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TABLE OF CONTENTS

TITLE 33

STATE DEPARTMENT OF HEALTH

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CHAPTER 33-17-01

33-17-01-02. Definitions. For the purpose of this chapter the following definitions shall apply:

1. "Action level" means the concentration of lead or copper in water specified in title 40, Code of Federal Regulations, part 141, subpart I, section 141.80(c), that determines, in some cases, the treatment requirements set forth under title 40, Code of Federal Regulations, part 141, subpart I, that a water system is required to complete.

2. "Bag filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

3. "Bank filtration" means a water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a riverbed or riverbanks. Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other wells.

4. "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the department finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, any best available technology must be at least as effective as granular activated carbon.

5. "Cartridge filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed as rigid or semirigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

~~3.~~ 6. "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

7. "Combined distribution system" means the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

~~4.~~ 8. "Community water system" means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

~~5.~~ 9. "Compliance cycle" means the nine-year calendar year cycle during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants. Each compliance cycle consists of three 3-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; and the third begins January 1, 2011, and ends December 31, 2019.

~~6.~~ 10. "Compliance period" means a three-year calendar year period within a compliance cycle during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants. Each compliance cycle has three 3-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; and the third from January 1, 1999, to December 31, 2001.

~~7.~~ 11. "Composite correction program" or "CCP" means a systematic, comprehensive procedure for identifying, prioritizing, and remedying factors that limit water treatment plant performance as set forth in the United States environmental protection agency handbook entitled Optimizing Water Treatment Plant Performance Using The Composite Correction Program, EPA/625/6-91/027, 1998 edition. A composite correction program consists of two phases, a comprehensive performance evaluation and comprehensive technical assistance.

~~8.~~ 12. "Comprehensive performance evaluation" or "CPE" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with title 40, Code of Federal Regulations, part 141, subpart P and subpart T, the comprehensive performance evaluation shall consist of at least the following components:

a. Assessment of plant performance;

b. Evaluation of major unit processes;

c. Identification and prioritization of performance limiting factors;

d. Assessment of the applicability of comprehensive technical assistance; and

e. Preparation of a comprehensive performance evaluation report.

~~9.~~ 13. "Comprehensive technical assistance" or "CTA" means the performance improvement phase of a composite correction program that is implemented if the comprehensive performance evaluation results indicate improved performance potential. During the comprehensive technical assistance phase, identified and prioritized factors that limit water treatment plant performance are systematically addressed and eliminated.

~~10.~~ 14. "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

15. "Consecutive system" means a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

~~11.~~ 16. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

~~12.~~ 17. "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

~~13.~~ 18. "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

~~14.~~ 19. "Cross connection" means any connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.

~~15.~~ 20. "CT" or "CT calc" means the product of residual disinfectant concentration (C) in milligrams per liter determined before or at

the first customer and the corresponding disinfectant contact time (T) in minutes. If disinfectants are applied, at more than one point prior to the first customer, the CT of each disinfectant sequence must be determined before or at the first customer to determine the total percent inactivation or total inactivation ratio. In determining the total inactivation ratio, the residual disinfectant concentration of each disinfection sequence and the corresponding contact time must be determined before any subsequent disinfection application points. CT ninety-nine point nine is the CT value required for ninety-nine point nine percent (three-logarithm) inactivation of giardia lamblia cysts. CT ninety-nine point nine values for a wide variety of disinfectants and conditions are set forth under title 40, Code of Federal Regulations, part 141, subpart H. CT calculated divided by CT ninety-nine point nine is the inactivation ratio. The total inactivation ratio is determined by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one point zero is assumed to provide a three-logarithm inactivation of giardia lamblia cysts.

~~16.~~ 21. "Department" means the state department of health.

~~17.~~ 22. "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane or septum, and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

~~18.~~ 23. "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

~~19.~~ 24. "Disinfectant" means any oxidant, including, but not limited to, chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

~~20.~~ 25. "Disinfectant contact time" (T in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. Where only one C is measured, T is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where C is measured. Where more than one C is measured, T, for the first measurement of C, is the time in minutes that it takes the water to move from the first or only point of disinfectant application to a point before or at the point where the first C is measured. For subsequent measurements of C, T is the time in minutes that it takes for water to move from the previous C measurement point to

the C measurement point for which the particular T is being calculated. Disinfectant contact time in pipelines must be calculated by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. T within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

~~21.~~ 26. "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

~~22.~~ 27. "Disinfection profile" means a summary of daily giardia lamblia inactivation through the treatment plant. The disinfection profile shall be developed as set forth under title 40, Code of Federal Regulations, part 141, subpart P (141.172) and subpart T (141.530-141.536).

~~23.~~ 28. "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

29. "Dual sample set" means a set of two samples collected at the same time and same location, with one sample analyzed for total trihalomethanes (TTHM) and the other sample analyzed for haloacetic acids five (HAA5). Dual sample sets are collected for the purpose of conducting an initial distribution system evaluation (IDSE) under title 40, Code of Federal Regulations, parts 141.600 to 141.605 inclusive, and determining compliance with the TTHM and HAA5 MCLs under title 40, Code of Federal Regulations, parts 141.620 to 141.629 inclusive.

~~24.~~ 30. "Effective corrosion inhibitor residual", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a concentration sufficient to form a passivating film on the interior walls of pipe.

~~25.~~ 31. "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

~~26.~~ 32. "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

~~27.~~ 33. "Filter profile" means a graphical representation of individual filter performance based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

~~28.~~ 34. "Filtration" means a process for removing particulate matter from water by passage through porous media.

35. "Finished water" means water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection or addition of corrosion control chemicals).

~~29.~~ 36. "First draw sample" means a one-liter sample of tap water, collected in accordance with title 40, Code of Federal Regulations, part 141, section 141.86(b)(2), that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.

~~30.~~ 37. "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

38. "Flowing stream" means a course of running water flowing in a definite channel.

~~31.~~ 39. "Granular activated carbon ten" or "GAC10" means granular activated carbon filter beds with an empty-bed contact time of ten minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with subpart V MCLs under title 40, Code of Federal Regulations, part 141.64(b)(2) shall be one hundred twenty days.

40. "Granular activated carbon twenty" or "GAC 20" means granular activated carbon filter beds with an empty-bed contact time of twenty minutes based on average daily flow and a carbon reactivation frequency of every two hundred forty days.

~~32.~~ 41. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

~~33.~~ 42. "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as giardia lamblia or cryptosporidium. Ground water under the direct influence of surface water also means significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

~~34.~~ 43. "Haloacetic acids five" or "HAA5" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid, rounded to two significant figures after addition.

~~35.~~ 44. "Halogen" means one of the chemical elements chlorine, bromine, or iodine.

~~36.~~ 45. "Initial compliance period" means the first full compliance period that begins January 1, 1993, during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants.

46. "Lake/reservoir" means a natural or manmade basin or hollow on the earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

~~37.~~ 47. "Large water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves more than fifty thousand persons.

~~38.~~ 48. "Lead service line" means a service line made of lead that connects the water main to the building inlet and any pigtail, gooseneck, or other fitting that is connected to a lead line.

~~39.~~ 49. "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called legionnaires disease.

50. "Locational running annual average" or "LRAA" means the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

~~40.~~ 51. "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

~~41.~~ 52. "Maximum residual disinfectant level" or "MRDL" means a level of a disinfectant added for water treatment that must not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

~~42.~~ 53. "Maximum total trihalomethane potential" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of twenty-five degrees Celsius [77 degrees Fahrenheit] or above.

~~43.~~ 54. "Medium-size water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves three thousand three hundred one to fifty thousand persons.

55. "Membrane filtration" means a pressure-driven or vacuum-driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal

efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

~~44.~~ 56. "Near the first service connection" means at one of the twenty percent of all service connections in the entire system that are nearest the water supply treatment facility as measured by water transport time within the distribution system.

~~45.~~ 57. "Noncommunity water system" means a public water system that is not a community water system that primarily provides service to other than year-round residents. A noncommunity water system is either a "nontransient noncommunity" or "transient noncommunity" water system.

~~46.~~ 58. "Nontransient noncommunity water system" means a noncommunity water system that regularly serves at least twenty-five of the same persons over six months per year.

~~47.~~ 59. "Optimal corrosion-control treatment", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means the corrosion-control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

~~48.~~ 60. "Person" means an individual, corporation, company, association, partnership, municipality, or any other entity.

61. "Plant intake" means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

~~49.~~ 62. "Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

~~50.~~ 63. "Point-of-entry treatment device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

~~51.~~ 64. "Point-of-use treatment device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

~~52.~~ 65. "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the physical,

chemical, biological, or radiological quality conforming to applicable maximum permissible contaminant levels.

66. "Presedimentation" means a preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

~~53.~~ 67. "Product" means any chemical or substance added to a public water system, any materials used in the manufacture of public water system components or appurtenances, or any pipe, storage tank, valve, fixture, or other materials that come in contact with water intended for use in a public water system.

~~54.~~ 68. "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals sixty or more days out of the year. A public water system includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities that are not under control of the operator which are used primarily in connection with the system. A public water system does not include systems that provide water through pipes or constructed conveyances other than pipes that qualify for the exclusions set forth under section 1401(4)(B)(i) and (ii) of the Federal Safe Drinking Water Act [42 U.S.C. 300f(4)(B)(i) and (ii)]. A public water system is either a "community" or a "noncommunity" water system.

~~55.~~ 69. "Repeat compliance period" means any subsequent compliance period after the initial compliance period during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants.

~~56.~~ 70. "Residual disinfectant concentration" (C in CT calculations) means the concentration of disinfectant measured in milligrams per liter in a representative sample of water.

~~57.~~ 71. "Sampling schedule" means the frequency required for submitting drinking water samples to a certified laboratory for examination.

~~58.~~ 72. "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.

~~59.~~ 73. "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

~~60.~~ 74. "Service line sample" means a one-liter sample of water, collected in accordance with title 40, Code of Federal Regulations, part 141, section 141.86(b)(3), that has been standing for at least six hours in a service line.

~~61.~~ 75. "Single-family structure", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a building constructed as a single-family residence that is currently used either as a residence or a place of business.

~~62.~~ 76. "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity resulting in substantial particulate removal by physical and biological mechanisms.

~~63.~~ 77. "Small water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves three thousand three hundred or fewer persons.

~~64.~~ 78. "Specific ultraviolet absorption" or "SUVA" means specific ultraviolet absorption at two hundred fifty-four nanometers, an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of two hundred fifty-four nanometers in meters to the minus one by its concentration of dissolved organic carbon, the fraction of the total organic carbon that passes through a zero point four five micrometer pore diameter filter, in milligrams per liter.

~~65.~~ 79. "Subpart H systems" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to the requirements of title 40, Code of Federal Regulations, part 141, subpart H.

~~66.~~ 80. "Supplier of water" means any person who owns or operates a public water system.

~~67.~~ 81. "Surface water" means all water which is open to the atmosphere and subject to surface runoff.

~~68.~~ 82. "System with a single service connection" means a system which supplies drinking water to consumers with a single service line.

~~69.~~ 83. "Too numerous to count" means that the total number of bacterial colonies exceeds two hundred on a forty-seven millimeter membrane filter used for coliform detection.

~~70.~~ 84. "Total organic carbon" means total organic carbon in milligrams per liter measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

~~71.~~ 85. "Total trihalomethanes" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane, and tribromomethane [bromoform]), rounded to two significant figures.

~~72.~~ 86. "Transient noncommunity water system" means a noncommunity water system that primarily provides service to transients.

~~73.~~ 87. "Trihalomethane" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

88. "Two-stage line softening" means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

~~74.~~ 89. "Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and is open to the atmosphere.

~~75.~~ 90. "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

~~76. "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or state agency.~~

~~77.~~ 91. "Water system" means all sources of water and their surroundings and includes all structures, conducts, and appurtenances by means of which the water is collected, treated, stored, or delivered.

92. "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or state agency.

93. "Wholesale system" means a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery

may be through a direct connection or through the distribution system of one or more consecutive systems.

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1991; February 1, 1993; August 1, 1994; August 1, 2000; April 1, 2005; January 1, 2010.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-02, 61-28.1-03

33-17-01-06. Maximum contaminant levels, action levels, and treatment technique requirements, and maximum residual disinfectant levels.

1. **Inorganic chemicals.** The maximum contaminant levels, action levels, and treatment technique requirements for inorganic chemical contaminants excluding disinfection byproducts shall be as prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141, subpart G.

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL MILLIGRAM(S) PER LITER	ACTION LEVEL MILLIGRAM(S) PER LITER	TREATMENT TECHNIQUES REQUIREMENTS
Antimony	0.006		
Arsenic	0.05 (until January 22, 2006) 0.010 (effective January 23, 2006)		
Asbestos	7 million fibers per liter (longer than ten micrometers)		
Barium	2		
Beryllium	0.004		
Cadmium	0.005		
Chromium	0.1		
Copper		The 90th percentile level must be less than or equal to 1.3	Source water and corrosion control treatment
Cyanide (as free cyanide)	0.2		
Fluoride	4.0		
Lead		The 90th percentile level must be less than or equal to 0.015	Source water and corrosion control treatment, public education, and lead service line replacement
Mercury	0.002		
Nickel	0.1		
Nitrate (as N)	10		
Nitrite (as N)	1		
Selenium	0.05		

Thallium	0.002
Total Nitrate and Nitrite (as N)	10

At the discretion of the department, nitrate levels not to exceed twenty milligrams per liter may be allowed in a noncommunity water system if the supplier of water demonstrates to the satisfaction of the department that:

a. Such water will not be available to children under six months of age;

b. There will be continuous posting of the fact that nitrate levels exceed ten milligrams per liter and the potential health effect of exposure;

c. Local and state public health authorities will be notified annually of nitrate levels that exceed ten milligrams per liter; and

d. No adverse health effects shall result.

2. **Organic chemicals.** The maximum contaminant levels and treatment technique requirements for organic chemical contaminants excluding disinfection byproducts and disinfection byproduct precursors shall be as prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141, subpart G.

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL MILLIGRAM(S) PER LITER	ACTION LEVEL MILLIGRAM(S) PER LITER	TREATMENT TECHNIQUE REQUIREMENTS
Nonvolatile Synthetic Organic Chemicals:			
Acrylamide			The combination (or product) of dose and monomer level may not exceed 0.05 percent dosed at 1 part per million (or equivalent)
Alachlor	0.002		
Atrazine	0.003		
Benzo (a) pyrene	0.0002		
Carbofuran	0.04		
Chlordane	0.002		
Dalapon	0.2		
Dibromochloropropane (DBCP)	0.0002		
Di (2-ethylhexyl) adipate	0.4		
Di (2-ethylhexyl) phthalate	0.006		
Dinoseb	0.007		
Diquat	0.02		
Endothall	0.1		
Endrin	0.002		
Epichlorohydrin			The combination (or product) of dose and monomer level may not exceed 0.01 percent dosed at 20 parts per million (or equivalent)
Ethylene dibromide (EDB)	0.00005		
Glyphosate	0.7		
Heptachlor	0.0004		
Heptachlor epoxide	0.0002		
Hexachlorobenzene	0.001		
Hexachlorocyclopentadiene	0.05		
Lindane	0.0002		
Methoxychlor	0.04		
Oxamyl (Vydate)	0.2		
Polychlorinated biphenyls (PCBs)	0.0005		
Pentachlorophenol	0.001		
Picloram	0.5		
Simazine	0.004		
Toxaphene	0.003		
2,3,7,8-TCDD (Dioxin)	0.00000003		
2,4-D	0.07		
2,4,5-TP Silvex	0.05		
Volatile Synthetic Organic Chemicals:			

Benzene	0.005
Carbon tetrachloride	0.005
p-Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
Dichloromethane	0.005
1,2-Dichloropropane	0.005
Ethylbenzene	0.7
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.2
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (total)	10

3. **Filtration and disinfection treatment.**

   a. General requirements. All subpart H systems that utilize surface water sources shall provide filtration and disinfection treatment. All subpart H systems that utilize ground water sources deemed by the department to be under the direct influence of surface water shall provide disinfection treatment and shall either comply with filtration avoidance criteria or provide filtration treatment.

   b. Treatment technique requirements. The department hereby identifies filtration and disinfection as treatment techniques to protect against the potential adverse health effects of exposure to giardia lamblia, cryptosporidium, legionella, viruses, heterotrophic plate count bacteria, and turbidity. The treatment techniques apply only to subpart H systems. Subpart H systems that serve ten thousand or more persons shall be deemed to be in compliance with the treatment techniques if the requirements set forth under title 40, Code of Federal Regulations, part 141, subparts H and P, are met. Subpart H systems that serve fewer than ten thousand persons shall be deemed to be in compliance with the treatment techniques if the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H, are met.

4. **Radioactivity.** The maximum contaminant levels for radioactivity are as follows:

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL (MCL)
Combined radium-226 and radium-228	5 picocuries per liter (pCi/L)
Gross alpha particle activity (including radium-226, but excluding radon and uranium)	15 picocuries per liter (pCi/L)
Uranium	30 micrograms per liter (ug/L)

5. **Microbiological.** The maximum contaminant levels for coliform bacteria are as follows:

   a. Monthly maximum contaminant level violations.

      (1) No more than one sample per month may be total coliform-positive for systems collecting less than forty samples per month.

      (2) No more than five point zero percent of the monthly samples may be total coliform-positive for systems collecting forty or more samples per month.

      All routine and repeat total coliform samples must be used to determine compliance. Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair are sufficient, and samples invalidated by the department, may not be used to determine compliance.

   b. Acute maximum contaminant level violations.

      (1) No repeat sample may be fecal coliform or E. coli-positive.

      (2) No repeat sample may be total coliform-positive following a fecal coliform or E. coli-positive routine sample.

   c. Compliance must be determined each month that a system is required to monitor. The department hereby identifies the following as the best technology, treatment techniques, or other means generally available for achieving compliance with the maximum contaminant levels for total coliform bacteria: protection of wells from contamination by appropriate placement and construction; maintenance of a disinfection residual throughout the distribution system; proper maintenance of the distribution system including appropriate pipe replacement and repair

procedures, cross-connection control programs, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of a positive water pressure in all parts of the distribution system; filtration and disinfection or disinfection of surface water and disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, or ozone; and the development and implementation of a department-approved wellhead protection program.

6. **Disinfectants.** The maximum residual disinfectant levels for disinfectants are as follows:

DISINFECTANT	MAXIMUM RESIDUAL DISINFECTANT LEVEL IN MILLIGRAMS PER LITER
Chlorine	4.0 as free chlorine
Chloramines	4.0 as combined chlorine
Chlorine dioxide	0.8 as chlorine dioxide

The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum residual disinfectant levels: control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

7. **Disinfection byproducts.**

~~a. Interim maximum contaminant level for total trihalomethanes. The interim maximum contaminant level for total trihalomethanes is zero point one zero milligrams per liter.~~

~~b. Final maximum contaminant level for total trihalomethanes and maximum contaminant levels for other disinfection byproducts. The final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for~~ The maximum contaminant levels for total trihalomethanes, haloacetic acids five, bromate, and chlorite are as follows:

DISINFECTION BYPRODUCT	MAXIMUM CONTAMINANT LEVEL IN MILLIGRAMS PER LITER
Total trihalomethanes	0.080
Haloacetic acids five	0.060
Bromate	0.010
Chlorite	1.0

~~Systems installing granular activated carbon or membrane technology for compliance purposes may apply to the department~~

~~for an extension of up to twenty-four months, but not beyond January 1, 2004. In granting an extension, the department shall establish a compliance schedule and may require that the system take interim treatment measures. Failure to meet a schedule or interim treatment requirements established by the department constitutes a violation as set forth under title 40, Code of Federal Regulations, part 141, subpart G.~~

The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the ~~final~~ maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and chlorite: for total trihalomethanes and haloacetic acids five, enhanced coagulation, enhanced softening, or granular activated carbon ten with chlorine as the primary and residual disinfectant; for bromate, control of the ozone treatment process to reduce production of bromate; and for chlorite, control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels. All best available technology and compliance shall be prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141.64.

8. **Disinfection byproduct precursors.** The department hereby identifies enhanced coagulation and enhanced softening as treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems. The treatment techniques apply only to subpart H community and nontransient noncommunity water systems that use conventional treatment. Such systems shall be deemed to be in compliance with the treatment techniques if the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart L, are met.

9. **Confirmation sampling.** The department may require confirmation samples and average confirmation sample results with initial sample results to determine compliance. At the discretion of the department, sample results due to obvious monitoring errors may be deleted prior to determining compliance.

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; February 1, 1993; August 1, 1994; August 1, 2000; December 1, 2003; April 1, 2005; January 1, 2010.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03

33-17-01-08.1. ~~Disinfectant~~ Disinfectants, disinfectant residuals, disinfection ~~byproduct~~ byproducts, and disinfection byproduct ~~precursor sampling and monitoring requirements~~ precursors.

1. **Disinfectants.**

a. Coverage. The maximum residual disinfectant levels for disinfectants apply to community and nontransient noncommunity water systems that add a chemical disinfectant to the drinking water in any part of the water treatment process or that provide water that contains a chemical disinfectant. The maximum residual disinfectant level for chlorine dioxide also applies to transient noncommunity water systems that use chlorine dioxide as a disinfectant or oxidant.

b. Compliance dates. Subpart H community and nontransient noncommunity water systems that serve ten thousand or more persons shall comply with the maximum residual disinfectant levels beginning January 1, 2002. All other community and nontransient noncommunity water systems that add a chemical disinfectant to the drinking water in any part of the water treatment process or that provide water that contains a chemical disinfectant shall comply with the maximum residual disinfectant levels beginning January 1, 2004.

Subpart H transient noncommunity water systems that serve ten thousand or more persons and use chlorine dioxide as a disinfectant or oxidant shall comply with the maximum residual disinfectant level for chlorine dioxide beginning January 1, 2002. All other transient noncommunity water systems that use chlorine dioxide as a disinfectant or oxidant shall comply with the maximum residual disinfectant level for chlorine dioxide beginning January 1, 2004.

c. Sampling and monitoring requirements. Systems shall conduct monitoring to determine compliance with the maximum residual disinfectant levels as set forth under title 40, Code of Federal Regulations, part 141, subpart L.

d. Control of disinfectant residuals. Except for chlorine dioxide, systems may increase residual disinfectant levels in the distribution system to a level and for a time necessary to protect public health and address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination events, or cross-connection events.

2. **Disinfection byproducts.**

a. Interim maximum contaminant level for total trihalomethanes. Subpart H community water systems that serve ten thousand or more persons shall comply with the interim maximum contaminant level for total trihalomethanes until December 31, 2001. All

~~other community water systems that serve ten thousand or more persons and add a chemical disinfectant to the drinking water in any part of the water treatment process shall comply with the interim maximum contaminant level for total trihalomethanes until December 31, 2003. The interim maximum contaminant level for total trihalomethanes shall no longer be applicable after December 31, 2003.~~

~~Systems shall conduct monitoring to determine compliance with the interim maximum contaminant level for total trihalomethanes as set forth under title 40, Code of Federal Regulations, subpart C.~~

~~Before a system makes any significant modifications to its existing treatment process for the purpose of achieving compliance with the interim maximum contaminant level for total trihalomethanes, the system shall submit and obtain department approval of a detailed plan setting forth its proposed modifications and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by the system will not be adversely affected by the modifications. At a minimum, the department-approved plan shall require the system modifying its disinfection practice to:~~

~~(1) Evaluate the water system for sanitary defects and evaluate the source water for biological quality;~~

~~(2) Evaluate its existing treatment practices and consider improvements that will minimize disinfectant demand and optimize finished quality throughout the distribution system;~~

~~(3) Provide baseline water quality survey data of the distribution system as the department may require;~~

~~(4) Conduct additional monitoring to assure continued maintenance of optimal biological quality in the finished water; and~~

~~(5) Demonstrate an active disinfectant residual throughout the distribution system at all times during and after the modifications.~~

~~b. Final maximum contaminant level for total trihalomethanes and maximum contaminant levels for other disinfection byproducts. Subpart H community and nontransient noncommunity water systems that serve ten thousand or more persons shall comply with the final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and chlorite beginning January 1, 2002. All other community and nontransient noncommunity water systems that add a chemical disinfectant to the drinking water in any part of~~

~~the water treatment process or that provide water that contains a chemical disinfectant shall comply with the final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and chlorite beginning January 1, 2004.~~

~~Systems shall conduct monitoring to determine compliance with the final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and chlorite as set forth under title 40, Code of Federal Regulations, subpart L.~~

~~c. Disinfection byproduct precursors. Subpart H community and nontransient noncommunity water systems that use conventional treatment and serve ten thousand or more persons shall comply with the treatment techniques for control of disinfection byproduct precursors beginning January 1, 2002. Subpart H community and nontransient noncommunity water systems that use conventional treatment and serve fewer than ten thousand persons shall comply with the treatment techniques for control of disinfection byproduct precursors beginning January 1, 2004.~~

~~Systems shall conduct monitoring to determine compliance with the treatment techniques for control of disinfection byproducts as set forth under title 40, Code of Federal Regulations, subpart L.~~ Public water systems shall conduct monitoring to determine compliance with maximum contaminant levels, maximum residual disinfectant levels, and treatment technique requirements for disinfectants, disinfection residuals, disinfection byproducts, and disinfection byproduct precursors as set forth under title 40, Code of Federal Regulations, part 141, subparts L and V. Public water systems shall also comply with the requirements for conducting an initial distribution system evaluation as set forth under title 40, Code of Federal Regulations, part 141, subpart U.

History: Effective August 1, 2000; amended effective January 1, 2010.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03

33-17-01-09. Filtration and disinfection treatment sampling and monitoring requirements.

1. Coverage. All subpart H systems shall conduct monitoring to determine compliance with the treatment technique requirements for filtration and disinfection.

2. Systems utilizing surface water sources. All subpart H systems that utilize surface water sources shall comply with the turbidity and residual disinfectant concentration sampling and monitoring requirements set

forth under title 40, Code of Federal Regulations, part 141, subpart H. Those systems serving ten thousand or more persons shall also comply with the disinfection profiling and benchmarking requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P. Beginning January 1, 2002, those systems that serve ten thousand or more persons and provide conventional filtration treatment or direct filtration shall also comply with the individual filter sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P. Those systems serving fewer than ten thousand persons shall also comply with the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart T and the Federal Register volume 69, number 124, Tuesday, June 29, 2004, pages 38850-38857.

3. Systems utilizing ground water sources under the direct influence of surface water. The following sampling and monitoring requirements apply to subpart H systems that utilize ground water sources deemed by the department to be under the direct influence of surface water:

   a. All systems that provide filtration treatment shall comply with the turbidity and residual disinfectant concentration sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H. Those systems serving ten thousand or more persons shall also comply with the disinfection profiling and benchmarking requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P. Beginning January 1, 2002, those systems that serve ten thousand or more persons and provide conventional filtration treatment or direct filtration shall also comply with the individual filter sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P. Those systems serving fewer than ten thousand persons shall also comply with the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart T and the Federal Register volume 69, number 124, Tuesday, June 29, 2004, pages 38850-38857.

   b. All systems that do not provide filtration treatment shall comply with the filtration avoidance criteria and applicable disinfection sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H. Those systems serving ten thousand or more persons shall also comply with the disinfection profiling and benchmarking requirements and, beginning January 1, 2002, the filtration avoidance criteria set forth under title 40, Code of Federal Regulations, part 141, subpart P. Those systems serving fewer than ten thousand persons shall also comply with the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart T and the Federal Register volume 69, number 124, Tuesday, June 29, 2004, pages 38850-38857.

4. Recycle provisions. All subpart H systems that utilize conventional filtration or direct filtration treatment and that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must meet the requirements as prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141.76, subpart H.

5. Enhanced treatment for cryptosporidium. All public water systems that utilize a surface water source or a ground water source under the direct influence of surface water shall meet the treatment technique requirements for cryptosporidium set forth under title 40, Code of Federal Regulations, part 141, subpart W. These requirements are in addition to requirements found in title 40, Code of Federal Regulations, part 141, subparts H, P, and T.

History: Amended effective December 1, 1982; July 1, 1988; February 1, 1993; August 1, 2000; December 1, 2003; April 1, 2005; January 1, 2010.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03

33-17-01-14. Reporting and recordkeeping requirements.

1. **Reporting requirements.** Except when a shorter reporting period is specified, the system shall report to the department the result of any test, measurement, or analysis required within the first ten days following the month in which the results are received or the first ten days following the end of the required monitoring period as stipulated by the department, whichever of these is shorter.

   The system shall notify the department within forty-eight hours of the failure to comply with any primary drinking water regulations including failure to comply with monitoring requirements, except that failure to comply with the maximum contaminant levels for total coliform bacteria must be reported to the department no later than the end of the next business day after the system learns of the violation.

   Community water systems required to comply with ~~the interim maximum contaminant level for total trihalomethanes~~ title 40, Code of Federal Regulations, part 141, subpart G shall report the results of all analyses to the department within thirty days of the system's receipt of the results. Subpart H systems shall comply with the reporting requirements for filtration and disinfection treatment set forth under title 40, Code of Federal Regulations, part 141, subparts H, P, ~~and~~ T, and W. Community and nontransient noncommunity water systems shall comply with the reporting requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I. Community, nontransient noncommunity, and transient noncommunity water systems shall comply with the applicable reporting requirements for disinfectants, disinfection byproducts, and disinfection byproduct

precursors set forth under title 40, Code of Federal Regulations, part 141, ~~subpart~~ subparts L, U, and V.

The system is not required to report analytical results to the department in cases when the department performed the analysis.

Within ten days of completing the public notification requirements set forth under title 40, Code of Federal Regulations, part 141, subpart Q for the initial public notice and any repeat notices, public water systems must submit to the department a certification that the system has fully complied with the public notification regulations. The public water system must include with this certification a representative copy of each type of notice distributed, published, posted, and made available to persons served by the system and to the media.

The system shall submit to the department, within the time stated in the request, copies of any records required to be maintained by the department or copies of any documents then in existence which the department is entitled to inspect under the provisions of state law.

2. **Recordkeeping requirements.** Subpart H systems shall comply with the recordkeeping requirements for filtration and disinfection treatment set forth under title 40, Code of Federal Regulations, part 141, subparts H, P, ~~and~~ T, and W. Community and nontransient noncommunity water systems shall comply with the recordkeeping requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I. Community, nontransient noncommunity, and transient noncommunity water systems shall comply with the applicable recordkeeping requirements for disinfectants, disinfection byproducts, and disinfection byproduct precursors set forth under title 40, Code of Federal Regulations, part 141, ~~subpart~~ subparts L, U, and V. Community water systems shall retain copies of consumer confidence reports for no less than three years.

   All public water systems shall retain on their premises or at a convenient location near their premises, the following additional records to document compliance with the remaining provisions of this chapter:

   a. Bacteriological and chemical analyses. Records of bacteriological analyses and turbidity analyses shall be kept for not less than five years. Records of chemical analyses shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

      (1) The date, place, and time of sampling and the name of the person who collected the sample;

(2) Identification of the sample as to whether it was a routine distribution system sample, check sample, or raw or other special purpose sample;

(3) Date of analysis;

(4) Laboratory and person responsible for performing analysis;

(5) The analytical technique or method used; and

(6) The result of the analysis.

b. Corrective actions taken. Records of action taken by the system to correct violations shall be kept for a period of not less than three years after the last action taken with respect to the particular violation involved.

c. Reports and communications. Copies of any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, state, or federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

d. Variances and exemptions. Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

e. Public notices and certifications. Copies of public notices issued pursuant to title 40, Code of Federal Regulations, part 141, subpart Q and certifications made to the department pursuant to title 40, Code of Federal Regulations, part 141.31 must be kept for three years after issuance.

f. Copies of monitoring plans developed pursuant to this part shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under subdivision a, except as specified elsewhere in this part.

History: Amended effective July 1, 1988; December 1, 1990; February 1, 1993; August 1, 2000; December 1, 2003; April 1, 2005; January 1, 2010.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03, 61-28.1-05

33-17-01-20. Ground water system - Source requirements. In addition to the remaining provisions of this chapter, public water systems utilizing ground water sources shall comply with the monitoring and treatment technique requirements and undergo sanitary surveys as set forth under title 40, Code of

Federal Regulations, part 141, subpart S. This applies to public water systems that are consecutive users but not to subpart H systems and systems that combine all of their ground water with surface water prior to treatment.

History: Effective January 1, 2010.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03

TITLE 46

LABOR DEPARTMENT

JANUARY 2010

ARTICLE 46-05

HOUSING

CHAPTER 46-05-01
HOUSING FOR OLDER PERSONS

46-05-01-01. Housing for persons who are fifty-five years of age or older - Definitions.

1. The provisions regarding familial status and age in North Dakota Century Code chapter 14-02.5 shall not apply to housing intended and operated for persons fifty-five years of age or older.

2. For purpose of this chapter, "housing facility or community" means any dwelling or group of dwelling units governed by a common set of rules, regulations, or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include a:

   a. Condominium association;

   b. Cooperative;

c. Property governed by a homeowners' or resident association;

d. Municipally zoned area;

e. Leased property under common private ownership;

f. Mobile home park; and

g. Manufactured housing community.

3. For purposes of this chapter, "older person" means a person fifty-five years of age or older.

History: Effective January 1, 2010.
General Authority: NDCC 14-02.5-11
Law Implemented: NDCC 14-02.5-11; 24 CFR 100.304

46-05-01-02. Eighty percent occupancy.

1. In order for a housing facility or community to qualify as housing for older persons under North Dakota Century Code section 14-02.5-11, at least eighty percent of its occupied units must be occupied by at least one person fifty-five years of age or older.

2. For purposes of this chapter, "occupied unit" means:

   a. A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

   b. A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

3. For purposes of this chapter, "occupied by at least one person fifty-five years of age or older" means that on the date the exemption for housing designed for persons who are fifty-five years of age or older is claimed:

   a. At least one occupant of the dwelling unit is fifty-five years of age or older; or

   b. If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was fifty-five years of age or older.

4. Newly constructed housing for first occupancy need not comply with the requirements of this section until at least twenty-five percent of the units are occupied. For purposes of this chapter, "newly constructed housing" includes a facility or community that has been

wholly unoccupied for at least ninety days prior to re-occupancy due to renovation or rehabilitation.

5. Housing satisfies the requirements of this section even though:

   a. There are unoccupied units, provided that at least eighty percent of the occupied units are occupied by at least one person fifty-five years of age or older.

   b. There are units occupied by employees of the housing facility or community, and family members residing in the same unit, who are under fifty-five years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

   c. There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents and who are under the age of fifty-five.

   d. For a period expiring January 1, 2011, there are insufficient units occupied by at least one person fifty-five years of age or older, but the housing facility or community, at the time the exemption is asserted:

      (1) Has reserved all unoccupied units for occupancy by at least one person fifty-five years of age or older until at least eighty percent of the units are occupied by at least one person who is fifty-five years of age or older; and

      (2) Meets the requirements of sections 46-05-01-03 and 46-05-01-04.

6. For purposes of the transition provision described in subdivision d of subsection 5, a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least eighty percent of the occupied units by at least one person fifty-five years of age or older.

7. When application of the eighty percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person fifty-five years of age or older.

8. Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person fifty-five years

of age or older, so long as the housing facility or community complies with the provisions of section 46-05-01-03.

History: Effective January 1, 2010.
General Authority: NDCC 14-02.5-11
Law Implemented: NDCC 14-02.5-11; 24 CFR 100.305

46-05-01-03. Intent to operate as housing designed for persons who are fifty-five years of age or older.

1. In order for a housing facility or community to qualify as housing designed for persons who are fifty-five years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons fifty-five years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

   a. The manner in which the housing facility or community is described to prospective residents;

   b. Any advertising designed to attract prospective residents;

   c. Lease provisions;

   d. Written rules, regulations, covenants, deeds, or other restrictions;

   e. The maintenance and consistent application of relevant procedures;

   f. Actual practices of the housing facility or community; and

   g. Public posting in common areas of statements describing the facility or community as housing for persons fifty-five years of age or older.

2. Phrases such as "adult living", "adult community", or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons fifty-five years of age or older.

3. If there is language in a deed or other community or facility document which is inconsistent with the intent to provide housing for persons who are fifty-five years of age or older, the commissioner shall consider documented evidence of a good-faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

4. A housing facility or community may allow occupancy by families with children as long as it meets the requirements of section 46-05-01-02 and subsection 1 of section 46-05-01-03.

History: Effective January 1, 2010.
General Authority: NDCC 14-02.5-11
Law Implemented: NDCC 14-02.5-11; 24 CFR 100.306

46-05-01-04. Verification of occupancy.

1. In order for a housing facility or community to qualify as housing for persons fifty-five years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with section 46-05-01-02 through reliable surveys and affidavits.

2. A facility or community shall, within one hundred eighty days of January 1, 2010, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is fifty-five years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

3. The procedures described in subsection 2 must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years.

4. Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

   a. Driver's license;

   b. Birth certificate;

   c. Passport;

   d. Immigration card;

   e. Military identification;

   f. Any other state, local, national, or international official documents containing a birth date of comparable reliability; or

   g. A certification in a lease, application, affidavit, or other document signed by any member of the household age eighteen or older asserting that at least one person in the unit is fifty-five years of age or older.

5. A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

6. The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

7. If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person fifty-five years of age or older. Such evidence may include:

   a. Government records or documents, such as a local household census;

   b. Prior forms or applications; or

   c. A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

8. Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

9. A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

History: Effective January 1, 2010.
General Authority: NDCC 14-02.5-11
Law Implemented: NDCC 14-02.5-11; 24 CFR 100.307

46-05-01-05. Good-faith defense.

1. A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good-faith belief that the housing facility or community qualified for an exemption under this chapter.

2. a. A person claiming the good-faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

   b. Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must verify, in writing and under oath or

affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons fifty-five years of age or older in order for such person to claim the defense.

c. For purposes of this section, an authorized representative of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this chapter.

d. For purposes of this section, a "person" means a natural person.

e. A person shall not be entitled to the good-faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons fifty-five years of age or older. Such a person will be ineligible for the good-faith defense regardless of whether the person received written assurance described in subdivision b.

History: Effective January 1, 2010.
General Authority: NDCC 14-02.5-11
Law Implemented: NDCC 14-02.5-11; 24 CFR 100.308

TITLE 50

STATE BOARD OF MEDICAL EXAMINERS

JANUARY 2010

CHAPTER 50-02-07
LICENSE FEES

[Repealed effective January 1, 2010]

CHAPTER 50-02-07.1
LICENSE FEES

50-02-07.1-01. License fees. The fee for licensure in North Dakota, whether it be by qualification, reciprocity, endorsement, or special license, is two hundred dollars. The fee for a locum tenens license is two hundred dollars and the annual registration fee for all licensed physicians is one hundred fifty dollars.

History: Effective January 1, 2010.
General Authority: NDCC 43-17-25
Law Implemented: NDCC 43-17-25

50-02-07.1-02. Late fees. A physician seeking to renew the annual registration who has failed to complete the annual registration process within the time specified by the state board of medical examiners must be assessed a fee equal to three times the normal annual registration fee, in addition to such other penalties as are authorized by law, if that physician is found to have been practicing medicine in this state after the physician's license expired.

History: Effective January 1, 2010.
General Authority: NDCC 43-17-25
Law Implemented: NDCC 43-17-26.1

50-02-07.1-03. Administrative sanction. An administrative sanction shall be imposed in the amount of three times the normal annual registration fee for any applicant or licensed physician who provides false or deceptive information with regard to any material fact concerning eligibility for initial licensure or renewal after verifying or certifying that the information provided is true. This includes all material information provided in an initial license application, an annual registration renewal, or a report of compliance with mandatory continuing education requirements.

The imposition of an administrative sanction under this section is not a disciplinary action of the board; however, it does not preclude the board from also imposing disciplinary action, or other penalties provided by law, for the same conduct in appropriate cases.

An applicant or licensed physician may challenge the imposition of an administrative sanction under this section in a hearing under North Dakota Century Code chapter 28-32 before an administrative law judge.

History: Effective January 1, 2010.
General Authority: NDCC 43-17-07.1(3)
Law Implemented: NDCC 43-17-25

This was not intended by agency — will be removed in supplement publication

CHAPTER 50-02-14
RENEWAL OF LICENSES

Section
50-02-14-01 Renewal of Licenses

50-02-14-01. Renewal of licenses. ~~Commencing with the July 2007 renewal cycle, and~~ provided that all renewal requirements are deemed by the board to be met, a physician who applies for renewal of the physician's medical license within thirty-one days of the expiration date of that license shall be granted a license with an effective date of the first day following expiration of the physician's license. Nothing in this rule shall be construed to affect the board's ability to impose statutory fines or other disciplinary action against physicians for failing to renew a medical license prior to its expiration date or for practicing medicine with an expired license.

History: Effective January 1, 2010.
General Authority: NDCC 43-17-07.1
Law Implemented: NDCC 43-17-24

50-03-01-07. Drug therapy. Repealed effective January 1, 2010. ~~A physician assistant may dispense prepackaged medications prepared by a registered pharmacist acting on a physician's written order and labeled to show the name of the physician assistant and the physician. The dispensation authorized shall be limited to controlled drugs of schedules four and five and nonscheduled drugs. The dispensation by the physician assistant must be authorized by, and within, the preestablished guidelines of the supervising physician.~~

History: ~~Amended effective July 1, 1988; November 1, 1993.~~
General Authority: ~~NDCC 43-17-13~~
Law Implemented: ~~NDCC 43-17-02(10)~~

50-03-01-07.1. Medication dispensation. A physician assistant may dispense medications which the physician assistant is authorized to prescribe in the following circumstances:

1. The dispensation is in compliance with all applicable federal and state regulations;

2. Pharmacy services are not reasonably available, or an emergency requires the immediate dispensation of medication for the appropriate medical care of a patient; and

3. Dispensation of medications by the physician assistant is within the guidelines of the supervising physician.

History: Effective January 1, 2010.
General Authority: NDCC 43-17-07.1
Law Implemented: NDCC 43-17-02(9)

50-03-01-09. Number of assistants under physician's supervision limited. Repealed effective January 1, 2010. ~~No physician may act as primary supervising physician for more than two physician assistants currently qualified under section 50-03-01-02, unless compelling reasons are presented to and approved by the board.~~

History: ~~Amended effective July 1, 1988; November 1, 1993; November 1, 1995.~~
General Authority: ~~NDCC 43-17-13~~
Law Implemented: ~~NDCC 43-17-02(10)~~

50-03-01-09.2. Physician assistants under physician's supervision. Subject to approval by the board, a physician may act as primary supervising physician for such number of physician assistants as is consistent with good medical practice, considering the type and circumstance of the physician's practice

and the authority delegated to the physician assistants and which permits the physician to fulfill all supervisory duties required by law.

History: Effective January 1, 2010.
General Authority: NDCC 43-17-07.1
Law Implemented: NDCC 43-17-02(9)

50-03-04-09. Primary supervising physician's responsibility. It is the responsibility of the primary supervising physician to direct and review the work, records, and practice of the fluoroscopy technologist on a daily, continuous basis to ensure that appropriate and safe treatment is rendered. The primary supervising physician must be available continuously for contact personally or by telephone or radio, and the supervision must include at least two hours per week of ~~onsite,~~ personal supervision. Such supervision may be provided onsite or by means of televideo and audio technology that permits the supervising physician to view the work being performed by the fluoroscopy technologist as it is occurring and to communicate with the technologist. A fluoroscopy technologist must be present at all times when fluoroscopic studies performed by the radiologic technologist are being interpreted by a supervising radiologist. All studies performed by a fluoroscopy technologist must be reviewed by a supervising radiologist. The primary supervising physician will remain primarily responsible for the acts of the fluoroscopy technologist even when the fluoroscopy technologist is acting under the immediate supervision of an onsite supervising physician.

It is the responsibility of the primary supervising physician to evaluate and monitor fluoroscopy patient exposure to ionizing radiation to ensure that the cumulative absorbed dose is limited to the minimum amount necessary to achieve the clinical tasks. This includes requiring the use of equipment that aids in minimizing absorbed doses, the recording of "beam on" time in patient records for every fluoroscopy procedure, and the establishment of standard operating procedures and protocols for each specific type of procedures performed. Those protocols must address all aspects of each procedure and must be available for review by the board at all times.

It is the responsibility of the primary supervising physician to ensure that the fluoroscopy technologist does not perform any fluoroscopy procedure in any facility that has not developed a comprehensive fluoroscopic quality control program. That quality control program must be approved by the board before the fluoroscopy technologist performs fluoroscopy procedures at that facility.

History: Effective October 1, 1999; amended effective January 1, 2010.
General Authority: NDCC ~~43-17-13~~ 43-17-07.1
Law Implemented: NDCC 43-17-02(11)

TITLE 61

STATE BOARD OF PHARMACY

JANUARY 2010

CHAPTER 61-02-07.1

61-02-07.1-10. Pharmacy technician continuing education.

1. Each pharmacy technician shall complete at least ~~twenty~~ ten hours of approved pharmacy technician continuing education every ~~two years~~ year as a condition of renewal of a registration as a pharmacy technician in North Dakota.

2. There may be no carryover or extension of continuing education units with the exception that continuing education units obtained twelve months prior to the beginning of each ~~two-year~~ annual reporting period may be used in the current ~~two-year~~ annual reporting period which begins March first of each year and ends the last day of February, or the previous reporting period~~, however~~. However, they may not be counted as credit in both reporting periods. The failure to obtain the required ~~twenty~~ ten hours of continuing education by the renewal date may result in a suspension for a minimum of thirty days, or a maximum of the period ending the date the continuing education is completed.

3. Pharmacy technicians shall maintain their own records on forms supplied by the board. The records must be maintained for a two-year period.

4. The requirements of this section do not apply to a pharmacy technician applying for a first renewal of a registration.

5. A pharmacy technician registered with the board may make application to the board for a waiver of compliance with the pharmacy technician continuing education requirements and may be granted an exemption by the board.

6. Upon request of the board, proof of compliance must be furnished to the board.

7. Approved pharmacy technician continuing education means those pharmacy technician continuing education programs approved by the board. The board shall maintain a record of approved programs, including the hours of credit assigned to each program which shall be available upon request.

History: Effective July 1, 1996; amended effective January 1, 2005; January 1, 2010.
General Authority: NDCC 28-32-02, 43-15-10(12)(14)(19)
Law Implemented: NDCC 28-32-03

CHAPTER 61-03-04

61-03-04-02. Requirements for continuing pharmaceutical education.

1. Each pharmacist shall complete at least ~~thirty~~ fifteen hours (~~three~~ 1.5 c.e.u.) of approved continuing pharmaceutical education every ~~two years~~ year as a condition of renewal of a certificate of licensure as a pharmacist in the state of North Dakota.

2. There may be no carryover or extension of continuing education units with the exception that continuing education units obtained twelve months prior to the beginning of each ~~two-year~~ annual reporting period which begins March first of each year and ends the last day of February, may be used in the current ~~two-year~~ annual reporting period or the previous reporting period~~, however~~. However, they may not be counted as credit in both reporting periods. The failure to obtain the required ~~thirty~~ fifteen hours of continuing education by the renewal date may result in a suspension for the minimum of thirty days or a maximum of the period ending the date the continuing education is completed.

3. Pharmacists shall maintain their own records on forms supplied by the board. The records shall be maintained for a two-year period.

4. The requirements of this section do not apply to a pharmacist applying for a first renewal of a certificate of licensure.

5. A pharmacist holding a certificate of licensure from the board may make application to the board for a waiver of compliance with the continuing pharmaceutical education requirements and may be granted an exemption by the board. No pharmacist holding such an exemption may practice pharmacy in North Dakota until reinstated by the board after completing fifteen hours of continuing pharmaceutical education (one and one-half c.e.u.) during the year before reinstatement.

6. Upon request of the board, proof of compliance must be furnished to the board.

History: Effective April 1, 1986; amended effective January 1, 2005; January 1, 2010.
General Authority: NDCC 28-32-02, 43-15-10(12)(14), 43-15-25.1
Law Implemented: NDCC 28-32-03, 43-15-10(12)(14), 43-15-25.1

TITLE 67

DEPARTMENT OF PUBLIC INSTRUCTION

JANUARY 2010

CHAPTER 67-09-01

67-09-01-01. Definitions. For purposes of this article:

1. "Application" means the appropriate construction approval application provided by the department, including all required supporting documentation.

2. "Board" means the North Dakota state board of public school education.

3. "Construction" means construction, purchase, repair, improvement, renovation, or modernization of any school building or facility which is estimated by the school board to cost more than ~~twenty-five~~ forty thousand dollars.

4. "Consult" means to meet with, discuss data and plans, and seek advice and counsel.

5. "Department" means the North Dakota department of public instruction.

6. "District" means a North Dakota public school district.

7. "Emergency construction" means any new construction or remodeling construction that is requested because of damage or destruction of buildings or facilities as a result of fire, tornado, flood, or other act of God.

8. "Facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the district.

9. "Facility plan" means the school district's facility plan required for new construction, or remodeling construction estimated to cost ~~one~~ two hundred fifty thousand dollars or more, completed on forms provided or sanctioned by the department.

10. "New construction" means any construction that provides additional area to the current buildings or facilities and is estimated to cost more than ~~twenty-five~~ forty thousand dollars.

11. "Project" means the building, facility, or improvement that would result from the construction.

12. "Remodeling construction" means any construction that improves current buildings or facilities and is estimated to cost more than ~~twenty-five~~ forty thousand dollars.

13. ~~"Stable" enrollment may only be demonstrated by using either of the following methods:~~

    ~~a. The enrollment for the district has remained the same or has increased over the three-year period prior to the year the application is made; or~~

    ~~b. The enrollment as projected by the department using the cohort-survival method will remain the same or will increase over the five-year period subsequent to the year the application is made.~~

~~14.~~ "Superintendent" means the North Dakota superintendent of public instruction.

~~15.~~ 14. "Technical assistance" means counsel, advice, and involvement in the completion of the application and facility plan.

History: Effective April 1, 1994; amended effective November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-06-09, 15.1-36-01

67-09-01-02. Construction must be approved by the superintendent of public instruction - Exception. A district may not undertake construction of any school building or facility estimated to cost more than ~~twenty-five~~ forty thousand dollars unless:

1. The construction is approved by the superintendent; or

2. The construction is required as part of a plan to correct deficiencies required under North Dakota Century Code section 15.1-06-09,

approved by the state fire marshal, and the estimated cost does not exceed seventy-five thousand dollars.

History: Effective April 1, 1994; amended effective May 1, 1999; November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-06-09, 15.1-36-01

67-09-01-02.1. General requirements for approval. The superintendent may not approve any new construction or remodeling construction unless the school district demonstrates:

1. The need for the project~~:~~;

2. The educational utility of the project;

3. ~~a. The ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project; or~~

   ~~b.~~ Potential use of the project by a future reorganized school district; and

4. The capacity to pay for the project.

History: Effective November 1, 2002; amended effective January 1, 2010.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-06-09, 15.1-36-01

67-09-01-03. Consultation with the department required. The district shall consult with the department at least:

1. Sixty days prior to the submission of an application if the construction is new construction, or remodeling construction estimated to cost ~~one~~ two hundred fifty thousand dollars or more; or

2. Thirty days prior to the submission of an application if the construction is remodeling construction estimated to cost less than ~~one~~ two hundred fifty thousand dollars.

The department may waive the timelines in this section for emergency construction.

History: Effective April 1, 1994; amended effective November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-05.1. Approval of remodeling construction costing less than ~~one~~ two hundred fifty thousand dollars. The superintendent may approve

remodeling construction estimated to cost less than ~~one~~ two hundred fifty thousand dollars if the district demonstrates:

1. The need for the remodeling construction by showing that the remodeling is required to address any of the following criteria:

   a. Implementation of the life safety code;

   b. Implementation of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, et seq.];

   c. Implementation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794];

   d. Asbestos abatement or removal;

   e. The school's total enrollment, or the enrollment in a particular grade range that will be affected by the remodeling, has increased;

   f. The part of the building or facility that is to be remodeled has exceeded its useful life;

   g. The building or facility has been damaged as a result of fire, tornado, flood, or other act of God; or

   h. Violations of fire, health, safety, and any other required state or federal standards will be corrected by the construction;

2. The remodeling construction will enhance or facilitate delivery of educational services in the district; and

3. ~~Enrollment is likely to increase or remain stable for a period of time at least equal to the anticipated usable life of the project or the project will potentially be used by a future reorganized school district; and~~

4. ~~4.~~ The ability to pay for the project.

History: Effective November 1, 2002; amended effective January 1, 2010.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-05.2. Approval of new construction or remodeling construction costing ~~one~~ two hundred fifty thousand dollars or more. The superintendent may approve new construction or remodeling construction estimated to cost ~~one~~ two hundred fifty thousand dollars or more, if the district meets the following requirements:

1. The district must submit a completed facility plan with the application for construction approval.

2. At the time of consultation with the department, the district shall complete and review its facility plan with the department. The district shall receive and consider technical assistance provided by the department in completing and reviewing the district's facility plan. If the district submitted an acceptable facility plan within the preceding ~~two~~ three years, the district may submit a copy of that plan but the superintendent may require the district to update or revise the plan.

3. The facility plan must include:

   a. A description and preliminary diagrams of the proposed construction;

   b. A description of programs to reduce energy costs and waste disposal costs;

   c. Trend data on school or facility maintenance;

   d. The estimated difference in operation costs as a result of construction completion; and

   e. Any other information deemed advisable by the superintendent.

4. The facility plan must address the following factors, which relate to the need for the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:

   a. A description of district schools and facilities;

   b. Alternatives considered by the district and reasons for rejecting alternatives;

   c. Evidence that demonstrates that, despite attempted cooperation or collaboration with area schools, health and human service agencies and other education agencies and political subdivisions, no form of cooperation with another entity will result in buildings or facilities that meet the needs of the students;

   d. The need for buildings or facilities could not be met within the district or adjacent districts at a comparable cost by leasing, repairing, remodeling, or sharing existing buildings or facilities or by using temporary buildings or facilities;

   e. Description of district programs and services and an assessment of improvements that will occur as a result of construction completion;

   f. Violations of fire, health, safety, and any other required state or federal standards, which will be corrected by the construction;

g. The new construction or remodeling is required to address any of the following criteria:

(1) Implementation of the life safety code;

(2) Implementation of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, et seq.];

(3) Implementation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794];

(4) Asbestos abatement or removal;

(5) The school's total enrollment or the enrollment in a particular grade range that will be affected by the construction has increased;

(6) The building or facility, or part of the building or facility, has exceeded its useful life; or

(7) The building or facility has been damaged or destroyed as a result of fire, tornado, flood, or other act of God; and

h. Any other information deemed advisable by the superintendent.

5. The facility plan must address the following factors, which relate to the educational utility of the project construction, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:

a. The building or facility will enhance or facilitate delivery of educational services in the district;

b. The building or facility meets or exceeds the size standards recommended by the department;

c. The proposed building or facility is comparable in size, cost, and quality to buildings or facilities recently constructed in other districts that have similar enrollment; and

d. Any other information deemed advisable by the superintendent.

6. The facility plan must address the following factors, which relate to the ~~district's ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project, but may also relate to the other~~ general requirements for approval as indicated in section 67-09-01-02.1:

a. Past, present, and projected enrollment data;

b. The economic and population bases of the communities to be served are likely to grow or to remain stable;

c. ~~Enrollment is likely to increase or remain stable for a period of time at least equal to the anticipated usable life of the project;~~

~~d.~~ The building or facility will be in use for the life of the building or facility; and

~~e.~~ d. Any other information deemed advisable by the superintendent.

7. The facility plan must address the following factors, which relate to the potential utilization of the project by a future reorganized school district, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:

   a. The location of school sites in each surrounding school district, including surrounding districts' attendance numbers in elementary and high school, capacity of buildings, and distances from the applicant's district;

   b. Geographic information regarding the area proposed to be served;

   c. Appropriate efforts to determine how this building or facility fits into the learning needs of the area have been made;

   d. Information regarding the potential utilization of the project by a future reorganized school district; and

   e. Any other information deemed advisable by the superintendent.

8. The facility plan must address the following factors, which relate to the district's capacity to pay for the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:

   a. The availability and manner of financing the construction has been thoroughly evaluated;

   b. Trend data on general fund revenues, expenditures, and fund balances;

   c. Trend ~~date~~ data on tax levies;

   d. Trend data on taxable valuation per student;

   e. Current bonded indebtedness, debt retirement schedules, and total capital expenditures of the district;

f. Current sources of district revenue;

g. The operating budget of the district can satisfactorily meet the projected operating cost of the proposed building or facility; and

h. Any other information deemed advisable by the superintendent.

History: Effective November 1, 2002; amended effective January 1, 2010.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-10. Approval effective for ~~two~~ three years - Change in approved plan. Construction approval received under this chapter is effective for ~~two~~ three years from the date of approval. If the district has not commenced construction within the ~~two-year~~ three-year period, the district must apply again for construction approval. If a district modifies an approved plan and the modification results in a cost of more than ~~twenty-five~~ forty thousand dollars in excess of the cost of the approved plan, or if the modification changes the purpose or stated function of the approved plan, the district shall again obtain the approval of the superintendent as provided by this chapter.

History: Effective April 1, 1994; amended effective November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

CHAPTER 67-10-01

67-10-01-01. Definitions. For purposes of this article:

1. "Board" means the board of university and school lands.

2. "Department" means the North Dakota department of public instruction.

3. "District" means a North Dakota public school district.

4. "Fund" means the coal development trust fund controlled by the board of university and school lands.

5. "Loan application" means the construction loan application provided by the department of public instruction.

6. "Project" means a building or facility that a school district is authorized to construct, purchase, repair, improve, renovate, or modernize under North Dakota Century Code section ~~15-35-01.1~~ 15.1-36-01.

7. "Superintendent" means the North Dakota superintendent of public instruction.

History: Effective April 1, 1994; amended effective January 1, 2010.
General Authority: NDCC ~~15-35-01.1~~ 15.1-36-01, 15.1-36-02
Law Implemented: NDCC ~~15-35-01.1,~~15-60, 15.1-36-01, 15.1-36-02

67-10-01-02. Loan eligibility. A district may apply for a loan from the fund if the following are met:

1. The project has been approved by the superintendent or the state board of public school education pursuant to North Dakota Century Code section ~~15-35-01.1 and~~ 15.1-36-01, is estimated to cost in excess of ~~fifty thousand~~ one million dollars, and has an expected utilization of thirty years;

2. The district has an existing indebtedness equal to at least fifteen percent of the district's taxable valuation; and

3. The principal amount of the loan requested does not exceed the lesser of thirty percent of the taxable valuation of the district or five million dollars.

History: Effective April 1, 1994; amended effective January 1, 2010.
General Authority: NDCC ~~15-35-01.1~~ 15.1-36-01, 15.1-36-02(2)(a), 15.1-36-04
Law Implemented: NDCC ~~15-35-01.1, 15-60~~ 15.1-36-02, 15.1-36-04

67-10-01-04. Order of approval - Priority - Times loan applications considered. Loan applications ~~received before July 1, 1994, will be considered~~

~~for approval within forty-five days after the application is received. Thereafter, loan applications~~ will be considered in the order of approval of construction under article 67-09 but priority will be given to any district meeting the requirements for receipt of an equity payment under North Dakota Century Code section 15.1-27-11. Applications will be considered for approval two times each year, in the months of March and September. For consideration in March, the loan application must be received no later than February first. For consideration in September, the loan application must be received no later than August first.

History: Effective April 1, 1994; amended effective January 1, 2010.
General Authority: NDCC 15-35-01.1, 15.1-36-02
Law Implemented: NDCC 15-35-01.1, 15-60, 15.1-36-02

67-10-01-06. Loan approval - Order - Determination of loan amount and percent of interest. Repealed effective January 1, 2010. ~~Loan applications will be considered for approval in the order of approval of construction of the project by the superintendent or the state board of public school education. The superintendent may determine the loan amount and a percentage rate of interest to be paid on the loan.~~

~~1. The superintendent will not approve a loan amount that exceeds two million five hundred thousand dollars for any particular application. In determining the loan amount to be awarded, the superintendent shall consider the following:~~

~~a. The total number of loan applications received and the total amount of loans requested in the six-month application period, or, if the application is received prior to July 1, 1994, the total number of loan applications received and the total amount of loans requested at the time the application is considered;~~

~~b. The total amount of money the superintendent has determined will be approved for loans in the six-month period, or, if the application is received prior to July 1, 1994, the total amount of money the superintendent has determined will be approved for loans at the time the application is considered; and~~

~~c. The cost of the project and the fiscal capacity of the district.~~

~~2. The interest on a loan may not exceed the rate of two percent below the net interest rate on comparable tax-exempt obligations as determined on the date the loan application is approved by the superintendent, provided the interest rate may not exceed six percent.~~

~~**History:** Effective April 1, 1994.~~
~~**General Authority:** NDCC 15-35-01.1~~
~~**Law Implemented:** NDCC 15-35-01.1, 15-60~~

67-10-01-07. Board approval. The superintendent shall submit any approved loan applications to the board for final approval with recommendations regarding the loan amounts, the rates of interest to be paid on the loans, and the terms of the loans. The board shall consider the loan applications in the order in which they were approved by the superintendent. The board shall consider the superintendent's recommendation in determining whether to approve the loan. A loan may not be approved if approval would increase the outstanding principal balance of loans made from the fund to more than ~~twenty-five~~ fifty million dollars. The superintendent shall notify each applicant of the action taken by the board.

History: Effective April 1, 1994; amended effective January 1, 2010.
General Authority: NDCC ~~15-35-01.1~~ 15.1-36-02
Law Implemented: NDCC ~~15-35-01.1, 15-60~~ 15.1-36-02

ARTICLE 67-11

EDUCATION PROFESSIONAL CREDENTIALS

CHAPTER 67-11-01
DRIVER EDUCATION INSTRUCTOR'S CREDENTIAL

[Repealed effective January 1, 2010]

CHAPTER 67-11-04

67-11-04-01. Credentials required. For purposes of school accreditation, a school may employ as a librarian only a person who holds a library media credential as outlined in this chapter or who has been authorized by the North Dakota education standards and practices board in this specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards ~~2000~~ 2004 with ~~2002~~ 2006 revisions adopted by the education standards and practices board ~~on August 1, 2002~~. An individual holding a library media credential issued under this chapter may serve students in ~~kindergarten~~ prekindergarten through grade twelve.

History: Effective February 1, 2000; amended effective November 1, 2002; October 1, 2006; January 1, 2010.
General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02
Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-04. Types of credentials.

1. The plan of study option to qualify for a library media credential is:

   a. Issued to an individual licensed to teach or approved to teach by the North Dakota education standards and practices board;

   b. Issued to an individual who is employed as a librarian in a school that is unable to employ a credentialed librarian and who does not meet the qualifications for an LM01, LM02, or LM03 credential, as required by the total number of students served;

   c. Issued to an individual who has completed a minimum of six semester hours of undergraduate or graduate credits in library media from subsection 1 of section 67-11-04-05; and

   d. Issued to an individual who submits a written plan of study for approval to become a credentialed librarian and who annually submits college transcripts showing a minimum of six semester hours of undergraduate or graduate credits in library media until the licensed teacher qualifies for the required credential.

2. The librarian credential (LM03) is:

   a. Issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the credential every five years;

b. Issued to an individual who has completed a minimum of fifteen semester hours of undergraduate or graduate credits in library media from subsection 1 of section 67-11-04-05.

3. The library media specialist credential (LM02) is:

   a. Issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the credential every five years; and

   b. Issued to an individual who has completed a minimum of fifteen semester hours of undergraduate or graduate credits in library media from subsection 1 of section 67-11-04-05 and nine semester hours of undergraduate or graduate credits in library media from subsection 2 of section 67-11-04-05.

4. The library media director credential (LM01) is:

   a. Issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license must renew the credential every five years;

   b. Issued to an individual who holds a master's degree in library science, media education, another field of education, or education administration from a state-approved program; and

   c. Issued to an individual who has completed a minimum of fifteen semester hours of undergraduate or graduate credits in library media from subsection 1 of section 67-11-04-05, nine semester hours of undergraduate or graduate credits in library media from subsection 2 of section 67-11-04-05, and six semester hours of graduate credits in ~~educational administration~~ library or education coursework under subsection 3 of section 67-11-04-05.

5. If a credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of the issuance of the credential, the credential will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002; October 1, 2006; January 1, 2010.
General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02
Law Implemented: NDCC 15.1-02-04, 15.1-02-11

67-11-04-05. Credential standards.

1. Coursework required for all library media credentials and the plan of study option identified in section 67-11-04-04 must be taken from a state-approved library media program and must include at least fifteen semester hours of undergraduate or graduate credits in the following areas:

   a. Introduction to the role of the librarian in the school library;

   b. Reference;

   c. Selection of materials and collection development;

   d. Classification and cataloging of library materials; and

   e. Library administration.

   A minimum of two semester hours must be taken in each area identified in subdivisions a through e.

2. Coursework required for the LM01 and LM02 credentials identified in section 67-11-04-04 must be taken from a state-approved library media program and must include at least nine semester hours of undergraduate or graduate credits in the following areas:

   a. Conducting research following state and national library standards;

   b. Current issues in school librarianship; and

   c. A study of children's literature or young adult literature or reading methods <u>which may be accomplished through a class taken in either a state-approved library or state-approved education program</u>.

   A minimum of two semester hours must be taken in each area identified in subdivisions a through c.

3. Coursework required for the LM01 credential identified in section 67-11-04-04 must be taken from a state-approved ~~educational administration~~ <u>library or state-approved education</u> program and must include at least six semester hours of graduate credits from two or more courses in the following areas:

   a. Personnel supervision;

   b. Policy and educational finance;

c. Staff and program evaluation; or

d. Curriculum, instruction, and learning theory.

History: Effective February 1, 2000; amended effective May 16, 2000; October 1, 2006; January 1, 2010.
General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02
Law Implemented: NDCC 15.1-02-04, 15.1-02-11

CHAPTER 67-11-05

67-11-05-01. School counselor credential. For purposes of school accreditation, a school may employ as a school counselor only a person who holds a school counselor credential or ~~the~~ a provisional school counselor ~~designate~~ credential as outlined in this chapter or who has been authorized by the education standards and practices board in that specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards ~~2000~~ 2004 with ~~2002~~ 2006 revisions adopted by the education standards and practices board ~~on August 1, 2002~~.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02
Law Implemented: NDCC ~~15-20.4-03,~~ 15.1-02-04, 15.1-02-11, 15.1-13-23

67-11-05-03. ~~Program approval~~ Approval for school counselor programs. Whenever this chapter refers to "state-approved program", it refers to the process by which the education standards and practices board in concert with the department of public instruction shall supervise a system of program approval at those colleges within the state of North Dakota which provide school counselor education programs. School counselor education programs from other states or private colleges which meet standards for program approval are listed in the manual on certification and preparation of education personnel in the United States and Canada published by the national association of state directors of teacher education and certification.

History: Effective May 16, 2000; amended effective November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02
Law Implemented: NDCC ~~15-20.4-03,~~ 15.1-02-04, 15.1-02-11, 15.1-13-23

67-11-05-04. Types of credentials.

1. ~~Counselor designate credential CD08 will no longer be issued. A CD08 issued on or before January 1, 2001, is valid until the expiration date on the credential. See subsection 4 of section 67-11-05-04 for an option to satisfy accreditation requirements.~~

~~2.~~ Counselor designate credential CD16 ~~is valid only while the individual holds a valid North Dakota educator's professional license. A credential~~ will not be issued after June 30, 2010. Counselor designate credentials must be renewed each time the individual's educator's professional license is renewed. However, an individual who holds a lifetime North Dakota educator's professional license must renew the credential every five years.

~~3.~~ 2. ~~School counselor credential CG01, CG02, CG03, CG1G, CG2G, or CG3G.~~

a. ~~These credentials will be known as the CG01 and CG1G for secondary, CG02 and CG2G for elementary, and CG03 and CG3G for elementary and secondary in any school grade configuration.~~ An individual with a school counselor credential (SC03) will serve prekindergarten through grade twelve. Individuals holding previous school counselor credentials CG01, CG02, or CG03 will be redesignated as school counselor serving prekindergarten, kindergarten, elementary, and secondary students.

b. ~~Each CG01, CG02, and CG03 credential is valid only while the individual holds a valid North Dakota educator's professional license. A credential must be renewed each time the individual's educator's professional license is renewed. However, an individual who holds a lifetime North Dakota educator's professional license must renew the credential every five years.~~

~~c.~~ Each ~~CG1G, CG2G, and CG3G~~ school counselor provisional credential (SCP3) is valid for one year, ~~provided the holder is pursuing the seven-year course of study required by North Dakota Century Code section 15.1-13-23 and North Dakota Administrative Code section 67.1-02-04-03,~~ and is renewable for one-year terms ~~until the earlier of:~~ for a maximum of seven years. Individuals approved by the education standards and practices board may be eligible for a school counselor provisional credential.

~~(1) Seven years from the date of initial employment as a school counselor; or~~

~~(2) The credentialed individual acquires an educator's professional license.~~

~~After successful completion of the required seven-year course of study and acquisition of an educator's professional license, and prior to the expiration of the one-year term for the last year the individual was credentialed as a CG1G, CG2G, or CG3G, the individual must obtain appropriate credentials as a CG01, CG02, or CG03.~~

c. Each school counselor credential is valid only while the individual holds a North Dakota educator's professional license, or a professional school counseling restricted license. A credential must be renewed each time the individual's educator's professional license is renewed. However, an individual who holds a lifetime North Dakota educator's professional license must renew the credential every five years.

~~4.~~ 3. Plan of study option to qualify for counselor qualification points to satisfy accreditation requirements.

If a school is unable to employ a credentialed counselor ~~or counselor designate, as required by the enrollment of students served~~, the school may employ a licensed teacher to serve as the counselor ~~designate~~ on a plan of study approved by the department of public instruction. A written plan of study, from a state-approved school counseling program, including course names, numbers, and credit hours, to become a credentialed counselor ~~or counselor designate~~ must be submitted to the department of public instruction and be approved. Upon written request, the department may authorize a change of the courses selected for a particular year in the written plan of study if the change will not result in fewer than five semester hours per year of core counseling coursework. ~~The~~ To be considered for approval, a licensed teacher must have completed a minimum of ~~eight hours of~~ three graduate ~~coursework in counseling from a state-approved school counseling program in order for the plan to be considered for approval.~~ classes that are part of the required curriculum for a master's degree in school counseling or its equivalent from a state-approved counseling program addressing the following content areas:

a. Counseling theory;

b. Counseling methods or techniques;

c. Program management; and

d. Ethics and law.

Once the written plan of study is approved, the licensed teacher must submit transcripts documenting completion of a minimum of five semester hours of graduate core counseling coursework, as listed in ~~subdivision d of~~ subsection 1 of section 67-11-05-05, each year until the teacher obtains the required credential.

~~5.~~ 4. To synchronize credentials issued under this chapter with the licensure period of the educator's professional license, any credential that will expire within twelve months of issuance, because the educator's professional license will expire within twelve months of the issuance of the new credential, will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02
Law Implemented: NDCC 15-20.4-03, 15.1-02-04, 15.1-02-11, 15.1-13-23

67-11-05-05. Credential standards.

1. **School counselor credential standards for ~~CG01, CG02, and CG03 credentials~~ the SC03 credential.** The counselor must:

   ~~a. Hold a valid educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1 except as provided through provisions in North Dakota Century Code section 15.1-13-23 and subsection 3;~~

   ~~b. Have two years of successful professional experience in teaching or a related human service field except as provided through provisions in North Dakota Century Code section 15.1-13-23;~~

   ~~c. Obtain a favorable letter of recommendation from the counselor's state-approved school counseling program advisor; and~~

   ~~d.~~ ~~Have~~ have a master's degree in counseling, education, ~~counseling,~~ or a related human service field and the following graduate core counseling coursework content from a state-approved school counseling program listed below:

   ~~(1)~~ a. Elementary school counseling ~~(CG02, CG2G, CG03, and CG3G)~~;

   ~~(2)~~ b. Secondary school counseling ~~(CG01, CG1G, CG03, and CG3G)~~;

   ~~(3)~~ c. Supervised ~~school-based~~ school counseling internship:

      ~~(a) For the CG01, CG1G, CG2G, or the CG02, a minimum of four hundred fifty contact hours at the appropriate grade levels; and~~

      ~~(b)~~ ~~For the CG03 and the CG3G,~~ consisting of a minimum of four hundred fifty contact hours of which at least one hundred fifty contact hours are at both the elementary and secondary level;

   ~~(4)~~ d. ~~Guidance administration and consulting~~ Counseling program management;

   ~~(5)~~ e. Counseling theories;

   ~~(6)~~ f. Assessment techniques;

   ~~(7)~~ g. Group ~~techniques or group dynamics~~ counseling;

   ~~(8)~~ h. Career counseling and ~~testing~~ assessment; ~~and~~

   ~~(9)~~ i. Social and multicultural counseling;

j. Ethics and law; and

k. Counseling techniques.

2. **Counselor designate credential standards CD16.** The counselor designate must:

a. Hold ~~a valid~~ an educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-08 and 15.1-13-10 and North Dakota Administrative Code title 67.1;

b. Have completed a minimum of sixteen semester hours of graduate core counseling courses from a state-approved school counseling program; and

c. Obtain a favorable letter of recommendation from the counselor's state-approved school counseling program advisor.

~~3. **School counselor credential standards for CG1G, CG2G, and CG3G credentials.** To qualify as a CG1G, CG2G, or CG3G, an individual must:~~

~~a. Have a graduate degree in counseling from a state-approved school counseling program;~~

~~b. Have completed the requirements required in subdivisions c and d of subsection 1; and~~

~~c. Be pursuing licensure as a teacher by engaging in a course of study that will result in licensure within seven years of initial employment as a school counselor as provided in section 67.1-02-04-03.~~

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02
Law Implemented: NDCC ~~15-20.4-03,~~ 15.1-02-04, 15.1-02-11, 15.1-13-23

67-11-05-06. Application process. An initial applicant must submit the following:

1. A completed application form, SFN 51622, provided by the department of public instruction;

2. A copy of ~~official~~ college transcripts; and

3. ~~Written documentation from a supervisor verifying two years of successful professional experience in teaching or a related human~~

~~service field except as provided by North Dakota Century Code section 15.1-13-23 and subsection 3 of section 67-11-05-05;~~

~~4. A favorable letter of recommendation from the applicant's state-approved school counseling program advisor; and~~

~~5.~~ Documentation from a counselor educator verifying the ~~school-based~~ school counseling internship ~~for a CG01, CG02, CG03, CG1G, CG2G, or CG3G~~ that details:

a. Grade levels and number of contact hours involved in the internship experience; and

b. The name and location of the school where the internship occurred.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02
Law Implemented: NDCC ~~15-20.4-03,~~ 15.1-02-04, 15.1-02-11, 15.1-13-23

67-11-05-07. Renewal requirements.

1. All school counselor credentials are renewed by submitting a copy of ~~official~~ college transcripts documenting the completion of four semester hours of graduate coursework in education, of which two semester hours must be in the area of counseling. These two semester hours of required counseling coursework may be replaced by thirty clock-hours of continuing education hours in counseling with a signed verification of attendance or participation by the conference or workshop sponsor, the employer, or a school district business manager.

2. Renewals for the purpose of aligning the renewal dates of their credentials with their educator's professional licenses may be granted upon request of applicants. The number of semester hours needed for renewal will be calculated on a one semester hour per year basis.

History: Effective February 1, 2000; amended effective May 16, 2000; November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-02-04, 15.1-02-11, 28-32-02
Law Implemented: NDCC ~~15-20.4-03,~~ 15.1-02-04, 15.1-02-11, 15.1-13-23

CHAPTER 67-16-01

67-16-01-04. Courses. ~~All~~ If an alternative education program is authorized by the superintendent of public instruction under this chapter, courses in the alternative education program ~~must~~ need not meet the ~~following criteria:~~

1. ~~Minimum~~ minimum curriculum in North Dakota Century Code section ~~15-41-24 and course length in North Dakota Century Code section 15-41-06 must be maintained unless, after submitting an acceptable plan for alternatives, as outlined in chapter 67-16-01, a waiver is granted by the superintendent of public instruction.~~

2. ~~Program~~ 15.1-21-02 but all program courses must lead toward graduation for each of the participants.

History: Effective January 1, 2000; amended effective January 1, 2010.
General Authority: NDCC ~~15-40.1-07.2~~ 15.1-02-11, 28-32-02
Law Implemented: NDCC ~~15-40.1-07.2~~ 15.1-09-03, 15.1-21-02(7), 15.1-27-03.1

CHAPTER 67-19-01

67-19-01-02. Accreditation status. A school earning the status of accredited must:

1. Meet all the required standards and criteria;

2. Accrue at least eighty-five percent of the total point values assigned to the point-value standards and criteria that apply to the school; and

3. Accrue at least fifty percent of the point values assigned ~~to subdivisions a through h of subsection 6 of section~~ under sections 67-19-01-13 and 67-19-01-14.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11
Law Implemented: NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-04

67-19-01-06. Classification by school grade description and authority.

1. A school must be classified as a secondary school, middle level or junior high school, or an elementary school dependent upon the grade organization in that school. Accreditation standards and criteria must be applied according to the declared organization of a school. A school district retains the discretion to organize grades in the configurations that are most appropriate for that district.

2. Configurations for school organizations are:

   a. A secondary school may include any consecutive combination of grades from seven through twelve.

   b. A middle level or junior high school may include any consecutive combination of grades from five through nine.

   c. An elementary school may include any consecutive combination of grades from ~~kindergarten~~ prekindergarten through grade eight.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11

67-19-01-10. Review cycle.

1. ~~A~~ Before September fifteenth of each year, each school must submit required accreditation information ~~each fall~~;

2. A school will be reviewed on all standards and criteria in section 67-19-01-13 or 67-19-01-14 annually;

3. The accreditation status as provided in section 67-19-01-02 will be reported to each school by March thirty-first of each school year; and

4. Corrections must be ~~sent to~~ received by the department ~~and postmarked~~ no later than ~~April~~ June thirtieth or the reported school status will be ~~retained~~ continued.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11

67-19-01-13. Calculation tables for secondary, middle level, or junior high schools.

1. The calculation tables outline the standards for secondary schools and middle level and junior high schools. The tables identify the required standards and the point-value standards and criteria that apply to the school.

2. The accreditation standards and criteria that are identified by the letter R are those which are required of all schools.

3. The point-value standards and criteria are designed to provide some flexibility to schools.

4. A school must accrue at least eighty-five percent of the overall points that apply to the school and accrue at least fifty percent of the points assigned to each section.

5. Schools accrue points for the standards that apply directly to them. For example, a school employing an assistant superintendent is eligible for the two points assigned to that standard if the person holding the position is qualified for the position.

6. Calculation tables for secondary, middle level, or junior high are:

		Points
a.	Education improvement process	R
b.	Administration:	
	(1) Superintendent:	
	(a) Qualifications	R
	(b) Time assignment	5
	(Accrual of 5 points only if qualified)	

(2)	Assistant superintendent qualifications	2
	(Accrual of 2 points only if employed and qualified)	
(3)	Principal:	
	(a) Qualifications	R
	(b) Time assignment	5
	(Accrual of 5 points only if qualified)	
(4)	Assistant principal:	
	(a) Qualifications	2
	(Accrual of 2 points only if employed and qualified)	
	(b) Time assignment	2
	(Accrual of 2 points only if employed and qualified)	
(5)	Special education director qualifications:	2
	(Accrual of 2 points only if employed and qualified)	
c.	Instructional personnel:	
(1)	Teacher preparation	R
(2)	~~Specialized credential preparation:~~	
	~~Maximum accrual for enrollment category:~~	
	~~0-100~~	~~10~~
	~~101-250~~	~~15~~
	~~251+~~	~~20~~
	~~(Loss of 2 points for each teacher lacking appropriate credential)~~	
~~(3)~~	Professional development plan	R
d.	Instructional program:	
(1)	Written curriculum plan	R
(2)	Curriculum:	
	(a) Two-year course offerings (high school only)	R
	(b) Curriculum subjects and time allotment (middle level or junior high only)	R
(3)	Class size:	
	Maximum accrual for enrollment category:	
	0-100	10
	101-250	15
	251+	20
	(Loss of 1 point per teacher)	

e.	Student evaluation plan	R
f.	(Effective for the 2009-10 school year) Pupil personnel services:	
	(1) Pupil personnel services plan	R
	(2) Coordinator	R
	(3) Counseling and guidance services:	
	(a) Counselor qualifications	3
	(b) Counselor time assignment	3
	(Accrual of 3 points only if qualified)	
g.	(Effective after the 2009-10 school year) Pupil personnel services:	
	(1) Pupil personnel services plan	R
	(2) Coordinator	R
	(3) Counseling and guidance services:	
	(a) Counselor qualifications	R
	(b) Counselor time assignment	3
	(Accrual of 3 points only if qualified)	
	(4) Career advisor qualifications	R
	When counselor and guidance services are provided by a career advisor for grades seven through twelve, a career advisor can satisfy up to one-third of the counseling requirement.	
h.	Library media services:	
	(1) Library media services plan	R
	(2) Librarian:	
	(a) Qualifications	3
	(b) Time assignment	3
	(Accrual of 3 points only if qualified)	
~~h.~~ i.	School policies - handbooks:	
	(1) Teacher handbook	2
	(2) Student and parent handbook	2

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11, 15.1-06-19, 15.1-06-20

67-19-01-14. Calculation tables for elementary schools.

1. The following calculation tables outline the standards for elementary schools. The table identifies the required standards and the point-value standards and criteria that apply to the school.

2. The accreditation standards and criteria which are identified by the letter R are those which are required of all schools within the timelines established.

3. The point-value standards and criteria are designed to provide some flexibility to schools.

4. A school must accrue at least eighty-five percent of the overall points that apply to the school and accrue at least fifty percent of the points assigned to each section.

5. Schools must accrue points for the standards that apply directly to them. For example, a school employing an assistant superintendent is eligible for the two points assigned to that standard if the person holding the position is qualified for the position.

6. Calculation tables for elementary schools are:

		Points
a.	Education improvement process	R
b.	Administration:	
	(1) Superintendent (if employed):	
	(a) Qualifications	R
	(b) Time assignment	5
	(Accrual of 5 points only if qualified)	
	(2) Assistant superintendent qualifications	2
	(Accrual of 2 points only if employed and qualified)	
	(3) Principal:	
	(a) Qualifications	R
	(b) Time assignment	5
	(Accrual of 5 points only if qualified)	
	(4) Assistant principal:	
	(a) Qualifications	2
	(Accrual of 2 points only if employed and qualified)	
	(b) Time assignment	2
	(Accrual of 2 points only if employed and qualified)	
	(5) Special education director qualifications:	2

(Accrual of 2 points only if employed and qualified)

c. Instructional personnel:

(1) Teacher preparation R

(2) ~~Specialized credential preparation:~~

~~Maximum accrual for enrollment category:~~

~~0-100 10~~

~~101-250 15~~

~~251+ 20~~

~~(Loss of 2 points for each teacher lacking appropriate credential)~~

~~(3)~~ Professional development plan R

d. Instructional program:

(1) Written curriculum plan R

(2) Curriculum subjects and time allotment R

(3) Class size:

Maximum accrual for enrollment category:

0-100 10

101-250 15

251+ 20

(Loss of 1 point per teacher)

e. Student evaluation:

(1) Student evaluation plan R

(2) Readiness - kindergarten and first grade 2

f. (Effective for the 2009-10 school year) Pupil personnel services:

(1) Pupil personnel services plan R

(2) Coordinator R

(3) Counseling and guidance services:

(a) Counselor qualifications 3

(b) Counselor time assignment 3

(Accrual of 3 points only if qualified)

g. (Effective after the 2009-10 school year) Pupil personnel services:

(1) Pupil personnel services plan R

(2) Coordinator R

(3) Counseling and guidance services:

(a) Counselor qualifications R

(b) Counselor time assignment		3
(Accrual of 3 points only if qualified)		
(4) Career advisor qualifications		R
When counselor and guidance services are provided by a career advisor for grades seven and eight, a career advisor can satisfy up to one-third of the counseling requirement.		
h. Library media services:		
(1) Library media services plan		R
(2) Librarian:		
(a) Qualifications		3
(b) Time assignment		3
(Accrual of 3 points only if qualified)		
i. (Effective after the 2009-10 school year)		
Student performance strategist (kindergarten through grade three)		
(1) Qualifications		R
(2) Time - One full-time equivalent for each four hundred students		3
~~h.~~ j. School policies - handbooks:		
(1) Teacher handbook		2
(2) Student and parent handbook		2

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11, 15.1-06-19, 15.1-07-32

67-19-01-15. Education improvement process. ~~The~~ All schools must implement an education improvement process ~~must meet~~ that meets the needs of all students in the school. ~~The plan for education improvement~~ Schools may choose to follow the state education improvement process or an alternative process that at least meets the requirements of the state process. Schools that follow the state education improvement process must ~~be established~~ establish their plans as a result of ~~a local assessment~~ assessments and must describe how the plan will lead to improved student achievement at the school~~.~~ as follows:

1. The continuous cycle of education improvement is conducted over a five-year period with reports submitted to the department annually by June thirtieth.

2. The five-year continuous cycle includes peer visitation and consultation.

3. The cycle results in three reports from peer reviewers external to the school: ~~a~~ an initial team chair report, a ~~first~~ team visitation report, and a ~~second~~ final team ~~visitation~~ chair report. The continuous cycle results in the following:

   a. An initial team chair report submitted by the external team chair during the first year;

   b. The action plan for education improvement submitted by the school's education improvement committee;

   c. An annual report of the education improvement activities submitted by the school's education improvement committee;

   d. An external team report provided by the external team chair following the team visit during the second or third year of the continuous cycle; and

   e. A final team chair report submitted by the external team chair at the end of the cycle.

4. ~~The cycle includes two reports from the school: an education improvement plan following the team chair visit and a final response to the second team visitation report.~~

~~5.~~ The annual accreditation review is based on the school maintaining progress in its continuous cycle by submitting the required reports.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11

67-19-01-29.1. Instructional personnel - Specialized credential preparation. ~~Secondary, middle level or junior high, or elementary schoolteachers~~ All school personnel must comply with the ~~following:~~ state credential and licensing requirements appropriate to their assignment.

~~1. **Special education personnel.** A teacher who provides special education services must have a major in special education, or a special education credential, or a letter of approval issued by the department in the area services are provided by the teacher.~~

~~2. **Special teachers of reading.** A remedial or title I teacher must have an appropriate reading credential.~~

~~3. **Special teachers of mathematics.** A remedial or title I teacher must have an appropriate mathematics credential.~~

History: Effective July 1, 2007; amended effective January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11

67-19-01-30. Professional development plan. A written school district plan must be adopted which describes a program for professional development. The plan must include a description of the procedures, the activities, and the timeline for completion of activities. The plan must be reviewed at least once every five years and ~~kept on file for onsite review~~ submitted to the department each time it is amended.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11

67-19-01-31. Written curriculum plan for kindergarten through grade twelve. Repealed effective January 1, 2010.

~~1. A school must have a written plan for curriculum assessment, development, implementation, and evaluation. The plan must include a description of the procedures, the activities, and the timeline for implementation. The plan must be reviewed at least once every five years and kept on file for onsite review.~~

~~2. In formulating the written plan, schools shall consult the kindergarten through grade twelve course codes and descriptions and content area standards available on the department's web site.~~

~~3. Provision for experimental programs is provided in the kindergarten through grade twelve course codes and descriptions available on the department's web site.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~
~~**General Authority:** NDCC 15.1-02-11~~
~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-32. Instructional program - Enrollments in grades nine through twelve.

1. A curriculum for all students in grades nine through twelve must assure each student access to a minimum of five units of credit per year.

2. The minimum units of credit listed for each course ~~area must be taught in each school at least once every two years:~~

~~a. English language arts four units.~~

~~b. Mathematics four units.~~

~~c. Science four units.~~

~~d. Social studies three units.~~

~~e. Physical education one unit.~~

~~f. Health one-fourth unit.~~

~~g. Foreign language one unit.~~

~~h. Fine arts one unit, however at least one unit of music must be offered every four years.~~

~~i. Career and technical education one unit~~ are set out in North Dakota Century Code section 15.1-21-02.

3. A secondary school must provide additional units of credit in each school over a two-year period. The number of units is determined by the enrollment categories as follows:

   a. Eighty or fewer - seven units from two course areas;

   b. Eighty-one through one hundred fifty - nine units from two course areas;

   c. One hundred fifty-one through three hundred fifty - eleven units from three course areas; and

   d. Three hundred fifty-one or more - thirteen units from four course areas.

4. Schools must count for purposes of the minimum two-year course offering those courses in which students are enrolled which are provided through cooperative arrangements between or among schools and approved by the department.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-21-02

67-19-01-34. Instructional program - Enrollments in grades seven and eight.

1. Grades seven and eight required courses. A student must be enrolled for a minimum time of instruction per week in the following areas:

   a. English language arts two hundred minutes.

   b. Mathematics two hundred minutes.

   c. Science two hundred minutes.

   d. Social studies two hundred minutes (Social studies in grade eight must include North Dakota studies. The North Dakota studies course code must be used when reporting on the MIS03.).

   e. Physical education eighty minutes.

   f. Health fifty minutes.

2. Grades seven and eight additional courses:

   a. Music must be available to all students:

      (1) For a minimum of one hundred minutes per week in grade seven;

      (2) For a minimum of one hundred minutes per week in grade eight; or

      (3) For a minimum of fifty minutes per week in grade seven and for a minimum of fifty minutes per week in grade eight.

   b. A minimum of two hundred minutes per week of instruction in courses from one or a combination of the following must be available:

      (1) Art;

      (2) Agribusiness;

      (3) Business education;

      (4) Computer education;

      (5) Modern languages;

      (6) Family and consumer sciences;

      (7) Technology education; and

(8) Other additional courses as approved by the department.

c. A middle level or junior high school student must not be assigned to a study hall for more than one period a day.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11, 15.1-21-01

67-19-01-35. Instructional program - Enrollments in ~~kindergarten~~ prekindergarten through grade six. Specific requirements regarding the length of the minimum instructional time per week for all subject areas are:

1. ~~Kindergarten~~ Prekindergarten and kindergarten (two and three-quarters hours per day or 825 minutes per week, equivalent);
2. Primary (grades one through three)

Language arts	650	650	650
Mathematics	200	200	200
Social studies	100	100	100
Science	60	60	60
Health	40	40	40
Music	90	90	90
Physical education	90	90	90
Art	45	45	45
Unallocated time	375	375	375

Unallocated time may be used for:

a. Planning and guided learning;

b. Initiating or expanding a subject area;

c. Providing elective offerings; and

d. Providing pupil personnel services.

3. Intermediate (grades four through six)

	4th	5th	6th
Language arts	460	420	420
Mathematics	200	200	200

Social studies (Social studies in grade four must include North Dakota studies. The North Dakota studies course code must be used when reporting on the MIS03.)	200	200	200
Science	160	200	200
Health	80	80	80
Music	90	90	90
Physical education	90	90	90
Art	45	45	45
Unallocated time	325	325	325

Unallocated time may be used for:

a. Planning and guided learning;

b. Initiating or expanding a subject area;

c. Providing elective offerings; and

d. Providing pupil personnel services.

4. Thirty minutes of supervised recess may be counted as part of the ninety minutes of physical education for grades one through three.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11, 15.1-21-01

67-19-01-36. Class size.

1. Secondary and middle level or junior high school:

   a. Class size is recommended to be twenty-five students but may not exceed thirty students.

   b. A school unit is allowed three percent of the total number of classes taught to exceed thirty students to a maximum of thirty-four students per class without citation.

   c. Science and career and technical education classes must not exceed the capacity of the learning stations provided.

   d. Instrumental and vocal music classes are exempt from the class size standard.

2. Elementary school:

   a. Classroom enrollment, one grade level per teacher:

      (1) ~~Kindergarten~~ Prekindergarten through grade three is recommended to be twenty students but may not exceed twenty-five; and

      (2) Grades four through eight is recommended to be twenty-five students but may not exceed thirty.

   b. Maximum classroom enrollment, two grade levels per teacher:

      (1) ~~Kindergarten~~ Prekindergarten through grade three, twenty students; and

      (2) Grades four through eight, twenty-five students.

   c. Maximum classroom enrollment, three grade levels per teacher, ~~kindergarten~~ prekindergarten through grade eight, is fifteen students.

   d. Maximum classroom enrollment, four grade levels per teacher, ~~kindergarten~~ prekindergarten through grade eight, is ten students.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11

67-19-01-37. Teacher preparation time - ~~Kindergarten~~ Prekindergarten through grade twelve. A teacher's schedule must include preparation time during the teacher's working day.

History: Effective January 1, 2000; amended effective January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11

67-19-01-38. Student evaluation.

1. A school district shall develop a plan for use of standardized test scores and other available data to enable instructional personnel and supervisors to plan curriculum, to improve the instructional program, to enhance student performance, to provide for special needs of students, and to report student progress to parents and the community. The plan must be reviewed at least once every five years and be kept on file for onsite review.

2. Kindergarten or grade one. A standardized readiness test must be administered in either kindergarten or grade one, whichever is the initial point of formal education. The most recent copyright date of the standardized readiness test administered may not be more than ten years prior to the administration of the test.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11

67-19-01-39. Pupil personnel services.

1. Each district must provide a pupil personnel services plan, which ensures students' needs are being met in counseling and guidance services, career planning, social and psychological services, and health services.

2. A district must have a written description of the pupil personnel services plan which is developed and reviewed periodically in cooperation with the staff members from counseling and guidance, social and psychological, and health services. The written plan must be on file with the pupil personnel services coordinator, must be reviewed at least once every five years, and kept on file for onsite review. In school districts with enrollments of one through twenty-four students, a copy of the written plan must be on file with the department of public instruction. The written plan must include the scope of services, personnel, and resources; schedule and time assignments of services that will be provided; and health and immunization records.

3. The pupil personnel services must be coordinated by a credentialed school counselor, superintendent, principal, or special education unit director. The classroom teacher may coordinate the services in elementary school districts with enrollments of one through twenty-four students.

History: Effective January 1, 2000; amended effective May 16, 2000; July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15-20.1-24, 15-20.1-25, 15.1-02-11, 15.1-06-20

67-19-01-40. Counseling and guidance services - Prekindergarten through grade six.

1. Counseling and guidance services provided to students in prekindergarten through grade six must be provided by credentialed counselors at the required time assignments.

2. a. Qualifications for school counseling and guidance personnel ~~employed in a secondary, middle level or junior high, or elementary school.~~ serving students in prekindergarten through grade six

~~a.~~ ~~The qualifications for counseling and guidance personnel~~ are ~~determined by~~ based on the total number of students in the schools served:

(1) School district enrollment of one through twenty-four. A credentialed counselor is not required. However, the written plan as provided for in subsection 2 of section 67-19-01-39 must state what access the student has to counseling services by credentialed or licensed mental health professionals.

(2) Enrollment of twenty-five through two hundred fifty. A counselor must ~~be a licensed teacher and must~~ have a ~~CD16~~ counselor designate credential or an approved written plan of study on file with the department of public instruction as provided for in subdivision b.

(3) Enrollment of two hundred fifty-one or more. A counselor must ~~be a licensed teacher and must have a CG01 or CG1G or CG03 or CG3G credential for a high school, a CG01 or CG1G or CG02 or CG2G or CG03 or CG3G credential for a middle level or junior high school, CG02 or CG2G or CG03 or CG3G credential for an elementary school, or have an approved written plan of study on file with the department of public instruction as provided for in subdivision b~~ have a school counselor credential. Services may also be provided in accordance with North Dakota Century Code section 15.1-13-23 and North Dakota Administrative Code chapter 67-11-05 and section 67.1-02-04-03.

b. If a school is unable to employ a credentialed counselor, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the counselor ~~designate~~. A written plan of study to become a credentialed counselor must be submitted to the department of public instruction and must be approved as described in section 67-11-05-04 - school counselor credentials.

~~2.~~ 3. The time assignment ~~must be provided by a qualified counselor and is determined by~~ for counseling and guidance personnel serving students in prekindergarten through grade six based on the total number of students served:

a. The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full-time credentialed school counselor must be provided for each four hundred fifty students.

b. A school district with enrollment of one through twenty-four must submit annually a copy of its written plan as described in subsection 2 of section 67-19-01-39 to the department of public instruction, which includes classroom guidance activities based on the same time assignment.

c. In an elementary school, a qualified elementary school counselor ~~(CG02 or CG2G or CG03 or CG3G)~~ or counselor designate must provide at least fifty percent of the required counselor time assignment. Other licensed counselors or licensed social workers may be used to meet the remaining fifty percent required counselor time assignment. Time in excess of the accreditation standard may be provided by either a licensed counselor or a licensed social worker included in the school's written plan as described in subsection 2 of section 67-19-01-39.

History: Effective January 1, 2000; amended effective May 16, 2000; July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11, 15.1-06-19

67-19-01-40.1. Counseling and guidance services - Grades seven through twelve for the 2009-10 school year. During the 2009-10 school year, all schools must provide counseling and guidance services to students in grades seven through twelve as follows:

1. Counseling and guidance services must be provided by credentialed counselors.

2. a. Qualifications for school counseling and guidance personnel serving students in grades seven through twelve are based on the total number of students in the schools served:

(1) School district enrollment of one through twenty-four. A credentialed counselor is not required. However, the written plan as provided for in subsection 2 of section 67-19-01-39 must state what access the student has to

counseling services by credentialed or licensed mental health professionals.

(2) Enrollment of twenty-five through two hundred fifty. A counselor must have a counselor designate credential or an approved written plan of study on file with the department of public instruction as provided for in subdivision b.

(3) Enrollment of two hundred fifty-one or more. A counselor must have a school counselor credential. Services may also be provided in accordance with North Dakota Century Code section 15.1-13-23 and North Dakota Administrative Code chapter 67-11-05 and section 67.1-02-04-03.

b. If a school is unable to employ a credentialed counselor, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the counselor. A written plan of study to become a credentialed counselor must be submitted to the department of public instruction and must be approved as described in section 67-11-05-04.

3. The time assignment for counseling and guidance personnel serving students in grades seven through twelve is based on the total number of students served:

a. The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full-time credentialed school counselor must be provided for each four hundred fifty students.

b. A school district with enrollment of one through twenty-four must annually submit a copy of its written plan to the department of public instruction, including classroom guidance activities based on the same time assignment, as described in subsection 2 of section 67-19-01-39.

c. In an elementary school, a qualified elementary school counselor or counselor designate must provide at least fifty percent of the required counselor time assignment. Other licensed counselors or licensed social workers may be used to meet the remaining fifty percent required counselor time assignment. Time in excess of the accreditation standard may be provided by either a licensed counselor or a licensed social worker included in the school's written plan as described in subsection 2 of section 67-19-01-39.

History: Effective January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11

67-19-01-40.2. Counseling and guidance services - Grades seven through twelve after the 2009-10 school year. After the 2009-10 school year, all schools must provide counseling and guidance services to students in grades seven through twelve.

1. Each school must have a minimum of one full-time equivalent counselor available for every three hundred students in grades seven through twelve. Proportionate time allowances may be calculated for fractions thereof.

2. All counseling and guidance services must be provided by credentialed counselors, except a school may fulfill up to one-third of the counseling staffing level requirement with a qualified career advisor working under the direction of qualified counseling staff.

History: Effective January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11, 15.1-06-19, 15.1-06-20

67-19-01-41. Library media services.

1. Each school must provide a library media services plan which ensures that students and staff are effective users of ideas and information.

2. A school must have a written description of the library media services plan, developed and reviewed periodically in cooperation with the library and instructional staff and maintained at the school district level, which includes scope of services, personnel, resources, and equipment, and schedule and time assignments of services that will be provided. The library media services written plan must be reviewed at least once every five years and remain on file for onsite review.

3. Qualifications for school library media personnel employed in a secondary, middle level or junior high, elementary, or centralized (~~kindergarten~~ prekindergarten through grade twelve) library:

   a. The qualifications for librarians are determined by the total number of students in the schools served:

      (1) Enrollment of one through twenty-four. A librarian is not required; however, the library media services plan as provided in subsection 1 of section 67-19-01-41 must state what access students have to library materials and services.

      (2) Enrollment of twenty-five through two hundred fifty. A librarian must be a licensed teacher and must have an LM03, LM02, LM01, or an approved plan of study librarian credential.

(3) Enrollment of two hundred fifty-one or more. A librarian must be a licensed teacher and must have an LM01 or LM02 library media credential or an approved plan of study.

b. If a school is unable to employ a credentialed librarian, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the librarian. A written library plan of study to become a credentialed librarian must be submitted to the department of public instruction and must be approved as described in section 67-11-04-04 - school library media credentials.

4. The time assignment must be provided by a qualified librarian and is determined by the total number of students served.

a. The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full-time credentialed school librarian must be provided for each four hundred fifty students.

b. A school with enrollment of one to twenty-four must make library media materials and services available to all students as indicated in the district's library media services plan. The school must annually submit a copy of its written library media services plan as described in subsection 2 to the department of public instruction.

c. In any school library with a full-time librarian, library media aide time assignments may be used to fulfill time requirements in excess of one full-time librarian.

d. In an elementary school, a qualified elementary school librarian must provide at least fifty percent of the total library program time assignment for organization, curriculum, service, coordination, and supervision responsibilities. Library media aide time assignments may be used to meet the total library time assignments in excess of the fifty percent librarian serving in ~~an elementary kindergarten~~ a prekindergarten through grade six or ~~kindergarten~~ prekindergarten through grade eight library.

History: Effective January 1, 2000; amended effective May 16, 2000; July 1, 2007; January 1, 2010.
General Authority: NDCC 15.1-02-11
Law Implemented: NDCC 15.1-02-11

67-19-01-43. Driver's education program - Administrative requirements. Repealed effective January 1, 2010. ~~A high school may offer a driver's education program. A driver's education program must:~~

~~1. Be approved by the department prior to any instruction;~~

2. Be provided only by an instructor with a driver education instructor credential issued under chapter 67-11-01;

3. Provide insurance coverage for damages to others by student drivers in the amount required by North Dakota Century Code section 39-16.1-02;

4. Have and enforce policies that assure that each student taking a driver's education course has reached the student's fourteenth birthday;

5. Have and enforce policies that assure that the school's insurance carrier provides notice of the necessary insurance coverage to the department of public instruction and that the insurance carrier provides the department ten days' notice of cancellation of the required insurance policy and the reason for the cancellation;

6. Have and enforce policies that assure that at all times during the instructor's certification period, the instructor has a valid, nonsuspended, and unrevoked driver's license for the class of vehicle for which the instructor will provide instruction; and

7. Have and enforce policies that assure that each instructor carries insurance coverage at least in the amounts required by North Dakota law.

History: Effective June 1, 2002.
General Authority: NDCC 15.1-02-11, 15.1-22-02
Law Implemented: NDCC 15.1-02-11, 15.1-22-02, 39-06-05, 39-16.1-02

CHAPTER 67-20-01

67-20-01-01. Eligibility and application. A school district must apply for and receive approval from the superintendent of public instruction for a summer high school program. To be considered by the superintendent, an application must be received ~~no later than June first or before the start of the program, whichever is earlier~~ by the department fifteen days prior to the start of the program.

History: Effective May 1, 1999; amended effective October 1, 2006; January 1, 2010.
General Authority: NDCC 15.1-27-19
Law Implemented: NDCC 15.1-21-16, 15.1-27-19

67-20-01-02. Application. Repealed effective January 1, 2010. ~~Application for a summer high school program must be made on SFN 50091, which is available on the department of public instruction's web site.~~

History: ~~Effective May 1, 1999; amended effective October 1, 2006.~~
General Authority: ~~NDCC 15.1-27-19~~
Law Implemented: ~~NDCC 15.1-27-19~~

67-20-01-03. Courses. All courses in the summer high school program must meet the following criteria:

1. Each course must be part of the high school curriculum as adopted by the school board and must be offered and available to all high school students.

2. Each course must be selected from courses listed in the department of public instruction's ~~kindergarten through grade twelve~~ course codes and descriptions available on the department's website.

3. Courses that are not listed in the department of public instruction's ~~kindergarten through grade twelve~~ course codes and descriptions are considered experimental courses and ~~must~~ may not be offered unless approved by the department prior to the first day the summer program is in session.

4. Teachers must be licensed to teach or approved to teach in accordance with North Dakota Century Code section 15.1-06-06.

5. ~~A summer school program in driver's education will be approved only if the driver's education instructor submits to the department an abstract of the instructor's driving record from a state driver's license office showing not more than three moving traffic violations in the previous thirty-six months.~~ Each summer course must satisfy graduation

requirements and consist of at least the same number of hours as the same course offered during the school year.

History: Effective May 1, 1999; amended effective October 1, 2006; January 1, 2010.
General Authority: NDCC 15.1-27-19
Law Implemented: NDCC 15.1-06-06, 15.1-21-16, 15.1-27-19

67-20-01-08. Payments. ~~Proportionate payments will be paid based on pupil membership in an approved course. The payment is determined by the weighting factor of the high school, the amount of credit issued, average daily membership, and the amount of funding available for the current biennium. The minimum driver's education credit payment is for one-fourth credit consisting of thirty clock-hours of classroom instruction and twelve clock-hours of driving and observation time, which is paid proportionately if either or both parts are offered during the summer. The classroom instruction, driving, and observation must be completed by a student for the school to receive the proportional payments for a driver's education credit.~~ Summer school payments will be made through the state school aid system based on the number of full-time equivalent students enrolled in summer courses multiplied by the weight for summer education programs in North Dakota Century Code section 15.1-27-03.1. Full-time equivalent students are determined using this formula:

1. For science or vocational courses, the total membership hours divided by one hundred fifty hours multiplied by .25.

2. For all other courses, the total membership hours divided by one hundred twenty hours multiplied by .25.

Summer school payments will be made for driver's education only if classroom instruction, driving, and observation are all completed by the student during summer school and the driver's education credit is a minimum of one-fourth credit consisting of thirty clock-hours of classroom instruction and twelve clock-hours of driving and observation time.

History: Effective May 1, 1999; amended effective October 1, 2006; January 1, 2010.
General Authority: NDCC 15.1-27-19
Law Implemented: NDCC 15.1-21-16, 15.1-27-03.1, 15.1-27-19

CHAPTER 67-24-01

67-24-01-01. Eligibility and application. A school district must apply for and receive approval from the superintendent of public instruction for a summer remedial elementary school program or summer elementary grades five through eight school program. To be considered by the superintendent, an application must be received ~~no later than June first or before the start of the program, whichever is earlier~~ by the department fifteen days prior to the start of the program.

History: Effective February 1, 2000; amended effective November 1, 2002; October 1, 2006; January 1, 2010.
General Authority: NDCC 15.1-27-19
Law Implemented: NDCC 15.1-21-16, 15.1-27-19

67-24-01-02. Application. Repealed effective January 1, 2010. ~~Application for a summer remedial elementary school program must be made on SFN 52031, which is available on the department of public instruction's web site.~~

History: ~~Effective February 1, 2000; amended effective November 1, 2002; October 1, 2006.~~
General Authority: ~~NDCC 15.1-27-19~~
Law Implemented: ~~NDCC 15.1-27-19~~

67-24-01-03. Courses - Summer remedial elementary school program. The delivery of courses in the summer remedial elementary school program must be developmentally appropriate instruction in remedial reading and remedial mathematics, which enables students to achieve challenging academic standards. All courses in the summer remedial elementary school program must meet the following criteria:

1. Each course must be part of the elementary curriculum as adopted by the school board and must be offered and available to all eligible elementary students.

2. Each course must be selected from courses listed in the department of public instruction's ~~kindergarten through grade twelve~~ course codes and descriptions available on the department's website.

3. Teachers must be licensed to teach or approved to teach in accordance with North Dakota Century Code section 15.1-06-06.

History: Effective February 1, 2000; amended effective November 1, 2002; October 1, 2006; January 1, 2010.
General Authority: NDCC 15.1-27-19
Law Implemented: NDCC 15.1-06-06, 15.1-21-16, 15.1-27-19

67-24-01-03.1. Courses - Summer elementary school grades five through eight program. After the 2009-10 school year, the delivery of courses provided to students enrolled in grades five through eight may include mathematics,

reading, science, and social studies. All courses offered to students enrolled in grades five through eight must:

1. Be part of the grades five through eight school curriculum as adopted by the school board and must be offered and available to all grades five through eight school students.

2. Be selected from courses listed in the department of public instruction's course codes and descriptions available on the department's website.

3. Be taught by teachers licensed to teach or approved to teach in accordance with North Dakota Century Code section 15.1-06-06.

History: Effective January 1, 2010.
General Authority: NDCC 15.1-27-19
Law Implemented: NDCC 15.1-21-16, 15.1-27-19

67-24-01-04. Scheduling. Summer remedial elementary school programs and summer elementary grades five through eight school programs must be conducted between the closing date of the regular school year and the beginning date of the next regular school year.

1. Eligible remedial elementary students must be enrolled:

   ~~1.~~ a. For a minimum of sixty hours in remedial mathematics;

   ~~2.~~ b. For a minimum of sixty hours in remedial reading; or

   ~~3.~~ c. For a minimum of thirty hours in remedial mathematics and thirty hours in remedial reading.

2. Elementary grades five through eight school students must be enrolled:

   a. For a minimum of sixty hours in mathematics;

   b. For a minimum of sixty hours in reading;

   c. For a minimum of sixty hours in science;

   d. For a minimum of sixty hours in social studies; or

   e. For a minimum of two 30-hour segments in mathematics, reading, science, or social studies.

History: Effective February 1, 2000; amended effective November 1, 2002; October 1, 2006; January 1, 2010.
General Authority: NDCC 15.1-27-19
Law Implemented: NDCC 15.1-21-16, 15.1-27-19

67-24-01-05. Students. Students must be in ~~grade one~~ kindergarten through grade eight based upon the grade they ~~will be in the fall~~ have actually attained at the time the course is taken for the district to qualify for proportionate payments. ~~Eligible~~

1. For remedial elementary students to be served, they must score:

   ~~1.~~ a. Below the sixtieth percentile on a standardized test;

   ~~2.~~ b. Below the sixtieth percentile on a teacher-developed test; or

   ~~3.~~ c. Have a grade of C or below in the school year that just ended.

2. Any grade five through eight student is eligible to attend summer school reading, mathematics, science, and social studies.

3. No more than fifteen students may be served by one licensed teacher in remedial courses.

4. No more than twenty-five students may be served by one licensed teacher in summer school grades five through eight reading, mathematics, science, or social studies courses.

History: Effective February 1, 2000; amended effective November 1, 2002; October 1, 2006; January 1, 2010.
General Authority: NDCC 15.1-27-19
Law Implemented: NDCC 15.1-21-16, 15.1-27-06(6), 15.1-27-19

67-24-01-08. Payments. ~~The proportionate payment will be calculated by multiplying average daily membership times the weighting factor for the elementary school determined under North Dakota Century Code section 15.1-27-07 times the educational support per student provided under North Dakota Century Code section 15.1-27-04. If necessary, the educational support per student must be reduced to stay within the total amount of funding made available for remedial elementary programs under North Dakota Century Code section 15.1-27-19. Average daily membership must be reported by course and must be computed based on the following formula:~~ Summer school payments will be made through the state school aid system based on the number of full-time equivalent students enrolled in summer courses multiplied by the weight for summer education programs in North Dakota Century Code section 15.1-27-03.1. Full-time equivalent students are determined for all courses by dividing the total membership hours by one hundred twenty hours and multiplying by .25.

~~1. The quotient of the total hours membership divided by one hundred twenty hours times the product of .25 times one hundred eighty days equals the computed days membership.~~

~~Computed days membership = Total hours membership x .25 x 180 days~~

~~120~~

~~2. The computed days membership for each class is totaled to obtain the aggregate computed days membership. The aggregate computed days membership is divided by one hundred eighty days to obtain the average daily membership.~~

~~Average daily membership = Σ Computed days membership~~

~~180~~

History: Effective February 1, 2000; amended effective November 1, 2002; January 1, 2010.
General Authority: NDCC 15.1-27-19
Law Implemented: NDCC 15.1-21-16, 15.1-27-03.1, 15.1-27-19

TITLE 69

PUBLIC SERVICE COMMISSION

JANUARY 2010

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~December 31, 2006~~ August 1, 2009, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-01.2

TITLE 75

DEPARTMENT OF HUMAN SERVICES

CHAPTER 75-02-02

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

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

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

   b. Outpatient hospital services. "Outpatient hospital services" means those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation and emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of

the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act.

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

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

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

f. Early and periodic screening and diagnosis of individuals under twenty-one years of age and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and provide health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care

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

g. Physician's services, whether furnished in the office, the patient's home, a hospital, nursing facility, or elsewhere. "Physician's services" means those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.

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

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

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

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

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

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

j. Hospice care. "Hospice care" means the care described in 42 U.S.C. 1395x(dd)(1) furnished by a "hospice program", as that term is defined in 42 U.S.C. 1395x(dd)(2), to a terminally

ill individual who has voluntarily elected to have hospice care. Hospice care may be provided to an individual while the individual is a resident of a nursing facility, but only the hospice care payment may be made. An individual's voluntary election must be made in accordance with procedures established by the department which are consistent with procedures established under 42 U.S.C. 1395d(d)(2), for such periods of time as the department may establish, and may be revoked at any time.

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

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

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

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

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

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

of the physician's or practitioner's professional practice as defined and limited by federal and state law.

q. Durable medical equipment and supplies. "Durable medical equipment and supplies" means those medically necessary items suitable for use in the home and used to treat disease, to promote healing, to restore bodily functioning to as near normal as possible, or to prevent further deterioration, debilitation, or injury which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. Durable medical equipment includes prosthetic and orthotic devices, eyeglasses, and hearing aids. For purposes of this subdivision:

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

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

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

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

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

(2) "Preventive services" means those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability, and other

health deviations or their progression, prolong life, and promote physical and mental health and efficiency.

(3) "Rehabilitative services", in addition to those for which provision is made elsewhere in these definitions, includes any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.

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

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

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

u. Personal care services. "Personal care services" means those services that assist an individual with activities of daily living and instrumental activities of daily living in order to maintain independence and self-reliance to the greatest degree possible.

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

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

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

(3) Whole blood, including items and services required in collection, storage, and administration, when it has been

recommended by a physician and when it is not available to the patient from other sources.

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

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

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

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

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

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

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

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

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

i. Coverage may not be extended and payment may not be made for emergency room services that are not medically necessary, as determined by the department under section 75-02-02-12, and provided in response to a medical emergency.

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

k. Coverage and payment for personal care services ~~may~~:

(1) May not be made unless prior authorization is granted ~~and may not exceed one hundred twenty hours per month except when the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for the mentally retarded level of care, in which case, coverage and payment may not exceed two hundred forty hours per month.~~, and the recipient meets the criteria established in subsection 1 of section 75-02-02-09.5; and

(2) May be approved for:

(a) Up to one hundred twenty hours per month, or at a daily rate;

(b) Up to two hundred forty hours per month if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for the mentally retarded level of care; or

(c) May be approved up to three hundred hours per month if the recipient is determined to be impaired in at least five of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in

section 75-02-02-09 or intermediate care facility for the mentally retarded level of care; and none of the three hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Family practice;

(2) Internal medicine;

(3) Obstetrics;

(4) Pediatrics;

(5) Osteopathy;

(6) General practice;

(7) Rural health clinics;

(8) Federally qualified health centers; and

(9) Indian health clinics.

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

(1) Aged, blind, or disabled;

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

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

(4) Receiving home and community-based services.

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

(1) Certified family nurse practitioner services;

(2) Certified pediatric nurse practitioner services;

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

(4) Family planning services;

(5) Certified nurse midwife services;

(6) Pediatric services;

(7) Optometric services;

(8) Chiropractic services;

(9) Clinic services;

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

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

(12) Emergency services;

(13) Transportation services;

(14) Case management services;

(15) Home and community-based services;

(16) Nursing facility services;

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

(18) Psychiatric services;

(19) Ophthalmic services;

(20) Obstetrical services;

(21) Psychological services;

(22) Ambulance services;

(23) Immunizations;

(24) Independent laboratory and radiology services; and

(25) Public health unit services.

(26) Personal care services.

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

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

(1) The recipient relocates;

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

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

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

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

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

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

b. Imposed a limit that is exceeded;

c. Imposed a condition that was not met;

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

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

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July 1, 1993; January 1, 1994; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; November 8, 2002; September 1, 2003; July 1, 2006; January 1, 2010.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04; 42 USC 1396n(b)(1); 42 CFR 431.53; 42 CFR 431.110; 42 CFR 435.1009; 42 CFR Part 440; 42 CFR Part 441, subparts A, B, D

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

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

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

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

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

2. Limitation on payment for eye services.

   a. No payment will be made for eyeglasses for individuals twenty-one years of age and older except for one pair of eyeglasses no more often than once every ~~three~~ two years. No payment will be made for the repair or replacement of eyeglasses during the ~~three-year~~

two-year period unless the provider has secured the prior approval of the department and the department has found that the repair or replacement is medically necessary.

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

3. Limitation on chiropractic services.

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

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

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

History: Effective September 1, 2003; amended effective July 1, 2006; July 1, 2009.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04

75-02-02-09.5. Limitations on personal care services.

1. No payment for personal care services may be made unless an assessment of the recipient is made by the department and the recipient is determined to be impaired in at least one of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring or in at least three of the instrumental activities of daily living of medication assistance, laundry, housekeeping, and meal preparation.

2. No payment may be made for personal care services unless prior authorization has been granted by the department.

3. Payment for personal care services may only be made to an enrolled qualified service provider who meets the standards described in chapter 75-03-23 or to a basic care assistance provider that qualifies for a rate under chapter 75-02-07.1.

4. No payment may be made for personal care services provided in excess of the services, hours, or timeframe authorized by the department in the recipient's approved service plan.

5. Personal care services may not include skilled health care services performed by persons with professional training.

6. An inpatient or resident of a hospital, a nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental disease may not receive personal care services.

7. Personal care services may not include home-delivered meals, services performed primarily as housekeeping tasks, transportation, social activities, or services or tasks not directly related to the needs of the recipient such as doing laundry for family members, cleaning of areas not occupied by the recipient, or shopping for items not used by the recipient.

8. Laundry, shopping, and housekeeping tasks when provided as personal care services must be incidental to the provision of other personal care tasks and cannot exceed thirty percent of the total time authorized for the provision of all personal care tasks.

9. No payment may be made for personal care services provided to a recipient by the recipient's spouse, parent of a minor child, or legal guardian.

10. No payment may be made for care needs of a recipient which are outside the scope of personal care services.

11. Authorized personal care services may ~~not exceed one hundred twenty hours per month except authorized personal care services may not exceed two hundred forty hours per month when a recipient has been determined to meet nursing facility or intermediate care facility for the mentally retarded level of care criteria.~~ only be approved for:

    a. Up to one hundred twenty hours per month, or at a daily rate;

    b. Up to two hundred forty hours per month, or at a daily rate, if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for the mentally retarded level of care; or

    c. Up to three hundred hours per month if the recipient is determined to be impaired in at least five of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for the mentally retarded level of care; and none of the three

hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.

12. Personal care services may only be provided when the needs of the recipient exceed the abilities of the recipient's spouse or parent of a minor child to provide those services. Personal care services may not be substituted when a spouse or parent of a minor child refuses or chooses not to perform the service for a recipient. Personal care services may be provided during periods when a spouse or parent of a minor child is gainfully employed if the services cannot be delayed until the spouse or parent is able to perform them.

13. Personal care services may not be provided for tasks that are otherwise age appropriate or generally needed by an individual within the normal stages of development.

14. The authorization for personal care services may be terminated if the services are not used within sixty days, or if services lapse for at least sixty days, after the issuance of the authorization to provide personal care services.

15. The department may deny or terminate personal care services when service to the client presents an immediate threat to the health or safety of the client, the provider of services, or others, or when services that are available are not adequate to prevent a threat to the health or safety of the client, the provider of services, or others.

History: Effective July 1, 2006; amended effective January 1, 2010.
General Authority: NDCC 50-24.1-18
Law Implemented: NDCC 50-24.1-18; 42 CFR Part 440.167

CHAPTER 75-02-02.1

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

1. The categorically needy coverage group includes:

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

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

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

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

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

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

   g. Families who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which they became ineligible as a result, wholly or partly, of the collection or increased collection of child or spousal support continue eligible for medicaid for four calendar months;

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

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

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

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

2. The optional categorically needy coverage group includes:

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

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

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

d. Gainfully employed individuals with disabilities age eighteen to sixty-five who meet medically needy nonfinancial criteria, have countable assets within the medically needy asset levels, have income below two hundred twenty-five percent of the poverty level, and are not eligible for medicaid under any other provision except as a qualified medicare beneficiary or a special low-income medicare beneficiary. Coverage under this group ends on the last day of the month before the month in which the individual attains the age of sixty-five.

e. Individuals under age nineteen who are disabled, who meet medically needy nonfinancial criteria, who have income at or below two hundred percent of the poverty level, and who are not eligible for Medicaid under any other provision. Coverage under this group ends on the last day of the month in which the individual reaches age nineteen.

3. The medically needy coverage group includes:

a. Eligible caretaker relatives and individuals under age twenty-one in families with deprived children who qualify for and require medical services on the basis of insufficient income, but who do not meet income or age family coverage group requirements, ~~but meet medically needy income and asset standards~~ or who do not qualify under optional categorically needy or poverty level groups;

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

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

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

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

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

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

4. The poverty level coverage group includes:

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

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

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

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

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

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

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

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

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; January 1, 1994; January 1, 1997; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-31

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

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

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

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

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

5. The identity of each applicant must be established and documented.

6. Citizenship status of each applicant must be established and documented.

History: Effective December 1, 1991; amended effective July 1, 2003; June 1, 2004; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01

75-02-02.1-16. State of residence. A resident of the state is an individual who is living in the state voluntarily and not for a temporary purpose. Temporary absences from the state with subsequent returns to the state, or intent to return when the purpose of the absence has been accomplished, do not interrupt continuity of residence. Residence is retained until abandoned or established in another state.

1. For individuals entering the state, the earliest date of eligibility is the date of entry. Residence may not be established for individuals who ~~are receiving medicaid benefits from, or claiming~~ claim residence in~~,~~ another state.

2. Individuals under age twenty-one.

   a. For any individual under age twenty-one who is living independently from the individual's parents or who is married and capable of indicating intent, the state of residence is the state where the individual is living with the intention to remain there permanently or for an indefinite period.

   b. For any individual who is receiving foster care or adoption assistance payments, under title IV-E, from another state and is living in North Dakota, North Dakota is the state of residence for medicaid purposes.

   c. For any individual under age twenty-one not residing in an institution, whose medicaid eligibility is based on blindness or

disability, the state of residence is the state in which the individual is living.

d. For any other noninstitutionalized individual under age twenty-one, the state of residence is the state in which the child is living with the child's parent or caretaker ~~is a resident~~ relative on other than a temporary basis. A child who comes to North Dakota to receive an education, special training, or services in a facility such as the Anne Carlsen facility, a maternity home, or a vocational training center is normally regarded as living temporarily in the state if the intent is to return to the child's home state upon completion of the education or service. A child placed by an out-of-state placement authority, including a court, into the home of relatives or foster parents in North Dakota on other than a permanent basis or for an indefinite period is living in the state for a temporary purpose and remains a legal resident of the state of origin. A resident of North Dakota who leaves the state temporarily to pursue educational goals (including any child participating in job corps) or other specialized services (including a child placed by a North Dakota placement authority, including a court, into the home of out-of-state relatives or foster parents) does not lose residence in the state.

e. For any institutionalized individual, under age twenty-one, who is neither married nor living independently, residence is that of the parents or legal guardian at the time of placement or the state of residence of the parent or legal guardian at the time of medicaid application if the child is institutionalized in the same state. Only if the parental rights have been terminated, and a guardian or custodian appointed, may the residence of the guardian or custodian be used. If the individual has been abandoned by the individual's parents and does not have a guardian, the individual is a resident of the state in which the individual ~~lives~~ is institutionalized.

3. Individuals age twenty-one and over:

a. For any individual not residing in an institution, the state of residence is the state where the individual is living with the intention to remain there permanently or for an indefinite period or is entering the state with a job commitment or seeking employment. The state of residence, for medicaid purposes, of a migrant or seasonal farm worker is the state in which the individual is employed or seeking employment.

b. Except as provided in subdivision c, the state of residence of an institutionalized individual is the state where the individual is living with the intention to remain there permanently or for an indefinite period.

c. For an institutionalized individual who became incapable of indicating intent before age twenty-one, the state of residence is that of the parent or guardian making application, at the time of placement or, if the individual is institutionalized in that state, at the time of application. If the individual has no guardian, the application is not made by either parent, and the placement was not made by another state, the state of residence is the state in which the individual is physically present.

4. For purposes of this subsection:

   a. "Individual incapable of indicating intent" means one who:

      (1) Has an intelligence quotient of forty-nine or less, or a mental age of seven or less, based upon tests acceptable to the division of mental health of the department of human services;

      (2) Has been found by a court of competent jurisdiction to be an incapacitated person as defined in subsection 2 of North Dakota Century Code section 30.1-26-01;

      (3) Has been found by a court of competent jurisdiction to be legally incompetent; or

      (4) Is found incapable of indicating intent based on medical documentation obtained from a physician or surgeon, clinical psychologist, or other person licensed by the state in the field of mental retardation; and

   b. "Institution" means an establishment that furnishes, in single or multiple facilities, food, shelter, and some treatment or services to four or more individuals unrelated to the proprietor.

5. Notwithstanding any other provision of this section except subsections 6 through 9, individuals placed in out-of-state institutions by a state retain residence in that state regardless of the individual's indicated intent or ability to indicate intent. The application of this subsection ends when a person capable of indicating intent leaves an institution in which the person was placed by this state. Providing information about another state's medicaid program or about the availability of health care services and facilities in another state, or assisting an individual in locating an institution in another state, does not constitute a state placement.

6. For any individual receiving a state supplemental payment, the state of residence is the state making the payment.

7. For any individual on whose behalf payments for regular foster care or state adoption assistance are made, the state of residence is the state making the payment.

8. If an interstate reciprocal residency agreement has been entered into between this state and another state pursuant to 42 CFR 435.403(k), the state of residence of an affected individual is the state determined under that agreement.

9. When two or more states cannot agree which state is the individual's state of residence, the state of residence is the state in which the individual is physically present.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02; 42 CFR Part 435

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

1. An applicant or recipient must be a United States citizen or an alien lawfully admitted for permanent residence. Acceptable documents to establish United States citizenship and naturalized citizen status are defined in 42 CFR 435.407.

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

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

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

~~5.~~ 4. The following categories of aliens, while lawfully admitted for a temporary or specified period of time, are not eligible for medicaid, including emergency services, because of the temporary nature of their admission status:

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

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

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

d. Crewmen on shore leave;

e. Treaty traders and investors and their families;

f. Foreign students;

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

h. Temporary workers, including agricultural contract workers; and

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

~~6.~~ 5. ~~Aliens~~ Except for aliens identified in subsection 4, aliens who are not lawfully admitted for permanent residence in the United States are not eligible for medicaid, except for emergency services.

6. Aliens from the Federated States of Micronesia, the Marshall Islands, or Palau are lawfully admitted as permanent nonimmigrants and are not eligible for medicaid, except for emergency services.

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

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

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

b. Refugees and asylees;

c. Aliens whose deportation was withheld under section 243(h) of the Immigration and Naturalization Act; ~~and~~

d. Cuban and Haitian entrants;

e. Aliens admitted as Amerasian immigrants;

f. Victims of a severe form of trafficking;

g. For the first eight months after entry into the United States, Iraqi and Afghan aliens and family members who are admitted under section 101(a)(27) of the Immigration and Naturalization Act;

h. For the period paroled, aliens paroled into the United States for at least one year under section 212(d)(5) of the Immigration and Nationality Act;

i. Aliens granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act in effect prior to April 1, 1980;

j. Aliens granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act or who have a pending application that sets forth a prima facie case for eligibility for that nonimmigrant status;

k. Certain battered aliens and their children who have been approved or have a petition pending which sets forth a prima facie case as identified in 8 U.S.C. 1641(c), but only if the department determines there is a substantial connection between the battery and the need for the benefits to be provided; and

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

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

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

(1) Placing health in serious jeopardy;

(2) Serious impairment to bodily functions; or

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

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

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

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01

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

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

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

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

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

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

   a. For periods of eligibility prior to January 1, 2010:

      (1) Four thousand dollars for a one-person unit; or

   ~~b.~~ (2) Six thousand dollars for a two-person unit.

   b. For periods of eligibility on or after January 1, 2010, the asset limit described in 42 U.S.C. 1396d(p)(1)(C).

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

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

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

   c. Assets owned by a spouse who is not residing with an applicant or recipient are not considered available unless the assets are liquid assets held in common.

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

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

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

      (3) The earned income of any blind or disabled student under age twenty-two is disregarded.

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

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

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

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

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

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

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; May 1, 2006; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02

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

1. Property that is essential to earning a livelihood.

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

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

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

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

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

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

   c. A ready market for property consisting of an ownership interest in a business entity exists if the interest may be publicly traded. A ready market does not exist if there are unreasonable limitations on the sale of the interest, such as a requirement that the interest be sold

at a price substantially below its actual value or a requirement that effectively precludes competition among potential buyers.

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

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

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

2. Property which is not saleable without working an undue hardship. Such property may be excluded no earlier than the first day of the month in which good-faith attempts to sell are begun, and continues to be excluded only for so long as the asset continues to be for sale and until a bona fide offer for at least seventy-five percent of the property's fair market value is made. Good-faith efforts to sell must be repeated at least annually in order for the property to continue to be excluded.

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

(1) A good-faith effort to sell real property must be made for at least three calendar months in which no bona fide offer for at least seventy-five percent of the property's fair market value is received before the property can be shown to be not saleable without working an undue hardship.

(2) A good-faith effort to sell property other than real property or an annuity must be made for at least thirty days in which no bona fide offer for at least seventy-five percent of the property's fair market value is received before the property can be shown to be not saleable without working an undue hardship.

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

otherwise fails to assure the receipt of regular and timely payments due with respect to the property.

3. a. Any prepayments or deposits ~~which total five thousand dollars or less~~ up to the amount set by the department in accordance with state law and the medicaid state plan, which are designated by an applicant or recipient for the burial of the applicant or recipient. Earnings accrued on the total amount of the designated burial fund are excluded.

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

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

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

(4) Any fund, insurance, or other property given to another person or entity in contemplation that its value will be used to meet the burial needs of the applicant or recipient shall be considered part of the burial fund.

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

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

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

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

b. A burial plot for each family member.

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

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

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

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

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

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

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

11. For nine months beginning after the month of receipt, any educational scholarship, grant, or award and any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution. This asset must be identifiable and not commingled with other assets.

12. For nine months beginning after the month of receipt, any income tax refund, any earned income tax credit refund, or any advance payments of earned income tax credit. This asset must be identifiable and not commingled with other assets.

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

14. The value of a life estate.

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

16. The value of mineral acres.

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

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; August 1, 2005; April 1, 2008; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-02.3

75-02-02.1-32. Valuation of assets. It is not always possible to determine the value of assets with absolute certainty, but it is necessary to determine a value in order to determine eligibility. The valuation must be based on reasonably reliable information. It is the responsibility of the applicant or recipient, or the persons acting on behalf of the applicant or recipient, to furnish reasonably reliable information. Because an applicant or recipient may not be knowledgeable of asset values, and particularly because that person may have a strong interest in the establishment of a particular value, whether or not that value is accurate, some verification of value must be obtained. If a valuation from a source offered by an applicant or recipient is greatly different from generally available or published sources, the applicant or recipient must provide a convincing explanation for the differences particularly if the applicant or recipient may be able to influence the person providing the valuation. If reasonably reliable information concerning the value of assets is not made available, eligibility may not be determined. Useful sources of verification include:

1. With respect to liquid assets: reliable account records.

2. With respect to personal property other than liquid assets:

   a. Publicly traded stocks, bonds, and securities: stockbrokers.

b. Autos, trucks, mobile homes, boats, farm equipment, or any other property listed in published valuation guides accepted in the trade: the valuation guide.

c. With respect to harvested grains or produce: grain buyers, grain elevator operators, produce buyers; and, for crops grown on contract: the contract.

d. With respect to stock in corporations not publicly traded: appraisers, accountants.

e. With respect to other personal property: dealers and buyers of that property.

f. With respect to a life insurance policy: the life insurance company.

3. Real property.

a. With respect to mineral interests: appraisers, specializing in minerals, mineral buyers, geologists.

b. With respect to agricultural lands: appraisers, real estate agents dealing in the area, loan officers in local agricultural lending institutions, and other persons known to be knowledgeable of land sales in the area in which the lands are located, but not the "true and full" value from tax records.

c. With respect to real property other than mineral interests and agricultural lands: market value or "true and full" value from tax records, whichever represents a reasonable approximation of fair market value; real estate agents dealing in the area; and loan officers in local lending institutions.

4. Divided or partial interests. Divided or partial interests include assets held by the applicant or recipients; jointly or in common with persons who are not in the medicaid unit; assets where the applicant or recipient or other persons within the medicaid unit own only a partial share of what is usually regarded as the entire asset; and interests where the applicant or recipient owns only a life estate or remainder interest in the asset.

a. Liquid assets. The value of a partial or shared interest in a liquid asset is equal to the total value of that asset.

b. Personal property other than liquid assets and real property other than life estates and remainder interests. The value of a partial or shared interest is a proportionate share of the total value of the asset equal to the proportionate share of the asset owned by the applicant or recipient.

c. Life estates and remainder interests.

(1) The life estate and remainder interest tables must be used to determine the value of a life estate or remainder interest. In order to use the table, it is necessary to first know the age of the life tenant or, if there are more than one life tenants, the age of the youngest life tenant; and the fair market value of the property which is subject to the life estate or remainder interest. The value of a life estate is found by selecting the appropriate age in the table and multiplying the corresponding life estate decimal fraction times the fair market value of the property. The value of a remainder interest is found by selecting the appropriate age of the life tenant in the table and multiplying the corresponding remainder interest decimal fraction times the fair market value of the property.

Life Estate and Remainder Interest Table

Age	Life Estate	Remainder Interest
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410

19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626
49	.85578	.14422

50	.84743	.15257
51	.83674	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449
67	.65098	.34902
68	.63610	.36390
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739
73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643

80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113
96	.22181	.77819
97	.21550	.78450
98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468
102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

(2) The life estate and remainder interest tables are based on the anticipated lifetimes of individuals of a given age

according to statistical tables of probability. If the life tenant suffers from a condition likely to cause death at an unusually early age, the value of the life estate decreases and the value of the remainder interest increases. An individual who requires long-term care, who suffers from a condition that is anticipated to require long-term care within twelve months, or who has been diagnosed with a disease or condition likely to reduce the individual's life expectancy is presumed to suffer from a condition likely to cause death at an unusually early age, and may not rely upon statistical tables of probability applicable to the general population to establish the value of a life estate or remainder interest. If an individual is presumed to suffer from a condition likely to cause death at an unusually early age, an applicant or recipient whose eligibility depends upon establishing the value of a life estate or remainder interest must provide a reliable medical statement that estimates the remaining duration of life in years. The estimated remaining duration of life may be used, in conjunction with a life expectancy table, to determine the comparable age for application of the life estate and remainder interest table.

5. Contractual rights to receive money payments:

   a. Except as provided in subdivision d, the value of contractual rights to receive money payments in which payments are current is an amount equal to the total of all outstanding payments of principal required to be made by the contract unless evidence is furnished that establishes a lower value.

   b. Except as provided in subdivision d, the value of contractual rights to receive money payments in which payments are not current is the current fair market value of the property subject to the contract.

   c. Except as provided in subdivision d, if upon execution the total of all principal payments required under the terms of the contract is less than the fair market value of the property sold, the difference is a disqualifying transfer governed by section 75-02-02.1-33.1 or 75-02-02.1-33.2, and the value of the contract is determined under subdivision a or b.

   d. A contractual right to receive money payments that consists of a promissory note, loan, or mortgage is a disqualifying transfer governed by section 75-02-02.1-33.2 of an amount equal to the outstanding balance due as of the date the lender or purchaser, or the lender's or purchaser's spouse, first applies for medicaid to secure nursing care services, as defined in section 75-02-02.1-33.2, if:

(1) Any payment on the contract is due after the end of the contract payee's life expectancy as established in accordance with actuarial publications of the office of the chief actuary of the social security administration;

(2) The contract provides for other than equal payments or for any balloon or deferred payment; or

(3) The contract provides for any payment otherwise due to be diminished after the contract payee's death.

e. The value of a secured contractual right to receive money payments that consists of a promissory note, loan, or mortgage not described in subdivision d shall be determined under subdivision a or b. For an unsecured note, loan, or mortgage, the value is the outstanding payments of principal and overdue interest unless evidence is furnished that establishes a lower value.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; April 1, 2008; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02

75-02-02.1-33.1. Disqualifying transfers made before February 8, 2006.

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

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

(1) Except as provided in paragraph 2, the number of months is thirty-six months.

(2) The number of months is sixty months:

(a) In the case of payments from a revocable trust that are treated as income or assets disposed of by an individual pursuant to subdivision c of subsection 4 of section 75-02-02.1-31 or paragraph 3 of subdivision a of subsection 3 of section 75-02-02.1-31.1;

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

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

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

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

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

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

(1) The individual's spouse;

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

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

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

b. The income or assets:

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

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

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

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

c. The individual makes a satisfactory showing that:

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

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

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

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

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

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

(3) Excluded home replacement funds;

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

(5) Life estate interests;

(6) Mineral interests;

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

(8) An annuity.

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

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

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

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

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

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

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

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

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

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

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

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

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

7. No income or asset transferred to a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, stepsister, stepbrother, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew

of the individual or the individual's spouse, purportedly for services or assistance furnished by the transferee to the individual or the individual's spouse, may be treated as consideration for the ~~transferred income or asset~~ services or assistance furnished unless:

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

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

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

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

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

9. For purposes of this section:

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

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

c. "Fair market value" means:

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

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

(a) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or

anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or

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

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

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

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

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

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

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

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

(4) Includes:

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

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

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

(d) Skilled nursing coinsurance;

(e) Medicare part A deductible coverage;

(f) Medicare part B deductible coverage;

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

(h) Foreign travel emergency coverage.

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

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

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

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

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

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

12. An individual who disposes of assets or income to someone in a confidential relationship is presumed to have transferred the assets or income to an implied trust in which the individual is the beneficiary and which is subject to treatment under section 75-02-02.1-31.1. The presumption may be rebutted only if the individual shows:

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

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

13. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home care and long-term care coverage, purchased on or before July 31, 2003, with a daily benefit at least equal to 1.25 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:

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

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

14. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home health care coverage, assisted living coverage, basic care coverage, and skilled nursing

facility coverage, purchased on or after August 1, 2003, with a daily benefit at least equal to 1.57 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:

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

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

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

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

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

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

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

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

16. This section applies to transfers of income or assets made before February 8, 2006.

History: Effective October 1, 1993; amended effective December 1, 1996; July 1, 2003; June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

75-02-02.1-33.2. Disqualifying transfers made on or after February 8, 2006.

1. This section applies to transfers of income or assets made on or after February 8, 2006.

2. Except as provided in subsections 6 and 15, an individual is ineligible for skilled nursing care, swing-bed, or home and community-based benefits if the individual or the individual's spouse disposes of assets or income for less than fair market value on or after the look-back date. The look-back date is a date that is sixty months before the first date on which the individual is both receiving skilled nursing care, swing-bed, or home and community-based services and has applied for benefits under this chapter, without regard to the action taken on the application.

3. An applicant, recipient, or anyone acting on behalf of an applicant or recipient, has a duty to disclose any transfer of any asset or income made by or on behalf of the applicant or recipient, or the spouse of the applicant or recipient, for less than full fair market value:

   a. When making an application;

   b. When completing a redetermination; and

   c. If made after eligibility has been established, by the end of the month in which the transfer was made.

4. The date that a period of ineligibility begins is the latest of:

   a. The first day of the month in which the income or assets were transferred for less than fair market value;

   b. The first day on which the individual is receiving nursing care services and would otherwise have been receiving benefits for institutional care but for the penalty; or

   c. The first day thereafter which is not in a period of ineligibility.

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

   b. A fractional period of ineligibility may not be rounded down or otherwise disregarded with respect to any disposal of assets or income for less than fair market value.

c. Notwithstanding any contrary provisions of this section, in the case of an individual or an individual's spouse who makes multiple fractional transfers of assets or income in more than one month for less than fair market value on or after the look-back date established under subsection 2, the period of ineligibility applicable to such individual must be determined by treating the total, cumulative uncompensated value of all assets or income transferred during all months on or after the look-back date as one transfer and one penalty period must be imposed beginning on the earliest date applicable to any of the transfers.

6. For purposes of this section, "assets" includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least one year after the date of the purchase.

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

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

      (1) The individual's spouse;

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

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

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

   b. The income or assets:

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

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

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

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

c. The individual makes a satisfactory showing that:

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

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

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

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

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

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

(3) Excluded home replacement funds;

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

(5) Life estate interests;

(6) Mineral interests;

(7) An asset received from a decedent's estate during any period it is considered to be unavailable under subsection 5 of section 75-02-02.1-25; or

(8) An annuity.

8. a. An individual shall not be ineligible for medicaid by reason of subsection 2 to the extent the individual makes a satisfactory showing that an undue hardship exists for the individual. Upon

imposition of a period of ineligibility because of a transfer of assets or income for less than fair market value, the department shall notify the applicant or recipient of the right to request an undue hardship exception. An individual may apply for an exception to the transfer of asset penalty if the individual claims that the ineligibility period will cause an undue hardship to the individual. A request for a determination of undue hardship must be made within ninety days after the circumstances upon which the claim of undue hardship is made were known or should have been known to the affected individual or the person acting on behalf of that individual if incompetent. The individual must provide to the department sufficient documentation to support the claim of undue hardship. The department shall determine whether a hardship exists upon receipt of all necessary documentation submitted in support of a request for a hardship exception. An undue hardship exists only if the individual shows that all of the following conditions are met:

(1) Application of the period of ineligibility would deprive the individual of food, clothing, shelter, or other necessities of life or would deprive the individual of medical care such that the individual's health or life would be endangered;

(2) The individual who transferred the assets or income, or on whose behalf the assets or income were transferred, has exhausted all lawful means to recover the assets or income or the value of the transferred assets or income, from the transferee, a fiduciary, or any insurer;

(3) A person who would otherwise provide care would have no cause of action, or has exhausted all causes of action, against the transferee of the assets or income of the individual or the individual's spouse under North Dakota Century Code chapter 13-02.1, the Uniform Fraudulent Transfers Act, or any substantially similar law of another jurisdiction; and

(4) The individual's remaining available assets and the remaining assets of the individual's spouse are less than the asset limit in subsection 1 of section 75-02-02.1-26 counting the value of all assets except:

    (a) A home, exempt under section 75-02-02.1-27, but not if the individual or the individual's spouse has equity in the home in excess of twenty-five percent of the amount established in the approved state plan for medical assistance which is allowed as the maximum home equity interest for nursing facility services or other long-term care services;

    (b) Household and personal effects;

(c) One motor vehicle if the primary use is for transportation of the individual, or the individual's spouse or minor, blind, or disabled child who occupies the home; and

(d) Funds for burial ~~of five thousand dollars or less~~ up to the amount excluded in subsection 3 of section 75-02-02.1-28 for the individual and the individual's spouse.

b. Upon the showing required by this subsection, the department shall state the date upon which an undue hardship begins and, if applicable, when it ends.

c. The agency shall terminate the undue hardship exception, if not earlier, at the time an individual, the spouse of the individual, or anyone with authority to act on behalf of the individual, makes any uncompensated transfer of income or assets after the undue hardship exception is granted. The agency shall deny any further requests for an undue hardship exception due to either the disqualification based on the transfer upon which the initial undue hardship determination was based, or a disqualification based on any subsequent transfer.

9. If a request for an undue hardship waiver is denied, the applicant or recipient may request a fair hearing in accordance with the provisions of chapter 75-01-03.

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

a. In any case in which the individual's assets and the assets of the individual's spouse remaining after the transfer produce income which, when added to other income available to the individual and to the individual's spouse, total an amount insufficient to meet all living expenses and medical costs reasonably anticipated to be incurred by the individual and by the individual's spouse in the month of transfer and in the fifty-nine months following the month of transfer;

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

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

d. In any case in which a transfer is made by or on behalf of the individual or the individual's spouse, if the value of the transferred income or asset, when added to the value of the individual's

other countable assets, would exceed the asset limits in section 75-02-02.1-26; or

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

11. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid must show that a desire to receive medicaid benefits played no part in the decision to make the transfer and must rebut any presumption arising under subsection 10. The fact, if it is a fact, that the individual would be eligible for the medicaid coverage for nursing care services, had the individual or the individual's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid.

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

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

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

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

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

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

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

15. For purposes of this section:

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

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

c. "Fair market value" means:

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

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

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

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

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

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

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

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

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

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

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

(4) Includes:

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

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

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

(d) Skilled nursing coinsurance;

(e) Medicare part A deductible coverage;

(f) Medicare part B deductible coverage;

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

(h) Foreign travel emergency coverage.

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

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

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

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

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

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

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

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

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

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

19. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home care and long-term care coverage, purchased on or before July 31, 2003, with a daily benefit at least equal to 1.25 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:

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

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

20. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage, purchased on or after August 1, 2003, and before January 1, 2007, with a daily benefit at least equal to 1.57 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:

    a. For each month during which the individual is not eligible for medicare benefits, the individual has in force a major medical

policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and

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

21. With respect to an annuity transaction which includes the purchase of, selection of an irrevocable payment option, addition of principal to, elective withdrawal from, request to change distribution from, or any other transaction that changes the course of payments from an annuity which occurs on or after February 8, 2006, an individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid, if the asset was used to acquire an annuity, only if:

a. The owner of the annuity provides documentation satisfactory to the department that names the department as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant or the department is named in the second position after the community spouse or minor or disabled child, and that establishes that any attempt by such spouse or a representative of such child to dispose of any such remainder shall cause the department to become the remainder beneficiary for at least the total amount of medical assistance paid on behalf of the annuitant;

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

c. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;

d. The annuity provides substantially equal monthly payments of principal and interest that vary by five percent or less from the total annual payment of the previous year, and does not have a balloon or deferred payment of principal or interest;

e. The annuity will return the full principal and interest within the purchaser's life expectancy as determined in accordance with actuarial publications of the office of the chief actuary of the social security administration; and

f. All annuities owned by the purchaser produce total monthly gross income that:

(1) Does not exceed the minimum monthly maintenance needs allowance for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5; and

(2) When combined with the purchaser's other monthly income at the time the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse applies for benefits under this chapter, does not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5.

History: Effective April 1, 2008; amended effective January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

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

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

   a. Occasional small gifts;

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

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

   d. Agent orange payments;

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

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

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

h. Interest or dividend income from liquid assets.

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

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

a. The nursing care income level;

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

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

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

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

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

(2) Incurred in the month for which eligibility is being determined, or was incurred in a prior month but was actually paid in the month for which eligibility is being determined and was not previously allowed as a deduction or offset of recipient liability, and was not applied previously to recipient liability;

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

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

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

(6) Claimed; and

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

4. For purposes of this section, "premiums for health insurance" include any payments made for insurance, health care plans, or nonprofit health service plan contracts which provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage which is:

a. Limited to disability or income protection coverage;

b. Automobile medical payment coverage;

c. Supplemental to liability insurance;

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

e. Credit accident and health insurance.

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02

75-02-02.1-38.2. Disregarded income.

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

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

b. Occasional small gifts;

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

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

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

f. Educational loans, scholarships, grants, awards, workers compensation, vocational rehabilitation payments, and work study received by a student, or any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution;

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

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

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

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

k. Training funds received from vocational rehabilitation;

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

m. Income tax refunds and earned income credits;

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

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

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

q. Payments from the family subsidy program;

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

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

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

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

v. Agent orange payments;

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

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

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

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

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

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

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

dd. Refugee cash assistance or grant payments;

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

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

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

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

ii. Homestead tax credit;

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

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

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

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

nn. The first two thousand dollars per year of ~~lease~~ payments ~~deposited in~~ derived from individual interests in Indian ~~moneys accounts~~ trust or restricted lands;

oo. Interest or dividend income from liquid assets; ~~and~~

pp. Additional pay received by military personnel as a result of deployment to a combat zone; and

qq. All wages paid by the census bureau for temporary employment related to census activities.

2. For purposes of this section:

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

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

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02

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

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

   a. Limited to disability or income protection coverage;

   b. Automobile medical payment coverage;

   c. Supplemental to liability insurance;

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

e. Credit accident and health insurance.

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

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

b. Incurred by a member of a medicaid unit in the month for which eligibility is being determined, or was incurred in a prior month but was actually paid in the month for which eligibility is being determined and was not previously allowed as a deduction or offset of recipient liability, and was not previously applied to recipient liability;

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

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

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

f. Claimed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

        (2) Mandatory retirement plan deductions;

(3) Union dues actually paid; and

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

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

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

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02

75-02-02.1-40. Income levels.

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

a. Categorically needy income levels.

(1) Family coverage income levels established in the medicaid state plan are applied to the family coverage group. The family size is increased for each unborn child when determining the appropriate family size.

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

b. Medically needy income levels.

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

is increased for each unborn child when determining the appropriate family size.

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

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

(4) The income level for each ineligible family member in a spousal impoverishment prevention case is equal to one-third of an amount determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member. For purposes of this paragraph, "family member" has the meaning given in subsection 1 of section 75-02-02.1-24.

c. Poverty income level.

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

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

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

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

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

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

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

(8) The income level for workers with disabilities is two hundred twenty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

(9) The income level for children with disabilities is two hundred percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

2. Determining the appropriate income level in special circumstances.

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

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

c. During a month in which an individual enters a specialized facility or leaves a specialized facility to return home, the individual shall

be included in the family unit in the home for the purpose of determining the family size and the appropriate income level. An individual residing in a specialized facility shall be allowed the appropriate medically needy, workers with disabilities, or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.

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

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

f. For a spouse electing to receive home and community based services, who has an ineligible community spouse, the medically needy income level for one is effective in the month the home and community-based services begin, during full calendar months, and in the month the home and community-based services are terminated. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.

g. An individual with no spouse, disabled adult child, or child under age twenty-one at home who enters a nursing facility may receive the medically needy income level for one if a physician certifies that the individual is likely to return to the individual's home within six months. The six-month period begins with the first full calendar month the individual is in the nursing facility. If, at any time during the six-month period, the individual's status changes

and the stay in the nursing facility is expected to exceed the six months, the individual may have only the nursing care income level beginning in the month following the month of the status change. An individual may receive the medically needy income level for only one six-month period per stay in a nursing facility. If an individual is discharged, then readmitted to a nursing facility, there must be a break of at least one full calendar month between the periods of institutionalization in order for the new stay to be considered a new period of institutionalization.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02

CHAPTER 75-02-02.2

75-02-02.2-02. Application, redetermination, and eligibility periods.

1. **Application.**

   a. Any individual who wishes to make application on behalf of a child for coverage must have the opportunity to do so without delay.

   b. An application is a written request for plan coverage to a county agency, the department, a disproportionate share hospital, as defined in section 1923(a)(1)(A) of the Social Security Act [42 U.S.C. 1396r-4(a)(1)(A)], or a federally qualified health center, as described in section 1905(l)(2)(B) of the Social Security Act [42 U.S.C. 1396d(l)(2)(B)].

   c. A prescribed application form must be signed by the applicant or appropriate individual on behalf of the child applying for plan coverage.

   d. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who request it.

   e. The date of the application is the date a signed application is received by the department, a county agency, a disproportionate share hospital, or a federally qualified health center. The department, county agency, disproportionate share hospital, or federally qualified health center must document the data an application is received.

2. **Redetermination.**

   a. The department or county agency must redetermine a recipient's eligibility at least annually.

   b. A recipient or anyone acting on a recipient's behalf has the same responsibility to furnish information during a redetermination of eligibility for coverage as an applicant has during the initial application.

   c. Plan coverage terminates on the last day of the last month of the annual period if a recipient fails to provide sufficient information to redetermine eligibility.

3. **Eligibility periods.**

a. Eligibility for the children's health insurance program begins on the first day of the month following the month in which the eligibility determination is made.

b. The coverage period ends at the earliest of:

(1) The end of the twelve-month eligibility period;

(2) The end of the month in which the recipient turns age nineteen;

(3) The end of the month ~~in~~ prior to the first full month for which the recipient has obtained other creditable health insurance coverage;

(4) The end of the month in which the recipient leaves the household;

(5) The end of the month in which the recipient loses residency in the state; or

(6) When the recipient's whereabouts are unknown and mail directed to the recipient is returned by the post office indicating no known forwarding address.

History: Effective October 1, 1999; amended effective August 1, 2005; January 1, 2010.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-10. Eligibility criteria.

1. Children ages birth through eighteen years of age are eligible for plan coverage provided all other eligibility criteria are met. Coverage for children who are eighteen years of age will continue through the last day of the month in which the child turns nineteen years of age.

2. A child who has current creditable health insurance coverage or has coverage which is available at no cost, as defined in section 2701(c) of the Public Health Service Act [42 U.S.C. 300gg(c)] is not eligible for plan coverage.

3. A child is not eligible for plan coverage if a family member voluntarily terminated either employer-sponsored or individual health insurance coverage of the child within six months of the date of application unless:

a. The health insurance coverage was terminated due to the involuntary loss of employment;

b. The health insurance coverage was terminated through no fault of the family member who had secured the coverage; or

c. The health insurance coverage was terminated by a household member who is actively engaged in farming in a county which is declared a federal disaster area.

4. Except as provided in subsection 6, the public institution provisions of section 75-02-02.1-19 apply to healthy steps applicants and recipients.

5. A child who meets current medicaid eligibility criteria in the month for which plan coverage is determined is not eligible for plan coverage unless the child would otherwise be eligible for the medically needy medicaid program with a recipient liability. Such child may be enrolled in either the healthy steps program or the medically needy medicaid program.

6. A child who resides in an institution for mental disease at the time an eligibility determination is made is not eligible for plan coverage. A child who enters an institution for mental disease while receiving plan coverage may remain eligible for coverage.

7. If the department estimates that available funds are insufficient to allow plan coverage for additional applicants, the department may take any action appropriate to avoid commitment of funds in excess of available funds including denying applications and establishing waiting lists not forbidden by title XXI of the Social Security Act [42 U.S.C. section 1397aa et seq.] or regulations adopted thereunder. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

8. A social security number must be furnished as a condition of eligibility for each child for whom benefits are sought except for:

   a. A newborn child beginning on the date of birth and for the remaining days of the current eligibility period; and

   b. Children who have applied for, but not yet received, social security numbers.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; January 1, 2010.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.

75-02-06-03. Depreciation.

1. Ratesetting principles require that payment for services includes depreciation on all capital assets used to provide necessary services.

   a. Capital assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program, may be depreciated. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. To properly provide for costs or the valuation of such assets, an appraisal is required if the provider has no historical cost records or has incomplete records of the capital assets.

   b. A depreciation allowance is permitted on assets used in a normal standby or emergency capacity.

   c. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.

2. Depreciation methods.

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

   b. Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:

      (1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or

(2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.

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

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

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

3. Acquisitions.

a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, must be capitalized as a part of the cost of the asset.

b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.

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

5. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and may be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.

6. Basis for depreciation of assets acquired as an ongoing operation. Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden

of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.

a. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1985, is limited to the lowest of:

   (1) Purchase price paid by the purchaser;

   (2) Fair market value at the time of the sale; or

   (3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes.

b. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer.

c. The cost basis of a facility and its depreciable assets acquired by donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer or donee.

d. In order to calculate the increase over the seller's cost basis, an increase may be allowed, under subdivision a, only for assets with a historical cost basis established separately and distinctly in the seller's depreciable asset records.

e. An adjustment may not subsequently be allowed for any depreciable cost disallowed in rate periods prior to January 1, 2006.

f. For purposes of this subsection, "date of acquisition" means the date when ownership of the depreciable asset transfers from the transferor to the transferee such that both are bound by the transaction. For purposes of transfers of real property, the date of acquisition is the date of delivery of the instrument transferring ownership. For purposes of titled personal property, the date of acquisition is the date the transferee receives a title acceptable for registration. For purposes of all other capital assets, the date of acquisition is the date the transferee possesses both the asset and an instrument, describing the asset, which conveys the property to the transferee.

g. For rate years beginning on or after January 1, 2006, the limitations of paragraph 3 of subdivision a shall not apply to the valuation basis of assets acquired as an ongoing operation between July 1, 1985, and July 1, 2000.

7. A per bed cost limitation based on single and double occupancy must be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling.

   a. Effective ~~August 1, 2007~~ July 1, 2009, the per bed limitation basis for double occupancy is ~~$88,872~~ $112,732 and for a single occupancy is ~~$133,308~~ $169,098.

   b. The per bed limitation basis for single occupancy must be calculated using the limitation determined in subdivision a, multiplied by 1.5.

   c. The double and single occupancy per bed limitation must be adjusted annually on July first, using the increase, if any, in the consumer price index for all urban consumers, United States city average, all items, for the twelve-month period ending the preceding May thirty-first.

   d. The per bed limitation in effect at the time a construction, renovation, or remodeling project is put in service must be multiplied times the number of beds in double and single occupancy rooms to establish the maximum allowable cost basis of buildings and fixed equipment.

   e. The cost basis of a facility's buildings and fixed equipment must be limited to the lower of the recorded cost of total facility buildings and fixed equipment or the per bed limitation.

   f. The per bed limitation is not applicable to projects started or approved by the state health council before July 1, 1994.

   g. For rate years beginning after December 31, 2007, the limitations of subdivision a do not apply to the valuation basis of assets acquired as a result of a natural disaster before December 31, 2006. The provisions of this subsection may not be applied retroactively to any rate year before January 1, 2008.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; July 2, 2003; September 7, 2007; July 1, 2009.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-16.2. One-time adjustments for legislatively approved cost increases.

1. The department shall increase rates otherwise established by this chapter for supplemental payments or one-time adjustments to historical costs approved by the legislative assembly.

2. Any additional funds made available by the supplemental payments or one-time adjustments must be used for the legislatively prescribed purpose and are subject to audit. If the department determines that the funds were not used for the appropriate purpose, an adjustment must be made in accordance with subsection 5 of section 75-02-06-16.

History: Effective July 1, 2009.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4

75-02-07.1-26. One-time adjustments.

1. **Adjustments to meet licensure standards.**

   a. The department may provide for an increase in the established rate for additional costs incurred to meet licensure 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 or other costs increased to correct the deficiencies cited in the survey process.

   b. The facility shall submit a written request to the department within thirty days of submitting the plan of correction to the state department of health. The request must:

      (1) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's licensure survey;

      (2) Identify the number of new staff or additional staff hours and the associated costs required to meet the licensure standards;

      (3) Provide a detailed list of any other costs necessary to meet licensure standards;

      (4) Describe how the facility shall meet licensure standards if the adjustment is received, including the number and type of staff to be added to the current staff and the projected salary and fringe benefit cost for the additional staff; and

      (5) Document that all available resources, including efficiency incentives, if used to increase staffing, are not sufficient to meet licensure standards.

   c. The department shall review the submitted information and may request additional documentation or conduct onsite visits.

   d. If an increase in costs is approved, the adjustment must be calculated based on the costs necessary to meet licensure standards less any incentives included when calculating the established rate. The net increase must be divided by resident days and the amount calculated must be added to the established rate. This rate must then be subject to any rate limitations that may apply.

e. 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 that the funds were not used for the intended purpose, an adjustment must be made in accordance with section 75-02-07.1-23.

f. If the actual cost of implementation exceeds the amount included in the adjustment, no retroactive settlement may be made.

2. **Adjustments for unforeseeable expenses.**

a. 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 beyond the control of those responsible for the management of the facility.

b. Within sixty days after first incurring the unforeseeable expense, the facility shall submit to the department a written request containing:

(1) An explanation as to why the facility believes the expense was unforeseeable;

(2) An explanation as to why the facility believes the expense was beyond the managerial control of the owner or administrator of the facility; and

(3) A detailed breakdown of the unforeseeable expenses by expense line item.

c. 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 their background and knowledge of basic care industry and business trends.

d. 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.

e. 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 section 75-02-07.1-23.

3. **Adjustments for salary and benefit enhancements.**

   a. The department may provide for a salary and benefit enhancement rate. ~~A facility must submit a plan detailing enhancements for employee salary and benefits at least forty-five days prior to the implementation of the enhancement by the facility.~~

   b. The salary and benefit enhancement rate shall be added to the personal care ~~rate~~ and room and board rates otherwise established under this chapter for the rate years beginning July 1, ~~2001~~ 2009, and July 1, ~~2002~~ 2010. The enhancement rate may not be effective before the implementation date of the enhancement by the facility.

   c. ~~The salary and benefit enhancement rate may not exceed one dollar and eighty-two cents for the rate year beginning July 1, 2001.~~ For the rate year beginning July 1, ~~2002~~ 2010, the salary and benefit enhancement rate effective July 1, ~~2001~~ 2009, shall be reduced by one-twelfth for each month the costs related to the implementation of the enhancement are included in the cost report used to establish the facility's July 1, ~~2002~~ 2010, rate and then increased by the adjustment factor set forth in section 75-02-07.1-21.

   d. Any additional funds provided must be used to provide ~~the~~ salary and benefit enhancements ~~outlined in the facility's plan~~ 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 section 75-02-07.1-23.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001; July 1, 2009.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

TITLE 89

STATE WATER COMMISSION

JANUARY 2010

CHAPTER 89-03-03

89-03-03-02. Definition of domestic rural use. For the purpose of North Dakota Century Code section 61-04-01.1, "domestic rural use" means two or more family units or households obtaining water from the same system for personal needs and for household purposes, including~~, but not limited to,~~ heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding ~~one acre [.40 hectare]~~ five acres [2.0 hectares] in area for each family unit or household for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use.

History: Effective November 1, 1989; amended effective January 1, 2010.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-01.1

CHAPTER 89-10-01

89-10-01-03. Definitions. The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the state engineer after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.

2. "Boardwalk" means a walk constructed of planking.

3. "Domestic use" means the use of water for household purposes and irrigation of gardens, lawns, and shrubbery surrounding a house. "Domestic use" does not include the use of water for irrigation of more than five acres [2.0 hectares] and the use of water for carrying on a business.

4. "Grantee" means the person, including that person's assigns, successors, and agents who are authorized pursuant to an authorization.

~~4.~~ 5. "Navigable waters" means any waters which were in fact navigable at time of statehood, that is, were used or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water, including the Missouri River, the Yellowstone River, the Red River of the North from Wahpeton to the Canadian border, the Bois De Sioux River from Wahpeton to the South Dakota border, the James River, the Upper Des Lacs Lake, Devils Lake, Painted Woods Lake, and Sweetwater Lake.

~~5.~~ 6. "Ordinary high watermark" means that line below which the action of the water is frequent enough either to prevent the growth of vegetation or to restrict its growth to predominantly wetland species. Islands in navigable waters are considered to be below the ordinary high watermark in their entirety.

~~6.~~ 7. "Project" means any activity which occurs either partially or wholly on sovereign lands.

~~7.~~ 8. "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.

~~8.~~ 9. "State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.

~~9.~~ 10. "Structure" means something that is formed from parts, and includes boat docks, boat ramps, and water intakes.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; January 1, 2010.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-10. Projects not requiring a permit. The following projects do not require a permit:

1. Boat docks if all of the following conditions are satisfied:

   a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;

   b. The dock is used only for embarkation, debarkation, moorage of boats, water intakes, or recreation;

   c. Only clean, nonpolluting materials are used;

   d. The total length of the dock over the surface of the water does not ~~extend more than~~ exceed twenty-five feet [7.6 meters] ~~in length from the edge of the water~~ on a river and fifty feet [15.24 meters] ~~in length from the edge of the water~~ on a lake, and there is no unreasonable interference with navigation or access to an adjacent riparian owner's property;

   e. The dock is connected to a point above the ordinary high watermark by a boardwalk that does not exceed twenty-five feet [7.6 meters] in length, and is removed from below the ordinary high watermark each fall; and

   f. ~~There is no excavation or filling below the ordinary high watermark in excess of that authorized in subsection 4; and~~

   ~~g.~~ Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.

2. ~~Boat ramps if all of the following conditions are satisfied:~~

   ~~a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;~~

   ~~b. Excavation of the bank is limited to the minimum width necessary for the placement of a single lane boat ramp adjacent to privately~~

~~owned property or a double lane boat ramp adjacent to publicly owned property;~~

~~c. Material excavated from the bank is removed to a location above the ordinary high watermark;~~

~~d. Only such clean, nonpolluting fill and riprap material free of waste metal, organic materials, and unsightly debris are placed below the ordinary high watermark as necessary to construct and stabilize the boat ramp; and~~

~~e. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.~~

~~3.~~ Water intakes if all of the following conditions are satisfied:

a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for riparian owner's or lessee's ~~personal~~ domestic use; and

b. ~~Excavation of the bank is limited to the minimum width necessary to install and maintain the water intake;~~

~~c. Materials excavated from the bank are removed to a location above the ordinary high watermark;~~

~~d.~~ The intake is ~~entirely~~ removed from sovereign lands each fall~~; and~~.

~~e. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.~~

~~4. Dredging or filling if all of the following conditions are satisfied:~~

~~a. The work is completed and maintained by the riparian owner or the riparian owner's lessee;~~

~~b. The amount of dredge or fill material does not exceed ten cubic yards as part of a single and complete project;~~

~~c. No stream diversion results;~~

~~d. No extension of a claim of ownership to sovereign lands results; and~~

~~e. Only clean, nonpolluting material free of waste metal, organic materials, and unsightly debris is used.~~

~~5.~~ 3. Boats that are temporarily moored.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; January 1, 2010.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-10.1. Boat docks, ~~boat ramps,~~ and water intakes. Boat docks, ~~boat ramps,~~ and water intakes not meeting the criteria in section 89-10-01-10 require a permit from the state engineer. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Effective April 1, 2009; amended effective January 1, 2010.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-10.2. Boat dock registration. Boat docks that do not require a permit under this chapter and that are located on the Missouri River between the Oliver and Morton County line (river mile 1328.28) and Lake Oahe wildlife management area (river mile 1303.5) south of Bismarck must be registered with the state engineer prior to placement of any such dock. The state engineer shall provide registration forms. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee and the dock may be subject to removal at the dock owner's expense.

History: Effective January 1, 2010.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-11. Structures. Except as otherwise provided in this chapter, the construction or moorage of a structure is prohibited on sovereign lands. If a structure is ~~constructed on or moored to sovereign lands~~ prohibited, the state engineer shall:

1. Issue an order identifying the action required to modify, remove, or otherwise eliminate the structure and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken shall be at least twenty days after the order is issued.

2. If the ordered action is not taken by the date specified in the order, the state engineer may modify, remove, or otherwise eliminate the structure.

3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer modifies, removes, or eliminates the structure, the state engineer may assess the fees and costs of such action against any property of the person responsible for the structure; or may commence a civil proceeding to recover the costs

incurred in such action. If the state engineer chooses to recover costs by assessing the cost against property of the person responsible for the structure and the property is insufficient to pay for the costs incurred, the state engineer may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.

4. Within ten days of the date the order is issued, a person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.

5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the sovereign lands at issue are located in accordance with North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; January 1, 2010.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33, 61-03-21.3, 61-03-22

89-10-01-34. Dredging or filling. Unless permitted by the state engineer, dredging or filling on sovereign lands is prohibited. If prohibited dredging or filling occurs, the state engineer shall:

1. Issue an order identifying the action required to restore the sovereign lands and a date by which the ordered action must be taken.

2. If the ordered action is not taken by the date specified in the order, the state engineer may take any action to restore the sovereign lands.

3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer takes action to restore sovereign lands, the state engineer may assess the costs of such action against the property where the dredging or filling occurred, or may commence a civil proceeding to recover the costs incurred in such action. If the state engineer chooses to recover costs by assessing the costs against property where the dredging and filling occurred and the property is insufficient to pay for the costs incurred, the state engineer may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment

levied under this section must be collected in the same manner as other real estate taxes are collected and paid.

4. Within ten days of the date the order is issued, a person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and points of law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.

5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the sovereign lands at issue are located in accordance with North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective January 1, 2010.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-03-21.3, 61-03-22, 61-33

TITLE 96

BOARD OF CLINICAL LABORATORY PRACTICE

JANUARY 2010

CHAPTER 96-02-09

96-02-09-02. Unprofessional conduct. Unprofessional conduct includes:

1. Scientific and professional misconduct including falsification, fabrication, plagiarism, concealment, inappropriate omission of information, and making false or deceptive statements.

2. Dishonest or illegal compensation for services rendered.

3. Failure to comply with all laws regarding confidentiality and security of patient information and test results.

4. Failure to protect the safety and welfare of patients, employees, coworkers, the public, and the environment as it relates to clinical laboratory practice.

5. Failure to report a violation of clinical laboratory practice law or rules to the board.

6. Suspension or revocation of, or disciplinary action against, an individual's license in another jurisdiction.

7. Failure to meet minimum standards of clinical laboratory practice.

8. Practice beyond the scope of practice allowed by an individual's current license.

9. Personal problems, legal problems, substance abuse, or mental health difficulties that have interfered with a licensee's professional judgment or practice.

History: Effective January 1, 2010.
General Authority: NDCC 43-48-04
Law Implemented: NDCC 43-48-15

CHAPTER 96-02-10

96-02-10-01.1. Exempt test and method. An individual, supervised by an individual licensed by the board, performing total protein tests by Reichert digital refractometer, is exempt from the provisions of North Dakota Century Code chapter 43-48.

History: Effective January 1, 2010.
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~~ North Dakota Administrative Code sections 96-02-10-01 and 96-02-10-01.1, "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; amended effective January 1, 2010.
General Authority: NDCC 43-48-04
Law Implemented: NDCC 43-48-03