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TITLE 4

OFFICE OF MANAGEMENT AND BUDGET

CHAPTER 4-07-05
RECRUITMENT AND SELECTION

4-07-05-01.1. Definitions. The terms used throughout this chapter have the same meaning as those in North Dakota Century Code chapter 54-44.3, except:

1. "Closing date" means a date by which applications must be received or postmarked as specified.

2. "External recruiting" means that applications for filling a vacant position under an appointing authority shall be accepted from current employees of the appointing authority and persons not employed by the appointing authority.

3. "Internal recruiting" means that applications for filling a vacant position under an appointing authority shall only be accepted from current employees of the appointing authority and employees eligible for reinstatement by the appointing authority.

4. "Promotion" means a personnel action that results in the advancement of an employee to a position in a different class that has a higher pay grade than the employee's previous position.

5. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by human resource management services at the time the personnel action occurs.

6. "Reinstatement" means a personnel action that involves the reemployment of a previous employee of the appointing authority, who resigned or was separated while in good standing in a classified position.

7. "Transfer" means a personnel action that results in the reassignment of an employee from one position to a different position that has the same pay grade as the employee's previous position and that does not result in a break in service.

8. "Underfill" means to fill a classified position by employing, promoting, reinstating, or transferring an individual into a classified position at a lower class than originally announced.

9. "Vacancy announcement" means an announcement that a particular position is vacant and that the appointing authority intends to recruit to fill it.

History: Effective July 1, 1995; amended effective November 1, 1996; July 1, 2004.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

4-07-05-07. Veterans' preference ~~documentation required~~. ~~To receive veterans' preference, an applicant must submit the following documentation:~~ Veterans' preference must be applied in the recruitment and selection of employees in accordance with North Dakota Century Code chapter 37-19.1.

~~1. An applicant claiming veterans' preference shall provide a copy of report of separation DD-214.~~

~~2. An applicant claiming disabled veterans' preference shall provide a copy of report of separation DD-214 and a letter less than one year old from the veterans' administration indicating the veteran's disability status.~~

~~3. An applicant claiming veterans' preference as an eligible spouse of a deceased veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and the veteran's death certificate.~~

~~4. An applicant claiming disabled veterans' preference as an eligible spouse of a disabled veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and a letter less than one year old from the veterans' administration indicating the veteran's disability status.~~

History: Effective November 1, 1996; amended January 1, 2012.
General Authority: NDCC 54-44.3
Law Implemented: NDCC 37-19.1, 54-44.3-23

4-07-05-08. Vacancy announcement contents. Each vacancy announcement must include the following information:

1. Class or working title.
2. Position number.
3. Salary or projected hiring range.
4. Closing date.
5. Duty location of position (city).
6. Procedures for applying.
7. Summary of work.
8. Minimum qualifications and special requirements.
9. Whether recruitment is internal or external.
10. Status:
    a. Full time or part time; and
    b. Regular or temporary.
11. If a position is exempt from veterans' preference, the advertisement must state that veterans' preference does not apply to the position being advertised.

Additional preferred qualifications may be listed on the vacancy announcement at the discretion of the appointing authority, or a reference to the position description may be made.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008; January 1, 2012.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 37-19.1-02(4), 54-44.3-12

CHAPTER 4-07-06

4-07-06-02. Probationary period. Each newly hired or reinstated employee shall serve a probationary period each time of the employee's hiring into a classified position in an agency. Nonprobationary classified employees are not required to serve a probationary period upon promotion within an agency. Temporary service at the same level and type of work may be considered toward the probationary period.

History: Effective September 1, 1992; amended effective July 1, 1995; November 1, 1996; July 1, 2004; January 1, 2012.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1)

CHAPTER 4-07-13

4-07-13-07. Uses of sick leave. Sick leave may be used by an employee when:

1. The employee is ill or injured and is unable to work.

2. The employee has an appointment for the diagnosis or treatment of a medically related condition.

3. The employee wishes to attend to the needs of the employee's eligible family members who are ill or to assist them in obtaining other services related to their health or well-being.

   a. Sick leave used for these purposes may not exceed ~~forty~~ eighty hours per calendar year.

   b. Upon the approval of the agency appointing authority or designee, the employee may, per calendar year, take up to an additional ten percent of the employee's accrued sick leave to care for the employee's child, spouse, or parent with a serious health condition. The employer may require the employee to provide written verification of the serious health condition by a health care provider.

4. It is appropriate as a participant in an employee assistance program.

History: Effective September 1, 1992; amended effective January 1, 2012.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1), 54-52.4-03

CHAPTER 4-07-14
FUNERAL LEAVE AND HONOR GUARD LEAVE

4-07-14-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-06-36, 54-44.3-12(1)

4-07-14-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3 and section 54-06-36, except:

1. "Family" means husband, wife, son, daughter, father, mother, stepparents, brother, sister, brother-in-law, sister-in-law, grandparents, grandchildren, stepchildren, foster parents, foster children, daughter-in-law, and son-in-law.

2. "Funeral leave" means an approved absence from work, with pay, of up to twenty-four working hours, provided to an employee to attend or make arrangements for a funeral, as a result of a death in the employee's family, or in the family of an employee's spouse.

3. "Honor guard" means an individual with an essential ceremonial role in the funeral service of a veteran.

4. "Honor guard leave" means the approved absence from work, with pay, for up to twenty-four working hours per calendar year for an employee to participate in an honor guard for a funeral service of a veteran.

5. "Individual with an essential ceremonial role" performing as part of the official funeral service of a veteran is a member of the flagbearers, a member of the flag-folding team, a member of the firing party, the bugler, or the honor guard captain.

History: Effective September 1, 1992; amended effective January 1, 2012.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-06-36, 54-44.3-12(1)

4-07-14-03. Granting funeral or honor guard leave. An appointing authority may grant a request for ~~a~~ funeral or honor guard leave even if the absence of the employee might interfere with the normal operations of the agency.

History: Effective September 1, 1992; amended effective January 1, 2012.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-06-36, 54-44.3-12(1)

4-07-14-04. Not considered sick leave or annual leave. An agency may not consider funeral or honor guard leave as sick leave or annual leave.

History: Effective September 1, 1992; amended effective January 1, 2012.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-06-36, 54-44.3-12(1)

CHAPTER 4-07-24

4-07-24-07. Merit system application appeals to the agency appointing authority.

1. An applicant who has submitted a timely and properly completed application for a position within an agency, department, or institution subject to this chapter and who has been determined by the employing agency to be disqualified for that position because of failure to meet the minimum qualifications, may appeal the disqualification to the agency appointing authority.

2. The employing agency must notify an applicant who fails to meet the minimum qualifications for a position of the applicant's disqualification and right to appeal by letter mailed to the applicant's last-known address or transmitted by electronic means. If an applicant wishes to appeal the disqualification, the applicant shall file a written appeal to the agency appointing authority. The appeal must be ~~postmarked no later than fifteen working days from the date on the letter of notification of rejection by the employing agency~~ delivered, mailed, or transmitted by electronic means and must be received by the agency appointing authority within fifteen working days from the date of notice of the applicant's disqualification. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery. The letter of appeal must specify the basis upon which the applicant relies to assert that the applicant meets the minimum qualifications for the position.

3. The agency appointing authority has fifteen working days from the receipt of the appeal to review the appeal and provide a written response to the applicant.

History: Effective July 1, 1995; amended effective January 1, 2012.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12

4-07-24-08. Merit system application appeals to human resource management services.

1. If an applicant is a regular employee and does not agree with the response of the agency appointing authority, the applicant may further appeal the disqualification to human resource management services. A letter of appeal must be addressed to the Director, Human Resource Management Services, 600 East Boulevard Avenue, Dept. 113, Bismarck, ND 58505-0120, and must be ~~postmarked no later than~~

~~fifteen working days from the date of the agency appointing authority's response to the appeal~~ delivered, mailed, or transmitted by electronic means and must be received in the human resource management services office by five o'clock p.m. within fifteen working days of service of the notice of the agency's response to the appeal. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery. The letter of appeal must specify the basis upon which the applicant relies to assert that the applicant meets the minimum qualifications for the position.

2. Upon receipt of the appeal letter, the director, human resource management services, shall certify the appeal and submit a written request to the director, office of administrative hearings, to conduct the hearing in accordance with this section.

3. If the applicant and the appointing authority agree in writing, an appeal taken under this section may be disposed of informally as provided in this subsection. The administrative law judge shall notify the applicant and the appointing authority to provide documentation upon which each relies to assert its position on the appeal. Each party may also provide a memorandum of support for its position and may request oral argument before the administrative law judge at the time it submits its memorandum. If either party requests oral argument before the administrative law judge, the administrative law judge shall notify the parties of the time, date, and location of the oral argument. After oral argument, if any, the administrative law judge shall issue findings of fact, conclusions of law, and a final order and provide them to the parties and human resource management services. If the applicant and the appointing authority do not agree to informal disposition of the appeal, the administrative law judge shall conduct a hearing in accordance with this section. After the hearing, the administrative law judge shall issue findings of fact, conclusions of law, and a final order and provide them to the parties and human resource management services.

History: Effective August 1, 1995; amended effective November 1, 1996; July 1, 2004; January 1, 2012.
General Authority: NDCC 28-32-05.1, 54-44.3-12
Law Implemented: NDCC 28-32-05.1, 54-44.3-12

CHAPTER 4-11-01

4-11-01-01. Definitions. For purposes of this chapter:

1. "Accident" means an unintended event involving a state-owned or state-leased vehicle which produces injury or damage. The word "injury" includes personal injury, death, or property damage.

2. "Board" means the risk management motor vehicle accident review board.

3. "Corrective actions" means ~~board-recommended~~ corrective actions recommended by the department or board when an accident is classified as preventable. Recommendations may include:

   a. Additional training be provided to the operator, such as driver training, defensive driving training, or emergency vehicle operational training;

   b. Physical, eye, written, or operational examinations be given to the operator to identify problem areas relevant to the operator if a review of the accident indicates that the cause may have been due to an impairment;

   c. Restricted operation of state-owned or state-leased vehicles on state business; and

   d. Duty assignment not requiring operation of a vehicle on state business.

4. "Defensive driving concept" means driving that saves lives, time, and money in spite of the conditions and the actions of others.

5. "Department" means the department of transportation.

6. "Nonpreventable accident" means the operator acted reasonably to prevent the occurrence.

~~6.~~ 7. "Operator" means a state employee driving a state-owned or state-leased vehicle involved in an accident. "State employee" means every present or former officer or employee of the state or any person acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.

~~7.~~ 8. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person and injury to a person's rights or reputation.

~~8.~~ 9. "Preventable accident" means the operator did not act reasonably to prevent the occurrence.

~~9.~~ 10. "Property damage" includes injury to or destruction of tangible or intangible property.

~~10.~~ 11. "Reportable state fleet vehicle accident" means any accident that results in injury due to the operation of a state-owned or state-leased licensed motor vehicle.

12. "Significant property damage" includes any damage that renders the vehicle inoperable and damage of a nature or extent in which injury to an occupant might reasonably have occurred.

History: Effective May 1, 2000; amended effective January 1, 2012.
General Authority: NDCC 28-32-02, 32-12.2-14
Law Implemented: NDCC 32-12.2-14

4-11-01-03. Composition and responsibilities.

1. Composition:

   a. The board consists of five voting members. Of those five members, three are ex officio permanent members and two are members who serve two-year terms.

   b. The three ex officio permanent board members are:

      (1) The director of the department of transportation or the director's designee, who is chairperson.

      (2) The director of the office of management and budget or the director's designee.

      (3) The superintendent of the highway patrol or the superintendent's designee.

   c. The two nonpermanent board members are at-large designees selected by the three ex officio permanent board members. Criteria for selection of the nonpermanent board members include the total number of miles a potential nonpermanent board member's agency's personnel operate state-owned or state-leased fleet vehicles and that agency's accident rates.

2. Responsibilities of the board include:

   a. Reviewing accidents involving a state-owned or state-leased vehicle operated by a state employee which involve bodily injury

or significant property damage and reviewing operator appeals of recommendations made by the department.

b. Adopting rules concerning receiving accident reports, holding meetings, receiving verbal or written information, making recommendations, communicating with state agencies and employees, and informing state agencies of its recommendations.

c. An impartial review of the facts and application of the board's rules.

d. Taking a fair and objective vote on each matter before the board.

3. Responsibilities of the chairperson of the board include:

a. Scheduling the board's meetings and notifying all participants. This includes notifying the operator and the operator's agency head of the date, time, and place the board will convene to review the accident involving the operator.

b. Directing all activities of the board and being responsible for receiving, preparing, presenting, and maintaining all of the records, reports, and other materials pertaining to the operation of the board.

c. Providing the operator and the operator's agency head with the board's written decision and recommendation of corrective action.

4. The department of transportation fleet services division will review all reportable state fleet motor vehicle accidents and report accidents of agencies not exempt from review by the board to the board if either or both of the following apply:

a. A preliminary review shows that the accident appears to have been preventable, using the definition of preventable accident under section 4-11-01-01 and the accident resulted in bodily injury or significant property damage.

b. A citation was issued to the operator of the state-owned or state-leased vehicle.

5. The department of transportation fleet services division will use forms approved by the board to provide information pertaining to the reportable state fleet motor vehicle accident subject to the board's review. Information contained on those forms must include a description of the accident, possible underlying causes of the accident, any immediate corrective action taken to prevent reoccurrence, suggested measures to prevent reoccurrence, and whether the operator has indicated that the operator will present written evidence concerning the accident.

6. The board will develop a form to record its decision. The form may be incorporated as a part of the form used by the department of transportation fleet services division to report an accident to be reviewed by the board. Information contained on the decision recording form must include the names of the board members reviewing the matter, a determination of whether the accident was preventable by the operator, the reasons the accident was determined preventable, the date of the decision, and the recommendation to be made to the operator's agency head.

7. The department will review all accidents that do not involve bodily injury or significant property damage to determine whether the accident was preventable and recommend corrective actions to the operator's agency head.

8. The board will review appeals from operators that object to any findings or recommendations made by the department.

History: Effective May 1, 2000; amended effective January 1, 2012.
General Authority: NDCC 28-32-02, 32-12.2-14
Law Implemented: NDCC 32-12.2-14

4-11-01-04. Operating procedures.

1. The board will meet on a quarterly basis, or at the call of the chairperson according to need.

2. No meeting will be convened unless three board members are present. An affirmative vote of at least three board members is required for board action or recommendation.

3. The board will afford the operator a reasonable opportunity to explain the circumstances surrounding the accident, including anything the operator believes contributed to its cause. The operator may present written evidence relative to the accident.

4. In making its decision, the board shall use the definitions of preventable accident and nonpreventable accident in section 4-11-01-01. All decisions must be made without prejudice or bias and must be based solely on facts presented through reports submitted or testimony given to the board. Decisions must be based on general guidelines of the defensive driving concept as defined in section 4-11-01-01.

5. If the board finds an accident preventable, it shall recommend corrective actions to the head of the agency employing the operator. The recommendations may include the corrective actions in section 4-11-01-01. It is the employing agency head's responsibility to decide what corrective actions will be implemented.

6. Board records must contain the decision and be kept on file ~~at the office of risk management~~ with the department for a period of three years following the year in which the accident occurred.

7. The board shall issue to the operator and the operator's agency head a notification, in writing, of the board's decision within seven business days of the date of the decision.

   a. This notification must advise the operator of the right to request reconsideration of the decision.

   b. If the accident is classified as preventable and the board recommends any type of corrective action as a result, the notification must include:

      (1) The classification;

      (2) The recommended corrective actions; and

      (3) The operator's right to request the board to reconsider its decision.

8. An operator who disagrees with the original classification or recommended corrective actions has the right to request reconsideration by the board. Reconsideration procedures include:

   a. Filing a written notice of the request for reconsideration with the director of the risk management division of the office of management and budget within fourteen business days after the notification was mailed to the operator. The request must include any pertinent new information the operator would like the board to consider and a brief statement of the grounds for reconsideration.

   b. If the director of risk management determines the additional information provided by the operator warrants reconsideration by the board, the additional information must be reviewed at a subsequent board meeting. The operator has the right to appear at the meeting and present evidence or witnesses who can offer relevant information.

   c. The operator will be paid the operator's regular salary, will be reimbursed for travel expenses, and may not be required to take any leave for time needed to assist the board in its review. Any costs associated with corrective actions must be borne by the operator's employing agency.

   d. The board reserves the right to change its classification or recommendation based on any additional information the operator presents in the request for reconsideration.

e. If the director of risk management determines the additional information provided with the request for reconsideration does not support reconsideration, the original decision by the board is final and the matter will not be scheduled for reconsideration.

History: Effective May 1, 2000; amended effective January 1, 2012.
General Authority: NDCC 28-32-02, 32-12.2-14
Law Implemented: NDCC 32-12.2-14

TITLE 10

ATTORNEY GENERAL

CHAPTER 10-12-01

10-12-01-01. Definitions. The terms used throughout this chapter have the same meaning as in the North Dakota Century Code unless otherwise defined here:

1. "Agency" means the attorney general's office bureau of criminal investigation division.

2. "Applicant" means an individual who is applying for a concealed weapons license.

3. "Class 1 license" means a concealed weapons license issued to ~~a person~~ an individual at least twenty-one years of age who has participated in classroom instruction on weapon safety rules and the deadly force law of North Dakota, has demonstrated evidence of familiarity with a firearm or dangerous weapon, and has successfully completed an actual shooting or certified proficiency exercise in accordance with these rules.

4. "Class 2 license" means a concealed weapons license issued to ~~a person~~ an individual at least eighteen years of age who has successfully completed an open-book examination on weapon safety rules and the deadly force law of North Dakota.

5. "Concealed weapons license" means a class 1 or class 2 license issued by the director of the bureau of criminal investigation to carry a firearm or dangerous weapon concealed.

6. "Crime of violence" means a violation of North Dakota Century Code section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, or any equivalent statute of any other jurisdiction.

7. "Director" means the director of the bureau of criminal investigation.

~~7.~~ 8. "Instructor" means an individual certified by the attorney general to provide classroom instruction on weapon safety rules and the North Dakota deadly force law, administer written examinations for concealed weapons licenses, determine evidence of familiarity with firearms and dangerous weapons, and conduct shooting and proficiency exercises for firearms and dangerous weapons.

9. "Mentally incompetent" means an individual requiring treatment as defined in subsection 11 of North Dakota Century Code section 25-03.1-02.

10. "Offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct that:

a. Is done knowingly contrary to justice, honesty, or good morals;

b. Includes as an element of the offense falsification or fraud;

c. Includes as an element of the offense harm or injury directed to another individual or entity or another individual's or entity's property; or

d. Is in violation of North Dakota Century Code chapter 12.1-20 or 12.1-27 or equivalent laws of another state or the federal government.

History: Effective September 1, 1986; amended effective April 1, 2010; January 1, 2012.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03

10-12-01-02. Application for concealed weapons license.

1. An application for a class 1 or class 2 concealed weapons license must be on ~~a~~ an original form approved by the director of the bureau of criminal investigation. Only a satisfactorily completed original application may be approved by the director. The application must include:

a. All questions on the application answered~~, either with the information requested or marked "N/A" for nonapplicable, where appropriate~~ and all applicable information provided;

b. A valid reason for the applicant carrying a concealed weapon;

c. The signed approval of the sheriff of the applicant's county of residence. The sheriff may not approve the application for a concealed weapons license until the applicant has successfully

completed a background investigation in that county and has successfully completed the testing procedures specified in this chapter;

d. If the applicant resides in a city with a police department, signed approval of the chief of police or the chief's designee;

e. Two fingerprint cards containing the classifiable fingerprints of the applicant; and

f. Two passport-size color photographs of the applicant.

2. The applicant shall provide to the agency all documentation relating to any court-ordered treatment or commitment for mental health or alcohol or substance abuse or incidents of domestic violence.

3. The applicant shall provide to the director written authorizations for disclosure of the applicant's mental health and alcohol or substance abuse evaluation and treatment records.

4. A nonrefundable license fee in the amount of forty-five dollars, by certified check or money order, payable to the order of the attorney general.

~~2.~~ 5. The sheriff shall process the application within thirty days after completion of the testing portion of the application process.

~~3.~~ 6. If the applicant resides in a city that has a police department, the chief of police shall process the application within ten working days from receipt of the application by the city's police department.

~~4.~~ 7. The agency shall process the application and make a determination whether to issue the concealed weapons license within ~~thirty~~ forty-five days from receipt of the application from the forwarding law enforcement agency.

~~5.~~ 8. The applicant must be a citizen of the United States and successfully pass a criminal history background investigation conducted by the agency.

~~6.~~ 9. The instructor shall complete the application as follows:

a. If the application is for a class 2 concealed weapons license, the instructor shall complete the test block section and verify whether the applicant has successfully completed an open-book written test on weapon safety rules and the deadly force law of North Dakota. The instructor shall sign the application.

b. If the application is for a class 1 concealed weapons license, the instructor shall complete the test block section and verify whether the applicant has successfully participated in classroom instruction on weapon safety rules and the deadly force law of North Dakota, has demonstrated familiarity with a firearm or dangerous weapon, has completed a shooting course for firearms or a proficiency exercise for other dangerous weapons, and has passed an open-book written test on weapon safety rules and the deadly force law of North Dakota. The instructor shall sign the application.

~~7.~~ 10. An incomplete application satisfactorily will be returned to the applicant for completion. The ~~satisfactory~~ completed application must be returned to the agency no later than twenty days from the postmark date the incomplete application was returned to the applicant. Failure to return the satisfactorily completed application within the time required may result in denial of the application and the applicant will be required to recommence the entire application process.

History: Effective September 1, 1986; amended effective April 1, 2010; January 1, 2012.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1), 62.1-04-03(4), 62.1-04-03(5)

10-12-01-07. Denial, revocation, or cancellation of a concealed weapons license. The director of the bureau of criminal investigation may deny, revoke, or cancel a concealed weapons license for the following reasons:

1. The applicant or licenseholder is prohibited from owning, possessing, or having a firearm under North Dakota Century Code section 62.1-02-01 or under federal law or has committed any other violation of North Dakota Century Code title 62.1; or

2. The applicant made a material misstatement on the application for the concealed weapons license.

3. For a class 1 license in accordance with subdivision c or e of subsection 1 of North Dakota Century Code section 62.1-04-03.

History: Effective September 1, 1986; amended effective April 1, 2010; January 1, 2012.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1)(f), 62.1-04-03(6), 62.1-04-03(7)

10-12-01-08. Renewal of a concealed weapons license. A concealed weapons license may be renewed if a current licenseholder is eligible for a concealed weapons license and completes a renewal application subject to the following conditions:

1. Licenses issued before August 1, 2009, regardless of the age of the licenseholder, convert to a class 2 license upon renewal and no additional testing is required. No additional testing is required ~~to renew~~ for timely renewal of a class 2 license. ~~Renewal applications for a class 2 license must be submitted not earlier than ninety days prior to and not later than ninety days after the class 2 license expires. Approval of renewal applications received outside these timeframes is at the discretion of the director.~~

2. A class 1 license may be renewed upon successful completion of the class 1 requirements within one year before submission of the application for renewal. ~~Renewal applications for a class 1 license must be submitted not earlier than ninety days prior to and not later than ninety days after the class 1 license expires. Approval of renewal applications received outside these timeframes is at the discretion of the director.~~

3. Timely renewal is the responsibility of the applicant. The renewal application may be delivered to law enforcement not more than one hundred eighty days before the license expires through the date the license expires. Failure to deliver a renewal application to the local law enforcement agency at least ninety days prior to the license expiration date may result in expiration of the currently held license until such time as it is renewed.

4. An incomplete application is not deemed to have been submitted to the bureau of criminal investigation until after it has been returned ~~satisfactory~~ completed. The satisfactorily completed application must be returned to the bureau of criminal investigation no late than twenty days from the postmark date the incomplete application was returned to the applicant. Failure to return the satisfactorily completed application within the time required will result in denial of the application and the applicant will be required to recommence the entire application process.

satisfactorily later

5. Renewal applications may not be submitted to law enforcement after the date the current license expires. Renewal applications received by law enforcement after the current license expires are invalid. Invalid application forms may be destroyed by the law enforcement agency or bureau of criminal investigation. The licenseholder will be required to reapply as a new applicant and complete all required testing.

6. A license issued before August 1, 2009, and a class 2 license may be upgraded to a class 1 license upon successful completion of the class 1 license requirements and satisfaction of the age requirement.

~~4.~~ 7. The renewal application must be processed within thirty days after its receipt by the sheriff. The chief of police, if applicable, is required to process the renewal application within ten working days of receipt by

the agency. The bureau of criminal investigation is required to process the renewal application and make a determination within ~~thirty~~ forty-five days of receipt.

History: Effective September 1, 1986; amended effective April 1, 2010; January 1, 2012.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03

10-12-01-12. Firearm or dangerous weapons instructor certification.

1. The attorney general may certify firearm or dangerous weapons instructors to conduct classroom instruction, administer the written examination, have the applicant demonstrate familiarity with a firearm or dangerous weapon, and conduct the shooting and dangerous weapons proficiency examination.

2. In order to become certified as a firearm or dangerous weapons instructor, an individual shall successfully complete the concealed weapons instructor course approved by the director. Successful completion of the certification program requires a passing score on a written examination and a shooting course of fire.

3. The attorney general may certify a peace officer as a firearm or dangerous weapons instructor to conduct classroom instruction and administer the written examination who has current certification from the North Dakota peace officer standards and training board in methods of instruction.

4. The attorney general may certify a peace officer as a firearm or dangerous weapons instructor to conduct firearm and dangerous weapons familiarity demonstrations and shooting and proficiency exercises who has current certification from the North Dakota peace officer standards and training board as a weapons instructor.

5. All applications for instructor certification must be made on a form approved by the director of the bureau of criminal investigation.

6. Firearm or dangerous weapons instructor certification is effective for three years from the date of certification.

7. Except as otherwise provided in this chapter, a firearm or dangerous weapons instructor must possess a current valid North Dakota concealed weapons license as a requirement for certification under this section.

History: Effective April 1, 2010; amended effective January 1, 2012.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1)(d)

10-12-01-13. Renewal of firearm or dangerous weapons instructor certification.

1. The director shall prescribe and provide the required training program for renewal of firearm or dangerous weapons instructor certification, including classroom, firearm, and dangerous weapons instruction. Successful completion of the renewal training program requires a passing score on a written examination and a shooting course of fire or dangerous weapons proficiency.

2. Applications for renewal must be submitted on a form approved by the director.

3. Except as otherwise provided in this chapter, a firearm or dangerous weapons instructor must possess a current valid North Dakota concealed weapons license as a requirement for renewal of certification under this section.

History: Effective April 1, 2010; amended effective January 1, 2012.
General Authority: NDCC 62.1-04-03
Law Implemented: NDCC 62.1-04-03(1)(d)

TITLE 32

STATE BOARD OF COSMETOLOGY

CHAPTER 32-01-01

32-01-01-01. Organization of board of cosmetology.

1. **History and functions.** The 1927 legislative assembly passed a Cosmetology Practice and Training Act, codified as North Dakota Century Code chapter 43-11. This chapter requires the governor to appoint a state board of cosmetology. The board regulates and licenses all cosmetologists, manicurists, estheticians, instructors, students, schools, and salons. It is the duty of the board to protect the public health, welfare, and safety through the prevention of the creating and spreading of infectious and contagious diseases.

2. **Board membership.** The board consists of ~~three~~ five members appointed by the governor. Each member has a three-year term, and the terms are so arranged that ~~only one term expires~~ no more than two terms expire on June thirtieth of each year.

3. **Board officers.** Each year the board meets and elects a president and secretary from their own number. All records of the board shall be kept at the board office.

4. **Board office.** The address of the board office is:

~~North Dakota State Board of Cosmetology~~
~~1102 South Washington~~
~~Suite 200~~
~~Bismarck, North Dakota 58501~~

State Board of Cosmetology
1102 South Washington
Suite 200
P.O. Box 2177
Bismarck, North Dakota 58502

History: Amended effective October 1, 1987; July 1, 1988; September 1, 1989; April 1, 1994; March 1, 1998; January 1, 2012.
General Authority: NDCC ~~28-32-02.1~~ 28-32-02, 43-11-05
Law Implemented: NDCC 43-11-03, 43-11-04

CHAPTER 32-01-03

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

History: Amended effective July 1, 1990; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05~~, 43-11-35~~
Law Implemented: NDCC 43-11-11, 43-11-11.1, 43-11-12, 43-11-13, 43-11-14, 43-11-15, 43-11-16, 43-11-17, 43-11-18, 43-11-19, 43-11-20, 43-11-20.1, 43-11-20.2, 43-11-20.3, 43-11-20.4, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-27.1, 43-11-28, 43-11-29, 43-11-30, 43-11-31, 43-11-32, 43-11-33, 43-11-34, 43-11-35

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

History: Amended effective July 1, 1990; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-16, 43-11-19, 43-11-21, 43-11-22, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-28, 43-11-29, 43-11-30, 43-11-31, 43-11-32, 43-11-35

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

1. **Cosmetology salon.** To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology salon shall have adequate workspace to maintain a safe and sanitary condition for a cosmetology salon. In addition to such workspace, the cosmetology salon shall have a reception area, supply room or supply area with enclosed cabinets, toilet facilities, and facilities to maintain sanitary conditions. There shall be adequate workspace for each additional ~~operator~~ cosmetologist or manager-operator in the salon.

   a. Separate entrance. All public entrances and exits must meet the local or state building codes.

   b. Cosmetology salon separate. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

   c. Resident salons. Each cosmetology salon in a residential building shall maintain an entrance separate from the entrance to living quarters. No cosmetology services shall be conducted in any room used as living or sleeping quarters. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

   d. Mobile home salons. Mobile homes, motor homes, trailers, or any type of recreational vehicles containing a cosmetology salon shall be permanently set on a foundation. Each cosmetology salon in such mobile home, motor home, trailer, or any type of recreational vehicle shall maintain an entrance separate from the living quarters. No cosmetology services shall be conducted in any room used as living or sleeping quarters. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

2. **Cosmetology schools.** To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology school shall have adequate square feet of floor space to maintain a safe and sanitary condition for a cosmetology school. Such floor space must include a business office, reception room, clinic laboratory practice room, dispensary, student lounge, hallways, and classrooms sufficient for training the number of students enrolled. Two lavatories must be in the same building as the school and immediately and easily accessible from the school. In addition, for the manicurist and esthetician courses, floor space must include separate classrooms with adequate space to teach students enrolled.

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

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-11

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

1. Each cosmetology establishment shall have adequate lighting at all workstations.

2. Each cosmetology establishment shall be equipped with an exhaust fan or air exchange system in the working area appropriate for the services provided.

3. ~~Each~~ A cosmetology establishment shall ~~maintain on the premises~~ have a fire extinguisher mounted in public view. All employees and students shall be instructed in the proper operation and use of the fire extinguisher.

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

History: Amended effective July 1, 1988; March 1, 1998; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-11

32-02-01-06. Personal hygiene. Every ~~operator~~ cosmetologist, manager-operator, manicurist, esthetician, instructor, and student, while on the cosmetology establishment premises, shall be neat and clean in person and in attire, and free from any infectious or communicable disease.

1. **Attire.** Every ~~operator~~ cosmetologist, manager-operator, manicurist, esthetician, instructor, student instructor, and student must be neat and clean in person and attire, and shall wear clean washable professional attire as determined by salon and school owner.

2. **Hands.** Every ~~operator~~ cosmetologist, manager-operator, manicurist, esthetician, instructor, student instructor, and student shall wash one's hands with soap and water immediately before serving each client.

3. **Carrying combs.** Combs or other instruments shall not be carried in clothing pockets.

4. **Infectious or communicable diseases.** ~~An operator~~ A cosmetologist, manager-operator, manicurist, esthetician, instructor, student instructor, or student who has an infectious or communicable disease may not knowingly transmit the disease to the public in a cosmetology establishment while such a disease is in a communicable stage.

5. **Smoking.** ~~An operator~~ A cosmetologist, manager-operator, manicurist, esthetician, instructor, student instructor, or student may not smoke while actively engaged in serving the public.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-11

32-02-01-11. Particular aspects of disinfecting.

1. **Germicides.** In disinfecting tools, instruments, and implements, any federally approved germicide prepared specifically for germicidal treatment of tools, instruments, and implements shall be used in accordance with the directions of the manufacturer. All germicidal solutions shall be fresh, clean, and free from contaminants.

2. **Fluids, creams, and powders.** All fluids, semifluids, creams, wax, and powders shall be kept in a clean, covered container at all times and shall be dispensed with a clean sanitized spatula or from a shaker, dispenser pump, or spray-type container. Spatulas made of a washable, nonabsorbent material may be sanitized and used again, and spatulas made of wood shall be discarded after use. Fluids, semifluids, creams, and powders shall be applied only by sanitary, disposable applicators, and the applicators shall be discarded after use.

3. **Tools and instruments.** All permanent wave equipment, clips, rollers, pins, shampoo and comb-out capes, nets, as well as all other tools, instruments, and implements shall be kept in a clean, sanitized condition at all times. Neck strips or similar covering shall be used in lieu of a clean towel whenever applicable in order to prevent such materials from coming in contact with the skin or hair of each client. Such neck strips or similar covering shall not be used more than once, and all other reusable items shall be washed, sanitized, and disinfected before use on each client.

4. **Containers.** All bottles and containers shall be correctly and distinctly labeled to disclose their contents, and all bottles and containers containing poisonous substances shall be so designated.

5. **Waste container.** Each cosmetology establishment shall provide adequate covered and lined waste containers which shall be emptied and washed daily. All chemical waste material must be deposited

immediately in a closed fire-retardant container and frequently disposed of in a sanitary manner.

6. **Protective coverings.** All protective coverings used on a client shall be kept clean and in good condition~~, and such protective coverings shall be stored in a closed cabinet when not in use~~.

7. **Wet sanitizers.** Each cosmetology establishment shall have wet sanitizers of sufficient size and quantity to sanitize all tools, instruments, and implements of the establishment, and such sanitizers shall be readily accessible. Such sanitizers shall contain a commercial sanitizing agent approved federally and such sanitizing agent shall be used according to the manufacturers' directions.

8. **Metal instruments.** All metal tools, instruments, and implements shall be sanitized with a disinfectant solution after each use and stored in a closed container until the next use. All clippers and trimmers must be cleaned with a disinfectant spray after each client.

9. **Storage of supplies.** Every cosmetology establishment shall have a separate cabinet or storage area for the storage of supplies, and any supplies containing any caustic or other material harmful to humans shall be stored in a place not readily accessible to clients or the public.

10. **Combs and brushes.** Combs and brushes shall be cleansed and disinfected prior to each use. All shall be in good usable condition.

11. **Electric tools and outlets.** Each cosmetology establishment shall have a sufficient number of electrical outlets so that no cord or electrical connection constitutes a hazard, fire or otherwise, to the public or persons employed or learning in the establishment.

12. **Neck brushes.** No salon or school may use neck brushes.

13. **Dry sanitizers.** All tools, instruments, and implements must be stored in a clean closed cabinet or drawer. Paper, money, candy, and personal items may not be stored or placed in cabinets or drawers where tools, instruments, and implements are stored.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-11

CHAPTER 32-03-01

32-03-01-08. Tools and supplies. Each cosmetology salon shall maintain tools, supplies, instruments, and equipment adequate for the number of ~~operators~~ cosmetologists and manager-operators employed and adequate to serve the public in cosmetology.

History: Amended effective January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-11

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

1. Possess a valid manager-operator, master manicurist, or master esthetician license.

2. Possess a kit and present the kit for inspection by a board-approved inspector. The kit must contain the following:

   a. License;

   b. Copy of rules of sanitation;

   c. First-aid kit complying with section 32-02-01-07; and

   d. Separate closed labeled containers for soiled and clean supplies.

3. Comply with all rules of disinfection for combs, brushes, tools, and other equipment as provided in section 32-02-01-10.

4. The original fee for a homebound license is fifty-five dollars per year and annual renewals are thirty dollars per year and yearly inspections must be coordinated with the ~~board office~~ inspector.

History: Effective February 1, 1996; amended effective July 1, 1996; August 8, 1996; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-01, 43-11-11, 43-11-13, 43-11-13.2, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-28

OBJECTION

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO NORTH DAKOTA ADMINISTRATIVE CODE SECTION 32-03-01-12

AS ADOPTED BY THE STATE BOARD OF COSMETOLOGY EFFECTIVE FEBRUARY 1, 1996.

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

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

History: Effective May 29, 1996.
General Authority: NDCC 28-32-03.3

32-04-01-25. Examinations.

1. **School examinations.** Each student must have successfully passed eighty percent of the weekly examinations and secured a seventy-five percent average in the cosmetology school final examination in both written and practical work.

2. **Board examinations.** A cosmetologist, manicurist, and esthetician examination shall consist of a theoretical portion and a practical portion. The practical examinations shall be administered by the board.

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

   ~~a. Hairstyling.~~

   ~~b. Basic hair shaping using entire mannequin (full head haircut).~~

   ~~c. Hair coloring.~~

   ~~d. Permanent waving.~~

   ~~e. Chemical hair relaxing.~~

   In order to be certified as passing an examination, a candidate shall score at least seventy-five percent on the theoretical and practical portions of the examination.

3. **Failing applicant.** Applicants who fail any portion of the examination shall reregister and pay the required fee before being permitted to retake the portion of the examination they have failed. An applicant for a cosmetology license who fails the practical examination twice must complete an additional one hundred sixty hours of training at a school of cosmetology. An applicant for an esthetician license who fails the practical examination twice must complete an additional fifty hours of training at a school of cosmetology ~~before applying for a second reexamination~~. An applicant for a manicurist license who fails the practical examination twice must complete an additional thirty hours of training at a school of cosmetology ~~before applying for a second reexamination~~.

4. **Applicant complaint.** An applicant shall notify the board in writing if there is reason to believe that there has been discrimination during any portion of the examination.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-16, 43-11-22, 43-11-23

32-04-01-26.1. Cosmetology course curriculum. The hours of the cosmetology course curriculum must include the following:

Hair shaping	250 hours
Hairstyling	250 hours
Nails	~~50~~ 100 hours
Facials, skin care	~~25~~ 100 hours
Chemical services	250 hours
Study of theory, law, and sanitation	400 hours
Related subjects (classroom or clinic for instructions)	~~575~~ 450 hours
Total minimum hours	1,800 hours

History: Effective July 1, 2000; amended effective January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-16

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

Sterilization, sanitation, and safety	75 hours
Body treatment, facials, hair removal, and makeup	340 hours
Study of theory, law, ~~ethics, management,~~ and ~~salesmanship~~ sanitation	75 hours
Related subjects	60 hours
Unassigned	50 hours
Total minimum hours	600 hours

History: Effective July 1, 1990; amended effective July 1, 2000; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-16

32-04-01-28. Manicurist course curriculum. The curriculum for students enrolled in a manicurist course must be three hundred fifty hours. No school or licensed instructor may permit a student to render clinical services until a student has completed twenty percent of the total hours of instruction required. The curriculum must include the following:

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

History: Effective July 1, 1990; amended effective December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-16

TITLE 33

STATE DEPARTMENT OF HEALTH

ARTICLE 32-05

INDIVIDUALS

CHAPTER 32-05-01
COSMETOLOGISTS, MANAGER-OPERATORS, INSTRUCTORS, STUDENT INSTRUCTORS, DEMONSTRATORS, ESTHETICIANS, AND MANICURISTS

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

1. **Fee and proof.** The application shall be accompanied by the required proof of qualification applicable to the applicant, the original license fee of fifteen dollars, and the practical examination fee of twenty-five dollars.

2. **Renewal.** Every ~~operator~~ cosmetologist shall renew the ~~operator's~~ cosmetologist's license by annually making written application to the board before December thirty-first each year, and such renewal application shall be accompanied by the fifteen dollar fee.

3. **Penalty fee.** If the licensee fails to renew the ~~operator's~~ cosmetologist's license by the expiration date, a penalty fee of fifteen dollars is required.

4. **Change of name or address.** Every ~~operator~~ cosmetologist shall notify the board in writing of any change of name or change of residence address.

5. **Certificates displayed.** Every ~~operator~~ cosmetologist shall conspicuously display the ~~operator's~~ cosmetologist's certificate of registration in the reception or work area of the cosmetology salon.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-28

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

1. Pay the application fee.

2. Provide proof that the applicant is licensed as a cosmetologist, instructor, manicurist, or esthetician in another jurisdiction and that the applicant's license is in good standing.

3. Demonstrate the other jurisdiction's licensure requirements at the time the applicant was licensed by the other jurisdiction were substantially equal to those in North Dakota at the time the North Dakota application was filed. Three thousand hours or more of work experience as a licensed ~~operator~~ cosmetologist will be considered substantially equal to three hundred hours of cosmetology education.

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

History: Effective July 1, 2000; amended effective December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-25

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

1. **Fee and proof.** The application shall be accompanied by the fee of twenty-five dollars and the required proof of qualification. ~~One thousand hours of practice as a licensed operator is the equivalent of one hundred twenty-five days of practice as a licensed operator.~~

2. **Renewal.** Every manager-operator shall renew the manager-operator's license by annually making an application to the board before December

thirty-first each year, and the renewal application shall be accompanied by the twenty dollar fee.

3. **Penalty fee.** If the licensee fails to renew the manager-operator's license by the expiration date, a penalty fee of fifteen dollars is required.

4. **Change of name or address.** Every manager-operator shall notify the board in writing of any change of name or change of residence address.

5. **Certificates displayed.** Every manager-operator shall conspicuously display the manager-operator's certificate of registration in the reception or work area of the cosmetology salon.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-26, 43-11-28

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

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant, the original license fee of twenty-five dollars, and the practical examination fee of twenty-five dollars.

2. **Renewal.** Every esthetician shall renew the esthetician's license by annually making written application to the board office before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.

3. **Penalty fee.** If the licensee fails to renew the esthetician's license by the expiration date, a penalty fee of fifteen dollars is required.

4. **Change of name or address.** Every esthetician shall notify the board in writing of any change of name or residence.

5. **Certificates displayed.** Every esthetician shall conspicuously display the esthetician's certificate of registration in the reception or work area of the cosmetology salon.

History: Effective July 1, 1990; amended effective March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

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

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant, the original license fee of twenty-five dollars, and the practical examination fee of twenty-five dollars.

2. **Renewal.** Every manicurist shall renew the manicurist's license by annually making written application to the board before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.

3. **Penalty fee.** If the licensee fails to renew the manicurist's license by the expiration date, a penalty of fifteen dollars is required.

4. **Change of name or address.** Every manicurist shall notify the board in writing of any change of name or any change of residence.

5. **Certificates displayed.** Every manicurist shall conspicuously display the manicurist's certificate of registration in the reception or work area of the cosmetology salon.

History: Effective July 1, 1990; amended effective March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-13, 43-11-27, 43-11-27.1, 43-11-28

CHAPTER 33-43-01

33-43-01-23. Hearing process for individuals on the nurse aide registry.

1. Individuals who have been denied registry status will be informed of the reasons why and provided an opportunity for a hearing consistent with this section.

2. Individuals registered on the department's registry against whom allegations of abuse, neglect, misappropriation of resident property, or other misconduct are made will be:

   a. Informed by the department of the allegations;

   b. Informed of the investigation results; and

   c. If the allegations are found valid, notified of their right to request a hearing regarding the department's decision to revoke, suspend, or encumber the individual's registry status within thirty days of the notification.

3. If a hearing is not timely requested, the department's finding will be final and the department will submit information specific to validated allegations to the registry.

4. If a hearing is timely requested, the department will apply to the office of administrative hearings for appointment of an administrative law judge. The office of administrative hearings will notify the accused of the date set for the hearing.

5. The administrative law judge will conduct the hearing and prepare recommended findings of fact and conclusions of law, as well as a recommended order. If through the department's investigation process, there is evidence that abuse, neglect, misappropriation of resident property, or other misconduct has occurred, the department will notify law enforcement officials and other officials as determined appropriate.

6. Allegations of abuse, neglect, misappropriation of resident property, or other misconduct by an individual on the department's nurse aide registry, validated by the department or through the hearing process, shall:

   a. Be identified in the nurse aide registry within ten days of the validation; and

   b. Remain on the registry permanently, unless the validation was made in error, the individual was found not guilty in a court of a law, or the department is notified of the nurse aide's death. After a period of one year, an individual with a finding of neglect placed on the individual's registry listing may petition the state to have the finding removed from the individual's registry listing consistent with the process identified in section 33-43-01-24, if determined eligible by the department.

7. Within thirty days following the addition of information regarding a validation to the registry, the department will provide the individual on the department's nurse aide registry with a copy of all information which will be maintained in the registry.

8. Within thirty days of mailing the notification of a finding adverse to an individual on the department's nurse aide registry, the individual may contact the department and correct any misstatements or inaccuracies in the information regarding the individual maintained by the registry.

9. Any medicare or medicaid participating nursing facility, home health agency, hospital, basic care facility, assisted living facility, ombudsman, other representative of an official agency, or other individual with a need to know may receive information contained in the registry by making a written request.

History: Effective January 1, 2012.
General Authority: NDCC 23-44-02, 28-32-02(1)
Law Implemented: NDCC 23-44-02

TITLE 75

DEPARTMENT OF HUMAN SERVICES

CHAPTER 75-02-06
RATESETTING FOR NURSING HOME CARE

75-02-06-12. Offsets to cost.

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income in any form received by the facility, with the exception of an established rate, income from payments made under the Workforce Investment Act, bed reduction incentive payments, donations, the deferred portion of patronage dividends credited to the facility and not previously offset, charges for private rooms, special services, and noncovered bed hold days~~, and late charges~~ must be offset up to the total of the appropriate actual allowable cost. If actual costs are not identifiable, income must be offset up to the total of costs described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each cost category. Sources of income include:

   a. "Activities income". Income from the activities department and the gift shop must be offset to activity costs.

   b. "Dietary income". Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks must be offset to dietary and food costs.

   c. "Drugs or supplies income". Amounts received from employees, doctors, or others not admitted as residents must be offset to nursing supplies. Medicare part B income for drugs and supplies must be offset to nursing supplies.

   d. "Insurance recoveries income". Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when or if the cost is incurred, if the facility did not adjust the basis for depreciable assets.

   e. "Interest or investment income". Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, must be offset to interest expense.

   f. "Laundry income". All amounts received for laundry services rendered to or on behalf of employees, doctors, or others must be offset to laundry costs.

g. "Private duty nurse income". Income received for the providing of a private duty nurse must be offset to nursing salaries.

h. "Rentals of facility space income". Income received from outside sources for the use of facility space and equipment must be offset to property costs.

i. "Telegraph and telephone income". Income received from residents, guests, or employees must be offset to administration costs. Income from emergency answering services need not be offset.

j. "Therapy income". Except for income from medicare part A, income from therapy services, including medicare part B income, must be offset to therapy costs unless the provider has elected to make therapy costs nonallowable under subsection 40 of section 75-02-06-12.1.

k. "Vending income". Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to the cost category where vending costs are recorded.

l. "Bad debt recovery". Income for bad debts previously claimed must be offset to property costs in total in the year of recovery.

m. "Other cost-related income". Miscellaneous income, including amounts generated through the sale of a previously expensed or depreciated item, such as supplies or equipment, or the amount related to the default of a contractual agreement related to education expense assistance, must be offset, in total, to the cost category where the item was expensed or depreciated.

2. Payments to a provider by its vendor must ordinarily be treated as purchase discounts, allowances, refunds, or rebates, even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider shall provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.

3. When an owner, agent, or employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's,

agent's, or employee's own personal use as a result of the provider's purchases from the vendor, the value of the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.

4. When the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the provider and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.

5. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.

6. For purposes of this section, "medicare part B income" means the interim payment made by medicare during the report year plus any cost settlement payments made to the provider or due from the provider for previous periods which are made during the report year and which have not been reported to the department prior to June 30, 1997.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; June 1, 1988; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 2002; January 1, 2010; January 1, 2012.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-12.1. Nonallowable costs. Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of resident care facilities and activities. These costs are not allowed in computing the rates. Nonallowable costs include:

1. Political contributions;

2. Salaries or expenses of a lobbyist;

3. Advertising designed to encourage potential residents to select a particular facility;

4. Fines or penalties, including interest charges on the penalty, bank overdraft charges, and late payment charges;

5. Legal and related expenses for challenges to decisions made by governmental agencies except for successful challenges as provided for in section 75-02-06-02.5;

6. Costs incurred for activities directly related to influencing employees with respect to unionization;

7. Cost of memberships in sports, health, fraternal, or social clubs or organizations, such as elks, country clubs, knights of columbus;

8. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying costs, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions made by governmental agencies (including all dues unless an allocation of dues to such costs is provided);

9. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, i.e., lions, chamber of commerce, or kiwanis, in excess of one thousand five hundred dollars per cost reporting period;

10. Home office costs not otherwise allowable if incurred directly by the facility;

11. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors that include annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements for security exchange commission purposes, stock transfer agent fees, and stockholder and investment analysis;

12. Corporate costs not related to resident care, including reorganization costs; costs associated with acquisition of capital stock, except otherwise allowable interest and depreciation expenses associated with a transaction described in subsection 3 of section 75-02-06-07; and costs relating to the issuance and sale of capital stock or other securities;

13. The full cost of items or services such as telephone, radio, and television, including cable hookups or satellite dishes, located in resident accommodations, excluding common areas, furnished solely for the personal comfort of the residents;

14. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;

15. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to resident care;

16. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility;

17. Costs incurred by the provider's subcontractors, or by the lessor of property that the provider leases, that are an element in the subcontractor's or lessor's charge to the provider, if the costs would not have been allowable had the costs been incurred by a provider directly furnishing the subcontracted services, or owning the leased property except no facility shall have a particular item of cost disallowed under this subsection if that cost arises out of a transaction completed before July 18, 1984;

18. The cost, in excess of charges, of providing meals and lodging to facility personnel living on premises;

19. Depreciation expense for facility assets not related to resident care;

20. Nonnursing facility operations and associated administration costs;

21. Direct costs or any amount claimed to medicare for medicare utilization review costs;

22. All costs for services paid directly by the department to an outside provider, such as prescription drugs;

23. Travel costs involving the use of vehicles not exclusively used by the facility except to the extent:

    a. The facility supports vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care;

    b. Resident-care related vehicle travel costs do not exceed a standard mileage rate established by the internal revenue service; and

    c. The facility documents all costs associated with a vehicle not exclusively used by the facility;

24. Travel costs other than vehicle-related costs unless supported, reasonable, and related to resident care;

25. Additional compensation paid to an employee, who is a member of the board of directors, for service on the board;

26. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid, per day, to a member of the legislative council, pursuant to North Dakota Century Code section 54-35-10;

27. Travel costs associated with a board of directors meeting to the extent the meeting is held in a location where the organization has no facility;

28. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the portion of the cost which relates to costs that benefit all eligible employees;

29. Employment benefits associated with salary costs not includable in a rate set under this chapter;

30. Premiums for top management personnel life insurance policies, except that the premiums must be allowed if the policy is included within a group policy provided for all employees, or if the policy is required as a condition of mortgage or loan and the mortgagee or lending institution is listed as the sole beneficiary;

31. Personal expenses of owners and employees, including vacations, personal travel, and entertainment;

32. Costs not adequately documented through written documentation, date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities;

33. The following taxes:

    a. Federal income and excess profit taxes, including any interest or penalties paid thereon;

    b. State or local income and excess profit taxes;

    c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes on the issuance of bonds, property transfers, or issuance or transfer of stocks, which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;

    d. Taxes, including real estate and sales tax, for which exemptions are available to the provider;

    e. Taxes on property not used in the provision of covered services;

    f. Taxes, including sales taxes, levied against the residents and collected and remitted by the provider; and

    g. Self-employment (FICA) taxes applicable to persons including individual proprietors, partners, members of a joint venture;

34. The unvested portion of a facility's accrual for sick or annual leave;

35. The cost, including depreciation, of equipment or items purchased with funds received from a local or state agency, exclusive of any federal funds;

36. Hair care, other than routine hair care, furnished by the facility;

37. The cost of education unless:

    a. The facility is claiming an amount for repayment of an employee's student loans related to educational expenses incurred by the employee prior to the current cost report year provided:

        (1) The education was provided by an accredited academic or technical educational facility;

        (2) The allowable portion of a student loan relates to education expenses for materials, books, or tuition and does not include any interest expense;

        (3) The education expenses were incurred as a result of the employee being enrolled in a course of study that prepared the employee for a position at the facility, and the employee is in that position; and

        (4) The facility claims the amount of student loan repayment assistance at a rate that does not exceed two dollars and twenty-five cents per hour of work performed by the employee in the position for which the employee received education, provided the amount claimed per employee may not exceed the lesser of ~~one-half of~~ the allowable student loan or three thousand seven hundred fifty dollars per year, or an aggregate of fifteen thousand dollars, and in any event may not exceed ~~one-half of~~ the cost of the employee's education.

    b. The facility is claiming education expense for an individual who is currently enrolled in an accredited academic or technical educational facility provided:

        (1) The education expense is for materials, books, or tuition;

        (2) The facility claims the education expense annually in an amount not to exceed the lesser of ~~one-half of~~ the individual's education expense incurred during the cost report year or three thousand seven hundred fifty dollars;

        (3) The aggregate amount of education expense claimed for an individual over multiple cost report periods does not exceed fifteen thousand dollars; and

(4) The facility has a contract with the individual which stipulates a minimum commitment to work for the facility of one thousand six hundred sixty-four hours of employment after completion of the education program for each year education expense assistance was provided, as well as a repayment plan if the individual does not fulfill the contract obligations.

38. Repealed effective January 1, 1999.

39. Increased lease costs of a facility, unless:

    a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;

    b. The increased costs related to the ownership are charged to the lessee; and

    c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee;

40. At the election of the provider, the direct and indirect costs of providing therapy services to nonnursing facility residents or medicare part B therapy services, including purchase of service fees and operating or property costs related to providing therapy services;

41. Costs associated with or paid for the acquisition of licensed nursing facility capacity;

42. Goodwill; ~~and~~

43. Lease costs in excess of the amount allocable to the leased space as reported on the medicare cost report by a lessor who provides services to recipients of benefits under title XVIII or title XIX of the Social Security Act~~.~~; and

44. Salaries accrued at a facility's fiscal yearend but not paid within seventy-five days of the cost report yearend.

History: Effective January 1, 1990; amended effective January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2010; January 1, 2012.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-16. Rate determinations.

1. For each cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident days for the direct care

cost category and resident days for other direct care, indirect care, and property cost categories. The actual rate as calculated is compared to the limit rate for each cost category to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification. The lesser of the actual rate or the limit rate for other direct care, indirect care, and property costs, and the adjustments provided for in subsection 2 and 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.

2. a. For a facility with an actual rate below the limit rate for indirect care costs, an incentive amount equal to seventy percent times the difference between the actual rate, exclusive of the adjustment factor, and the limit rate in effect at the end of the year immediately preceding the rate year, up to a maximum of two dollars and sixty cents or the difference between the actual rate, inclusive of the adjustment factor and the limit rate for indirect care costs, whichever is less, must be included as part of the indirect care cost rate.

   b. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care and other direct care rates, exclusive of the adjustment factor, or the limit rate in effect at the end of the year immediately preceding the rate year. The three percent operating margin must be added to the rate for the direct care and other direct care cost categories.

3. Limitations.

   a. The department shall accumulate and analyze statistics on costs incurred by facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.

   b. The department shall review, on an ongoing basis, aggregate payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If aggregate payments to facilities exceed estimated payments under medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do

not exceed an amount that can be estimated would have been paid under medicare payment principles.

c. All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, 2006. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.

d. The limit rate for each of the cost categories must be established as follows:

(1) Historical costs for the report year ended June 30, 2006, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.

(2) For the rate year beginning January 1, ~~2010~~ 2012, the limit rate for each cost category is:

(a) For the direct care cost category, one hundred ~~fifteen~~ thirty-one dollars and ~~seventy-eight~~ fifty-nine cents;

(b) For the other direct care cost category, ~~twenty-one~~ twenty-four dollars and ~~ninety-four~~ sixty-seven cents; and

(c) For the indirect care cost category, ~~fifty-five~~ sixty-two dollars and forty-two cents.

~~(3) For rate years beginning on or after January 1, 2011, the limit rate for each cost category is calculated based on:~~

~~(a) For the direct care cost category, one hundred twenty-seven dollars and fifty cents multiplied by the adjustment factor determined under subsection 4;~~

~~(b) For the other direct care cost category, twenty-three dollars and eighty-nine cents multiplied by the adjustment factor determined under subsection 4; and~~

~~(c) For the indirect care cost category, sixty dollars and fifty-seven cents multiplied by the adjustment factor determined under subsection 4.~~

e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.

f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:

(1) Actual census for the report year; or

(2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:

(a) Multiplied times three hundred sixty-five; and

(b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.

g. The department may waive or reduce the application of subdivision f if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:

(1) The facility has reduced licensed capacity; or

(2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision f.

h. The department may waive the application of paragraph 2 of subdivision f for nongeriatric facilities for individuals with disabilities or geropsychiatric facilities or units if occupancy below ninety percent is due to lack of department-approved referrals or admissions.

4. An adjustment factor shall be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care under subsection 1 and for purposes of adjusting the limit rates for direct care costs, other direct care costs, and indirect care costs under subsection 3, but may not be used to adjust property costs under either subsection 1 or 3.

5. Rate adjustments.

a. Desk audit rate.

(1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by telephone or mail of any adjustments based on the desk

review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department shall review the information and make appropriate adjustments.

(2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.

(3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate except as provided for in section 75-02-06-22 or subdivision c.

(4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. No decision on the request for reconsideration of the desk rate may be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.

(5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.

(6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year that result in a change of at least ten cents per day for the rate weight of one.

b. Final rate.

(1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.

(2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least ten cents per day for the rate weight of one that are found during a field audit or are reported by the facility within twelve months of the rate yearend.

(3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c.

(4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.

(5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:

(a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least ten cents per day for the rate weight of one must result in a change to the final rate. The change must be applied retroactively as provided for in this section.

(b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least ten cents per day for the rate weight of one had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.

(c) Adjustments resulting from an audit of home office costs, that result in a change of at least ten cents per day for the rate weight of one, must be included as an adjustment in the report year in which the costs were incurred.

(d) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.

c. Pending decision rates for private-pay residents.

(1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information

furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.

(2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.

(3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.

(4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.

d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least twenty-five cents per day, except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

6. Rate payments.

a. The rate as established must be considered as payment for all accommodations and includes all items designated as routinely provided. No payments may be solicited or received from the resident or any other person to supplement the rate as established.

b. The rate as established must be paid by the department only if the rate charged to private-pay residents for semiprivate accommodations equals the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to the department for the same bed type, i.e., hospital or leave days.

c. If the established rate exceeds the rate charged to a private-pay resident, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund must be the difference between the established rate and the rate charged the private-pay resident times the number of medical assistance resident days paid during the period in which the established rate exceeded the rate charged to private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.

d. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments may not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

e. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year that exceed the established rate may be made unless specifically provided for in this section.

7. Partial year.

a. Rates for a facility changing ownership during the rate period are set under this subdivision.

(1) The rates established for direct care, other direct care, indirect care, operating margins, and incentives for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:

(a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and

(b) For a facility with less than four months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 4; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.

(2) Unless a facility elects to have a property rate established under paragraph 3, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:

(a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and

(b) For a facility with less than four months of operation under the new ownership during the report year, by using the rate established for the previous owner for the previous rate year; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.

(3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

b. For a new facility, the department shall establish an interim rate equal to the limit rates for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the property rate. The property rate must be calculated using projected property costs and projected census. The interim rate must be in effect for no less than ten months and no more than eighteen months. Costs for the period in which the interim rate is effective must be used to establish a final rate. If the final rates for direct care, other direct care, and indirect care costs are less than the interim rates for those costs, a retroactive adjustment as provided for in subsection 5 must be made. A retroactive adjustment to the property rate must be made to adjust projected property costs to actual property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs must be the greater of actual census, projected census, or census imputed at ninety-five percent of licensed beds.

(1) If the effective date of the interim rate is on or after March first and on or before June thirtieth, the interim rate must be effective for the remainder of that rate year and must continue through June thirtieth of the subsequent rate year. The facility shall file by March first an interim cost report for the period ending December thirty-first of the year in which the facility first provides services. The interim cost report is used to establish the actual rate effective July first of the subsequent rate year. The partial year rate established based on the interim cost report must include applicable incentives, margins, phase-ins, and adjustment factors and may not be subject to any cost settle-up. The cost reports for the report year ending June thirtieth of the current and subsequent rate years must be used to determine the final rate for the periods that the interim rate was in effect.

(2) If the effective date of the interim rate is on or after July first and on or before December thirty-first, the interim rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report year ending June thirtieth of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the subsequent rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the periods the interim rate was in effect.

(3) If the effective date of the interim rate is on or after January first and on or before February twenty-ninth, the interim rate must remain in effect through the end of the rate year in which

the interim rate becomes effective. The facility shall file a cost report for the period ending June thirtieth of the current rate year. This cost report must be used to establish the rate for the subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the current rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the period that the interim rate was in effect.

(4) The final rate for direct care, other direct care, and indirect care costs established under this subdivision must be limited to the lesser of the limit rate for the current rate year or the actual rate.

c. For a facility with renovations or replacements in excess of one hundred thousand dollars, and without a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first day of the month beginning after the date the project is completed and placed into service or the first day of the month beginning after the date the request for a projected property rate is received by the department, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

d. For a facility with a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, must be applied to all licensed beds. An interim property rate must be established based on projected property costs and projected census. The interim property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health or the first day of the month beginning after the date when the request for a projected property rate is made to the department, whichever

is later, through the end of the rate year. The facility shall file by March first an interim property cost report following the rate year. The interim cost report is used to determine the final rate for property and to establish the amount for a retroactive cost settle-up. The final rate for property is limited to the lesser of the interim property rate or a rate based upon actual property costs. The property rate for the subsequent rate year must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on property costs actually incurred during the report year; and may not be subject to retroactive cost settle-up. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

e. For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.

f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.

g. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subdivision c or d and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subdivision c or d may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

8. One-time adjustments.

a. Adjustments to meet certification standards.

(1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.

(2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:

(a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;

(b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and

(c) Provide a detailed list of any other costs necessary to meet survey standards.

(3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the limit rate.

(4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

b. Adjustments for unforeseeable expenses.

(1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.

(2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:

(a) An explanation as to why the facility believes the expense was unforeseeable;

(b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and

(c) A detailed breakdown of the unforeseeable expenses by expense line item.

(3) The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on its background and knowledge of nursing care industry and business trends.

(4) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.

(5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

c. Adjustment to historical operating costs.

(1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.

(2) The following conditions must be met before a facility can receive the adjustment:

(a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;

(b) The facility shall document all available resources, including efficiency incentives, if used to increase nursing hours, are not sufficient to meet the minimum standards; and

(c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.

(3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any rate limitations that may apply.

(4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 5.

(5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.

d. Adjustments for disaster recovery costs when evacuation of residents occurs.

(1) A facility may incur certain costs when recovering from a disaster such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.

(2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.

(3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.

(4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for the first six months following the month the facility readmits the first resident.

(5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a

reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.

9. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds ten cents per day for the rate weight of one.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002; July 2, 2003; December 1, 2005; January 1, 2010; July 1, 2010; January 1, 2012.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-17. Classifications.

1. A facility shall complete a resident assessment for any resident occupying a licensed facility bed, except a respite care, hospice inpatient respite care, or hospice general care resident.

2. A resident must be classified in one of ~~thirty-four~~ forty-eight classifications based on the resident assessment. If a resident assessment is not performed in accordance with subsection 3, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, the resident must be included in group ~~BC1~~ AAA, not classified, until the next required resident assessment is performed in accordance with subsection 3. For purposes of determining standardized resident days, any resident day classified as group ~~BC1~~ AAA must be assigned the relative weight of one. A resident, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, who has not been classified, must be billed at the group ~~BC1~~ AAA established rate. The case-mix weight for establishing the rate for group ~~BC1~~ AAA is ~~.62~~ 0.45. Days for a respite care, hospice inpatient respite care, or hospice general inpatient care resident who is not classified must be given a weight of one when determining standardized resident days. Therapeutic, hospital, or institutional leave days that are resident days must be given a weight of ~~.62~~ 0.45 when determining standardized resident days.

3. Resident assessments must be completed as follows:

   a. The facility shall assess the resident within the first fourteen days after any admission or return from an acute hospital stay.

b. The facility shall assess the resident quarterly after any admission or return from an acute hospital stay. The quarterly assessment reference period ends on the day of the third subsequent month corresponding to the day of admission or return from an acute hospital stay, except if that month does not have a corresponding date, the quarterly assessment reference period ends on the first day of the next month. The assessment reference period begins seven days prior to the ending date of a quarterly assessment period. The assessment reference date used for the resident assessment instrument must be within the assessment reference period.

c. An assessment must be submitted upon initiation of rehabilitation therapy if initiation of rehabilitation therapy occurs outside of the quarterly assessment reference period established in subdivision b.

d. An assessment must be submitted upon discontinuation of rehabilitation therapy if discontinuation of rehabilitation therapy occurs outside of the quarterly assessment reference period established in subdivision b.

4. The resident classification is based on resident characteristics and health status recorded on the resident assessment instrument, including the ability to perform activities of daily living, diagnoses, and treatment received. The resident is first classified in one of seven major categories. The resident is then classified into subdivisions of each major category based on the resident's activities of daily living score and whether nursing rehabilitation services are needed or the resident has signs of depression.

5. For purposes of this section:

a. A resident's activities of daily living score used in determining the resident's classification is based on the amount of assistance, as described in the resident assessment instrument, the resident needs to complete the activities of bed mobility, transferring, toileting, and eating;

b. A resident has a need for nursing rehabilitation services if the resident receives two or more of the following for at least fifteen minutes per day for at least six of the seven days preceding the assessment:

(1) Passive or active range of motion;

(2) Amputation or prosthesis care;

(3) Splint or brace assistance;

(4) Dressing or grooming training;

(5) Eating or swallowing training;

(6) Bed mobility or walking training;

(7) Transfer training;

(8) Communication training; or

(9) ~~Any scheduled toileting or bladder retraining program~~ Urinary toileting, bladder, or bowel training program; and

c. A resident has signs of depression if the ~~resident exhibits at least three of the following~~ resident's total severity score for depression is at least ten based on the following:

(1) ~~Negative statements~~ Little interest or pleasure in doing things;

(2) ~~Repetitive questions~~ Feeling down, depressed, or hopeless;

(3) ~~Repetitive verbalization~~ Trouble falling asleep or staying asleep or sleeping too much;

(4) ~~Persistent anger with self and others~~ Feeling tired or having little energy;

(5) ~~Self deprecation~~ Poor appetite or overeating;

(6) ~~Expressions of unrealistic fears~~ Feeling bad or failure or let self or others down;

(7) ~~Recurrent statements that something terrible is to happen~~ Trouble concentrating on things;

(8) ~~Repetitive health complaints~~ Moving or speaking slowly or being fidgety or restless;

(9) ~~Repetitive anxious complaints or concerns of nonhealth-related issues;~~ Thoughts of being better off dead or hurting self; or

(10) ~~Unpleasant mood in morning;~~ Short-tempered or easily annoyed.

~~(11) Insomnia or changes in usual sleep patterns;~~

~~(12) Sad, pained, or worried facial expression;~~

~~(13) Crying or tearfulness;~~

~~(14) Repetitive physical movements;~~

~~(15) Withdrawal from activities of interest; or~~

~~(16) Reduced social interaction.~~

6. The major categories in hierarchical order are:

a. Rehabilitation category. To qualify for the rehabilitation category, a resident must receive rehabilitation therapy. A resident who qualifies for the rehabilitation category is assigned a subcategory based on the resident's activities of daily living score. The rehabilitation category may be assigned within a classification period based on initiation or discontinuation dates if therapies are begun or discontinued on any date not within an assessment reference period.

b. Extensive services category.

~~(1)~~ To qualify for the extensive services category, a resident must have an activities of daily living score of at least ~~seven~~ two and ~~have:~~ within the fourteen days preceding the assessment, received tracheostomy care or required a ventilator, respirator, or infection isolation while a resident.

~~(a) Within the fourteen days preceding the assessment, received tracheostomy care or required a ventilator, respirator, or suctioning; or~~

~~(b) Within the seven days preceding the assessment, received intravenous medications or intravenous feeding provided and administered by staff within the facility; and~~

~~(2) A resident who qualifies for the extensive services category must have assigned a qualifier score of zero to five based on:~~

~~(a) The presence of a clinical criteria that qualifies the resident for the special care category, clinically complex category, or impaired cognition category;~~

~~(b) Whether the resident received intravenous medications or intravenous feeding provided and administered by staff within the facility;~~

~~(c) Whether the resident received tracheostomy care and suctioning; or~~

~~(d) Whether the resident required a ventilator or respirator.~~

c. Special care high category.

(1) To qualify for the special care high category, a resident must have ~~one or more of the conditions for the extensive care category with an activities of daily living score of less than seven or have~~ at least one of the following conditions or treatments with an activities of daily living score of at least ~~seven~~ two:

(a) ~~Multiple sclerosis, cerebral palsy, or quadriplegia with an activities of daily living score of at least ten~~ Comatose and completely dependent for activities of daily living;

(b) ~~Respiratory therapy seven days a week~~ Septicemia;

(c) ~~Treatment for pressure or stasis ulcers on two or more body sites;~~ Diabetes with:

[1] Insulin injections seven days a week; and

[2] Insulin order changes on two or more days;

(d) ~~Surgical wound or open lesion with treatment~~ Quadriplegia with an activities of daily living score of at least five;

(e) ~~Tube feedings that comprise at least twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day, and be aphasic~~ Chronic obstructive pulmonary disease and shortness of breath when lying flat;

(f) ~~Radiation therapy; or~~ A fever in combination with:

[1] Pneumonia;

[2] Vomiting;

[3] Weight loss; or

[4] Tube feedings that comprise at least:

[a] Twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day; or

[b] Fifty-one percent of daily caloric requirements;

(g) ~~A fever in combination with dehydration, pneumonia, vomiting, weight loss, or tube feeding.~~ Parenteral or intravenous feedings provided in and administered in and by the nursing facility; or

(h) Respiratory therapy seven days a week.

(2) A resident who qualifies for the special care category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.

d. Special care low category.

(1) To qualify for the special care low category, a resident must have at least one of the following conditions or treatments with an activities of daily living score of at least two:

(a) Multiple sclerosis, cerebral palsy, or Parkinson's disease with an activities of daily living score of at least five;

(b) Respiratory failure and oxygen therapy while a resident administered continuously for at least two hours or intermittently with at least two applications of at least thirty minutes each within the facility in the fourteen days preceding the assessment;

(c) Tube feedings that comprise at least:

[1] Twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day; or

[2] Fifty-one percent of daily caloric requirements.

(d) Two or more stage two pressure ulcers with two or more skin treatments;

(e) Stage three or four pressure ulcer with two or more skin treatments;

(f) Two or more venous or arterial ulcers with two or more skin treatments;

(g) One stage two pressure ulcer and one venous or arterial ulcer with two or more skin treatments;

(h) Foot infection, diabetic foot ulcer, or other open lesion of foot with application of dressings to the foot;

(i) Radiation treatment while a resident; or

(j) Dialysis treatment while a resident.

(2) A resident who qualifies for the special care low category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.

e. Clinically complex category.

(1) To qualify for the clinically complex category, a resident must have one or more of the conditions for the extensive services or special care ~~category~~ categories with an activities of daily living score of ~~less than seven~~ zero or one or have at least one of the following conditions, treatments, or circumstances:

(a) ~~Comatose~~ Pneumonia;

(b) ~~Burns~~ Hemiplegia or hemiparesis with an activities of daily living score of at least five;

(c) ~~Septicemia~~ Surgical wounds or open lesions with at least one skin treatment;

(d) ~~Pneumonia~~ Burns;

(e) ~~Internal bleeding~~ Chemotherapy while a resident;

(f) ~~Dehydration~~ Oxygen therapy while a resident administered continuously for at least two hours or intermittently with at least two applications of at least thirty minutes each within the facility in the fourteen days preceding the assessment;

(g) ~~Dialysis;~~ Intravenous medication provided, instilled, and administered by staff within the facility while a resident; or

(h) ~~Hemiplegia with an activities of daily living score of at least ten;~~ Transfusions while a resident.

~~(i) Chemotherapy;~~

~~(j) Tube feedings that comprise at least twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day;~~

~~(k) Transfusions;~~

~~(l) Foot wound with treatment;~~

~~(m) Diabetes mellitus, with injections seven days per week and two or more physician order changes in the fourteen days preceding the assessment;~~

~~(n) Oxygen therapy administered continuously for at least two hours or intermittently with at least two applications of at least thirty minutes each within the facility in the fourteen days preceding the assessment; or~~

~~(o) Within the fourteen days preceding the assessment, at least one physician visit with at least four order changes or at least two physician visits with at least two order changes.~~

(2) A resident who qualifies for the clinically complex category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.

~~e.~~ f. ~~Impaired cognition~~ Behavioral symptoms and cognitive performance category. To qualify for the ~~impaired cognition~~ behavioral symptoms and cognitive performance category, a resident must have ~~a cognition performance scale score of three, four, or five and~~ an activities of daily living score of less than ~~eleven~~ six. ~~A resident who qualifies for the impaired cognition category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.~~

(1) To qualify for the behavioral symptoms and cognitive performance category, a resident must either:

(a) Be cognitively impaired based on one of the following:

[1] A brief interview of mental status score of less than ten;

[2] Coma and completely dependent for activities of daily living;

[3] Severely impaired cognitive skills; or

[4] Have a severe problem being understood or severe cognitive skills problem and two or more of the following:

[a] Problem being understood;

[b] Short-term memory problem; or

[c] Cognitive skills problem.

(b) Exhibit behavioral symptoms with one or more of the following symptoms:

[1] Hallucinations;

[2] Delusions;

[3] Physical or verbal behavior symptoms directed toward others on at least four days in the seven days preceding the assessment;

[4] Other behavioral symptoms not directed toward others on at least four days in the seven days preceding the assessment;

[5] Rejection of care on at least four days in the seven days preceding the assessment; or

[6] Wandering on at least four days in the seven days preceding the assessment.

(2) A resident who qualifies for the behavioral symptoms and cognitive performance category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.

~~f. Behavior only category.~~

~~(1) To qualify for the behavior only category, a resident must have exhibited, in four of the seven days preceding the assessment, one or more of the following behaviors:~~

~~(a) Resisting care;~~

~~(b) Combativeness;~~

~~(c) Physical abuse;~~

~~(d) Verbal abuse;~~

~~(e) Wandering; or~~

~~(f) Hallucinating or having delusions.~~

~~(2) A resident who qualifies for the behavior only category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.~~

g. Reduced physical functioning category. To qualify for the reduced physical functioning category, a resident may not qualify for any other group. A resident who qualifies for the reduced physical functioning category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.

7. Except as provided in subsection 2, each resident must be classified into a case-mix class with the corresponding group label, activities of daily living score, other criteria, and case-mix weight as follows:

a. Rehabilitation with an activities of daily living score of fifteen or sixteen (group RAE); case-mix weight: 1.65.

b. Rehabilitation with an activities of daily living score ~~of seventeen or eighteen~~ between eleven and fourteen, inclusive (group RAD); case-mix weight: ~~1.79~~ 1.58.

~~b.~~ c. Rehabilitation with an activities of daily living score between ~~fourteen~~ six and ~~sixteen~~ ten, inclusive (group RAC); case-mix weight: ~~1.54~~ 1.36.

~~c.~~ d. Rehabilitation with an activities of daily living score between ~~nine~~ two and ~~thirteen~~ five, inclusive (group RAB); case-mix weight: ~~1.26~~ 1.10.

~~d.~~ e. Rehabilitation with an activities of daily living score ~~between four and eight, inclusive~~ of zero or one (group RAA); case-mix weight: ~~1.07~~ 0.82.

~~e.~~ f. Extensive services with an activities of daily living score of at least ~~seven and a qualifier score of four or five~~ two and received tracheostomy care and ventilator or respirator care (group ~~SE3~~ ES3); case-mix weight: ~~2.62~~ 3.00.

~~f.~~ g. Extensive services with an activities of daily living score of at least ~~seven and a qualifier score of two or three~~ two and received tracheostomy, ventilator, or respirator care (group ~~SE2~~ ES2); case-mix weight: ~~1.72~~ 2.23.

~~g.~~ h. Extensive services with an activities of daily living score of at least ~~seven and a qualifier score of zero or one~~ two and required infection isolation (group ~~SE1~~ ES1); case-mix weight: ~~1.56~~ 2.22.

~~h.~~ i. Special care high with depression and an activities of daily living score of ~~seventeen~~ fifteen or ~~eighteen~~ sixteen (group ~~SSC~~ HE2); case-mix weight: ~~1.50~~ 1.88.

~~i.~~ j. Special care high with an activities of daily living score of fifteen or sixteen (group ~~SSB~~ HE1); case-mix weight: ~~1.39~~ 1.47.

~~j.~~ k. Special care high with depression and an activities of daily living score between ~~seven~~ eleven and fourteen, inclusive~~, or extensive services with an activities of daily living score of less than seven~~ (group ~~SSA~~ HD2); case-mix weight: ~~1.33~~ 1.69.

l. Special care high with an activities of daily living score between eleven and fourteen, inclusive (group HD1); case-mix weight: 1.33.

m. Special care high with depression and an activities of daily living score between six and ten, inclusive (group HC2); case-mix weight: 1.57.

n. Special care high with an activities of daily living score between six and ten, inclusive (group HC1); case-mix weight: 1.23.

o. Special care high with depression and an activities of daily living score between two and five, inclusive (group HB2); case-mix weight: 1.55.

p. Special care high with an activities of daily living score between two and five, inclusive (group HB1); case-mix weight: 1.22.

q. Special care low with depression and an activities of daily living score of fifteen or sixteen, inclusive (group LE2); case-mix weight: 1.61.

r. Special care low with an activities of daily living score of fifteen or sixteen, inclusive (group LE1); case-mix weight: 1.26.

s. Special care low with depression and an activities of daily living score between eleven and fourteen, inclusive (group LD2); case-mix weight: 1.54.

t. Special care low with an activities of daily living score between eleven and fourteen, inclusive (group LD1); case-mix weight: 1.21.

u. Special care low with depression and an activities of daily living score between six and ten, inclusive (group LC2); case-mix weight: 1.30.

v. Special care low with an activities of daily living score between six and ten, inclusive (group LC1); case-mix weight: 1.02.

w. Special care low with depression and an activities of daily living score between two and five, inclusive (group LB2); case-mix weight: 1.21.

x. Special care low with an activities of daily living score between two and five, inclusive (group LB1); case-mix weight: 0.95.

~~k.~~ y. Clinically complex with depression and an activities of daily living score of ~~seventeen~~ fifteen or ~~eighteen~~ sixteen (group ~~CC2~~ CE2); case-mix weight: ~~1.46~~ 1.39.

~~l.~~ z. Clinically complex with an activities of daily living score of ~~seventeen~~ fifteen or ~~eighteen~~ sixteen (group ~~CC1~~ CE1); case-mix weight: ~~1.27~~ 1.25.

~~m.~~ aa. Clinically complex with depression and an activities of daily living score between ~~twelve~~ eleven and ~~sixteen~~ fourteen, inclusive (group ~~CB2~~ CD2); case-mix weight: ~~1.18~~ 1.29.

~~n.~~ bb. Clinically complex with an activities of daily living score between ~~twelve~~ eleven and ~~sixteen~~ fourteen, inclusive (group ~~CB1~~ CD1); case-mix weight: ~~1.17~~ 1.15.

~~o.~~ cc. Clinically complex with depression and an activities of daily living score between ~~four~~ six and ~~eleven~~ ten, inclusive (group ~~CA2~~ CC2); case-mix weight: 1.08.

~~p.~~ dd. Clinically complex with an activities of daily living score between ~~four~~ six and ~~eleven~~ ten, inclusive~~, or special care with an activities of daily living score of less than seven~~ (group ~~CA1~~ CC1); case-mix weight: ~~1.02~~ 0.96.

ee. Clinically complex with depression and an activities of daily living score between two and five, inclusive (group CB2); case-mix weight: 0.95.

ff. Clinically complex and an activities of daily living score between two and five, inclusive (group CB1); case-mix weight: 0.85.

gg. Clinically complex with depression and an activities of daily living score of zero or one (group CA2); case-mix weight: 0.73.

hh. Clinically complex and an activities of daily living score of zero or one (group CA1); case-mix weight: 0.65.

~~q.~~ ii. ~~Impaired cognition~~ Behavioral symptoms and cognitive performance with nursing rehabilitation and an activities of daily living score between ~~six~~ two and ~~ten~~ five, inclusive (group ~~IB2~~ BB2); case-mix weight: ~~.98~~ 0.81.

~~r.~~ jj. ~~Impaired cognition~~ Behavioral symptoms and cognitive performance with an activities of daily living score between ~~six~~ two and ~~ten~~ five, inclusive (group ~~IB1~~ BB1); case-mix weight: ~~.88~~ 0.75.

~~s.~~ kk. ~~Impaired cognition~~ Behavioral symptoms and cognitive performance with nursing rehabilitation and an activities of daily living score of ~~four~~ zero or ~~five~~ one (group ~~IA2~~ BA2); case-mix weight: ~~.80~~ 0.58.

~~t.~~ ll. ~~Impaired cognition~~ Behavioral symptoms and cognitive performance with an activities of daily living score of ~~four~~ zero or ~~five~~ one (group ~~IA1~~ BA1); case-mix weight: ~~.67~~ 0.53.

~~u. Behavior only with nursing rehabilitation and an activities of daily living score between six and ten, inclusive (group BB2); case-mix weight: .97.~~

~~v. Behavior only with an activities of daily living score between six and ten, inclusive (group BB1); case-mix weight: .85.~~

~~w. Behavior only with nursing rehabilitation and an activities of daily living score of four or five (group BA2); case-mix weight: .69.~~

~~x. Behavior only with an activities of daily living score of four or five (group BA1); case-mix weight: .63.~~

~~y.~~ mm. Reduced physical functioning with nursing rehabilitation and an activities of daily living score ~~between sixteen and eighteen~~ of fifteen or sixteen, ~~inclusive~~ (group PE2); case-mix weight: ~~1.04~~ 1.25.

~~z.~~ nn. Reduced physical functioning with an activities of daily living score ~~between sixteen and eighteen~~ of fifteen or sixteen, ~~inclusive~~ (group PE1); case-mix weight: ~~.96~~ 1.17.

~~aa.~~ oo. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between eleven and ~~fifteen~~ fourteen, inclusive (group PD2); case-mix weight: ~~.95~~ 1.15.

~~bb.~~ pp. Reduced physical functioning with an activities of daily living score between eleven and ~~fifteen~~ fourteen, inclusive (group PD1); case-mix weight: ~~.87~~ 1.06.

~~cc.~~ qq. Reduced physical functioning with nursing rehabilitation and an activities of daily living score ~~of nine or ten~~ between six and ten, inclusive (group PC2); case-mix weight: ~~.86~~ 0.91.

~~dd.~~ rr. Reduced physical functioning with an activities of daily living score ~~of nine or ten~~ between six and ten, inclusive (group PC1); case-mix weight: ~~.84~~ 0.85.

~~ee.~~ ss. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between ~~six~~ two and ~~eight~~ five, inclusive (group PB2); case-mix weight: ~~.75~~ 0.70.

~~ff.~~ tt. Reduced physical functioning with an activities of daily living score between ~~six~~ two and ~~eight~~ five, inclusive (group PB1); case-mix weight: ~~.68~~ 0.65.

~~gg.~~ uu. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of ~~four~~ zero or ~~five~~ one (group PA2); case-mix weight: ~~.66~~ 0.49.

~~hh.~~ vv. Reduced physical functioning with an activities of daily living score of ~~four~~ zero or ~~five~~ one (group PA1); case-mix weight: ~~.62~~ 0.45.

8. The classification is effective the date the resident assessment must be completed in all cases except an admission or for a return from an acute hospital stay. The classification for an admission or for a return is effective the date of the admission or return.

9. A facility complying with any provision of this section that requires a resident assessment must use the minimum data set in a resident assessment instrument that conforms to standards for a resident classification system described in 42 CFR 413.333.

History: Effective September 1, 1987; amended effective January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; October 1, 2010; January 1, 2012.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-07.1-14. Compensation.

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:

   a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the report year;

   b. Sixty thousand nine hundred seventy-four dollars;

   c. The limit set under this subsection for the previous rate year adjusted by the adjustment factor; or

   d. If the facility is combined with a nursing facility or hospital, the compensation limit for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility may not exceed the greatest of subdivision a, b, or c.

2. Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation described in subsection 1, divided by three hundred sixty-five times the number of calendar days the individual was employed.

3. Compensation includes:

   a. Salary for managerial, administrative, professional, and other services;

   b. Amounts paid for the personal benefit of the person, e.g., housing allowance, flat-rate automobile allowance;

   c. The cost of assets and services the person receives from the provider;

   d. Deferred compensation, pensions, and annuities;

   e. Supplies and services provided for the personal use of the person;

   f. The cost of a domestic or other employee who works in the home of the person; or

   g. Life and health insurance premiums paid for the person and medical services furnished at facility expense.

4. Reasonable compensation for a person with at least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount required to be paid for the same services if provided by a nonrelated employee to a North Dakota facility. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable hourly compensation may not exceed the amount determined under subsection 1, divided by two thousand eighty.

5. Costs otherwise nonallowable under this chapter may not be included as compensation.

History: Effective July 1, 1996; amended effective July 1, 1998; October 1, 2011; July 1, 2011.
General Authority: NDCC 50-06-16, 50-24.5-02(3), 50-24.5-10
Law Implemented: NDCC 50-24.5-02(3), 50-24.5-10

CHAPTER 75-03-36
LICENSING OF CHILD-PLACING AGENCIES

75-03-36-40 Service Delivery
75-03-36-41 Rights of the Foster Child

75-03-36-07. Responsibilities of the child-placing agency administrator.

1. The administrator shall:

   a. Plan and coordinate with the governing body the development of policies and procedures governing the child-placing agency's services.

   b. Ensure that the governing body is kept informed of matters affecting the child-placing agency's finances, operation, and provision of services.

   c. Ensure employment of qualified staff and the administration of the child-placing agency's personnel policies.

   d. Ensure that the child-placing agency and its services are made known to the community.

   e. Maintain the ~~child-placing agency's~~ policies and procedures required by this chapter in written form.

   f. Maintain a current organizational chart showing the child-placing agency's lines of accountability and authority.

   g. Maintain a records retention policy that ensures adoption files are maintained permanently and foster care files are retained according to applicable foster care regulations.

2. The child-placing agency, under the administrator's direction, shall maintain a record for each client. A client's record must be kept current from the point of intake to termination of service and must contain information relevant to the provision of services.

3. The administrator who delegates responsibility for program development shall delegate those responsibilities to qualified staff members.

History: Effective April 1, 2010; amended effective January 1, 2012.
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-10. Staff functions and qualifications.

1. The child-placing agency shall employ or contract with staff with sufficient qualifications to enable them to perform the agency's fiscal, clerical, and maintenance functions.

2. The child-placing agency shall employ or contract with staff to perform the agency's administrative, supervisory, and placement services. These staff and their qualifications, unless otherwise approved by the department, are as follows:

   a. The administrator shall provide for the general management and administration of the child-placing agency in accordance with the licensing requirements and policies of the child-placing agency's governing body. The administrator must have a bachelor's degree and a minimum of four years of professional experience in human services, at least two of which have been in administration including financial management, or must be an individual otherwise qualified and serving the child-placing agency as an administrator prior to April 1, 2010.

   b. The placement supervisor shall supervise, evaluate, and monitor the work progress of the placement staff. The placement supervisor must be a licensed certified social worker and have a minimum of two years of experience in supervision of child placement workers or in child placement, or must have a master's degree in a human service-related field from an accredited school, and a minimum of two years of experience in supervision of child placement workers or in child placement, or must be an individual otherwise qualified and serving the child-placing agency as a placement supervisor prior to April 1, 2010.

   c. The child placement worker shall perform intake services; provide casework or group work services, or both, for children and families; recruit and assess foster and adoptive homes; and plan and coordinate resources affecting children and families. The child placement worker must be a licensed certified social worker or a licensed social worker.

3. If the child-placing agency has no placement supervisor, the child placement worker must meet the education and experience requirements of the placement supervisor.

4. Staff serving as child placement workers or child placement supervisors must meet the above-stated education and experience requirements or be excused from those requirements found in North Dakota Century Code chapter 43-41 on the licensing of social workers.

5. Placement worker caseload must be limited to ensure the placement worker is able to make all the required contacts with the biological, foster, and adoptive families; adopted adults; and collateral parties.

History: Effective April 1, 2010; amended effective January 1, 2012.
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-16.1. Adoptive family child abuse and neglect. A child-placing agency shall not place a child in an adoptive home if a person residing in the adoptive home, except a child placed for adoption, has been the subject of a child abuse or neglect assessment where a services-required decision was made unless the agency director or supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the adoptive parents, documenting criteria used in making the decision, and imposing any restrictions deemed necessary, approves the adoptive assessment; and

1. The adoptive home's resident can demonstrate the successful completion of an appropriate therapy; or

2. The adoptive home's resident can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.

History: Effective January 1, 2012.
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-22. Child-placing agency closure. ~~A~~ Unless otherwise approved by the department, a child-placing agency licensed under this chapter may not cease operations before:

1. Notifying the department in writing of the child-placing agency's intent to close and the proposed date of closure, with details regarding how the child-placing agency plans to meet the requirements of this subsection. This notification must be received by the department not less than ninety days prior to the proposed date of closure;

2. All pending adoptive placements are finalized;

3. All families awaiting adoptive placement have been referred to other agencies or have closed their cases;

4. Custodians of children referred for services have been informed of the child-placing agency's closure and arrangements for transfer of the cases have been made;

5. The child-placing agency makes a reasonable attempt, which may require publication of a notice of closure, to notify former clients of the child-placing agency's closure;

6. Arrangements have been made with another resident licensed child-placing agency to retain all permanent adoption records and provide post-finalization services;

7. Arrangements have been made to transfer any other records which must be retained for a specific time period to the department; and

8. Temporarily retained records must be:

   a. Boxed in banker-style boxes;

   b. Clearly labeled; and

   c. Indexed with the child-placing agency providing the index to the department in writing and electronically as specified by the department.

History: Effective April 1, 2010; amended effective January 1, 2012.
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-25. Provision of services to the child - Adoption.

1. The child-placing agency shall make every effort to place siblings together in an adoptive home. If it is not possible to place siblings together, the child-placing agency shall add written documentation in the child's file identifying the reasons the siblings could not be placed together and the plans formulated to keep the siblings in contact with one another after the adoption.

2. The child-placing agency shall provide a life book to the child, if the child does not already have one, and shall give the child an opportunity to explore the child's birth history in preparation for the child's adoptive placement.

3. When appropriate to the child's developmental needs, the child-placing agency shall provide preplacement counseling to the child to assist the child in adjusting to adoption.

4. The child-placing agency shall begin recruitment efforts immediately upon referral for a child referred to the child-placing agency without an identified family. Diligent recruitment will include listing the child with local, regional, and national child-specific recruitment resources as directed by the child's child and family team.

History: Effective April 1, 2010.
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-36. Child-placing agencies' file and documentation requirements for foster care placements.

1. The child-placing agency shall adopt a written file and documentation policy requiring that, within thirty days after placement, the child-placing agency establish and thereafter maintain a file for each child. This file must include:

   a. The child's full name, birth date, age, and gender;

   b. Name and contact information, including that of the custodian, parents, and other pertinent individuals;

   c. A signed care agreement, contract, or current court order establishing the child-placing agency's authority to accept and care for the child;

   d. An explanation of custody and legal responsibility for consent to any medical or surgical care;

   e. An explanation of responsibility for payment for care and services;

   f. A current care plan;

   g. A copy of the appropriate interstate compact forms;

   h. Copies of periodic, at least quarterly, written reports to the child's parent, guardian, or legal custodian;

   i. Medical records, including annual health tracks screenings, and evidence of appropriate medical followthrough, immunization records, and height and weight records;

   j. Records of annual dental examinations ~~at intervals not to exceed six months. Provide for~~, including necessary dental treatments~~, including necessary~~ such as prophylaxis, repairs, and extractions;

   k. School records, including individual education plans, if applicable; and

   l. Records of eye examinations at intervals not to exceed two years. Children who are in need of glasses shall be supplied with glasses as required.

2. The child-placing agency shall adopt a written file and documentation policy ensuring that the child-placing agency shall maintain a current and systematically filed case record on each ~~client~~ foster family served. Permanent case records shall be kept in locked, fire-resistant filing cabinets. There shall be a master file or card catalog on all case

records of the child-placing agency. The case records shall include at least the following:

a. A face sheet with current ~~addresses of~~ contact information for foster parents ~~of child clients or~~ and other significant persons;

b. Application documents;

c. Agency assessments and supporting documentation, including criminal history and child protection services registry check results;

d. Medical records with significant family health history and signed statements authorizing necessary medical or surgical treatment;

e. Correspondence;

f. ~~Legal~~ Licensing documents; and

g. Child-placing agency agreements or contracts~~; and~~.

~~h. A case service plan.~~

History: Effective April 1, 2010; amended effective January 1, 2012.
General Authority: NDCC 50-12-05, 50-12-07
Law Implemented: NDCC 50-12

75-03-36-37. Child and family plan of care for foster children. The child-placing agency shall adopt a written policy that ensures the child-placing agency will develop a written plan of care for each child and family. The policy must require:

1. The child-placing agency develop the care plan in conjunction with the child and family team;

2. The child's care plan be developed or reviewed within thirty days of placement with the child-placing agency;

3. The child's care plan be developed or reviewed with the appropriate participation and informed consent of the child or, when appropriate, the child's guardian or custodian;

4. Documentation that the child and ~~a~~ the child-placing agency representative have participated in child and family team meetings on a ~~regular~~ quarterly basis, and that input has been obtained from the custodian, child, family, foster family, and other pertinent team members;

5. Documentation that the child-placing agency has collaborated and communicated at regular intervals with other agencies that are working

with the child to ensure coordination of services and to carry out the child's plan;

6. Documentation of services provided by other agencies, including arrangements that are made in obtaining them;

7. Documentation of the arrangements by which the child's special needs, including prescribed medication, diets, or special medical procedures, are met;

8. The child-placing agency to provide for annual dental examinations including necessary dental treatments such as prophylaxis, repairs, and extractions;

~~8.~~ 9. The child-placing agency make reasonable efforts to gather information from the custodian, parents, foster parents, courts, schools, and any other appropriate individuals or agencies;

~~9.~~ 10. Completion of a strengths and needs assessment of the child, biological family, and foster family;

~~10.~~ 11. Identification of measurable goals, including timeframes for completion;

~~11.~~ 12. Identification of the measures that will be taken or tasks that will be performed to assist the child and family with meeting the goals;

~~12.~~ 13. Identification of the individual or entity responsible for providing the service or completing the task;

~~13.~~ 14. A discharge plan, including a projected discharge date with special attention to discharge planning efforts for a child who is aging out of the foster care system; and

~~14.~~ 15. The child-placing agency to document in a child's service plan evidence of individualized treatment progress, to review the plan at least every thirty days, or more often if necessary, to determine if services are adequate and still necessary or whether other services are needed.

History: Effective April 1, 2010; amended effective January 1, 2012.
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12