes of all games may not exceed twelve thousand dollars per year. However, the total cash prizes for raffles~~, bingo, and sports pools~~ may not exceed three thousand dollars per day ~~or six thousand dollars per year. No~~ and no single cash ~~or merchandise~~ prize can exceed one thousand dollars. A donated merchandise prize is valued at its retail price when it is acquired.

3. When a governing body issues a permit, it shall assign a permit number, specify the day or period for which it is effective, and send a copy of it to the attorney general within fourteen days from when it was issued. An organization that has a license may not at the same time have a permit.

4. An organization may receive one or more local permits to conduct a raffle, bingo, or sports pool from a city or county governing body during a ~~fiscal~~ year ~~July first to June thirtieth. However, for~~. For a calendar ~~year~~ raffle, a local permit may be issued for a calendar year ~~January first to December thirty-first~~. If an organization plans to conduct a raffle ~~on or after July first, a local permit cannot be issued before January first~~,

a permit may not be issued more than six months prior to the first raffle drawing date.

5. An organization may receive one charity local permit to conduct a raffle, bingo, sports pool, paddlewheels, twenty-one, or poker from a city or county governing board during a ~~fiscal~~ year ~~July first to June thirtieth~~. If the organization has received a local permit or license during the fiscal year, it may not receive a charity local permit. If the organization received a charity local permit during the fiscal year, it may not receive a local permit. The organization shall file a report on the event of a charity local permit with the attorney general and governing body within thirty days of the event.

6. For bingo, an organization shall comply with section 99-01.3-04-01, 99-01.3-04-02, and 99-01.3-04-03. For a raffle, an organization shall comply with sections 99-01.3-05-01 through 99-01.3-05-05. For a sports pool, an organization shall comply with section 99-01.3-07-01. For twenty-one, an organization shall comply with sections 99-01.3-08-02, 99-01.3-08-09, 99-01.3-08-10, and 99-01.3-08-11. For poker, an organization shall comply with section 99-01.3-09-01. For paddlewheels, an organization shall comply with section 99-01.3-11-01.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-03, 53-06.1-06

## CHAPTER 99-01.3-02

**99-01.3-02-01. Definitions.** As used in this article:

1. "Attorney general" includes an agent of the attorney general.

2. "Bar" means retail alcoholic beverage establishment.

3. "Bar employee" is a person, employed by a bar that is not operated by an organization, who redeems winning pull tabs or bingo cards, or both, involving a dispensing device or who sells raffle tickets or sports pool chances on a board for an organization.

4. "Cash on hand" means coin, currency, and checks, plus an IOU due from another source of cash or nongaming funds, less an IOU owed to another source of cash or nongaming funds.

5. "Cash prize" means coin, currency, marketable security, and a similar item that can be readily redeemed or converted into legal tender. Cash prize does not include precious metal bullion, a coin of precious metal or antique coin that has a market value greater than its face value, or a merchandise gift certificate. The value of a marketable security is its cost.

6. "Cash profit" means:

   a. For bingo, excluding a dispensing device, total ending cash on hand, less starting cash on hand and prizes paid by check, for a bingo session.

   b. For a raffle, total receipts less prizes paid by cash and check.

   c. For a commingled game of pull tabs, total ending cash on hand, less starting cash on hand and cash prizes paid by check, for a day's activity.

   d. For a commingled game of pull tabs and bingo involving a dispensing device, total currency withdrawn from a dispensing device, less the value of daubers sold, credits paid on a credit redemption register, cash long or short from an employee bank, and prizes paid, for an interim period.

   e. For a club special, tip board, seal board, and punchboard, the total daily difference between ending cash on hand and starting cash on hand and less prizes paid by check, for the game.

   f. For a prize board, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check and cost of coins, for the game.

g. For a sports pool, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check.

h. For twenty-one, and paddlewheels described by subsection 2 of section 99-01.3-11-01, total ending cash on hand, plus drop box cash, less total starting cash on hand, for a day's activity.

i. For poker, total ending cash on hand, less starting cash on hand, for a day's activity.

j. For calcuttas, total ending cash on hand, less starting cash on hand, prizes paid by check, and refunds to players, for the event.

k. For paddlewheels described by subsection 1 of section 99-01.3-11-01, total ending cash on hand, less starting cash on hand and prizes paid by check, for a paddlewheel ticket card.

7. "Conduct of games" means the direct operation of a game on a site, including placing pull tabs or bingo cards in or withdrawing currency from a dispensing device. This term excludes a bar employee who redeems a winning pull tab or bingo card, or both, involving a dispensing device or who sells a raffle ticket or a sports pool chance on a board.

8. "Deal" in pull tabs means each box or bag or series of boxes or bags containing one game with the same serial number. "Deal" in bingo means each box of bingo cards, regardless of the serial number.

9. "Employee" includes a person employed by an organization, an employee of a temporary employment agency who provides gaming-related services to an organization, and a volunteer of an organization.

10. "Flare" refers to a flare, master flare, or prize flare:

a. Flare. A flare is a display with the state gaming stamp affixed which describes a punchboard, sports-pool board, calcutta board, deal of pull tabs, club special, tip board, prize board, seal board, and deal of bingo cards involving a dispensing device. The flare for a punchboard is its face sheet. A flare for a sports-pool board, calcutta board, prize board, club special, tip board, and seal board is the game board.

b. Master flare. A master flare for a game of pull tabs is the same as a "flare" but it does not have a state gaming stamp affixed. A master flare for paddlewheels is described by subsection 1 of section 99-01.3-11-02.

c. Prize flare. A prize flare is a posted display which describes a winning bingo pattern and prize amount involving bingo cards used in a dispensing device.

11. "Gaming equipment" means a game piece or device specifically designed for use in conducting games, including integral components of a dispensing device such as a currency validator, processing board, ~~and~~ EPROM microchip or other data storage device, and attached bar code credit devices. The term excludes fill and credit slips, promotional paper bingo cards, and a bingo dauber.

12. "Inside information" is any information about the status of a game when that game is conducted that may give a person an advantage over another person who does not have that information, regardless if the person uses or does not use the information, when providing that information is prohibited by the gaming law or rules. It includes information provided through written, verbal, or nonverbal communications that implies or expresses the number of unsold chances; relationship of a game's cash on hand to its ideal adjusted gross proceeds; number of unredeemed top tier or minor winning game pieces that is not posted, value of a hole card in twenty-one, number under the tape of a sports-pool board, or number under a seal.

13. "Organization" in reference to a local permit includes a "group of people".

14. ~~"Permit" means a local permit or charity local permit.~~

~~15.~~ "Primary game" is the principal game conducted on a site. Determining factors include frequency of conduct, square footage used, duration of time conducted, and volume of activity.

15. "Retail price" means the purchase price paid by an organization, excluding sales tax.

16. "Volunteer" means a person who conducts games for no compensation. A volunteer may receive a gift not exceeding a total retail value of ~~fifteen~~ twenty dollars for a consecutive twenty-four-hour period, cash tips, and reimbursement for documented business expenses. No gift may be cash or convertible into cash. See definition of employee.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-02-02. Record check.**

1. Unless a person is not required to have a record check according to subsection 4, an organization or distributor may not employ the person as a temporary or permanent "employee" until the organization or distributor has initiated a record check on the person, or the person has independently requested a record check from the bureau of criminal investigation within one year before employment. However, an organization or distributor may temporarily employ a person pending a record check.

2. An organization or distributor shall initiate a record check of a person by submitting a "request for record check" form to the attorney general before or when the person begins temporary employment. If the attorney general determines that a fingerprint card or special authorization form, or both, are necessary, the attorney general shall provide this card or form, or both, to an organization or distributor which shall submit the card or form, or both, to the attorney general within ten days from when the card or form, or both, were received. An organization or distributor may only request a record check of a person who has a written promise of employment or who is temporarily employed pending the result of the record check. A person shall attest to the accuracy of the information on the form and authorize the attorney general to release information on any criminal record found, including a copy of the bureau of criminal investigation's criminal history record information, to an organization or distributor which requested the record check.

3. For the purpose of this section, the definition of an "employee" is:

   a. A person who directly operates games on a site;

   b. A person who is a shift or gaming manager;

   c. A person who is employed by a bar that is not operated by an organization, and who is authorized by an organization under subsection 4 of section 99-01.3-12-02 to withdraw currency or a drop box from a pull tab or bingo card dispensing device;

   d. A person who places a deal of pull tabs or bingo cards in a dispensing device, removes currency from the device, or reimburses a bar for redeemed pull tabs or bingo cards;

   e. A person who is a member of a drop box cash count team; or

   f. A person who directly sells or distributes gaming equipment for a distributor.

4. These employees of an organization are not required to have a record check:

a. A volunteer, except a gaming manager or person who is a member of a drop box cash count team;

b. An employee who is sixteen or seventeen years of age;

c. An employee who has an expired work permit and who continues to be employed by the same organization or distributor that the person was employed by when the work permit expired;

d. An employee who has had a record check done and, within one year of the record check, has become reemployed by the same organization or employed by a different organization, distributor, or bar than the person was employed by when the record check was done, and who provides the notification copy of a "request for record check" form and, if applicable, a copy of the bureau of criminal investigation's criminal history record information, to the new employing organization, distributor, or bar; or

e. An employee, other than a gaming manager, who only conducts a calcutta, raffle, or sports pool or is employed by an organization that conducts games on no more than fourteen days during a calendar year.

5. The attorney general may require fingerprints of a person. A local law enforcement agency may charge a fee for taking fingerprint impressions.

6. The fee for a record check is ~~twenty~~ thirty dollars and is not refundable. However, if a federal agency or local law enforcement agency has done a record check, the attorney general may waive the fee. The fee must be remitted by an organization, distributor, or person with the request form.

7. Unless a federal or local law enforcement agency conducts a record check, the attorney general shall do the record check and provide a copy of the "request for record check" form to an organization or distributor which requested the record check and the person on whom the record check was done. This copy must indicate whether a criminal record was found or not found. If a criminal record is found, the attorney general shall also provide an organization or distributor and person with a copy of the bureau of criminal investigation's criminal history record information. An organization or distributor shall review this report to determine whether a person is eligible for employment as an employee according to subdivision a or b of subsection 5 of North Dakota Century Code section 53-06.1-06.

8. If a person is not eligible for employment but has been temporarily employed pending a record check, an organization or distributor, within five days of receiving the copy of the "request for record check"

form, shall terminate the person's employment. This period cannot be extended.

9. An organization or distributor shall retain the copy of a "request for record check" form and criminal history record information for one year from the end of the month in which a person voluntarily or involuntarily separated from employment or had not been temporarily employed pending a record check.

10. If a person, while employed by an organization or distributor, pleads guilty to or has been found guilty of a felony or misdemeanor offense referenced by subdivisions a and b of subsection 5 of North Dakota Century Code section 53-06.1-06, the person must immediately notify the organization or distributor. Upon notification, an organization or distributor, within five days, shall terminate the person's employment unless the person received a deferred imposition of sentence or deferred prosecution and has fully complied with the terms of the deferral.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-02-03. Restrictions and requirements.**

1. An employee shall wear an identification tag while working in the gaming area of a site. The tag must clearly display a person's first name and first initial of the last name or the person's identification number, and organization's name. The tag must be worn on the upper one-third of a person's body. An organization shall provide a tag to a person and is equally responsible with the person that the tag is properly displayed.

2. An organization shall have the gaming law; chapter 99-01.3-02, general rules; chapter 99-01.3-03, accounting rules; and the rules chapter of each game type conducted at a site available in the gaming area for review by any person.

3. An organization shall have a policy manual on its conduct and play of games in the gaming area at a site available for review by any person. The manual must include policies for resolving a question, dispute, or violation of the gaming law or rules. The manual cannot include internal controls.

4. An organization shall maintain a list of all employees on a site, including their name, address, and telephone number. The list must be safeguarded and be available to the attorney general and law enforcement officials.

5. An organization shall disclose or make available to players a description of the "gaming area" of a site authorization for applying subsection 1 and sections 99-01.3-04-03(1)(f), 99-01.3-06-02(3)(d), 99-01.3-08-06(3), 99-01.3-12-02(3)(c), and 99-01.3-12-04(2)(c).

6. An organization's top official shall provide to the governing board and membership in writing, or by electronic publication method, each quarter information on an organization's adjusted gross proceeds; cash profit; cash long or short; net proceeds; excess expenses; reimbursement of excess expenses; and, for a fraternal, veterans, or civic and service organization, a list of eligible uses. This information and how it was provided must be included in an organization's records. If an administrative complaint is issued to an organization, the top official shall disclose the allegation, in writing, to the board within seven days from the date the complaint was received. If an allegation is substantiated, the top official shall disclose to the board and membership, in writing, the allegation and sanction imposed within ninety days of the final disposition of the complaint.

7. A person may not modify a state gaming stamp or flare, including a last sale prize. An organization may not, independent of a distributor, add or delete a last sale prize.

8. A person under the age of twenty-one may not conduct or play games, except bingo and raffles, and, at an alcoholic beverage establishment, may not be a member of a drop box cash count team. An employee under the age of eighteen may not count drop box cash. A person under the age of sixteen may not conduct bingo.

9. An employee or a bar employee may not use inside information or provide inside information to any person.

10. The attorney general may waive a rule when it is for the best interest of the gaming industry and public.

11. If an organization does not plan to reapply for a license for the next licensing period or relinquishes a license, it shall return its unplayed games to the attorney general or distributor. An organization may not destroy an unplayed or unreported game without permission of the attorney general.

12. When an organization disposes played deals of pull tabs and bingo cards, club specials, prize boards, tip boards, seal boards, and punchboards, the disposal method must assure complete destruction.

13. If an organization is forced to dispose accounting records or game pieces damaged in a natural or extraordinary disaster, it shall document

each item disposed and provide a copy of the documentation to the attorney general within fourteen days before the disposal.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-02-05. Lessor and organization - Restrictions.**

1. A lessor's employee who is not the lessor's spouse, lessor's common household member, management, management's spouse, or lessor's employee or agent who approved the lease may conduct games at that site, including accessing a dispensing device, as an organization employee:

   a. On a day when the employee is not working for the bar; or

   b. On a day when the employee is working for the bar but is working in an area of the bar where alcoholic beverages are not dispensed or consumed.

2. No game may be directly operated as part of a lessor's business. However, a lessor may donate a gift certificate or cash or merchandise prize~~, but not a dispensed alcoholic drink,~~ to an organization.

3. Except as allowed by subdivision c, a lessor, lessor's spouse, lessor's common household member, management, management's spouse, officer, board of directors member, or, lessor's employee or agent who approved the lease, may not:

   a. Loan money or provide gaming equipment to an organization;

   b. Interfere with or attempt to influence an organization's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds. However, a lessor may recommend an eligible use. If the lessor violates this rule, the attorney general may suspend any or all games at the site for up to six months;

   c. Conduct games at any of the organization's sites ~~or~~ and, except for officers and board of directors members who did not approve the lease, may not play any game at the lessor's site;

   d. Require an organization's employee to assist, for or without compensation, in a lessor's business at the site. However, an organization's employee may voluntarily order drinks for customers; or

   e. Count drop box cash.

4. A lessor who is an officer or board member of an organization may not participate in the organization's decisionmaking that is a conflict of interest with gaming.

5. Unless an organization or its employee has first received approval from the attorney general, follows guidelines prescribed by the attorney general, or an organization's employee patronizes a lessor in the normal course of a lessor's business, the organization or its employee may not buy a gift certificate or merchandise as a gaming prize ~~directly or indirectly~~ from a lessor, or buy merchandise, food, or alcoholic or nonalcoholic drinks from the lessor for the lessor's employees or patrons. Except as provided by subdivision e of subsection 3, an employee of an organization may not be an agent of the bar for any bar activity.

6. An organization, employee, or bar may not~~, directly or indirectly,~~ give a free or discounted game piece ~~or~~, chip, ~~any free~~ or play of a game except for discounts allowed for bingo and raffle activity, or free or discounted alcoholic drink to a person to play a game ~~or as a prize in a game at a site~~. A lessor may at its own expense advertise gaming on promotional drink tickets.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-02-06. Rental agreement.**

1. A rental agreement must be signed and dated by a lessor and organization.

2. An agreement must contain:

   a. Term of the agreement which must be on a fiscal year basis from July first to June thirtieth or, if a site authorization is for a shorter period, the term is for the shorter period. Except for a site where bingo is the primary game, an agreement may not exceed three years;

   b. Monetary consideration;

   c. The inclusion of this statement with proper selections made:

      "The lessor agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not~~, directly or indirectly,~~ conduct games at any of the organization's sites and, except for officers

and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab or bingo card involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization";

d. If an organization provides a lessor with a temporary loan of funds for redeeming winning pull tabs or bingo cards involving a dispensing device, a statement that the lessor agrees to repay the entire loan immediately when the organization discontinues using a device at the site; and

e. Statements that:

(1) Bingo is or is not the primary game conducted;

(2) Twenty-one or paddlewheels, or both (involving a playing table), is or is not conducted and the number of tables on which the rent is based, including the number of tables on which a wager over five dollars is accepted;

(3) Pull tabs is or is not conducted;

(4) The rental agreement is automatically terminated, at a lessor's option, if an organization's license is suspended for more than fourteen days or revoked; and

(5) An oncall, temporary or permanent employee, except a bar employee defined by subsection 3 of section 99-01.3-02-01 will not, directly or indirectly, conduct games at the site as an organization employee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

3. Rent must be a fixed dollar amount per month.

a. A participatory or graduated rate arrangement based on gross proceeds or adjusted gross proceeds is prohibited.

b. If bingo is the primary game and it is not conducted through a dispensing device or if a site is leased by an organization that has the alcoholic beverage license for that site, the monthly rent must be reasonable. Factors include time usage, floor space, local prevailing rates, and available sites and services. An organization may pay seasonal expenses, such as snow removal, air-conditioning, and heating, to a vendor.

c. If bingo is not the primary game or if bingo is the primary game and it is conducted through a dispensing device, the maximum monthly

rent must be according to subsection 5 of North Dakota Century Code section 53-06.1-11. Special considerations are:

(1) If two or more organizations conduct twenty-one or paddlewheels, or both, involving a table and pull tabs for less than a month at a temporary site which is a public or private premise, or if two or more organizations are issued site authorizations to conduct games at a site on different days of the week, the maximum monthly rent, in the aggregate, may not exceed the limit set by subsection 5 of North Dakota Century Code section 53-06.1-11; and

(2) If a raffle, calcutta, sports pool, or poker is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed. ~~Otherwise, the rent for poker must be reasonable.~~

d. Except for applying subsection 3 or 4 of section 99-01.3-03-04, an organization or employee may not pay, nor may a lessor accept, any additional rent or expense from any source ~~directly or indirectly~~ for any other purpose, including office or storage space, snow removal, maintenance, equipment, furnishings, entertainment, or utilities. Except for a leased site at which bingo is the primary game conducted, an organization may not pay for any capital or leasehold improvements or remodeling.

4. If there is a change in the monthly rent or any other material change to a rental agreement, the agreement must be amended and a copy of it postmarked or hand-delivered to the attorney general before its effective date.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-07.4

**99-01.3-02-09. Persons restricted from playing games.**

1. An employee who is a shift or gaming manager may not play any game at any of the organization's sites. An employee who services a pull tab or bingo card dispensing device may not play the device at that site.

2. An employee may not play any game while on duty, except a volunteer may participate in a raffle. ~~However, for~~ For the game of bingo, if an organization's total gross proceeds for the previous fiscal year, for which tax returns were filed, was twenty-five thousand dollars or less, a volunteer who is not a bingo caller, shift manager, or gaming manager, may also play bingo not involving a dispensing device while on duty.

3. An employee may not play pull tabs, including through a dispensing device, tip board, club special, prize board, or punchboard until after three hours of active play have occurred since the employee went off duty at that site. "Active" play means that a game has been available for play. A player may not provide and an employee may not accept an unopened pull tab as a tip.

4. An employee who is not a volunteer may play twenty-one while off duty at that site only on a table that has a video surveillance system.

5. A bar employee may not play bingo or pull tabs, which involve a dispensing device, while on duty. A bar employee may play bingo involving a device while off duty, and may play pull tabs involving a device while off duty after three hours of active play have occurred since the bar employee went off duty at that site, unless otherwise prohibited by subdivision d of subsection 3 of section 99-01.3-02-05.

6. An employee or bar employee taking a temporary break is still considered on duty.

7. If an organization allows an employee to play games at its site, it shall disclose or make available to players the policy at that site.

8. A shift manager may not permit and an employee may not allow an employee's common household member, spouse, child, parent, brother, or sister, at a site, to:

   a. Play pull tabs of a game while the employee is on duty as a jar operator for that game, regardless if the employee takes a temporary break or rotates to conduct another game. This rule does not apply to an employee who only places pull tabs in or withdraws currency from a dispensing device; or

   b. Play twenty-one or paddlewheels at a table when the employee is dealing or is a wheel operator at that table.

9. An organization may prohibit a person from playing games at a site.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-02-10. Training and acknowledgment of the gaming law and rules.**

1. A gaming manager, and an employee who is principally responsible for auditing closed games or daily activity or does bookkeeping, who have no previous gaming-related experience in those capacities, within

thirty days of employment and within thirty days of each promulgation of rules, shall request training from the attorney general. The training must include the gaming law and rules, recordkeeping, internal control, and tax return.

2. An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions that relate to the person's job duties. The attorney general shall designate the provisions to be read. An acknowledgment must be dated, reference the provisions, and be part of the person's personnel file.

3. ~~Except for a gaming manager, this~~ This section does not apply to an ~~employee of an~~ organization that only conducts a raffle, calcutta, poker, paddlewheels described by subsection 1 of section 99-01.3-11-01, sports pool, or to an independent contractor.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-02-11. Independent contractor services restricted.** Only an organization member, employee, or member of an auxiliary to an organization may manage, control, or conduct games. An organization may have an independent contractor, including another organization, provide only the following gaming-related services. The organization shall ensure that the independent contractor complies with the gaming law and rules:

1. Perform audit services, including auditing closed games and daily activity, do interim audits of games, verify bank deposits, and reconcile inventory of gaming equipment and cash banks;

2. Perform accounting and bookkeeping services, including recording receipts and disbursements, processing payroll and payroll reports, reconcile bank statements, write checks, and prepare budgets, financial statements, and tax returns. However, an independent contractor may not have signatory authority of a bank account;

3. Train personnel how to conduct games and operate a dispensing device;

4. Repair and store a dispensing device;

5. Access, store, and review ~~videotapes~~ recorded video;

6. Store records and played games;

7. Take a locked bank bag or locked drop box to a financial institution provided the independent contractor has no access key; and

8. An independent contractor that is a security ~~agency~~ company or financial institution may count drop box cash.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

## CHAPTER 99-01.3-03

### 99-01.3-03-01. Accounting records and system of internal control.

1. Except as otherwise provided by rule, an organization shall retain purchase invoices, receipts, accounting and bank records, including receipts documenting eligible uses and solicitations for net proceeds, for three years from the end of the quarter in which the activity was reported.

2. Except for an organization that has gross proceeds of twenty-five thousand dollars or less, only conducts a calcutta, raffle, sports pool, paddlewheels described by subsection 1 of section 99-01.3-11-01, or poker, or is involved only in conducting no more than two events during a fiscal year of July first through June thirtieth and each event lasts no more than fourteen calendar days, a governing board of the organization shall establish a written system of internal control, comprised of accounting and administrative controls. An organization may not permit any person to review this system, except the attorney general, law enforcement officials, authorized employees, and an adviser. If the attorney general determines that a system of internal control is inadequate, an organization shall remedy the inadequacy.

3. Accounting controls must include procedures and records that achieve these objectives:

   a. Transactions are executed as authorized by management;

   b. Gaming activity is properly recorded;

   c. Access to cash, games, and other assets is permitted as authorized by management; and

   d. Assets recorded on records are periodically compared to actual assets and any differences are resolved.

4. Administrative controls must describe the interrelationship of employee functions and their division of responsibilities.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

### 99-01.3-03-02. Gaming account.

1. An organization shall maintain at least one gaming account at a financial institution located in North Dakota. Except as provided by subsection 3, this account must be used for depositing gaming funds

and transferring net proceeds to a trust account. ~~For purposes of this rule, net proceeds is calculated as adjusted gross proceeds, less gaming and excise taxes, and less the greater of the actual gaming or allowable expenses. This transfer~~ Transfers must be made by the last day of the quarter following the quarter in which the net proceeds were earned. The amount transferred must be for an amount equal to or greater than the adjusted gross proceeds, less gaming and excise taxes, and less the greater of actual or allowable gaming expenses for the quarter. The gaming account may be used for payment of expenses. An organization may transfer funds to its general account for payment of expenses. If an organization is not required to maintain a trust account, a disbursement of net proceeds to an eligible use must be payable to the ultimate use or recipient. A payment may be made by electronic transfer.

2. Interest earned is other income. A service fee is an expense.

3. Except to reimburse the account for a negative imbalance, and to deposit raffle nongaming funds, bingo dauber receipts, fees from players who use bingo card marking devices, prizes paid by an insurance company to an organization for payment to a player, and sales tax, the organization may not deposit nongaming funds into a gaming account unless approved by the attorney general.

4. If an organization buys a qualifying item of video surveillance equipment according to subsection 2 of section 99-01.3-08-04 and later sells or rents the item, it shall make a record of the transaction, deposit the gross receipts or rental income directly into its gaming account, and make a proper adjustment on the tax return.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-11

**99-01.3-03-03. Trust account.**

1. Unless an organization only conducts a calcutta, raffle, sports pool, paddlewheels described by subsection 1 of section 99-01.3-11-01, or poker or a combination of those games, or is involved in conducting no more than two events during a fiscal year of July first through June thirtieth and each event lasts no more than fourteen calendar days, an organization shall maintain at least one trust account at a financial institution located in North Dakota. Except to reimburse the account for a negative imbalance and as provided by subsection 13 of section 99-01.3-14-01, this account must receive only funds from a gaming account. This account is used only to disburse net proceeds to eligible uses. A transfer of net proceeds to another trust account or to a closely related organization is not a disbursement of net proceeds. Net proceeds cannot be pledged as collateral for any loan.

2. An organization shall disburse net proceeds within a reasonable period.

3. Except for transferring funds to another trust account, an organization may not transfer funds from a trust account to any other bank account. A disbursement must be payable directly to the ultimate use or recipient. However, an organization may make a payment directly to a credit card company for charges on a credit card if the credit card use is restricted to eligible uses and may only reimburse its general account for compensation that qualifies as an eligible use and which is paid from the general account. A reimbursement must be documented by a supporting schedule. A payment may be made by electronic transfer.

4. If an organization invests net proceeds in a certificate of deposit, bond, stock, ~~or~~ mutual fund, ~~it shall report interest and distributed or reinvested dividend and capital gain income~~ or other marketable securities, all income earned, including interest, dividends, and capital gains, must be reported each quarter as an adjustment on a tax return and be disbursed to an eligible use. An actual loss on an investment may not be deducted on a tax return. ~~An organization shall record the actual or unrealized gain of market value on a consistent basis each quarter on the tax return. An organization may not deduct an actual loss on a sale of a marketable security on the tax return, but may deduct an unrealized loss up to the amount of unrealized gain previously reported. Unearned income and actual gains on a sale of a marketable security must be disbursed to an eligible use.~~ A service fee is an adjustment to the account's balance.

5. For reporting purposes, an organization may elect to report the gain in market value of the accounts outlined in subsection 4. Adjustments can be made for decreases in market value; however, such decreases cannot reduce the account's value below its adjusted basis. Electing

to report securities at market value must be consistently applied each quarter.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-03-04. Restrictions and requirements.**

1. An organization is allowed an expense according to subsection 2 of North Dakota Century Code section 53-06.1-11 and an additional expense for qualifying items of security and video surveillance equipment prescribed by subsection 2 of section 99-01.3-08-04 ~~or based on guidelines prescribed by the attorney general~~. The allowable expense amount may be used for any purpose that does not violate the gaming law or rules.

2. An organization may not base an employee's compensation on a participatory percentage of gross proceeds, adjusted gross proceeds, or net proceeds. An organization may pay a fixed bonus through an incentive program.

3. An organization may not pay or reimburse, nor may a lessor accept a payment or reimbursement from an organization, for any media advertising done by the lessor or any other person that is related to games at a site unless the organization's share of this expense is prorated to the benefit the organization receives and the media advertising is voluntary by the organization.

4. An organization may not pay or reimburse a lessor or share in the cost, nor may a lessor accept a payment, reimbursement, or sharing of the cost from an organization, of any sign advertising related to games at a site unless the sign is not owned by the lessor. If a lessor rents an advertising sign from a vendor, the organization's share of this expense must be prorated to the benefit the organization receives and the sign advertising is voluntary to the organization.

5. A player's uncollectible check is an expense. If an organization establishes a policy to reduce a player's cash prize by the amount of the player's uncollectible check and award the player the difference, if any, the organization shall disclose or make available to players that policy.

6. If a door prize is awarded as a promotion of games, the cost of the door prize is an expense.

7. A net cash short is an expense and a net cash long is other income for a quarter.

8. Only an unopened pull tab, unopened set of stapled jar tickets, or set of banded jar tickets that has the band intact may be accounted for as unsold or defective when a game is reported on a tax return. An organization shall account for any single unsold or defective jar ticket at a proportional selling price of a stapled set of jar tickets.

9. If foreign currency is exchanged into United States currency, any loss is an expense.

10. The attorney general shall determine whether a theft of an organization's gaming funds can be deducted toward adjusted gross proceeds on its tax return and notify the organization. The attorney general shall consider whether the organization:

    a. Immediately reported the theft to a local law enforcement agency and the attorney general;

    b. Has documentation that substantiates the theft amount;

    c. Had physical security of the funds;

    d. Has an adequate system of internal control; and

    e. Incurred an identifiable theft.

11. If an organization rents out gaming equipment, the income is nongaming income.

12. All accounting records must be completed and initialed or signed with a nonerasable ink pen. An organization shall maintain a register of each employee's name and the employee's initials or signature as the employee normally writes them on a record or report. The initials or signature of a person on a record or report attests that to the person's best knowledge the information is true and correct.

13. A fee charged a player to enter a twenty-one or poker tournament, less the cost of a prize, must be reported as other income.

14. For computing prizes on a tax return, a merchandise prize and a gift certificate are valued at an organization's actual cost, including sales tax, and a donated prize is valued at zero.

15. If a raffle, sports pool, or calcutta prize is forfeited and has previously been reported on a tax return, an organization shall report the prize as other income.

16. When a deal of pull tabs, deal of bingo cards involving a dispensing device, club special, tip board, seal board, prize board, sports-pool board, calcutta board, or a series of paddlewheel ticket cards is placed

in play, an employee shall compare the game serial number on the pull tab, bingo card, board, or card to the serial number on the state gaming stamp. If the two serial numbers are different, an employee shall immediately notify the distributor and complete a form prescribed by the attorney general.

17. If an organization pays a fee ~~directly or indirectly~~ to an insurance company to insure a contingency cash or merchandise prize for bingo or a raffle, the fee is an expense. If the insurance company pays or provides a prize ~~directly or indirectly~~ to a winning player, it is not reported as a prize on a tax return.

18. If an organization conducts twenty-one, it may pay monthly rent for more than one table provided that, for each additional table, the table is used at least thirteen times a quarter. This level of activity is based on a site's historical experience, or seasonal activity, of each of the previous four quarters, regardless of which organization conducted twenty-one at the site. For a new site or a site that has been completely remodeled in appearance and function, the level of activity must be reviewed and or reestablished after the first full quarter. If an additional table is used at least thirteen times in at least one but not all of the previous four quarters, the allowable monthly rent for that table must be prorated over all the active months of the licensing year. For example, if a second table was used at least thirteen times in only two of the previous four quarters, the additional monthly rent for the second table would be a maximum of two hundred dollars per month (or three hundred dollars per month if a wager greater than five dollars is accepted on the table) multiplied by six months (totaling one thousand two hundred dollars) and prorated to one hundred dollars per month for the licensing year.

19. If an organization does not intend to reapply for a license for the next fiscal year ~~of July first through June thirtieth~~, its license is revoked or suspended for a period of more than six months, or its license application is denied, and it has net proceeds that are not disbursed, the organization shall file an action plan with the attorney general. The plan must be filed within thirty days of the expiration of the license or when the license is relinquished ~~or~~, revoked, suspended, or the license application is denied, and include~~:~~

    ~~a. The organization's financial statements for gaming and nongaming activity for the most recent year;~~

    ~~b. Planned sources of funds, dates of fundraising activities, and net income; and~~

    ~~c.~~ ~~Planned~~ a planned timetable for disbursing all the net proceeds and anticipated uses.

If the action plan is not timely filed, net proceeds must be disbursed within ninety days of the expiration of the license or when the license is relinquished ~~or~~, revoked, suspended, or the license application is denied. The disbursement must be reported to the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-11

**99-01.3-03-06. Gross proceeds, IOUs, documenting cash and chip banks.**

1. Gross proceeds for a game must be separately maintained while the game is conducted. An organization shall use a separate cash bank for each game. However, the cash banks for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. If an employee needs to establish or replenish a cash bank by withdrawing funds from the gaming account, the employee shall execute a withdrawal by check or authorized withdrawal and reference the game's or games' cash bank. If a cash bank needs replenishment and another game's or games' cash bank, cash reserve bank, or nongaming funds are used as a source of cash, an IOU form must be used to record the loan and payback. An IOU form must include:

   a. The source and destination of the funds;

   b. For a club special, prize board, tip board, seal board, series of paddlewheel ticket cards, and punchboard, the game's gaming stamp number;

   c. Amount and date of loan and repayment; and

   d. Initials of a cash bank cashier or an employee for each transaction.

2. An organization shall document each game's daily starting and ending cash on hand, including a cash reserve bank. Unless there is only one employee on duty when a site opens or closes, two persons shall ~~count~~ participate in the cash count in the presence of each other. ~~Each person shall independently count the cash in the presence of the other person and resolve any difference between the two counts. Then, one person shall record the count, and~~ After completing and documenting the cash count, both persons shall initial the record.

3. An organization shall document the daily starting and ending chip banks for casino and betting chips. The chip banks for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. Unless there is only one employee on duty when a site opens or closes, two persons shall participate in

the count of the chips in the presence of each other and record the count by denomination of chip. ~~Both persons shall independently count the chips in the presence of each other and resolve any difference. Then, one person shall record the count, and~~ After completing and documenting the chip count, both persons shall initial the record.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-03-07. Prize register.** For a bingo session, raffle drawing, sports-pool board, calcutta board, paddlewheel excluding the use of a table, and twenty-one or poker tournament, an employee shall legibly print this information on a prize register or similar document when a prize is issued to a player:

1. Name of the site;
2. Game type:
   a. Bingo - Date of the session and game number.
   b. Raffles - Date of the drawing, winning ticket number, and initials of two employees who conducted the drawing unless the initials are on another document.
   c. Sports pools - Date of the sports event, winning score, and gaming stamp number.
   d. Twenty-one or poker tournament - Date of the tournament.
   e. Calcutta - Date of the sports event and gaming stamp number; ~~and~~
   f. Paddlewheel excluding the use of a table - Date of the event, card number, winning ticket number, and gaming stamp number;
3. Amount of a cash prize or a description and cost of a merchandise prize;
4. Name of player;
5. Total amount of cash and cost of merchandise prizes awarded; and
6. Initials of preparer.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-03-08. Record of win.**

1. If a player wins a last sale prize or a seal prize, cash prize greater than two hundred dollars, ~~or~~ a merchandise prize that has a retail price ~~including sales tax~~ exceeding two hundred dollars, or donated merchandise prize with a fair market value exceeding two hundred dollars, an employee shall record the win. If a pull tab has two or more winning prize patterns, the requirement is based on the value of each prize pattern. A record of win must be completed for the total prize even if a player splits the prize with another person. The record must be a check drawn from the gaming account, numbered receipt, or flare of a sports-pool board, calcutta board, club special, tip board, prize board, punchboard, or seal board. A bar employee shall print this information on a receipt or an employee shall print this information on a check, receipt, or flare, unless it is already provided:

   a. Name of the site;

   b. Game type and, by game type:

      (1) Bingo, excluding a dispensing device - Date of the session, game number, cash prize amount or description of a merchandise prize and retail ~~value~~ price, and date of prize payout if different from the date of the session.

      (2) Bingo, involving a dispensing device - Name of the game, cash prize amount, date of activity, and game serial number.

      (3) Raffles - Date of the drawing, winning ticket number, cash prize amount or description of a merchandise prize and retail ~~value~~ price, and date of prize payout if different from the date of the drawing.

      (4) Pull tabs, including a dispensing device, punchboards, club special, tip board, seal board, and prize board - Name of the game, cash prize amount or description of a merchandise prize and retail price ~~including sales tax~~, date of activity, and game serial number.

      (5) Sports pools - Date of the event, cash prize amount, date of prize payout, and gaming stamp number.

      (6) Twenty-one or poker tournament - Date of the tournament, cash prize amount, or description of a merchandise prize and retail price.

      (7) Calcuttas - Date of the event, cash prize amount, date of prize payout, and gaming stamp number;

c. A player's full name~~,~~ and address~~, and driver's license number, including the state of license registration.~~;

(1) If the player is present but not personally known by a bar employee or an employee, this information must be recorded from a pictured driver's license or tribal, government, or military identification~~.~~;

(2) If ~~a~~ the player is present but does not have one of these pictured identifications, a bar employee or an employee shall record the player's full name from ~~two other forms~~ another form of identification or mail the prize to the player; or

(3) If the player is not present, verification of this information is not required and the prize must be mailed; and

d. Initial of a bar employee or an employee.

2. After a record of win is completed at a site, a player shall sign and date it. However, this rule does not apply to a prize mailed to a player.

3. Unless a prize is for a last sale prize feature, a bar employee or an employee shall print, in ink, the check or receipt number on a pull tab, punchboard punch, or a bingo card involving a dispensing device.

4. A player who has actually won a prize shall claim the prize. A bar employee or employee may not falsify or permit a player to falsify a record of win or enable a player to conspire with another person to have the other person claim a prize. If a bar employee or employee determines that a player has falsified or attempted to falsify a record of win before the prize payout, the bar employee or employee shall deny the player the prize and notify the attorney general and local law enforcement agency.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-11

**99-01.3-03-09. Inventory records of games, paper bingo cards, tickets, cash banks, and chips and reconciliation.**

1. An organization shall maintain master and site inventory records of all deals and games that have a state gaming stamp affixed to their flares. The master records must include the sales invoice number, date received, name of game, dates of issuance to and received from a site, site name, period played, and quarter tax return on which reported, by gaming stamp number. The site records must include the gaming stamp number, date received, date placed, and date closed, by site

and name of game. If an organization has only one site ~~that is the location of its home office~~ where inventory is stored, it may combine the master and site inventory records. Each quarter an organization shall reconcile its inventory records of all deals and games that have a state gaming stamp affixed to their flares that are recorded as being in play and in inventory as unplayed to the items that are actually in play and in inventory. A person shall count these items that are actually in play and in inventory, compare this count to the inventory records, and resolve any difference.

2. An organization shall maintain master and site inventory records of paper bingo cards. The master records must include for each primary color and type of card the sales invoice number, date received, serial number, number of cards bought, dates of issuance to a site, and site name, or include information prescribed by a method approved by the attorney general. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. The site records must include site name, primary color and type of card, serial number, quantity received, date received, and quantity issued and returned for each session, or include information prescribed by a method approved by the attorney general. Each quarter an organization shall reconcile its inventory records of paper bingo cards that are recorded as being in inventory to the cards that are actually in inventory. A person shall count these items that are actually in inventory, compare this count to the inventory records, and resolve any difference.

3. An organization shall maintain master and site inventory records of rolls of tickets. The record must include the date each roll is acquired, ticket color, beginning and ending ticket numbers, and number of tickets on the roll. Each quarter an organization shall reconcile its inventory of rolls of tickets. This reconciliation must include verification of the starting ticket number and total number of remaining tickets that are recorded as being at the home office and site to the rolls of tickets that are actually on hand. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. A person shall count the rolls of tickets at the home office and site, compare this count to the inventory records, and resolve any difference.

4. An organization shall maintain a master record of ideal cash bank amounts and account for permanent increases or decreases. For each cash bank, the record must include the site, game type, game identifier, and amount. When a cash bank is started or when the ideal amount is permanently increased or decreased, the date, check number, amount, source or destination of the funds, and updated ideal cash bank amount must be recorded. ~~Temporary increases or decreases in a daily cash bank do not need to be recorded.~~ Each quarter an organization shall reconcile its master cash bank records to the actual cash banks. A person shall count the cash banks, compare the count

to the current ideal cash bank amount recorded on the record, and resolve any difference.

5. An organization shall maintain casino and betting chip master and site inventory records. The records must include the dates chips are acquired, transferred to, and received from a site and running totals, by value of chip. Each quarter an organization shall reconcile its inventory of chips that are recorded as being at the home office and site to the chips that are actually in inventory. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. A person shall count the chips in inventory at the home office and site, compare this count to the inventory records, and resolve any difference.

6. The count and reconciliation must be done by a person who does not have access to deals, games, paper bingo cards, rolls of tickets, cash banks (and who does not have sole signatory authority of the gaming account), or chips. It must be documented, including the name and title of the person who does the count and reconciliation, date and procedure performed, result, corrective action taken, and initials of that person.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-03-10. Bank deposit and audit.**

1. The cash profit, less a documented increase or plus the decrease in the starting cash on hand for the next gaming activity, plus cash and merchandise prizes paid by check and cost of coins for a prize board, must be deposited in the gaming account by the third banking day following the day of a bingo session; club special, prize board, tip board, seal board, or punchboard is removed from play; sports-pool game; calcutta event; poker occasion; day's or interim period's pull tab, twenty-one or paddlewheel activity; or closed bingo prize flare involving a dispensing device. However, the receipts for a raffle~~,~~ and calendar~~, and~~ or master sports-pool board must be deposited in the gaming account by the third banking day following receipt of the cash by the person responsible for the activity.

2. For a day's pull tab activity, bingo session, raffle drawing, poker occasion, twenty-one and paddlewheel activity, and interim period's pull tab or bingo activity involving a dispensing device, a deposit slip or receipt must reference a site, name of the game ~~or~~, game type, date of activity, and deposit amount. The deposit amount for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. For a club special, prize board, tip board, seal board, punchboard, ~~sports-pool board, calcutta~~

~~board,~~ and series of paddlewheel ticket cards, a deposit slip or receipt must reference a site, name of the game, date removed from play, deposit amount, and gaming stamp number. For a sports-pool board or calcutta board, a deposit slip or receipt must reference a site, date of the event or auction, deposit amount, and gaming stamp number. For all game types, an employee who prepares a deposit shall initial the bank deposit slip. If another employee makes the bank deposit and has access to the cash, the employee shall also initial the bank deposit slip.

3. If an organization prepares a deposit slip for more than one type of game, it shall record on the deposit slip or a supporting schedule by each game type, the information required by subsection 2. A supporting schedule must reconcile to a validated bank deposit slip or receipt. A validated bank deposit slip or receipt and any supporting schedule must be included with the accounting records of each game type. If a bank does not return a validated bank deposit slip that contains information required by subsection 2, an organization shall prepare a duplicate deposit slip, make a copy of it, or prepare a supporting schedule that reconciles to the bank deposit amount.

4. For a bank deposit, a person shall record the amount to be deposited on the game's accounting record and retain the copy of a two-part bank deposit slip and any supporting schedule with the accounting record. This person shall forward the accounting record, copy of the bank deposit slip, and any supporting schedule directly to a bookkeeper. A second person shall take custody of the bank deposit funds and the original of the bank deposit slip and take them to a financial institution or arrange for the funds to be deposited. If, before the bank deposit is made, the custody of bank deposit funds is transferred directly from a person to another person, face-to-face, and the cash is accessible to be counted, both persons shall ~~independently~~ participate in a count of the cash in the presence of each other and resolve any difference. ~~Then, one person shall record the amount on the accounting record, and~~ After completing and documenting the cash count, both persons shall initial and date the record. The person who makes the bank deposit shall forward a validated bank deposit slip or receipt directly to a bookkeeper. An organization shall comply with this rule unless it uses another bank deposit procedure which has proper accounting control.

5. If an employee prepares or has custody of a bank deposit which is not scheduled to be immediately deposited, the employee shall safeguard the funds.

6. An employee who did not have access to the cash to be deposited shall, within a reasonable time, verify that the amount recorded on a daily or interim accounting record to be deposited was actually deposited according to a bank statement. The employee shall document the verification by initialing the accounting record and dating it. If more than one deposit amount is recorded on an accounting record, the

employee shall initial the record for each verified deposit amount and date the record.

7. A closed game or daily activity must be audited, within a reasonable time, by a person who did not conduct the game and who did not have access to the total receipts or cash profit for the game's or day's activity. This person may not have sole signatory authority of the gaming account. A person who audits a closed game or daily activity shall verify the number and value of unsold chances, gross proceeds, number and value of prizes, adjusted gross proceeds, and cash profit. If the audit reveals an irregularity, the person shall notify the appropriate organization representative.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-03-12. Tax return.**

1. An organization that has an active license shall file a tax return each quarter. Closely connected organizations shall file a consolidated tax return. A tax return and payment of tax for a quarter must be postmarked or hand-delivered by the last day of the month following the end of the quarter. However, if the last day of the month is a Saturday, Sunday, or holiday, the due date is the first following business day. An extension for filing a tax return may be granted for good cause, with approval of the attorney general, by filing a written request explaining the reason. A request must be postmarked or hand-delivered by the due date of a tax return.

2. An incomplete tax return will not be considered timely filed unless it is correctly completed and returned by the due date or an approved extended date. A tax return is incomplete if information is missing or misrepresented, it is not properly signed, instructions are not followed, current schedules are not used, or required documentation is not provided.

3. An organization shall file a quarterly tax return on its original due date, even though payment of the entire tax due cannot be paid, to minimize the interest and penalty assessed. An explanation, including the anticipated payment date, must accompany a tax return received from an organization to be considered for an installment pay plan. The attorney general may for good cause allow an organization to make installment payments of delinquent tax, interest, and penalty.

**History:** Effective May 1, 1998; amended effective July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-12

## CHAPTER 99-01.3-04

### 99-01.3-04-03. Conduct and play.

1. These rules and information must be disclosed or made available to players:

   a. A person may not separate a paper card when there are two or more faces on a sheet;

   b. A person under eighteen years of age may not play bingo unless an individual, eighteen years of age or older, accompanies a minor when buying a bingo card or package and throughout the session. The adult may not be an employee on duty. This rule does not apply if a person under twenty-one years of age is not allowed on the site or an organization has a permit or prize structure that does not exceed the limit of a permit;

   c. If an organization does not restrict duplicate paper cards from being in play for a game, it shall disclose or make available that information to all players before their purchase of cards or packages;

   d. The actual letter and number on a ball drawn or freely awarded is official;

   e. If a person knowingly uses a fraudulent scheme or technique to cheat or skim involving bingo, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;

   f. A bingo card is void if it is taken outside the gaming area; and

   g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.

2. These policies must be disclosed or made available to players:

   a. A policy of when an organization may cancel a bingo session;

   b. A policy that if a player has more than one bingo on one card or on two or more cards for a game, whether it is considered as one bingo or more than one bingo for splitting a prize with another winning player;

   c. A policy that a bingo is timely called by a player when, on the last number called, the player calls the word "bingo" or other

required word before the bingo caller announces the whole letter and number of the next ball to be called, or other policy;

d. A policy on sharing a prize by two or more winning players on identically or differently priced cards. A policy must include the following except that an organization may award a minimum prize:

(1) If a prize is cash and all winning players bingo on identically priced cards, the cash prize must be divided equally. An organization may round fractional dollars.

(2) If a prize is cash and the winning players bingo on differently priced cards, an organization shall award each winning player:

(a) The designated prize;

(b) An equal share of the designated prize; or

(c) A proportional part of the designated prize for that card or any other fair method. The proportional part is the ratio that each winning player is in relation to the total number of winning players. To illustrate, if three players bingo on differently priced cards, each player is to be awarded one-third of the designated prize for that player's card.

(3) If a prize is merchandise and it cannot be divided, an organization shall do one of these options which must be disclosed in the bingo program or promotional material or announced before the bingo session:

(a) Award each winning player a substitute merchandise prize which must be of at least equal value and total the retail ~~value~~ price of the original prize. A merchandise prize may be redeemable or convertible into cash at an organization's option;

(b) Award a certain cash split amount that totals the retail ~~value~~ price of the original prize; or

(c) Conduct a continuous or separate playoff game between the winning players;

e. A policy that a player may or may not use a bingo card marking device and play additional paper bingo cards at the same time; and

f. A policy that a player may or may not share the player's bingo package with another player.

3. An organization shall make these announcements:

   a. Before each session, the policies on:

      (1) When a bingo is timely called by a player;

      (2) Whether the bingo caller, floorworker, or both must hear and acknowledge a player who calls the word "bingo" or other required word; and

      (3) That a player is responsible for ensuring that the bingo caller, floorworker, or both hear and acknowledge the player; and

   b. Before each game, the game's winning bingo pattern.

4. An employee may only assist a disabled player in playing a bingo card or assist a player in how to use a bingo card marking device. A legally blind or disabled player may use the player's personal braille or special card when an organization does not provide such a card. An organization may inspect and reject the card.

5. An employee may not sell or award a gift certificate as a prize unless:

   a. A ~~gift~~ certificate is accounted for when it is sold or awarded. An employee shall issue a ~~gift~~ certificate to the purchaser or player and retain a copy or stub of the certificate with the daily records and record the certificate on a register to document the sale. An organization shall recognize a sale of a ~~gift~~ certificate as gross proceeds on the tax return for the quarter in which it was sold. A certificate awarded as a prize has no cash value. A ~~gift~~ certificate must be used to buy only a bingo card or package;

   b. A register is maintained which accounts for all ~~gift~~ certificates sold or awarded at a site. A register must include, for each certificate, a consecutive control number, selling price (~~value~~ if applicable), dates issued and redeemed, sites at which it is issued and redeemed, and initials of the employees who issue and redeem the certificate; and

   c. A redeemed ~~gift~~ certificate is signed by a player and retained by an organization with the daily accounting records. A player is issued a bingo card or package at the site when the ~~gift~~ certificate is redeemed.

6. If an organization changes a publicly announced bingo program for a session in which a potential prize or the number of games is reduced, an employee shall notify a player of the change before the player buys a card.

7. If an organization sells two or more differently priced cards or packages for a game, it shall use a different type, color, or serial number of card for each differently priced card or package or use a method approved by the attorney general ~~to differentiate each card or package to determine the winning prize~~. An organization may not use the same serial numbered paper bingo cards for more than one game or group of games during a bingo session, unless the face of a card is a different color.

8. If an organization accepts a discount coupon, the redeemed coupon must contain the dollar value or percentage discount and be signed by a player. An employee shall write the value of the bingo card or package purchased on the face of the coupon unless the value is already stated, record the date on the coupon or on a group of coupons for a session, and retain the coupon with the daily records. The value of a player's one or more coupons must be less than the value of the card or package bought.

9. If an organization accepts a donated item in exchange for a discount, an employee shall account for the discount on a register as part of the daily records. A discount must be less than the value of the card or package bought. A register must contain:

   a. Bingo session and date of the session;

   b. Amount of the discount;

   c. Value of the bingo card or package bought;

   d. Signature of the player;

   e. Total amount of bingo card or package discounts for the session; and

   f. Date and initials of the cashier.

10. A card or package must be bought on a site immediately before the start of a game or during a session. However, an organization may presell a card or package for a special session that involves a bingo prize or prizes that equal or exceed ten thousand dollars for the session provided the organization:

    a. Uses a consecutively numbered two-part receipt to register a player who prepays. One part is issued to a player who shall redeem the receipt to receive the card or package. The second part is retained by the organization to account for the gross proceeds;

    b. Separately accounts for the gross proceeds and reports it on a tax return for the quarter in which the game is conducted; and

c. Provides a card or package to the player before the start of the session that day.

Except for a bonanza bingo or a game that has all of its numbers predrawn, no card may be sold for a game which is in progress or ended. If a paper bingo card is included in a package for a game in progress or ended, the card must be withdrawn and voided or destroyed. An employee may exchange a purchased package for another package if the employee accounts for all the cards of the first package and a session has not started.

11. An organization may allow a player to use a bingo card marking device provided by the organization that marks an electronic card image of a purchased card as follows:

a. A device cannot be reserved for a player unless a player is disabled. An organization shall provide each player an equal opportunity to use the available devices on a first-come, first-served basis. A device cannot be issued through a floorworker;

b. A device must be used only at a site where the site system is located and the session is being conducted;

c. A device must be rented for a fixed amount, regardless of the price for a card or package or number of cards played through the device, or provided free to a player for the player's temporary use during the session;

d. No player can use more than one device at a time during a session;

e. No player can play more than seventy-two cards per game on a device and cannot choose or reject downloaded cards;

f. An organization shall use paper bingo cards in the session that are of a series different than the cards downloaded in the devices;

g. If a card or package may be used in a device and in paper form, it must be sold for the same price. An organization may sell a special card or package to a player for use only in a device. The organization may require a player to buy a minimum-priced card or package to use a device;

h. If a player rents a device while a game for that session is in progress, the player may not play that game and a cashier shall ~~notate~~ record on the player's receipt that the specific game number is void;

i. An organization may print a facsimile of a winning card and post it for players to inspect;

j. A player shall use an input function key on a device to mark each number as it is called. When a player inputs a number, a device may automatically mark all the player's cards that contain that number;

k. If a player has a winning card, the player shall:

(1) Timely call bingo according to subdivision c of subsection 2 and it must be by a method other than through a device; and

(2) Provide the device with the winning card displayed to a floorworker to verify according to subsection 18;

l. If a player's call of a bingo is disputed or if the attorney general makes a request, an organization shall print the winning card stored on the device;

m. An organization shall have one spare device available should a device in use malfunction. If a player's device malfunctions, the player may exchange the device for a spare device. An organization shall restore the player's same cards from the site system;

n. An organization may perform routine maintenance on a device; and

o. An organization shall back up all of a site system's accounting information for a session on a report or separate electronic media immediately after that session and retain the backup file for three years from the end of the quarter in which the activity was reported on a tax return.

12. After the start of a session, an organization may not refund the purchase price of a card or package unless a site incurs an electrical power loss, there is inclement weather, an organization experiences an extraordinary incident, a session is canceled, or a player has an emergency.

13. If an organization sells hard cards before each game, during the game an employee shall count the number of hard cards played by all the players to the number recorded as sold. If the comparison reveals an irregularity, the gaming manager shall take corrective action.

14. An organization may not sell a bingo package that contains a variable number of cards based on each player's ability to play. Each separately priced package must contain a standard number of cards.

15. If a game has an actual or potential prize valued at five hundred dollars or greater ~~or involves two or more differently priced cards or packages~~, an employee shall use an electronic bingo card verifier; record in writing the called numbers and the sequence in which they were drawn ~~and retain the record for three months~~; or audiotape the bingo caller calling the balls ~~and retain the tape for three months. Also, when~~. When a player bingos, an employee shall retain the bingo card verifier record ~~in writing or~~, record in writing, or audiotape information, which includes the following and retain ~~the record~~ these records for three months.

    a. Game number, winning pattern, type of card (regular, premium, super), series (card) number, and last number called; and

    b. Cash register receipt number, if applicable.

16. Except for speedball bingo or when a monitor or random number generator is used, a caller shall manually display the letter and number on the ball to players. An employee shall announce the letters and numbers on the balls or displayed by a random number generator in their exact sequence; however, numbers freely awarded do not need to be announced. If a player calls bingo and the bingo is invalid, the next ball called must be in sequence of the balls drawn.

17. A player may bingo more than one time on the same card when an organization conducts continuation games of more than one pattern on the same card.

18. A winning card must be verified by an employee and one neutral player or person unless an electronic bingo card verifier is used. A floorworker may not access a verifier. For a winning card on a bingo card marking device, an employee shall compare the serial number of the device to the receipt for the cards played on that device.

19. An organization may offer a variety of prizes to a winning player who may choose a prize by random selection or chance. A player may win an additional prize by choosing the prize by random selection or playing a game of skill if the player is not required to give anything of value. An organization shall disclose the potential prizes in the bingo program and notify a player of these prizes before the player chooses a prize or plays a game of skill.

20. An organization may award, as a prize, cash, merchandise, merchandise gift certificate, or gift certificate that can be redeemed for a bingo card or package.

21. An organization may conduct a qualifying game whereby a player wins ~~the game's prize and~~ an opportunity to play in a special game~~, but not for free~~.

22. An organization may award a bonus that is based on a factor incidental to a bingo program if it is disclosed in a program, calendar, or flyer, and announced before a session, and is recorded on a prize register. Factors include a player bingoing on a certain color of card, combination of colored cards, last number called, or winning a game on the player's birthday.

23. If a player bingos and an employee determines that the player is playing more bingo cards than were bought, the player's bingo is void.

24. Bonanza bingo and a game that has all of its numbers predrawn must be conducted as follows:

    a. A caller shall initially call a certain quantity of balls. While a caller initially calls the bingo balls or before the caller calls the next continuous number, a player shall verify that the letter and number on the balls drawn are correctly displayed. A posted display must be used for the games, have restricted access, and reference that game;

    b. A card must be sealed and unpeekable when it is sold;

    c. An organization may sell or exchange cards throughout a session until sales are closed. If an organization exchanges cards, an employee shall, before the next continuous number is called, fully account for the floorworkers' sales of cards according to section 99-01.3-04-07. A floorworker may not turn in any exchanged card after the accounting is begun;

    d. If a player bingos before the next continuous number is called, the player wins. Otherwise, an additional bingo ball is drawn until a player bingos. This rule does not apply to a game that has all of its numbers predrawn;

    e. A game may not extend beyond a session;

    f. If an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, an employee shall:

        (1) Validate the date of the session on the card with a mechanical device or rubber stamp. A card validated for a session, but not sold, must be voided. The organization shall use a different color of card for each game conducted at a site during a day;

        (2) Retain the exchanged cards as part of the daily records for six months;

(3) Record the validation date and card color used by session; and

(4) Reconcile the cards, accounting for:

(a) Number of cards taken from inventory which must be independently counted and verified by two employees who shall initial and date the verification;

(b) Number of cards sold;

(c) Number of cards exchanged, which must be separately maintained for each floorworker. The cards must be recounted by an employee who is not a floorworker and who did not complete the floorworker sales report. The employee who controls the floorworker sales report shall band each floorworker's exchanged cards separately, identify the banded group with the floorworker's name, session, and initial and date. A floorworker shall also initial the floorworker's banded group;

(d) Number of cards returned to inventory and voided which must be independently counted and verified by two employees. Each person shall initial and date the verification; and

(e) Document any discrepancy and corrective action taken; and

g. A voided card must be retained for six months.

25. If an employee determines, during or immediately after the play of a game and before a card is verified as a winning bingo, that a ball is missing, the employee shall void the game and offer the players a fair alternative.

26. Except for a game that has all of its numbers predrawn and for which an organization has recorded the information required by section 99-01.3-03-07 on the winning card and retains the card, an employee shall record a prize and bonus prize on a register according to section 99-01.3-03-07.

27. Unless written approval is obtained from the attorney general for use of another receipting method, an organization shall receipt gross proceeds, including an additional amount paid by a player for a chance to win an extra prize in a special game, by a cash register, tickets, paper card count, or floorworker sales report. The receipting method must reference the primary color and type, and serial number of the

cards sold, or reference other information approved by the attorney general.

28. For a site where bingo is the primary game or a site that is leased by a licensed organization, the organization or any person may not pay bingo prizes in which the total bingo prizes exceed total bingo gross proceeds for two entire consecutive quarters. However, if bingo is the primary game at the site, a bingo prize that equals or exceeds ten thousand dollars is excluded from the calculation of total bingo prizes.

29. An organization shall have a written bingo program for each session. However, if the program does not change each day or session, an organization may retain one program and record the dates on which it applied. A program must contain:

    a. Name of a site or organization;

    b. Date or dates of the sessions;

    c. Description of each game and the game's prize; and

    d. Selling prices of the cards or packages.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.1

**99-01.3-04-05. Tickets.** The ticket receipting method may be used to record gross proceeds of packages, hard cards, and paper cards, including floorworker sales, by issuing consecutively numbered tickets. These rules apply:

1. All tickets on a roll must have a preprinted consecutive number; and

2. Tickets must be issued consecutively from a roll. The daily records must contain the ticket color, ticket selling price, and lowest and highest numbered tickets issued from each roll for a session. Every ticket on a particular roll must be issued for the same price on that day. Tickets issued for each type of sale must be recorded separately. A ticket not issued during a session that bears a number below the highest numbered ticket issued, along with any tickets from the end of the roll which will not be issued in a future session, must be retained as part of the daily records as unsold.

3. A discount coupon and gift certificate must be recorded in the daily records.

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-04-06. Paper card count.** The paper card count receipting method may be used to record gross proceeds of paper bingo cards. The daily records must include the total number of cards or collated sets taken from inventory and returned to inventory. Unless there is only one employee on duty when the cards or sets are taken from or returned to inventory, the count of the cards or sets must be done by two persons. Both persons shall ~~independently~~ participate in a count of the cards or sets in the presence of each other and resolve any difference. ~~Then, one person shall record~~ After completing and documenting the count, ~~and~~ both persons shall initial the record. The record must include the selling price of the card or set and number of cards or sets issued, returned, voided, and sold for each type of card for the session. A discount coupon and gift certificate must be recorded in the daily records.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-04-07. Floorworker sales report.** The floorworker sales report receipting method may be used to record gross proceeds of paper bingo cards sold by floorworkers. A report must be completed, for each floorworker, by an employee who is not a floorworker. For a bonanza bingo game in which an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, a report must contain all the information required by subsections 1 through ~~9~~ 10. For all other games, a floorworker's report must contain all the information required by subsections 1 through 6, by game, and must contain the information required by subsections 7, 8, ~~and~~ 9, and 10, by session.

1. Game number.

2. Floorworkers' names or assigned numbers.

3. Selling price of each single (one card) and packet.

4. Number of singles and packets issued to each floorworker, by game. The employee issuing the cards and the floorworker shall initial the report. If an organization sells singles at a discount, the number of discounted sets must be predetermined and separately accounted for when issued to a floorworker.

5. Number of singles and packets returned by floorworker, by game, as unsold, including the number of exchanged bonanza bingo cards. The

floorworker and an employee who is not a floorworker shall count the cards and initial the report in the presence of each other.

6. Number and value of singles and packets sold by each floorworker, by game.

7. Amount of cash turned in to a cashier by floorworker. The floorworker and the cashier shall count the cash and initial the report in the presence of each other.

8. Amount of cash long or short by floorworker.

9. Total value of singles and packets sold, total cash turned in, and total cash long or short.

10. A void, refund, or similar item must be approved by a supervisor and retained with the floorworker sales report.

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-04-08. Recordkeeping.** Records must include:

1. For each session~~, records must include~~:

   a. The gross proceeds for each type of sale or game. If a site system involving bingo card marking devices is used, records must include the summary report for the session according to subdivision c of subsection 1 of section 99-01.3-16-09.1;

   b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;

   c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sessions for a quarter must reconcile to the tax return;

   d. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;

   e. Inventory records according to subsections 2 ~~and~~, 3, and 4 of section 99-01.3-03-09;

   f. If bingo is the primary game at a site, the number of players and time of the count;

   g. A copy of or reference to a bingo program according to subsection 29 of section 99-01.3-04-03;

h. All voided paper bingo cards for a session and exchanged bonanza bingo cards, which must be retained for six months;

i. The gift certificate register;

j. Redeemed gift certificates and discount coupons; and

~~i.~~ k. Purchase invoice or receipt documenting the cost of a merchandise prize.

2. The cash profit (see subdivision a of subsection 6 of section 99-01.3-02-01) which must be deposited intact according to section 99-01.3-03-10.

3. The count and reconciliation of paper bingo cards, rolls of tickets, and ~~a~~ cash ~~bank~~ banks according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-05

**99-01.3-05-01. Raffle.** A raffle is a game in which a prize is won by a player who bought a raffle ticket or square on a board. A winning player is determined by drawing a ticket stub or number of a square on a board from a receptacle or by an alternate fair method. A calendar raffle is a raffle in which a player's ticket stub is entered in two or more drawings held on predetermined days over an extended period of time for predetermined prizes. The conduct of a raffle is the drawing or alternate fair method of selection.

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-05-02. Tickets - Limitations and requirements.**

1. Each raffle ticket is a separate and equal chance to win with all other tickets sold. A person may not be required to buy more than one ticket, or to pay for anything other than the ticket, to enter a raffle. An organization may sell several tickets or sell tickets in advance of a special event to a person at a discount. A discounted ticket must be specifically designated as a discounted ticket on the ticket and its stub. The number of discounted tickets must be predetermined and separately issued and accounted for when issued to a ticket seller.

2. An organization may not allow a raffle ticket seller to retain a ticket for free or retain any portion of the price of a ticket as compensation, and may not compensate the seller a certain amount or provide a gift for selling a winning ticket. An organization may provide a raffle ticket seller a fixed amount for selling the most or a certain number of tickets. No raffle ticket can be resold.

3. A raffle ticket must have a detachable stub that is consecutively numbered. Except for the use of double admission tickets, a stub must have a duplicate number corresponding to the number on the ticket and contain the purchaser's name, address, and telephone number. A ticket must be issued, as a receipt, to a player. For a raffle conducted by a licensed organization, the ticket numbers must be mechanically or electronically imprinted. For a raffle conducted by an organization that has a permit, the ticket ~~numbers~~ may be manually imprinted.

4. An employee may not sell a ticket on a site where another organization is licensed or has a permit unless the employee is granted permission by the lessor and other organization. An employee of a lessor may sell raffle tickets at the site for the organization authorized to conduct games at that site.

5. A ticket seller shall return the stubs of all tickets sold. The stubs must be intermixed in a receptacle.

6. An organization shall return the price of a ticket to a player if the stub of the player's ticket was not placed in the receptacle for the drawing.

7. For a calendar raffle, the stub of each ticket sold must be entered in all the drawings conducted since the ticket was sold. A licensed organization may not conduct a calendar raffle for other than a fiscal year beginning July first and ending June thirtieth.

8. An organization may not conduct a drawing unless two employees are present. A drawing must occur at an authorized public or private site.

9. In conducting a drawing, an employee shall draw a stub for the highest valued prize first. If there is more than one prize, an employee shall continue drawing for the prizes in the order of descending value. A prize is valued at its cash value or retail price. An organization may defer announcing the names of the winning players and respective prizes until after all the drawings have occurred and may make the announcement in any sequence. This rule does not apply when an organization adopts a written policy to place a winning player's stub immediately back into a receptacle to potentially be drawn for another prize or multiple drawings with a winner's choice of prizes.

10. An organization may not print any work or phrase on promotional material or advertising which implies or expresses that a purchase of the ticket is a charitable donation.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-05-03. Prize restrictions and requirements.**

1. No prize may be real estate, ticket for entry into another raffle, or live animal except for beef or dairy cattle, horse, bison, sheep, or pig. A live animal must be donated ~~and may not have a value exceeding one thousand dollars~~. A prize must be an item that may be legally owned and possessed and has a value or a right to a free service. A winning player may not be required to first pay for or buy something to receive a prize. Cash or merchandise prizes may be awarded. A cash prize may be based on a percentage of gross proceeds. A single cash prize cannot exceed one thousand dollars and, during one day, the total cash prizes cannot exceed three thousand dollars.

2. An organization may convert a merchandise prize to a cash prize; provided, that the retail price of a single merchandise prize does not exceed one thousand dollars and, during one day, the retail price of the converted merchandise prize and cash prizes do not exceed three thousand dollars.

3. An organization shall own or have a contract to acquire a merchandise prize before a drawing. However, an organization does not need to register or title an automobile or similar item.

4. Besides a primary prize that is awarded, an organization may offer an additional unguaranteed cash prize limited to one thousand dollars or merchandise prize provided:

   a. A ticket must describe the prize;

   b. The prize is predetermined and may be limited to a winning player of one of the other prizes;

   c. A player is not required to pay an additional amount, forfeit a prize, or be present to participate;

   d. Unless an organization owns a prize, an award of the prize must be insured; and

   e. ~~A~~ Unless the prize is limited to a winning player of one of the other prizes, a drawing ~~is~~ must be conducted from all tickets sold.

5. If an organization has not been able to recover the cost of the prize, it may cancel a raffle and refund the gross proceeds.

6. A prize winner must be drawn or determined on the date and at the location indicated on a ticket unless a different date or location is requested in writing and approved by the attorney general before the date of the drawing. If a different drawing date or location is approved, an organization shall notify the purchasers of the tickets of the change by contacting each purchaser or by making a public announcement. The attorney general may, for good cause, change the date or location for a drawing.

7. Within seven days of a raffle, an organization shall notify the winning player verbally or, if the value of the prize exceeds two hundred dollars, in writing, of the prize and arrange the pickup or delivery of the prize. If a prize remains unclaimed by a winning player for thirty days following the date of the written notification and an organization has made a good-faith effort to contact the winner to redeem the prize, the organization may retain the prize, have a second prize drawing, or award it in another raffle or game.

8. An organization may award a bonus prize based on a separate drawing of previously drawn winning tickets.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 36-21.1-09, 53-06.1-01.1, 53-06.1-10.1

**99-01.3-05-04. Information on a ticket.** Except for double admission tickets, each ticket must contain this preprinted information:

1. Name of organization;

2. Ticket number;

3. Price of the ticket, including any discounted price;

4. Prize, description of an optional prize selectable by a winning player, and or option to convert a merchandise prize to a cash prize that is limited to the lesser of the value of the merchandise prize or one thousand dollars. However, if there is insufficient space on a ticket to list each minor prize that has a retail price not exceeding ~~fifteen~~ twenty dollars, an organization may state the total number of minor prizes and their total retail price;

5. For a licensed organization, print "office of attorney general" and license number. For an organization that has a permit, print the authorizing city or county and permit number;

6. A statement that a person is or is not required to be present at a drawing to win;

7. Date and time of the drawing or drawings and, if the winning player is to be announced later, date and time of that announcement. For a calendar raffle, if the drawings are on the same day of the week or month, print the day and time of the drawing;

8. Location and street address of the drawing;

9. If a merchandise prize requires a title transfer involving the department of transportation, a statement that a winning player is or is not liable for sales or use tax;

10. If a purchase of a ticket or winning a prize is restricted to a person of a minimum age, a statement that a person must be at least "_____" years of age to buy a ticket or win a prize;

11. A statement that a purchase of the ticket is not a charitable donation;

12. If a secondary prize is an unguaranteed cash or merchandise prize, a statement that the prize is not guaranteed to be won and odds of winning the prize based on numbers of chances; and

13. If a prize is live beef or dairy cattle, horse, bison, sheep, or pig, a statement that the winning player may convert the prize to a cash prize that is limited to the lesser of the market value of the animal or one thousand dollars.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-05-05. Double admission tickets.** An organization may use double admission tickets provided:

1. Two single tickets must be printed side by side on a roll with a consecutive number. Both tickets must have the same number;

2. A list of the prizes must be disclosed or made available to players or the prize must be present at the site. If there is more than one prize, an organization may use a different receptacle for each prize to enable an employee or player to place one of the tickets in the receptacle related to a certain prize, or one receptacle in which the winning player can select from a variety of prizes. All tickets must be sold consecutively or in consecutive sets if the tickets are tracked by each ticket seller at a site on the day of the raffle. All the tickets of each separately colored roll must be sold for the same price on that day. An organization may use a separate colored roll to sell several tickets to a person at a discount. The organization and player each retains one ticket, unless the player is allowed to temporarily retain the entire ticket until the player places one ticket into a receptacle;

3. A winning player need not be present when a drawing is held but shall claim the prize within a reasonable redemption period set by the organization that day. Otherwise, an organization shall conduct a second prize drawing, or more, until the prize is claimed. A statement of the time of the drawing and redemption period must be on all promotional material and be posted at a site; and

4. An organization shall record in its daily records the color and selling value of each ticket and the lowest and highest numbered ticket sold from each roll. Any tickets left on a roll which will not be sold in any other

raffle must be retained as part of the daily records. This subsection does not apply to a local permit.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-05-06. Reporting gross proceeds and prizes.**

1. When the sales price of a raffle ticket relates partly to admission for a meal or other nongaming activity, an organization shall deposit the gross proceeds into its gaming account and allocate the amount between gaming and nongaming activity in this order:

   a. An amount is allocated to raffle gross proceeds equal to the cost of the prize.

   b. An amount is allocated to nongaming activity to recover its cost. This amount must be documented and is not reported on a tax return.

   c. The remaining amount is allocated to raffle gross proceeds.

2. If an organization conducts a raffle in which the prize drawing is in one quarter, the gaming activity must be reported in the quarter in which the prize drawing is held. If an organization conducts a calendar raffle in which prize drawings are in more than one quarter, the gross proceeds and prizes must be reported ~~as:~~

   ~~a. Report gross proceeds for a quarter based on the percentage of prizes awarded in that quarter in relation to the total prizes to be awarded in all the quarters; and~~

   ~~b.~~ ~~Report prizes~~ in the ~~quarters~~ quarter in which the ~~drawings are~~ final prize drawing is held.

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-05-07. Recordkeeping.** Records must include:

1. For each raffle~~, records must include~~:

   a. Purchase invoice documenting the purchase of tickets and range of ticket numbers printed;

b. Ticket distribution log containing a ticket seller's name, quantity issued, range of single and discounted ticket numbers issued to the seller, and quantity sold;

c. Reconciliation of the cash received from each ticket seller based on the number of tickets sold, including discounted tickets, date cash is received, and a schedule of bank deposits;

d. For double admission tickets, the daily starting and ending cash on hand, IOU records according to section 99-01.3-03-06, and daily records according to subsection 4 of section 99-01.3-05-05;

e. A sample of a ticket;

f. The stubs of all sold tickets which must be retained for one year from the end of the quarter in which the activity was reported on a tax return;

g. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;

h. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all raffles for a quarter must reconcile to the tax return; and

i. Purchase invoice or receipt documenting the cost of a merchandise prize and documentation of the cost of nongaming activity according to subdivision b of subsection 1 of section 99-01.3-05-06.

2. For double admission tickets, inventory records according to ~~subsection~~ subsections 3 and 4 of section 99-01.3-03-09.

3. The total receipts, less a cash prize, which must be deposited according to section 99-01.3-03-10.

4. The count and reconciliation of rolls of tickets and cash banks according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-06

**99-01.3-06-01. Games - Definitions.** This chapter applies to an organization that conducts pull tabs, club specials, tip boards, seal boards, prize boards, and punchboards, but not pull tabs involving a dispensing device. The maximum price per chance is two dollars. A prize board, club special, punchboard, seal board, and tip board are conducted as a single game which may have a cash or merchandise prize and one or more seal prizes. The value of a seal prize may exceed the value of the top tier prize. The value of a last sale prize cannot exceed the value of the top tier prize. If a merchandise prize is awarded, its retail ~~value~~ price must be stated on a flare. ~~An organization shall complete the description of a merchandise prize and retail value of the prize on a flare for a game that has a merchandise prize. Retail value includes sales tax.~~ For pull tabs described by subsection 3, only a cash prize can be awarded, not a merchandise or seal prize.

1. "Club special" means a placard used with pull tabs and it contains numbered lines and a seal covering the winning number of the top tier prize. A player may win a minor prize or, if the player has a pull tab with a number matching a predesignated number on the placard, would sign the player's full name on the line. When all the lines are signed, a seal is removed to reveal a winning line number. A player whose signature is on that line wins the seal prize. An organization is responsible for ensuring that a description and retail price of a merchandise prize or cash prize to be awarded and cost per play is on a flare. The maximum number of pull tabs in a deal is ~~four~~ five hundred ~~ten~~. The maximum cash prize or seal prize ~~value~~, including the retail price of a merchandise prize ~~and sales tax~~, is one hundred fifty dollars.

2. "Prize board" means a board used with pull tabs to award cash or merchandise prizes. Coins of various values may be affixed to the board and, under each coin, a cash prize value is preprinted on the board. A board may contain numbered lines and a seal covering a winning number. A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. However, if a number or symbol matches a winning number or symbol assigned to a specific coin or minor prize, the player wins that coin or prize, and a cash prize value stated under the coin. A last sale prize may be awarded. When the board is closed, a seal is removed to reveal the winning line number. A player whose signature is on that line wins the seal prize. No board may be closed unless all the top tier winning pull tabs have been redeemed, all the pull tabs are sold, ~~and~~ all the seals have been opened, or the board has been conducted for ninety calendar days. An organization is responsible for ensuring that a description and retail price of a merchandise prize or cash prize to be awarded and cost per play is on a board. A seal prize ~~is~~ and a last sale prize are not considered ~~a~~ top tier ~~prize~~ prizes. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face

value, of the coins that were awarded to the total face value of all the coins. An organization may use an unawarded prize in another game, sell the prize, or deposit the coin in the gaming account. The maximum number of pull tabs in a deal is two thousand. The maximum cash prize or seal prize ~~value~~, including the retail price of a merchandise prize ~~and sales tax~~, is five hundred dollars.

3. "Pull tab" means a folded or banded ticket (jar ticket) or a card with break-open tabs (pull tab) or latex covering. Unless otherwise stated, the terms "pull tab" and "jar ticket" are used interchangeably. A winning pull tab contains certain symbols or numbers. The maximum cash prize is five hundred dollars.

4. "Punchboard" means a board comprised of holes that contain numbered slips of paper (punches). A punchboard may include a seal prize, and more than one last sale prize if the punchboard is split into more than one section. An employee or player extracts a punch from the punchboard. If the number on the punch matches a number on a flare, the player wins a prize. No punchboard may be closed unless all the top tier winning punches have been redeemed, all the punches are sold, or the punchboard has been conducted for ninety calendar days. A seal prize and a last sale prize are not considered top tier prizes. The maximum cash prize or seal prize ~~value~~, including the retail price of a merchandise prize, is five hundred dollars.

5. "Seal board" means a placard containing consecutively numbered lines. A seal covers the winning number. A player buys a blank "line" and signs the player's full name on it. After all the lines are signed, the seal is removed to reveal the winning line number. An organization ~~shall complete the~~ is responsible for ensuring that a description and retail ~~value~~ price of a merchandise prize or cash prize to be awarded and cost per play is on a board. The maximum seal cash prize ~~value~~ or retail price of a merchandise prize is five hundred dollars.

6. "Tip board" means a placard to which jar tickets or pull tabs are attached. A seal covers the winning number of the top tier prize. A player may win a minor prize or, if the number of a player's jar ticket matches a number on the placard, the player signs the player's full name on the line. After all the lines are signed or all the pull tabs have been sold, the seal is removed to reveal the winning ~~line~~ number. The maximum number of jar tickets or pull tabs in a deal is ~~four~~ five hundred. The maximum cash prize or seal prize ~~value~~, including the retail price of a merchandise prize, is one hundred fifty dollars. An organization is responsible for

ensuring that a description and retail price of a merchandise prize or cash prize to be awarded and cost per play is on a board.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-08

**99-01.3-06-02. Conduct and play.**

1. Deals of pull tabs must be commingled for a game as follows:

   a. Two or more deals must be placed in a receptacle and be thoroughly intermixed. When an organization's predetermined number or range of numbers of winning pull tabs remain in a game as unredeemed, an additional deal is added. An employee shall add a deal to a game when there are about two hundred fifty pull tabs remaining and the game cannot be or is not being closed. The new pull tabs must be intermixed with the pull tabs in the receptacle before any pull tab is sold;

   b. Except for the game serial number, and a minor difference in printing that is approved by the attorney general, the deals must be identical. If deals of a game involve folded or banded jar tickets, the color of the tickets' band must be the same; however, neapolitan colored bands may be used. When a deal is added to a game, an employee shall compare the color of a deal's pull tabs to the color of the game's pull tabs. If the two colors are not the same, the deal cannot be used;

   c. A master flare or flare for at least one deal of a game must be displayed with the game and be visible to and not easily removed by a player. An organization shall retain all original flares at a site while a game is in play. If a deal has a last sale prize feature, the deal's flare must also be displayed. Only the flare of one deal of a game may have a last sale prize feature;

   d. If an indicator for adding a deal to a game has been reached and an organization does not have a deal to add, the organization shall temporarily suspend the game until it procures a deal. However, if the organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;

   e. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter, a game may be closed anytime if all top tier winning pull tabs have been redeemed;

f. Except as provided by subdivision g, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and:

(1) Fifty deals have been added to a game;

(2) A game's actual gross proceeds are twenty-five thousand dollars; or

(3) A game has been in play for twenty-five consecutive calendar days; and

g. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period.

2. An employee may not place a deal of pull tabs, club special, or prize board in play which has a manufacturer's or distributor's seal broken on the game's container when the game was received from a distributor. A person may not take off a deal's manufacturer's cellophane shrink wrap or break the manufacturer's or distributor's security seal on the deal's container until the deal is to be placed in a receptacle. If a distributor's or manufacturer's security seal is broken before the deal is used, an organization shall return the deal to the distributor. If a deal is packaged in two or more containers, the full deal must be placed in play at the same time.

3. These rules must be disclosed or made available to players:

a. Restricting the play of a game to one player or a group of players is prohibited;

b. A winning pull tab must be redeemed within a fifteen-minute time limit;

c. If a person knowingly solicits, provides, receives, or knowingly uses any inside information, from or to any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;

d. A pull tab cannot be redeemed if it has been taken from the gaming area;

e. To the best of the organization's knowledge, a prize remaining on a board relates to a winning pull tab that has not been bought. This rule is not required to be disclosed or made available to players if an organization does not conduct a prize board;

f. A deal may be added to a game at any time; and

g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited. This rule is not required to be disclosed or made available to players if an organization does not pay a prize that requires a record of win.

4. These policies and information must be disclosed ~~or made available~~ to players:

a. For any last sale prize, the method of determining which player is entitled to buy the last pull tab or punch for a last sale prize when two or more players desire to buy the last pull tab or punch;

b. The information, if any, authorized by subdivision a or b, or both, of subsection 6;

c. Any limit on the number of pull tabs or punches that a player may buy at a time; and

d. When a game is being closed, an employee shall:

(1) Post a notice that the game is being sold out; and

(2) Any limit on the number of pull tabs or punches that two or more players may buy at a time.

5. A player may not redeem and an employee may not knowingly pay a prize for a pull tab after fifteen minutes have elapsed since the pull tab was bought. If a player attempts to redeem a pull tab after the time limit, an employee shall, if possible, retain and void the pull tab.

6. A person may post the information referenced by subdivision a or b, or both, for a commingled game provided that the posting contains a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain

unredeemed. Posted information may be as described in subdivision a or b, or both:

a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.

b. The number of unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.

7. An organization may limit the number of pull tabs a player may buy regardless if the player is redeeming a winning pull tab.

8. An employee may not selectively pick a pull tab from a receptacle based on its game serial number or other factor. An employee shall take a handful of pull tabs from a receptacle and count off the number bought. An employee may not permit a player to physically handpick a pull tab or honor a player's request to select a specific pull tab. However, an employee may honor a player's suggestion to select a pull tab from a general area of a receptacle. In applying subsection 2 of North Dakota Century Code section 53-06.1-16, the phrase "fraudulent scheme or technique" includes an employee selecting, by any method, only certain pull tabs in a game or an employee not thoroughly intermixing pull tabs of the initial or added deals.

9. An employee may only assist a disabled player in opening a pull tab.

10. An employee shall deface a winning number or symbol of a pull tab, <u>including pull tabs used with a prize board,</u> and punchboard punch when it is redeemed. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced. An employee may not knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, has a game serial number different from the serial numbers of the deals in the game, or is defective.

11. If a player buys a set of stapled jar tickets and, before or after opening any jar ticket, determines that the set contains less than the standard number of tickets, an employee may issue the player only the number

of tickets actually missing. If a player buys a set of banded jar tickets and, before breaking the band, determines that the set contains less than the standard number of tickets, an employee may issue the player a new set in exchange for the defective set. An employee may staple together the proper number of loose jar tickets of a game to sell. An employee may, at any time, sell a loose unopened jar ticket or partial set of banded jar tickets at a proportional selling price of a full set.

12. When a game is being closed, an organization may continue to conduct the game although all of its top tier and minor winning pull tabs have been redeemed. An employee may not permit a player to buy out a game except when a game is being closed. If an organization closes a game that has pull tabs unsold, it may not open or place the pull tabs back into play.

13. Unless an organization conducts a commingled game according to subdivision e of subsection 1 or closes a commingled game at least monthly, an employee who did not conduct the game shall do a monthly interim audit of the game. If the percent-of-accuracy of all the games of a site for the previous quarter was less than ninety-eight and one-half percent, an employee who did not conduct the game shall do a weekly interim audit of the games for that site for up to twelve continuous weeks or until the organization determines, resolves, and documents the cause. One of the weekly interim audits may be the audit required by subsection 7 of section 99-01.3-03-10. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general. Percent-of-accuracy is computed as cash profit divided by adjusted gross proceeds.

14. An employee shall award the last sale cash or merchandise prize to the player who actually buys the last pull tab or punch.

15. An organization may transfer a commingled game, club special, tip board, seal board, prize board, and punchboard from a site to another site, or rotate games among sites. If an organization discontinues gaming at a site, it may close a game. If a game is in the process of being conducted through a jar bar, the game cannot be transferred to a dispensing device. A game must be reported for the site at which it was closed and on a tax return for the quarter in which it was closed.

16. An employee may not pay, from any source of funds, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site. This rule does not apply to a last sale prize.

17. Before leaving a jar bar unattended, an employee shall safeguard the games, cash, and records.

18. An organization may not publicly display a redeemed pull tab.

19. An organization or employee may not reimburse, from any source of funds, an amount to a player for play of a game that ~~is defective~~ has a manufacturing defect or has ~~a material~~ an incorrect posting of information described by subsection 6, unless the attorney general approves.

20. If an organization suspects or determines that a game may be defective, the organization shall temporarily suspend the game, notify the attorney general, and follow the attorney general's instructions.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-08

**99-01.3-06-03. Recordkeeping.** Records must include:

1. All redeemed and unsold pull tabs or punches for a game must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return;

2. For a commingled game, an accounting of each deal's, shift's, or day's redeemed pull tabs, including the number by prize value, total prizes, and number of redeemed top tier pull tabs by game serial number. This accounting must be consistent and be done each time a deal is added to a game, a shift ends, or at the end of each day. If the accounting is done each time a deal is added to a game, the redeemed winning pull tabs for the period must be grouped separately and retained with all other groups of pull tabs of that game. If the accounting is done at the end of each shift or day, the redeemed winning pull tabs for each shift or day must be banded and each banded group must be dated with the date of activity and be retained in a storage container with all other banded groups of that game. For each game, there must be a daily accounting of deals added to a game, by gaming stamp and game serial numbers, and of the cash profit and bank deposit;

3. For a club special, tip board, seal board, prize board, and punchboard, and accounting of prizes, by gaming stamp number;

4. A daily accounting of starting and ending cash on hand and IOU records according to section 99-01.3-03-06;

5. For a deal of pull tabs or prize board, the game information sheet and flare, and for a club special, tip board, punchboard, and seal board, the flare, with the state gaming stamp affixed must be retained for three years from the end of the quarter in which the game was reported on a tax return;

6. A summary of ideal gross proceeds, value of unsold pull tabs or punches, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries for a quarter must reconcile to the activity reported on the tax return;

7. Record of win according to section 99-01.3-03-08;

8. Inventory records according to ~~subsection~~ subsections 1 and 4 of section 99-01.3-03-09;

9. For a commingled game, the cash profit (see subdivision c of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10;

10. For a club special, tip board, seal board, prize board, and punchboard, the cash profit (see subdivisions e and f of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10;

11. Interim audit records according to subsection 13 of section 99-01.3-06-02;

12. Purchase invoice or receipt documenting the cost of a merchandise prize; and

13. The count and reconciliation of deals, games, and cash ~~bank~~ banks according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-07

**99-01.3-07-01. Sports pool.** A "sports pool" is comprised of wagers paid by players for a line or square that will determine which player wins. The maximum cost per line or square is five dollars. The conduct of a sports pool is the selling of chances on the board and award of a prize. Only cash prizes can be awarded. No sports-pool board with the state gaming stamp affixed may be conducted off of a site.

1. A sports-pool board must be a ten or twelve line or twenty-five or one hundred square board and be acquired from a distributor.

2. An organization shall complete the cost per play, date of sports event, ideal prizes, and method of prize payout on a board. An employee of a lessor may sell chances on a board, but not award prizes, at the site for the organization authorized to conduct games at the site. The method of prize payout may be at periodic intervals or the end of a game. The total payout cannot exceed ninety percent of the gross proceeds.

3. A sports pool must be conducted for a professional sporting event only. An organization shall designate one opponent along the vertical columns of numbers and the other opponent along the horizontal rows of numbers. However, if the opponents are unknown when the board is being sold, an organization shall designate identifiable conferences, divisions, or games. A player who buys a square or line or an employee shall write the player's full name in that square or on that line. Only one player may buy a specific square or line. Except for a calendar sports pool, no tapes may be removed until all the squares or lines are sold and the opponents are designated. All the squares or lines must be sold before the sports event begins. If all the squares or lines are not sold, an organization may advance the board to another game or refund the players' money. If opponents were designated but the board is advanced to another game, an organization shall keep the same opponents or designate new opponents. When an unsold board is advanced to another game, an organization shall post a notice on a site disclosing its policy of advancing the board. Gross proceeds must be separately maintained for each board.

4. An organization may conduct a calendar or master sports pool for two or more games of the same sport. An organization shall use one board for each game and buy the necessary number of boards before selling any square. For example, if a sports pool involves sixteen games, an organization shall buy sixteen boards. A player buys the same square on each board for all the games ~~for a maximum price of five dollars per square per game. If all the books of a calendar sports pool or all the squares of a master sports pool are not sold before the first game, an organization shall refund the players' money and void all the boards. The voided boards must be reported on the tax return as "no activity".~~

~~Otherwise, each~~. Each board is reported separately on a tax return for the quarter in which the game was held.

5. A calendar sports pool must be conducted as follows:

   a. The tapes covering the numbers assigned the horizontal rows and vertical columns of the boards must be removed to reveal the numbers. One opponent must be designated along the vertical columns of numbers and the other opponent designated along the horizontal rows of numbers. The board must state the game and its date;

   b. Each square of each board must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right;

   c. Each board must be printed and may be reduced in size. The quantity printed is based on the type of board. For example, for a one hundred square board, each board must be printed one hundred times. A printed board for each game and a receipt comprise a book;

   d. A receipt must contain:

      (1) A consecutive receipt number starting with one. A statement that the receipt number is the player's assigned square for all the boards in the book;

      (2) Name and address of organization and name of site;

      (3) For a licensed organization, print "office of the attorney general" and site license number. For an organization that has a permit, print the name of the city or county and permit number;

      (4) Price of the book, method of prize payout and prize; and

      (5) A detachable section containing a player's full name, address, telephone number, and matching receipt number which is retained by an organization;

   e. An employee may not sell a book on a site where another organization is licensed or has a permit unless the employee is granted permission by the lessor and other organization;

   f. A player may not choose a particular book to buy. When a book is sold, a receipt's detachable section is completed. After a player buys a book, the player may see the numbers assigned that player's square on the boards; ~~and~~

g. A board must be posted at the site on the day that the related game is held.; and

h. If all the books of a calendar sports pool are not sold before the first game, an organization shall refund the players' money and void all the boards. The voided boards must be reported on the tax return as "no activity".

6. A master sports pool must be conducted as follows:

a. An organization shall post a twenty-five or one hundred square master board at a site. Each square must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right. A master board must include:

(1) Name of organization;

(2) The games;

(3) Price of participating, number of games, method of prize payout and prize; and

(4) A statement that the scores assigned to the players' squares for each game will be posted at the site five days before the game.

b. A player shall buy a square and write the player's full name and telephone number in it.

c. A sports-pool board with the state gaming stamp affixed must be posted at a site five days before the game related to that board is held.

d. If all the squares of a master sports pool are not sold before the first game, an organization shall refund the players' money and void all the boards. The voided boards must be reported on the tax return as "no activity".

7. The winner of a board is determined, at the end of each payout period:

a. For a ten line board, by determining the line that is assigned the last number (one's position) of the combined score of both opponents.

b. For a twelve line board, by determining the line that is assigned the number of the round in which the boxing match ended.

c. For a twenty-five and one hundred square board, by determining the square at the juncture of the horizontal row and vertical column

which relate to the numbers (one's position) of each opponent's score.

8. An organization shall make a good-faith effort to contact a winning player to award a prize. If a prize is unclaimed for thirty days following the notification or a player attempts to falsify or falsifies a record of win, the prize is forfeited.

9. An employee shall record a prize on a board or a register according to section 99-01.3-03-07. If a prize is recorded on a board, the board must contain the information required by section 99-01.3-03-07.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-09

**99-01.3-07-02. Recordkeeping.** Records must include:

1. For each sports-pool board~~, records must include~~:

   a. The sold board indicating the winning square or line. A board must be retained for one year from the end of the quarter in which the activity was reported on a tax return. However, if an organization uses a board as a prize register or record of win, the board must be retained for three years from the end of the quarter in which the game was reported on a tax return;

   b. The daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06;

   c. The type of professional sport and amount of each prize;

   d. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sports-pool boards conducted during a quarter must reconcile to the activity reported on a tax return; and

   e. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.

2. Inventory records according to ~~subsection~~ subsections 1 and 4 of section 99-01.3-03-09.

3. The total receipts, less a cash prize, which must be deposited according to section 99-01.3-03-10.

4. The count and reconciliation of sports-pool boards and cash banks according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-08

### 99-01.3-08-03. Casino chips.

1. A wager and tip must be made with chips. If an organization accepts a twenty-five dollar wager, it shall provide twenty-five dollar chips to players for their optional use. Chips may be issued in values of fifty cents, one dollar, two dollars, five dollars, and twenty-five dollars. An organization may use a fifty cent metal coin or fifty cent United States coin as a substitute for a fifty cent chip provided the coin produces sufficient clarity on video surveillance. Except for a commemorative chip, an organization may not use a different chip of the same value at a site.

2. Each chip must be one and nine-sixteenths inches [39.62 millimeters] in diameter and be permanently impressed, engraved, or imprinted on one side with an organization's name and on the other side with the value of the chip. The name may be represented by a unique identification that differentiates an organization's chips from all other organizations' chips. If a site had twenty-one gross proceeds averaging ten thousand dollars or more for two consecutive quarters and this level of activity is expected to continue or an organization installs a video surveillance system at a site, regardless of the value of wagers accepted at the site, the chips must meet the specifications of subsection 3. If video surveillance is not required, an organization may use a fifty cent United States coin as a substitute for a fifty cent chip or fifty cent metal coin.

3. Each value of chip must have the following prescribed primary color. Except for a fifty cent chip or metal coin, a chip also must have one or two contrasting secondary colors as edge spots. Edge spots must be visible on the perimeter of both sides of a chip and on the chip's circumference. An organization may not use a secondary color on any value of chip that is identical to the primary color used by the organization on another value of chip that results in a reversed combination of primary and secondary colors between the two values of chips. The primary colors and edge spots must be:

   a. Fifty cent chip - mustard yellow which is the color classified as 5Y 7/6 on the Munsell system of color coding. This chip has no edge spots. A fifty cent metal coin or fifty cent United States coin may be used as a substitute for the fifty cent chip.

   b. One dollar chip - white which is the color classified as N 9/ on the Munsell system of color coding. A one dollar chip must have four solid edge spots and each edge spot must be one-half of one inch [12.7 millimeters] in width.

   c. Two dollar chip - pink which is the color classified as 2.5R 6/10 on the Munsell system of color coding. A two dollar chip must have

four split edge spots and each edge spot must be three-eighths of one inch [9.40 millimeters] in width. Each of the two split portions of an edge spot and the space between the two split portions must be one-eighth of one inch [3.05 millimeters] in width. The two split portions of an edge spot must be the secondary color and the middle space may either be the primary color or a third color.

d. Five dollar chip - red which is the color classified as 2.5R 4/12 on the Munsell system of color coding. A five dollar chip must have six solid edge spots and each edge spot must be one-quarter of one inch [6.35 millimeters] in width.

e. Twenty-five dollar chip - green which is the color classified as 2.5G 5/12 on the Munsell system of color coding. A twenty-five dollar chip must have eight white solid edge spots and each edge spot must be five thirty-seconds of one inch [4.06 millimeters] in width or, if the center of the chip is embossed in gold or inlaid with a coin, the chip must have three white solid edge spots and each edge spot must be fifteen thirty-seconds of one inch [12.18 millimeters] in width.

f. One hundred dollar chip - black which is the color classified as N 2/ on the Munsell system of color coding. A one hundred dollar chip must have four white triple split edge spots and each edge spot must be one-half of one inch [12.7 millimeters] in width. Each of the three split portions of an edge spot and the two spaces between the three split portions must be ~~one-sixteenth~~ about three thirty-seconds of one inch [1.52 millimeters] in width. This chip is used in the game of paddlewheels.

4. An employee shall safeguard chips in a safe place or on a table with a locking cover. If a table has been opened and no employee is stationed at it, an employee shall remove or secure the chip tray with a locking cover.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

**99-01.3-08-04. Video surveillance system.** If a site had twenty-one gross proceeds averaging ten thousand dollars or more per quarter for two entire consecutive quarters, this level of activity is expected to continue, and wagers exceed two dollars, an organization shall have a video surveillance system operational at the site within forty-five days from the end of the second quarter. However, for a site with seasonal activity, this level of activity is based on the average gross proceeds of the active quarters within the fiscal year July first through June thirtieth. A level of activity is based on a site's recent historical experience, but not earlier than the previous fiscal year, regardless of which

organization conducted twenty-one at the site. If an organization conducts twenty-one at a newly acquired site that has a level of activity requiring a video surveillance system, it shall have the system for a table operational within forty-five days of conducting twenty-one or limit wagers to two dollars until the system is operational. A system must be operational for each twenty-one table that is regularly located on a site, regardless of how infrequent a table is used or the value of wagers accepted at the table. A temporary table that is brought onto a site for fourteen or fewer consecutive days for a special event according to subsection 4 of section 99-01.3-01-02, but for not more than two events per quarter, does not need a system. An organization shall:

1. Install a system that meets these specifications:

   a. ~~A super VHS (S-VHS) real time video cassette recorder must be used. It~~ A recording unit must be a super VHS (S-VHS) system utilizing super VHS (S-VHS) videotapes or a digital video recorder (DVR) system and must record in real time. A video system must be approved by the attorney general and no time lapse or multiplex video recorders may be used as the primary mode of operation. A recording unit must be secured in a locked cabinet or area, plugged into an outlet that cannot be switched off, and be programmable with a minimum seven-day memory backup. A ~~recorder~~ recording unit must have a built-in or separate time and date generator that displays the time and date on ~~videotape~~ the recorded video without significantly obstructing a recorded picture. A ~~recorder~~ playback unit used to review a ~~videotape~~ recorded video must have forward and reverse frame-by-frame and high-speed scanning capability ~~and may be operable by a wireless remote control. However, an organization may use a digital video recorder with a removable or external hard disk drive~~;

   b. A super VHS or high resolution color camera that has four hundred or more active lines of horizontal resolution must be used. A camera must have a signal to noise ratio, with the automatic gain circuitry off, of forty-five decibels or better. A camera must be positioned above the center of a table and record gaming activity from the dealer's perspective. A camera must be plugged into a surge protector and use an outlet that cannot be switched off. A camera must be protected by a slotted or clear dome. An automatic iris is optional;

   c. A camera lens must have an f-stop rating of f-1.2 or better, be color-corrected and have a format size equal to or greater than the format size of a camera. A lens may be fixed or variable focus. A lens must have a field of view to record the face of a dealing shoe, all betting spaces, discard holder, chip tray, currency plunger, and table number;

d. A color video monitor with a ~~super VHS~~ connection that produces lines of horizontal resolution that equal or exceed the number of active lines of horizontal resolution that a video camera is outputting. A monitor's screen must measure at least thirteen inches [330.2 millimeters] diagonally; and

e. For a super VHS color camera, super VHS YC or coaxial video cable must be used. For a high resolution color camera, coaxial video cable must be used. The cable must meet these specifications:

(1) If the length of a cable is one hundred linear feet [30.48 linear meters] or less and the cable will not be flexed, exposed outside a building, or constantly moved, the center conductor must be stranded or solid pure copper material. Otherwise, the center conductor must be stranded pure copper material.

(2) The shield must be braided pure copper material. The dielectric must be foam material. A cable must be rated for seventy-five ohms of impedance. If a cable is to be placed in a return air system, the jacket must be teflon or other accepted fire-rated material~~; and~~.

~~f. Super VHS (S-VHS) videotapes must be used.~~

2. Buy or lease qualifying items. Additional allowable expense funds may be used for only these qualifying items:

a. Super VHS video cassette recorder (VCR), central processing unit (CPU), digital video recorder (DVR), time and date generator, and locking vented enclosure;

b. Super VHS, digital, or high resolution color camera with a fixed or zoom lens and dome;

c. Super VHS or high resolution color video monitor;

d. Super VHS YC or coaxial video cable;

e. ~~Super~~ VCR, CPU, or DVR cabinet, super VHS videotapes, and tape or compact disk storage cabinet;

f. Table number and site identification;

g. Installation and maintenance of equipment, including lighting fixture;

h. In-line video cable amplifier, surge protector, video printer, tape rewinder, battery backup, and tape eraser; and

i. Lease payment and interest expense on a financing loan.

3. If an organization conducts twenty-one or paddlewheels at more than one site, a table must have a site identification. A site identification and any table number must be visible on ~~videotape~~ a recorded video.

4. A playing surface must be a bright green. Only maroon and black jumbo-faced playing cards may be used.

5. If a ~~recorder~~ recording unit or camera for a table is not properly operating or not producing an unobstructed view and clear picture of cards, currency, and chips and not repaired or remedied within seventy-two continuous hours, either close the table or limit wagers to two dollars at all the tables at the site until the equipment is repaired.

6. Maintain a clean dome and a proper field of view on the playing surface.

7. Authorize only a gaming or shift manager or an independent person to:

   a. Access a ~~recorder~~ recording unit, camera, and stored ~~videotapes~~ recorded video;

   b. Start and stop a ~~recorder to record~~ recording unit for a table when chips are first made available for use on the table and continue recording until the table is permanently closed for the day; and

   c. Change a ~~videotape~~ recorded video in a ~~recorder~~ recording unit for a table at the beginning, during, or at the end of a day's activity, regardless if the authorized person is a dealer or wheel operator at the site. An organization may use two real time recorders in sequence to record a table's activity that exceeds the recording capability of one tape. If two recorders are used for one table, their separate recordings for a day's activity must overlap by ten minutes.

8. Retain a ~~videotape~~ recorded video in a safe storage place for thirty days.

9. On a weekly basis a qualified person shall review one hour of twenty-one and paddlewheel activity multiplied by the number of tables used and document the review. However, if a table at a site is operated for twenty hours or less per week, only one-half hour of review is required. A person may not review a ~~videotape~~ recorded video of a table on which the person dealt or was a wheel operator.

10. Use the attorney general's current recordkeeping system unless approval is obtained from the attorney general for use of another

system. An organization shall track a dealer's and wheel operator's percent-of-hold performance. Percent-of-hold is computed as adjusted gross proceeds divided by gross proceeds.

11. Limit its purchase or lease of a camera, lens, cable, camera dome, time and date generator, and installation, including moving a camera to another ~~location~~ site, to a vendor approved by the attorney general. An organization shall defer remitting at least fifty percent of the cost or lease price of this equipment to a vendor until the attorney general approves the clarity of the recorded video for a table. A vendor shall provide the attorney general with a sample recording to evaluate. However, an organization may buy or lease a qualifying item from another organization provided the equipment meets the specification of subsection 1. If an organization acquires video surveillance equipment at a new site from another organization ~~or~~, moves a camera to another location at the site, or converts to a digital video recorder (DVR), the organization shall provide the attorney general with a sample ~~tape~~ recorded video to evaluate. ~~An organization shall defer remitting at least fifty percent of the cost or lease price of this equipment to a vendor until the attorney general approves the clarity of the videotape for a table. A vendor shall provide the attorney general with a sample tape to evaluate.~~ If an organization moves a table to a different location at a site, the organization ~~or vendor~~ shall, within fourteen days, provide the attorney general with a sample ~~tape~~ recorded video to evaluate. If the quality of the sample tape is not satisfactory, an organization and vendor shall resolve the deficiency.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10, 53-06.1-11

**99-01.3-08-05. Distributing and removing chips.**

1. A fill slip must be used to distribute casino and betting chips from a chip bank to a table and a credit slip to return chips from the table to the chip bank. An organization may not transfer or exchange chips directly between two tables. An organization shall use a fill and credit slip to temporarily transfer a chip tray to or from a table and jar bar. Access to a fill and credit slip must be restricted to an authorized person. The same fill and credit slip format may be used for both twenty-one and paddlewheels.

2. A fill slip and credit slip must be separate forms. Fill and credit slips must be mechanically or electronically consecutively prenumbered two-part carbonless forms, be used in sequential order, and be all accounted for. Originals and copies of voided fill and credit slips must be marked "VOID" and be initialed by the preparer.

3. A fill slip must be prepared by a chip bank cashier, pit boss, or shift manager. A credit slip must be prepared by a dealer, wheel operator, pit boss, or shift manager. The original and copy of a fill and credit slip must contain:

   a. Reference to twenty-one (21) or paddlewheels (PW), site, date and time (including a.m. or p.m.), and a table number ~~for twenty-one or "PW" for paddlewheels~~;

   b. Quantity and total value of chips, by value, and grand total value of chips; and

   c. For a fill slip, the initials of a chip bank cashier. However, if a dealer is the only employee on duty, this person shall initial the fill slip. For a credit slip, the initials of a dealer or wheel operator.

4. After preparation of a fill slip, a chip bank cashier shall retain the original. However, if a dealer is the only employee on duty, this person shall retain the original. After preparation of a credit slip, a dealer or wheel operator shall deposit the original in a drop box.

5. If an organization has a shift manager or authorized employee on duty who is not presently dealing or operating a paddlewheel, this person shall verify the quantity and value of the chips, initial the original part of the fill or credit slip, and transfer the copy of the fill slip with the chips to a table, or transfer the copy of the credit slip with the chips to a cashier.

6. A dealer or wheel operator shall verify the information on the copy of a fill slip and, if correct, initial and deposit it in a drop box. A cashier shall verify the information on the copy of a credit slip and, if correct, initial and retain it. However, if a dealer is the only employee on duty, the dealer shall retain the copy of a credit slip.

7. As an option, an organization may have:

   a. A dealer or wheel operator initial the original part of a fill slip before it is retained by a chip bank cashier; and

   b. A chip bank cashier initial the original part of a credit slip before it is retained by a dealer or wheel operator.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-08-08. Shuffle and cut of the cards.**

1. Before starting play, and after each shoe of cards is dealt, a dealer shall, in front of the players, thoroughly shuffle all the cards. Then, a dealer shall offer the stack of cards, with backs facing away from the dealer, to a random player to be cut. A player shall cut the cards by placing a cutting card in the stack at least ten cards in from either end. A dealer shall rotate the opportunity to cut the cards among all the players. If all players decline, a dealer or pit boss shall cut the cards. For a site with a video surveillance system, an organization shall standardize its dealers' procedures for shuffling and cutting cards and may use one or more standard shuffling methods.

2. A dealer shall take all the cards in front (toward the dealer) of a cutting card and place them in back of the stack or take all the cards in back (away from the dealer) of the cutting card and place them in front of the stack. The cutting card must be at the bottom of the stack. A dealer shall then insert an indicator card about fifty to one hundred cards from the bottom of the stack. The stack is inserted into a dealing shoe facedown. When an indicator card appears at the face of a shoe and enough cards have been dealt to complete the present hand, a dealer shall reshuffle the cards. A dealer may reshuffle the cards only if the indicator card appears, no activity has occurred at the table for a period of time set by the organization, or a table has been temporarily closed with no dealer stationed at the table and it is reopened.

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-08-09. Betting.**

1. An original wager must be an even dollar amount ~~ranging~~ and may range from one dollar to twenty-five dollars. A wager of one dollar must be accepted unless an organization has more than one active table then a minimum wager may be set on no more than one-half of the tables. An active table under this subsection means a table in which a dealer and chips are present and available for play or has one or more players participating in the game. An organization may establish a maximum wager for each table. If all the tables at a site do not have the same betting limit, a plaque must be placed on top of a table indicating the minimum and maximum wager for the table. If a table that has a minimum wager becomes the only active table at a site or more than one-half of the active tables have a minimum wager, then the organization must notify players that the minimum wager amount will be lowered to a wager of one dollar at the end of the current dealing shoe. A wager that exceeds the maximum wager is valued at a table's maximum wager and the excess must be returned to a player. An organization shall post and announce a change in the maximum wager at a table with adequate notice to a player.

2. An original wager is the amount bet per hand before the first card is dealt and excludes tip betting. After the first card has been dealt, no original wager or tip bet may be changed. A separate wager may be a split, double-down, insurance bet, and tip bet.

3. Splitting is permitted on any pair or any two 10-count value cards. A player is allowed a maximum of four hands per betting space. A player's right-hand card in a split must be played to completion before the adjacent split hand is dealt a second card. A player shall take at least one card on a split hand. A wager on each hand must equal the original wager. Split aces draw only one card each. A two-card twenty-one after a split is not a natural twenty-one.

4. Doubling-down is permitted on the first two cards dealt to a betting space or the first two cards of a split hand, except on split aces. An organization may require a double-down wager to equal the original wager or allow a double-down wager to be equal to or less than the original wager. Only one additional card is dealt.

5. An organization may permit insurance betting except on a tip wager. An insurance bet is placed when a dealer's faceup card is an ace and it must be one-half the original wager. The payoff on a winning bet is two to one.

6. An organization may permit tip betting and doubling-down on tip bets. A tip bet is made when the original wager is made by placing a chip outside a betting space, but with the chip touching the lower left edge of the betting space, from a dealer's perspective. A betting space is limited to one tip bet. A tip bet does not have to equal an original wager and may range from fifty cents up to a table's maximum wager, but may be limited to less than the table's maximum wager at an organization's option. A doubled-down tip bet must equal the original tip bet. If a player's hand wins, a tip bet is paid off at an equal amount and the tip bet and payoff are placed in a dealer's tip receptacle. If the dealer's hand wins, a tip bet is placed in the chip tray. If a player's and dealer's hands tie, a tip bet is a standoff (push).

7. If a player's wager consists of two or more values of chips, a player shall neatly stack the lowest value chip on top of the highest value chip. If the chips are improperly stacked, a dealer shall tell the player and either the dealer or player shall properly stack the chips.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

**99-01.3-08-11. Playing.**

1. After the first two cards have been dealt to each betting space and if a dealer's faceup card is an ace, the dealer shall ask the players if they desire to make an insurance bet. A player shall make an insurance bet by placing a chip on the insurance line of the playing surface. A dealer shall reposition the chip below the lower right-hand corner of the first card dealt and to the immediate right of the second card dealt, from the dealer's perspective. A dealer shall then announce "insurance bets are closed". However, if a player who has been dealt a natural twenty-one (blackjack) desires to make an insurance bet and does not desire to double-down, a dealer may, at an organization's option, do an even money payoff rather than having the player place an "insurance" bet. To exercise this option, a dealer shall state "even money" and immediately do a chip payoff to a player equal to the player's original wager. This even money payoff must be done according to subdivision a of subsection 16. A dealer shall then place the player's cards in a discard holder. For this option, a tip bet is a standoff (push). This rule does not apply if an insurance bet is not permitted.

2. A dealer may announce the dealer's faceup card one time to all the players at a table. If the dealer is using the hole-card-no-peek method of dealing, the dealer's faceup card is an ace or a ten-count card, the dealer is using a mechanical or electronic hole card reader and special cards, and the dealer's hand is a natural blackjack, the dealer shall play the dealer's hand as prescribed by subdivision c or d of subsection 10. Otherwise, a dealer shall, beginning from the dealer's left and for each player's hand, prompt a player to indicate whether the player desires to split or double-down, or both. As a prompt, a dealer may announce the point total of each player's hand. For splitting a hand, a player shall place an additional wager, equal to an original wager, horizontal to the original wager. For doubling-down on an original wager or tip bet, a player shall place a chip vertical to the wager. A player may not double-down on a tip bet unless the player also doubles-down on the original wager. If a dealer is unsure of a player's intent, the dealer shall ask the player and properly reposition a chip.

3. If a player has split or doubled-down, or both, a dealer shall play each hand as follows:

    a. When a player places a wager for a split, a dealer shall split the cards side by side. If a player has also placed a tip bet, a dealer shall assign and reposition the tip bet to the split hand located at the foremost left of a betting space, from the dealer's perspective. Each split hand must be played separately. If aces are split, one additional card must be dealt face upwards to each of the hands and placed at a right angle to the first card dealt.

    b. A doubled-down hand must be dealt one additional card face upwards and placed at a right angle to the first two cards dealt.

However, if a table does not have a video surveillance system, the card may be placed beneath a player's original wager.

4. A dealer may not take a hit card from a dealing shoe nor may a dealer bypass a player unless the player has first indicated the player's request for a hit card or to stand by a distinct hand signal.

5. As a player indicates to stand or draw a hit card, other than on a hand that has split aces or a double-down, a dealer shall deal face upwards an additional card or cards as the player requests. A player is responsible for correctly computing the total card count of the player's hand.

6. If a player did not split, double-down, or place an insurance bet, and busts (a player's total card count exceeds twenty-one), the player loses an original wager and any tip bet. A dealer shall immediately collect and place a player's chips, including any tip bet, in a chip tray and the cards in a discard holder.

7. If a dealer's faceup card is not an ace or a ten-count card and a player split or doubled-down and busts, the player loses the wager for that split or double-down hand and any tip bet assigned to it. A dealer shall immediately collect and place a player's chips in a chip tray and the cards in a discard holder.

8. If a dealer's faceup card is an ace or a ten-count card and a player split, doubled-down, or placed an insurance bet and busts, the dealer shall gather the cards of that hand and place them outside the betting space. Then, a dealer shall reposition the player's split and or doubled-down wagered chips, in the same betting position, on top of the player's cards of that hand. A tip bet for such a split or double-down hand that busts is lost. A dealer shall immediately place the tip bet chips in a chip tray.

9. If a dealer's faceup card is not an ace or a ten-count card and all players bust, a dealer shall end the round. If a dealer's faceup card is an ace or a ten-count card and all players bust, and no player split, doubled-down, or placed an insurance wager, a dealer shall end the round.

10. If the decisions of all players have been carried out, a dealer shall turn up the dealer's facedown card (hole-card-no-peek method) or deal a second card face upwards to the dealer (no-hole-card method). However, for the no-hole-card method, a dealer shall remove the dealer's second card from a dealing shoe and, without looking at the value of the card, place it beside the dealer's first card. Then, a dealer shall announce the total card count of the two cards. A dealer shall play the dealer's hand as follows:

    a. If a dealer's faceup card is an ace and the dealer's hand is not a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect

all the players' insurance bet chips, with the dealer's right or left hand, in a sweeping motion, and place them in a chip tray. A dealer may not use the right and left hand at the same time. Then, for all the players' busted hands that have been split, doubled-down, or both, a dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands, and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's insurance bet chips and busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.

b. If a dealer's faceup card is a ten-count card and a dealer's hand is not a natural twenty-one, for all the players' busted hands that have been split, doubled-down, or both, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.

c. If a dealer's faceup card is an ace, the dealer's hand is a natural twenty-one, and a player has placed an insurance bet, the player wins the insurance wager at the rate of two to one. A dealer shall do the payoff procedure according to subsection 15 or 16. However, if

a player's original hand also is a natural twenty-one, subdivision d also applies.

d. If a dealer's faceup card is an ace or a ten-count card and the dealer's hand is a natural twenty-one, the organization wins all original wagers and original tip bets, unless a player's original hand also is a natural twenty-one which results in a standoff. All other players lose.

e. If a player has doubled-down or split against a dealer's faceup card of an ace or a ten-count card and the dealer's hand is a natural twenty-one, only the player's original wager is lost unless the player's original hand also is a natural twenty-one which results in a standoff. All separate splitting and doubling-down wagers are voided. A dealer shall return the chips of the separate wagers to the players.

f. If the count of a dealer's hand is sixteen or under, the dealer shall draw a hit card until the count exceeds sixteen. An additional card must be dealt face upwards to the immediate right of a dealer's first two cards dealt, from the dealer's perspective, and the dealer shall announce the total card count.

g. If the count of a dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer shall stay (not draw a hit card). <u>At its option, an organization may allow a dealer to take a hit card when the dealer has a soft seventeen (ace card and a six). If the organization allows this option, it must be posted at the site.</u> If a dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, twenty, or twenty-one can be obtained by counting the ace as an eleven, a dealer shall value the dealer's hand as such and stay. A dealer shall announce the final total card count of the dealer's hand.

h. If a dealer's hand busts, the remaining players with active hands win.

11. If a player's original hand is a natural twenty-one and a dealer's faceup card is not an ace or a ten-count card, the player's hand wins and is paid off at a rate of three to two, unless the player chooses to double-down. A dealer's chip payoff on a player's wager may occur immediately or when the dealer, in the order of hands, comes to that player's hand.

12. A wager is won or lost by comparing the total card count of each player's hand to the dealer's hand. A dealer or player with the highest total card count wins. Wagers, including tip bets, are paid off at an equal amount according to subsection 15 or 16. All ties are a standoff - no payoff is made, including on a tip bet.

13. If a player's hand loses against a dealer's hand, an organization wins any tip bet. A dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of adjacent losing hands with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. A dealer may, at an organization's option that is consistently applied at a site, collect the chips of losing hands with only the dealer's right hand, on a hand-by-hand basis. When a tie hand is reached, the dealer shall recognize that hand with a tap on the tabletop and announce that it is a push. When a winning hand is reached, a dealer shall place any previously collected chips in a chip tray and do the payoff procedure for adjacent winning hands according to subsection 15 or 16. When a losing hand is again reached, the dealer shall repeat the collection and payoff procedure until all losing wagers have been collected and all winning hands have been paid. The dealer shall then collect all the remaining cards according to subsection 17.

14. If a player's hand wins against a dealer's hand and the player placed a tip bet, the dealer wins the tip bet and the one-to-one payoff from a chip tray according to subsection 15 or 16.

15. If a player's hand wins against a dealer's hand and a table does not have a video surveillance system, the payoff procedure is:

    a. Normal hand. A payoff chip must be placed beside the original wagered chip in a betting space.

    b. Split hand. The payoff chip must be placed beside the wagered chips in a betting space.

    c. Double-down hand. The payoff chips must be placed beside the two wagered chips in a betting space.

    d. Insurance bet. A payoff chip must be first placed beside the insurance bet chip, fanned, then placed on top of the insurance bet chip and the chips pushed to a player.

    e. Natural twenty-one. The payoff chips must be pyramided with the higher value chip placed beside the original wagered chip in a betting space and the smaller value chip placed on top over the center of the other two chips.

    f. Tip bet. A payoff chip must be placed beside the tip bet chip and any double-down chip in the inner table area. Then, a dealer shall place the chips directly in a tip receptacle.

16. If a player's hand wins against a dealer's hand and a table has a video surveillance system, the payoff of each winning hand must be done on a hand-by-hand basis. The payoff procedure is:

a. A dealer shall fan all of a player's wagered chips toward the dealer or side with only the dealer's left hand. A dealer may, at an organization's option that is consistently applied at a site, fan all of a player's wagered chips toward the dealer or side with only the dealer's right hand. However, for a site that has a pit boss on duty and the organization requires a double-down wager to equal the original wager, a dealer may, for a player who has placed a split bet or double-down bet, or both, fan only one of the player's stacks of wagered chips. A dealer shall reposition a tip bet chip in the inner table area with the dealer's left hand and fan the chips. A dealer may, at an organization's option that is consistently applied at a site, fan all the players' tip bets and double-down chips after the payoff procedure has been done on all winning players' hands. However, if a player's bet exceeds five dollars, the dealer shall separate the player's chips, by value, fan them in sets of five chips, and then fan any remaining chips. A dealer shall, with the dealer's right hand, take a chip from a chip tray, equal in value to the player's wagered chips (not tip bet chips), place the payoff chip in a stacked manner beside the wagered fanned chips, fan the payoff chips toward the dealer or side, and move the dealer's hands away from the chips. However, if the prize payoff exceeds twenty casino chips of the same value, the dealer may use a rack to account for one or more sets of twenty chips and fan the remaining chips. A dealer shall repeat this procedure for each separate winning hand.

b. After the payoff procedure has been done on all winning players' hands and the tip bet chips have been fanned, a dealer shall, with the dealer's right hand, take a chip from a chip tray of the same value as the tip bet chip, place the payoff chip in a stacked manner beside the fanned chips, and fan the payoff chips. A dealer shall repeat this procedure for each separate winning tip bet. Then, a dealer shall move the dealer's hands away from the chips. After a dealer has picked up the cards according to subsection 17, the dealer shall place the chips directly in a tip receptacle.

17. At the end of a round of play, a dealer shall pick up all the cards remaining on the playing surface so that they can be played back to recreate each hand, starting with the player to the dealer's right and moving to the left around the table. After the cards have been collected in a sweep or hand by hand, a dealer shall pick up the dealer's cards against the top of the players' cards and place them in a discard holder.

18. If a table has a video surveillance system, a dealer's shift ends, and the dealer:

a. Does not desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view. A dealer shall then take the tip receptacle and leave the table.

b. Does desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall take all the chips out of the tip receptacle. A dealer shall place the chips in the inner table area at the dealer's left; sort, stack, and fan only the chips to be exchanged; take chips from a chip tray equal in value to the fanned chips; place the replacement chips at the dealer's right; sort, stack, and fan the chips, momentarily move the dealer's hands away from the chips so the chips are within a camera's view; place the exchanged chips in a chip tray; then place the replacement chips and unexchanged chips in a tip receptacle. A dealer shall then momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view, take the tip receptacle, and leave the table. As an option, a dealer for the next shift may exchange the present dealer's tips.

19. A dealer may not allow a player to touch a card.

20. A dealer may not switch or remove a player's card or chip, pay on a standoff, or do anything to alter a fair and legal outcome of a betting hand.

21. An organization may adopt a policy to allow a dealer, when a player leaves a table, to exchange two or more of the player's casino chips for higher value chips provided that the dealer first asks the player's permission, the player agrees, and the dealer announces the value of chips being exchanged.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

**99-01.3-08-14. Drop box cash count.**

1. A drop box that has been used must be removed from a table by the end of the day's activity. If a drop box is removed from a table and the cash is not counted immediately, the drop box must be transported by the shift manager and, if there is more than one employee on duty, escorted by an employee to a safe storage place. The cash must be removed from the drop box before the drop box can be used for another day's activity. An empty drop box may be stored on a table or in a safe storage place.

2. A drop box must be opened by a two-person count team. The persons must be independent of each other. A count team may be an independent person, including a representative of a financial institution, and a gaming employee; two representatives of a financial institution or security company; two nongaming employees; or two gaming employees provided they did not conduct games at the same site on the day of the gaming activity and day of the count. One of these two

gaming employees may have conducted games at the site associated with the drop box cash. A count team may not be two persons who have a direct supervisor and subordinate relationship or include an employee of a lessor unless this employee conducts games as an employee of the organization. A count team member may not be a common household member, spouse, child, parent, brother, or sister of the other count team member.

3. The key to the lock securing the contents of a drop box must be controlled by one count team member who may not access the drop box unless both count team members are present. If there are two separate locks that secure the contents of a drop box, the key to the second lock must be controlled by the other count team member.

4. Each person shall independently count the drop box cash in the presence of the other person and resolve any difference between the two counts. ~~Then, one person shall record the count and the other person shall verify the recorded amount, and both persons shall initial and date the cash count report for each drop box.~~ Documentation of the count must be initialed and dated by both count team members.

5. An organization shall comply with this rule unless it uses another drop box cash count procedure that has been approved by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-08-15. Tournaments.** Except as provided by this section, an organization shall conduct a twenty-one tournament according to this chapter. These rules must be disclosed to players:

1. An organization shall charge a player an entry fee and provide the player a fixed number of no-value chips. Except for mini-tournaments, within a tournament, in which players pay a separate entry fee and the winning players advance to the championship round, the cumulative entry fee per player cannot exceed ~~one~~ two hundred dollars. An organization may allow a player to ~~reenter~~ rebuy or add-on additional chips during a tournament by paying ~~another entry~~ an additional amount which may be less than or equal to the original entry fee ~~provided the player first lost all of the player's previous chips~~. An entry fee has no relationship to the number of chips issued to the player. The chips have no cash redemption value. An organization shall maintain a register of players and their entry fee.

2. An organization may assign a player one or two betting spaces. An organization may use a rotating button to signify the order of betting. If

a button is used, it must move clockwise one position after each hand. The organization shall set the time or number of shoes or hands to be played.

3. A player may not move from table to table, temporarily stop playing, remove chips from on top of a table, or transfer chips to or from another player. An organization shall set a minimum bet limit and may set a maximum bet limit based on a number of chips. A bet must be made on each hand. A player may not cash out before the end of play unless the player withdraws.

4. An organization may advance players with the most number of chips from each preliminary round or mini-tournament to the next round or championship round. A player with the most number of chips, based on preliminary rounds, mini-tournaments, or a championship round, wins. An organization may award a prize to the winning player of each mini-tournament. However, if two players remain in the tournament, they may agree to split the prize rather than finish the tournament. For a twenty-one tournament, a cash or merchandise prize may be awarded. For a poker tournament, only a cash prize may be awarded and the total prizes may not exceed ninety percent of the entry fees.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.2

**99-01.3-08-16. Recordkeeping.** Records must include:

1. For each day's activity~~, records must include~~:

   a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;

   b. Drop box cash and values of fill and credit slips of each table;

   c. For a tournament, prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;

   d. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all twenty-one activity for a quarter must reconcile to the tax return; and

   e. For a video surveillance system, dealer percent-of-hold information~~, videotape~~ and recorded video inventory log that must be retained for one year from the end of the quarter of the activity, and ~~videotape~~ recorded video review record that can be disposed of after thirty days unless it references criminal activity.

2. ~~Chip inventory~~ Inventory records according to ~~subsection~~ subsections 4 and 5 of section 99-01.3-03-09.

3. The cash profit (see subdivision h of subsection 6 of section 99-01.3-02-01) which must be deposited intact according to section 99-01.3-03-10.

4. The count and reconciliation of ~~a~~ cash ~~bank~~ banks and casino and betting chips according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-09

### 99-01.3-09-02. Limitations and fees.

1. An organization may only conduct poker on two occasions per year. An occasion may include more than one site. A nontournament occasion is a twenty-four-hour period of play. A tournament occasion is a consecutive three-calendar-day period of play.

2. For nontournament play, if an organization does not provide a dealer, players shall use cash. If an organization provides a dealer, players shall use chips. An organization shall charge a player a fee not to exceed two dollars per one-half hour of playing time and collect the fee in advance. An employee shall record the fee when it is collected. The fee schedule must be disclosed or made available to players.

3. For a tournament, an organization shall provide a dealer who cannot play in the game and:

   a. Comply with section 99-01.3-08-15; or

   b. Use value chips. An organization may charge a player an entry fee not to exceed ~~one~~ two hundred dollars or a fee not to exceed two dollars per one-half hour of playing time, collected in advance. Only a cash prize may be awarded and the total prizes may not exceed ninety percent of the entry fees.

4. An organization that conducts poker through a "poker run" involving more than one site shall comply with guidelines prescribed by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.2

**99-01.3-09-04. Recordkeeping.** Records must include:

1. For each poker occasion~~, records must include~~:

   a. The starting and ending cash on hand according to section 99-01.3-03-06;

   b. ~~Except if an organization only charges a fixed entry fee~~ The fees collected, rebuys, add-ons, and number of players for tournament play, and for nontournament play, the fees collected for each one-half hour interval ~~of~~ on each table ~~the fees collected and number of players~~;

c. For a tournament, prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;

d. Name, initials, and time worked of the employee who collected the fee; and

e. A summary of gross proceeds, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all poker activity for a quarter must reconcile to the tax return.

2. Inventory records according to subsection 4 of section 99-01.3-03-09.

3. The cash profit (see subdivision i of subsection 6 of section 99-01.3-02-01) which must be deposited intact according to section 99-01.3-03-10.

4. The count and reconciliation of cash banks according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-10

**99-01.3-10-01. Calcutta.** A "calcutta" is a sporting event in which players wager at an auction on the competitors. A sporting event is a competitive sport involving physical skill or endurance and scores a person's physical ability. The conduct of a calcutta is the auction process. An auction pool is comprised of the wagers paid by players who offered the highest bids on the competitors. The auction pool is distributed to the player who wagered on the winning competitor. The winning competitor may be one competitor, a team of competitors, or ranked competitors. The payout of the cash prize to a winning player is based on a predetermined percentage of the auction pool, which may not exceed ninety percent. Only cash prizes may be awarded.

1. A calcutta may only be conducted for a professional or amateur sporting event held in North Dakota, but not for an elementary, secondary, or postsecondary education sporting event. An organization may conduct more than one calcutta on the same sporting event. More than one organization may independently conduct a calcutta on the same event.

2. An organization shall acquire a calcutta board from a distributor and complete on it the sporting event, date of the sports event, and manner of distributing the auction pool as a prize. The requirements of the players must be disclosed or made available to the players on the site.

3. Each competitor in a sporting event must be identified before the auction begins. A competitor may also be a player who may wager on oneself. A competitor may wager on another competitor.

4. Each competitor must be eighteen years of age or older to be eligible to be listed on a calcutta board. Each eligible competitor must be offered through an auction to prospective players. An organization may require that all eligible competitors be bid on and may set a minimum bid. A player who offers the highest bid for a competitor by a verbal, sealed, or open bid wagers on that competitor. A player may wager any amount and buy more than one competitor. A competitor may be auctioned off only to one player.

5. An open bid enables a potential player, during a certain time, to write the player's name and bid for a competitor on a register assigned that competitor. Each successive potential player interested in that competitor shall write the player's name and bid, of an amount higher than the previous bid, on the register. When the time period ends, the last player listed on the register wagers the amount bid on that competitor.

6. An organization shall conduct an auction at its site that may be where the sporting event is held. A player must be present to bid.

7. Before an auction, an employee shall:

a. Verbally announce the predetermined percentages of the auction pool that will be paid to a winning player and retained by an organization. The amount a player may win depends on the total amount of the auction pool and not on any odds; and

b. Complete for each line on a board a sequential number starting with the number one and a name of a competitor.

8. The sequence of a verbal bid auction must be determined by a random drawing of the numbers assigned each line.

9. If a competitor is not bid on by a player, an organization may sell the competitor by:

   a. If there is more than one competitor not bid on, placing the competitors in one or more groups and auction a group as one competitor; or

   b. Allowing a competitor to purchase oneself for a predetermined minimum wager.

10. After an auction, an employee shall complete this information for each line on a board and total the amounts wagered:

    a. Full name and address of the player who bought the competitor; and

    b. Amount wagered by the player.

11. If a competitor was bought by a player and does not compete in the event, an organization shall refund the wagered amount to the player and adjust the prize payout.

12. After a sporting event, an employee shall complete on the board, for each winning player, the amount of the auction pool won. A winning player is the player who wagered on the competitor who won the event. An organization may award the prize to a winning player where the event is held. If an eligible competitor was not bought by a player and wins or places in the event, the organization shall retain the prize that would have been awarded on the competitor. If an ineligible competitor wins or places in the event, the organization shall award the prize that would have been awarded on the competitor to the next highest ranked eligible competitor.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.3

**99-01.3-10-02. Recordkeeping.** Records must include:

1. For each calcutta~~, records must include~~:

   a. A calcutta board indicating the winning competitor and player. The board must be retained for one year from the end of the quarter of activity;

   b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;

   c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all calcuttas conducted for a quarter must reconcile to the tax return; and

   d. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.

2. Inventory records according to ~~subsection~~ subsections 1 and 4 of section 99-01.3-03-09.

3. The cash profit (see subdivision j of subsection 6 of section 99-01.3-02-01) which must be deposited according to section 99-01.3-03-10.

4. The count and reconciliation of calcutta boards and cash banks according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-11

**99-01.3-11-03. Paddlewheel, table, chips, and video surveillance system.**

1. A paddlewheel is a round mechanical vertical wheel, at least thirty inches [76.2 centimeters] in diameter, and may be divided into a maximum of five concentric circles. The outer circle must contain at least forty numbers or symbols. A paddlewheel may have house numbers or symbols for an optional odd or even bet. Each inner circle may contain up to one-half of the number of numbers or symbols as that circle's adjacent outer circle. The numbers and symbols may repeat on a circle. Each circle must be divided into equally spaced sections, be a different primary color, and correspond to the colored numbers or symbols of a table playing surface. The colored numbers or symbols of all concentric circles must be at least five-eighths of one inch [15.88 millimeters] in height.

2. A peg must protrude, on the circumference of a paddlewheel, between each section of the outside circle. A pointer must be positioned above a paddlewheel. It is used to stop a spin of a paddlewheel and determine the winning colored number or symbol.

3. A table must have:

   a. A chip tray and a rail for holding a player's chips;

   b. A playing surface which must be permanently imprinted with colored numbers or symbols of at least one and one-half inches [3.81 centimeters] in height relating to each circle of a paddlewheel. A table may have spaces for various wagers, including sets of numbers, colored numbers, symbols, and "ODD" and "EVEN" bets;

   c. Either a mirror to reflect or a color video camera and monitor to display the winning colored number or symbol on the paddlewheel; and

   d. A "drop box" must have a money plunger which must remain in the slot unless the plunger is used.

4. An organization shall issue solid color-coded sets of chips for betting purposes. No betting chip can be the primary color of mustard yellow. The number of different sets and number of chips within each set is based on an organization's discretion. Each chip must be one and nine-sixteenths inches [39.62 millimeters] in diameter and be permanently impressed, engraved, or imprinted on one side with an organization's name and the other side may have a stated value of one dollar. The name may be represented by a unique identification that

differentiates an organization's chips from other organizations' chips. Each chip is valued at one dollar. An organization shall issue casino chips in values of one dollar, five dollars, twenty-five dollars, and one hundred dollars for paying a winning bet or exchanging a betting chip. A casino chip must meet the specification of subsection 3 of section 99-01.3-08-03.

5. An organization shall have a picture-in-picture video surveillance system on a table and paddlewheel. The system must meet the specifications and requirements prescribed by subsections 1, 2, 3, 5, 6, 7, 8, 9, 10, and 11 of section 99-01.3-08-04.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.4

**99-01.3-11-07. Recordkeeping.** Records must include:

1. For paddlewheel activity described by subsection 1 of section 99-01.3-11-01:

   a. For each day's activity, the starting and ending cash banks and IOU records according to section 99-01.3-03-06;

   b. For each ticket card of each series of paddlewheel ticket cards:

      (1) Date conducted, card number, cash prize amount or cost and description of a merchandise prize; and

      (2) The flare with all winning tickets and unsold ticket cards which must be retained for one year from the end of the quarter in which the activity was reported on a tax return; ~~and~~

   c. ~~Series of paddlewheel ticket cards inventory~~ Inventory records according to subsection 1 of section 99-01.3-03-09~~.~~;

   d. The count and reconciliation of each series of paddlewheel ticket cards according to subsection 6 of section 99-01.3-03-09;

   e. Prize register according to section 99-01.3-03-07; and

   f. Purchase invoice or receipt documenting the cost of a merchandise prize.

2. For paddlewheel activity described by subsection 2 of section 99-01.3-11-01:

a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;

b. Drop box cash and values of fill and credit slips;

c. Wheel operator percent-of-hold information~~, videotape~~ and recorded video inventory log ~~that~~ must be retained for one year from the end of the quarter of the activity, and ~~videotape~~ recorded video review record that can be disposed of after thirty days unless it references criminal activity;

d. ~~Chip inventory~~ Inventory records according to subsection 5 of section 99-01.3-03-09; and

e. The count and reconciliation of casino and betting chips according to subsection 6 of section 99-01.3-03-09.

3. For all paddlewheel activity:

a. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all paddlewheel activity for a quarter must reconcile to the tax return;

b. The cash profit (see subdivisions h and k of subsection 6 of section 99-01.3-02-01) which must be deposited intact according to section 99-01.3-03-10; ~~and~~

c. Inventory records according to subsection 4 of section 99-01.3-03-09; and

d. The count and reconciliation of ~~a~~ cash ~~bank~~ banks according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-12

### 99-01.3-12-02. Use and requirements of an organization.

1. An organization may operate a pull tab dispensing device when the organization's employee is on duty and may have a bar employee redeem a winning pull tab when the organization's employee is or is not on duty.

2. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.

3. An organization shall disclose or make these rules available to players:

   a. Restricting access to or delaying using credits on a device is prohibited;

   b. A winning pull tab must be redeemed within fifteen minutes;

   c. A pull tab cannot be redeemed if it has been taken from the gaming area;

   d. If a person knowingly solicits, provides, or receives any inside information, by any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both; and

   e. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.

4. An organization shall maintain custody of all keys to a device. However, an organization may provide an authorized employee of a bar with a key to the cash compartment to withdraw currency or a drop box if:

   a. A device's cash compartment is separate from its pull tab and accounting meter compartments. However, if access to a device's accounting meters is controlled by a security code, the cash and accounting meters may be in the same compartment;

   b. The organization authorizes a specific employee of a bar to withdraw cash and complies with section 99-01.3-02-02 regarding a record check on the employee; and

   c. If a drop box is not used, an authorized employee of a bar shall count the cash, record the amount, sign and date the record, and

secure the cash and record in a keyless locking bank bag. If a drop box is used, an organization may not provide the authorized employee of a bar the key to access the contents of the drop box.

5. An organization shall withdraw currency from a device within a seven-calendar-day interim period.

6. An organization shall use the current recordkeeping system prescribed by the attorney general.

7. An organization shall have a rental agreement conforming to section 99-01.3-02-06.

8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend or a test validation of currency, the person shall record the value of pull tabs and currency validated. An organization shall retain the log in a device during the quarter of activity.

9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem a winning pull tab. A loan and any increase in the loan must be made by check payable to the bar and be interest free. An organization may not access, count, or take custody of the loaned money. The duration of the loan must be until an organization discontinues conducting pull tabs at a site through a device. When the bar repays the loan, the organization shall deposit the funds in its gaming account and the deposit slip or receipt must reference the site, source of funds, and amount. The amount reimbursed to a bar must equal the value of redeemed winning pull tabs which the bar provides an organization. An organization employee may not use a bar's cash on hand for redeeming a winning pull tab.

10. An organization may not provide an independent service technician a key to access a device regardless if the device is leased.

11. If a theft of currency occurs, an organization shall record the currency and pull tab or bingo card accounting meters or print a cash withdrawal report and audit the game. The organization shall provide a copy of all of this information to a local law enforcement agency and the attorney general.

12. When a game is closed:

    a. The game must be reported on a tax return for the site at which it was closed;

    b. An employee shall buy back all remaining redeemed winning pull tabs from a bar; and

c. If the game has unsold pull tabs, these cannot be put back into play.

13. An organization or employee may not:

a. Modify the assembly or operational functions of a device;

b. Use or continue to conduct a deal of pull tabs after being notified by a distributor of a ban or recall of the deal;

c. Designate a pull tab to entitle a player who buys it with a prize provided by a bar or distributor; or

d. Intentionally test vend currency or pull tabs to synchronize nonresettable accounting meters.

14. A game must be conducted and played through a device as follows:

a. Except for a game serial number and color of the pull tabs, the deals must be identical;

b. An employee shall securely attach a master flare to the interior or exterior of a device, or on an adjacent wall, so the flare's information is visible to players. When a deal is added, the deal's flare may be retained in a device or at an organization's office;

c. An employee shall place at least one complete and one-half deal in a device at the same time at the start of a game. The remaining pull tabs of any partial deal must be added to the game before the game is closed;

d. If a device does not have a tray, at the start of a game the pull tabs must be randomly placed in all the stacking columns. To add pull tabs to a game, an employee shall first add any remaining pull tabs of a deal previously partially placed in the device or pull tabs of a new deal by randomly mixing these pull tabs with the pull tabs in the device;

e. If a device has a tray, at the start of a game the pull tabs from one deal must be placed in two stacking columns and at least one-half of the pull tabs from a second deal must be placed in two other stacking columns until full. Next, any leftover pull tabs from the first deal must be placed in any remaining empty column. Then, the pull tabs in the columns must be evened out. To add pull tabs to a game, an employee shall first add any remaining pull tabs of a deal previously partially placed in the device or pull tabs of a new deal by taking the unsold pull tabs from all, except two, of the columns and placing them on top of the unsold pull tabs of those two columns. Next, the employee shall place any overflow of unsold pull tabs and

the partial or new deal's pull tabs in the empty columns until full and then place leftover pull tabs in those two other columns. Then, the pull tabs in the columns must be evened out;

f. If a deal is to be added to a game and an organization does not have a deal to add, the organization shall temporarily suspend the game until it procures a deal. However, if the organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;

g. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter or if a site has not previously had gaming, a game may be closed anytime if all top tier winning pull tabs have been redeemed;

h. Except as provided by subdivision i, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and:

(1) Fifty deals have been added to a game;

(2) A game's actual gross proceeds are twenty-five thousand dollars; or

(3) A game has been in play for twenty-five consecutive calendar days;

i. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed or low-level switches in all but two columns of a device have been triggered, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period. When a game is being closed, an employee shall post a sign stating that the game is being sold out;

j. If the percent-of-accuracy of all the games involving a device for a site for the previous quarter was less than ninety-eight and one-half percent, an employee who did not conduct the game shall do a weekly interim audit of the games at the site for up to twelve continuous weeks or until the organization determines, resolves, and documents the cause. <u>One of the weekly interim audits may be the audit required by subsection 7 of section 99-01.3-03-10.</u> An organization shall start the weekly audits no

later than the date on which its tax return for the quarter was filed with the attorney general. However, if games involving a device are conducted without a bar employee redeeming a winning pull tab, pull tab games not involving a device are also conducted, and the combined percent-of-accuracy of all pull tab games at the site for the previous quarter was ninety-eight and one-half percent or greater, no weekly interim audit is required. Percent-of-accuracy is computed as cash profit divided by adjusted gross proceeds; and

k. An organization may transfer a device from a site to another site or rotate a device among sites. If an organization discontinues gaming at a site, it may close a game or transfer the game to a device at another site. If a game is in the process of being conducted through a device, an organization may not transfer the game to a jar bar.

15. Two or more organizations may use devices at the same site on different days of the week provided the organizations use different names of games in the devices and the bar uses separate cash banks.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-12-04. Requirements of a bar and an organization.**

1. A bar employee or an employee shall deface a winning number or symbol of a pull tab when it is redeemed. Tickets redeemed for credit must be defaced by an employee of the organization at the time of the interim period site visit. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced.

2. A bar employee or an employee may not:

   a. Assist a player in opening a pull tab except to assist a disabled player;

   b. Knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial numbers of the deals in the game;

   c. Knowingly pay a prize to a player who is redeeming a pull tab when the player with the pull tab has left the gaming area of a site;

   d. Publicly display a redeemed pull tab;

e. Knowingly pay a prize for a pull tab after fifteen minutes has elapsed since it was bought. If a player attempts to redeem a pull tab after the allowed time limit, a bar employee or an employee shall, if possible, retain and void the pull tab;

f. Pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site; or

g. Reimburse, from any source of funds, an amount to a player for play of a game that ~~is defective~~ has a manufacturing defect or has ~~a material~~ an incorrect posting of information described by subsection 7, unless the attorney general approves.

3. A prize must be cash. There may be no last sale prize.

4. If a device malfunctions, is inoperable, and a player has a credit, a bar employee or an employee shall pay the player for the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement. If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.

5. A bar employee and an employee shall document the number and value of redeemed winning pull tabs, by value, that are exchanged for cash or check. These pull tabs must be grouped, banded, and retained separate from other pull tabs that ~~the~~ an organization employee may have ~~directly~~ redeemed, and separate from those redeemed through a credit redemption device, by interim period.

6. An organization shall provide a bar employee and a bar shall maintain a current copy of subsection 9 of section 99-01.3-02-03 and sections 99-01.3-02-05, 99-01.3-02-09, 99-01.3-03-08, 99-01.3-12-03, and 99-01.3-12-04 regarding the bar employee's and bar's duties and restrictions.

7. A bar employee or an employee may post the information referenced by subdivision a or b, or both, provided that an organization does not have a partial deal that is to be added to a device. An organization shall post a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization,

that remain unredeemed. Posted information may be the information described in subdivision a or b, or both:

a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.

b. The number or unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-12-05. Recordkeeping.** Records must include:

1. All redeemed and unsold pull tabs for a game ~~must~~ and be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return;

2. The deal's game information sheet and flare with the state gaming stamp affixed ~~must~~ and be retained for three years from the end of the quarter in which the game was reported on a tax return;

3. A record of game serial numbers for each game;

4. Record of win according to section 99-01.3-03-08;

5. Credit redemption register;

6. If an employee redeems winning pull tabs at a site, a daily employee report documenting the starting and ending cash on hand and IOU records according to section 99-01.3-03-06 and prizes redeemed;

7. Interim period site summary, including meter readings, gaming stamp number and game serial number of a deal added to a device, currency withdrawn, redeemed prizes by denomination obtained from a bar, total

prizes, credit redemption register refunds, cash profit or loss, and bank deposit;

8. Summary, including cumulative prizes, cash profit, bank deposits, and redeemed top tier pull tabs by game serial number;

9. Inventory records according to ~~subsection~~ subsections 1 and 4 of section 99-01.3-03-09; ~~and~~

10. Access log~~.~~;

11. A summary of ideal gross proceeds, value of unsold pull tabs, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all games for a quarter must reconcile to the tax return~~.~~;

12. The cash profit (see subdivision d of subsection 6 of section 99-01.3-02-01) for an interim period which must be deposited intact according to section 99-01.3-03-10~~.~~; and

13. The count and reconciliation of deals and ~~a~~ cash ~~bank~~ banks according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-13

**99-01.3-13-05. Recordkeeping.** Records must include:

1. For each interim period~~, records must include~~:

   a. A prize flare for each deal of a game and test vended, redeemed, and unsold bingo cards must be retained for one year from the end of the quarter in which the activity was reported on a tax return;

   b. Record of win according to section 99-01.3-03-08;

   c. Record of called bingo numbers;

   d. Credit redemption register;

   e. If an employee redeems winning bingo cards at a site, a daily employee report documenting the daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06 and prizes redeemed;

   f. Interim period site summary, including meter readings, gaming stamp number and game serial number of a deal added to a device, currency withdrawn, redeemed prizes by denomination obtained from a bar, total prizes, credit redemption register refunds, cash profit or loss, and bank deposit;

   g. Summary, including cumulative prizes, cash profit, and bank deposits;

   h. Inventory records according to ~~subsection~~ subsections 1 and 4 of section 99-01.3-03-09; and

   i. Access log.

2. A summary of ideal gross proceeds, value of unsold bingo cards, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all interim periods for a quarter must reconcile to the tax return.

3. The cash profit (see subdivision d of subsection 6 of section 99-01.3-02-01) for an interim period which must be deposited intact according to section 99-01.3-03-10.

4. The count and reconciliation of deals and ~~a~~ cash ~~bank~~ banks according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-14

### 99-01.3-14-02. Eligible uses.

1. A use of net proceeds for erecting, acquiring, improving, maintaining, or repairing real or personal qualifying property owned by an organization is an eligible use provided the organization agrees that, upon abandoning the exclusive use of the property for an eligible use, it will transfer the property to a governmental unit or to an organization that will use it for an eligible use. However, if an organization sells the property, the portion of net receipts from the sale related to the original net proceeds must be deposited in the trust account and disbursed to an eligible use, or reinvested in property used for a similar purpose.

2. In applying subdivision a of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds must be disbursed to or by a recognized nonprofit city or county job development authority or certified or noncertified local development corporation.

3. In applying subdivision b of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds must be used to attract in-state and out-of-state visitors by publicizing attractions, promoting, planning, conducting, and sponsoring market research, trade shows, meetings, conventions, seminars, sporting events, and festivals, and by developing and promoting the state's attractions, recreational opportunities, shopping malls, and other tourism-related activities. Uses may not directly benefit a for-profit business.

4. In applying subdivision c of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:

   a. A scholarship for a student. A scholarship may be based on criteria, including community service, patriotism, leadership, education, talent, athletic ability, course of study, or special disability. No scholarship award may be decided by a donor organization, unless the organization administers an education program for special students or students inflicted with disease. Net proceeds may be disbursed to a scholarship board or to an educational institution. A majority of the members of a scholarship board may not be members of a donor organization. A disbursement must be payable to an educational institution and a recipient, scholarship board and a recipient, or to an educational institution or scholarship board. A student receiving a scholarship may apply it at a nonprofit public, or for-profit or nonprofit private, educational institution, including a trade or business school, registered with or accredited by any state board. A scholarship may be for housing, books, tuition, and meals that relate to a student's educational need. A scholarship may be awarded through a pageant, contest, or tournament; however, associated administrative and operating

expenses do not qualify. No scholarship may be based on criteria that includes a person's physical appearance;

b. Supplemental assistance to a primary, secondary, or postsecondary nonprofit educational institution, including affiliated alumni associations, booster clubs, parent-teacher councils, and college sororities and fraternities. Net proceeds may be used for youth activities, educational equipment, musical instruments, playground equipment, extracurricular activities, sporting events, field trips, cultural exchanges, maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, and supplies;

c. Assistance to a library for maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, supplies, program services, special events, promotions, educational material, books, computer systems, information services, exhibits, story hours, film showings, and discussion groups. A disbursement to a museum may be for maintaining buildings, remodeling, fixed assets, administrative and operating expenses, and assembly of exhibits for preservation, collection, education, and interpretation;

d. Assistance to a nonprofit performing arts and humanities organization for studio and auditorium rental, speaker fees, equipment, travel, administrative and operating expenses, and uniforms. Functions may include children's theater, summer camps, and developing art parks;

e. Preservation of cultural heritage, including restoring, reconstructing, improving, or preserving public buildings in North Dakota which are listed in the state historic sites registry or the national registry of historic places. Net proceeds may be used for programs of nonprofit organizations that provide historical information or tell a story about a local region, North Dakota, or the nation and which primarily educate and inspire the public, elderly, disabled, schoolchildren, teachers, and foreign visitors. Qualifying programs include the lifestyles and human experiences of homesteaders, immigrants, Indian culture, frontier army, and fur trade. Net proceeds may be used for interpretive programming, including exhibits, publications, simulations of life, classroom outreach services, audiovisual presentations, special events, and tours. Special events such as chautauquas and community celebrations of Norskfest, threshing bees, and Octoberfest qualify for expenses of parades, displays, equipment, educational materials, and awards. School reunion expenses do not qualify;

f. Youth community and athletic activities open to all youth, less than eighteen years of age. An organization shall disburse, to the extent possible, equal amounts to activities for each gender. Net

proceeds may be used for uniforms, equipment, tournament fees, private and public ground transportation, coaches' salaries, judges, field trips, speaker fees, father-son and mother-daughter banquets provided that the meals for these banquets are provided free, meals, and lodging~~. Business-sponsored appreciation luncheons and banquets, advertising, and the purchase of a transportation vehicle do not qualify~~;

g. Adult amateur athletic activities within North Dakota. Net proceeds may be used for sponsorship and league fees for entire teams, uniforms, umpire fees, construction, use and maintenance of a sports complex, and team equipment. Uniforms and equipment must be owned by the team or league association. Tournament fees, individual player fees, food and drink, lodging, trophies, prizes, yearbook, advertising, and private or public transportation expenses do not qualify, except transportation expenses for a disabled player. A race car, horse racing, and similar activity do not qualify;

h. Maintenance of religious buildings, remodeling, fixed assets, administrative and operating expenses, gospel outreach programs, youth church activities, uniforms for a choir, furnishings, and supplies for church groups and services; and

i. Scientific research for a cure to relieve human beings of disease and suffering.

5. In applying subdivision d of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:

a. Food, temporary housing, clothing, utilities, medical services, and fuel for private and public transportation for an individual or family suffering from poverty or homelessness, or financial distress due to a natural disaster or medical problem;

b. Purchase and maintenance of a ground transportation vehicle for the elderly;

c. Services for abused persons, including to:

(1) Provide emotional support, guidance, and counseling to victims of crimes of rape and sexual assault and encourage prosecution of perpetrators;

(2) Establish educational programs about rape, sexual assault and incest, the dramatic effects it has on victims and their families, and the cost to society;

(3) Establish and direct services for abused spouses and their children in the community, including advocacy, emergency shelter and food, information services, referrals, and peer support; and

(4) Develop and coordinate programs to encourage and assist development of a strong volunteer advocate network;

d. Support for youth centers and halfway houses;

e. Recognize an individual or group of people who volunteer their time to community services, nursing homes, or hospitals if a gift, prize, or other gratuity does not exceed one hundred dollars per person per calendar year;

f. Net proceeds may be used for public or private nonprofit nursing homes, day care centers, and medical facilities for maintaining buildings, remodeling, fixed assets, administrative and operating services, supplies, reading programs, and craft activities for patients;

g. Complying with the Americans with Disabilities Act of 1990 by remodeling a publicly owned facility; and

h. To remodel or improve a fraternal or veterans' organization's owned facility or a nonprofit community facility to make it accessible or usable to youth, senior citizens, people with disabilities, and nonmembers of the organization, for community programs, services, or functions. The community must use a building for free or a reasonable fee. To make a building accessible, net proceeds may be used to widen doorways and hallways, remodel bathroom fixtures and facilities, install chair lifts, wheelchair ramps, elevators, handrails, and automatic door openers. To make a building usable, net proceeds may be used to repair a building to meet a building code or make it structurally fit for use, to enlarge a facility, replace a furnace, water heater, and air-conditioner, and to make it safe. The cost must be prorated to the benefit the community receives in relation to the total usage of the facility as determined by the attorney general.

6. In applying subdivision e of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include burial expenses and flowers provided an organization does not discriminate between members and nonmembers.

7. In applying subdivision f of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include promotion and celebration of civil rights, nondiscrimination, patriotism, and freedom. State and national convention expenses; recognition nights that may include a

banquet, program, and dance for past commanders or past members; ceremonial and ritual activities; and purchase of a transportation vehicle do not qualify.

8. In applying subdivision g of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include maintaining parks and perpetual trust funds for public cemeteries.

9. In applying subdivision j of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds may be used for subsistence for a family member traveling with an ill family member to an out-of-town medical facility.

10. In applying subdivision l of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:

    a. Adult and city bands, choirs, ~~including~~ drum and bugle corps, color and honor guards, parade floats, director fees, rent of storage, postage, insurance, laundry, utilities, uniforms, gun safe, firearm, sheet music, audio system, instruments, transportation vehicle, in-state lodging, and private and public ground transportation for performances at community concerts, homecomings, open houses, parades, festivals, funerals, nursing homes, hospitals, and special events. For only a color or honor guard, net proceeds may be used to pay a member a maximum per diem of ~~fifteen~~ twenty dollars for each day of actual service. An audio system and instruments must be owned by a band, choir, or organization. A vehicle must be owned by an organization;

    b. Community celebrations that recognize or honor the military service of individuals in the armed services;

    c. Educational agricultural trade shows and conventions held in North Dakota. Meals and entertainment do not qualify;

    ~~c.~~ d. Nonprofit organizations that protect animals. Uses include:

        (1) Hatcheries and wildlife preserves, wetlands, and sanctuaries;

        (2) Teaching and promoting ecology, game and wildlife management, and outdoor interests involving animals, fish, and birds; and

        (3) Spay and neuter programs, pet placement, lost and found pet services, educational programs, investigations of animal abuse, and information services;

~~d.~~ e. Preserving and cleaning up the environment, including air quality, water quality, ~~and~~ waste and recycling programs, and conservation of natural resources; and

~~e.~~ f. Outreach public medical care.

11. In applying subdivision m of subsection 2 of North Dakota Century Code section 53-06.1-11.1, a special trust fund:

    a. Must be managed and controlled by trustees, who may be board members, appointed by an organization. However, if an organization dissolves, it must establish a nonprofit corporation limited to the primary purpose stated in its declaration of trust. A trust may be revocable or irrevocable; and

    b. Must be comprised only of net proceeds which can be disbursed to the trust periodically or in a lump sum. Net proceeds must be invested only in marketable securities. A trust's principal, interest, dividends, and gains on sales of investments must be applied toward the trust's primary purpose. No trust's principal can be disbursed until a donor organization has permanently discontinued conducting games or dissolved.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01, 53-06.1-01.1

## CHAPTER 99-01.3-15

### 99-01.3-15-02. Restrictions and requirements.

1. A licensed organization, organization that has a permit, or licensed manufacturer may not be a distributor. A person who is an officer, manager, gaming manager, or member of a governing board of a licensed organization or organization that has a permit may not be an officer, director, shareholder, proprietor, independent contractor, consultant, or employee of a distributor, nor have a financial interest in that distributor. A person having a financial interest in a distributor may not be a lessor of a site to an organization that is an active customer of that distributor. A change in ownership of a distributor must be immediately reported to the attorney general.

2. A distributor shall have an office in North Dakota where records must be kept.

3. An officer, director, shareholder, agent, or employee of a distributor may not:

   a. Directly or indirectly play a game of pull tabs, club special, tip board, prize board, seal board, sports-pool board, or punchboard at any site, or provide bookkeeping services, including summarizing or auditing games, to an organization; or

   b. Interfere with or attempt to influence a lessor's relationship with an organization involving a lease agreement, interfere with or attempt to influence an organization's management, employment practices, policy, gaming operation, or disbursement of net proceeds, attempt to influence a bar to enter into or cancel a lease agreement with an organization, or procure a site for an organization. A distributor may notify an organization of an available site.

4. A distributor may not have an expressed or implied agreement with another distributor to restrict the sales of either of them to a specific geographic area or organization.

5. A distributor may not sell or provide a drop box unless it is a double-locking ~~or triple-locking~~ removable metal container and has:

   a. One lock that secures a drop box to the underside of a table, and one or two separate locks that secure the contents placed into the drop box. The key to each of the locks must be different; and

   b. A slot opening through which currency and forms can be inserted into a drop box. The slot of a drop box may not exceed three and one-half inches [88.90 millimeters] in length and one-half inch [38.10 millimeters] in width. Inside a drop box there must be a

spring-loaded mechanism that automatically closes and locks the slot opening when the drop box is removed from a table.

6. A distributor may not sell or provide twenty-one and paddlewheel (betting and casino) chips to an organization if those chips are identical in physical characteristic to chips previously sold or provided by that distributor to a different organization.

7. A distributor may not~~, directly or indirectly,~~ give a gift, trip, prize, or other gratuity valued singly or in the aggregate in excess of one hundred dollars per employee per calendar year related to a licensed organization or organization that has a permit. A distributor may not~~, directly or indirectly,~~ loan money (excluding credit) to a licensed organization or organization that has a permit, or to an employee of such an organization.

8. An employee of a distributor who is an owner or salesperson shall, within thirty days of starting business or employment, request training from the attorney general. The training must include the gaming law, rules, and recordkeeping. An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions of the gaming law and rules which relate to the person's job duties. The attorney general shall designate the provisions to be read. The acknowledgment must be dated, reference the provisions, and be part of the person's personnel file.

9. A distributor may not share an office or warehouse facility with an organization.

10. A distributor shall file a copy of each sales invoice related to a licensed organization and record of voided gaming stamps with the attorney general by the fifth business day following the month of the transaction.

11. A distributor may not buy or be provided gaming equipment from an affiliated company unless the company is a wholly owned subsidiary of the distributor. An affiliated company must have originally bought the equipment directly from a licensed manufacturer.

12. A distributor may not buy or be provided gaming equipment from an out-of-state distributor unless the out-of-state distributor has the manufacturer ship the equipment directly to the licensed distributor and the manufacturer is licensed.

13. A distributor may not knowingly possess, display, sell, or provide an organization a deal of pull tabs or bingo cards, club special, tip board, prize board, or punchboard that:

a. Does not conform to the quality standards of section 99-01.3-16-04, 99-01.3-16-05, or 99-01.3-16-06;

b. Has a manufacturer's or distributor's seal broken on the manufacturer's container or has been prohibited by the attorney general from sale or play within North Dakota; or

c. Contains pull tabs or punches that have winner protection features although they are not winning pull tabs or punches.

14. A distributor may not temporarily store any game that has a state gaming stamp affixed to its flare which has been sold. A sale occurs when a distributor issues a sales invoice. If a distributor sells or provides gaming equipment to another distributor, the distributor shall ship the equipment directly to the other distributor's address.

15. A distributor shall direct a manufacturer to ship gaming equipment directly to the distributor and the distributor shall have it unloaded at its warehouse. However, if a distributor buys equipment from a manufacturer for sale to another distributor or buys a flashboard, blower, jar bar, paddlewheel, or twenty-one, poker, or paddlewheel table for sale to an organization, the distributor may direct the manufacturer to ship the equipment directly to the other distributor or organization, including the organization's site.

16. A distributor may not separate a paper card when there are two or more faces on a sheet.

17. A distributor may not:

a. Sell or provide a dispensing device or bingo card marking device to an organization unless a model of the device has first been approved by the attorney general;

b. Modify an approved dispensing device model or electronic currency validator unless authorized by the attorney general; or

c. Rent a dispensing device to an organization unless the rent is for a fixed dollar rate per month or other duration. For a bingo card marking device, a distributor may rent a bingo card marking device to an organization for a fixed dollar rate per month or other duration, or for a percentage or fixed dollar amount of rental income derived from a player who uses the device. Rent may not be based on gross proceeds of bingo. If a distributor rents a bingo card marking device to an organization, the distributor may have a manufacturer, on behalf of the distributor, issue an invoice to an organization; however, the organization shall remit all rent payments directly to the distributor.

18. A distributor may arrange for an organization to acquire a dispensing device through a financing lease purchase agreement with a finance or lease company. Although an organization is deemed to own a device, a finance or lease company may have a security interest or ownership right in the device until the organization satisfies the lease.

19. If a distributor is an agent for another distributor in marketing a dispensing device, the agent is not required to complete a sales invoice. A distributor is an agent if it receives a commission and does not finance or take temporary possession or title to the device.

20. A distributor that sells or provides a new or used dispensing device to an organization or distributor, other than as an agent, or merely transacts a transfer of a device, for or without a fee, between two organizations, shall do the following unless that distributor contracts with another distributor to comply with this rule on its behalf:

    a. Maintain an adequate inventory of electronic and mechanical parts in North Dakota, provide maintenance service, and provide technical assistance and training in the service and repair of a device;

    b. Make available, upon request, electrical and mechanical parts to all other licensed distributors at the usual price for such parts; and

    c. Notify the attorney general of any recurring electronic or mechanical malfunction of a device model.

21. A distributor that resells, transacts a transfer, rents, or provides a used dispensing device to an organization shall change or arrange to have changed all the keyed locks on the device.

22. A distributor that sells or provides a dispensing device to an organization shall record this information on a sales invoice:

    a. Name, address, and license number of an organization and name and location, if known, of the site where the device will be placed; and

    b. Name of device and its serial number.

23. A distributor shall initially set up a dispensing device at a site and conduct and document one training session on the operation and service of the device for an employee of an organization that buys a device for the first time.

24. A service technician may not access a dispensing device unless accompanied by an organization employee.

25. A distributor may not possess, in inventory, a processing chip encoded with proprietary software that was duplicated by the distributor for a dispensing device usable in North Dakota.

26. A distributor may not sell or provide new video surveillance equipment or install video surveillance equipment for an organization unless the distributor is a regular vendor of this equipment and is approved by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-14

**99-01.3-15-06. Distribution of gaming equipment.**

1. A manufacturer's game serial number must be on a paddlewheel ticket described by subsection 1 of section 99-01.3-11-01, seal board, tip board, sports-pool board, and calcutta board. No game serial number may be special ordered. A game serial number must be preprinted on a paddlewheel ticket card. If a game serial number is not preprinted on a seal board, sports-pool board, or calcutta board, a distributor shall assign and electronically or mechanically imprint it on the board. No serial number may be repeated within three years.

2. For a deal of pull tabs (two-ply card with break-open tabs), deal of bingo cards used in a dispensing device, and a specialty jar ticket game, a distributor may open a manufacturer's cellophane shrink wrap to access a flare. A distributor shall affix a state gaming stamp on the front of the original flare of a deal of pull tabs and bingo cards, club special, tip board, series of paddlewheel ticket cards, and on a punchboard, sports-pool board, seal board, prize board, and calcutta board that is sold or provided to a customer. If a case of bingo cards that is used in a dispensing device consists of two or more containers, each container is a separate deal, regardless of whether the game serial number is the same. A gaming stamp must be affixed in North Dakota. A distributor shall legibly write a manufacturer's game serial number in ink on the stamp. If the written number is incorrect, the number cannot be changed or erased and the stamp must be voided. For a series of paddlewheel ticket cards, the game serial number written must be the lowest numbered paddlewheel ticket card. Then, a distributor shall replace, if applicable, a flare inside the cellophane shrink wrap and seal the opening. This rule does not apply to gaming equipment provided directly to an organization that has a permit, Indian tribe, United States military, out-of-state purchaser, or another licensed distributor.

3. If a manufacturer's security seal on a container is inadvertently broken but the integrity of a deal remains intact, a distributor may reseal the

deal with a distributor permanent adhesive security seal. The seal must be applied to all accessible sides of a container and ensure that a deal's pull tabs or bingo cards are not accessible from outside the container. A distributor shall indicate on a sales invoice that the deal was resealed by the distributor and the reason.

4. A distributor shall provide a flare with a deal of pull tabs or jar tickets and series of paddlewheel ticket cards. The master flare for a game involving deals of jar tickets that contain winning tickets of the same prize value printed in differently colored numbers or symbols must have the flare's numbers and symbols printed in matching colors. A flare, including a master flare, must indicate the name of the game, manufacturer's form number (excluding a flare for a deal of jar tickets), cost per play, and value and number of winning prizes. The front of a flare for a deal of jar tickets must indicate the number of jar tickets in the deal. The number of prizes may be designated by a number or by a quantity of symbols that represent the number of winning prizes and winning number or symbol. A symbol must be pictured on a flare, not described. A last sale prize must be printed on a flare or be indicated by a permanently affixed sticker. The flare or sticker must contain the last sale feature, prize value, and distributor's name or license number. Except to add a last sale feature to a manufacturer's flare for a deal of pull tabs (two-ply or three-ply card), a distributor may not alter a flare. A distributor may make a flare for a deal of jar tickets. This information must be mechanically or electronically printed on a flare.

5. A distributor shall provide an organization with an adequate supply of bingo prize flares for use with a bingo card dispensing device.

6. A distributor may not sell or provide a ten or twelve line or twenty-five or one hundred square sports-pool board to a customer unless a special opaque tape covers the numbers on the board. If a tape is disturbed, any recovering of the numbers must be detectable. A tape must prevent the concealed numbers from being viewed from outside when using a high-intensity lamp of up to five hundred watts.

7. For a deal of jar tickets, club special, tip board, and prize board, a distributor shall provide a game information sheet containing cost per play, ideal gross proceeds, ideal prizes, including any last sale prize, if known, and ideal adjusted gross proceeds or, in place of a separate sheet, the information may be printed on the front or back of the deal's flare.

8. A distributor shall print these phrases on a sports-pool board:

   a. Professional sports pool;

   b. Cost per play $_____;

c. Date of sports event _____;

d. Ideal prizes $_____; and

e. Method of prize payout _____.

9. A distributor shall indicate this information on the flare of a series of paddlewheel ticket cards:

   a. Game serial numbers of the lowest and highest numbered paddlewheel ticket cards;

   b. Quantity of cards; and

   c. Type of paddlewheel ticket (for example, 40 x 3 x 120), if applicable.

10. A distributor shall print the phrases "merchandise prize_____" and "retail ~~value~~ price $_____" on a flare and for each seal for a game that has a merchandise prize.

11. A distributor shall sell a calcutta board that is cardboard or similar material on which is printed a matrix of horizontal lines and vertical columns sufficient to accommodate the information required by subsections 7, 10, and 12 of section 99-01.3-10-01. A distributor shall print "calcutta" at the top of a board and print the phrases "sporting event _____", "method of prize payout _____", and "date of sports event _____" on the board.

12. A distributor shall print the phrases "cost per play $_____" and "retail ~~value~~ price $_____" on a seal board.

13. A distributor shall print "cost per play $_____" or similar phrase on a prize board.

14. If a distributor is notified by an organization that the game serial number of a deal of pull tabs or bingo cards, club special, tip board, seal board, punchboard, series of paddlewheel ticket cards, calcutta board, prize board, or sports-pool board is different from the number written on a state gaming stamp, the distributor shall follow procedures prescribed by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1.-01.1, 53-06.1-14

**99-01.3-15-08. Promotional and sample bingo cards and pull tabs.** A distributor may not sell or provide promotional paper bingo cards, bingo cards used

in a dispensing device, jar tickets, or pull tabs to an organization or any person unless the face of each paper bingo card, the outside of a jar ticket, or the game information side of each pull tab or bingo card contains the phrase "promotional use only", "happy hour", "no purchase necessary", or similar phrase. A distributor may not sell or provide sample paper bingo cards, bingo cards used in a device, jar tickets, or pull tabs to an organization or any person unless the word "void" is on the face of each paper bingo card and jar ticket and on the game information side of each pull tab or bingo card. A distributor may sell other nongaming promotional items to any person.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-15-10. Recordkeeping.** A distributor shall maintain complete, accurate, and legible accounting records in North Dakota. The records must be retained for three years and include, by month:

1. Purchase invoices for gaming equipment.

2. Sales ~~invoices for~~ of gaming and nongaming equipment, supplies, and services sold or provided on a distributor's invoice. A sales invoice must be prepared on a form ~~prescribed~~ approved by the attorney general and include:

   a. License number of the distributor;

   b. Business name and address of the buyer and business name and address where the gaming equipment or supplies were shipped to or where the service was performed;

   c. License or permit number of the buyer, if applicable;

   d. Invoice number and date;

   e. Date shipped;

   f. Indication for a credit memo;

   g. Quantity, price, and description of each item of gaming equipment, supplies, and services. This includes the name of game and indication of the item as a deal of pull tabs or bingo cards, club special, prize board, tip board, seal board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards. For a deal of pull tabs (excluding jar tickets) and bingo cards, it must include a manufacturer's form number. For a series of paddlewheel ticket cards, it must include the number of paddlewheel ticket cards and number of tickets on each card. For a prize board, it must include separate costs, including sales tax,

for a merchandise prize (if any), coins, and board and pull tabs. For paper bingo cards, it must include the primary color of single cards or primary color of the top card of collated booklets, type (number of faces on a sheet) of collated booklets or single cards, number of cards in a collated booklet, and serial number and size of series. For a bingo card marking device, it must include the quantity;

h. Gaming stamp number;

i. Ideal gross proceeds, ideal adjusted gross proceeds, price of a merchandise prize, and value of a last sale prize; and

j. An indication that a deal was resealed and the reason, if applicable.

3. A sales invoice must be:

   a. Prenumbered consecutively with a preprinted number of at least four characters;

   b. Prepared in three parts and issued as follows:

      (1) One part to the customer;

      (2) One part retained in an invoice file by customer name; and

      (3) One part to the attorney general according to subsection 10 of section 99-01.3-15-02; and

   c. A credit memo for a returned item must be prepared and issued like a sales invoice. A credit memo must represent only a returned item.

4. A sales journal must include the invoice date, number, total amount, and name of customer.

5. A cash receipts journal must include cash sales, cash received from all sources, name of customer, date a payment is received, and amount.

6. A cash payments journal must include checks issued, cash payments, date of check or payment, check number, name of payee, and type of expense.

7. Record of voided gaming stamps on a form prescribed by the attorney general.

8. Inventory records and reconciliation of inventories.

9. A repair report for each service call on a dispensing device.

10. Documentation of a training session conducted according to subsection 23 of section 99-01.3-15-02.

11. A manufacturer's invoice that references a rental fee charged an organization for a bingo card marking device.

12. A quantity-based perpetual inventory record of bingo card marking devices provided to or withdrawn from a site must include the organization name and model of device.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-16

**99-01.3-16-01. License.** A manufacturer of deals of pull tabs or bingo cards, paper bingo cards, bingo card marking device, or a pull tab dispensing device, or any other person may not ~~directly or indirectly~~ sell, lease, solicit business, or provide these items to a distributor without a license. If two or more manufacturers are affiliated, each manufacturer shall apply for a license. A license is not transferable. The annual licensing period is April first through March thirty-first. An application must include information prescribed by the attorney general. The license fee for a manufacturer of pull tabs, bingo cards, or bingo card marking devices is four thousand dollars. The license fee for a manufacturer of only pull tab dispensing devices is one thousand dollars. If a person manufactures pull tabs and paper bingo cards, or, pull tab dispensing devices and either pull tabs or paper bingo cards, or both, only one license fee is required.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-14

**99-01.3-16-04. Quality standards for pull tabs.** A manufacturer shall manufacture pull tabs according to these standards:

1. Construction.

   a. A deal must be designed, constructed, glued, and assembled to prevent the determination of a winning pull tab or numbers or symbols without first removing the tabs or other covering.

   b. All the pull tabs of a deal must have the same game serial number which cannot be repeated on the same form number for three years.

   c. When a tab or other covering is removed, the numbers or symbols must be fully visible in the window and must be placed so that no part of a symbol or number remains covered. The numbers or symbols can be displaced to the left or right in a window for increased security.

   d. The window slits on a pull tab must be perforated on three sides. A pull tab must be glued on all four edges and between each window. The glue must be of sufficient strength and type to prevent the separation or delamination of a pull tab.

2. Opacity. Concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of a pull tab using a high-intensity lamp of five hundred watts.

3. Color. It must not be possible to detect or pick out winning from losing pull tabs through a variation in printing graphics or colors, especially those involving different printing plates.

4. Printed information. The minimum information printed on a pull tab must be as follows, except that subdivisions b, c, and d are not required for a folded or banded jar ticket or to a two-ply or three-ply card with only one perforated break-open tab which measures one and one-quarter inches [31.7 millimeters] by two and one-quarter inches [57.1 millimeters] or less in size, subdivisions a, c, d, and e are not required for pull tabs used with a tip board, and subdivisions b, c, and e are not required for a pull tab used with a prize board:

   a. Name of manufacturer or its logo;

   b. Name of game;

   c. Cost per pull tab;

   d. Manufacturer's form number;

   e. Number of winning pull tabs and winning numbers or symbols, and prize amounts, or a flare must be included with the game providing that information; and

   f. Unique minimum five-character game serial number, printed on the game information side of the pull tab.

5. Winner protection. A unique symbol or printed security device, such as a specific number keyed to a particular winning pull tab, or the name of the symbol or some of the symbol colors changed for a winning pull tab, or other similar protection must be placed in the winning windows of winning pull tabs. Also, a winning pull tab that has a prize greater than twenty dollars must have a secondary form of winner verification.

6. Randomization. The winning pull tabs must be intermixed among all other pull tabs in a deal to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning pull tab may be determined. A deal must be assembled so that no placement of winning or losing pull tabs exists that allows prize manipulation or pick out. Banded jar tickets packaged in a bag must be randomized.

7. Guillotine cutting. It must not be possible to isolate winning or potential winning pull tabs of a deal by variations in size or the appearance of a cut edge of the pull tabs.

8. Packaging.

a. A deal's container must be sealed with a seal that warns the purchaser (end user) that the deal may have been tampered with if the container was received with the seal broken. A seal must ensure that a deal's pull tabs are not accessible from outside the container when sealed. A manufacturer shall seal or tape every entry point into the container. The seal or tape must be tamper-resistant and be designed so that should a container be opened or tampered with, it would be easily noticed. For jar tickets packaged in a bag, the glue used to seal the flap of the bag must be permanent adhesive glue. The required seal cannot be a manufacturer's cellophane shrink wrap.

b. A manufacturer shall print, in bold letters, "Pull tabs must be removed from this packaging container and thoroughly mixed before sale to the public" or similar language on the outside of a container.

c. A deal's game serial number must be legibly placed on or be able to be viewed from the outside of the deal's container.

d. For a deal shipped to North Dakota, a flare for a deal of pull tabs (two-ply or three-ply card) or a specialty jar ticket deal must be located on the outside of the deal's sealed container so that the seal will not be broken to access the flare.

9. Number of top tier winners. Except for a deal for a prize board, a deal must have at least two top tier winning pull tabs.

10. A manufacturer may not exactly duplicate (print) a winning number, symbol, or set of symbols of any nonpromotional jar ticket or pull tab on any promotional jar ticket or pull tab.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-16-09.2. Manufacturing specifications - Bar code credit device.** A bar code credit device must:

1. Limit redemption of winning pull tabs for credit to only pull tabs that have a prize value equal to or less than ten dollars;

2. Reject a winning pull tab that is not coded with the same game serial number or other protective code related to the deal in the dispensing device, or a pull tab ticket not properly defaced that has been inserted into the device for credit;

3. Reject a photocopy and any other type of reproduction of an actual winning pull tab;

4. Reject a nonwinning pull tab and provide a message regarding "nonwinning pull tab", "invalid pull tab", or similar phrase visible to a player; and

5. Have resettable and nonresettable meters to separately account for:

   a. Interim period and cumulative values of winning pull tabs validated for credit;

   b. Interim period and cumulative values of currency validated for credit; and

   c. Interim period and cumulative values of the total of winning pull tabs and currency validated for credit.

**History:** Effective July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-16-10. Testing, approval, and recall.**

1. A manufacturer of a pull tab or bingo card dispensing device or bingo card marking device may not sell or provide a device to a distributor unless a model of the device has been approved by the attorney general.

2. A manufacturer of a dispensing device shall provide a device model, a copy of its construction blueprint, wiring schematics, circuit analysis, technical and operation manuals, random number generator or player button sequencing concept source and object code computer programs, proprietary operating software source and object code computer programs, and other information requested by the attorney general. A manufacturer of a bingo card marking device shall provide a device model site system, technical and operations manual, proprietary operating software source and object code computer programs, and other information requested by the attorney general. A manufacturer of a currency validator or credit redemption device for pull tab dispensing devices shall provide a copy of the source and object code computer programs and other information requested by the attorney general. A manufacturer may provide a copy of letters of approval and test reports of the dispensing device, bingo card marking device, or currency validator from other states, federal jurisdictions, or independent testing laboratories.

3. The attorney general may require a manufacturer of a dispensing device, bingo card marking device, or currency validator to transport

a working model, and the information required by subsection 2 to the attorney general or designee for analysis, testing, and evaluation. A manufacturer shall pay all the costs and provide special equipment for the testing. The attorney general may require a manufacturer to pay the estimated costs, in advance. After the analysis, testing, and evaluation is done, the designee shall provide the results to the attorney general. An overpayment of costs must be refunded to a manufacturer or the manufacturer shall pay any underpayment of costs. The attorney general shall provide the manufacturer with the results. Before approving a device's model, the attorney general may require a trial period.

4. If a manufacturer of a dispensing device knows or determines that a model of device is defective or can be manipulated, the manufacturer shall immediately notify the attorney general and cease selling the device. The attorney general may require the manufacturer to recall or modify the device. Upon notification, a manufacturer shall initiate compliance with a recall or modification at the manufacturer's expense.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004.
**General Authority:** NDCC 53-06.1-01.1
**Law Implemented:** NDCC 53-06.1-01.1