

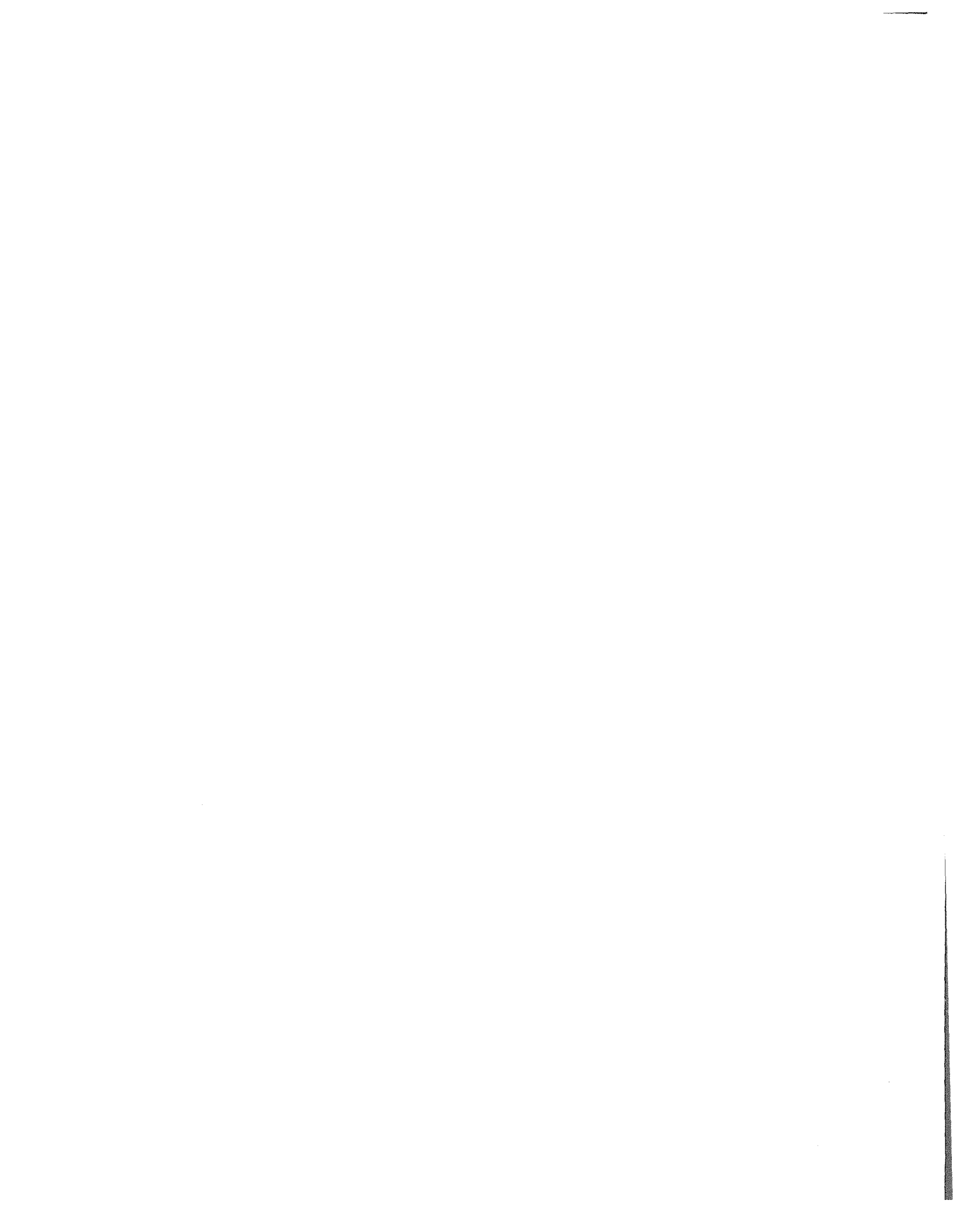
**NORTH DAKOTA ADMINISTRATIVE CODE**

(Pages 1 - 291)

Supplements 317 - 319

November 2005  
December 2005  
January 2006

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



## TABLE OF CONTENTS

Board of Dietetic Practice (January 2006) .....	1
State Board of Cosmetology (December 2005).....	7
State Department of Health (January 2006).....	37
Department of Transportation (January 2006).....	101
Industrial Commission (January 2006).....	123
Insurance Commissioner (January 2006).....	149
State Board of Examiners for Nursing Home.....	207
Administrators (November 2005)	
State Board of Pharmacy (January 2006).....	213
Real Estate Commission (January 2006).....	219
Department of Human Services (December 2005).....	231
Board of Clinical Laboratory Practice (January 2006).....	257
State Board of Respiratory Care (January 2006).....	261
Department of Commerce (January 2006).....	277



**TITLE 20.5**  
**BOARD OF DIETETIC PRACTICE**



**JANUARY 2006**

**CHAPTER 20.5-02-01**

**20.5-02-01-01. Licensure application.** An application for a license for dietetic practice must be made to the state board of dietetic practice on forms approved by the board. The application must contain such information as the board may reasonably require.

1. Each application for a license as a licensed registered dietitian must be accompanied by:
  - a. The prescribed fee; and
  - b. A copy of the certificate indicating registration by the commission on dietetic registration of the American dietetic association.
2. Each application for a license as a licensed nutritionist must be accompanied by:
  - a. The prescribed fee; and
  - b. Proof that the applicant:
    - (1) Has received a master's or doctorate degree in human nutrition, nutrition education, foods and nutrition, or public health nutrition from an accredited college or university; or a master's or doctorate degree in a related field that meets eligibility requirements of the commission on dietetic registration of the American dietetic association; or
    - (2) Has completed and received a baccalaureate degree and a minimum of nine semester hours or twelve quarter hours of academic nutrition credits with at least two semester hours or three quarter hours in advanced nutrition. Such advanced nutrition must have human physiology and either organic chemistry or biochemistry as a prerequisite. For applicants who enroll in a baccalaureate program after August 1, 2000,

the applicant's baccalaureate degree must be in the field of dietetics or food and nutrition as approved by the board and from an accredited college or university. If the baccalaureate degree is greater than ten years old, evidence of ~~current~~ seventy-five hours of continuing education in nutrition under section 20.5-02-01-05 must be provided.

3. All applications must be signed by the applicant and notarized.
4. The board may request such additional information or clarification of information provided in the application as it deems necessary.
5. Any applicant who was previously issued a license from the board will have any prior licensing records, including complaints and disciplinary measures taken, applied to the record of the new license.

**History:** Effective December 1, 1986; amended effective May 1, 1987; October 1, 2000; January 1, 2006.

**General Authority:** NDCC 43-44-03

**Law Implemented:** NDCC 43-44-07, 43-44-08

**20.5-02-01-03. Licensure renewal.** Licenses are renewable annually and are effective for a renewal year which runs from October first to the following September thirtieth.

1. Applications for renewal of license will be mailed by the board on or before ~~August thirty-first~~ June first to all licenseholders. Fees are payable to the board on or before ~~September thirtieth~~ July first of the year preceding the renewal year.
2. License fees are considered delinquent and a late charge is assessed if the renewal application is not postmarked on or before ~~September thirtieth~~ July first of the year preceding the renewal year.
3. A licensee may have the licensee's license renewed up to one year after the license has lapsed without submitting a new application. To apply for renewal of a lapsed license, an applicant must submit:
  - a. ~~An application~~ The renewal form;
  - b. The initial license fee; ~~and~~
  - c. Late charges assessed by the board.;
  - d. CPE unit activity form; and
  - e. Commission on dietetic registration card for LRD only.



4. Renewal licenses must be mailed on or before ~~October thirty-first~~ September twentieth of the renewal year if the renewal request is complete and postmarked on or before ~~September thirtieth~~ July first.
5. Notwithstanding the provisions in this section regarding renewal of lapsed licenses, once a license has lapsed, the person who held the lapsed license may not practice as a dietitian or use a title reserved under state law for individuals who are licensed by the board until the person's license is renewed or until a new license is issued. A person whose license has lapsed but who continues to practice as a dietitian or use a restricted title violates state law and this chapter. Such a violation is grounds for denying an application by the former licensee for renewal of the lapsed license or for a new license.

**History:** Effective December 1, 1986; amended effective October 1, 2000; January 1, 2006.

**General Authority:** NDCC 43-44-03

**Law Implemented:** NDCC 43-44-03, 43-44-14

**20.5-02-01-04. Fees.** The board has adopted the following fee payment schedule:

1. Initial license fee:

Licensed registered dietitian	\$60.00
Licensed nutritionist	<u>\$60.00</u>
Limited permit	<u>\$25.00</u>

2. License fees for renewal are:

Licensed registered dietitian	\$45.00
Licensed nutritionist	<u>\$45.00</u>
Limited <del>permits</del> <u>permit</u>	<u>\$25.00</u>

3. Late fees in the amount of ~~five~~ ten dollars per month must be charged for all applications received by the board which are postmarked after ~~September thirtieth~~ July first of the year prior to the year of renewal.

4. An application for a new license from a person whose license has lapsed within the last twelve months will be treated as an application for renewal of the lapsed license and must be accompanied by all applicable late fees.

5. Dietetic practitioners who initially become licensed after August first of any year are exempt from licensure renewal for a period of one year.

6. Limited permits are issued for one year and are renewable for one additional six-month period. On receipt of notification of change in status to registered dietitian, no additional fee is charged until renewal time, at which time the initial fee would be due.

**History:** Effective December 1, 1986; amended effective October 1, 1993; October 1, 2000; January 1, 2006.

**General Authority:** NDCC 43-44-03

**Law Implemented:** NDCC 43-44-03, 43-44-05, 43-44-12

**20.5-02-01-05. Continuing education.** To renew a license, a person must present proof of having attended ~~at least twelve clock-hours~~ of continuing education approved by the board. ~~This yearly requirement may be waived upon a showing by the licensee of having attended at least seventy-five hours of continuing education in a consecutive five-year period. The applicant must submit evidence to the board of having attended the required number of continuing education hours.~~ The LRD licensee must have attended at least seventy-five hours of continuing education in the licensee's five-year recertification cycle. The five-year recertification cycle for licensed registered dietitians is based on the commission on dietetic registration's recertification cycle. For the licensed nutritionist, it is based on the year of initial licensure. The applicant must retain evidence of having attended the continuing education hours and submit upon request.

Continuing education courses must be related to or increase the professional competence of the attendee. This determination will be made by the board through approval of requested courses. If any licensee allows the licensee's license to lapse for a period of more than one year, the licensee may be required to submit proof of completion of at least ~~twelve~~ fifteen clock-hours of continuing education for each year that the licensee's license has lapsed up to a total of ~~sixty~~ seventy-five hours.

**History:** Effective December 1, 1986; amended effective October 1, 2000; January 1, 2006.

**General Authority:** NDCC 43-44-03

**Law Implemented:** NDCC 43-44-03

**TITLE 32**  
**STATE BOARD OF COSMETOLOGY**



## DECEMBER 2005

### CHAPTER 32-01-02

**32-01-02-01. Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-11, except:

1. "Cosmetology establishment" includes businesses, premises, and schools required to have a certificate of registration from the North Dakota board of cosmetology pursuant to North Dakota Century Code chapter 43-11.
2. "Cosmetology school" means any school teaching any or all of the practices of cosmetology.
3. "Disinfect" means to destroy harmful micro-organisms or to free from infection.
4. "Disinfectant" means an agent used to kill germs.
5. "Good repair" means that an item is soil-free with no holes, frayed wires, or tears in covering and fully operational for the purpose intended.
6. "Infectious disease" means any disease which can be transmitted, directly or indirectly, from person to person.
7. "Occupation of cosmetologist" includes the practice of esthetics and manicuring as defined in North Dakota Century Code section 43-11-01.
8. "Salon" means ~~that part of any building wherein~~ a location where the occupation of a cosmetologist, manicurist, or esthetician is practiced. The occupation of a cosmetologist, manicurist, or esthetician is practiced in a particular location if the cosmetologist, manicurist, or esthetician advertises services will be provided at the location or provides services at the location to three or more people on a regularly scheduled basis, except. The occupation of a cosmetologist, manicurist, or esthetician is not practiced in a location if the services

are provided at special or educational events after notification to and approval by the board, or under a homebound license.

9. "Sanitized" means rendered free of dust, foreign material, and agents of disease or infestation through use of effective cleaning and disinfecting processes.
10. "Sanitizer" means a container holding a sanitizing agent which is large and deep enough to completely submerge the tools and implements to be disinfected.

**History:** Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-01, 43-11-11, 43-11-27.1

## CHAPTER 32-01-03

**32-01-03-01. Comply with laws.** All cosmetology salons and schools and all operators, manager-operators, estheticians, manicurists, instructors, student instructors, and students, ~~and demonstrators~~ shall comply with the rules contained in this title and all applicable federal, state, and local laws, ordinances, rules, regulations, and codes.

**History:** Amended effective July 1, 1990; December 1, 2005.

**General Authority:** NDCC 43-11-05, 43-11-35

**Law Implemented:** NDCC 43-11-11, 43-11-11.1, 43-11-12, 43-11-13, 43-11-14, 43-11-15, 43-11-16, 43-11-17, 43-11-18, 43-11-19, 43-11-20, 43-11-20.1, 43-11-20.2, 43-11-20.3, 43-11-20.4, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-27.1, 43-11-28, 43-11-29, 43-11-30, 43-11-31, 43-11-32, 43-11-33, 43-11-34, 43-11-35

**32-01-03-04. Board to determine qualifications of applicant.** The sufficiency of the qualifications of all applicants for admission to board examinations of all students and student instructors or for registration or licensing of students, student instructors, instructors, ~~demonstrators~~, operators, ~~and~~ manager-operators, estheticians, and manicurists shall be determined by the board. The board may delegate such authority to the secretary of the board, and anyone feeling aggrieved by the board secretary's decision may in writing request a hearing before the board on the matter. The board hearing shall be conducted pursuant to the provisions of North Dakota Century Code chapters 43-11 and 28-32.

**History:** Amended effective July 1, 1990; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13, 43-11-15, 43-11-16, 43-11-19, 43-11-21, 43-11-22, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-28, 43-11-29, 43-11-30, 43-11-31, 43-11-32, 43-11-35

## CHAPTER 32-02-01

### 32-02-01-02. Space dimensions and requirements.

1. **Cosmetology salon.** To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology salon shall have adequate workspace to maintain a safe and sanitary condition for a cosmetology salon. In addition to such workspace, the cosmetology salon shall have a reception ~~room~~ area, supply room or supply area with enclosed cabinets, toilet facilities, and facilities to maintain sanitary conditions, ~~and hallways~~. There shall be adequate workspace for each additional operator or manager-operator in the salon.
  - a. Separate entrance. All public entrances and exits must meet the local or state building codes.
  - b. Cosmetology salon separate. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
  - c. Resident salons. Each cosmetology salon in a residential building shall maintain an entrance separate from the entrance to living quarters. No cosmetology services shall be conducted in any room used as living or sleeping quarters. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
  - d. Mobile home salons. Mobile homes, motor homes, trailers, or any type of recreational vehicles containing a cosmetology salon shall be permanently set on a foundation. Each cosmetology salon in such mobile home, motor home, trailer, or any type of recreational vehicle shall maintain an entrance separate from the living quarters. No cosmetology services shall be conducted in any room used as living or sleeping quarters. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
2. **Cosmetology schools.** To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology school shall have adequate square feet of floor space to maintain a safe and sanitary condition for a cosmetology school. Such floor space must include a business office, reception room, clinic laboratory practice room, dispensary, student lounge, hallways, and classrooms sufficient for training the number of students enrolled. Two lavatories must be in the same building as the school and immediately and easily accessible from the school. In addition, for the manicurist and esthetician courses, floor space must include separate classrooms with adequate space to teach students enrolled.



3. **Cosmetology school separate.** Each cosmetology school shall be separated from living quarters and any other business, except an affiliated school, by a solid nontransparent wall from floor to ceiling containing no openings or doors.

**History:** Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-11

### **32-02-01-03. Lighting - Exhaust fans - Fire extinguishers.**

1. Each cosmetology establishment shall have adequate lighting at all workstations.
2. Each cosmetology establishment shall be equipped with an exhaust fan or air exchange system in the working area.
3. Each cosmetology establishment shall maintain on the premises a fire extinguisher mounted in public view. All employees and students shall be instructed in the proper operation and use of the fire extinguisher.

All exhaust fans, fire extinguishers, and lighting must comply with the state and local building codes.

**History:** Amended effective July 1, 1988; March 1, 1998; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-11

### **32-02-01-04. Sanitary premises.**

1. Walls, floors, and fixtures must be kept clean and in good repair at all times.
2. All floors must be cleaned and made free of hair and other debris after each client and must be in good repair. Carpeting is not permitted in the working area, except in cosmetology establishments with carpeting in the working area on July 1, 2000, and which have not changed ownership since July 1, 2000. Carpeting will only be permitted in the reception, drying, and facial treatment areas.
3. Windows and mirrors should be clean.
4. Shampoo bowls and implements must be free from all hair and debris and cleansed prior to each use.
5. The dispensing area must be neat and clean. The supply area may not be accessible to the public.

6. Pedicure chairs, foot spas, and manicure tables must be cleaned and disinfected between uses.

**History:** Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; January 1, 2002; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-11

**32-02-01-12. Toilet facilities.** All cosmetology salons ~~in commercial or public buildings~~ shall have adequate toilet facilities conveniently located and readily accessible to the public patronizing the establishment. All cosmetology salons in residential establishments shall provide and label toilet facilities ~~within the salon.~~ Such toilet only for the use of customers during business hours. Toilet facilities shall be clean, sanitary, and properly maintained at all times. All plumbing must be in accordance with the state or local plumbing codes.

Each salon shall provide adequate handwashing facilities, including hot and cold running water. Each handwashing sink must have a soap dispenser supplied with liquid soap and disposable towels or approved air dryer.

**History:** Amended effective March 1, 1998; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-11

**32-02-01-13. Pets.** No animals, birds, or other pets ~~(except guide dogs assistance animals for the blind)~~ disabled and fish in aquariums, shall be permitted in any cosmetology establishment.

**History:** Amended effective December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-11

## CHAPTER 32-03-01

**32-03-01-01. Salon applications.** All persons, firms, associations, corporations, partnerships, and other entities desiring to operate a cosmetology salon shall make application to the board for a certificate of registration prior to commencing business. The application shall be made on a form provided by the board and shall be accompanied by the fee of ~~seventy-five~~ eighty dollars. All renewal applications of cosmetology salons shall be made to the board before December thirty-first in each year. Renewal applications shall be accompanied by the fee of ~~twenty-five~~ thirty dollars. Prior to any change of ownership, name, location, or address, a cosmetology salon shall apply for reregistration with the board. For rural salons, owners shall supply a detailed map indicating the salon's exact location and directions for driving to that salon.

**History:** Amended effective July 1, 1988; January 1, 2002; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13, 43-11-15, 43-11-17, 43-11-28

**32-03-01-02. Floor plan.** Every application for a certificate of registration shall be accompanied by a detailed floor plan of the proposed salon premises ~~drawn to scale~~. The floor plan shall show entrances, exits, ~~electrical outlets, water and sewer facilities, air-conditioning, exhaust fans,~~ locations of equipment, reception room area, supply room area, toilet facilities, hallways, and facilities to maintain sanitary conditions. A copy of an approved inspection report by local, county, or state authorities governing plumbing, electrical, and building codes ~~are~~ is required prior to final inspection. A revised floor plan shall be filed with the board in the event of any change of location or major changes in the salon premises.

**History:** Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-11

**32-03-01-10. Booth space.** In the event any salon premises are divided into booth space allotments to be leased to others, each person, firm, association, partnership, corporation, or other entity whose name appears on the application as operator of the booth space shall be responsible for the sanitary conditions of the space. Booth rental salons are subject to inspections during the operation whether or not a booth operator is available. The owner of the cosmetology salon shall be responsible for keeping the entire salon open for inspection by the board or board inspectors, and the board shall examine and inspect the entire salon premises regardless of any booth space allotments.

Each booth space allotment shall be licensed as a separate salon having a separate and independent certificate of registration, and each booth space allotment shall be operated only by a manager-operator, master manicurist, or master esthetician.

1. **Compliance as salon.** Each booth space allotment must have adequate workspace. The salon premises must meet all of the requirements of a salon contained in North Dakota Century Code chapter 43-11 and this article, except that there may be common reception areas, common toilet facilities, common product dispensing area, and common entrances and exits.
2. **Certificates displayed.** The certificate of registration for each booth space allotment shall be displayed in the booth.
3. **Premises used.** Each manager-operator, master manicurist, or master esthetician operating a booth space salon shall be responsible for all professional services performed and for all of the premises used.

**History:** Amended effective February 1, 1996; March 1, 1998; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-11, 43-11-13, 43-11-15, 43-11-17

**32-03-01-12. Application for license to practice cosmetology for the homebound.** All licensed cosmetologists not associated with licensed salons desiring to provide cosmetology services for the homebound shall make application to the board for a homebound license and meet the following requirements:

1. Possess a valid manager-operator, master manicurist, or master esthetician license.
2. Possess a kit and present the kit for inspection by a board-approved inspector. The kit must contain the following:
  - a. ~~Manager-operator license~~ License;
  - b. Copy of rules of sanitation;
  - c. Eyewash;
  - d. First-aid kit complying with section 32-02-01-07; and
  - e. ~~Portable drainboard~~;
  - f. ~~Twelve combs and twelve brushes~~;
  - g: d. Closed container Separate closed labeled containers for soiled towels and ~~other linens that need to be laundered~~; clean supplies.
  - h. ~~Photo identification~~; and
  - i. ~~Disinfectant solution~~.

3. Comply with all rules of disinfection for combs, brushes, tools, and other equipment as provided in section 32-02-01-10.
4. The original fee for a homebound license is ~~twenty-five~~ fifty ~~thirty~~ fifty-five dollars per year and annual renewals are ~~twenty-five~~ thirty dollars per year and yearly inspections must be coordinated with the board office.
5. ~~This rule is subject to the exceptions contained in North Dakota Century Code section 43-11-02.~~

**History:** Effective February 1, 1996; amended effective July 1, 1996; August 8, 1996; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-01, 43-11-11, 43-11-13, 43-11-13.2, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-28

## OBJECTION

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO NORTH DAKOTA ADMINISTRATIVE CODE SECTION 32-03-01-12 AS ADOPTED BY THE STATE BOARD OF COSMETOLOGY EFFECTIVE FEBRUARY 1, 1996.

The committee objects to this rule because the committee deems it to be unreasonable, arbitrary, or capricious. The committee believes this rule exceeds the intent of the Legislative Assembly by unduly restricting the availability of cosmetology services to homebound persons.

Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.

**History:** Effective May 29, 1996.

**General Authority:** NDCC 28-32-03.3

**32-03-01-14. Practice outside of salon.** A manager-operator, master manicurist, or master esthetician may practice outside of a salon establishment if:

1. The manager-operator, master manicurist, or master esthetician has one year of work experience;
2. The manager-operator, master manicurist, or master esthetician follows all applicable rules of sanitation adopted in chapter 32-02-01; and

3. Cosmetology services are not provided in a manner or frequency to cause the location where the services are provided to constitute a salon as defined in section 32-01-02-01.

**History:** Effective July 1, 2000; amended effective December 1, 2005.

**General Authority:** NDCC 43-11-05, 43-11-11

**Law Implemented:** NDCC 43-11-11

## CHAPTER 32-04-01

**32-04-01-01. School applications.** All persons, firms, associations, partnerships, corporations, and other entities desiring to operate a cosmetology school shall make application to the board for a certificate not less than three months prior to commencing business. The application shall be made on a form provided by the board and shall be accompanied by the fee of five hundred five dollars. All renewal applications of cosmetology schools shall be made to the board before December thirty-first in each year. Renewal applications shall be accompanied by the fee of two hundred five dollars. Six weeks prior to any change of ownership, location, or address, a cosmetology school shall make written application to the board. The application for reregistration must be made on a form provided by the board and must be accompanied by a fee of two hundred five dollars.

**History:** Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13, 43-11-16, 43-11-17

**32-04-01-02. Floor plan.** Every application for a certificate of registration to conduct a cosmetology school shall be accompanied by a detailed floor plan of the proposed school premises ~~drawn to scale~~. The floor plan shall show entrances, exits, ~~electrical outlets, water and sewer facilities, air-conditioning, exhaust fans,~~ locations of equipment ~~and the arrangement of the~~ business office, reception room area, classrooms, clinic laboratory, dispensary, student lounge, toilet facilities, ~~practice room,~~ and hallways. A revised floor plan shall be filed with the board in the event of any change of location or major changes in the school premises.

**History:** Amended effective July 1, 1988; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-11, 43-11-16

**32-04-01-06. Student registration.** Each cosmetology school shall register students taking a complete course of study within ~~ten~~ forty-five days after students' enrollment. Each school shall register students' enrollment by written notification to the board.

1. **Student contract.** Each cosmetology school shall provide the board with a true copy of the student contract for each student and student instructor enrolled. The student contract shall contain the entire contract between the parties, including a complete list of tools, books, and supplies provided to the student or student instructor. Such student contract shall be provided to the board within ~~ten~~ forty-five days of enrollment of each student and student instructor.
2. **Registration.** Each cosmetology school shall furnish the board for each student and student instructor enrolled with the completed state board notice of registration form accompanied by a copy of the student's

birth certificate and high school diploma or official transcript signed by school or general educational development. All such materials shall be provided to the board within ~~ten~~ forty-five days of student and student instructor enrollment.

3. ~~Credit before approval~~ **Discontinuance before registration.** ~~No student or student instructor shall be given credit for any time prior to the receipt and approval of the student's or student instructor's registration by the board. If a student discontinues the course before the student is registered, the school will notify the board as required by section 32-04-01-08.~~
4. **Reregistration.** Upon reregistration for any reason, the provisions of this section shall be complied with when applicable.

**History:** Amended effective July 1, 1990; March 1, 1998; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-16, 43-11-19

**32-04-01-13. Equipment and library.** Each cosmetology school shall have the following minimum equipment and library for each of the following courses of training and instruction provided by the school:

1. **Cosmetology minimum equipment:**

First 25 students	26-50	51-75	76-100
1- Chart of anatomy			
a. Bones			
b. Muscles			
c. Nerves			
d. Circulatory system			
e. Skin			
1- Blackboard <del>four feet by six feet</del> [1.22 meters by <del>1.83 meters</del> ] for each theory room			
2- <del>Master dry sterilizers or electric sterilizers</del>			
2 <u>1- Large wet sterilizers sterilizer for each twenty-five students enrolled</u>	3	4	6
4 <u>1- Shampoo basins basin for each six students enrolled</u>	6	8	10
6- <u>Facial chairs, beds, or tables</u>	8	10	12



12	1-	<del>Hair dryers</del> <u>dryer for each eight students enrolled</u>	15	25	30
6	1-	<del>Manicure tables</del> <u>table for each four students enrolled</u>	8	10	10
12	1-	<del>Work stations</del> <u>Workstation with mirrors mirror for each two students enrolled</u>	25	35	45
	1-	<del>Therapeutic lamp</del> <u>two-colored bulbs</u>			
300-		Permanent cold wave rods and other permanent cold wave supplies			
6-		<del>Waste containers</del>	10	14	20
1-		<del>Full length mirror</del>			
2-		<del>Soiled towel closed containers</del>	4	8	10
2-		<del>Closed towel cabinets</del>			
2-		<del>Closed supply cabinets</del>			
1-		Bulletin board - conspicuously located			
		Solution dispensers adequate for enrollment			
		Fireproof cabinet <u>or file</u> for school and student records			
		Adequate supply of facial supplies			

**2. Esthetician minimum equipment:**

- a. Sufficient chalkboards.
- b. One lavatory bowl for enrollment for up to fifteen students.
- c. One ~~work station~~ workstation or position per two students, which must include a facial chair or cushioned massage table.
- d. One set of facial equipment per two ~~work stations~~ workstations or positions, to include manual, mechanical, or electrical apparatus (at least one of the following): electrical heating mask, steamer, brushing, vacuum ionization, glass electrode or high-frequency galvanic or cathodic current (prohibited faradic) decrustation machine, spray or mister, or one magnification lamp.
- e. Sufficient trays for facial supplies.

- f. One dry sterilizer per each ~~work station~~ workstation.
- g. One properly lighted makeup area.
- h. One head form or chart per class.
- i. Audiovisual aids.

**3. Manicurist minimum equipment:**

- a. Sufficient chalkboards.
- b. A minimum of one handwashing sink separate from restrooms for enrollment up to fifteen, and one additional sink for each fifteen students or fraction thereof.
- c. Advanced department will have adequate chairs for clients, also adequate ventilation for work areas.
- d. One workspace with adequate light must be provided for every student.
- e. Sufficient trays for manicuring supplies.
- f. One set of mannequin hands per student.
- g. Manicuring kit for each student containing proper implements for manicuring and pedicuring.
- h. Implements for artificial nails, nail wraps, and tipping.
- i. One pedicure setup station.
- j. Audiovisual aids.

**4. Minimum school library:**

- a. Standard dictionary.
- b. Dictionary of medical words.
- c. Standard textbook.
- d. References on iron curling.
- e. References on hair straightening.
- f. References on hair coloring.

- g. Copy of cosmetology law.
- h. Copy of sanitary rules and regulations.
- i. Copy of minimum prices.
- j. Trade magazines.
- k. ~~Slides and films~~ Audiovisual aids pertaining to cosmetology.

**History:** Amended effective July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-11, 43-11-16

### **32-04-01-25. Examinations.**

1. **School examinations.** Each student must have successfully passed eighty percent of the weekly examinations and secured a seventy-five percent average in the cosmetology school final examination in both written and practical work.
2. **Board examinations.** ~~The time, place, and date of board examinations must be submitted to the board two weeks prior to test date.~~ A cosmetologist, manicurist, and esthetician examination shall consist of a theoretical portion and a practical portion. ~~The theoretical portion examinations shall be administered by the board members or staff. The practical portion of the cosmetologist examination will be administered by the cosmetology school if the examinee graduated from a North Dakota cosmetology school in the past year. If the examinee graduated from a North Dakota cosmetology school more than one year prior to making application, the practical portion of the cosmetologist examination may be administered by the cosmetology school or the board. The board will administer the practical portion of the cosmetologist examination to applicants who did not graduate from a North Dakota cosmetology school. A board member shall be present to observe during practical examination. There shall be no more than one test date per month.~~

The practical portion of the cosmetologist examination shall consist of the candidate demonstrating:

- a. Hairstyling.
- b. Basic hair shaping using entire mannequin (full head haircut).
- c. Hair coloring.
- d. Permanent waving.

- e. Chemical hair relaxing.

In order to be certified as passing an examination, a candidate shall score at least seventy-five percent ~~or more~~ on the theoretical and practical portions of the examination. ~~Candidates' scores shall be submitted to the board five days after the examination date.~~

- 3. **Failing applicant.** Applicants who fail any portion of the examination shall reregister and pay the required fee before being permitted to retake the portion of the examination they have failed. An applicant for an esthetician or manicurist license who fails ~~any portion of the practical examination twice must wait until six months have passed since the last examination before retesting~~ complete an additional fifty hours of training at a school of cosmetology before applying for a second reexamination. An applicant for a manicurist license who fails the practical examination twice must complete an additional thirty hours of training at a school of cosmetology before applying for a second reexamination.
- 4. **Applicant complaint.** An applicant shall notify the board in writing if there is reason to believe that there has been discrimination during any portion of the examination.

**History:** Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-16, 43-11-22, 43-11-23

**32-04-01-26. Solicitor's permit.** All persons who solicit or sell any course of instruction shall obtain a permit. Applications must be accompanied by a surety bond in the penal sum of one thousand dollars for each solicitor. The permit fee is ~~twenty-five~~ thirty dollars.

**History:** Effective July 1, 1988; amended effective December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-16

**32-04-01-27. Esthetician course curriculum.** The curriculum for students enrolled in an esthetician course ~~for a complete course of~~ must be six hundred hours ~~of training must be as follows:~~ No school or licensed instructor may permit a student to render clinical services until a student has completed twenty percent of the total hours of instruction required. ~~These hours are to~~ The curriculum must include the following:

Sterilization, sanitation, and safety	75 hours
Body treatment, facials, hair removal, and makeup	340 hours
Study of law, ethics, management, and salesmanship	75 hours
Related subjects	60 hours

Unassigned	50 hours
Total minimum hours	<u>600 hours</u>

**History:** Effective July 1, 1990; amended effective July 1, 2000; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-16

**32-04-01-28. Manicurist course curriculum.** The curriculum for students enrolled in a manicurist course ~~for a complete course of~~ must be three hundred fifty hours ~~at forty hours per week in at least three months or twenty-four hours per week in at least five months, training must be as follows:~~. No school or licensed instructor may permit a student to render clinical services until a student has completed twenty percent of the total hours of instruction required. ~~These hours are to~~ The curriculum must include the following:

Sterilization, sanitation, and safety	45 hours
Manicuring, pedicuring, and application of artificial nails	200 hours
Study of law, management, ethics, and salesmanship	45 hours
Related subjects	35 hours
Unassigned	25 hours
Total minimum hours	<u>350 hours</u>

**History:** Effective July 1, 1990; amended effective December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-16

**32-04-01-29. Curriculum for esthetician instructor training.** Repealed effective December 1, 2005.

- ~~1. Persons receiving esthetician instructor training in a cosmetology school shall spend all of their training time under the direct supervision of a licensed instructor and may not be left in charge of students or schools at any time without the direct supervision of a licensed instructor.~~
- ~~2. Persons receiving instructor training are not permitted to perform clinical services on a client for compensation, either by appointment or otherwise. Persons receiving instructor training must be furnished a teacher's training manual.~~
- ~~3. The curriculum in a cosmetology school, for an esthetics instructor training course, must include:
 
  - ~~a. The teacher - 65 hours:
 
    - ~~(1) Personality.~~~~~~

- (2) ~~Technical knowledge.~~
- (3) ~~Teacher's characteristics.~~
- (4) ~~Teachers as professionals.~~
- b. ~~Preparations for teaching:~~
  - (1) ~~Planning for teaching.~~
  - (2) ~~Preparing lesson plans:~~
    - (a) ~~Objectives.~~
    - (b) ~~Outline.~~
  - (3) ~~Student activities.~~
  - (4) ~~Steps of teaching:~~
    - (a) ~~Preparation.~~
    - (b) ~~Presentation.~~
    - (c) ~~Application.~~
    - (d) ~~Testing.~~
- c. ~~Student motivation and learning – 65 hours:~~
  - (1) ~~State board of cosmetology requirements and recordkeeping.~~
  - (2) ~~Student motivation.~~
  - (3) ~~Student participation.~~
  - (4) ~~Student personalities.~~
  - (5) ~~Individual:~~
    - (a) ~~Slow learner.~~
    - (b) ~~Gifted learners.~~
- d. ~~Methods, management, and materials – 170 hours:~~
  - (1) ~~Methods, procedures, and techniques of teaching:~~
    - (a) ~~Lectures and discussions.~~

- (b) Demonstrations:
- (c) Conducting practice activities:
- (d) Questioning techniques:
- (e) Results:
- (f) Special situations:

(2) Classroom management:

- (a) Physical environment:
- (b) Administrative duties:
- (c) Student discipline:
- (d) Class supervision:
- (e) Classroom routine:
- (f) Corrective measures:

(3) Teaching materials:

- (a) Audiovisual aids (types):
- (b) Values of different teaching aids:
- (c) Correct usage:
- (d) Miscellaneous teaching materials:
  - [1] Textbooks:
  - [2] Workbooks:
  - [3] Reference books:
  - [4] Creative aids:

e. Testing and evaluations – 100 hours:

(1) Testing:

- (a) Purpose:
- (b) Performance tests:

- (c) ~~Written tests.~~
- (d) ~~Standardized tests.~~
- (2) ~~Evaluation:~~
  - (a) ~~General student abilities.~~
  - (b) ~~Student achievement.~~
  - (c) ~~Teacher evaluation.~~
- f. ~~Education (vocabulary development) – 130 hours.~~
- g. ~~Unassigned – 70 hours.~~
- ~~Total hours – 600.~~

~~History: Effective July 1, 1990; amended effective July 1, 2000.~~

~~General Authority: NDCC 43-11-05~~

~~Law Implemented: NDCC 43-11-16~~

**32-04-01-30. Curriculum for nail care instructor training. Repealed effective December 1, 2005.**

1. ~~Persons receiving nail care instructor training in a cosmetology school shall spend all of their training time under the direct supervision of a licensed instructor and may not be left in charge of students or school at any time without the direct supervision of a licensed instructor.~~
2. ~~Persons receiving nail care instructor training are not permitted to perform clinical services on a client for compensation, either by appointment or otherwise. Persons receiving instructor training must be furnished a teacher's training manual.~~
3. ~~The curriculum in a cosmetology school for a nail care instructor training course must include at least three hundred fifty hours to be completed in three months at forty hours a week or in five months at twenty-four hours per week as follows:~~
  - a. ~~Lesson planning and presentations – 50 hours.~~
  - b. ~~Testing – 25 hours.~~
  - c. ~~Education – 25 hours (vocabulary development).~~
  - d. ~~Demonstration and lecturing – 50 hours.~~
  - e. ~~Teaching aids – 15 hours.~~



- f. ~~Classroom management -- 25 hours.~~
- g. ~~Rules and law -- 10 hours.~~
- h. ~~Basic teaching methods -- 50 hours.~~
- i. ~~Teaching principles -- 70 hours.~~
- j. ~~Personality and teaching -- 20 hours.~~
- k. ~~Unassigned -- 10 hours.~~

~~Total hours -- 350.~~

**History:** ~~Effective July 1, 1990.~~

**General Authority:** ~~NDCC 43-11-05~~

**Law Implemented:** ~~NDCC 43-11-16~~

## CHAPTER 32-05-01

**32-05-01-01. Operators.** Every person desiring to be licensed by the board as an operator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to operators and the educational qualifications set forth in section 32-04-01-26.1 and shall make application to the board for a certificate prior to commencing any activity as an operator.

1. **Fee and proof.** The application shall be accompanied by the required proof of qualification applicable to the applicant, the original license fee of fifteen dollars, and the examination fee of ~~twenty~~ twenty-five dollars.
2. **Renewal.** Every operator shall renew the operator's ~~certificate~~ license by annually making written application to the board before December thirty-first each year, and such renewal application shall be accompanied by the ~~ten~~ fifteen dollar fee.
3. **Penalty fee.** If the licensee fails to renew the operator's license following ~~by~~ the expiration date, a penalty fee of ~~ten~~ fifteen dollars is required.
4. **Change of name or address.** Every operator shall notify the board in writing of any change of name or change of residence address.
5. **Certificates displayed.** Every operator shall conspicuously display the operator's certificate of registration in the reception or work area of the cosmetology salon.

**History:** Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-28

**32-05-01-01.1. License without examination.** Every person desiring to be licensed as an operator, manicurist, or esthetician without taking the examination shall make an application on the form provided by the board and:

1. Pay the application fee.
2. Provide proof that the applicant is licensed as a cosmetologist, manicurist, or esthetician in another jurisdiction and that the applicant's license is in good standing.
3. Demonstrate the other jurisdiction's licensure requirements at the time the applicant was licensed by the other jurisdiction were substantially equal to those in North Dakota at the time the North Dakota application was filed. Three thousand hours or more ~~years~~ of work experience as a

licensed ~~cosmetologist~~ operator will be considered substantially equal to three hundred hours of cosmetology education.

4. Pass an examination on North Dakota sanitation practices and cosmetology law.

**History:** Effective July 1, 2000; amended effective December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-25

**32-05-01-02. Manager-operators.** Every person desiring to be licensed by the board as a manager-operator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to manager-operators and shall make written application to the board ~~to register for the manager-operator's license.~~

1. **Fee and proof.** The application shall be accompanied by the fee of ~~twenty~~ twenty-five dollars and the required proof of qualification. One thousand hours of practice as a licensed operator is the equivalent of one hundred twenty-five days of practice as a licensed operator.
2. **Renewal.** Every manager-operator shall renew the manager-operator's ~~certificate~~ license by annually making an application to the board before December thirty-first each year, and the renewal application shall be accompanied by the ~~fifteen~~ twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the manager-operator's license ~~following~~ by the expiration date, a penalty fee of ~~ten~~ fifteen dollars is required.
4. **Change of name or address.** Every manager-operator shall notify the board in writing of any change of name or change of residence address.
5. **Certificates displayed.** Every manager-operator shall conspicuously display the manager-operator's certificate of registration in the reception or work area of the cosmetology salon.

**History:** Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-26, 43-11-28

**32-05-01-03. Instructors.** Every person desiring to be an instructor shall have the qualifications and passed the examination required by North Dakota Century Code chapter 43-11 applicable to student instructors and instructors and shall make application in writing to the board pursuant to North Dakota Century Code section 43-11-27 and this section.

1. **Renewal.** Every instructor shall renew the instructor's ~~certificate~~ license by annually making written application to the board before December thirty-first each year, and the renewal application shall be accompanied by the ~~fifteen~~ twenty dollar fee and evidence of attendance at a board-approved seminar during the previous year.
2. **Penalty fee.** If the licensee fails to renew the instructor's license ~~following~~ by the expiration date, a penalty fee of ~~ten~~ fifteen dollars is required.
3. **Seminars.** Every instructor shall attend ~~a~~ eight hours of board-approved ~~seminar~~ continuing education annually. Before attending any seminar, every instructor shall apply in writing to the board for approval of the seminar.
4. **Change of name or address.** Every instructor shall notify the board in writing of any change of name or change of residence address.
5. **Certificate displayed.** Every instructor shall conspicuously display the instructor's certificate of registration in the clinic laboratory area of the cosmetology school.

**History:** Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-27, 43-11-28

**32-05-01-04. Student instructors.** Every person desiring to be a student instructor shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to student instructors and shall make application in writing to the board before enrollment in a registered cosmetology school. Upon board approval of the application, the person may enroll in a licensed cosmetology school.

1. **Fee.** There shall be a ~~ten~~ fifteen dollar fee for application and registration of student instructors with the board.
2. **Contents and certification.** The cosmetology school of the approved student shall certify in writing to the board the name, age, and qualifications of the student instructor, and the board shall record the information in a student instructor register.
3. **Application.** Upon completion of the required course prescribed for student instructors, the student instructor shall make written application to the board on a form provided by the board, and the written application shall be accompanied by a fee of ~~thirty~~ thirty-five dollars.

4. **Examination.** The time, place, and date of the examinations for instructor's ~~certificates~~ licenses shall be set by the board. The examination fee is ~~fifty~~ fifty-five dollars.

**History:** Amended effective July 1, 1988; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-27, 43-11-28

**32-05-01-06. Esthetician.** Every person desiring to be licensed by the board as an esthetician shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to estheticians and the educational qualifications set forth in section 32-04-01-27 and shall make written application to the board to register for the esthetician's examination:

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant, the original license fee of twenty-five dollars, and the examination fee of ~~twenty~~ twenty-five dollars.
2. **Renewal.** Every esthetician shall renew the esthetician's ~~certificate~~ license by annually making written application to the board office before December thirty-first each year, and such renewal application must be accompanied by the ~~fifteen~~ twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the esthetician's license following by the expiration date, a penalty fee of ~~ten~~ fifteen dollars is required.
4. **Change of name or address.** Every esthetician shall notify the board in writing of any change of name or residence.
5. **Certificates displayed.** Every esthetician shall conspicuously display the esthetician's certificate of registration in the reception or work area of the cosmetology salon.

**History:** Effective July 1, 1990; amended effective March 1, 1998; January 1, 2002; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

**32-05-01-06.1. Master esthetician.** Every person desiring to be licensed by the board as a master esthetician shall furnish to the board evidence of having practiced as a licensed esthetician for one ~~hundred twenty-five days~~ thousand hours.

A master esthetician may operate as a manager-operator of a salon that is operated and engaged exclusively in the practice of skin care.

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant and the original license fee of twenty-five dollars.
2. **Renewal.** Every master esthetician shall renew the master esthetician's license by annually making written application to the board's office before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.
3. **Penalty Fee.** If the licensee fails to renew the master esthetician's license by the expiration date, a penalty fee of fifteen dollars is required.

**History:** Effective February 1, 1996; amended effective July 1, 2000; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13.1, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

**32-05-01-07. Manicurist.** Every person desiring to be licensed by the board as a manicurist shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to manicurists and the educational qualifications set forth in section 32-04-01-28 and shall make written application to the board to register for the manicurist's examination.

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant, the original license fee of twenty-five dollars, and the examination fee of ~~twenty~~ twenty-five dollars.
2. **Renewal.** Every manicurist shall renew the manicurist's certificate license by annually making written application to the board before December thirty-first each year, and such renewal application must be accompanied by the ~~fifteen~~ twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the manicurist's license ~~following~~ by the expiration date, a penalty of ~~ten~~ fifteen dollars is required.
4. **Change of name or address.** Every manicurist shall notify the board in writing of any change of name or any change of residence.
5. **Certificates displayed.** Every manicurist shall conspicuously display the manicurist's certificate of registration in the reception or work area of the cosmetology salon.

**History:** Effective July 1, 1990; amended effective March 1, 1998; January 1, 2002; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13, 43-11-27, 43-11-27.1, 43-11-28

**32-05-01-07.1. Master manicurist.** Every person desiring to be licensed by the board as a master manicurist shall furnish to the board evidence of having practiced as a licensed manicurist for ~~sixty days~~ one thousand hours.

A master manicurist may operate as a manager-operator of a salon that is operated and engaged exclusively in the practice of manicuring.

1. **Fee and proof.** The required proof of qualification applicable to the applicant and the original license fee of twenty-five dollars must accompany the application.
2. **Renewal.** Every master manicurist shall renew the master manicurist's license by annually making written application to the board office before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the master manicurist's license by the expiration date, a penalty fee of fifteen dollars is required.

**History:** Effective February 1, 1996; amended effective July 1, 2000; December 1, 2005.

**General Authority:** NDCC 43-11-05

**Law Implemented:** NDCC 43-11-13.1, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28





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



JANUARY 2006

CHAPTER 33-06-16

**33-06-16-01. Definitions.** As used in this chapter:

1. "Diagnostic test" means a test that is used to establish a definitive diagnosis of some condition in an affected newborn.
2. "Newborn screening system" means the routine testing of newborn infants for congenital conditions by analysis of a dried blood specimen through laboratory procedures that identify infants with an increased risk for specified diseases and conditions, and that justify followup actions and diagnostic tests or procedures.
3. "Program" means the North Dakota newborn screening program in the ~~division~~ community health section of maternal and child health in the state department of health.
4. "Protected health information" has the meaning set forth in North Dakota Century Code section 23-01.3-01.
5. "Tandem mass spectrometry" is a laboratory technology that uses a machine consisting of two mass spectrometers joined by a fragmentation chamber. Tandem mass spectrometry technology allows the identification of an array of metabolic conditions, such as amino acid, fatty acid, and organic acid disorders, from a single dried blood spot. Tandem mass spectrometry can test for multiple disorders in a single screening run and the number of known disorders which may be screened by this technology is constantly changing.

6. Metabolic disease is a genetically determined disorder in which a specific enzyme defect causes a clinically significant block or alteration in a biochemical pathway or process.

**History:** Effective December 1, 1996; amended effective March 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-01-03(3), 23-01-03.1, 23-01-04, 23-01-15, 25-17-01, 25-17-02

**Law Implemented:** NDCC 23-01-03.1, 25-17-01(3), 25-17-02, 25-17-03

**33-06-16-02. Testing of newborns.** Under the newborn screening system, except as authorized by section 33-06-16-04, each newborn infant born in this state shall be tested for the metabolic diseases ~~phenylketonuria~~ cystic fibrosis, hypothyroidism, galactosemia, congenital adrenal hyperplasia, biotinidase deficiency, sickle cell disease, and other hemoglobinopathies, and ~~any other disease that can be identified through a sample of the newborn's blood shall also be tested by tandem mass spectrometry that is designated on the department's test schedule with a designated laboratory engaged to perform this testing on behalf of the program.~~

**History:** Effective March 1, 2003; amended effective January 1, 2006.

**General Authority:** NDCC 23-01-03(3), 23-01-03.1, 23-01-04, 23-01-15, 25-17-01, 25-17-02

**Law Implemented:** NDCC 23-01-03.1, 25-17-01(3), 25-17-02, 25-17-03

**33-06-16-04. Refusal of testing.**

1. If the parents or guardians refuse to have their infant receive newborn screening testing as authorized by North Dakota Century Code section 25-17-04, that refusal shall be documented by a written statement signed by the parents or guardians.
2. The original refusal statement shall become a part of the infant's medical record and a copy of the statement ~~shall~~ must be submitted to the program within six days after testing was refused.

**History:** Effective March 1, 2003; amended effective January 1, 2006.

**General Authority:** NDCC 23-01-03(3), 23-01-03.1, 23-01-04, 23-01-15, 25-17-01, 25-17-02

**Law Implemented:** NDCC 23-01-03.1, 25-17-01(3), 25-17-02, 25-17-03

## CHAPTER 33-11-01

**33-11-01-01. Definitions.** Words defined in North Dakota Century Code chapter 23-27 shall have the same meaning in this chapter.

1. "Advanced first aid ambulance attendant" means a person who meets the requirements of the advanced first aid ambulance attendant program and is certified by the department.
2. "Ambulance driver" means an individual who operates an ambulance vehicle.
3. "Ambulance run" means the response of an ambulance vehicle and personnel to an emergency or nonemergency for the purpose of rendering medical care or transportation or both to someone sick or incapacitated.
4. "Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent which includes the following skills: adult one and two person cardiopulmonary resuscitation, adult obstructed airway, child one and two person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, and infant obstructed airway, and automated external defibrillator.
5. "Commission on accreditation of ambulance services" means the commission on accreditation of ambulance services located in Glenview, Illinois.
- ~~6.~~ 7. "Department" means the state department of health as defined in North Dakota Century Code chapter 23-01.
- ~~6.~~ 7. "Driver's license" means the license as required under North Dakota Century Code sections 39-06-01 and 39-06-02.
- ~~7.~~ 8. "Emergency ~~care~~ medical technician" means a person who is certified as an emergency ~~care~~ medical technician by the department.
- ~~8.~~ 9. "Emergency medical technician-basic" means a person who is certified as an emergency medical technician-basic by the national registry of emergency medical technicians and licensed by the department.
- ~~9.~~ 10. "Emergency medical technician-paramedic" means a person who is certified as an emergency medical technician-paramedic by the national registry of emergency medical technicians and licensed by the department.
- ~~10.~~ 11. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.

- ~~41.~~ 12. "Licensed health care facilities" means facilities licensed under North Dakota Century Code chapter 23-16.
- ~~42.~~ 13. "Nonemergency health transportation" means health care transportation provided on a scheduled basis by licensed health care facilities to their own patients or residents whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during transit or emergency medical treatment upon arrival at the final destination.
- ~~43.~~ 14. "Paramedic with additional training" means evidence of successful completion of additional training and appropriate periodic skills verification in such topics as management of patients on ventilators, twelve lead electrocardiograms or other critical care monitoring devices, drug infusion pumps, and cardiac or other critical care medications, or any other specialized procedures or devices determined at the discretion of the paramedics medical director.
- ~~44.~~ 15. "Personnel" means qualified primary care providers, or drivers, or both, within an ambulance service.
- ~~45.~~ 16. "Primary care provider" means a qualified individual responsible for the care of the patient while on the ambulance run.
- ~~46.~~ 17. "Scheduled basic life support transfer" means transfers provided on a scheduled basis by an advanced life support service to patients who need no advanced life support procedures en route.
- ~~47.~~ 18. "Separate location" means each operation that is headquartered from a separate location.
- ~~48.~~ 19. "Specialty care transport" means interfacility transportation, including transfers from a hospital to an aeromedical intercept site, of a critically injured or ill patient by a ground ambulance vehicle, including medically necessary supplies and services, at a level of service beyond the scope of the emergency medical technician-paramedic.
- ~~49.~~ 20. "State health council" means the council as defined in North Dakota Century Code title 23.

**History:** Effective September 25, 1979; amended effective March 1, 1985; January 1, 1986; June 1, 1991; August 1, 1994; August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-01-04. Issuance and renewal of licenses.**

1. The department or its authorized agent may inspect the service. If minimum standards, for either basic life support ground ambulance services or advanced life support ground ambulance services, are met, the department shall issue a license.
2. A service may request that the department consider it in compliance with this chapter if it is fully accredited by the commission on accreditation of ambulance services or its equivalent.
3. Services requesting their compliance with this chapter to be verified through an accrediting agency shall submit to the department a copy of the entire accrediting agency survey report. Subsequent accreditation or revisit documentation must be submitted prior to license renewal.
4. If minimum standards, for either basic life support ambulance services or advanced life support ambulance services, are not met, the department will allow the ambulance service thirty days to comply with the standards. The department will work with the ambulance service to obtain compliance.

**History:** Effective September 25, 1979; amended effective March 1, 1985; August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

### **33-11-01-10. Out-of-state operators.**

1. Operators from licensed in another state may pick up patients within this state for transportation to locations within this state under the following circumstances:
  - a. When there is a natural disaster, such as a tornado, earthquake, or other disaster which may require all available ambulances to transport the injured; or
  - b. When an out-of-state ambulance is traveling through the state for whatever purpose comes upon an accident where immediate emergency ambulance services are necessary.
2. Out-of-state ambulance services who expect to pick up patients from within this state and transport to locations within this state ~~are expected to~~ must meet the North Dakota state standards and become licensed under North Dakota Century Code chapter 23-27 and this chapter.

**History:** Effective September 25, 1979; amended effective March 1, 1985; January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-01-15. Ground ambulance service vehicle requirements.**

1. All ground ambulances must have a vehicle manufactured to be an ambulance.
2. All ground ambulance service vehicles must be equipped with a siren and flashing lights as described for class A emergency vehicles in subsection 2 of North Dakota Century Code section 39-10-03.

**History:** Effective January 1, 2006

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04



## CHAPTER 33-11-02

**33-11-02-02. Training standards for primary care provider.** The primary care provider must have current emergency care medical technician certification license or its equivalent and must have current cardiopulmonary resuscitation certification.

**History:** Effective March 1, 1985; amended effective January 1, 1986; August 1, 1994; August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-02-03. Minimum equipment requirements.** In addition to a vehicle as described in section 33-11-01-15, the ambulance shall have the following:

1. Mounted ambulance cot with retaining straps.
2. Stretchers with retaining straps. Vehicle design dictates quantity.
3. Piped oxygen system - with appropriate regulator and flow meter, or two "E" size bottles for minimum oxygen supply with regulator and flow meter.
4. Portable oxygen unit with carrying case. To include one "D" size bottle with another "D" bottle in reserve.
5. Three nasal cannulas, three nonrebreather oxygen masks in adult and pediatric sizes, and three sets of oxygen supply tubing.
6. Suction - wall-mounted and portable - capable of achieving 400 mmhg/4 seconds or less.
7. Bag valve mask resuscitation units in infant child and adult sizes with appropriate-sized face masks or pocket masks with oxygen inlet in pediatric and adult sizes.
8. Spine boards - one full-size and one half-size seated spinal immobilization device, with retaining straps.
9. Commercial fracture splints usable for open and closed fractures, or padded boards usable for pediatric and adult patients.
10. Cold packs - four minimum.
11. Fire extinguisher - dry chemical, mounted, five pound [2.27 kilogram] minimum.
12. Head-to-board immobilization device.

13. Obstetrical kit - disposable or sterilizable.
14. Activated charcoal.
15. Two sterile burn sheets or equivalent.
16. Three triangular bandages or commercial slings.
17. Two trauma dressings - approximately ten inches [25.4 centimeters] by thirty-six inches [91.44 centimeters].
18. Twenty-five sterile gauze pads - four inches [10.16 centimeters] by four inches [10.16 centimeters].
19. Twelve soft roller self-adhering type bandages - five yards [4.57 meters] long.
20. One set of nasopharyngeal airways in adult and child sizes.
21. One set of oropharyngeal airways in adult, child, and infant sizes.
22. Two sterile occlusive dressings approximately three inches [76.2 millimeters] by nine inches [228.6 millimeters].
23. Four rolls of tape - assorted sizes.
24. Shears - blunt - two minimum.
25. Bedpan, emesis basin, urinal - ~~single use or disinfected~~.
26. One gallon [3.79 liters] of distilled water or saline solution.
27. Intravenous fluid holder - cot mounted or ceiling hooks.
28. Flashlights - two minimum.
29. ~~Three~~ One sharps containers container less than half full.
30. Three red biohazard bags.
31. ~~Small, medium, and large cervical~~ Cervical collars in adult, child, and infant sizes.
32. Two blankets, four sheets, two pillows, four towels.
33. Phenol disinfectant product, such as lystophene or amphyl.
34. Reflectorized flares for securing scene - set of three minimum.

35. Automatic defibrillator.
36. Blood pressure manometer, cuff in child, adult, and large adult sizes, and stethoscope.
37. Lower extremity traction splint.
38. Radio with the capability of meeting state emergency medical services standards as determined by the department.
39. Glucose or glucose - one dose for oral use.
40. Disposable gloves - one box each of small, medium, and large sizes.
41. Four disposable hot packs.
42. Personal protection equipment such as mask, nonabsorbent gown, protective eyewear - minimum of four.
43. Biological fluid cleanup kit.
44. Twenty-five triage tags.

**History:** 33-11-01-11; redesignated effective March 1, 1985; amended effective February 1, 1989; August 1, 1994; August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-02-04. Medical director.** Each ground ambulance service shall have a signed agreement on file with the department with a North Dakota licensed physician who shall serve as official medical director and whose duties include; but are not limited to, establishing local written medical protocols, recommending optional equipment, and maintaining current training requirements for personnel.

**History:** Effective August 1, 2003; amended effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-02-05. Basic life support ambulance performing advanced life support interventions.** Basic life support ambulance services may provide advanced life support interventions on an as-needed basis if the following requirements are met:

1. The primary care provider is licensed to provide the level of care required.
2. The service complies with the equipment list as set forth by its medical director.

3. A North Dakota licensed physician has authorized advanced life support interventions by verbal or written order.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

## CHAPTER 33-11-03

### 33-11-03-01. Minimum standards for personnel.

1. The driver must be an emergency care medical technician or its equivalent.
2. The primary care provider must be an emergency medical technician-paramedic or its equivalent, or be a registered nurse currently certified as an emergency care medical technician or its equivalent who has a current American heart association advanced cardiac life support certification or its equivalent.
3. For scheduled basic life support transfers, the driver and the primary care provider must be at least emergency care medical technicians or its equivalent.

**History:** Effective March 1, 1985; amended effective January 1, 1986; August 1, 1994; August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-03-04. Medical director.** Each ground ambulance service shall have a signed agreement on file with the department with a North Dakota licensed physician who shall serve as official medical director and whose duties include; ~~but are not limited to;~~ establishing local written medical protocols, recommending optional equipment, and maintaining current training requirements for personnel.

**History:** Effective March 1, 1985; amended effective August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-03-05. Availability on first call.** Unless the advanced life support ambulance service has a system status management program as defined in this chapter in place that is approved by the department, the number of advanced life support ambulances available for first call by the licensed ambulance service is dependent upon the population of the city in which the ambulance is based. For cities with a population less than fifteen thousand, one advanced life support ambulance must be available for first call. For cities with populations between fifteen thousand one and fifty-five thousand, two advanced life support ambulances must be available for first call. For cities with populations greater than fifty-five thousand, three advanced life support ambulances must be available for first call.

The second call ambulance or ambulances may be staffed and equipped at the basic life support level.

**History:** Effective March 1, 1985; amended effective January 1, 1986; August 1, 1994; August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

## CHAPTER 33-11-04

### 33-11-04-01. Definitions.

1. "Air ambulance run" means the response of an aircraft and personnel to an emergency or nonemergency for the purpose of rendering medical care or transportation or both to someone who is sick or injured.
2. "Aircraft" means either an airplane also known as a fixed-wing, or a helicopter also known as a rotor-wing.
3. "Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent, which includes the following skills: adult one and two person cardiopulmonary resuscitation, adult obstructed airway, child one and two person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, and infant obstructed airway, and automated external defibrillator.
4. "Commission on accreditation of medical transport systems" means the commission on accreditation of medical transport systems located in Anderson, South Carolina.
5. "Department" means the state department of health as defined in North Dakota Century Code chapter 23-01.
- ~~5.~~ 6. "Emergency ~~care~~ medical technician" means a person who meets the requirements of the state emergency ~~care~~ medical technician program and is ~~certified~~ licensed by the department.
- ~~6.~~ 7. "Emergency medical technician-basic" means a person who is certified by the national registry of emergency medical technicians and licensed by the department.
- ~~7.~~ 8. "Emergency medical technician-paramedic" means a person who is certified by the national registry of emergency medical technicians and licensed by the department.
- ~~8.~~ 9. "Equivalent" means training or equipment of equal or greater value which accomplishes the same results as determined by the department.
- ~~9.~~ 10. "Personnel" means qualified primary care providers within an air ambulance service.

- 40: 11. "Primary care provider" means a qualified individual responsible for care of the patient while on an air ambulance run.

**History:** Effective August 1, 2003; amended effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-04-03. Application for license.**

1. Application for the license shall be made in the manner prescribed by the department.
2. The application must be made for either basic life support air ambulance service as defined in chapter 33-11-05 ~~or for~~, advanced life support air ambulance service as defined in chapter 33-11-06, or for critical care air ambulance service as defined in chapter 33-11-07.

**History:** Effective August 1, 2003; amended effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-04-04. Issuance and renewal of licenses.**

1. The department or its authorized agent may inspect the air ambulance service. If minimum standards for either basic life support air ambulance services ~~or~~, advanced life support air ambulance services, or critical care air ambulance services are met, the department shall issue a license.
2. A service may request that the department consider it in compliance with this chapter if it is fully accredited by the commission on accreditation of medical transport systems or its equivalent.
3. Services requesting their compliance with this chapter be verified through an accrediting agency shall submit to the department a copy of the entire accrediting agency survey report. Subsequent accreditation or revisit documentation must be submitted prior to license renewal.

**History:** Effective August 1, 2003; amended effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-04-05. Availability of air ambulance services.** Basic life support air ambulance services may be available as needed per licensee's discretion. Advanced life support air ambulance services and critical care air ambulance services shall be available twenty-four hours per day and seven days per week,



except as limited by weather or aircraft maintenance or by unscheduled pilot duty limitations in accordance with federal aviation administration regulations.

**History:** Effective August 1, 2003; amended effective March 24, 2004; January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-04-06. Number of personnel required.** For a licensed basic life support air ambulance service, the minimum number of personnel required is one primary care provider as defined in chapter 33-11-05. For a licensed advanced life support air ambulance service, the minimum number of personnel required is one primary care provider as defined in chapter 33-11-06, except when either the transferring or receiving physician believes the patient's status requires a minimum of two providers. For a licensed critical care air ambulance service, the minimum number of personnel required is two providers as defined in chapter 33-11-07.

**History:** Effective August 1, 2003; amended effective March 24, 2004; January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-04-14. Medical director.** Each air ambulance service shall have a signed agreement on file with the department with a North Dakota licensed physician who shall serve as official medical director and whose duties include establishing ~~local~~ written medical protocols, recommending optional equipment, and maintaining current training requirements for personnel.

**History:** Effective August 1, 2003; amended effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

## CHAPTER 33-11-05

**33-11-05-01. Training standards for primary care provider.** The primary care provider must have current emergency care medical technician certification license or its equivalent and must have current cardiopulmonary resuscitation certification.

**History:** Effective August 1, 2003; amended effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

## CHAPTER 33-11-06

**33-11-06-03. Advertising restrictions. No basic life support air ambulance service may advertise itself as an advanced life support air ambulance service.**

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**CHAPTER 33-11-07**  
**CRITICAL CARE AIR AMBULANCE LICENSE**

Section

<u>33-11-07-01</u>	<u>Training Standards for Care Providers</u>
<u>33-11-07-02</u>	<u>Minimum Equipment Requirements</u>
<u>33-11-07-03</u>	<u>Advertising Restrictions</u>

**33-11-07-01. Training standards for care providers.** Both care providers' training shall be consistent with the definition of specialty care transport in section 33-11-01-14.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-07-02. Minimum equipment requirements.** All equipment required for a basic life support air ambulance as found in section 33-11-05-02 and all equipment required for an advanced life support air ambulance found in section 33-11-06-02 plus the following equipment must be available at the base station:

1. Ventilator.
2. Intravenous infusion pumps.
3. Any specialized equipment ordered by a physician.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

**33-11-07-03. Advertising restrictions.** No air ambulance service may advertise itself as a critical care air ambulance service unless it has been issued a critical care air ambulance license by the department.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

## CHAPTER 33-31-03

**33-31-03-07. Salvaged food operator license fee.** Before any salvaged food operator engages in the distribution or selling of distressed or salvaged food, that operator must be licensed by the department. Licenses expire on December thirty-first following the date of issuance. The annual license fee for a salvaged food distributor is sixty-five dollars.

**History:** Effective January 1, 2006.

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

**Law Implemented:** NDCC 23-09-24

## CHAPTER 33-33-01

**33-33-01-07. License fees.** The department shall charge the following fees for licenses to operate mobile home parks in this state:

1. For a mobile home park containing at least three but not more than ten lots, seventy dollars.
2. For a mobile home park containing at least eleven but not more than twenty-five lots, one hundred dollars.
3. For a mobile home park containing at least twenty-six but not more than fifty lots, one hundred thirty dollars.
4. For a mobile home park containing more than fifty lots, one hundred sixty dollars.

The department shall waive the license fee for any mobile home park owned by the state, a municipality, or a nonprofit organization.

**History:** Effective January 1, 2006.

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

**Law Implemented:** NDCC 23-10-02, 23-10-07

## CHAPTER 33-33-02

**33-33-02-07. License fees.** The department shall charge the following fees for licenses to operate trailer parks or campgrounds in this state:

1. For a trailer park or campground containing at least three but not more than ten lots, seventy dollars.
2. For a trailer park or campground containing at least eleven but not more than twenty-five lots, one hundred dollars.
3. For a trailer park or campground containing at least twenty-six but not more than fifty lots, one hundred thirty dollars.
4. For a trailer park or campground containing more than fifty lots, one hundred sixty dollars.

The department shall waive the license fee for any trailer park or campground owned by the state, a municipality, or a nonprofit organization.

**History:** Effective January 1, 2006.

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

**Law Implemented:** NDCC 23-10-07

## CHAPTER 33-33-03

### **33-33-03-02. License issuance, suspension, revocation, and reinstatement.**

1. It shall be unlawful for any person to engage in the operation of one or more vending machines in North Dakota who does not possess a currently valid vending license from the department. Only persons who comply with the provisions of this chapter shall be entitled to receive such a license. The annual license fee for operating a vending machine is twenty dollars.
2. Any person desiring to operate one or more vending machines in North Dakota shall make application in writing to the department on forms provided by the department. The applicant shall provide the following information:
  - a. The applicant's full name, residence, and post-office address.
  - b. The name and location of the commissary or commissaries where the vending machines are to be located and the name and location of the company or companies servicing the vending machines.
  - c. The identity of the products to be dispensed through vending machines.
  - d. The signature of the applicant or applicants.
3. Upon receipt of the application, the department shall issue a license to the applicant. The license shall not be transferable. The operator's license shall be displayed and be readily visible in the immediate area of the vending machines. In order to retain an operator's license, the operator shall comply with the requirements of these regulations.
4. After an opportunity for a hearing, and following the procedures provided in section 33-33-03-04, an operator's license may be suspended temporarily by the department upon violation by the licenseholder of any of the provisions of this chapter or may be revoked upon serious or repeated violation of such section, or for interference with the department's performance of its duties.
5. Notwithstanding any other provisions of this chapter, whenever the department finds unsanitary or other conditions involving the operation of any vending machine or commissary which, in the judgment of the department, constitutes a substantial hazard to the public health, it may, without notice or hearing, issue a written order to the operator citing the existence of such condition and specifying corrective action to be taken and, if deemed necessary, requiring immediate discontinuance of operation. Such order shall be effective immediately and shall apply



only to the vending machine, commissary, or product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the department, shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and upon receipt of a written request from the operator, the department shall make a reinspection to determine whether operations may be resumed.

6. After any hearing held under the provisions of this chapter, the department shall sustain, modify, or rescind any notice or order considered in the hearing.
7. Any operator whose license has been suspended may at any time make application for the reinstatement of the license. Within ten days after the receipt of a written application, accompanied by, or including, a statement signed by the operator to the effect that in the operator's opinion the violated term or terms of this chapter have been complied with, the department shall make a reinspection. If the applicant is again complying with the terms of this chapter, the license shall be reinstated.

**History:** Effective August 1, 1988; amended effective January 1, 2006.

**General Authority:** NDCC 19-02.1-24, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-24

## CHAPTER 33-33-06

**33-33-06-18. License fees.** The annual license fee paid to the department by proprietors of bed and breakfast facilities is twenty-five dollars. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed on or before February first following the expiration date.

**History:** Effective January 1, 2006.

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

**Law Implemented:** NDCC 23-09.1-02

**CHAPTER 33-33-07**  
**BEVERAGE LICENSE FEES**

Section

33-33-07-01

Beverage License Fees

**33-33-07-01. Beverage license fees.** Before any beverage bottler, manufacturer, processor, importer, jobber, or other retailer sells or distributes any nonalcoholic beverage in North Dakota, that beverage must be licensed by the department. The license fees for beverages are as follows:

1. Soda water, ginger ale, root beer, and pop, each brand or class, fifty-five dollars.
2. Concentrated extracts, fountain syrups, and beverage bases, each brand, fifty-five dollars.
3. True fruit juices and imitation or compound fruit beverages, each brand, fifty-five dollars. Mineral and spring water, and potable water sold by a private individual, firm, corporation, or limited liability company for household or culinary purposes, each brand, fifty-five dollars.

**History:** Effective January 1, 2006.

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

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

**CHAPTER 33-33-08**  
**FOOD ESTABLISHMENT LICENSE FEES**

Section

33-33-08-01

Food Establishment License Fees

**33-33-08-01. Food establishment license fees.** The following annual license fees must be paid by the proprietors of food establishments, assisted living facilities, schools, or child care centers:

1. For a restaurant with general food service, seventy-five dollars plus fifty cents per seat, with a maximum license fee of one hundred fifty dollars.
2. For a limited restaurant, seventy-five dollars.
3. For a retail food store, retail meat market, or bakery with not more than two thousand five hundred square feet [232.26 square meters], seventy-five dollars.
4. For a retail food store, retail meat market, or bakery with two thousand five hundred to five thousand square feet [232.26 to 464.52 square meters], eighty-five dollars.
5. For a retail food store, retail meat market, or bakery with more than five thousand square feet [464.52 square meters], ninety-five dollars.
6. For a bar or tavern dispensing beer, liquor, or other alcoholic beverages, fifty-five dollars.
7. For a mobile food unit or temporary food stand, seventy dollars.
8. For a food processing facility, thirty-five dollars.
9. For an assisted living facility, eighty-five dollars.
10. For a school, ninety dollars.
11. For a child care facility, fifty dollars.

If a business operates more than one type of food establishment on the same premises and under the same management, the department shall issue a single license stating the types of establishments the business is licensed for and the maximum license fee charged may not exceed one hundred five dollars for those establishments with not more than two thousand five hundred square feet [232.26 square meters], one hundred forty dollars for those establishments with two thousand five hundred square feet [232.26 square meters] to not more than five

thousand square feet [464.52 square meters], and two hundred dollars for those establishments over five thousand square feet [464.52 square meters].

**History:** Effective January 1, 2006.

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

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

## CHAPTER 33-36-01

**33-36-01-01. Definitions.** Words defined in North Dakota Century Code chapter 23-27 have the same meaning in this chapter.

1. "Cardiopulmonary resuscitation", initial and refresher, means the American heart association health care provider standards or its equivalent which includes the following skills: adult one and two person cardiopulmonary resuscitation, adult obstructed airway, child one and two person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, ~~and~~ infant obstructed airway, and automated external defibrillator.
2. "Certification scope enhancement programs" means those certification programs which add additional skills to or refresh existing skills obtained from the primary certification programs.
3. "Department" means the state department of health.
4. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.
5. "National registry" means the national registry of emergency medical technicians located in Columbus, Ohio.
6. "Prehospital emergency medical services personnel" are those persons certified or licensed under the programs defined in this chapter.
7. "Primary certification programs" means those certification programs which integrate a broad base of skills necessary to perform within a level of the emergency medical services system as determined by the department.

**History:** Effective April 1, 1992; amended effective August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

### **33-36-01-02. Emergency medical services training ~~programs~~ courses.**

The department shall establish training, testing, and certification requirements for the following emergency medical services ~~programs~~ courses:

1. Primary certification ~~programs~~ courses:
  - a. First responder;
  - b. Emergency ~~care~~ medical technician;
  - c. Emergency medical technician-basic;

- d. Emergency medical technician-intermediate/85;
  - e. Emergency medical technician-intermediate/99;
  - f. Emergency medical technician-paramedic;
  - g. Advanced first aid ambulance attendant;
  - h. Emergency vehicle operations;
  - i. Emergency medical dispatch; and
  - j. Automobile extrication.
2. Certification scope enhancement ~~programs~~ courses:
- a. ~~Emergency medical services instructor;~~
  - b. ~~Manual defibrillation;~~
  - e. b. Intravenous maintenance;
  - d. c. Flight medical crew;
  - e. d. Automobile extrication instructor;
  - e. Emergency medical services instructor;
  - f. Epinephrine administration;
  - g. Dextrose administration;
  - h. Bronchodilator/nebulizer administration;
  - i. Multi-lumen airway insertion; and
  - j. ~~Cardiac monitoring;~~ and
  - k. Emergency vehicle operations instructor.
3. Certification refresher ~~programs~~ courses:
- a. First responder-refresher;
  - b. Emergency medical technician-basic refresher;
  - c. Emergency medical technician-intermediate/85 refresher;

- d. Emergency medical technician-intermediate/99 refresher; and
- e. Emergency medical technician-paramedic refresher.

**History:** Effective April 1, 1992; amended effective October 1, 1992; August 1, 1994; August 1, 2003; August 1, 2004; January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-01-03. Training, testing, and certification, and licensure standards for primary certification programs courses.** The department shall authorize the conduct of courses, the testing of students, and the certification or licensure of personnel when application has been made on forms provided and in the manner specified by the department contingent on the following requirements:

1. First responder:
  - a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
  - b. Textbooks. The department shall approve textbooks.
  - c. Course coordinator. The course coordinator must be certified licensed by the department as an emergency medical services instructor and must be currently certified as a first responder or its equivalent.
  - d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination ~~provided~~ specified by the department or the national registry and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.
  - e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process, or are certified as a first responder by the national registry. Persons passing the testing process between January first and June thirtieth must shall be certified until ~~March thirty-first~~ June thirtieth of the second year, or ninety days past their national registry expiration date if they are nationally registered. Persons passing the testing process between July first and December thirty-first ~~must shall~~ be certified until ~~March thirty-first~~ June thirtieth of the third year, or ninety days past their national registry expiration date if they are nationally registered.



- f. Recertification. The department shall recertify for a two-year period expiring on ~~March thirty-first~~ June thirtieth, or ninety days past their national registry expiration date if they are nationally registered, to those persons who have met one of the following requirements:
- (1) Completion of a sixteen-hour North Dakota first responder refresher course.
  - (2) Completion of a twenty-four hour emergency medical technician-basic refresher course.
2. Emergency care medical technician and national registry emergency medical technician-basic:
- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
  - b. Textbooks. The department shall approve textbooks.
  - c. Course coordinator. The course coordinator must be ~~certified~~ licensed by the department as an emergency medical services instructor and must be currently ~~certified~~ licensed as an emergency care medical technician or its equivalent.
  - d. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician or its equivalent.
  - e. Testing. Students must pass the written examination and a practical examination specified by the department which meets the national registry's standards or its equivalent in order to be eligible for ~~certification~~ licensure. The content of the practical examination must be determined by the department, and the department shall establish policies regarding retesting of failed written and practical examinations.
  - e. f. Emergency care medical technician initial ~~certification~~ licensure. The department shall issue initial ~~certification~~ licensure as an emergency care medical technician to persons under the age of eighteen who have completed an authorized course and passed the testing process or those who have requested reciprocity from another state with equivalent training. Persons passing the testing process between January first and June thirtieth ~~must~~ shall be ~~certified~~ licensed until ~~March thirty-first~~ June thirtieth of the second

year. Persons passing the testing process between July first and December thirty-first ~~must shall~~ be certified licensed until ~~March thirty-first~~ June thirtieth of the third year.

f. g. Emergency medical technician-basic initial ~~certification~~ licensure. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification will be licensed by the department expiring ninety days after their national registry expiration date.

g. h. Recertification of emergency care medical technicians. The department shall ~~recertify~~ relicense for a two-year period expiring ~~on March thirty-first~~ June thirtieth those persons who have met all of the following requirements:

(1) Completion of a twenty-four hour emergency medical technician-basic refresher course which includes a cardiopulmonary resuscitation health care provider refresher, answering correctly at least seventy percent of the questions on a written examination ~~provided~~ specified by the department and passing a local practical examination meeting the department's requirements.

(2) Completion of forty-eight hours of continuing education as approved by the department or the national registry.

h. i. Recertification of emergency medical technicians-basic. Emergency medical technicians-basic must be recertified by the national registry recertification policies. Persons recertified by the national registry will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.

3. Emergency medical technician-intermediate/85:

a. Student prerequisite certification. Students must be certified or licensed as an emergency care medical technician or its equivalent prior to testing.

b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

c. Textbooks. The department shall approve textbooks.

d. Course coordinator. The course coordinator must be certified licensed by the department as an emergency medical services

instructor and must be currently certified licensed as an emergency medical technician-intermediate/85 or its equivalent.

- e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician intermediate/85 or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician intermediate/85 or its equivalent.
  - f. Testing. Students must pass the written and practical examinations as provided by the national registry and administered by the department in order to be eligible for certification licensure.
  - f. g. Emergency medical technician-intermediate/85 initial certification licensure. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.
  - g. h. Recertification Relicensure of emergency medical technician-intermediate/85. Emergency medical technician-intermediate/85 must be recertified by the national registry recertification policies. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.
4. Emergency medical technician-intermediate/99:
- a. Student prerequisite certification or license. A student must be certified or licensed as an emergency care medical technician or its equivalent prior to testing.
  - b. Curriculum. The course curriculum shall be that issued by the United States department of transportation, national highway traffic safety administration, in the addition specified by the department.
  - c. Textbooks. The department shall approve textbooks.
  - d. Course coordinator. The course coordinator must be certified licensed by the department as an emergency medical services instructor and must be currently certified licensed as an emergency medical technician-intermediate/99 or its equivalent.

- e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician intermediate/99 or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician intermediate/99 or its equivalent.
  - f. Testing. Students must pass the written and practical examinations as provided by the national registry and administered by the department in order to be eligible for certification licensure.
  - f. g. Emergency medical technician-intermediate/99 initial certification licensure. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.
  - g. h. Recertification Relicensure of emergency medical technician-intermediate/99. An emergency medical technician-intermediate/99 must be recertified by the national registry recertification policies. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.
5. Emergency medical technician-paramedic:
- a. Student prerequisite certification. Students must be certified or licensed as an emergency ~~care~~ medical technician or its equivalent prior to testing.
  - b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
  - c. Textbooks. The department shall approve textbooks.
  - d. Course coordinator. The course coordinator must be ~~certified~~ licensed by the department as an emergency medical services instructor and must be currently ~~certified~~ licensed as an emergency medical technician-paramedic or its equivalent.
  - e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-paramedic or its equivalent. The primary instructor

must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician-paramedic or its equivalent.

- f. Field internship. Courses must provide field internship experience based on the curriculum requirements for patient contacts with a paramedic preceptor.
  - f. g. Testing. A student must pass the written and practical examinations as provided by the national registry and administered by the department in order to be eligible for certification licensure.
  - g. h. Emergency medical technician-paramedic initial certification licensure. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.
  - h. i. Recertification of emergency medical technician-paramedic. An emergency medical technician-paramedic must be recertified by the national registry recertification policies. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.
6. Advanced first aid ambulance attendant:
- a. Advanced first aid ambulance attendant initial certification. The department shall issue initial certification to persons currently certified in American national red cross advanced first aid and who demonstrate a minimum of two years experience with a North Dakota licensed ambulance service as evidenced by North Dakota ambulance service license application personnel rosters.
  - b. Recertification of advanced first aid ambulance attendants. The department shall recertify for a three-year period, expiring on March thirty-first June thirtieth, those persons who have completed a twenty-four hour emergency medical technician-basic refresher course, which includes a cardiopulmonary resuscitation refresher, answering correctly at least seventy percent of the questions on a written examination provided specified by the department and passing a local practical examination meeting the department's requirements.
7. Emergency vehicle operations:

- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
  - b. Course coordinator. The course coordinator must be certified by the department as an emergency vehicle operation instructor.
  - c. Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination ~~provided~~ specified by the department.
  - d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until ~~March thirty-first~~ June thirtieth of the third year.
  - e. Recertification. The department shall recertify for a two-year period those persons who complete the department's six-hour refresher course.
8. Emergency medical dispatch:
- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
  - b. Course coordinator. The course coordinator must be approved by the department as an emergency medical dispatch instructor.
  - c. Testing. The student must correctly answer at least seventy percent of the questions on a written examination ~~provided~~ specified by the department.
  - d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until ~~March thirty-first~~ June thirtieth of the third year.
  - e. Recertification. The department shall recertify for a two-year period those persons who have completed a seven-hour refresher as designated by the department.

9. Automobile extrication:

- a. Curriculum. The course curriculum must be approved by the department.
- b. Course coordinator. The course coordinator must be certified by the department as an automobile extrication instructor.
- c. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided specified by the department.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until ~~March thirty-first~~ June thirtieth of the third year.
- e. Recertification. The department shall recertify for a two-year period those persons who complete the department's six-hour refresher course and pass ~~the department's~~ a written examination specified by the department.

**History:** Effective April 1, 1992; amended effective August 1, 1994; August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-01-03.1. Limited temporary certification or licensure of emergency medical services training course graduates.**

1. An individual that has graduated from a department-authorized emergency medical services training course as an emergency medical technician, emergency medical technician - intermediate, or emergency medical technician - paramedic and has submitted a completed application signed by a physician and an official transcript verifying program completion may be issued a limited certification or license one time. A limited temporary certification or licensure allows the graduate to be employed while awaiting results of the graduate's national registry examination. The limited temporary certification or licensure expires ninety days after the date of issue.
2. The graduate must practice under the direct supervision of a person certified or licensed at an equal or greater level. Direct supervision

means close physical and visual proximity. The graduate may not be the primary care provider.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-01-04. Training, testing, and certification standards for certification scope enhancement programs courses.** The department shall authorize the conduct of courses, the testing of students, and the certification or licensure of personnel when application has been made on forms provided and in the manner specified by the department contingent on the following requirements:

1. Manual defibrillation:
  - a. Student prerequisite certification. A student must be certified licensed as an emergency care medical technician or its equivalent.
  - b. Curriculum. The course curriculum must be that issued by the department entitled "Manual Defibrillator/Monitor Curriculum".
  - c. Course coordinator. The course coordinator must be certified licensed by the department as an emergency medical services instructor and must be currently certified by the American heart association in advanced cardiac life support or its equivalent.
  - d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided specified by the department and pass all portions of a practical examination provided specified by the department. The practical examination must consist of the manual defibrillation of a simulated cardiac arrest patient and correctly identify eleven out of thirteen static cardiac strips.
  - e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the third year.
  - f. Recertification. The department shall recertify for a two-year period those persons who have met all of the following requirements:
    - (1) Quarterly review of the manual defibrillation process conducted by a person trained at least to the emergency care medical technician level and certified in manual defibrillation.



- (2) Successful completion of ~~the department's~~ a written and practical examinations examination specified by the department.

2. Intravenous therapy maintenance:

- a. Student prerequisite certification. A student must be ~~certified~~ licensed as an emergency ~~care~~ medical technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "EMT/ECT IV Maintenance Module".
- c. Course coordinator. The course coordinator must be ~~certified~~ licensed by the department as an emergency medical services instructor, and currently certified in intravenous therapy maintenance, or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination ~~provided~~ specified by the department and pass all portions of a practical examination ~~provided~~ specified by the department. The practical examination must consist of performing intravenous maintenance skills on a mannequin.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

3. Flight medical crew:

- a. Student prerequisite certification. A student must be an emergency ~~care~~ medical technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department or its equivalent.

- c. Course coordinator. The department shall approve the course coordinator.
  - d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course. A person who has completed an authorized course between January first and June thirtieth ~~must shall~~ be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first ~~must shall~~ be certified until ~~March thirty-first~~ June thirtieth of the third year.
  - e. Recertification. The department shall recertify for a two-year period those persons who have completed the department's four-hour refresher course or complete eight hours of air medical related education as approved by the department.
4. Automobile extrication instructor:
- a. Curriculum. The course curriculum must be approved by the department.
  - b. Student prerequisite. The candidate for this course must be currently certified for at least two years in automobile extrication with at least two years of certified automobile extrication experience.
  - c. Course coordinator. The department shall designate the course coordinator.
  - d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination ~~provided~~ specified by the department.
  - e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth ~~must shall~~ be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first ~~must shall~~ be certified until ~~March thirty-first~~ June thirtieth of the third year.
  - f. Recertification. The department shall recertify for a two-year period those persons who have satisfactorily conducted an automobile extrication course or have audited eight hours of an automobile extrication instructor course before the expiration date of their certification.

5. Emergency medical services instructor:

- a. Student prerequisite. An individual must be at least eighteen years of age, and certified or licensed for at least two years as a patient care provider at the level the individual will instruct at, in order to be certified licensed.
- b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department or its equivalent.
- c. Course coordinator. The course coordinator must be certified licensed by the department as an emergency medical services instructor.
- d. Initial ~~certification~~ licensure. The department shall issue initial ~~certification~~ licensure to persons who have completed an authorized course. Persons completing the course between January first and June thirtieth ~~must~~ shall be certified licensed until ~~March thirty-first~~ June thirtieth of the second year. Persons completing the course between July first and December thirty-first ~~must~~ shall be certified licensed until ~~March thirty-first~~ June thirtieth of the third year.
- e. Recertification. The department shall ~~recertify~~ relicense for a two-year period those persons who have completed the department's eight-hour recertification course, or those persons that are employed or affiliated with a licensed training institution, may submit documentation of eight hours of adult education training to satisfy the recertification requirements.

6. Epinephrine administration:

- a. Student prerequisite certification. A student must be certified as a first responder or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "EMT/ECT Epinephrine Administration Module".
- c. Course coordinator. The course coordinator must be certified licensed by the department as an emergency medical services instructor and must be currently certified in epinephrine administration or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination ~~provided~~

specified by the department and pass all portions of a practical examination ~~provided~~ specified by the department. The practical examination must consist of performing subcutaneous injection of epinephrine with the use of a preloaded, self-injecting device such as the epipen trainer.

- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

7. Dextrose administration:

- a. Student prerequisite ~~certification~~ licensure. A student must be ~~certified~~ licensed as an emergency medical technician-intermediate or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "EMT-I – 50% Dextrose Administration Module".
- c. Course coordinator. The course coordinator must be ~~certified~~ licensed by the department as an emergency medical services instructor and must be ~~certified~~ licensed in dextrose administration or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination ~~provided~~ specified by the department and pass all portions of a practical examination ~~provided~~ specified by the department. The practical examination must consist of administration of the drug by aseptic injection into intravenous administration tubing.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the third year.

- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.
8. Bronchodilator/nebulizer administration:
    - a. Student prerequisite ~~certification~~ licensure. A student must be ~~certified~~ licensed as an emergency ~~care~~ medical technician or its equivalent.
    - b. Curriculum. The course curriculum must be the general pharmacology and the respiratory emergencies sections of the curriculum issued by the United States department of transportation, national highway traffic safety administration, for emergency medical technicians-basic, in the edition specified by the department, or its equivalent.
    - c. Course coordinator. The course coordinator must be ~~certified~~ licensed by the department as an emergency medical services instructor and be certified in bronchodilator administration or its equivalent.
    - d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination ~~provided~~ specified by the department.
    - e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the third year.
    - f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.
  9. Multi-lumen airway insertion:
    - a. Student prerequisite ~~certification~~ licensure. A student must be ~~certified~~ licensed as an emergency ~~care~~ medical technician or its equivalent.
    - b. Curriculum. The course curriculum must be that issued by the department entitled "Multi-Lumen Airway Module".

- c. Course coordinator. The course coordinator must be certified licensed as an emergency medical services instructor and must be currently certified in multi-lumen airway insertion or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided specified by the department.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's two-hour refresher course, written examination, and practical examination.

10. ~~Cardiac monitoring:~~

- ~~a. Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.~~
- ~~b. Curriculum. The course curriculum must be that issued by the department entitled "Cardiac Monitoring".~~
- ~~c. Course coordinator. The course coordinator must be certified as an emergency medical services instructor and must be certified in cardiac monitoring or its equivalent.~~
- ~~d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.~~
- ~~e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.~~
- ~~f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.~~

44. Emergency vehicle operations instructor:

- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
- b. Course instructor. The department shall designate the course instructor.
- c. Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination ~~provided~~ specified by the department.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first ~~must~~ shall be certified until ~~March thirty-first~~ June thirtieth of the third year.
- e. Recertification. The department shall recertify for a two-year period those persons who have satisfactorily conducted an emergency vehicle operations course or have audited eight hours of an emergency vehicle operator's course.

**History:** Effective April 1, 1992; amended effective October 1, 1992; August 1, 1994; August 1, 2003; August 1, 2004; January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-01-04.1. Training, testing, and certification standards for certification refresher programs courses.** The department shall authorize the conduct of courses, the testing of students, and the certification of personnel when application has been made on forms provided and in the manner specified by the department contingent on the following requirements:

1. First responder refresher:
  - a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
  - b. Textbooks. The department shall approve textbooks.
  - c. Course coordinator. The course coordinator must be ~~certified~~ licensed by the department as an emergency medical services

instructor and must be currently certified as a first responder or its equivalent.

- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination ~~provided~~ specified by the department and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.
2. Emergency medical technician-basic refresher:
    - a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
    - b. Textbooks. The department shall approve textbooks.
    - c. Course coordinator. The course coordinator must be ~~certified~~ licensed by the department as an emergency medical services instructor and must be currently ~~certified~~ licensed as an emergency ~~care~~ medical technician or its equivalent.
    - d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination ~~provided~~ specified by the department and pass all stations of a practical examination conducted by the course coordinator.
  3. Emergency medical technician-intermediate/85 refresher:
    - a. Curriculum. The course coordinator shall select topics ~~consisting of twelve hours of training from the curriculum issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department~~ consistent with the reregistration requirements of the national registry.
    - b. Textbooks. The department shall approve textbooks.
    - c. Course coordinator. The course coordinator must be ~~certified~~ licensed by the department as an emergency medical services instructor and must be currently ~~certified~~ licensed as an emergency medical technician-intermediate/85 or its equivalent.
  4. Emergency medical technician-intermediate/99 refresher:
    - a. Curriculum. The course coordinator shall select topics ~~consisting of thirty-six hours of training from the curriculum issued by the United States department of transportation, national highway traffic safety~~



administration, in the edition specified by the department consistent with the reregistration requirements of the national registry.

- b. Textbooks. The department shall approve textbooks.
  - c. Course coordinator. The course coordinator must be certified licensed by the department as an emergency medical services instructor and must be currently certified licensed as an emergency medical technician-intermediate/99 or its equivalent.
5. Emergency medical technician-paramedic refresher:
- a. Curriculum. ~~The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department consistent with the reregistration requirements of the national registry.~~
  - b. Textbooks. The department shall approve textbooks.
  - c. Course coordinator. The course coordinator must be certified licensed by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-paramedic or its equivalent.

**History:** Effective August 1, 2003; amended effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-01-05. Revocation of certification or licensure.** The department may revoke the certification or licensure of a person who:

1. Has ~~represented themselves~~ misrepresented to others ~~as that the person is~~ a physician, nurse, or health care provider other than the highest level for which they are certified or licensed.
2. Is incapable of properly performing the skills for which the individual has been certified or licensed.
3. Performs a skill which exceeds those allowed by the individual's level of certification or licensure.
4. Has been charged with or convicted of a felony, ~~misdemeanor, or an infraction for an offense~~ which has a direct bearing upon the person's ability to serve the public in a capacity certified or licensed by this chapter. Persons certified or licensed who have been charged with or convicted of a felony, ~~misdemeanor, or an infraction~~ must report the information to the department.

5. Has been found by a court of law to be mentally incompetent.
6. Failure to follow examination policies as a student, instructor, or course coordinator.
7. Diversion of drugs for personal or unauthorized use.
8. Performance of care in a manner inconsistent with acceptable standards or protocols.
9. Has attempted to obtain by fraud or deceit a certification or license or has submitted to the department any information that is fraudulent, deceitful, or false.
10. Has had the person's national registry certification revoked for any reason.
11. Has misrepresented to others that the person is an employee, volunteer, or agent of an ambulance service, quick response unit, or rescue squad to offer emergency medical services.

**History:** Effective April 1, 1992; amended effective August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-01-06. Revocation process.** The department may revoke an individual's certification or license after making a diligent effort to:

1. Inform the individual by the department of the allegations.
2. Inform the individual of the department's investigation results.
3. Inform the individual of the department's intent to revoke and provide a notice of right to request hearing.
4. Provide the individual opportunity to request a hearing and rebut the allegations.

**History:** Effective April 1, 1992; amended effective August 1, 2003; January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-01-08. Waivers.** Based on each individual case, the department may waive any provisions of this chapter that may result in unreasonable hardship upon the individual or the individual's emergency medical service agency, provided such a waiver does not adversely affect the health and safety of patients. The department will consider waivers for the following situations and conditions:

1. A person had completed all the requirements for recertification or relicensure and a good-faith effort was made by that person to recertify with the national registry and by no fault of the person recertification was not granted.
2. A person who was current in the person's certification or license was called to active duty in the United States armed forces and deployed to an area without the resources to maintain the person's certification or license resulting in a lapse of the person's certification or license.
3. A waiver may be granted for a specific period of time not to exceed one year and shall expire on June thirtieth of each year.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

## **CHAPTER 33-36-02**

### **LICENSING OF EMERGENCY MEDICAL SERVICES TRAINING INSTITUTIONS**

#### Section

<u>33-36-02-01</u>	<u>Definitions</u>
<u>33-36-02-02</u>	<u>License Required - Fees</u>
<u>33-36-02-03</u>	<u>Application for License</u>
<u>33-36-02-04</u>	<u>Issuance and Renewal of Licenses</u>
<u>33-36-02-05</u>	<u>Training Institution Director Requirements</u>
<u>33-36-02-06</u>	<u>Training Institution Medical Director Requirements</u>
<u>33-36-02-07</u>	<u>Course Instructors</u>
<u>33-36-02-08</u>	<u>Training Institution Policies, Records, and Quality Assurance</u>
<u>33-36-02-09</u>	<u>Other Training Institution Requirements</u>
<u>33-36-02-10</u>	<u>Practical Examination Administration</u>
<u>33-36-02-11</u>	<u>Continuing Education</u>
<u>33-36-02-12</u>	<u>Revocation of Licensure</u>
<u>33-36-02-13</u>	<u>Revocation Process</u>
<u>33-36-02-14</u>	<u>Hearing</u>
<u>33-36-02-15</u>	<u>Waivers</u>

**33-36-02-01. Definitions.** Words defined in North Dakota Century Code chapter 23-27 have the same meaning in this chapter.

1. "Acceptable criminal background requirements" means that a student's criminal background is acceptable by the department and the national registry for entry into the profession.
2. "Accrediting agency" means the commission on accreditation on allied health education programs or its equivalent.
3. "Candidate" means a person that has completed a primary training course and is in the testing process.
4. "Certifying examination" means a national registry test.
5. "Department" means the North Dakota state department of health.
6. "Emergency medical services equipment" means automated external defibrillator, long back board, Kendrick extrication device, oxygen delivery equipment, rigid splints, traction splint, suction equipment, bandages, and other equipment needed to accomplish training.
7. "National registry" means the national registry of emergency medical technicians located in Columbus, Ohio.
8. "Physician" means a person licensed by the North Dakota board of medical examiners to practice medicine.

9. "Student" means a person that is actively in a primary training course and has not yet completed the course.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-02. License required - Fees.**

1. No North Dakota emergency medical services training institution, as defined in North Dakota Century Code chapter 23-27, shall be advertised or offered to the public or any person as a licensed training institution unless the operator of such service is licensed by the department.
2. The license shall expire midnight on October thirty-first of the third year following issuance. License renewal shall be on a three-year basis.
3. A license is valid only for the training institution for which it is issued. A license may not be sold, assigned, or transferred.
4. The license shall be displayed in a conspicuous place.
5. The three-year license fee shall be seventy-five dollars which is nonrefundable.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-03. Application for license.** An application for licensure as an emergency medical services training institution may be submitted on a form provided by the department or an alternate format which includes the following information:

1. Applicant information:
  - a. Name of the training institution;
  - b. Mailing address;
  - c. Telephone number;
  - d. Name of program coordinator;
  - e. Name of training institution medical director; and
  - f. E-mail address of contact person;

2. A copy of the written agreement with the physician medical director;
3. A copy of the written agreement with the hospitals, clinics, ambulance services, and physicians' offices that will provide field internship training;
4. A listing of the names of the persons or organizations that have financial interest in the institution;
5. A copy of the student handbook for the institution; and
6. A signed statement attesting to the accuracy of the application and all of its attachments.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-04. Issuance and renewal of licenses.**

1. The department or its authorized agent shall inspect the training institution. If minimum standards are met, the department shall issue a license.
2. A training institution may request that the department consider it in compliance with this chapter if it is fully accredited by the commission on accreditation of allied health education programs or its equivalent.
3. Training institutions requesting their compliance with this chapter to be verified through an accrediting agency shall submit to the department appropriate documentation to include the site visit survey report and official letter from the accrediting agency citing any deficiencies. Subsequent accreditation or revisit documentation must be submitted prior to license renewal.
4. Training institutions that offer paramedic training shall have the paramedic course accredited by an accrediting agency by January 1, 2010.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-05. Training institution director requirements.** Each licensed training institution must have a director who serves as the administrator of the training institution and who is responsible for:

1. Planning, conducting, and evaluating the program;
2. Selecting students and instructors;

3. Documenting and maintaining records;
4. Developing a curriculum; and
5. Acting as or appointing the test site coordinator for practical examinations if applicable.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-06. Training institution medical director requirements.** Each licensed training institution shall have an agreement on file at the department with a physician whose responsibilities include:

1. Ensuring an accurate and thorough presentation of the medical content of each training program;
2. Certifying that each candidate has successfully completed the training course;
3. In conjunction with the training program director, planning the clinical training;
4. Being available for practical test site consultations; and
5. Acting as a liaison between the training institution and the medical community.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-07. Course instructors.** Primary course instructors must be certified as an instructor coordinator as defined in section 33-36-01-04 and hold a certificate or license in or above the discipline that they are teaching and teach at least fifty percent of the course content. The remaining fifty percent may be taught by guest lecturers approved by the training institution director or medical director.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-08. Training institution policies, records, and quality assurance.** North Dakota licensed emergency medical services training institutions must:

1. Publish a student handbook which includes at least the following information:

- a. The full name and address of the school;
  - b. Names of owners and officers, including governing boards;
  - c. A description of each educational service offered, including tuition, fees, and length of courses;
  - d. Enrollment procedures and entrance requirements, including late enrollment if permitted;
  - e. A description of the institution's tuition assistance. If no assistance is offered, the institution must state this fact;
  - f. Attendance policy, including minimum attendance requirements;
  - g. A policy explaining satisfactory student progress which includes:
    - (1) How progress is measured and evaluated, including an explanation of any system of grading used;
    - (2) The conditions under which the student may be readmitted if terminated for unsatisfactory progress; and
    - (3) Explanation of any probation policy;
  - h. A description of the system used to make progress reports to students; and
  - i. An explanation of the refund policy which also includes the training agency's method of determining the official date of termination.
2. Maintain as a minimum, the following records for emergency medical services courses taught:
- a. Student records that include:
    - (1) Name and address for each student enrolled in an emergency medical services course;
    - (2) Grades for each written examination;
    - (3) Copies of each student's documentation of entrance requirements to each course, including a copy of the individual's cardiopulmonary resuscitation certification and criminal history statement; and



- (4) Field internship student evaluation forms from each field or clinical internship session. The form must include the evaluator's printed name, contact information, and signature.

Student records must be maintained for five years.

- b. Instructor and course records that include:
  - (1) Names and qualifications of the primary instructors;
  - (2) Names and qualification of guest instructors;
  - (3) Instructor evaluation records completed by students and training institution personnel; and
  - (4) Names of the practical examination evaluators.
3. Have at least seventy percent of the candidates who successfully complete a primary training course certified or licensed by the department or certified by the national registry within two years of course completion.
4. Develop and implement a quality assurance program for instruction. The quality assurance program must:
  - a. Establish and implement policies and procedures for periodic evaluation of all instructors, field internship sites, equipment, and other training resources;
  - b. Establish and implement a mentoring program for each new instructor. Each new instructor will be assigned a mentor who has a background in the course being taught or in teaching. The assigned mentor will complete an evaluation of the assignee at least once;
  - c. Establish and have completed student evaluations during and after each course taught; and
  - d. Establish and implement a remediation plan for all noted instructor deficiencies. Documentation of remediation shall be maintained for five years.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-09. Other training institution requirements.** North Dakota licensed emergency medical services training institutions must:

1. Have adequate classroom and laboratory space to conduct emergency medical services training.
2. Have appropriate dedicated emergency medical services equipment for training.
3. Determine the eligibility of prospective students in regard to age, minimum prior training requirements, and acceptable criminal background requirements.
4. Maintain a written agreement with a licensed medical facility and licensed ambulance service designating a field internship site.
5. After each primary training class is complete, notify the department of the starting date and number of students initially enrolled and the number of students fully completing the course.
6. Provide proof of liability insurance that covers the training institution and primary instructors.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-10. Practical examination administration.** A licensed training institution may conduct practical examinations under the following conditions:

1. The institution must be designated by the department to conduct practical examinations.
2. The facility must have adequate room to accommodate a test. Each test station must be well away from others so that the privacy of the candidate and the security of the test are maintained. There must be a separate monitored room for candidates to wait. The designated department representative may shut down or cancel a test because of inadequate facilities.
3. Test site dates must be approved by the department. For an advanced life support test site, the test site coordinator must notify the department eight weeks prior to the test date and submit a roster of probable candidates for the practical test. For a basic life support test site, the test site coordinator must notify the department two weeks prior to the test date and submit a roster of probable candidates for the practical test. The test site coordinator may accept candidates from other licensed training institutions or department-authorized courses or qualified candidates from other states if the test site coordinator has verified the eligibility of the candidate.

**33-36-02-12. Revocation of licensure.** The department may revoke the license of a training institution or license of an individual to instruct or practice under the following circumstances:

1. Negligence in performing or instructing emergency medical care.
2. Fraud, forgery, or misrepresentation of facts in procuring or attempting to procure licensure as an emergency medical service training institution.
3. Violation of this chapter promulgated to regulate emergency medical services training institutions.
4. Falsely passing candidates or discrimination of candidates at a practical test site.
5. Grossly immoral or dishonorable conduct.
6. Diversion of drugs for personal or unauthorized use.
7. The licensed training institution receives adverse accreditation action from a national accrediting agency.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-13. Revocation process.** The department may revoke a training institution's or individual's license after making a diligent effort to:

1. Inform the training institution or individual by the department of the allegations.
2. Inform the training institution or individual of the department's investigation results.
3. Inform the training institution or individual of the department's intent to revoke and provide a notice of right to request hearing.
4. Provide the training institution or individual opportunity to request a hearing and rebut the allegations.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-14. Hearing.** A request for hearing must be received by the department no later than twenty days following the training institution's or individual's receipt of the allegations. If a hearing is requested, the department will

apply to the office of administrative hearings for appointment of a hearing officer. The department will notify any complainants and the accused of the date set for the hearing. The hearing officer will conduct the hearing and prepare recommended findings of fact and conclusions of law as well as a recommended order for the department. The department shall notify the training institution or individual of its findings in writing after receiving the hearing officer's finding of fact, conclusion of law, and recommended order.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-15. Waivers.** Based on each individual case, the department may waive any provisions of this chapter.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

4. The test site coordinator is responsible for all logistics of the test site. The test site coordinator must remain at the test site for the duration of the test.
5. A national registry representative approved by the department or a designated department representative must oversee the test site. The national registry or department representative's only duties are to ensure the integrity of the test site and submit results to the national registry or the department. The designated department representative may not have an affiliation with the training institution.
6. The training institution must provide an adequate number of qualified evaluators for the number of students to be tested. For every eight candidates there must be at least one evaluator. The evaluators may not be the training institution coordinator or the primary instructors of the candidates. Evaluators must use and adhere to the department's testing evaluation forms.
7. An emergency medical technician candidate must pass all stations of a practical test site within two years of course completion. The required practical stations are:
  - a. Patient assessment management - trauma;
  - b. Patient assessment management - medical;
  - c. Cardiac arrest management/automated external defibrillator;
  - d. Spinal immobilization, seated or supine;
  - e. Bag valve mask, apneic patient with a pulse; and
  - f. One of the following random skills chosen by the department:
    - (1) Long bone immobilization;
    - (2) Joint dislocation immobilization;
    - (3) Traction splinting;
    - (4) Bleeding control and shock management;
    - (5) Upper airway adjuncts and suction;
    - (6) Mouth to mask with supplemental oxygen; or
    - (7) Supplemental oxygen administration.

8. A candidate may fail no more than three stations at any one test site. The candidate may retest those failed stations one time on the same day at the discretion of the test site coordinator. If a candidate fails four or more stations, the candidate must retest all stations at a later date.
9. All emergency medical technician practical test results must be reported to the department within one week of the practical test by the department representative. The department will determine the eligibility of the candidates to retest according to department policy.
10. Retesting candidates that have failed all or part of the emergency medical technician practical test will be done in accordance with department policy. The number of times a candidate may retest all or part of the emergency medical technician practical test is determined by department policy.
11. An advanced level practical test site must be approved by the department and comply with national registry rules and policies.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-02-11. Continuing education.** Continuing education courses for emergency medical services personnel must be approved by the department, licensed training institution, the national registry, or physician medical director. A licensed training institution may conduct continuing education courses, utilizing appropriate instructors, under the following conditions:

1. A number is assigned for each continuing education course. The numbering system must be approved by the department;
2. Continuing education units will be awarded for actual time rounded to the nearest quarter hour;
3. A certificate must be awarded or available upon request by the participant or the department. The certificate must list the title of the course, course number, date, hours awarded, location, instructor, and training institution name; and
4. The licensed training institution must keep records of the continuing education for two years. The records must include the course name, number, date, hours awarded, location, instructor, attendees, and attendee's state-issued license numbers.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**CHAPTER 33-39-02**  
**LICENSE FEES**

Section

33-39-02-01

License Fees

**33-39-02-01. License fees.** The following annual license fees must be paid by proprietors of lodging establishments:

1. For a lodging establishment containing not more than three sleeping rooms, thirty-five dollars.
2. For a lodging establishment containing at least four but not more than ten sleeping rooms, fifty dollars.
3. For a lodging establishment containing more than ten sleeping rooms and not more than twenty sleeping rooms, seventy dollars.
4. For a lodging establishment containing more than twenty sleeping rooms and not more than fifty sleeping rooms, ninety dollars.
5. For a lodging establishment containing fifty-one sleeping rooms or more, one hundred fifteen dollars.

**History:** Effective January 1, 2006.

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

**Law Implemented:** NDCC 23-09-02





**TITLE 37**  
**DEPARTMENT OF TRANSPORTATION**



## JANUARY 2006

### CHAPTER 37-03-01

**37-03-01-01. Definitions.** The terms herein shall have the meaning as provided in North Dakota Century Code chapters 39-01 and 39-16, with the latter chapter controlling in cases of conflict, except:

1. "Appropriate licensed addiction treatment program" means any hospital or facility for the treatment of alcoholism or drug-dependent persons or a mental health or retardation service as approved by the director.
2. "Approved course" means any defensive driving course approved by the national safety council and any driving while intoxicated counterattack program approved by the director.
2. ~~"Approved facility" means any hospital or facility for the treatment of alcoholism, drug-dependent persons, or mental health or retardation service as approved by the director.~~
3. "Director" means the commissioner's duly appointed and acting director of the ~~drivers~~ driver's license division of the department of transportation, or the director's duly authorized agent, or licensing authority as that term is used in North Dakota Century Code chapter 39-06, 39-06.1, or 39-06.2.
4. "Good cause to believe" or "sufficient evidence" means any information received by the director in writing from:
  - a. Federal, state, or local authorities;
  - b. Licensed physicians;
  - c. Any official as to admissions or adjudication of a traffic offense;
  - d. Any court as to a conviction of a traffic offense;
  - e. Any state or private hospital;

- f. Any facility for the treatment of alcoholics and drug-dependent persons approved by the state department of health and ~~consolidated laboratories~~;
  - g. Any facility licensed as an addiction hospital by the state department of health and ~~consolidated laboratories~~;
  - h. Any mental health and retardation service unit;
  - i. Any federal or state court which indicates that a person may be physically or mentally unable to safely operate a motor vehicle on the highways of the state of North Dakota;
  - j. Any person who has relevant information in regard to the ability of an applicant for a license, a licensee, or permittee to safely operate a motor vehicle; or
  - k. Any person on an application for an operator's license, instructional permit, or renewal thereof.
5. "Licensee" means any person who holds a valid operator's license, under the laws of this state.
  6. "Policy of insurance" means a motor vehicle liability policy in the amount of twenty-five thousand dollars for bodily injury to or death of one person in any one accident, and subject to said limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.
  7. "Security" means a cash bond not to exceed twenty-five thousand dollars.
  8. "Security requirements" means evidence of proof of compliance by the driver of filing security, obtaining a policy of insurance or a bond as required by North Dakota Century Code chapter 39-16 or 39-16.1.
  9. "Underlying suspension" when used in a statute relating to driver's license sanctions means the basic or essential fact or occurrence upon which a suspension has been or may be ordered. Whenever a suspension has two or more concurrent causes, one of which is for an alcohol-related offense or occurrence, the alcohol-related suspension is the underlying suspension.

**History:** Effective January 1, 1979; amended effective July 1, 1983; May 1, 1994; January 1, 2006.

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

**Law Implemented:** NDCC 39-06, 39-06.1, 39-16-02, 39-16-05

**37-03-01-03. Proof of birth.** Repealed effective January 1, 2006. All persons who make an original or duplicate application for an operator's license or nondriver photo identification card shall furnish proof of name and birth date by the use of the following documents:

1. Birth certificate, original or certified copy, issued by the state of birth;
2. Out-of-state, county, city, or state-issued birth certificates that are signed by or certified by an official of the respective jurisdiction;
3. The United States department of justice birth certificate;
4. The United States department of defense birth certificate;
5. District court identification card;
6. Passport or visa with photo;
7. Out-of-state drivers license or permit;
8. Immigration and naturalization identification, certified with photo;
9. Divorce or annulment decree when full name and date of birth are given;
10. State-issued photo identification cards; or
11. North Dakota pistol permit with photo, full name, and date of birth.

**History:** Effective January 1, 1979; amended effective May 1, 1994.

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

**Law Implemented:** NDCC 39-06-07, 39-06-07.1, 39-06-14

## CHAPTER 37-03-02

**37-03-02-01. Habitual drunkard - Determination.** ~~The director shall have good cause to believe that a person is a habitual drunkard if a person has three or more convictions for violating North Dakota Century Code section 39-08-01, or equivalent ordinance, with respect to intoxicating liquor or three or more administrative suspensions for testing at a blood-alcohol concentration of at least ten one-hundredths of one percent by weight within a five-year period. Such person shall not have one's operator's license privileges restored until that person has reported for an evaluation at an approved facility to determine that person's tolerance to the use of alcohol. A person's cooperation, refusal, or neglect to submit to such examination and the evaluation made by the approved facility will be used to determine the disposition of a person's driving privileges. The director has the final responsibility in the disposition of a person's driving privileges. Such disposition may result in the refusal to issue or reissue a license or the revocation or restoration, either partial or total, of a person's driving privileges. Repealed effective January 1, 2006.~~

~~History: Effective January 1, 1979; amended effective July 1, 1983.~~

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

~~Law Implemented: NDCC 39-06-03, 39-06-34~~

**37-03-02-02. Habitual user of narcotic drugs - Determination.** ~~The director shall have good cause to believe that a person is a habitual user of narcotic drugs if a person has three convictions for driving while under the influence of narcotic drugs within a five-year period. Such person shall not have one's operator's license privilege restored until that person has reported for an evaluation at an approved facility to determine that person's possible impairment, either mental or physical, through the use of narcotic drugs. A person's cooperation, refusal, or neglect to submit to such examination and the evaluation made by the approved facility will be used to determine the disposition of a person's driving privileges. The director has the final responsibility in the disposition of a person's driving privileges. Such disposition may result in the refusal to issue, suspension, revocation or the restoration, either partial or total, of a person's driving privileges. Repealed effective January 1, 2006.~~

~~History: Effective January 1, 1979.~~

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

~~Law Implemented: NDCC 39-06-03, 39-06-32~~

**37-03-02-03. Habitual user of drugs other than narcotic drugs - Determination.** ~~If the director has good cause to believe that a person is a habitual user of drugs other than narcotic drugs to a degree which renders such person incapable of safely operating a motor vehicle, the director may require such person to submit to such physical, mental, or driver's examination which the director may deem necessary to determine such person's fitness to safely operate a motor vehicle upon the highways of this state. The director may require such person to report for an evaluation at an approved facility to determine that person's possible impairment, either mental or physical, through the use of such drugs. A~~

~~person's cooperation, refusal, or neglect to submit to any required examination and the evaluation made by the approved facility will be used to determine the disposition of a person's driving privileges. The director has the final responsibility in the disposition of a person's driving privileges. Such disposition may result in the refusal to issue, suspension, revocation or the restoration, either partial or total, of a person's driving privileges. Repealed effective January 1, 2006.~~

~~**History:** Effective January 1, 1979.~~

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

~~**Law Implemented:** NDCC 39-06-03, 39-06-32~~

## CHAPTER 37-03-03

**37-03-03-03. Surrender and return of license or permit.** ~~Upon receipt of proper notice, any person whose driver's license or permit has been canceled, suspended, or revoked shall immediately surrender such license or permit to the director. If a person fails to surrender a license or permit which has been canceled, suspended, or revoked, any highway patrolman or peace officer shall secure possession of such license or permit and forward it to the director if, after an investigation, it is determined the person is not entitled to the possession of the license or permit. Repealed effective January 1, 2006.~~

**History:** ~~Effective January 1, 1979.~~

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

**Law Implemented:** ~~NDCC 39-06-37, 39-06.1-14~~

**37-03-03-07. Reduction of point total - How determined.** Repealed effective January 1, 2006. ~~The director shall reduce the point total assessed against the driving record of a licensee as follows:~~

- ~~1. Upon the completion of a period of suspension, the director shall reduce the point total shown on the licensee's record to eleven points.~~
- ~~2. The director shall reduce the point total shown on a licensee's driving record by one point for each three-month period commencing on the date of the last points against the licensee's driving record during which no points are recorded for a moving violation.~~
- ~~3. During any twelve-month period, if the licensee successfully completes an approved course and furnishes evidence of such completion to the director, the director shall reduce the point total on the licensee's driving record by three points, and such reduction in points shall only be from a point total accumulated prior to completion of an approved course and shall not exceed nine points during any three-year period commencing on the date of entry of the last points against the licensee's driving record.~~
- ~~4. If the licensee has been convicted of driving while under the influence of intoxicating liquor or controlled substances resulting in the suspension of the licensee's driving privileges, the director shall reduce the point total shown on the licensee's driving record by seven points for successful completion of an alcoholism or narcotics treatment program approved by the state department of health and consolidated laboratories.~~

**History:** ~~Effective January 1, 1979.~~

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

**Law Implemented:** ~~NDCC 39-06.1-13~~



- e. Parks and secures motorcycle properly.
4. Performs fundamental motorcycle riding skills, such as:
    - a. Turns left and right in open areas and in tight quarters;
    - b. Shifts through gears; and
    - c. Controls vehicle while stopping with rear and front brake.
  5. Executes routine riding tasks, such as:
    - a. Communicates with electrical and hand signals and other vehicle lights;
    - b. Rides at higher speeds;
    - c. Operates while standing on the footpegs;
    - d. Rides on irregular and changing roadway surfaces; and
    - e. Carries passengers and other loads.
  6. Operates safely in traffic, such as:
    - a. Develops techniques to increase visibility in traffic;
    - b. Identifies hazards and potentially unsafe conditions;
    - c. Predicts points of conflict with roadway and other vehicles;
    - d. Forecasts possible acts and behavior of other road users; and
    - e. Decides what to do and maintains or changes vehicle position and speed for a safe path of travel.
  7. Prevents and protects from highway loss, such as:
    - a. Selects an appropriate motorcycle;
    - b. Maintains a safe motorcycle;
    - c. Recognizes signs of vehicle trouble while riding; and

d. Selects an appropriate insurance plan.

**History:** Effective January 1, 1979; amended effective January 1, 2006.

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

**Law Implemented:** NDCC 39-06-14(3)

## CHAPTER 37-03-05

### **37-03-05-01. Report of accident - Content of report - Failure to report.**

~~Within ten days after any motor vehicle accident, the driver, or if the driver is unable to report, the owner of the motor vehicle within five days after learning of the accident, shall forward a written report of the accident on forms prescribed by the director to the director. The forms shall contain sufficiently detailed information to disclose the vehicles involved in the accident, any injuries or property damage sustained as a result of the accident, and information sufficient to enable the director to determine whether the security requirements under North Dakota Century Code chapters 39-16 and 39-16.1 are applicable. The director may suspend the license, or nonresident's operating privilege, of any person who willfully fails, refuses, or neglects to make the written report of a traffic accident as required. Repealed effective January 1, 2006.~~

~~History: Effective January 1, 1979.~~

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

~~Law Implemented: NDCC 39-16-05~~

### **37-03-05-02. Notice of intention to suspend - Content. Repealed**

~~effective January 1, 2006. If the director determines from any accident reports filed that the accident resulted in bodily injury or death, or damage to the property of any one person in excess of the amount specified in North Dakota Century Code section 39-16-05, and the security or policy of insurance as required was not in force at the time of the accident, the director shall cause a notice of intention to suspend license to be sent to the driver not less than ten days prior to the proposed action of the director containing the following information:~~

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

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

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

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

~~Law Implemented: NDCC 39-16-05~~

**37-03-05-03. Notice of hearing - Matters considered.** If a driver makes a written request for a hearing as specified in North Dakota Century Code section ~~37-03-05-02~~ 39-06-33, the director shall send a notice of hearing to the driver

specifying the time, date, and place for such hearing. The date set for such hearing shall be within sixty days, but not earlier than five days, after the request for the hearing has been received, unless otherwise agreed to by both the director and the person requesting such hearing. The decision in the matter must be made within thirty days of the completion of the hearing. The notice shall further specify that the matters considered at the hearing will be confined to the following:

1. Whether the accident resulted in bodily injury or death, or damage to the property of any one person in excess of the amount specified in North Dakota Century Code section 39-08-09;
2. Whether the accident involved circumstances to which the financial responsibility requirements and suspension do not apply;
3. Whether the possibility exists that liability for bodily injuries or death, or property damage in excess of one thousand dollars could be imposed against the driver;
4. If the possibility exists that liability may be imposed against the driver, the dollar amount of the potential liability and manner in which that amount may be secured by the driver in order to maintain the driver's license, or nonresident's operating privileges; and
5. Any other material matter relating to the suspension of the license deemed appropriate by the driver.

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

**History:** Effective January 1, 1979; amended effective July 1, 1981; May 1, 1994; January 1, 2006.

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

**Law Implemented:** NDCC 39-16-05

~~**37-03-05-04. Notice of suspension.** If the director receives evidence that a driver who has met the security requirements after an accident and subsequently has accepted responsibility for the accident or agreed to a settlement of claims arising from the accident or that a court of competent jurisdiction has ordered a judgment for damages arising from the accident, the director shall notify the driver that the driver's license or privilege to operate a motor vehicle in this state is suspended and the date such suspension is effective. Repealed effective January 1, 2006.~~

~~**History:** Effective January 1, 1979.~~

~~**General Authority:** NDCC 28-32-02, 39-16-02~~

~~**Law Implemented:** NDCC 39-16-05~~

## ARTICLE 37-10

### COMMERCIAL DRIVER'S LICENSE

Chapter	
37-10-00	Definition
37-10-01	Out-of-Service Order Violations
37-10-02	Railroad-Highway Grade Crossing Violations

#### CHAPTER 37-10-00

##### DEFINITION

#### Section

37-10-00-01                      Definition

**37-10-00-01. Definition.** As used in this article, "out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation, is out-of-service pursuant to 49 CFR 386.72, 392.5, 395.13, or 396.9, or compatible laws, or the North American uniform out-of-service criteria.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 39-06.2-14

**Law Implemented:** NDCC 39-06.2-10.9; 49 CFR 383.5

## CHAPTER 37-10-01

### **37-10-01-01. Out-of-service order - Driving of commercial motor vehicle prohibited - Alcohol-related offenses.**

1. Prohibited alcohol offenses for commercial motor vehicle drivers. Notwithstanding any other provision of law, a person may not drive, operate, or be in actual physical control of a commercial motor vehicle within this state while having any measurable or detectable amount of alcohol in the person's system.
2. In addition to any other sanctions that may be imposed under law a person who drives, operates, or is in actual physical control of a commercial motor vehicle within this state must be placed out of service for twenty-four hours if the person:
  - a. Has any measurable or detectable amount of alcohol in the person's system;
  - b. Has a blood-alcohol concentration of at least four one-hundredths of one percent by weight; or
  - c. Refuses to submit to an alcohol test under North Dakota Century Code section 39-06.2-10.
3. The out-of-service order must show the halting officer's reason for stopping or detaining the commercial motor vehicle driver and must show that the halting officer had reasonable grounds to believe the person was driving or in actual physical control of a commercial motor vehicle, that the person was lawfully detained, and that the person:
  - a. Had any measurable or detectable amount of alcohol in the person's system;
  - b. Had a blood-alcohol concentration of at least four one-hundredths of one percent by weight; or
  - c. Refused to submit to an alcohol test under North Dakota Century Code section 39-06.2-10.

Any out-of-service order must be issued prior to the end of the detention of the driver. The law enforcement officer shall sign and note the time and date of the issuance on the out-of-service order.

4. The out-of-service order prohibits the person named in the order from driving a commercial motor vehicle for a period of twenty-four hours from the time of the issuance of such order. The driving of a commercial

motor vehicle while subject to an out-of-service order is a violation of North Dakota Century Code section 39-06-42.

**History:** Effective October 1, 1993; amended effective January 1, 2006.

**General Authority:** NDCC 39-06.2-14

**Law Implemented:** NDCC 39-06.2-10.9

**37-10-01-03. Out-of-service order - Driving of commercial motor vehicle prohibited.**

1. Notwithstanding any other provision of law, a person may not drive or operate a commercial motor vehicle within this state when the driver has been placed out of service, the commercial motor vehicle has been placed out of service, or the motor carrier operation has been placed out of service.
2. No employer may knowingly allow, require, permit, or authorize a driver to operate a commercial motor vehicle during any period in which the driver, the commercial motor vehicle the individual is driving, or the motor carrier operation is subject to an out-of-service order.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 39-06.2-05, 39-06.2-14

**Law Implemented:** NDCC 39-06.2-10.9; 49 CFR 383.37

**37-10-01-04. Extension of commercial license suspension or revocation for violating an out-of-service order.** The director, who shall follow the administrative hearing procedures provided in North Dakota Century Code section 39-06.2-10, upon receiving a record of the conviction of any person upon a charge of driving a commercial motor vehicle while the commercial driver's license or commercial driving privileges of the person, the commercial motor vehicle, or the motor carrier operation were placed out of service, shall extend the period of that suspension or revocation for:

1. A period of ninety days for a conviction of a first violation of an out-of-service order;
2. A period of one year for a second conviction within ten years in a separate incident of violating an out-of-service order;
3. A period of three years for a third or subsequent conviction within ten years in separate incidents of violating an out of service order;
4. A period of one hundred eighty days, if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded, or while operating a commercial motor vehicle designed to transport sixteen or more passengers, including the driver; or

5. A period of three years, if the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded, or while operating commercial motor vehicles designed to transport sixteen or more passengers, including the driver.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 39-06.2-14

**Law Implemented:** NDCC 39-06.2-10.9; 49 CFR 383.51

**37-10-01-05. Extension of commercial license suspension or revocation.** The director, who shall follow the administrative hearing procedures provided in North Dakota Century Code section 39-06.2-10, upon receiving a record of the conviction of any person upon a charge of driving a commercial motor vehicle while the commercial driver's license or commercial driving privileges of the person are suspended or revoked shall extend the period of that suspension or revocation or otherwise disqualified for:

1. A period of one year if the operator's record shows the person's commercial driver's license or commercial driving privileges have not previously been suspended, revoked, or otherwise disqualified;
2. Lifetime if the operator's record shows the person's commercial driver's license or commercial driving privileges have previously been suspended, revoked, canceled, or otherwise disqualified; or
3. A period of three years, if the driver is convicted of a first violation of driving while privileges are suspended, revoked, or otherwise disqualified while transporting hazardous materials required to be placarded, or while operating commercial motor vehicles designed to transport more than sixteen passengers, including the driver.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 39-06.2-14

**Law Implemented:** NDCC 39-06.2-10.9; 49 CFR 383.51

**37-10-01-06. Certain disqualifications to run concurrently.** Any suspension ordered by the administrator under 49 CFR 383.52 must run concurrently with any other existing suspension, revocation, cancellation, or denial of licensing.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 39-06.2-14

**Law Implemented:** NDCC 39-06.2-10.9; 49 CFR 383.52

**37-10-01-07. Civil penalty for driver conviction of out-of-service order.** Any driver who is convicted of violating an out-of-service order in which the driver, the vehicle, or the motor carrier operation has been placed out of service, is subject to a civil penalty of not less than one thousand one hundred dollars and



**37-03-03-08. Blood tests - Reports by arresting officer.** Under circumstances where the arresting officer has obtained a blood sample from a resident operator arrested for violating North Dakota Century Code section 39-08-01, or equivalent ordinance, and it has been necessary for a county sheriff at the direction of the arresting officer to issue a temporary operator's permit upon taking possession of the person's North Dakota operator's license, the sheriff who issued the temporary operator's permit shall notify the arresting officer of the date of issuance of the temporary operator's permit at the same time the North Dakota operator's license is forwarded to the arresting officer. The arresting officer must forward to the director the person's North Dakota operator's license and a sworn report within five days of the date of issuance of the temporary operator's permit by the sheriff. Repealed effective January 1, 2006.

**History:** Effective July 1, 1983.

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

**Law Implemented:** NDCC 39-20-03.1

**37-03-03-10. Temporary operator's permit.** If the decision of an administrative hearing officer at the conclusion of a hearing is that a person's operator's license or privilege be revoked or suspended for refusing a blood-alcohol test or testing at least ~~ten~~ eight one-hundredths of one percent by weight of alcohol, the hearing officer, if the conditions warrant, may issue a temporary operator's permit on a form provided therefor, extending operating privileges for not more than four hours from the time the decision is announced after the hearing, to allow the person to return to the person's home.

Both the temporary operator's permit provided by this section, and the one provided by North Dakota Century Code chapter 39-20, to be issued by an arresting officer, are valid only if accompanied by the licensee's copy of the uniform traffic complaint and summons (traffic citation), if any, issued by the arresting officer.

**History:** Effective July 1, 1983; amended effective January 1, 2006.

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

**Law Implemented:** NDCC 39-20-05

## CHAPTER 37-03-04

### 37-03-04-01.1. Temporary restricted operator's license - Criteria and procedure for issuance.

1. ~~Where~~ When authorized by North Dakota Century Code section 39-06.1-11, a temporary restricted operator's license may be issued by the director according to the criteria in this section. In reviewing the person's record for the nature, frequency, and severity of violations and convictions entered thereon, the criteria considered will include:
  - a. Availability of other transportation.
  - b. Number of drivers in the household.
  - c. The nature of the driver's employment.
  - d. Total number of moving violations for the last three years.
  - e. Driving under suspension, revocation, or cancellation convictions.
  - f. Number of previous temporary restricted licenses issued.

A temporary restricted operator's license will be issued only to allow driving to, from, or during the person's employment, to and from an alcohol education or treatment program, to and from school ~~where~~ when the need is shown or for normal life maintenance needs if extenuating circumstances are shown.

2. The applicant for a temporary restricted operator's license shall make application only on the form provided by the director. The application form shall be completed, providing all of the information requested. Any incomplete application forms will be returned to the applicant for completion. The application shall:
  - a. Explain the need for the temporary restricted operator's license.
  - b. Provide a written statement from the applicant's employer, if any, or school authority, verifying the need for the temporary restricted operator's license.
  - c. Identify the vehicles to be driven under the temporary restricted operator's license.
  - d. Include any other information deemed necessary by the director.
3. The temporary restricted operator's license will contain all limitations and restrictions deemed necessary by the director, including the days

of the week, hours of the day, geographical area for driving, and the vehicles to be driven. The holder of the temporary restricted operator's license must notify the director of any changes in circumstances under which the temporary restricted operator's license was issued, and of any change in the vehicles desired to be driven.

4. If a temporary restricted operator's license has been denied, a reapplication may be made after thirty days have elapsed from the date of denial, if additional or changed information required for issuance becomes available.
5. No temporary restricted operator's license will be issued to an alcohol-impaired or drug-impaired driver who has contributed to the cause of death or serious bodily injury of another person.
6. No temporary restricted operator's license will be issued to anyone under the age of eighteen.

**History:** Effective July 1, 1983; amended effective May 1, 1994; January 1, 2006.

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

**Law Implemented:** NDCC 39-06.1-11

**37-03-04-03. Classified licenses - Class 1 or 2 - Qualification in lieu of test.** ~~Repealed effective January 1, 2006. In lieu of taking and passing the driving test given by the North Dakota highway patrol, a person may qualify for a class 1 or 2 license as follows:~~

- ~~1. By completing an employer's driver training if the employer has an approved driver training program on file with the director;~~
- ~~2. By producing a military record indicating qualification and testing; or~~
- ~~3. By producing a completion certificate from a reputable truck tractor driver training school.~~

~~**History:** Effective January 1, 1979.~~

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

~~**Law Implemented:** NDCC 39-06-14~~

**37-03-04-04. Class 4 license or endorsement for fourteen- or fifteen-year old applicant - Approved motorcycle training program.** ~~Repealed effective January 1, 2006. Any of the following motorcycle programs will be acceptable to the director:~~

- ~~1. A high school training program under the auspices of the department of public instruction.~~
- ~~2. A commercial driver training school licensed by the highway patrol.~~

- ~~3. Programs conducted by North Dakota colleges and universities, provided they run the motorcycle safety foundation approved course.~~
- ~~4. Private free instruction from a qualified instructor who has successfully completed an approved college or university program or course in motorcycle instructor preparation, is in possession of a valid motorcycle and automobile operator's license, and has a good driving record.~~

~~History: Effective January 1, 1979.~~

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

~~Law Implemented: NDCC 39-06-04(3)~~

**37-03-04-05. Content of motorcycle training program.** ~~The six hours of classroom and six hours of actual operation~~ training program content must include the following basic objectives to be achieved by students in theory and practice riding sessions in motorcycle safety education. The objectives are identified in a potential instructional sequence and the groupings suggest possible instructional units as follows:

1. Recognizes safe vehicle conditions, such as:
  - a. Operates the controls and devices;
  - b. Identifies important vehicle component parts; and
  - c. Inspects the motorcycle.
2. Conducts preride checks and procedures, such as:
  - a. Uses protective gear and equipment;
  - b. Performs prestart procedures;
  - c. Mounts the motorcycle correctly;
  - d. Starts the engine; and
  - e. Shuts off engine and dismounts.
3. Executes basic vehicle control procedures, such as:
  - a. Follows safe procedures for practice riding;
  - b. Balances motorcycle when walking or under power;
  - c. Moves motorcycle in straight path;
  - d. Stops with proper application of rear brake; and

not more than two thousand seven hundred fifty dollars. Prior to a civil penalty being imposed, a driver has a right to an administrative hearing as provided for in North Dakota Century Code section 39-06.2-10.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 39-06.2-10.9

**Law Implemented:** NDCC 49 CFR 383.53

**37-10-01-08. Civil penalty for employer conviction of out-of-service order.** Any employer who is convicted of knowingly allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver is subject to an out-of-service order, the commercial motor vehicle the driver is operating is subject to an out-of-service order, or the motor carrier operation is subject to an out-of-service order, is subject to a civil penalty of not less than two thousand seven hundred fifty dollars and not more than eleven thousand dollars. Prior to a civil penalty being imposed, an employer has a right to an administrative hearing as provided for in North Dakota Century Code section 39-06.2-10.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 39-06.2-14

**Law Implemented:** NDCC 39-06.2-10.9; 49 CFR 383.53

**CHAPTER 37-10-02**  
**RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS**

Section

37-10-02-01

Employer Violation for Railroad-Highway Grade Crossing

37-10-02-02

Civil Penalty for Employer Conviction of Railroad-Highway  
Grade Crossing

**37-10-02-01. Employer violation for railroad-highway grade crossing.**

An employer may not knowingly allow, permit, or authorize a driver to operate a commercial motor vehicle in violation of a railroad-highway grade crossing under North Dakota Century Code section 39-06.2-10.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 39-06.2-14

**Law Implemented:** NDCC 39-06.2-10.9; 49 CFR 383.37

**37-10-02-02. Civil penalty for employer conviction of railroad-highway grade crossing.** Any employer who is convicted of knowingly allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle in violation of a railroad-highway grade crossing under North Dakota Century Code section 39-06.2-10 is subject to a civil penalty of not more than ten thousand dollars. Prior to a civil penalty being imposed, an employer has a right to an administrative hearing as provided for in North Dakota Century Code section 39-06.2-10.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 39-06.2-14

**Law Implemented:** NDCC 39-06.2-10; 49 CFR 383.37(d)

**TITLE 43**  
**INDUSTRIAL COMMISSION**





## JANUARY 2006

### CHAPTER 43-02-03

#### 43-02-03-15. Bond and transfer of wells.

1. **Bond requirements.** Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, or injection shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.
  
2. **Bond amounts and limitations.** The bond shall be in the amount of fifteen thousand dollars when applicable to one well only. After July 1, 2006, such bond shall be in the amount of twenty thousand dollars. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. A blanket bond covering ten wells or less shall be in the amount of fifty thousand dollars provided the bond shall be limited to no more than ~~five~~ three of the following in aggregate and a blanket bond covering more than ten wells shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than ~~ten~~ six of the following in aggregate:
  - a. A well that is a dry hole and is not properly plugged;
  - b. A well that is plugged and the site is not properly reclaimed; and
  - c. A well that is abandoned pursuant to section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended.

No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. **Unit bond requirements.** Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

4. **Bond terms.** Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
5. **Transfer of wells under bond.** Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal must proceed as follows:

- a. The principal must notify the director, in writing, of all proposed transfers of wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to the commission a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.
  - c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.
6. **Treating plant bond.** Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the

operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

7. **Bond termination.** The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.
8. **Director's authority.** The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

**History:** Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

#### **43-02-03-16.2. Revocation and limitation of drilling permits.**

1. After notice and hearing, the commission may revoke a drilling, recompletion, or reentry permit or limit its duration. The commission may act upon its own motion or upon the application of an owner in the spacing or drilling unit. In deciding whether to revoke or limit a permit, the factors that the commission may consider include:
  - a. The technical ability of the permitholder and other owners to drill and complete the well.
  - b. The experience of the permitholder and other owners in drilling and completing similar wells.
  - c. The number of wells in the area operated by the permitholder and other owners.
  - d. Whether drainage of the spacing or drilling unit has occurred or is likely to occur in the immediate future and whether the permitholder has committed to drill a well in a timely fashion.

- e. Contractual obligations such as an expiring lease.
  - f. The amount of ownership the permitholder and other owners hold in the spacing or drilling unit. If the permitholder is the majority owner in the unit or if its interest when combined with that of its supporters is a majority of the ownership, it is presumed that the permitholder should retain the permit. This presumption, even if not rebutted, does not prohibit the commission from limiting the duration of the permit to ~~drill~~. However, if the amount of the interest owned by the owner seeking revocation or limitation and its supporters are a majority of the ownership, the commission will presume that the permit should be revoked.
2. The commission may suspend a permit that is the subject of a revocation or limitation proceeding. A permit will not be suspended or revoked after ~~a well has spudded~~ operations have commenced.
  3. If the commission revokes a permit upon the application of an owner and issues a permit to ~~drill to~~ that owner or to another owner who supported revocation, the commission may limit the duration of such permit. The commission may also, if the parties fail to agree, order the owner acquiring the permit to pay reasonable costs incurred by the former permitholder and the conditions under which payment is to be made. The costs for which reimbursement may be ordered may include those involving survey of the well site, title search of surface and mineral title, and preparation of an opinion of mineral ownership.
  4. If the commission declines to revoke a permit or limit the time within which it must be exercised, it may include a term in its order restricting the ability of the permitholder to renew the permit or to acquire another permit within the same spacing or drilling unit.

**History:** Effective December 1, 1996; amended effective January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-16.3. Recovery of a risk penalty.** The following govern the recovery of the risk penalty pursuant to subsection 3 of North Dakota Century Code section 38-08-08 and subsection 3 of North Dakota Century Code section 38-08-09.4:

1. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-08, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the risk and cost of drilling a well, including reentering a plugged and abandoned well, or the risk and cost of reentering an existing well to drill deeper or a horizontal lateral. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty

must also make a good-faith attempt to have the unleased owner execute a lease.

- a. The invitation to participate in drilling must contain the following:
    - (1) The location of the proposed or existing well and its proposed depth and objective zone.
    - (2) An itemization of the estimated costs of drilling and completion.
    - (3) The approximate date upon which the well will be spudded or reentered.
    - (4) The time within which the invitation must be accepted. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation, but in no circumstances may less than fifteen days be allowed.
    - (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
  - b. An election to participate must be in writing.
  - c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, by facsimile transmission followed within one business day by mailing, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
  - d. An election to participate is only binding upon an owner electing to participate if the well is spudded or reentry operations are commenced within ninety days after the date the owner extending the invitation to participate sets as the date upon which a response to the invitation is to be received. It also expires if the permit to drill or reenter expires without having been exercised. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
2. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-09.4, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the unit expense. If the

nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.

- a. The invitation to participate in the unit expense must contain the following:
  - (1) A description of the proposed unit expense, including the location, objectives, and plan of operation.
  - (2) An itemization of the estimated costs.
  - (3) The approximate date upon which the proposal will commence.
  - (4) The time within which the invitation must be accepted. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation, but in no circumstances may less than fifteen days be allowed.
  - (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
- b. An election to participate must be in writing.
- c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, by facsimile transmission followed within one business day by mailing, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
- d. An election to participate is only binding upon an owner electing to participate if the unit expense is commenced within ninety days after the date the owner extending the invitation request to participate sets as the date upon which a response to the request invitation is to be received. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
- e. An invitation to participate in a unit expense covering monthly operating expenses shall be effective for all such monthly operating expenses for a period of five years if the unit expense identified in

the invitation to participate is first commenced within ninety days after the date set in the invitation to participate as the date upon which a response to the invitation to participate must be received. An election to participate in a unit expense covering monthly operating expenses is effective for five years after operations are first commenced. If an election to participate in a unit expense comprised of monthly operating expenses expires or lapses after five years, a risk penalty may only be assessed and collected if the owner seeking the penalty once again complies with this section.

3. Upon its own motion or the request of a party, the commission may include in a pooling order requirements relating to the invitation and election to participate, in which case the pooling order will control to the extent it is inconsistent with this section.

**History:** Effective December 1, 1996; amended effective May 1, 2004; January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04, 38-08-08

**43-02-03-18. Drilling units - Well locations.** In the absence of an order by the commission setting spacing units for a pool:

1. a. Vertical or directional oil wells projected to a depth not deeper than the Mission Canyon formation shall be drilled upon a governmental quarter-quarter section or equivalent lot, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter-quarter section or equivalent lot. No more than one well shall be drilled to the same pool on any such governmental quarter-quarter section or equivalent lot, except by order of the commission, nor shall any well be drilled on any such governmental quarter-quarter section or equivalent lot containing less than thirty-six acres [14.57 hectares] except by order of the commission.
- b. Vertical or directional oil wells projected to a depth deeper than the Mission Canyon formation shall be drilled on a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lots containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.
2. a. ~~Horizontal wells projected to a depth not deeper than the Mission Canyon formation, with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive~~



~~formation of at least three hundred feet [91.4 meters], must be drilled upon a tract described as two adjacent governmental quarter-quarter sections within the same quarter section or equivalent lots, located not less than five hundred feet [152.4 meters] to the outside boundary of such tract. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.~~

- b. ~~Horizontal wells projected to a depth deeper than the Mission Canyon formation, with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least five hundred feet [152.4 meters], must be drilled upon a tract drilling unit described as a governmental section or described as two adjacent governmental quarter sections within the same section or equivalent lots, located not less than ~~six~~ five hundred ~~sixty~~ feet [201.2 152.4 meters] to the outside boundary of such tract. The horizontal well proposed to be drilled must, in the director's opinion, justify the creation of such drilling unit. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.~~
- 3.
    - a. Gas wells projected to a depth not deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lot containing less than one hundred forty-five acres [14.57 hectares] except by order of the commission.
    - b. Gas wells projected to a depth deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lot containing less than one hundred forty-five acres [14.57 hectares] except by order of the commission.
- 4. Within thirty days, or a reasonable time thereafter, following the discovery of oil or gas in a pool not then covered by an order of the commission, a spacing hearing shall be docketed. Following such hearing the commission shall issue an order prescribing a temporary spacing pattern for the development of the pool. This order shall continue in force for a period of not more than eighteen months at

the expiration of which time a hearing shall be held at which the commission may require the presentation of such evidence as will enable the commission to determine the proper spacing for the pool.

During the interim period between the discovery and the issuance of the temporary order, no permits shall be issued for the drilling of an offset well to the discovery well, unless approved by the director. Approval shall be consistent with anticipated spacing for the orderly development of the pool.

Any well drilled within one mile [1.61 kilometers] of an established field shall conform to the spacing requirements in that field except when it is apparent that the well will not produce from the same common source of supply. In order to assure uniform and orderly development, any well drilled within one mile [1.61 kilometers] of an established field boundary shall conform to the spacing and special field rules for the field, and for the purposes of spacing and pooling, the field boundary shall be extended to include the spacing unit for such well and any intervening lands. The foregoing shall not be applicable if it is apparent that the well will not produce from the same common source of supply as wells within the field.

5. If the director denies an application for permit, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; July 1, 2002; January 1, 2006.

**General Authority:** NDCC 38-08-04, 38-08-07

**Law Implemented:** NDCC 38-08-04, 38-08-07

**43-02-03-21. Casing, tubing, and cementing requirements.** All wells drilled for oil, natural gas, or injection shall be completed with strings of casing which shall be properly cemented at sufficient depths to adequately protect and isolate all formations containing water, oil, or gas or any combination of these; protect the pipe through salt sections encountered; and isolate the uppermost sand of the Dakota group.

Drilling of the surface hole shall be with freshwater-based drilling mud or other method approved by the director which will protect all freshwater-bearing strata. The surface casing shall consist of new or reconditioned pipe that has been previously tested to one thousand pounds per square inch [6900 kilopascals]. The surface casing shall be set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. Sufficient cement shall be used on surface casing to fill the annular space behind the casing to the bottom of the cellar, if any, or to the surface of the ground. All strings of surface casing shall stand cemented under pressure for at least twelve hours before drilling the plug or initiating tests. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the

pump and plug method or other methods approved by the director. The director is authorized to require an accurate gauge be maintained on the surface casing of any well, not properly plugged and abandoned, to detect any buildup of pressure caused by the migration of fluids.

Surface casing strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least three hundred fifty pounds per square inch [2415 kilopascals] within seventy-two hours. All compressive strengths on surface casing cement shall be calculated at a temperature of eighty degrees Fahrenheit [26.67 degrees Celsius].

Production or intermediate casing strings shall consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature found in the Mowry formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees Fahrenheit [26.67 degrees Celsius]. After cementing, the casing shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals]. If, at the end of thirty minutes, this pressure has dropped one hundred fifty pounds per square inch [1035 kilopascals] or more, the casing shall be repaired. Thereafter, the casing shall again be tested in the same manner. Further work shall not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

All flowing wells must be equipped with tubing. A tubing packer must also be utilized unless a waiver is obtained after demonstrating the casing will not be subjected to excessive pressure or corrosion. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 1997; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-25. Deviation tests and directional surveys.** When any well is drilled or deepened, tests to determine the deviation from the vertical shall be taken at least every one thousand feet [304.8 meters]. The director is authorized to waive the deviation test for a shallow gas well if the necessity therefor can be

demonstrated to the director's satisfaction. When the deviation from the vertical exceeds five degrees at any point, the director may require that the hole be straightened. Directional surveys may be required by the director, whenever, in the director's judgment, the location of the bottom of the well is in doubt.

A directional survey shall be made and filed with the director on any well utilizing a whipstock or any method of deviating the well bore. The obligation to run the directional survey may be waived by the director when a well bore is deviated to sidetrack junk in the hole, straighten a crooked hole, control a blowout, or if the necessity therefor can be demonstrated to the director's satisfaction. The survey contractor shall file two certified copies of all surveys with the director free of charge within thirty days of completion. Surveys must be submitted as one paper copy and one electronic copy, or in a form approved by the director. However, the director may require the directional survey to be filed immediately after completion if the survey is needed to conduct the operation of the director's office in a timely manner. Special permits may be obtained to drill directionally in a predetermined direction as provided above, from the director.

If the director denies a request for a permit to directionally drill, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

**History:** Amended effective April 1, 1980; April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; September 1, 2000; January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-28. Safety regulation.** During drilling operations all oil wells shall be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler ~~or~~ portable electric lighting generator, or treater shall be placed ~~or remain~~ nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production equipment to eliminate a fire hazard.

No well shall be drilled nor production equipment installed less than three hundred thirty feet [100.58 meters] from a building or residence unless agreed to in writing by the surface owner or authorized by order of the commission.

Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment.

**History:** Amended effective January 1, 1983; May 1, 1990; September 1, 2000; January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-29. Well and lease equipment.** Wellhead and lease equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected shall be installed and maintained. Equipment on producing wells shall be installed to facilitate gas-oil ratio tests, and static bottom hole or other pressure tests. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

**History:** Amended effective January 1, 1983; January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-31. Well log, completion, and workover reports.** After the plugging of a well, a plugging record (form 7) shall be filed with the director. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6) shall be filed with the director. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an electrical, radioactivity, or other similar log, or combination of logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. The operator shall cause to be run a log from which the presence of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. Two copies of all logs run shall be submitted to the director free of charge. Logs shall be submitted as one paper copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, core analyses, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director on new permits, except the operator name, well name, location, spud date, rig contractor, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the written request is received, whichever is earlier. If the written request

accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period shall commence on the date the well is spudded.

All information furnished to the director on recompletions or reentries, except the operator name, well name, location, spud date, rig contractor, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the well was approved for recompletion or reentry, whichever is earlier. Any information furnished to the director prior to approval of the recompletion or reentry shall remain public.

Approval must be obtained on a sundry notice (form 4) from the director prior to perforating or recompleting a well in a pool other than the pool in which the well is currently permitted.

After the completion of any remedial work, or attempted remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a sundry notice (form 4) with the director. The report shall present a detailed account of all work done and the date of such work; the daily production of oil, gas, and water both prior to and after the operation; the shots per foot, size, and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the installation of pumping equipment on a flowing well, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a sundry notice (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof including the date of such installation, and the daily production of the well prior to and after the pump has been installed.

All forms, reports, logs, and other information required by this section shall be submitted within thirty days after the completion of such work, although a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission.

**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; July 1, 2002; January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-33. Notice of intention to plug well.** The operator or the operator's agent shall file a notice of intention (form 4) to plug with the director, and obtain the approval of the director, prior to the commencement of plugging or plug-back operations. The notice shall state the name and location of the well, the name of the operator, and the method of plugging, which must include a detailed

statement of proposed work. In the case of a recently completed test well that has not had production casing in the hole, the operator may commence plugging by giving reasonable notice to, and securing verbal approval of, the director as to the method of plugging, and the time plugging operations are to begin. Within thirty days after the plugging of any well has been accomplished, the owner or operator thereof shall file a plugging record (form 7), and, if requested, a copy of the cementer's trip ticket or job receipt, with the director setting forth in detail the method used in plugging the well.

**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1992; January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-38.1. Preservation of cores and samples.** Sample cuttings of formations, taken at regular intervals in all wells drilled for oil or gas or geologic information in North Dakota, shall be washed and packaged in standard sample envelopes which in turn shall be placed in proper order in a standard sample box; carefully identified as to operator, well name, location, depth of sample; and shall be sent free of cost to the state geologist within thirty days after completion of drilling operations.

The operator of any well drilled for oil or gas in North Dakota, during the drilling of or immediately following the completion of any well, shall inform the state geologist or the geologist's representative of all intervals that are to be cored, or have been cored. All cores taken shall be preserved and forwarded to the state geologist, free of cost, within ninety days after completion of drilling operations, unless specifically exempted by the state geologist. ~~Those cores requested by the state geologist shall be forwarded to the state geologist within thirty days after completion of drilling operations.~~ If the state geologist does not desire the core an exemption is granted, the operator shall advise the state geologist of the final disposition of the core.

This section does not prohibit the operator from taking such samples of the core as the operator may desire for identification and testing. The operator shall furnish the state geologist with the results of identification and testing procedures.

**History:** Effective October 1, 1990; amended effective January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-39. Limiting gas-oil ratio.** In the event the commission has not set a limiting gas-oil ratio for a particular oil pool, the operator of any well in such pool whose gas-oil ratio exceeds two thousand shall demonstrate to the director that production from such well should not be restricted pending a hearing before the commission to establish a limiting gas-oil ratio. The director may restrict production

of any well with a gas-oil ratio exceeding two thousand, until the commission can determine that restrictions are necessary to conserve reservoir energy.

**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1992; January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-101. Prehearing motion practice.** In a matter pending before the commission, all prehearing motions must be served by the moving party upon all parties affected by the motion. Service must be upon a party unless a party is represented by an attorney, in which case service must be upon the attorney. Service must be made by delivering a copy of the motion and all supporting papers in conformance with one of the means of service provided for in rule 5(b) of the North Dakota Rules of Civil Procedure. Proof of service must be made as provided in rule 4 of the North Dakota Rules of Civil Procedure or by the certificate of an attorney showing that service has been made. Proof of service must accompany the filing of a motion. Any motion filed without proof of service is not properly before the commission ~~and must be returned to the moving party.~~

**History:** Effective May 1, 1990; amended effective January 1, 2006.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04



## CHAPTER 43-02-05

### 43-02-05-04. Permit requirements.

1. No underground injection may be conducted without obtaining a permit from the commission after notice and hearing. The application shall be on a form 14 provided by the commission and shall include at least the following information:
  - a. The name and address of the operator of the injection well.
  - b. The surface and bottom hole location.
  - c. Appropriate geological data on the injection zone and the confining zones including geologic names, lithologic descriptions, thicknesses, and depths.
  - d. The estimated bottom hole fracture pressure of the top confining zone.
  - e. Average and maximum daily rate of fluids to be injected.
  - f. Average and maximum requested surface injection pressure.
  - g. Geologic name and depth to base of the lowermost underground sources of drinking water which may be affected by the injection.
  - h. Existing or proposed casing, tubing, and packer data.
  - i. A plat depicting the area of review, (one-quarter-mile [402.34-meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.
  - j. The need for corrective action on wells penetrating the injection zone in the area of review.
  - k. Proposed injection program.
  - l. Quantitative analysis from a state-certified laboratory of freshwater from the two nearest freshwater wells within a one-mile [1.61-kilometer] radius. Location of the wells by quarter-quarter, section, township, and range must also be submitted. This requirement may be waived by the director in certain instances.

- m. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.
  - n. List identifying all source wells or sources of injectate.
  - o. A legal description of the land ownership within the area of review.
  - p. An affidavit of mailing certifying that all landowners within the area of review have been notified of the proposed injection well. If the proposed injection well is within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that comments or objections may be submitted to the commission within thirty days. If the proposed injection well is not within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that a hearing will be held at which comments or objections may be directed to the commission. A copy of the letter sent to each landowner must be attached to the affidavit.
  - q. All logging and testing data on the well which has not been previously submitted.
  - r. Schematic drawings of the injection system, including current well bore construction and proposed well bore and surface facility construction.
  - s. Sundry notice detailing the proposed procedure.
2. Permits may contain such terms and conditions as the commission deems necessary.
  3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute.
  4. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
  5. No person shall commence construction of an underground injection well until without prior approval of the commission has issued a permit for the well director.
  6. Permits are transferable only with approval of the commission.
  7. Permits may be modified by the commission.

8. Before injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.
9. All injection wells permitted before November 1, 1982, shall be deemed to have a permit for purposes of this section; however, all such prior permitted wells are subject to all other requirements of this chapter.
10. A permit shall automatically expire one year after the date it was issued, unless operations have commenced to complete the well as an injection well.
11. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

**History:** Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996; May 1, 2004; January 1, 2006.

**General Authority:** NDCC 38-08-04(2)

**Law Implemented:** NDCC 38-08-04(2)

#### **43-02-05-06. Construction requirements.**

1. All injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water or into an unauthorized zone. The casing and cement used in construction of each new injection well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, all of the following factors shall be considered:
  - a. Depth to the injection zone.
  - b. Depth to the bottom of all underground sources of drinking water.
  - c. Estimated maximum and average injection pressures.
  - d. Fluid pressure.
  - e. Estimated fracture pressure.
  - f. Physical and chemical characteristics of the injection zone.
2. Appropriate logs and other tests shall be conducted during the drilling and construction of injection wells. Any well drilled or converted to an injection well shall have a log run from which the quality of the cement bond can be determined. Cement bond logs shall contain at least the following elements: a gamma ray curve; a casing collar locator curve; a transit time curve; an amplitude curve; and a variable density curve. A descriptive report interpreting the results of these logs and tests shall

be prepared by a qualified log analyst and submitted to the commission if deemed necessary by the director.

3. All injection wells must be equipped with tubing and packer set at a depth approved by the director.

**History:** Effective November 1, 1982; amended effective May 1, 1992; July 1, 1996; May 1, 2004; January 1, 2006.

**General Authority:** NDCC 38-08-04(2)

**Law Implemented:** NDCC 38-08-04(2)

#### **43-02-05-14. Area permits.**

1. The commission, after notice and hearing, may issue an area permit providing for the permitting of individual injection wells if the proposed injection wells are:
  - a. Within the same field, facility site, reservoir, project, or similar unit in the same state;
  - b. Of similar construction;
  - c. Of the same class; and
  - d. Operated by a single owner or operator.
2. An area permit application shall include at least the following information:
  - a. The name and address of the operator.
  - b. ~~A plat depicting the area of review (one-quarter mile [402.34 meters] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults if known or suspected.~~ plat depicting the area permit and one-quarter mile [402.34 meters] adjacent detailing the location of all anticipated injection wells and all current producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults if known or suspected.
  - c. Appropriate geological data on the injection zone and the confining zones, including geologic names, lithologic descriptions, thicknesses, and depths.
  - d. Estimated fracture pressure of the top confining zone.

- e. Estimated maximum injection pressure.
  - f. Geologic name and depth to base of the lowermost underground source of drinking water which may be affected by the injection.
  - g. Proposed injection program.
  - h. List identifying all source wells or sources of injectate.
  - i. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.
  - j. Legal description of the land ownership within and one-quarter mile [402.34 meters] adjacent to the proposed area permit.
  - k. Affidavit of mailing certifying that all landowners have been notified.
  - l. Representative example of landowner letter sent.
  - m. Schematic of the proposed injection system.
  - n. Schematic drawing of a typical proposed injection well bore construction.
3. An area permit authorizes the director to approve individual injection well permit applications within the permitted area. The application shall be on a form 14 provided by the commission and shall include at least the following information:
- a. The name and address of the operator of the injection well.
  - b. The surface and bottom hole location.
  - c. Average and maximum daily rate of fluids to be injected.
  - d. Existing or proposed casing, tubing, and packer data.
  - e. Plat depicting the area permit and one-quarter mile [402.34 meters] adjacent detailing the location of all anticipated injection wells and all current producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults if known or suspected. A plat depicting the area of review (one-quarter-mile [402.34-meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults if known or suspected.

- f. The need for corrective action on wells penetrating the injection zone in the area of review.
  - g. Location of the two nearest freshwater wells by quarter-quarter, section, township, and range within a one-mile [1.61-kilometer] radius and the dates sampled. A quantitative analysis from a state-certified laboratory of the samples must be submitted with the application or within thirty days of sampling. This requirement may be waived by the director in certain instances.
  - h. All logging and testing data on the well which has not been previously submitted.
  - i. Schematic drawings of the current well bore construction and proposed well bore and surface facility construction.
  - j. Sundry notice detailing the proposed procedure.
4. The director is authorized to approve individual injection well permit applications within an area permit provided:
  - a. The additional well meets the area permit criteria.
  - b. The cumulative effects of drilling and operating additional injection wells are acceptable to the director.
5. If the director determines that any additional well does not meet the area permit requirements, the director may modify or terminate the permit or take enforcement action.
6. If the director determines the cumulative effects are unacceptable, the permit may be modified.
7. Area and individual injection well permits may contain such terms and conditions as the commission deems necessary.
8. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute.
9. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
10. No person shall commence construction of an underground injection well until the commission has issued a permit for the well.
11. Area and individual injection well permits are transferable only with approval of the commission.

12. Individual injection well permits may be modified by the commission.
13. Before injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.
14. Individual injection well permits shall automatically expire one year after the date issued, unless operations have commenced to complete the well as an injection well.
15. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

**History:** Effective November 1, 1982; amended effective May 1, 1992; May 1, 2004; January 1, 2006.

**General Authority:** NDCC 38-08-04(2)

**Law Implemented:** NDCC 38-08-04(2)

## CHAPTER 43-02-12

**43-02-12-01. Definitions.** The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 38-08.1 except:

1. "Building" means any residence or commercial structure including a barn, stable, or other similar structure.
2. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.
3. ~~"Operator of the land" means the surface owner or the surface owner's tenant of the land upon which geophysical operations are to be conducted.~~

**History:** Effective December 1, 1997; amended effective September 1, 2000; January 1, 2006.

**General Authority:** NDCC 38-08.1

**Law Implemented:** NDCC 38-08.1-01



**TITLE 45**  
**INSURANCE COMMISSIONER**



## JANUARY 2006

### CHAPTER 45-02-03

**45-02-03-02. Application for license - Fee.** All persons defined as administrators under the provisions of North Dakota Century Code chapter 26.1-27 must complete an application form and file it with the ~~department of insurance~~ department and must remit the required ~~twenty-five dollar~~ fee along with the application.

**History:** Effective September 1, 1983; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-01-08

**Law Implemented:** NDCC 26.1-27

**45-02-03-06. Renewal procedure.** The administrator is required to remit ~~a twenty-five dollar~~ the renewal fee on or before each annual anniversary date in order to maintain the certificate of ~~registration~~ authority. If such fee is not received in the prescribed time, the certificate of ~~registration~~ authority may be administratively terminated. The department will provide notice of the renewal of the certificate of ~~registration~~ authority or the termination of that certificate of ~~registration~~ authority.

**History:** Effective September 1, 1983; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-01-08

**Law Implemented:** NDCC 26.1-27

**45-02-03-07. Waiver procedure.** Repealed effective January 1, 2006. ~~Persons applying for a waiver of the registration requirement under North Dakota Century Code section 26.1-27-04 must in addition to an application submit a written detailed and documented statement as to the basis for the requested waiver. The commissioner shall make a determination with regard to the request for a waiver within sixty days of receipt of the request by the department.~~

**History:** ~~Effective September 1, 1983.~~

**General Authority:** ~~NDCC 26.1-01-08~~

**Law Implemented:** ~~NDCC 26.1-27~~

## **CHAPTER 45-02-04**

**45-02-04-02. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the insurance commissioner.
2. "Continuing education" means an accredited educational experience derived from participation in approved lectures, seminars, and correspondence courses in areas related to insurance. This education shall be designed to improve the professional skills of the participant and upgrade the standard of all insurance licensees to better serve the public.
3. "Coordinator" means an individual who is responsible for monitoring insurance education offerings and who serves as the liaison for students, instructors, and the commissioner.
4. "Instructor" means an individual who teaches, lectures, or otherwise instructs an insurance education offering.
5. "Insurance education" means prelicensure education and continuing education.
6. "Insurance lines" for insurance education purposes include life insurance, accident and health insurance, property insurance, and casualty insurance.
7. "Insurance producer or licensee" means a natural person licensed by this state for the type and kind of insurance being marketed and for which licensing examinations are required.
8. "License" means the authorization issued to an individual by the insurance commissioner to act as an insurance producer.
9. "License applicant" means a person not currently licensed or an insurance producer seeking a license for a line or lines of insurance for which the person is not currently licensed.
10. "National insurance education program" means a curriculum dedicated to the continuance of insurance education, leading to a nationally accepted insurance designation, such as a chartered property casualty underwriter (CPCU), a chartered life underwriter (CLU), or a registered health underwriter (RHU).
11. "Prelicensure education" means approved classroom education taken prior to sitting for the state licensing examination and completed within six months of filing the license application.

12. "~~Spenser~~ Provider" means a natural person, firm, institution, partnership, corporation, or association offering or providing insurance education.

**History:** Effective July 1, 1986; amended effective December 1, 2001; January 1, 2006.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-49

**45-02-04-03. General rules.**

1. **Course requirements.** The continuing education course requirements include an educational presentation involving insurance fundamentals, policies, laws, risk management, or other courses which are offered in a process of instruction approved by the commissioner as expanding skills and developing knowledge to better serve the insurance buying public.
2. **Nonapproved courses.** The following course content will not qualify for continuing education credit:
  - a. Prelicensure training.
  - b. Prospecting.
  - c. Recruiting.
  - d. Sales skills and promotions.
  - e. Motivation.
  - f. Psychology.
  - g. Communication skills.
  - h. Supportive office and machine skills.
  - i. Personnel management.

The above listing does not limit the commissioner's authority to disapprove any application which fails to meet the standards for course approval.

3. **Prelicensure course.** A prelicensure course means a classroom program consisting of at least eight credit hours, per line of insurance, with course content, including:
  - a. For property or casualty insurance, or both:

- (1) North Dakota laws, rules, and regulations relating to property and casualty insurance;
  - (2) Insurance and insurance-related concepts;
  - (3) Policy provisions;
  - (4) Types of policies;
  - (5) Perils, exclusions, deductibles, and liability;
  - (6) Prospecting and evaluating needs;
  - (7) Serving clients; and
  - (8) Presentation and acceptance of the policy.
- b. For life and annuity or accident and health insurance, or both:
- (1) North Dakota laws, rules, and regulations relating to life and annuity or accident and health insurance;
  - (2) Types of policies and coverages;
  - (3) Policy provisions, options, and benefits;
  - (4) Completing the application and delivering the policy;
  - (5) Taxes, retirement, and other insurance concepts;
  - (6) Group insurance; and
  - (7) Other provisions affecting insurance benefits.
4. **License applicant responsibility.** All license applicants shall present to the proctor, prior to sitting for insurance licensing examinations, a valid copy of the prelicensure report of compliance.
5. **Licensee responsibility.** Each licensee shall be responsible for maintaining original records of the licensee's continuing education certificates of attendance for a period of one year from the last reporting deadline. Such records shall be made available to the commissioner upon request.
6. **Licensee seeking additional lines.** Effective January 1, 1986, prelicensure education will be required of a current resident insurance producer or consultant seeking authority in a line of insurance for which the person is not currently licensed.

7. **Correspondence course credit.** Credit received by an insurance producer for a correspondence course must be based on successful completion of the course as prescribed by the ~~sponsor~~ provider and approved by the commissioner.
8. **Reciprocity.** The commissioner may approve credit for insurance-related courses approved by the North Dakota real estate commission and the North Dakota state bar association for continuing education purposes.
9. **Credit hour.** A credit hour means sixty minutes of time, of which at least fifty minutes must be instruction, with a maximum of ten minutes break.
  - a. Credit hours for insurance education will not be approved in increments of less than one-half hour.
  - b. Neither students nor instructors may earn credit for attending or instructing at any subsequent offering of a continuing education course more than once during a reporting period.
10. **Course audit.** The commissioner or an authorized representative reserves the right to audit insurance education offerings with or without notice to the ~~sponsor~~ provider.
11. ~~**National insurance education independent study.** A licensee who passes a national examination by way of independent study may receive up to fifteen hours of continuing education credit, of which seven and one-half hours will be considered as classroom.~~
- ~~12.~~ **Class attendance.**
  - a. No certificate of attendance will be issued to a continuing education participant who is absent for more than ten percent of the classroom hours.
  - b. Prelicensure courses must be attended in their entirety.
- ~~13.~~ 12. **Examinations.** Course examinations will not be required for insurance education courses, unless required by the ~~sponsor~~ provider.
- ~~14.~~ 13. **Textbooks.** Textbooks are not required for continuing education courses. All course materials must contain accurate and current information relating to the subject matter being taught.
- ~~15.~~ 14. **Approval of course offerings.** The commissioner requires ~~sponsors~~ providers of insurance education courses to provide the following:
  - a. To the commissioner on a commissioner-approved form prior to course offerings:

- (1) An application for course approval of an insurance education course fifteen business days prior to course offering.
  - (2) A complete course outline designating individual topics and the amount of time devoted to each area being taught. (NOTE: Prelicensure course outlines must include a copy of all textbooks, handouts, etc., ~~excluding Pictorial, R & R Newkirk, and Educational Training Systems, Inc., which are on file at the insurance department.~~)
  - (3) An application for coordinator approval.
  - (4) ~~An application for instructor approval.~~
  - (5) A fifty dollar per course filing fee.
- b. A class roster to the commissioner ~~on a commissioner-approved form~~ using a method prescribed by the commissioner fifteen days subsequent to completion of all insurance education courses. ~~This requirement may be waived for nationally designated independent study courses.~~
- c. To course participants subsequent to course offerings:
- (1) A course attendance certificate (10923) ~~and a summary report of compliance (10924)~~ to all students successfully completing an approved continuing education course.
  - (2) A prelicensure report of compliance (10925) to all students successfully completing an approved prelicensure course.

Upon review by the commissioner, ~~sponsors~~ providers will receive a copy of the course application indicating approval or denial, credit hours assigned, and a course certification number. Course certification numbers must be used on all insurance education certificates, correspondence, and advertisements.

46. 15. **Sponsor Provider management responsibility.** ~~Sponsors~~ Providers of insurance education courses are responsible for the actions of their respective instructors and coordinators.
47. 16. **Course approval after the fact.** Credit may be granted for a course after the fact provided such courses are properly submitted and approved by the commissioner. Subsequent approval depends on course content and is not automatic or guaranteed.
48. 17. **Advertising.** Courses may not be advertised in any manner unless approval has been granted, in writing, by the commissioner.



- a. All advertising relating to approved course offerings shall contain the following statement: "This course has been approved by the insurance commissioner for (insert hours) of insurance education credit."
  - b. Advertising must be truthful, clear, and not deceptive or misleading.
19. **18. Approval of subsequent offerings.** After approval has been granted for the initial offering of a course, approval for subsequent offerings will be granted without the necessity of a new application if a notice of subsequent offering is filed with the commissioner at least fifteen days before the date the course is to be held.
20. **19. Fees.** Fees for courses must be reasonable and clearly identifiable to students. If a course is canceled for any reason, all fees must be returned within thirty days of cancellation.
21. **20. Adequate facility.** Each course of study must be conducted in a classroom or other facility which will adequately and comfortably accommodate the faculty and the number of students enrolled. The ~~sponsor~~ provider may limit the number of students enrolled in a course.

**History:** Effective July 1, 1986; amended effective January 1, 2000; December 1, 2001; January 1, 2006.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-49

**45-02-04-04. General powers of commissioner.** The commissioner may deny, censure, suspend, or revoke the approval of a ~~sponsor~~ provider, coordinator, instructor, or course if it is determined not to be in compliance with the statute or rules governing the offering of insurance education courses. The commissioner may also refuse to approve courses conducted by specific ~~sponsors~~ providers if he the commissioner determines that past offerings have not been in compliance with insurance education laws and rules.

**History:** Effective July 1, 1986; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-49

**45-02-04-05. Course coordinator.**

1. **General requirement.** Each course of study must have at least one coordinator, approved by the commissioner, who is responsible for supervising the program and assuring compliance with the statutes and rules governing the offering of insurance education courses.
2. **Qualifications.** Course coordinators shall possess at least one of the following qualifications:

- a. A minimum of five ~~years~~ years' experience during the immediately preceding five-year period as an active licensed insurance agent;  
or
  - b. At least three ~~years~~ years' full-time experience during the immediately preceding five-year period in the administration of an education program; or
  - c. A degree in education plus at least two ~~years~~ years' insurance experience during the immediately preceding five-year period.
3. **Forms.** Applications for coordinator approval must be submitted on forms prescribed by the commissioner.
4. **Responsibilities.** Coordinators shall be responsible for, but not limited to, the following:
- a. Assuring compliance with all laws and rules pertaining to insurance education.
  - b. Notifying the commissioner of any material change in ~~applications of course instructors~~ or course content.
  - c. Assuring that students are provided with current, accurate information, and classroom facilities conducive to a sound learning environment.
  - d. Evaluation of courses and instructors. The commissioner may request written evaluations of courses and instructors either by students or coordinators.
  - e. Investigating complaints relating to course offerings and instructors, and forwarding all written complaints to the insurance department.
  - f. Maintaining accurate records relating to course offerings, instructors, and student attendance for a period of five years from the date the course was completed.
  - g. Being available to instructors and students by providing the name of the coordinator and a telephone number at which the coordinator can be reached.
  - h. Providing students with course attendance certificates on a form prescribed by the commissioner, within thirty days of course completion.

- i. Notifying the commissioner, fifteen days in advance, of any changes in course offering dates and subsequent offering dates of an approved course.

**History:** Effective July 1, 1986; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-49

**45-02-04-07. Prohibited practices.** ~~Sponsors~~ Providers, coordinators, and instructors are prohibited from misrepresenting any material submitted to the commissioner.

**History:** Effective July 1, 1986; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-49

**45-02-04-09. Licensee report of compliance.** Reports of compliance for continuing education credit must be submitted with a fee of twenty-five dollars at the end of each two-year period following licensure, except as provided below. All licensed resident insurance producers shall submit a compliance report and fee based on the following schedule. Licensed resident insurance producers with surnames beginning with:

1. A-K shall report ~~thirty~~ twenty-four hours or more of approved coursework of which three hours must be ethics for the previous two years within thirty days of January first of every odd-numbered year.
2. L-Z shall report ~~thirty~~ twenty-four hours or more of approved coursework of which three hours must be ethics for the previous two years within thirty days of January first of every even-numbered year.
3. A newly licensed resident insurance producer shall have the remainder of the calendar year in which initially licensed as a grace period. Beginning January first of the next calendar year, newly licensed resident insurance producers must comply with continuing education requirements, reporting the required continuing education credits for each calendar year according to the alphabetized schedule.
4. An insurance producer licensed exclusively for the sale of title insurance, travel or baggage insurance, surety, bail bonds, legal expense insurance, and credit is exempt from continuing education requirements.

**History:** Effective July 1, 1986; amended effective November 1, 1990; May 1, 1997; October 1, 1997; January 1, 2000; December 1, 2001; January 1, 2006.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-31.1(1), 26.1-26-31.1(2), 26.1-26-31.4

## CHAPTER 45-03-15

**45-03-15-01. Accounting practices and procedures.** Every insurance company doing business in this state shall file with the commissioner, pursuant to North Dakota Century Code section 26.1-03-07, the appropriate national association of insurance commissioners annual statement blank, prepared in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March ~~2003~~ 2005 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance.

**History:** Effective January 1, 1992; amended effective January 1, 2000; December 1, 2001; March 1, 2004; January 1, 2006.

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

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1

**45-03-15-02. Reporting of financial information.** Every insurance company licensed to do business in this state shall transmit to the commissioner and to the national association of insurance commissioners its most recent financial statements compiled on a quarterly basis, within forty-five days following the calendar quarters ending March thirty-first, June thirtieth, and September thirtieth. The financial statements must be prepared and filed in the form prescribed by the commissioner and in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March ~~2003~~ 2005 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance. The commissioner may exempt any company or category or class of companies from the filing requirement.

**History:** Effective January 1, 1992; amended effective January 1, 2000; December 1, 2001; March 1, 2004; January 1, 2006.

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

**Law Implemented:** NDCC 26.1-02-03, 26.1-03-07, 26.1-03-11.1

## CHAPTER 45-04-10

### 45-04-10-07. Enforcement procedures.

1. Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published, or prepared advertisement of its individual policies and specimen copies of typical printed, published, or prepared advertisements of its blanket, franchise, and group policies, hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. Such file is subject to inspection by this department. All such advertisements must be maintained in said file for a period of either four years or until the filing of the next regular report on the examination of the insurer, whichever is the longer period of time.
2. ~~Each insurer subject to the provisions of this chapter shall file with this department with its annual statement a certificate of compliance executed by an authorized officer of the insurer wherein it is stated that to the best of his knowledge, information, and belief the advertisements which were disseminated by or on behalf of the insurer in this state during the preceding statement year, or during the portion of such year when this chapter was in effect, complied or were made to comply in all respects with the provisions of this chapter and the insurance laws of this state as implemented and interpreted by this chapter.~~

**History:** Effective March 1, 1988; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-04-08, 28-32-02

**Law Implemented:** NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

**CHAPTER 45-05-08  
BINDING INTERCOMPANY ARBITRATION**

[Repealed effective January 1, 2006]

**CHAPTER 45-08-01.1  
COORDINATION OF BENEFITS REGULATION**

[Superseded by Chapter 45-08-01.2]

**CHAPTER 45-08-01.2**  
**COORDINATION OF BENEFITS REGULATION**

Section

<u>45-08-01.2-01</u>	<u>Definitions</u>
<u>45-08-01.2-02</u>	<u>Applicability and Scope</u>
<u>45-08-01.2-03</u>	<u>Use of Model Coordination of Benefits Contract Provisions</u>
<u>45-08-01.2-04</u>	<u>Rules for Coordination of Benefits</u>
<u>45-08-01.2-05</u>	<u>Procedure to Be Followed by Secondary Plan to Calculate Benefits and Pay a Claim</u>
<u>45-08-01.2-06</u>	<u>Miscellaneous Provisions</u>
<u>45-08-01.2-07</u>	<u>Effective Date for Existing Contracts</u>

**45-08-01.2-01. Definitions.** As used in this chapter, these words and terms have the following meanings, unless the context clearly indicates otherwise:

1. a. "Allowable expense", except as set forth below or when a statute requires a different definition, means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.
  
- b. If a plan is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established in accordance with section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in section 223(c)(2)(C) of the Internal Revenue Code of 1986.
  
- c. An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.
  
- d. Any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an allowable expense.
  
- e. The following are examples of expenses that are not allowable expenses:
  - (1) If a person is confined in a private hospital room, the difference between the cost of a semiprivate room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.
  
  - (2) If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary



fees or relative value schedule reimbursement or other similar reimbursement methodology, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

(3) If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

(4) If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the provider's contract permits, that negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits.

f. The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drugs, or hearing aids. A plan that limits the application of coordination of benefits to certain coverages or benefits may limit the definition of allowable expense in its contract to expenses that are similar to the expenses that it provides. When coordination of benefits is restricted to specific coverages or benefits in a contract, the definition of allowable expense shall include similar expenses to which coordination of benefits applies.

g. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid.

h. The amount of the reduction may be excluded from allowable expense when a covered person's benefits are reduced under a primary plan:

(1) Because the covered person does not comply with the plan provisions concerning second surgical opinions or precertification of admissions or services; or

(2) Because the covered person has a lower benefit because the covered person did not use a preferred provider.

2. "Birthday" refers only to month and day in a calendar year and does not include the year in which the individual is born.
3. "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:
  - a. Services, including supplies;
  - b. Payment for all or a portion of the expenses incurred;
  - c. A combination of subdivisions a and b; or
  - d. An indemnification.
4. "Closed panel plan" means a plan that provides health benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the plan, and that excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member.
5. "Consolidated Omnibus Budget Reconciliation Act of 1985" or "COBRA" means coverage provided under a right of continuation pursuant to federal law.
6. "Coordination of benefits" or "COB" means a provision establishing an order in which plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.
7. "Custodial parent" means:
  - a. The parent awarded custody of a child by a court decree; or
  - b. In the absence of a court decree, the parent with whom the child resides more than one-half of the calendar year without regard to any temporary visitation.
8. a. "Group-type contract" means a contract that is not available to the general public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage.
  - b. "Group-type contract" does not include an individually underwritten and issued guaranteed renewable policy even if the policy is purchased through payroll deduction at a premium savings to the insured since the insured would have the right to maintain or renew the policy independently of continued employment with the employer.

9. "High-deductible health plan" has the meaning given the term under section 223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.
10. a. "Hospital indemnity benefits" means benefits not related to expenses incurred.
- b. "Hospital indemnity benefits" does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.
11. a. "Plan" means a form of coverage with which coordination is allowed. Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no coordination of benefits among the separate parts of the plan.
- b. If a plan coordinates benefits, its contract shall state the types of coverage that will be considered in applying the coordination of benefits provision of that contract. Whether the contract uses the term "plan" or some other term such as "program", the contractual definition may be no broader than the definition of "plan" in this subsection. The definition of "plan" in the model coordination of benefits provision in appendix A is an example.
- c. "Plan" includes:
- (1) Group and nongroup insurance contracts and subscriber contracts;
  - (2) Uninsured arrangements of group or group-type coverage;
  - (3) Group and nongroup coverage through closed panel plans;
  - (4) Group-type contracts;
  - (5) The medical care components of long-term care contracts, such as skilled nursing care;
  - (6) The medical benefits coverage in automobile "no-fault" and traditional automobile "fault" type contracts subject to the provisions of the North Dakota no-fault coordination of benefits provisions as set forth in subsection 3 of section 26.1-41-13; and

(7) Medicare or other governmental benefits, as permitted by law, except as provided in paragraph 8 of subdivision d. That part of the definition of plan may be limited to the hospital, medical, and surgical benefits of the governmental program.

d. "Plan" does not include:

(1) Hospital indemnity coverage benefits or other fixed indemnity coverage;

(2) Accident only coverage;

(3) Specified disease or specified accident coverage;

(4) Limited benefit health coverage;

(5) School accident-type coverages that cover students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis;

(6) Benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(7) Medicare supplement policies;

(8) A state plan under medicaid; or

(9) A governmental plan, which by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan.

12. "Policyholder" means the primary insured named in a nongroup insurance policy.

13. "Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if:

a. The plan either has no order of benefit determination rules, or its rules differ from those permitted by this regulation; or

b. All plans that cover the person use the order of benefit determination rules required by this regulation, and under those rules the plan determines its benefits first.

14. "Secondary plan" means a plan that is not a primary plan.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 26.1-36-38

**Law Implemented:** NDCC 26.1-36-10, 26.1-36-29, 26.1-41-13

**45-08-01.2-02. Applicability and scope.** This chapter applies to all plans that are issued on or after the effective date of this chapter.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 26.1-36-38

**Law Implemented:** NDCC 26.1-36-10, 26.1-36-29, 26.1-41-13

**45-08-01.2-03. Use of model coordination of benefits contract provisions.**

1. Appendix A contains a model coordination of benefits provision for use in contracts. The use of this model coordination of benefits provision is subject to the provisions of subsections 2, 3, and 4 and to the provisions of section 45-08-01.2-04.
2. Appendix B is a plain language description of the coordination of benefits process that explains to the covered person how health plans will implement coordination of benefits. It is not intended to replace or change the provisions that are set forth in the contract. Its purpose is to explain the process by which the two or more plans will pay for or provide benefits.
3. The coordination of benefits provision contained in appendix A and the plain language explanation in appendix B do not have to use the specific words and format shown in appendix A or appendix B. Changes may be made to fit the language and style of the rest of the contract or to reflect differences among plans that provide services, that pay benefits for expenses incurred, and that indemnify. No substantive changes are permitted.
4. A coordination of benefits provision may not be used that permits a plan to reduce its benefits on the basis that:
  - a. Another plan exists and the covered person did not enroll in that plan;
  - b. A person is or could have been covered under another plan, except with respect to part B of medicare; or
  - c. A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

5. No plan may contain a provision that its benefits are "always excess" or "always secondary" except in accordance with the rules permitted by this regulation.
6. Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel provider. In most instances, coordination of benefits does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a provider in one of the closed panel plans because the other closed panel plan (the one whose providers were not used) has no liability. However, coordination of benefits may occur during the plan year when the covered person receives emergency services that would have been covered by both plans. Then the secondary plan shall use the provisions of section 45-08-01.2-05 to determine the amount it should pay for the benefit.
7. No plan may use a coordination of benefits provision, or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have that does not meet the definition of plan under subsection 11 of section 45-08-01.2-01.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 26.1-36-38

**Law Implemented:** NDCC 26.1-36-10, 26.1-36-29, 26.1-41-13

**45-08-01.2-04. Rules for coordination of benefits.** When a person is covered by two or more plans, the rules for determining the order of benefit payments are as follows:

1. a. The primary plan shall pay or provide its benefits as if the secondary plan or plans did not exist.
- b. If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan shall pay or provide benefits as if it were the primary plan when a covered person uses a nonpanel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan.
- c. When multiple contracts providing coordinated coverage are treated as a single plan under this chapter, this section applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one carrier pays or provides benefits under the plan, the carrier designated as primary within the plan shall be responsible for the plan's compliance with this regulation.
- d. If a person is covered by more than one secondary plan, the order of benefit determination rules of this chapter decide the order in which secondary plans benefits are determined in relation to

each other. Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which under the rules of this chapter, has its benefits determined before those of that secondary plan.

2. a. Except as provided in subdivision b, a plan that does not contain order of benefit determination provisions that are consistent with this chapter is always the primary plan unless the provisions of both plans, regardless of the provisions of this subdivision, state that the complying plan is primary.
- b. Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contractholder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance-type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.
3. A plan may take into consideration the benefits paid or provided by another plan only when, under the rules of this chapter, it is secondary to that other plan.
4. Order of benefits determination. Each plan determines its order of benefits using the first of the following rules that applies:
  - a. Nondependent or dependent.
    - (1) Subject to paragraph 2, the plan that covers the person other than as a dependent, for example as an employee, member, subscriber, policyholder, or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan.
    - (2) (a) If the person is a medicare beneficiary, and, as a result of the provisions of title XVIII of the Social Security Act and implementing regulations, medicare is:
      - [1] Secondary to the plan covering the person as a dependent; and
      - [2] Primary to the plan covering the person as other than a dependent (e.g., a retired employee).
    - (b) Then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder, or retiree is the secondary

plan and the other plan covering the person as a dependent is the primary plan.

b. Dependent child covered under more than one plan. Unless there is a court decree stating otherwise, plans covering a dependent child shall determine the order of benefits as follows:

(1) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

(a) The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

(b) If both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

(2) For a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married:

(a) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, but that parent's spouse does, that parent's spouse's plan is the primary plan. This item shall not apply with respect to any plan year during which benefits are paid or provided before the entity has actual knowledge of the court decree provisions:

(b) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of paragraph 1 shall determine the order of benefits:

(c) If a court decree states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of paragraph 1 shall determine the order of benefits; or

(d) If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child are as follows:

[1] The plan covering the custodial parent:



[2] The plan covering the custodial parent's spouse;

[3] The plan covering the noncustodial parent; and then

[4] The plan covering the noncustodial parent's spouse.

(3) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits shall be determined, as applicable, under paragraph 1 or 2 as if those individuals were parents of the child.

c. Active employee or retired or laid-off employee.

(1) The plan that covers a person as an active employee that is an employee who is neither laid off nor retired or as a dependent of an active employee is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

(2) If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule is ignored.

(3) This rule does not apply if the rule in subdivision a can determine the order of benefits.

d. COBRA or state continuation coverage.

(1) If a person whose coverage is provided pursuant to COBRA or under a right of continuation pursuant to state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber, or retiree or covering the person as a dependent of an employee, member, subscriber, or retiree is the primary plan and the plan covering that same person pursuant to COBRA or under a right of continuation pursuant to state or other federal law is the secondary plan.

(2) If the other plan does not have this rule, and if as a result, the plans do not agree on the order of benefits, this rule is ignored.

(3) This rule does not apply if the rule in subdivision a can determine the order of benefits.

- e. Longer or shorter length of coverage.
- (1) If the preceding rules do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan.
  - (2) To determine the length of time a person has been covered under a plan, two successive plans shall be treated as one if the covered person was eligible under the second plan within twenty-four hours after coverage under the first plan ended.
  - (3) The start of a new plan does not include:
    - (a) A change in the amount or scope of a plan's benefits;
    - (b) A change in the entity that pays, provides, or administers the plan's benefits; or
    - (c) A change from one type of plan to another, such as, from a single employer plan to a multiple employer plan.
  - (4) The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.
- f. If none of the preceding rules determines the order of benefits, the allowable expenses shall be shared equally between the plans.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 26.1-36-38

**Law Implemented:** NDCC 26.1-36-10, 26.1-36-29, 26.1-41-13

**45-08-01.2-05. Procedure to be followed by secondary plan to calculate benefits and pay a claim.** In determining the amount to be paid by the secondary plan on a claim, should the plan wish to coordinate benefits, the secondary plan shall calculate the benefits it would have paid on the claim in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may reduce its payment by the amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim do not exceed one hundred percent of the total allowable expense for that claim. In addition, the

secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 26.1-36-38

**Law Implemented:** NDCC 26.1-36-10, 26.1-36-29, 26.1-41-13

**45-08-01.2-06. Miscellaneous provisions.**

1. A secondary plan that provides benefits in the form of services may recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.
  
2. a. A plan with order of benefits determination rules that comply with this chapter (complying plan) may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefits determination rules that are inconsistent with those contained in this chapter (noncomplying plan) on the following basis:
  - (1) If the complying plan is the primary plan, it shall pay or provide its benefits first;
  - (2) If the complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, the payment shall be the limit of the complying plan's liability; and
  - (3) If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. If within two years of payment the complying plan receives information as to the actual benefits of the noncomplying plan, it shall adjust payments accordingly.
  
- b. If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation set forth below, then the complying plan shall advance to the covered person or on behalf of the covered person an amount equal to the difference.

- c. In no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service. In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan. The advance by the complying plan shall also be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.
3. Coordination of benefits differs from subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.
4. If the plans cannot agree on the order of benefits within thirty calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been the primary plan.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 26.1-36-38

**Law Implemented:** NDCC 26.1-36-10, 26.1-36-29, 26.1-41-13

**45-08-01.2-07. Effective date for existing contracts.**

1. A contract that provides health care benefits and that was issued before the effective date of this chapter shall be brought into compliance with this regulation by the later of:
- a. The next anniversary date or renewal date of the contract;
  - b. Twelve months following the effective date of these rules; or
  - c. The expiration of any applicable collectively bargained contract pursuant to which it was written.
2. For the transition period between the adoption of this chapter and the timeframe for which plans are to be in compliance pursuant to subsection 1, a plan that is subject to the prior coordination of benefits requirements shall not be considered a noncomplying plan by a plan subject to the new coordination of benefits requirements and if there is a conflict between the prior coordination of benefits requirements under the prior regulation and the new coordination of benefits requirements

under the amended regulation, the prior coordination of benefits requirements shall apply.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 26.1-36-38

**Law Implemented:** NDCC 26.1-36-10, 26.1-36-29, 26.1-41-13

## APPENDIX A

### MODEL COB CONTRACT PROVISIONS

#### COORDINATION OF THIS CONTRACT'S BENEFITS WITH OTHER BENEFITS

The coordination of benefits (COB) provision applies when a person has health care coverage under more than one plan. Plan is defined below.

The order of benefits determination rules govern the order in which each plan will pay a claim for benefits. The plan that pays first is called the primary plan. The primary plan must pay benefits in accordance with its policy terms without regard to the possibility that another plan may cover some expenses. The plan that pays after the primary plan is the secondary plan. The secondary plan may reduce the benefits it pays so that payments from all plans does not exceed 100% of the total allowable expense.

#### DEFINITIONS

A. A plan is any of the following that provides benefits or services for medical or dental care or treatment. If separate contracts are used to provide coordinated coverage for members of a group, the separate contracts are considered parts of the same plan and there is no COB among those separate contracts.

(1) Plan includes: group and nongroup insurance contracts, health maintenance organization (HMO) contracts, closed panel plans or other forms of group or group type coverage (whether insured or uninsured); medical care components of long-term care contracts, such as skilled nursing care; medical benefits under group or individual automobile contracts; and medicare or any other federal governmental plan, as permitted by law.

(2) Plan does not include: hospital indemnity coverage or other fixed indemnity coverage; accident-only coverage; specified disease or specified accident coverage; limited benefit health coverage, as defined by state law; school accident-type coverage; benefits for nonmedical components of long-term care policies; medicare supplement policies; medicaid policies; or coverage under other federal governmental plans, unless permitted by law.

Each contract for coverage under (1) or (2) is a separate plan. If a plan has two parts and COB rules apply only to one of the two, each of the parts is treated as a separate plan.

B. This plan means, in a COB provision, the part of the contract providing the health care benefits to which the COB provision applies and which may be reduced because of the benefits of other plans. Any other part of the contract providing health care benefits is separate from this plan.

A contract may apply one COB provision to certain benefits, such as dental benefits, coordinating only with similar benefits, and may apply another COB provision to coordinate other benefits.

- C. The order of benefit determination rules determine whether this plan is a primary plan or secondary plan when the person has health care coverage under more than one plan.

When this plan is primary, it determines payment for its benefits first before those of any other plan without considering any other plan's benefits. When this plan is secondary, it determines its benefits after those of another plan and may reduce the benefits it pays so that all plan benefits do not exceed 100% of the total allowable expense.

- D. Allowable expense is a health care expense, including deductibles, coinsurance and copayments, that is covered at least in part by any plan covering the person. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid. An expense that is not covered by any plan covering the person is not an allowable expense. In addition, any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an allowable expense.

The following are examples of expenses that are not allowable expenses:

- (1) The difference between the cost of a semiprivate hospital room and a private hospital room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.
- (2) If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology, any amount in excess of the highest reimbursement amount for a specific benefit is not an allowable expense.
- (3) If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an allowable expense.
- (4) If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary

plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the provider's contract permits, the negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits.

(5) The amount of any benefit reduction by the primary plan because a covered person has failed to comply with the plan provisions is not an allowable expense. Examples of these types of plan provisions include second surgical opinions, precertification of admissions, and preferred provider arrangements.

E. Closed panel plan is a plan that provides health care benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the plan, and that excludes coverage for services provided by other providers, except in cases of emergency or referral by a panel member.

F. Custodial parent is the parent awarded custody by a court decree or, in the absence of a court decree, is the parent with whom the child resides more than one-half of the calendar year excluding any temporary visitation.

## ORDER OF BENEFITS DETERMINATION RULES

When a person is covered by two or more plans, the rules for determining the order of benefits payments are as follows:

A. The primary plan pays or provides its benefits according to its terms of coverage and without regard to the benefits of under any other plan.

B. (1) Except as provided in paragraph 2, a plan that does not contain a coordination of benefits provision that is consistent with this regulation is always primary unless the provisions of both plans state that the complying plan is primary.

(2) Coverage that is obtained by virtue of membership in a group that is designed to supplement a part of a basic package of benefits and provides that this supplementary coverage shall be excess to any other parts of the plan provided by the contractholder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

C. A plan may consider the benefits paid or provided by another plan in calculating payment of its benefits only when it is secondary to that other plan.



D. Each plan determines its order of benefits using the first of the following rules that apply:

- (1) Nondependent or dependent. The plan that covers the person other than as a dependent, for example as an employee, member, policyholder, subscriber, or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan. However, if the person is a medicare beneficiary and, as a result of federal law, medicare is secondary to the plan covering the person as a dependent; and primary to the plan covering the person as other than a dependent (e.g., a retired employee); then the order of benefits between the two plans is reversed so that the plan covering the person as an employee, member, policyholder, subscriber, or retiree is the secondary plan and the other plan is the primary plan.
- (2) Dependent child covered under more than one plan. Unless there is a court decree stating otherwise, when a dependent child is covered by more than one plan the order of benefits is determined as follows:

  - (a) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

    - The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or
    - If both parents have the same birthday, the plan that has covered the parent the longest is the primary plan.
  - (b) For a dependent child whose parents are divorced or separated or not living together, whether or not they have ever been married:

    - (i) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. This rule applies to plan years commencing after the plan is given notice of the court decree;
    - (ii) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of subparagraph a above shall determine the order of benefits;
    - (iii) If a court decree states that the parents have joint custody without specifying that one parent has

responsibility for the health care expenses or health care coverage of the dependent child, the provisions of subparagraph a above shall determine the order of benefits; or

(iv) If there is no court decree allocating responsibility for the dependent child's health care expenses or health care coverage, the order of benefits for the child are as follows:

- The plan covering the custodial parent;
- The plan covering the spouse of the custodial parent;
- The plan covering the noncustodial parent; and then
- The plan covering the spouse of the noncustodial parent.

(c) For a dependent child covered under more than one plan of individuals who are the parents of the child, the provisions of subparagraph a or b above shall determine the order of benefits as if those individuals were the parents of the child.

(3) Active employee or retired or laid-off employee. The plan that covers a person is an active employee, that is, an employee who is neither laid off nor retired, is the primary plan. The plan covering that same person as a retired or laid-off employee is the secondary plan. The same would hold true if a person is a dependent of an active employee and that same person is a dependent of a retired or laid-off employee. If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule labeled D(1) can determine the order of benefits.

(4) COBRA or state continuation coverage. If a person whose coverage is provided pursuant to COBRA or under a right of continuation provided by state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber, or retiree or covering the person as a dependent of an employee, member, subscriber, or retiree is the primary plan and the COBRA or state or other federal continuation coverage is the secondary plan. If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule labeled D(1) can determine the order of benefits.

- (5) Longer or shorter length of coverage. The plan that covered the person as an employee, member, policyholder, subscriber, or retiree longer is the primary plan and the plan that covered the person the shorter period of time is the secondary plan.
- (6) If the preceding rules do not determine the order of benefits, the allowable expenses shall be shared equally between the plans meeting the definition of plan. In addition, this plan will not pay more than it would have paid had it been the primary plan.

#### EFFECT ON THE BENEFITS OF THIS PLAN

- A. When this plan is secondary, it may reduce its benefits so that the total benefits paid or provided by all plans during a plan year are not more than the total allowable expenses. In determining the amount to be paid for any claim, the secondary plan will calculate the benefits it would have paid in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may then reduce its payment by the amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim do not exceed the total allowable expense for that claim. In addition, the secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.
- B. If a covered person is enrolled in two or more closed panel plans and if, for any reason, including the provision of service by a nonpanel provider, benefits are not payable by one closed panel plan, COB shall not apply between that plan and other closed panel plans.

#### RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION

Certain facts about health care coverage and services are needed to apply these COB rules and to determine benefits payable under this plan and other plans. [Organization responsibility for COB administration] may get the facts it needs from or give them to other organizations or persons for the purpose of applying these rules and determining benefits payable under this plan and other plans covering the person claiming benefits. [Organization responsibility for COB administration] need not tell, or get the consent of, any person to do this. Each person claiming benefits under this plan must give [organization responsibility for COB administration] any facts it needs to apply those rules and determine benefits payable.

#### FACILITY OF PAYMENT

A payment made under another plan may include an amount that should have been paid under this plan. If it does, [organization responsibility for COB administration] may pay that amount to the organization that made that payment. That amount will then be treated as though it were a benefit paid under this plan. [Organization

responsibility for COB administration] will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means the reasonable cash value of the benefits provided in the form of services.

#### RIGHT OF RECOVERY

If the amount of the payments made by [organization responsibility for COB administration] is more than it should have paid under this COB provision, it may recover the excess from one or more of the persons it has paid or for whom it has paid; or any other person or organization that may be responsible for the benefits or services provided for the covered person. The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

## APPENDIX B

### CONSUMER EXPLANATORY BOOKLET

#### COORDINATION OF BENEFITS

##### IMPORTANT NOTICE

This is a summary of only a few of the provisions of your health plan to help you understand coordination of benefits, which can be very complicated. This is not a complete description of all of the coordination rules and procedures, and does not change or replace the language contained in your insurance contract, which determines your benefits.

##### Double Coverage

It is common for family members to be covered by more than one health care plan. This happens, for example, when a husband and wife both work and choose to have family coverage through both employers.

When you are covered by more than one health plan, state law permits your insurers to follow a procedure called "coordination of benefits" to determine how much each should pay when you have a claim. The goal is to make sure that the combined payments of all plans do not add up to more than your covered health care expenses.

Coordination of benefits (COB) is complicated, and covers a wide variety of circumstances. This is only an outline of some of the most common ones. If your situation is not described, read your evidence of coverage or contact your state insurance department.

##### Primary or Secondary?

You will be asked to identify all the plans that cover members of your family. We need this information to determine whether we are the "primary" or "secondary" benefit payer. The primary plan always pays first when you have a claim.

Any plan that does not contain your state's COB rules will always be primary.

##### When This Plan is Primary

If you or a family member are covered under another plan in addition to this one, we will be primary when:

##### Your Own Expenses

- : The claim is for your own health care expenses, unless you are covered by medicare and both you and your spouse are retired.

### Your Spouse's Expenses

- The claim is for your spouse, who is covered by medicare, and you are not both retired.

### Your Child's Expenses

- The claim is for the health care expenses of your child who is covered by this plan and
  - You are married and your birthday is earlier in the year than your spouse's or you are living with another individual, regardless of whether or not you have ever been married to that individual, and your birthday is earlier than that other individual's birthday. This is known as the "birthday rule";

or

- You are separated or divorced and you have informed us of a court decree that makes you responsible for the child's health care expenses;

or

- There is no court decree, but you have custody of the child.

### Other Situations

We will be primary when any other provisions of state or federal law require us to be.

#### How We Pay Claims When We Are Primary

When we are the primary plan, we will pay the benefits in accordance with the terms of your contract, just as if you had no other health care coverage under any other plan.

#### How We Pay Claims When We Are Secondary

We will be secondary whenever the rules do not require us to be primary.

#### How We Pay Claims When We Are Secondary

When we are the secondary plan, we do not pay until after the primary plan has paid its benefits. We will then pay part or all of the allowable expenses left unpaid, as explained below. An "allowable expense" is a health care expense covered by one of the plans, including copayments, coinsurance, and deductibles.

- If there is a difference between the amount the plans allow, we will base our payment on the higher amount. However, if the primary plan has a contract with the provider, our combined payments will not be more than the amount called for in our contract or the amount called for in the contract of the primary plan, whichever is higher. Health maintenance organizations (HMOs) and preferred provider organizations (PPOs) usually have contracts with their providers.
- We will determine our payment by subtracting the amount the primary plan paid from the amount we would have paid if we had been primary. We may reduce our payment by any amount so that, when combined with the amount paid by the primary plan, the total benefits paid do not exceed the total allowable expense for your claim. We will credit any amount we would have paid in the absence of your other health care coverage toward our own plan deductible.
- If the primary plan covers similar kinds of health care expenses, but allows expenses that we do not cover, we may pay for those expenses.
- We will not pay an amount the primary plan did not cover because you did not follow its rules and procedures. For example, if your plan has reduced its benefit because you did not obtain precertification, as required by that plan, we will not pay the amount of the reduction, because it is not an allowable expense.

#### Questions About Coordination of Benefits?

Contact Your State Insurance Department

## CHAPTER 45-12-01

### 45-12-01-01. Definitions. As used in this article:

1. "Alteration" means a structural modification of or a departure from an original or existing construction.
2. "Apartments" means all multiple dwellings, including condominiums.
3. "Approved" means approved by the commissioner.
4. "A.S.M.E. Code" means the Boiler and Pressure Vessel Construction Code of the American society of mechanical engineers of which sections I, II, IV, V, VIII (divisions 1, 2, and 3), IX, and X, ~~2004~~ 2004 edition, are hereby adopted by the commissioner and incorporated by reference as a part of this article. A copy of the American Society of Mechanical Engineers Code is on file at the office of the boiler inspection program. The American Society of Mechanical Engineers Code may be obtained from the American society of mechanical engineers headquarters at 3 park avenue, New York, New York 10016-5990.
5. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels or from electricity or nuclear energy. The term boiler includes fired units for heating or vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves, as provided under North Dakota Century Code section 26.1-22.1-01.
6. "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to decide whether a certificate may be issued under North Dakota Century Code section 26.1-22.1-10.
7. "Certificate of competency" means a certificate issued by a jurisdiction indicating that a person has passed an examination prescribed by the national board of boiler and pressure vessel inspectors.
8. "Chief inspector" means the chief boiler inspector appointed by the commissioner to serve in the capacity as stated by law.
9. "Commissioner" means the insurance commissioner of North Dakota.
10. "Condemned boiler" means a boiler that has been inspected and declared unsafe or disqualified by legal requirements by an inspector qualified to take such action who has applied a stamping or marking designating its rejection.



11. "Deputy inspector" means a boiler inspector or inspectors employed by the commissioner to assist the chief inspector in making inspections of boilers.
12. "Existing installations" includes any boiler constructed, installed, or placed in operation before July 1, 1973.
13. "External inspection" means an inspection made when a boiler is in operation.
14. "Fusion welding" means a process of welding metals in a molten or molten and vaporous state, without the application of mechanical pressure or blows. Such welding may be accomplished by the oxyacetylene or oxyhydrogen flame or by the electric arc. Thermic welding is also classed as fusion.
15. "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] or temperatures exceeding two hundred fifty degrees Fahrenheit [121.16 degrees Celsius]. For practical purposes it must be deemed the same as a power boiler.
16. "Hot water supply boiler" means a fired boiler used exclusively to supply hot water for purposes other than space heating and includes all service-type and domestic-type water heaters not otherwise exempt by North Dakota Century Code section 26.1-22.1-06.
17. "Inspector" means the chief boiler inspector or any deputy inspector or special inspector.
18. "Internal inspection" means an inspection made when a boiler is shut down and handholes and manholes are opened for inspection of the interior.
19. "Low pressure and heating boiler" means a boiler operated at pressures not exceeding fifteen pounds per square inch gauge [103 kilopascals] for steam or at pressures not exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] and temperatures not exceeding two hundred fifty degrees Fahrenheit [121.1 degrees Celsius] for water.
20. "Major repair" means a repair upon which the strength of a boiler would depend. Major repairs are those that are not of a routine nature as described in the National Board Inspection Code.
21. "Miniature boiler" means any boiler that does not exceed any of the following limits:
  - a. Sixteen-inch [40.64-centimeter] inside diameter of shell.

- b. Twenty square feet [1.86 square meter] heating surface.
  - c. Five cubic feet [.142 cubic meter] gross volume, exclusive of casing and insulation.
  - d. One hundred pounds per square inch gauge [689.48 kilopascals] maximum allowable working pressure.
22. "National board" means the national board of boiler and pressure vessel inspectors, 1055 crupper avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the American Society of Mechanical Engineers Code.
23. "National Board Inspection Code" means the manual for boiler and pressure vessel inspectors supplied by the national board. The National Board Inspection Code, ~~2001~~ 2004 edition, is hereby adopted by the commissioner and incorporated by reference as a part of this article. Copies of this code may be obtained from the national board at 1055 crupper avenue, Columbus, Ohio 43229.
24. "New boiler installations" includes all boilers constructed, installed, or placed in operation after July 1, 1973.
25. "Nonstandard boiler" means a boiler that does not bear the state stamp, the national board stamping, the American society of mechanical engineers stamp, or the stamp of any state or political subdivision which has adopted a standard of construction equivalent to that required by this article.
26. "Owner or user" means any person, firm, corporation, state, or political subdivision owning or operating any boiler which is not specifically exempt under North Dakota Century Code section 26.1-22.1-06 within North Dakota.
27. "Power boiler" means a closed vessel in which steam or other vapor (to be used externally to itself) is generated at a pressure of more than fifteen pounds per square inch gauge [103 kilopascals] by the direct application of heat.
28. "Reciprocal commission" means a commission issued by the commissioner to persons who have passed a written examination prescribed by the national board and who hold a national board commission issued by the national board, or to persons who have passed the written examination prescribed by the national board and are employed by ~~a self-insured corporation making their own inspections~~ an accredited national board owner/user inspection organization.

29. "Reinstalled boiler" means a boiler removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
30. "Reinstalled pressure vessel" means a pressure vessel removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
31. "Repair" is a restoration of any damaged or impaired part to an effective and safe condition.
32. "Secondhand boiler" means a boiler of which both the location and ownership have been changed after primary use.
33. "Secondhand pressure vessel" means a pressure vessel of which both the location and ownership have been changed after primary use.
34. "Service-type or domestic-type water heater" means a fired water heater of either instantaneous or storage type, used for heating or combined heating and storage of hot water to be used exclusively for domestic or sanitary purposes, with temperatures not exceeding two hundred ten degrees Fahrenheit [98.68 degrees Celsius], and a heat input not in excess of two hundred thousand British thermal units [ $2.11 \times 10$  to the 8th power joules] per hour, and pressure not to exceed one hundred sixty pounds per square inch [1103.17 kilopascals].
35. "Special inspector" means an inspector regularly employed by an ~~insurance company authorized to insure against loss from explosion of boilers in this state~~ accredited national board authorized inspection agency or an inspector who has passed the national board examination and is employed by a ~~self-insured corporation~~ an accredited national board owner/user inspection organization.
36. "Standard boiler" means a boiler that bears the stamp of North Dakota or of another state that has adopted a standard of construction equivalent to that required by this article or a boiler that bears the national board stamping or American society of mechanical engineers stamp.
37. "State of North Dakota Boiler Construction Code" is used to designate the accepted reference for construction, installation, operation, and inspection of boilers and will be referred to as this article. Anything not amended or specifically covered in this article must be considered the same as the American Society of Mechanical Engineers Code.

38. "Steam traction engines" means boilers on wheels which are used solely for show at state fairs and other exhibitions in which the public is invited to attend.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; October 1, 2002; January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-02

### 45-12-02-01. Inspection reports to be submitted.

1. **Power boilers.** Each ~~insurance company or self-insured corporation~~ authorized inspection agency or owner/user inspection organization, to which a special inspector commission has been issued, shall submit to the chief boiler inspector complete data of each high pressure boiler insured or inspected by it or covered by a written inspection agreement in North Dakota on form ~~NB-5 or other approved form for boilers~~ SFN 10706. Each ~~internal certificate~~ inspection must be reported to the chief boiler inspector within fifteen days after inspection on form ~~NB-6 or other approved form for boilers~~ SFN 10706. ~~External Noncertificate~~ inspections on high pressure boilers must be reported on form ~~NB-6 or other approved form~~ SFN 10706 only when hazardous conditions affecting the safety of the boiler are found to exist.
2. **Low pressure, hot water heating, and hot water supply boilers.** Within one year from effective date of this article, each ~~insurance company or self-insured corporation~~ authorized inspection agency or owner/user inspection organization shall submit to the chief boiler inspector complete data of each boiler insured or inspected by it or covered by a written inspection agreement in North Dakota on form ~~NB-5 or other approved form for boilers~~ SFN 10706. All required certificate inspections must be reported on form ~~NB-6 or other approved form~~ SFN 10706.

**History:** Effective June 1, 1994; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-02-02. Insurance companies and other authorized inspection agencies to notify the chief inspector of new, canceled, or suspended risks.** Each insurance company or other authorized inspection agency shall notify the chief inspector within thirty days of each boiler insured, covered by a written inspection agreement, canceled, not renewed, or suspended because of unsafe conditions.

**History:** Effective June 1, 1994; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-02-03. Insurance companies and other authorized inspection agencies to notify the chief inspector of defective boilers and boiler accidents.** If a special inspector, upon the first inspection of a new-risk boiler, finds that the boiler or any of the appurtenances are in such condition that the inspector's company refuses insurance or the boiler does not comply with the provisions of this article, the company shall submit a report of the defects to the chief inspector. When an accident occurs to an insured boiler or to a boiler covered by a written

inspection agreement which requires major repairs as defined in subsection 20 of section 45-12-01-01, or which results in the boiler being removed from service, that accident must be reported to the chief boiler inspector within thirty days of the insuring or inspecting company first becoming aware of the accident.

**History:** Effective June 1, 1994; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-02-04. ~~Self-insured corporations~~ Owner/user inspection organizations making own inspections.** The chief inspector will not be required to inspect boilers in any establishment owned and operated by a ~~self-insured corporation~~ an owner/user inspection organization provided an annual boiler inspection program is established and maintained by such ~~corporation~~ organization and all boilers and appurtenances are constructed, installed, operated, and repaired in accordance with the provisions of this article. When boilers are inspected by an employee of ~~a self-insured corporation~~ an owner/user inspection organization, such inspector must hold a certificate of competency or a commission issued by North Dakota or a state that has adopted the American Society of Mechanical Engineers Code. A complete report of each boiler inspection must be filed with the chief inspector on ~~national board or other approved forms~~ form SFN 10706 within fifteen days of inspection.

**History:** Effective June 1, 1994; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-02-08. Validity of inspection certificate for boilers.** A certificate of inspection, issued in accordance with this article, is valid until expiration unless some defect or condition affecting the safety of the boiler is disclosed and if all inspection fees have been paid. A certificate of inspection is valid for the following time periods:

1. Thirty-six months for power boilers over one hundred thousand pounds [45359.24 kilograms] of steam per hour as allowed by North Dakota Century Code section 26.1-22.1-07.
2. ~~Twenty-four~~ Twelve months for steam traction engines.
3. Twelve months for all other power boilers.
4. Thirty-six months for hot water heating and hot water supply boilers located in apartments and condominiums.
5. Twenty-four months for all other hot water heating, hot water supply, and low pressure boilers.

A certificate issued for a boiler inspected by a special inspector is valid only if the boiler for which it was issued continues to be insured by a duly authorized

insurance company ~~or self-insured corporation~~, covered by a written inspection agreement with an authorized inspection agency, or inspected by an accredited owner/user inspection organization. A two-month grace period must be extended for any certificate.

**History:** Effective June 1, 1994; amended effective January 1, 2000; January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-02-17. Reporting repairs to be made.**

1. The owner or person in charge of a boiler repair shop making major repairs to a boiler shall notify the chief boiler inspector of each major repair or alteration to be made to a boiler, and the anticipated repair must be approved before work is started; or
2. If the boiler is insured, covered by a written inspection agreement with an authorized inspection agency, or owned by ~~a self-insured corporation~~ an owner/user inspection organization, the special inspector may authorize the repair. After such repairs are made, they are subject to the approval of an inspector.

**History:** Effective June 1, 1994; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-02-22. Major repairs to boilers.** Major repairs, as defined in this article, must be made by:

1. A firm in possession of a valid national board "R" certificate of authorization for the type of vessel to be repaired; or
2. ~~Any self-insured company that has employees for the purpose of inspecting its own boilers in this state and these employees have been issued special inspector commissions under North Dakota Century Code section 26.1-22.1-08; or~~
3. A firm authorized by the commissioner to do repairs to boilers. Such authorization may only be issued upon a successful review of that firm's repair capabilities by the chief inspector. Such a review must be based on the National Board Inspection Code and must be made on a frequency determined by the chief inspector. Such authorization may be revoked or not renewed by the chief inspector for cause.

The requirements of this section are effective December 1, 1994.

**History:** Effective June 1, 1994; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14



## CHAPTER 45-12-03

### 45-12-03-07. Automatic low-water fuel cutoff or water-feeding device.

1. Each automatically fired steam or vapor system boiler must be equipped with an automatic low-water cutoff located to automatically cut off the fuel supply when the surface of the water falls to the lowest safe waterline. For other than electric and miniature boilers, each automatically fired high-pressure steam or vapor system boiler must be equipped with at least two low-water fuel cutoffs, one of which must be readily testable. One low-water fuel cutoff must be set to function ahead of the other. Functioning of the lower of the controls shall cause safety shutdown and lockout. The manual reset may be incorporated into the lower cutoff control. Where a reset device is separate from the low-water fuel cutoff, a means shall be provided to indicate actuation of the low-water fuel cutoff. The manual reset device may be of the instantaneous type or may include a time delay of not more than three minutes after the fuel has been cut off. A system may incorporate a time delay component with the low-water fuel cutoff device to prevent short cycling. A time delay must not exceed the manufacturer's recommended timing, or ninety seconds, whichever is less. A high pressure boiler regularly attended by a full-time operator is not considered as automatically fired, and is not required to be equipped with low-water fuel cutoffs. For other than electric boilers, the primary low-water fuel cutoff for low pressure steam boilers must be a float type that can be readily tested.
2. If a water-feeding device is installed, it must be constructed so that the water inlet valve cannot feed water into the boiler through the float chamber and located to supply requisite feedwater. The lowest safe waterline should not be lower than the lowest visible part of the water glass.
3. Such fuel or feedwater control device may be attached directly to a boiler or to the tapped openings provided for attaching a water glass directly to a boiler, provided that for low pressure boilers such connections from the boiler are nonferrous tees or Ys not less than one-half-inch [12.7-millimeter] pipe size between the boiler and the water glass, so that the water glass is attached directly and as close as possible to the boiler; the straight tapping of the Y or tee to take the water glass fittings, and the side outlet of the Y or tee to take the fuel cutoff or water-feeding device. The ends of all nipples must be reamed to full-size diameter.
4. Designs embodying a float and float bowl must have a vertical straight drainpipe at the lowest point in the water equalizing pipe connections by which the bowl and the equalizing pipe can be flushed and the device

tested. This drainpipe and connections must be not less than national pipe standard (NPS) 1.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

#### **45-12-03-08. Safety appliances.**

1. A person may not remove, tamper with, or render inoperative any safety appliances prescribed by these rules except for the purpose of making repairs. The resetting of safety appliances may not exceed the accepted working pressure of the unit.
2. Repairs or adjustments made to safety or safety relief valves must be done by the manufacturer of the valve or an approved testing facility equipped to do such repairs or adjustments. The resetting of safety valves or safety relief valves may not exceed the accepted working pressure for the unit.
3. An approved testing facility must be one of the following:
  - a. A facility holding a valid certificate of authorization and "VR" symbol stamp issued by the national board of boiler and pressure vessel inspectors.
  - b. ~~An owner or user "VR" program, the full equivalent of the national board "VR" program, reviewed and accepted by the chief boiler inspector, and a representative of the owner or user's authorized inspection agency responsible for the inservice inspection of the owner or user's boilers.~~
  - c. An owner or user program for doing adjustments to set pressure or blowdown, or both, to boiler pressure relief valves owned by them, provided the adjusted settings or capacities, or both, and the date of the adjustments are recorded on a metal tag secured to the seal wire. All external adjustments must be sealed showing the identification of the organization making the adjustments. The chief boiler inspector shall review the training, qualifications, and procedures used to implement this program.

**History:** Effective June 1, 1994; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

#### **45-12-03-26. Inspection of boilers.**

1. Each boiler used or proposed to be used within this state, except boilers exempt in North Dakota Century Code section 26.1-22.1-06, must be thoroughly inspected as to their construction, installation, condition, and operation as follows:
  - a. Power boilers must be inspected annually both internally while not under pressure and externally while under pressure. However, any power boiler or steam generator, the operation of which is an integral part of or a necessary adjunct to other continuous processing operations, must be inspected internally at such intervals as are permitted by the shutting down of the processing operation. The chief boiler inspector may provide for extension of time between internal inspections, but an external inspection must be made, and report submitted, for purposes of issuing a certificate. In all other instances the certificate inspection must be an internal inspection when construction permits.
  - b. Power boilers of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, which comply with subsection 2 of North Dakota Century Code section 26.1-22.1-07, must be inspected at least once every thirty-six months internally while not under pressure and at least once every twelve months externally while under pressure.
  - c. Steam traction engines must be inspected at least once every ~~twenty-four~~ twelve months. Inspections must alternate between internal inspections and hydrostatic tests. External inspections, made with the boiler under pressure, will be made at the discretion of the inspector.
  - d. Low pressure steam boilers must be inspected annually. Low pressure steam boilers of steel construction must be inspected alternately internally and externally. The issuance of a certificate must normally be based on the internal inspection.
  - e. Hot water heating and hot water supply boilers must be inspected biennially unless they are located in a nursing home, school, nursery school, or kindergarten, in which case they must be inspected annually. Hot water heating and hot water supply boilers located in apartments and condominiums must be inspected triennially. Internal inspections will be required when deemed necessary by the inspector.
  - f. A grace period of two months beyond the period specified in the above subdivisions may elapse between inspections.
2. The only reports normally required by the chief boiler inspector will be reports of inspections made as a certificate inspection. Certificate inspections must be made during the period of thirty days prior to and

thirty days after the expiration date of the certificate. Noncertificate inspections, when required by the provisions of this section, must be documented in such a manner that reports of these inspections may be furnished to the state insurance department upon the request of the chief boiler inspector. The chief boiler inspector encourages reports to be made at any time adverse conditions are found, or when difficulty is encountered getting cooperation from the owner or user.

3. The inspections required under this section must be made by the chief boiler inspector, or by a deputy inspector, or by a special inspector provided for in this article.
4. If at any time a hydrostatic test is deemed necessary by the inspector, it must be made by the owner or user in the presence of, and under the supervision of the inspector, and must be approved by the inspector.
5. Cast iron boilers must be considered as boilers that do not lend themselves to internal inspections. Internal inspections of electric boilers must be made when deemed necessary by the inspector.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-05

### 45-12-05-19. Fusible plugs.

1. Fire-actuated fusible plugs, if used, must conform to the requirements of the American Society of Mechanical Engineers Code for power boilers; ~~July 1, 1973.~~
2. They may be replaced by steel plugs if the boiler is gas-fired or oil-fired and is equipped with a low water fuel cutoff.

**History:** Effective June 1, 1994; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-09

**45-12-09-14. Temperature control.** Each automatically fired hot water boiler must be protected from over temperature by two temperature-operated controls.

1. Each individual automatically fired water boiler must have a safety limit control that will cut off the fuel supply to prevent water temperature from exceeding the maximum allowable temperature at the boiler outlet. The water temperature safety control must be constructed to prevent a temperature setting above the maximum allowable temperature and be of the manual reset type.
2. Each individual hot water boiler or each system of commonly connected boilers without intervening valves must have a control that will cut off the fuel supply when the water temperature reaches an operating limit, which must be less than the maximum allowable temperature.

**History:** Effective June 1, 1994; amended effective January 1, 2000; January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-09-14.1. Pressure control.** Each automatically fired steam boiler must be protected from overpressure by two pressure-operated controls.

1. Each automatically fired steam boiler must have a safety limit control that will cut off the fuel supply to prevent steam pressure from exceeding the fifteen pounds per square inch [103 kilopascals] maximum allowable working pressure of the boiler. Each control must be constructed to prevent a pressure setting above fifteen pounds per square inch [103 kilopascals] and be of the manual reset type.
2. Each individual steam boiler or each system of commonly connected steam boilers must have a control that will cut off the fuel supply when the pressure reaches an operating limit, which must be less than the maximum allowable pressure.
3. Shutoff valves of any type may not be placed in the steam pressure connection between the boiler and the controls described in subsections 1 and 2. These controls must be protected with a siphon or equivalent means of maintaining a water seal that will prevent steam from entering the control.

**History:** Effective June 1, 1994; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-09-18. Low-water fuel cutoff.**

1. Each automatically fired hot water heating boiler must have an automatic low-water fuel cutoff that has been designed for hot water service and which can be tested without draining the system or the boiler. It must be so located as to automatically cut off the fuel supply prior to the surface of the water falling below the lowest safe water level as established by the boiler manufacturer.
2. A coil-type or watertube boiler requiring forced circulation to prevent overheating of the coils or tubes must have a flow-sensing device installed in the boiler or piping in lieu of the required low-water fuel cutoff that will cut off the fuel supply when the circulation flow is interrupted. Functioning of the low-water fuel cutoff due to a low water condition must cause safety shutdown and lockout. Where a reset device is separate from the low-water fuel cutoff, a means shall be provided to indicate actuation of the low-water fuel cutoff. The manual reset may be the instantaneous type, or may include a time delay of not more than three minutes after the fuel has been cut off.
3. Low-water fuel cutoff requirements for steam boilers are addressed by section 45-12-03-07.

**History:** Effective June 1, 1994; amended effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

#### **45-12-09-21. Emergency shutoff switches.**

1. A manually operated emergency shutoff switch or circuit breaker must be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch must be located just inside the door. If there is more than one door to the boiler room, there must be a switch located at each door.
2. The emergency switch or circuit breaker must disconnect all power to the burner controls.
3. This requirement is limited to single and modular boilers exceeding 400,000 Btu/hr input installed after January 1, 2006.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-10

### **45-12-10-01. Construction and installation standards - Exceptions.**

Unfired pressure vessels may not be installed in North Dakota unless such vessels have been constructed in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, section VIII, division 1, 2, or 3, ~~2004~~ 2004 edition, and bear the "U" stamp as proof of such construction.

Manufacturers shall register unfired pressure vessels with the national board of boiler and pressure vessel inspectors. Unfired pressure vessels must bear the required stamping of the national board.

The requirements of this section apply to all pressure vessels within the scope of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, section VIII, division 1, 2, or 3, ~~2004~~ 2004 edition, with these exceptions:

1. Pressure vessels under federal control.
2. Pressure vessels that do not exceed four cubic feet [30 United States gallons] in volume and two hundred fifty pounds per square inch gauge [1723.70 kilopascals] in pressure.
3. Pressure vessels that do not exceed one and one-half cubic feet [11.22 United States gallons] in volume and six hundred pounds per square inch gauge [4136.88 kilopascals] in pressure.
4. Unfired pressure vessels installed or ordered prior to November 1, 1987. However, these unfired pressure vessels must be maintained in a safe operating condition using ANSI/NB-23 and ANSI/API-510 as guidelines.

Unfired pressure vessels referenced by this section must be protected with the American society of mechanical engineers stamped pressure relief devices as defined in section VIII of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, ~~2004~~ 2004 edition.

Existing pressure relief devices installed on unfired pressure vessels referenced by this section will be considered acceptable if the pressure relief device is set for the correct pressure, if the usage is correct, and if the device is in a satisfactory operating condition.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; October 1, 2002; January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**45-12-10-02. Application of standards - Repairs.** These rules apply only to new construction, except as noted below:



1. Reinstalled pressure vessels must meet the rules for new construction. Exception: National board registration is required only for those vessels ordered and constructed after November 1, 1987.
2. Repairs to unfired pressure vessels and to safety and safety relief valves for those vessels:
  - a. Repairs to safety valves and safety relief valves must be such that valve function is not impaired and the repaired valve will perform to the standards for which it was originally constructed. It is recommended that these repairs be made by a firm in possession of a valid "VR" certificate of authorization from the national board of boiler and pressure vessel inspectors.
  - b. Repairs to unfired pressure vessels must be such that vessels repaired will be returned to a safe and satisfactory operating condition, provided there is not deviation from the original design. It is recommended that these repairs be made by a firm in possession of a valid "R" certificate of authorization from the national board of boiler and pressure vessel inspectors.
  - c. The National Board Inspection Code (ANSI/NB-23, ~~2001~~ 2004 edition) and the American Petroleum Institute Code (ANSI/API-510, 1997 edition) cover repair and alteration procedures. ANSI/API-510 may be used to cover the maintenance inspection, repair, alteration, and rerating procedure for pressure vessels used by the petroleum and chemical process industries. It is intended that ANSI/NB-23 cover installations other than those covered by ANSI/API-510.
3. Alterations to unfired pressure vessels:
  - a. Alterations, as defined in ANSI/NB-23, must be made by a national board "R" certificate holder.
  - b. Alterations may also be made by an organization operating under the provisions of ANSI/API-510, provided the alteration is within the scope of ANSI/API-510.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; October 1, 2002; January 1, 2006.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14



**TITLE 55**

**STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS**



## NOVEMBER 2005

### CHAPTER 55-02-01

#### **55-02-01-16. Registration and renewal of licenses.**

1. Any person who holds a license issued by the board shall be registered with the board. The license expires on the thirty-first day of December in the year of its issuance and is renewable annually upon payment of the license fee. The board shall transmit renewal forms to all licensees whose licenses expire on December thirty-first.
2. The licensee shall pay an annual renewal fee of one hundred ~~twenty-five~~ fifty dollars.
3. An applicant for renewal shall provide documentation of completion of the continuing education required by section 55-02-01-12.
4. The board shall maintain a register of all licensed nursing home administrators. The board shall maintain a complete file of such pertinent information as may be deemed necessary.
5. A licensee who does not meet the requirement for renewal by December thirty-first may renew the license by meeting the requirements and paying a late renewal fee in the amount of twenty-five dollars per month for each month following December thirty-first. If the requirements for renewal are not met ~~by June thirtieth of the year following the renewal year~~ within six months of expiration, the license ~~expires~~ shall not be renewed.

**History:** Amended effective February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; November 1, 2005.

**General Authority:** NDCC 43-34-04, 43-34-05, 43-34-09

**Law Implemented:** NDCC 43-34-05, 43-34-09, 43-34-10

**55-02-01-17. Denial, suspension, and revocation of licenses.** The board, after notice and opportunity for hearing, may deny an application for license,

suspend, or revoke a license for a nursing home administrator, or may reprimand or otherwise discipline a licensee, if the licensee or applicant for license:

1. Has violated any of the provisions of the law pertaining to the licensing of nursing home administrators or the rules and regulations of the board pertaining thereto;
2. Has violated any of the provisions of the law, rules, or regulations of the licensing authority having jurisdiction over the operation and licensing of nursing homes;
3. Has practiced fraud, deceit, or misrepresentation or provided misleading omission or material misstatement of fact in securing, procuring, renewing, or maintaining a nursing home administrator license;
4. Has engaged in fraudulent, deceptive, or dishonest conduct in the licensee's capacity as a nursing home administrator;
5. Has committed acts of professional misconduct or professional negligence ~~in a nursing home~~;
6. Has practiced without a license;
7. Has transferred or surrendered possession of the licensee's license to any other person;
8. Has engaged in fraudulent, misleading, or deceptive advertising with respect to the facility;
9. Has impersonated another licensee;
10. Has failed to exercise true regard for the safety, health, and life of the resident;
11. Has permitted unauthorized or illegal disclosure of information relating to a resident or the resident's records;
12. Has discriminated in respect to residents or staff with regard to race, religion, color, age, sex, creed, marital status, disability, status with regard to public assistance, or national origin;
13. Has been convicted of an offense having a direct bearing on the applicant or licensee's ability to serve the public as a nursing home administrator or, following conviction of any offense, has been determined by the board to be insufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1;

14. Has engaged in sexual harassment, made sexual advances toward, or engaged in sexual contact with any nursing home resident, or engaged in sexual harassment of any nursing home employee, student, trainee, volunteer, consultant, or visitor ~~to the facility in which the licensee practices;~~
15. Has used the licensee's professional status, title, position, or relationship as a nursing home administrator or licensee to coerce, improperly influence, or obtain money, property, or services from a resident, resident's family member, visitor, employee, or any person served by or doing business with the a nursing facility that the licensee administers or is employed by home;
16. Has made a false statement or provided false or misleading information to the board, failed to submit reports as required by the board, failed to cooperate with an investigation of the board, or violated an order of the board;
17. Has failed to report a reprimand, restriction, limitation, condition, revocation, suspension, surrender, or other disciplinary action against the person's license as a nursing home administrator in another jurisdiction, has failed to report the existence of a complaint or other charges against the person's nursing home administrator license in another jurisdiction, or has been denied a license as a nursing home administrator by any other jurisdiction;
18. Has abused or is dependent on alcohol, legend drugs, or controlled substances, and the abuse or dependency affects the performance of the licensee's duties;
19. Has forged prescriptions or made drugs available to self, friends, or family members; or
20. Has failed to complete continuing education requirements.

**History:** Amended effective February 1, 1993; December 1, 1998; December 1, 2002; November 1, 2005.

**General Authority:** NDCC 43-34-03, 43-34-04, 43-34-09

**Law Implemented:** NDCC 43-34-03, 43-34-03.1, 43-34-09, 43-34-10, 43-34-11, 43-34-12





**TITLE 61**  
**STATE BOARD OF PHARMACY**



## JANUARY 2006

### CHAPTER 61-03-01

**61-03-01-05. Cancellation of certificates.** ~~Complaints for the revocation of certificates of any pharmacist or assistant pharmacist shall be in writing, stating concisely the facts constituting the grounds of complaint. Such complaint shall be filed with the secretary. Repealed effective January 1, 2006.~~

~~No complaint shall be acted upon unless accompanied by one or more affidavits. The board will not grant a hearing unless it is satisfied that the complaint is meritorious and made in good faith.~~

~~Upon receipt of the complaint, the secretary shall forthwith forward copies of the complaint to each member of the board.~~

~~If a majority of members of the board notify the secretary that they desire a hearing on the complaint, the secretary shall fix a time and place of hearing and notify the accused of hearing, and annex to the notice a copy of the complaint.~~

~~If any regular or special meeting of the board is to be held within thirty days, the hearing shall be held at such meeting. If no regular or special meeting is to be held within thirty days, then the secretary, unless the board otherwise orders, shall fix the time and place so as to afford the accused at least fifteen days' notice of the hearing.~~

~~The notice may be served by registered mail or personally. In case of service by registered mail, notice must be mailed at least twenty days before the day of hearing.~~

**General Authority:** NDCC 43-15-10(2)

**Law Implemented:** NDCC 43-15-10(2)

**61-03-01-08. Foreign graduates.** Any applicant who is a graduate of a school or college of pharmacy located outside the United States, which has not been recognized and approved by the board, but who is otherwise qualified to apply for a license to practice pharmacy in this state, shall be deemed to have satisfied the requirements of subsection 3 of North Dakota Century Code section 43-15-15

by verification to the board of the applicant's academic record and the applicant's graduation and by meeting such other requirements as this board may establish from time to time. Each such applicant shall have ~~successfully passed~~ the foreign pharmacy ~~equivalency~~ graduate examination committee (FPGEC) certification (which ~~examination certification~~ is hereby recognized and approved by the board) given ~~awarded~~ by the ~~foreign pharmacy graduate examination commission~~ and ~~demonstrated proficiency in English by passing~~ national association of boards of pharmacy. The FPGEC certification includes the test of English as a foreign language and the test of spoken English (which ~~examination is~~ examinations are hereby recognized and approved by the board) given by the educational testing service as a prerequisite to taking the licensure examination provided for in North Dakota Century Code section 43-15-19.

**History:** Effective August 1, 1983; amended effective January 1, 2006.

**General Authority:** NDCC 28-32-02, 43-15-10(2)(3)(12)(14), 43-15-15(4)

**Law Implemented:** NDCC 28-32-03, 43-15-10(2)(3)(12)(14), 43-15-15(4)

**ARTICLE 61-11**

**FEES**

Chapter  
61-11-01            Fees

**CHAPTER 61-11-01**  
**FEES**

Section  
61-11-01-01            Fees

**61-11-01-01. Fees.** The following fees must be paid to the board of pharmacy:

1. <u>North Dakota examination</u>	<u>\$100.00</u>
2. <u>Original or duplicate certificate</u>	<u>25.00</u>
3. <u>Reciprocal licensure</u>	<u>150.00</u>
4. a. <u>Internship licensure - North Dakota State University professional student</u> <u>(\$90 is paid to the North Dakota State University college of pharmacy for student programs)</u>	<u>100.00</u>
b. <u>Internship licensure - Pre-pharmacy students</u>	<u>10.00</u>
5. <u>Manufacturer-distributor-warehouse-reverse distributor</u> <u>Wholesale drug license</u>	<u>150.00</u>
<u>Penalty for late renewal</u>	<u>50.00</u>
6. <u>Pharmacy or drug store permit</u>	<u>175.00</u>
<u>Permitting in additional classes</u>	<u>0.00</u>
<u>Penalty for late renewal</u>	<u>50.00</u>
7. <u>Annual renewal for pharmacist in state</u> <u>(one-half is forwarded to the North Dakota pharmacists association)</u>	<u>200.00</u>
<u>Penalty for late renewal</u>	<u>25.00</u>
8. <u>Annual renewal for pharmacist in state (inactive status)</u>	<u>75.00</u>
<u>Penalty for late renewal</u>	<u>25.00</u>
9. <u>Annual renewal for pharmacist out of state</u>	<u>35.00</u>
<u>Penalty for late renewal</u>	<u>25.00</u>
10. <u>Annual registration for pharmacy technician</u> <u>(\$17.50 is forwarded to the national association of pharmacy technicians)</u>	<u>35.00</u>

<u>Penalty for late renewal</u>	<u>10.00</u>
<u>11. Pharmacy technician-in-training (two years)</u>	<u>10.00</u>

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-15-10

**Law Implemented:** NDCC 43-15-10, 43-15-18, 43-15-20, 43-15-25, 43-15-27, 43-15-34, 43-15-38, 43-15.1-04, 43-15.1-05

**TITLE 70**  
**REAL ESTATE COMMISSION**





## JANUARY 2006

### CHAPTER 70-02-01

#### **70-02-01-02. Application for license.**

1. No application for either a broker's or salesperson's license will be accepted from a person under the age of eighteen years.
2. All applications must be filed with the commission before an examination, complete in every detail with every question answered and correct fees sent with the application.
3. It shall be incumbent upon the applicant for a real estate broker's license to submit the applicant's proofs of qualification pursuant to subsection 2 of North Dakota Century Code section 43-23-08. Broker applicants wishing to qualify under the two-year experience requirement shall be required to submit to the commission a letter from said applicant's broker or brokers that the applicant has been actively engaged in the real estate business as a salesperson for at least two years.

"Actively engaged" means that the applicant must have devoted the applicant's full time as a licensed real estate salesperson. The foregoing shall be certified by a licensed real estate broker.

4. Each application for license shall be made on application forms provided by the real estate commission and are to be filled in personally by, or under the supervision of, the applicant.
5. After an application is filed, no refund of application fee will be made to any applicant ~~in the event of withdrawal~~.
6. The commission may deny any application for license when one or more of the following conditions are present:
  - a. The application contains any false statement.

- b. An investigation fails to show affirmatively that the applicant possesses in every instance the necessary qualifications.
  - c. The applicant has acted or attempted to act in violation of North Dakota Century Code chapter 43-23 or this title.
  - d. The applicant has had a license suspended or revoked in another state.
  - e. The check used in paying an examination or license fee shall not, for any reason, be honored by the financial institution upon which it is written.
  - f. The applicant has issued one or more checks or drafts which have been dishonored by a payor bank because:
    - (1) No account exists;
    - (2) The account was closed; or
    - (3) The account did not contain sufficient funds to pay the check or draft in full upon its presentment.
  - g. The applicant's credit history shows the existence of unpaid and overdue judgments, liens, or other debt obligations which, for the protection of the public, requires that the application be denied.
7. If the application and supporting documents on their face show that the applicant is qualified, but from complaints and information received or from investigation it shall appear to the commission at any time before the initial license is delivered, that there may be cause to deny a license, the commission may order a hearing to be held to consider such complaints or information.
8. The commission may require such other proof as may be deemed advisable of the honesty, truthfulness, and good reputation of any applicant, including the officers and directors of any corporation, or the members of any copartnership or association making such application, before accepting an application for license.
9. Inquiry and investigation may be made by the commission as to the financial responsibility of each applicant.
10. When a corporation submits its application for a license, the application must be accompanied by a copy of the articles of incorporation and a certificate of authority issued by the secretary of state.
11. When a partnership submits its application for a license, the application must be accompanied by a copy of the partnership agreement.

12. An applicant for licensure in another state may request the commission to certify to such other state that the applicant is a licensee of this state. A fee as set by the commission shall accompany the request.
13. An application for an organization to be licensed as a salesperson pursuant to North Dakota Century Code section 43-23-05.1 must be accompanied by a one-time license fee of not more than two hundred dollars, as set by the commission. The individual who owns the organization must possess and maintain a valid and active real estate license in order for the organization to be licensed. The failure to do so will cause the organization's license to become inactive and invalid. The one-time fee must be paid each time the organization's license is activated.

**History:** Amended effective August 1, 1981; May 1, 1986; January 1, 1992; February 1, 2004; January 1, 2006.

**General Authority:** NDCC 28-32-02, 43-23-08(7)

**Law Implemented:** NDCC 43-23-05, 43-23-08, 43-23-09, 43-23-11.1

## CHAPTER 70-02-02

**70-02-02-02. Application for approval of classroom instruction, distance education, or correspondence course.** In order for any course to be approved by the real estate commission an application for approval shall be filed with the commission not less than forty-five days prior to the contemplated date of opening. The application, in addition to the name and address of the school or person offering the course as well as any other identifying criteria which the commission may require, must be accompanied by a nonrefundable fee of fifty dollars, and must set forth the following:

1. A proposed course outline, in reasonable detail, with hours spent on each subject area to be covered by the course. Each outline shall make reference to the textbook used and other material related to the course or subject matter, and shall substantially conform to the approved curricula outlines prepared by the commission.
2. A resume on all instructors and subject to be taught must accompany the application.
3. A schedule of course offerings for the year for which approval is sought must accompany the application. Each schedule must include the name, date, time, and place of any course offering. The schedule of offerings must be arranged so as to allow reasonable time for either home study or in-class preparation for each classroom session.
4. A fee schedule for all course offerings must accompany the application.

**History:** Amended effective January 1, 1992; January 1, 2006.

**General Authority:** NDCC 43-23-08(7)

**Law Implemented:** NDCC 43-23-08

**70-02-02-04. Courses of study approved by the commission.** Courses of study provided in North Dakota Century Code section 43-23-08 shall be courses of study approved by the real estate commission and which are offered by any of the following:

1. North Dakota accredited baccalaureate degree granting institutions and North Dakota or non-North Dakota institutions offering programs, and credits from which can be transferred to an accredited North Dakota baccalaureate degree granting institution.
2. Special institutes or courses relating to real estate which ~~institutes or~~ courses are approved by the commission.
3. A correspondence course approved by the commission.

**4. A distance education course approved by the commission.**

**History:** Amended effective January 1, 2006.

**General Authority:** NDCC 43-23-08(7)

**Law Implemented:** NDCC 43-23-08

**70-02-02-07. Review of courses not having received prior approval.**

Any person completing a thirty-hour, sixty-hour, or ninety-hour course of study, either classroom, distance education, or correspondence, which has not received prior commission approval, shall submit a complete listing of the courses taken, the number of hours of study for each course and the qualifications of the teachers, and answer any additional questions which the commission may have regarding the course of study. After review of the information, the commission may approve the course of instruction, distance education, or the correspondence courses and give the applicant credit for meeting the educational requirements imposed by North Dakota Century Code chapter 43-23.

**History:** Amended effective January 1, 2006.

**General Authority:** NDCC 43-23-08(7)

**Law Implemented:** NDCC 43-23-08

## CHAPTER 70-02-04

**70-02-04-01. Continuing education defined.** As used in this chapter, continuing education, unless the context otherwise requires, means accredited educational experience derived from participation in approved lectures, seminars, distance education, and correspondence courses in areas related to real estate, which has been approved by the commission, to maintain and improve the professional skills and upgrade the standard of all real estate licensees.

The commission considers courses in the following areas to be acceptable, but not limited to, when considering approval:

1. Real estate ethics;
2. Legislative issues that influence real estate practice;
3. The administration of licensing provisions of real estate law and the rules, including compliance and regulatory practices;
4. Real estate financing, including mortgages and other financing techniques;
5. Real estate market measurement and evaluation, including site evaluations, market data, and feasibility studies;
6. Real estate brokerage administration, including office management, trust accounts, and employee contracts;
7. Real property management, including leasing agreements, accounting, procedures, and management contracts;
8. Real property exchange;
9. Land use planning and zoning;
10. Real estate securities and syndication;
11. Estate building and portfolio management;
12. Accounting and taxation as applied to real property;
13. Land development;
14. Real estate appraising;
15. Real estate marketing procedures;
16. Marketing business opportunities; and

17. Business courses which relate to the practice of real estate;
18. Agency representation; and
19. Contracts.

**History:** Effective August 1, 1981; amended effective May 1, 1986; January 1, 2006.

**General Authority:** NDCC 28-32-02, 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

**70-02-04-05. Nonqualifying courses.** The following course offerings will not be considered as qualifying for continuing education purposes:

1. "Cram courses" for examinations.
2. Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, language, and report writing.
3. Sales promotion or other meetings held in conjunction with the general business of the attendee or the attendee's employer.
4. Time devoted to breakfast, luncheons, or dinners.
5. Any course certified by the use of a challenge examination. All students must complete the required number of classroom hours in order to receive certification.
6. ~~Any course hours in excess of six obtained by correspondence within the two-year certification period.~~

The listing of the above offerings does not limit the commission's authority to disapprove any application which fails to meet the standards for course approval.

**History:** Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999; January 1, 2006.

**General Authority:** NDCC 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

**70-02-04-12. Correspondence programs.** The amount of credit to be allowed for correspondence programs shall be recommended by the program sponsor based upon the average completion time calculated by the sponsor after it has conducted "field tests". Although the program sponsor must make recommendations concerning the number of credit hours that should be granted, the number of credit hours that will be granted shall be determined by the commission.

~~Credit earned for correspondence coursework is subject to the limitation expressed in subsection 6 of section 70-02-04-05.~~

**History:** Effective August 1, 1981; amended effective January 1, 1992; January 1, 2006.

**General Authority:** NDCC 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

**70-02-04-15. Exemptions from continuing education requirement.** Any salesperson applicant, upon successful completion of the ~~real estate licensing examination, shall be required postlicensing education requirement, evidence of which has been furnished to the commission by the salesperson applicant's broker, is~~ exempt from the ~~sixteen-hour~~ continuing education requirement for only the two-year period during which the salesperson applicant successfully completed ~~such examination~~ the postlicensing education. Any broker applicant, upon successful completion of the real estate licensing examination, ~~and the successful completion of a minimum of thirty classroom hours of prelicensing education earned within the same two-year period in which the applicant has written the licensing examination, shall be~~ is exempt from the ~~sixteen-hour~~ continuing education requirement ~~for only for such~~ the two-year period during which the broker applicant successfully completed said examination.

**History:** Effective August 1, 1981; amended effective January 1, 1992; December 1, 1999; January 1, 2006.

**General Authority:** NDCC 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

**70-02-04-21. Continuing education certificate of attendance.** All schools, seminars, and workshops shall provide an individual certificate of attendance to each licensee upon completion of the educational program or training session under the following conditions:

1. No certificate of attendance shall be issued to a licensee who is absent for more than ten percent of the classroom hours.
2. The certificate shall contain information as to the licensee's name, course title, date, location of course, number of approved credit hours, and signature of course sponsor or instructor.
3. The licensee shall retain the attendance certificate ~~and attach it to the application for renewal of the licensee's license at the time of renewal.~~ The responsibility for recordkeeping will remain with the licensee.



4. The North Dakota real estate commission shall not be required to maintain a list of licensees and their completed courses of education.

**History:** Effective August 1, 1981; amended effective December 1, 1999; January 1, 2006.

**General Authority:** NDCC 43-23-08.2

**Law Implemented:** NDCC 43-23-08.2

## CHAPTER 70-02-05

**70-02-05-10. Surrender of license for failure to provide proof of insurance.** When a licensee receives notice of being placed on inactive status for failure to provide proof of insurance, the licensee shall immediately surrender the license and ~~the licensee's identification card~~ to the commission.

**History:** Effective February 1, 2002; amended effective January 1, 2006.

**General Authority:** NDCC 43-23-19

**Law Implemented:** NDCC 43-23-19

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



**DECEMBER 2005**

**CHAPTER 75-02-06**

**75-02-06-01. Definitions.** In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factor" means the ~~appropriate composite economic change index~~ inflation rate for nursing home services used to develop the legislative appropriation for the department for the applicable rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
6. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:
  - a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 3 of section 75-02-06-07;
  - b. A sale and leaseback to the same licensee;
  - c. A transfer of an interest to a trust;
  - d. Gifts or other transfers for nominal or no consideration;

- e. A merger of two or more related organizations;
  - f. A change in the legal form of doing business;
  - g. The addition or deletion of a partner, owner, or shareholder; or
  - h. A sale, merger, reorganization, or any other transfer of interest between related organizations.
7. "Building" means the physical plant, including building components and building services equipment, licensed as a facility, and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings located on the site used directly for resident care.
8. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
9. "Certified nurse aide" means:
- a. An individual who has satisfactorily completed a nurse aide training and competency evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154 and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or who has been deemed or determined competent as provided in 42 CFR 483.151(a) and (b) and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or
  - b. An individual who has worked less than four months as a nurse aide and is enrolled in a training and evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154.
10. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.
11. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.

12. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. It does not include a donation to a charity.
13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.
14. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.
15. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.
16. "Department" means the department of human services.
17. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
18. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
19. "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 2003 edition.
20. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
21. "Direct care costs" means the cost category for allowable nursing and therapy costs.
22. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
23. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the nursing facility premises.
24. "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
25. "Established rate" means the rate paid for services.

26. "Facility" means a nursing facility not owned or administered by state government or a nursing facility, owned or administered by state government, which agrees to accept a rate established under this chapter. It does not mean an intermediate care facility for the mentally retarded.
27. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
28. "Final decision rate" means the amount, if any, determined on a per day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration, a request for an administrative appeal, or a request for judicial appeal taken from a decision on an administrative appeal.
29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
31. "Freestanding facility" means a nursing facility which does not share basic services with a hospital-based provider.
32. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, uniform allowances, and medical services furnished at nursing facility expense.
33. "Highest market-driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
34. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
35. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other settings. It does not mean care provided to an individual residing in a nursing facility.
36. "Hospice inpatient respite care" means short-term inpatient care provided to an individual when necessary to relieve family members or other persons caring for the individual at home. Care may be provided



for no more than five consecutive days. For purposes of the definition, home does not include nursing facility.

37. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient or has been identified in a resident assessment instrument as "discharged anticipated to return".
38. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
39. "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.
40. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, intermediate care facility for the mentally retarded, or basic care facility.
41. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
42. "Limit rate" means the rate established as the maximum allowable rate for a cost category.
43. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
44. "Managed care organization" means a medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].
45. "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.
46. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.
47. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.

48. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
49. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act (FICA) taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
50. "Pending decision rate" means the amount, determined on a per day basis, by which a rate otherwise set under this chapter would increase if a facility prevails on a request for reconsideration, on a request for an administrative appeal, or on a request for a judicial appeal taken from a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter.
51. "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services to the resident.
52. "Private room" means a room equipped for use by only one resident.
53. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.
54. "Provider" means the organization or individual who has executed a provider agreement with the department.
55. "Rate year" means the calendar year from January first through December thirty-first.
56. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
57. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly,

significantly to influence or direct the policies of an organization or provider.

58. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
59. "Resident" means a person who has been admitted to the facility, but not discharged.
60. "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital leave days and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.
61. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.
62. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
63. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater; but does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds, and does not mean an increase in a nursing facility's licensed capacity resulting from converting beds formerly licensed as basic care beds.
64. "Standardized resident day" means a resident day times the classification weight for the resident.
65. "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, an intermediate care facility for the mentally retarded, a basic care facility, or an acute care setting, or, if not in an institutional setting, is not receiving home and community-based waived services.
66. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
67. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire or

refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

**History:** Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; July 2, 2003; December 1, 2005.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

#### **75-02-06-16. Rate determinations.**

1. For each cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident days for the direct care cost category and resident days for other direct care, indirect care, and property cost categories. The actual rate as calculated is compared to the limit rate for each cost category to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification. The lesser of the actual rate or the limit rate for other direct care, indirect care, and property costs, and the adjustments provided for in subsection 2 and 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.
2.
  - a. For a facility with an actual rate below the limit rate for indirect care costs, an incentive amount equal to seventy percent times the difference between the actual rate, exclusive of the adjustment factor, and the limit rate in effect at the end of the year immediately preceding the rate year, up to a maximum of two dollars and sixty cents or the difference between the actual rate, inclusive of the adjustment factor and the limit rate for indirect care costs, whichever is less, must be included as part of the indirect care cost rate.
  - b. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care and other direct care rates, exclusive of the adjustment factor, or the limit rate in effect at the end of the year immediately preceding the rate year. The three percent operating margin must be added to the rate for the direct care and other direct care cost categories.
3. **Limitations.**
  - a. The department shall accumulate and analyze statistics on costs incurred by facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and

economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.

- b. The department shall review, on an ongoing basis, aggregate payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If aggregate payments to facilities exceed estimated payments under medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under medicare payment principles.
- c. All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, ~~1999~~ 2003. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.
- d. The limit rate for each of the cost categories must be established as follows:
  - (1) Historical costs for the report year ended June 30, ~~1999~~ 2003, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.
  - (2) For the ~~period~~ rate year beginning ~~July 1, 2003~~ January 1, 2006, the limit rate for each cost category is ~~calculated based on:~~
    - (a) For the direct care cost category, ~~eighty-five~~ ninety-five dollars and ~~fifty-seven~~ cents;
    - (b) For the other direct care cost category, ~~fourteen~~ eighteen dollars and ~~eighty-nine~~ twenty-seven cents; and
    - (c) For the indirect care cost category, ~~thirty-six~~ forty-five dollars and ~~fifty-four~~ twenty-three cents.

- (3) For rate years beginning on or after January 1, ~~2004~~ 2007, the limit rate for each cost category is calculated based on:
- (a) For the direct care cost category, ~~eighty-five~~ ninety-five dollars and fifty-seven cents multiplied by the adjustment factor determined under ~~subparagraph b of paragraph 3 of subdivision b of subsection 4;~~
  - (b) For the other direct care cost category, ~~fourteen~~ eighteen dollars and ~~eighty-nine~~ twenty-seven cents multiplied by the adjustment factor determined under ~~subparagraph b of paragraph 3 of subdivision b of subsection 4;~~ and
  - (c) For the indirect care cost category, ~~thirty-six~~ forty-five dollars and ~~fifty-four~~ twenty-three cents multiplied by the adjustment factor determined under ~~subparagraph b of paragraph 3 of subdivision b of subsection 4.~~
- e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.
- f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:
- (1) Actual census for the report year; or
  - (2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:
    - (a) Multiplied times three hundred sixty-five; and
    - (b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.
- g. The department may waive or reduce the application of subdivision f if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:
- (1) The facility has reduced licensed capacity; or
  - (2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision f.

4. ~~Adjustment factors for direct care, other direct care, and indirect care costs:~~

~~a. An appropriate composite economic change index may adjustment factor shall be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care under subsection 1 and for purposes of adjusting limitations of the limit rates for direct care costs, other direct care costs, and indirect care costs under subsection 3, but may not be used to adjust property costs under either subsection 1 or 3.~~

~~b. For purposes of this section:~~

~~(1) "Appropriate composite economic change index" means one-half of the increase, if any, in the consumer price index, plus one-half of the increase, if any, in the data resources, incorporated, North Dakota specific nursing home input price index.~~

~~(2) The "consumer price index increase" means the percentage (rounded to the nearest one-tenth of one percent) by which consumer price index for urban wage earners and clerical workers (CPI-W), all items, United States city average for the quarter ending September thirtieth of the year immediately preceding the rate year (as prepared by the United States department of labor) exceeds that index for the quarter ending September thirtieth of the second year preceding the rate year.~~

~~(3) "Data resources, incorporated, North Dakota specific nursing home input price index" means:~~

~~(a) For purposes of determining the adjustment factor applicable to historical costs under subsection 1, for direct care, other direct care, and indirect care, the composite index for the eighteen-month period beginning immediately after the report year ends; and~~

~~(b) For purposes of determining the adjustment factor applicable to the limit rates for direct care, other direct care, and indirect care under subsection 3, the composite index for the period beginning January 1, 2004, and ending at the end of the rate year.~~

5. Rate adjustments.

a. Desk audit rate.

- (1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by telephone or mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department shall review the information and make appropriate adjustments.
- (2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.
- (3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate except as provided for in section 75-02-06-22 or subdivision c.
- (4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. No decision on the request for reconsideration of the desk rate may be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.
- (5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.
- (6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year that result in a change of at least ten cents per day for the rate weight of one.

**b. Final rate.**

- (1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.
- (2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least ten cents per day for the rate weight



of one that are found during a field audit or are reported by the facility within twelve months of the rate yearend.

- (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c.
- (4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.
- (5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
  - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least ten cents per day for the rate weight of one must result in a change to the final rate. The change must be applied retroactively as provided for in this section.
  - (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least ten cents per day for the rate weight of one had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.
  - (c) Adjustments resulting from an audit of home office costs, that result in a change of at least ten cents per day for the rate weight of one, must be included as an adjustment in the report year in which the costs were incurred.
  - (d) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.

c. Pending decision rates for private-pay residents.

- (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department

shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.

- (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.
  - (3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.
  - (4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.
- d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least twenty-five cents per day, except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

6. Rate payments.

- a. The rate as established must be considered as payment for all accommodations and includes all items designated as routinely provided. No payments may be solicited or received from the resident or any other person to supplement the rate as established.
- b. The rate as established must be paid by the department only if the rate charged to private-pay residents for semiprivate accommodations equals the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to the department for the same bed type, i.e., hospital or leave days.
- c. If the established rate exceeds the rate charged to a private-pay resident, 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 at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund must be the difference between the established rate and the rate charged the private-pay resident times the number of medical assistance resident days paid during the period in which the established rate exceeded the rate charged to private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.
- d. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments may not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.
- e. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year that exceed the established rate may be made unless specifically provided for in this section.

7. Partial year.

- a. Rates for a facility changing ownership during the rate period are set under this subdivision.
  - (1) The rates established for direct care, other direct care, indirect care, operating margins, and incentives for the previous owner must be retained through the end of the rate

period and the rates for the next rate period following the change in ownership must be established:

- (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
  - (b) For a facility with less than four months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 4; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.
- (2) Unless a facility elects to have a property rate established under paragraph 3, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:
- (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
  - (b) For a facility with less than four months of operation under the new ownership during the report year, by using the rate established for the previous owner for the previous rate year; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.
- (3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not

exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

- b. For a new facility, the department shall establish an interim rate equal to the limit rates for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the property rate. The property rate must be calculated using projected property costs and projected census. The interim rate must be in effect for no less than ten months and no more than eighteen months. Costs for the period in which the interim rate is effective must be used to establish a final rate. If the final rates for direct care, other direct care, and indirect care costs are less than the interim rates for those costs, a retroactive adjustment as provided for in subsection 5 must be made. A retroactive adjustment to the property rate must be made to adjust projected property costs to actual property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs must be the greater of actual census, projected census, or census imputed at ninety-five percent of licensed beds.
  - (1) If the effective date of the interim rate is on or after March first and on or before June thirtieth, the interim rate must be effective for the remainder of that rate year and must continue through June thirtieth of the subsequent rate year. The facility shall file by March first an interim cost report for the period ending December thirty-first of the year in which the facility first provides services. The interim cost report is used to establish the actual rate effective July first of the subsequent rate year. The partial year rate established based on the interim cost report must include applicable incentives, margins, phase-ins, and adjustment factors and may not be subject to any cost settle-up. The cost reports for the report year ending June thirtieth of the current and subsequent rate years must be used to determine the final rate for the periods that the interim rate was in effect.
  - (2) If the effective date of the interim rate is on or after July first and on or before December thirty-first, the interim rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report year ending June thirtieth of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the subsequent rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the periods the interim rate was in effect.



licensed beds is issued by the state department of health or the first day of the month beginning after the date when the request for a projected property rate is made to the department, whichever is later, through the end of the rate year. The facility shall file by March first an interim property cost report following the rate year. The interim cost report is used to determine the final rate for property and to establish the amount for a retroactive cost settle-up. The final rate for property is limited to the lesser of the interim property rate or a rate based upon actual property costs. The property rate for the subsequent rate year must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on property costs actually incurred during the report year; and may not be subject to retroactive cost settle-up. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

- e. For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.
  - f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.
  - 9. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subdivision c or d and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subdivision c or d may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
8. One-time adjustments.
- a. Adjustments to meet certification standards.
    - (1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs

that must be increased to correct the deficiencies cited in the survey process.

- (2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:
  - (a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;
  - (b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and
  - (c) Provide a detailed list of any other costs necessary to meet survey standards.
- (3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the limit rate.
- (4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

**b. Adjustments for unforeseeable expenses.**

- (1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.
- (2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:
  - (a) An explanation as to why the facility believes the expense was unforeseeable;
  - (b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and



- (c) A detailed breakdown of the unforeseeable expenses by expense line item.
- (3) The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on its background and knowledge of nursing care industry and business trends.
  - (4) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.
  - (5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.
- c. Adjustment to historical operating costs.
- (1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.
  - (2) The following conditions must be met before a facility can receive the adjustment:
    - (a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;
    - (b) The facility shall document all available resources, including efficiency incentives, if used to increase nursing hours, are not sufficient to meet the minimum standards; and
    - (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the

projected cost for salary and fringe benefits for the additional staff.

- (3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any rate limitations that may apply.
  - (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 5.
  - (5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.
- d. Adjustments for disaster recovery costs when evacuation of residents occurs.
- (1) A facility may incur certain costs when recovering from a disaster such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.
  - (2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.
  - (3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.
  - (4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for the first six months following the month the facility readmits the first resident.

- (5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.
9. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds ten cents per day for the rate weight of one.

**History:** Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002; July 2, 2003; December 1, 2005.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)



**TITLE 96**

**BOARD OF CLINICAL LABORATORY PRACTICE**



JANUARY 2006

**CHAPTER 96-02-10**  
**EXEMPTION FROM LICENSURE**

Section

96-02-10-01

Exempt Tests and Methods

96-02-10-02

Supervision

**96-02-10-01. Exempt tests and methods.** An individual, supervised by an individual licensed by the board, performing the following tests and using the following methods, is exempt from the provisions of North Dakota Century Code chapter 43-48:

1. Nonautomated urinalysis by dipstick or tablet color comparison.
2. Fecal occult blood by any accepted method.
3. Ovulation test by visual color comparison.
4. Qualitative urine pregnancy test by visual color comparison.
5. Erythrocyte sedimentation rate by any accepted nonautomated method.
6. Whole blood glucose by any accepted single analyte method.
7. Spun microhematocrit by any accepted method.
8. Hemoglobin by single analyte instrument of manual copper sulfate method.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-48-03, 43-48-04

**Law Implemented:** NDCC 43-48-03

**96-02-10-02. Supervision.** As used in subsection 9 of North Dakota Century Code section 43-48-03 and section 96-02-10-01, "supervised" means the following:

1. The supervisor shall identify the individuals being supervised on a form provided by the board and shall promptly notify the board of any changes to the information provided.
2. The supervisor shall ensure the individuals being supervised are appropriately trained in all tests and methods performed by the supervised individuals.
3. The supervisor shall:
  - a. Perform annual competency assessments of the individuals supervised using generally accepted clinical laboratory standards.
  - b. Not allow an individual supervised to start or continue performing tests until the individual has been properly trained and demonstrated competency.
  - c. Document training and competency assessments, retain the documentation for three years, and submit the documentation to the board upon request.
4. The supervisor shall regularly monitor and be available to consult with the individuals being supervised.

Failure by the licensee to supervise is unprofessional conduct and may be subject to disciplinary action by the board.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-48-04

**Law Implemented:** NDCC 43-48-03



**TITLE 105**  
**STATE BOARD OF RESPIRATORY CARE**



JANUARY 2006

CHAPTER 105-01-01

**105-01-01-01. Organization of the board of respiratory care.**

1. **History and function.** The 1985 legislative assembly passed legislation to license respiratory care practitioners, codified as North Dakota Century Code chapter 43-42. ~~That chapter requires the~~ The 2005 legislative assembly passed legislation to license registered polysomnographic technologists. The governor ~~to appoint~~ appoints a state board of respiratory care examining board. It is the responsibility of that board to license respiratory care practitioners and registered polysomnographic technologists within the state of North Dakota.
2. **Board membership.** The board consists of seven members appointed by the governor. ~~Two~~ Four members are ~~registered respiratory care practitioners therapists, two members are certified respiratory care practitioners,~~ one member is a physician, one member is a registered polysomnographic technologist, and ~~two members are representatives~~ one member is a representative of the general public. Each board member serves a term of three years. No member may serve more than two successive terms on the board.
3. **Officers.** The board elects a chairperson and officers annually.
4. **Inquiries.** Inquiries regarding board activities may be addressed to:

North Dakota State Board of Respiratory Care  
P.O. Box 2223  
Bismarck, North Dakota 58502-2223  
701-222-1564

or

~~North Dakota State Board of Respiratory Care  
c/o Division of Legal Services  
North Dakota State Department of Health~~

~~P.O. Box 5520  
1200 Missouri Avenue  
Bismarck, North Dakota 58502-5520~~

**History:** Effective September 1, 1996; amended effective January 1, 2006.  
Subsection 2 amended effective October 1, 2006.

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

**Law Implemented:** NDCC 43-42-02

## CHAPTER 105-02-01

**105-02-01-01. Initial licensure application.** An application for a license to practice respiratory care must be made to the state board of respiratory care examining board on forms approved by the board. The application must contain such information as the board may reasonably require.

1. Each application for a license must be accompanied by:
  - a. The prescribed fee.
  - b. An official transcript, certificate, or diploma verifying completion of an academic program in respiratory care recognized by the commission on allied health, education, and accreditation or its successor.
  - c. A photocopy of original national board of respiratory care registry or certification certificate.
2. All applications must be signed by the applicant and notarized.
3. Any new applicant who has not worked as a registered respiratory therapist or certified respiratory ~~therapy technician~~ therapist for three years will require entry-level recredentialing.
4. The board may request such additional information or clarification of information provided in the application as it deems necessary.

**History:** Effective September 1, 1996; amended effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03

**105-02-01-03. Fees.** The board has adopted the following fee payment schedule:

1. Initial license fee and license fee for renewal are:
  - Registered respiratory care ~~practitioner~~ therapist - ~~\$50.00~~ 60.00
  - Certified respiratory care ~~practitioner~~ therapist - ~~\$35.00~~ 60.00
  - Temporary respiratory care ~~practitioner~~ therapist - ~~\$35.00~~ 60.00
2. Late fees in the amount of ten dollars must be charged for all applications received by the board which are postmarked after December thirty-first of the year prior to the year of renewal.

3. ~~Respiratory care practitioners~~ therapists who initially become licensed after November first of the year are exempt from licensure renewal for a period of one year. There is no proration of fees.

**History:** Effective September 1, 1996; amended effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03

**105-02-01-04. Continuing education.** To renew a license, a person must present proof of having attended or acquired at least ten clock-hours of continuing education approved by the board. If any licensee allows the licensee's license to lapse for a period of more than one year, the licensee must be required to submit proof of attendance or acquisition of at least ten clock-hours of continuing education for each year that the license has lapsed up to a period of three years.

Continuing education for licensure renewal must be completed in the calendar year prior to the year for which licensure is sought. Under extraordinary circumstances, the board ~~my~~ may consider a request for continuing education hours accrued in the same calendar year.

Continuing education courses must relate to or increase the professional competence of the attendee. This determination will be made by the board through approval of requested courses. The board has the authority to accept programs sponsored by a local, state, regional, national, international, scientific, or professional organization appropriate to provide continuing education (i.e., American association of respiratory care (AARC), North Dakota society of respiratory care (NDSRC), American medical association (AMA), American lung association (ALA), American heart association (AHA), American academy of sleep medicine (AASM), association of polysomnographic technologists (APT), board of registered polysomnographic technologists (BRPT), American society of electroneurodiagnostic technologists (ASET), etc.).

**History:** Effective September 1, 1996; amended effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03

**105-02-01-05. Passing score.** The successful passing of a national examination means obtaining a score equal to or greater than the passing score established by the national board for respiratory care or its successor, as recognized by the board, which is in effect at the time of the administration of the test.

**History:** Effective September 1, 1996; amended effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03

**105-02-01-06. Qualified applicant.**

1. In licensing a registered respiratory care ~~practitioner~~ therapist or a certified respiratory care ~~practitioner~~ therapist, "qualified" means trained and possessing the credential issued by the recognized testing or certification body of the profession.
2. In licensing a temporary respiratory care ~~practitioner~~ therapist, the applicant will be deemed qualified upon meeting the eligibility requirements of the CRTT entry-level exam examination as required and administered by the national board for respiratory care or its successor organization.

**History:** Effective September 1, 1996; amended effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03

## CHAPTER 105-03-01

**105-03-01-01. Display of license.** Every person licensed under North Dakota Century Code chapter 43-42 to practice as a registered respiratory ~~care-practitioner~~ therapist or certified respiratory ~~care-practitioner~~ therapist shall maintain such license or certificate in the office, department, business, or place in which the person practices, where, upon request, it is available to the public.

**History:** Effective September 1, 1996; amended effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03



## ARTICLE 105-04

### REGISTERED POLYSOMNOGRAPHY TECHNOLOGIST LICENSURE

#### Chapter

105-04-01

Initial Licensure and Renewals

#### CHAPTER 105-04-01

#### INITIAL LICENSURE AND RENEWALS

#### Section

105-04-01-01

Initial Licensure Application

105-04-01-02

Licensure Renewal

105-04-01-03

Fees

105-04-01-04

Continuing Education

105-04-01-05

Passing Score

105-04-01-06

Qualified Applicant

**105-04-01-01. Initial licensure application.** An application for a license to practice polysomnography must be made to the state board of respiratory care on forms approved by the board. The application must contain such information as the board may reasonably require.

1. Each application for a license must be accompanied by:
  - a. The prescribed fee.
  - b. A photocopy of the certificate from the board of registered polysomnographic technologists, or other nationally accredited body approved by the board.
2. All applications must be signed by the applicant and notarized.
3. The board may request such additional information or clarification of information provided in the application as it deems necessary.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4), 43-42-04.1

**105-04-01-02. Licensure renewal.** Licenses are renewable annually.

1. Applications for renewal of license will be mailed by the board on or before December first to all licenseholders. Fees are payable to the board on or before December thirty-first of the year preceding the renewal year.
2. An application for renewal of license must be signed by the applicant and notarized.

3. License fees are considered delinquent and a late charge is assessed if the renewal application is not postmarked on or before December thirty-first of the year preceding the renewal year.
4. A license is considered as a renewal if renewal is sought within three years from the date of the last issuance. After three years any application is considered a new application.
5. Renewal of license must be mailed by January twenty-fourth of the renewal year if the renewal request is complete and postmarked on or before December thirty-first.
6. All late renewal applications will be audited and proof of continuing education units is required.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4)

**105-04-01-03. Fees.** The board has adopted the following fee payment schedule:

1. Initial license fee and license fee for renewal are:

Registered polysomnographic technologist - \$60.00

Registered polysomnographic technologist - registered respiratory therapist - \$60.00

Registered polysomnographic technologist - certified respiratory therapist - \$60.00

2. Late fees in the amount of ten dollars must be charged for all applications received by the board which are postmarked after December thirty-first of the year prior to the year of renewal.
3. Registered polysomnographic technologists who initially become licensed after November first of the year are exempt from licensure renewal for a period of one year. There is no proration of fees.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4)

**105-04-01-04. Continuing education.**

1. To renew a license, a person must present proof of having attended or acquired at least ten clock-hours of continuing education approved by the board. If any licensee allows the licensee's license to lapse

for a period of more than one year, the licensee must be required to submit proof of attendance or acquisition of at least ten clock-hours of continuing education for each year that the license has lapsed up to a period of three years.

2. Continuing education for licensure renewal must be completed in the calendar year prior to the year for which licensure is sought. Under extraordinary circumstances, the board may consider a request for continuing education hours accrued in the same calendar year.
3. Continuing education courses must relate to or increase the professional competence of the attendee. This determination will be made by the board through approval of requested courses. The board has the authority to accept programs sponsored by a local, state, regional, national, international, scientific, or professional organization appropriate to provide continuing education (i.e., AARC, AMA, ALA, AHA, AASM, APT, BRPT, ASET, etc.).

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4), 43-42-04.1

**105-04-01-05. Passing score.** The successful passing of a national examination means obtaining a score equal to or greater than the passing score, which is in effect at the time of the administration of the test, established by the board of registered polysomnographic technologists or its successor, as recognized by the board.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4), 43-42-04.1

**105-04-01-06. Qualified applicant.** In licensing a registered polysomnographic technologist, "qualified" means trained and possessing the credential issued by the recognized testing or certification body of the profession.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4), 43-42-04.1

## **ARTICLE 105-05**

### **PRACTICE OF POLYSOMNOGRAPHY**

#### **Chapter**

<b><u>105-05-01</u></b>	<b><u>Polysomnography Practice</u></b>
<b><u>105-05-02</u></b>	<b><u>Code of Ethics</u></b>

#### **CHAPTER 105-05-01**

### **POLYSOMNOGRAPHY PRACTICE**

#### **Section**

<b><u>105-05-01-01</u></b>	<b><u>Display of License</u></b>
<b><u>105-05-01-02</u></b>	<b><u>Scope of Practice</u></b>
<b><u>105-05-01-03</u></b>	<b><u>Clinical Work Experience</u></b>

**105-05-01-01. Display of license.** Every person licensed under North Dakota Century Code chapter 43-42 to practice as a registered polysomnographic technologist shall maintain such license or certificate in the office, department, business, or place in which the person practices, where, upon request, it is available to the public.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4), 43-42-04.1

#### **105-05-01-02. Scope of practice.**

1. **Polysomnographic technologists may only perform sleep diagnostics and analysis of data working in conjunction with physicians to provide comprehensive clinical evaluations that are required for the diagnosis of sleep disorders. By applying monitoring equipment, the technologist simultaneously monitors EEG (electroencephalography), EOG (electrooculography), EMG (electromyography), ECG (electrocardiography), multiple breathing variables, and blood oxygen levels during sleep. Interpretive knowledge is required to provide sufficient monitoring diligence to recording parameters and the clinical events observed during sleep. Technologists provide supportive services related to the ongoing treatment of sleep-related problems. The professional realm of this support includes guidance on the use of devices for the treatment of breathing problems during sleeping and helping individuals develop sleeping habits that promote good sleep hygiene.**
2. **Polysomnographic technologists shall:**
  - a. **Follow procedural protocols such as multiple sleep latency test (MSLT), maintenance of wakefulness test (MWT), parasomnia**

studies, PAP, oxygen titration, etc. to ensure collection of appropriate data.

- b. Follow lights-out procedures, including physiological and instrument calibrations and instructing the patient on completing questionnaires, to establish and document baseline values such as body position, oxyhemoglobin saturation, respiratory and heart rates, etc.
  - c. Perform polysomnographic data acquisition while monitoring study-tracing quality to ensure signals are artifact free and make adjustments, if necessary.
  - d. Document routine observations, including sleep stages and clinical events, changes in procedure and significant events in order to facilitate scoring and interpretation of polysomnographic results.
  - e. Implement appropriate interventions, including actions necessary for patient safety and therapeutic intervention such as continuous and bilevel positive airway pressure, oxygen administration, etc.
  - f. Follow lights-on procedures to verify integrity of collected data and complete the data collection process (repeats the physiological and instrument calibrations and instructs the patient on completing questionnaires, etc.).
  - g. Demonstrate the knowledge and skills necessary to recognize and provide age-specific care in the treatment, assessment, and education of neonatal, pediatric, adolescent, adult, and geriatric patients.
  - h. Oversee and perform difficult and unusual procedures and therapeutic interventions as related to sleep medicine.
3. A licensed and qualified member of another health care profession is not prohibited from performing any of the duties of a registered polysomnographic technologist that are consistent with accepted standards of that person's profession, providing the person is not represented as a registered polysomnographic technologist.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4), 43-42-04.1

### **105-05-01-03. Clinical work experience.**

1. A person enrolled in a bona fide polysomnographic training program is not prohibited from performing those duties essential for completion of a student's clinical service; provided, that the duties are performed under

the direct supervision or direction of a licensed health care professional trained in sleep medicine or the procedure. The supervisor or director is responsible to the board for the actions of the trainee.

2. A trainee is an individual who has completed a minimum of one year of postsecondary education in a health-related field, or its equivalent as approved by the board, and works under the direct supervision of a licensed health care professional trained in sleep medicine. A student or trainee must be identified as such.
3. Individuals on the credentialing track are exempt from the requirement to have the RPSGT credential for a period not to exceed thirty-six months starting from the first day of training, provided they are practicing with appropriate levels of supervision, in accordance with the published job descriptions sanctioned by the APT, BRPT, AASM, and ASET, or substantially similar written standards developed by the training program.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4), 43-42-04.1

**CHAPTER 105-05-02**  
**CODE OF ETHICS**

Section

<u>105-05-02-01</u>	<u>Code of Ethics</u>
<u>105-05-02-02</u>	<u>Grievance Procedure</u>
<u>105-05-02-03</u>	<u>Reporting Disciplinary Action</u>

**105-05-02-01. Code of ethics.** The board has adopted and incorporated into these rules by reference the national board of registered polysomnographic technologists statement of ethics and professional conduct as amended in 2000.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4), 43-42-04.1

**105-05-02-02. Grievance procedure.** Grievances must be processed in accordance with the provisions of North Dakota Century Code chapter 28-32.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4), 43-42-04.1

**105-05-02-03. Reporting disciplinary action.** The board shall report all disciplinary action taken by it to the national board of registered polysomnographic technologists.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 43-42-03

**Law Implemented:** NDCC 43-42-03(4), 43-42-04.1





**TITLE 108**  
**DEPARTMENT OF COMMERCE**



JANUARY 2006

ARTICLE 108-03

DEPARTMENT OF COMMERCE

Chapter  
108-03-01      Manufactured Home Installation Program

**CHAPTER 108-03-01**  
**MANUFACTURED HOME INSTALLATION PROGRAM**

<u>Section</u>	
<u>108-03-01-01</u>	<u>History</u>
<u>108-03-01-02</u>	<u>Scope</u>
<u>108-03-01-03</u>	<u>Definitions</u>
<u>108-03-01-04</u>	<u>Inquiries</u>
<u>108-03-01-05</u>	<u>Administration</u>
<u>108-03-01-06</u>	<u>Installers of Manufactured Homes - Registration</u>
<u>108-03-01-07</u>	<u>Installation by Owner</u>
<u>108-03-01-08</u>	<u>City, County, or Township Requirements</u>
<u>108-03-01-09</u>	<u>Certified Installer</u>
<u>108-03-01-10</u>	<u>Certified Installation Inspector</u>
<u>108-03-01-11</u>	<u>Standards</u>
<u>108-03-01-12</u>	<u>Inspection Procedures</u>
<u>108-03-01-13</u>	<u>Complaints</u>
<u>108-03-01-14</u>	<u>Suspension or Revocation</u>
<u>108-03-01-15</u>	<u>Appeal of Revocation or Suspension</u>
<u>108-03-01-16</u>	<u>Installation Insignias</u>
<u>108-03-01-17</u>	<u>Reports</u>
<u>108-03-01-18</u>	<u>Penalty</u>
<u>108-03-01-19</u>	<u>Fees</u>

**108-03-01-01. History.** In 2003 the legislative assembly created North Dakota Century Code section 54-21.3-08, to establish a manufactured home installation program. The law requires the division of community services to adopt rules establishing a manufactured home installation program for all manufactured homes built in accordance with the manufactured homes construction and safety

standards under 24 CFR 3280, adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.]. The law is in response to the 2000 Manufactured Housing Improvement Act that requires a state to have a manufactured home installation program, or to have the federal government impose an installation program.

In 2005 the legislative assembly amended North Dakota Century Code section 54-21.3-08, renaming it adoption of an installation program and providing a penalty.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-02. Scope.** This administrative chapter pertains to the first-time installation of each manufactured home installed in North Dakota in a temporary or permanent location and which is designed and commonly used for occupancy by persons for residential purposes beginning July 1, 2006. Each installed manufactured home must display an insignia issued by the department of commerce division of community services, certifying that the home is installed in compliance with this chapter.

Temporary installations for the purpose of home display or office use which will be relocated to another location to use as a residence are exempted from this chapter.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

#### **108-03-01-03. Definitions.**

1. "Certified inspector" means an employee of a participating jurisdiction, individual, employee of a private firm, employee of a manufacturer, housing inspector, or a North Dakota licensed engineer or architect who has been approved by the division to perform or enforce installation inspections.
2. "Certified installer" means an installer of manufactured homes who is registered with the division, has installed at least five manufactured homes consecutively in compliance with the manufacturer's installation instructions, and is currently approved as a certified installer by the division.
3. "Conflict of interest" means when there is a personal or private interest sufficient to influence or appears to influence the proper exercise of duties and responsibilities.
4. "Division" means the division of community services.

5. "Insignia" means a certificate or label of installation issued by the division to indicate compliance with the manufacturer's installation instructions and this chapter.
6. "Installation" means assembly, at the site of occupancy, of all portions of the manufactured home, connection of the manufactured home to existing utility connections that may not require licensing by other state agencies, and installation of support or anchoring systems, in accordance with the manufacturer's installation instructions or the alternate standards adopted in this chapter.
7. "Installation authorization" means a notice posted on the site of an installation indicating that the installer has authorization to install.
8. "Installation committee" means the committee to assist in the development and implementation of the manufactured home installation program. Represented on the committee are the division of community services, the North Dakota building officials association, the North Dakota league of cities, and the board of directors of the North Dakota manufactured housing association.
9. "Installer" means any person who attaches the manufactured unit sections together and ties the home to its foundation support and anchoring system.
10. "Manufactured home" means a federal housing and urban development (HUD) labeled structure, transportable in one or more sections that, in its traveling mode, is eight body feet [2.44 meters] or more in width or forty body feet [12.19 meters] or more in length, or, when erected on site, is three hundred twenty or more square feet [29.73 square meters]; that is built on a permanent chassis; that is designed to be used as a dwelling; that may or may not have a permanent foundation; that is connected to the required utilities; and that contains the plumbing, heating, air-conditioning, and electrical systems; except that such term shall include any structure that meets the size requirements and for which the manufacturer has voluntarily filed a certification required by the secretary of housing and urban development and that complies with the manufactured home construction and safety standards.

**NOTE:** This definition should not be interpreted to include any type of recreational vehicle that may equal or exceed the body length or width specified herein.
11. "Owner" means the owner of a manufactured home or property.
12. "Participating jurisdiction" means a local government entity with a building code department which has agreed to administer and inspect manufactured housing installations within the legal and extraterritorial

boundaries of the jurisdiction by employing or contracting with a certified inspector.

13. "Registered installer" means an installer that has registered with the division and is in compliance with the manufactured home installation program requirements.
14. "Standards" means the manufacturer's installation instructions or alternate federal standards adopted by the division. The division may issue interpretations of the standards to be followed during installations and inspections. A local jurisdiction may enact additional standards concerning unique public safety requirements, such as weight restrictions for snow loads or wind shear factors, but must provide these requirements in writing to the division of community services before enacting and enforcing them.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-04. Inquiries.** Inquiries about this program may be addressed to:

Manufactured Home Installation Program Manager  
North Dakota Department of Commerce  
Division of Community Services  
Department of Commerce  
1600 East Century Avenue, Suite 2  
Bismarck, ND 58503

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-05. Administration.** The administration of this program is the responsibility of the division of community services.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-06. Installers of manufactured homes - Registration.** Manufactured home installers in North Dakota shall first register with the division. If any of the application information for the registered installer changes after issuance of the registration, the registered installer shall notify the division in writing within thirty days from the date of the change. The division may suspend, revoke, or deny renewal of a registration if the registered installer fails to notify the division of any change in the application. A registration shall not be transferred nor assigned to another person.

At the time that an initial application for registration is filed, the following must be submitted:

1. Name of the installer and company;
2. Proof in the form of a copy of a valid driver's license or certificate of birth that the applicant is at least eighteen years of age;
3. Evidence from the applicant of attendance at training provided by the state in conjunction with the North Dakota manufactured housing association and passage of the North Dakota installation program examination, except for installers in business prior to the effective date of this chapter;
4. Existing installers may, in lieu of the above, provide evidence of at least three years of experience or equivalent training and testing in the installation of manufactured homes and attendance at training provided by the state in conjunction with the North Dakota manufactured housing association;
5. Proof of contractor's liability insurance in an amount not less than one hundred thousand dollars. This insurance policy shall contain a provision for the immediate notification of the division upon cancellation; and
6. A letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer in the amount of ten thousand dollars for the performance of installation pursuant to the manufacturer's installation instructions. A provision shall be included for the immediate notification of the division upon cancellation.

The application for registration as a manufactured home installer shall be submitted on a form provided by the division and shall be notarized and verified by a declaration signed under penalty of perjury by the applicant. The division shall make the application and declaration available for public inspection.

The registration period is from July first of each year through June thirtieth of the following year. All registrations expire on the same date of each year, whether or not the registration is issued for all or a portion of the registration period, and registration fees will be prorated based on the date of approval for registration. A registered installer will be required to attend yearly training provided by the state in conjunction with the North Dakota manufactured housing association and pass a written test every three years after initial registration.

Persons employed by a registered installer, as well as persons employed by an entity employing a registered installer, are not required to register when performing installation functions under the direct onsite supervision of a registered installer. The registered installer shall be responsible for supervising all employees

and for the proper and competent performance of all employees working under the registered installer's supervision.

Any registered installer seeking to renew registration shall, at the time of applying for renewal, provide proof of liability insurance and letter of credit, certificate of deposit, or surety bond to run concurrent with the registration period.

Registered installers shall allow and pay for periodic oversight inspections arranged by the division to monitor the installer's performance in complying with the program and registration requirements. The frequency of oversight inspections will be based on the findings of the inspections. The division may also arrange for the inspection of any manufactured home installation performed by a registered installer. This may also occur as the result of a consumer complaint.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-07. Installation by owner.** A person who owns the manufactured home or the real property where the home is to be installed is not required to register as an installer if that person does that person's own installation but shall comply with all provisions of this chapter other than the registration provision.

A person who installs more than one manufactured home in any twelve-month period, either owned or on real property owned by such person, must register as an installer and shall comply with the registration provisions.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-08. City, county, or township requirements.** A political subdivision may not issue a building or zoning permit for the first-time installation of a manufactured home to an unregistered installer. The political subdivision is required to report any such person attempting to obtain a permit to the division. Any building or zoning permit issued must contain the registration number of the installer issued by the division.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-09. Certified installer.** Any registered installer who has performed five consecutive installations that pass inspection by a certified inspector may apply to the division to be a certified installer. Evidence of complying installations shall include copies of all inspection reports made for each installation. The division will review the reports and decide if the registered installer should be granted certification. The division may require additional installations to



be performed before granting certification. No fee will be charged by the division for this certification.

A certified installer shall be authorized to post the installation authorization on the installation site. A certified installer shall also be authorized to purchase and attach installation insignias from the division. These insignias will be completed by the certified installer upon completion of the installation and attached to the manufactured homes. The certified installer shall complete and submit a required installation authorization and insignia report each month to the division. Installations by a certified installer do not require an inspection by a certified inspector. If a certified installer is performing work in a jurisdiction that is a participating jurisdiction, the installer must request the permission of the participating jurisdiction to issue its own installation authorization and to purchase and attach installation insignias. The division, or a certified inspector at the request of the division, may inspect the installation of any manufactured home performed by a certified installer.

Certified installers shall allow and pay for periodic oversight inspections arranged by the division to monitor the installer's performance in complying with the program requirements and applicable installation standards. The frequency of oversight inspections will be based on the findings of the inspections.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-10. Certified installation inspector.** The division may authorize individuals to perform inspections and enforce the proper installation of manufactured homes. Enforcement shall include issuance of installation authorizations and permanent insignias certifying compliance with the manufacturer's installation instructions.

Applicants for certified installation inspector shall furnish written evidence of a minimum of six months of manufactured home installation experience or equivalent training or related experience or state of North Dakota professional licensing in engineering. Applicants must have attended training provided by the state in conjunction with the North Dakota manufactured housing association and must pass the installation program examination. Certified inspectors will be required to attend yearly training provided by the state in conjunction with the North Dakota manufactured housing association and pass a written test every three years after initial certification. The certification period is from July first of each year through June thirtieth of the following year.

Certification is valid for one year, and each certification will expire on the same date, regardless of the effective date, whether or not the certification is issued for all or a portion of the certification period.

If a local government entity has a building code department, the jurisdiction may make a written request to be the exclusive independent installation

inspection agency within the jurisdiction's legal and extraterritorial boundaries as a participating jurisdiction. When approved, all manufactured home installation inspections will be made by that participating jurisdiction's certified inspector or by a certified inspector under contract to the jurisdiction. In the event of a consumer complaint, the division will make arrangements to conduct the complaint inspection within the participating jurisdiction. A participating jurisdiction may permit a certified installer to issue an installation authorization and install insignias. If a local government entity decides not to be a participating jurisdiction, its authority with respect to the installation of a manufactured home is limited to inspecting the construction of a permanent foundation for the home. It may not inspect the actual installation of the home.

A certified inspector shall not make inspections if the inspector has a conflict of interest that may affect the inspector's responsibility to make fair and impartial inspections.

A certified inspector and a participating jurisdiction with a certified inspector shall be authorized to issue an installation authorization and to purchase and affix insignias after the installation is completed and inspected. A certified inspector shall complete a monthly report of installation authorizations issued and insignias affixed.

Certified inspectors shall allow and pay for periodic oversight inspections arranged by the division to monitor installations that have been inspected to monitor the certified inspector's compliance with program requirements. The frequency of oversight inspections will be based on the findings of the inspections. The division may also arrange for the inspection of the installation of any manufactured home inspected by a certified inspector.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-11. Standards.** Since this program pertains only to the first-time installation of a manufactured home, the primary standards are the specifications provided in the manufacturer's installation instructions. However, alternate standards developed by the federal department of housing and urban development and adopted by the state may also be utilized. The standards do not pertain to the construction of permanent foundations. Standards for construction of permanent foundations are the responsibility of the local jurisdiction in which a manufactured home is installed.

Nothing in this section shall preclude a local government from enacting standards for manufactured homes concerning unique public safety requirements, such as weight restrictions for snow loads or wind shear factors, as otherwise permitted by law.

From time to time the division, in consultation with the installation committee, may issue interpretations of the standards to be followed during the course of manufactured home installations and inspections.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-12. Inspection procedures.** The division shall adopt a standard installation authorization form to be used statewide by the division and certified inspectors, a standard inspection form, and minimum inspection requirements. Inspection forms shall be maintained for a minimum of three years from the date of the attachment of the installation insignia. The number of inspections required to be performed to determine compliance with the manufacturer's installation instructions or alternate standards adopted by the division will be determined by the inspector based on the inspector's ability to properly inspect all areas required on the minimum inspection requirements and the work performed by the registered installer. Generally, however, there will be a minimum of one inspection on a single-wide and two inspections on multisection homes.

Prior to beginning the installation of a manufactured home, the owner or registered installer of a manufactured home shall make an application for an installation authorization from a participating jurisdiction or certified installation inspector. Certified installers may issue their own installation authorizations. The installation authorization is valid for thirty days from the date of issuance and may be extended for an additional thirty days upon written approval by the issuing entity.

Owners, registered installers, and certified installers shall display an installation authorization at the site of the manufactured home to be installed until an installation insignia is attached certifying compliance with the manufacturer's installation instructions. The authorization will contain the identity of the installer and owner, a telephone number and contact person, and whether or not the installer is the owner, a registered installer, or a certified installer. The authorization will also include the name, address, and telephone number of the issuing entity.

During installation and inspection, a copy of the manufacturer's installation instructions or alternate standards shall be available at all times onsite. The installer shall be responsible to maintain the copy of the manufacturer's installation instructions onsite. If the manufacturer's installation instructions or alternate standards are not present at the time of the inspection, the inspector may fail the inspection and require a reinspection. All costs of the inspection and any reinspection will be borne by the installer.

The owner, installer, manufacturer, or retailer shall have the right to be present at any inspection.

When the installation of a manufactured home is found to be in compliance with the manufacturer's installation instructions or alternate standards, an insignia will be permanently attached by the inspector making the inspection. A certified

installer may inspect that person's own installation and permanently attach the insignia. The insignia will be placed within thirty inches [76.2 centimeters] of the expected location of the electric meter housing, electric service entry, or on the meter housing.

When a manufactured home installation is found not to be in compliance by a certified inspector with the manufacturer's installation instructions, the installer shall be notified in writing by the inspector. At the time of the inspection, the inspector may include in the inspection report instructions for the installer to call for a reinspection at any stage of installation to prevent coverup of any part of the installation requiring reinspection by the inspector.

The installer shall pay for any repair required to bring the installation into compliance and shall pay for any subsequent inspections.

If an installation or subsequent repair of an installation by an installer fails to meet the manufacturer's installation instructions within the time limit allowed by the inspector, the inspector shall notify the installer that the installation is in default. The installer shall be given ten working days after notification of default to bring the installation into compliance. Any independent inspector that knows of an installation that is in default and has not been corrected by subsequent repair shall request that the division arrange for an investigation of the installation.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-13. Complaints.** The division may cause to be investigated any complaint concerning the installation of a manufactured home filed in writing by an owner, dealer, manufacturer, installer, or certified inspector. The division may designate a certified inspector or other qualified entity to make complaint inspections on behalf of the division. The initial costs of processing complaints will be paid through a fund established from a portion of the registration, certification, and insignia fees. If a complaint is determined to be valid, the installer must reimburse the division for the costs incurred investigating the complaint and any reinspections.

If a participating jurisdiction or a certified inspector finds an installation of a manufactured home to be in default, the jurisdiction or inspector shall file a written complaint with the division against the installer. Complaints received by telephone shall be confirmed in writing.

If the installation of a manufactured home fails the complaint inspection, the registered installer must make and pay for the repairs to bring the installation into compliance and shall pay the costs associated with the complaint inspection and

with any subsequent inspections. Failure of the installer to pay for repairs and subsequent inspections shall result in the revocation of registration and certification.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-14. Suspension or revocation.** The division may permanently revoke, temporarily suspend, or fail to renew the registration or certification of an installer if the person or entity fails to:

1. File with the division each year and keep in force a letter of credit, certificate of deposit, or surety bond as required;
2. File with the division and keep in force the required liability insurance;
3. Pay assessed inspection costs;
4. Make any subsequent repairs that are necessary to bring the installation into compliance with the manufacturer's installation instructions;
5. Correct any defects or deficiencies in the installation in the time period established by the division; and
6. Pass periodic oversight inspections.

The division may also revoke the certification of a certified installer and replace it, at its discretion, with the status of registered installer.

When the certification of a certified installer is revoked or suspended, the installer must immediately return to the division all unused installation insignias and the installer will lose the right to purchase and install insignias.

When the installer's registration or certification is revoked, the installer may reapply as a registered installer one year after the date of revocation but must retest. To be considered as a certified installer, the installer will be subject to the conditions for obtaining certification.

The division may revoke, suspend, or fail to renew the certification of any certified inspector who fails to maintain the minimum requirements for the certification, has a conflict of interest, or as a result of investigation of complaints by the division, the inspector is found to repeatedly fail to enforce the requirements of the program. The division, or a certified inspector or other qualified entity at the request of the division, may inspect the installation of any manufactured home inspected by a certified inspector. When the certification of a certified inspector is revoked, suspended, or not renewed, the certified inspector must immediately

return to the division all unused installation insignias and the inspector will lose the right to purchase and install insignias.

**History:** Effective January 1, 2006.  
**General Authority:** NDCC 54-21.3-08  
**Law Implemented:** NDCC 54-21.3-08

**108-03-01-15. Appeal of revocation or suspension.** A registered installer or certified inspector subject to revocation, suspension, or nonrenewal may appeal the revocation or suspension to the director of the division of community services. Further appeal may be heard under the procedures found in North Dakota Century Code chapter 28-32.

**History:** Effective January 1, 2006.  
**General Authority:** NDCC 54-21.3-08  
**Law Implemented:** NDCC 54-21.3-08

**108-03-01-16. Installation insignias.** The division shall adopt a standard insignia to be used statewide indicating that a manufactured home is installed in compliance with the manufacturer's installation instructions.

The insignia shall include the name, address, and telephone number of the division, the date the installation was completed, and the name, address, telephone number, and registration number of the installer.

Insignias shall remain the property of the state of North Dakota and are not subject to refunds.

When an installation insignia is lost or damaged, the division must be notified in writing. The division will issue a replacement insignia.

The division reserves the right to refuse to sell installation insignias to certified installers or certified inspectors based on findings of noncompliance with this chapter until findings are resolved.

The possession of unattached insignias is limited to the division, certified inspectors, and certified installers. Insignias must be kept secure. If an installer's or inspector's certification is revoked or the certified installer or certified inspector is no longer in business, any labels in their possession must immediately be returned to the division.

Certified installers and certified inspectors may purchase a two-month supply of installation insignias.

**History:** Effective January 1, 2006.  
**General Authority:** NDCC 54-21.3-08  
**Law Implemented:** NDCC 54-21.3-08

**108-03-01-17. Reports.** The division will establish and maintain a system of data bases and procedures for reporting for the following reports:

1. Each certified installer and certified inspector must submit a monthly report of installation authorizations issued.
2. Each certified inspector and certified installer must submit a monthly report accounting for insignias, both issued and on hand by serial number. The report is due by the fifteenth of the following month. A report is required even if no labels were issued during the month.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-18. Penalty.** Any person who violates any provision of this chapter is guilty of a class A misdemeanor.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

**108-03-01-19. Fees.** The following nonrefundable fees apply:

1. Installer registration - \$150 per year.
2. Nonparticipating jurisdiction certified inspector - \$150 per year.
3. Installation insignia - \$50 per label.
4. Oversight inspection - \$225 per inspection.
5. Replacement insignia - \$40.

The division may charge other fees related to providing training based on the actual cost of the training materials and instructors.

Certified inspectors may charge their own reasonable fees for conducting compliance inspections and reinspections.

**History:** Effective January 1, 2006.

**General Authority:** NDCC 54-21.3-08

**Law Implemented:** NDCC 54-21.3-08

