

NORTH DAKOTA ADMINISTRATIVE CODE

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

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TITLE 17
STATE BOARD OF CHIROPRACTIC EXAMINERS

APRIL 2014

CHAPTER 17-01-01

17-01-01-02. Fees. The board charges the following fees:

1. For an application for initial licensure, ~~two~~ three hundred dollars.
2. For renewal of a license, ~~two~~ three hundred dollars for active status or one hundred dollars for inactive status.
3. To change from inactive to active status, ~~fifty~~ two hundred dollars.
4. For a duplicate license, twenty-five dollars.
5. The additional administrative fee for late renewals is two hundred dollars.

History: Effective April 1, 2001; amended effective July 1, 2008; April 1, 2014.

General Authority: NDCC 43-06-04.1

Law Implemented: NDCC 43-06-08, 43-06-13

TITLE 33
STATE DEPARTMENT OF HEALTH

APRIL 2014

CHAPTER 33-15-01

33-15-01-04. Definitions. As used in this article, except as otherwise specifically provided or when the context indicates otherwise, the following words shall have the meanings ascribed to them in this section:

1. "Act" means North Dakota Century Code chapter 23-25.
2. "Air contaminant" means any solid, liquid, gas, or odorous substance or any combination thereof emitted to the ambient air.
3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property or animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
4. "Ambient air" means the surrounding outside air.
5. "ASME" means the American society of mechanical engineers.
6. "Coal conversion facility" means any of the following:
 - a. An electrical generating plant, and all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a generator nameplate capacity of twenty-five megawatts or more.
 - b. A plant, and all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal gasification, coal liquefaction, and the manufacture of fertilizer and other products and which uses or is designed to use over five hundred thousand tons of coal per year.

- C. A coal beneficiation plant, and all additions thereto, which improve the physical, environmental, or combustion qualities of coal and are built in conjunction with a facility defined in subdivision a or b.
- 7. "Control equipment" means any device or contrivance which prevents or reduces emissions.
- 8. "Department" means the North Dakota state department of health.
- 9. "Emission" means a release of air contaminants into the ambient air.
- 10. "Excess emissions" means the release of an air contaminant into the ambient air in excess of an applicable emission limit or emission standard specified in this article or a permit issued pursuant to this article.
- 11. "Existing" means equipment, machines, devices, articles, contrivances, or installations which are in being on or before July 1, 1970, unless specifically designated within this article; except that any existing equipment, machine, device, contrivance, or installation which is altered, repaired, or rebuilt after July 1, 1970, must be reclassified as "new" if such alteration, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.
- 12. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the United States environmental protection agency, including those requirements developed pursuant to title 40, Code of Federal Regulations, parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to title 40, Code of Federal Regulations, 52.21 or under regulations approved pursuant to title 40, Code of Federal Regulations, part 51, subpart I, including operating permits issued under a United States environmental protection agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.
- 13. "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.
- 14. "Fugitive emissions" means solid airborne particulate matter, fumes, gases, mist, smoke, odorous matter, vapors, or any combination thereof generated incidental to an operation process procedure or emitted from any source other than through a well-defined stack or chimney.
- 15. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food,

including wastes from markets, storage facilities, handling, and sale of produce and other food products.

16. "Hazardous waste" has the same meaning as given by chapter 33-24-02.
17. "Heat input" means the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.
18. "Incinerator" means any article, machine, equipment, device, contrivance, structure, or part of a structure used for the destruction of garbage, rubbish, or other wastes by burning or to process salvageable material by burning.
19. "Industrial waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
20. "Inhalable particulate matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
21. "Installation" means any property, real or personal, including, but not limited to, processing equipment, manufacturing equipment, fuel burning equipment, incinerators, or any other equipment, or construction, capable of creating or causing emissions.
22. "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure, or part of a structure used to burn combustible refuse, consisting of two or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.
23. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
24. "New" means equipment, machines, devices, articles, contrivances, or installations built or installed on or after July 1, 1970, unless specifically designated within this article, and installations existing at said stated time which are later altered, repaired, or rebuilt and result in the emission of an additional or greater amount of air contaminants.

25. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
26. "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.
27. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.
28. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.
29. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.
30. "Pesticide" includes:
 - a. Any agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals;
 - b. Any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and
 - c. Any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscicides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.
31. "Petroleum refinery" means an installation that is engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.
32. "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths micrometers.

33. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
34. "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.
35. "Pipeline quality natural gas" means natural gas that contains two grains, or less, of sulfur per one hundred standard cubic feet [2.83 cubic meters].
36. "Premises" means any property, piece of land or real estate, or building.
37. "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.
38. "Process weight rate" means the rate established as follows:
 - a. For continuous or longrun steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.
 - b. For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. If the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.
39. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.
40. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste, and infectious waste.
41. "Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, cans, dust, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit [1144 degrees Kelvin to 1255 degrees Kelvin]).

42. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.
43. "Smoke" means small gasborne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air.
44. "Source" means any property, real or personal, or person contributing to air pollution.
45. "Source operation" means the last operation preceding emission which operation:
 - a. Results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion fuel; and
 - b. Is not an air pollution abatement operation.
46. "Special waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and or mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
47. "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions.
48. "Standard conditions" means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].
49. "Submerged fill pipe" means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches [15.24 centimeters] above the bottom of the tank; or when applied to a tank which is loaded from the side, means any fill pipe the discharge opening of which is entirely submerged when the liquid level is one and one-half times the fill pipe diameter in inches [centimeters] above the bottom of the tank.
50. "Trade waste" means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.

51. "Trash" means refuse commonly generated by food warehouses, wholesalers, and retailers which is comprised only of nonrecyclable paper, paper products, cartons, cardboard, wood, wood scraps, and floor sweepings and other similar materials. Trash may not contain more than five percent by volume of each of the following: plastics, animal and vegetable materials, or rubber and rubber scraps. Trash must be free of grease, oil, pesticides, yard waste, scrap tires, infectious waste, and similar substances.
52. "Volatile organic compounds" means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on ~~January 1, 2012~~ July 1, 2013, which is incorporated by reference.
53. "Waste classification" means the seven classifications of waste as defined by the incinerator institute of America and American society of mechanical engineers.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-02

Table 1. AMBIENT AIR QUALITY STANDARDS

Air Contaminants	Standards (Maximum Permissible Concentrations)
Inhalable Particulates PM ₁₀	150 micrograms per cubic meter, 24-hour average concentration. The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, as determined in accordance with 40 CFR 50, Appendix K, is equal to or less than one.
PM _{2.5}	<p>45.0 <u>12.0</u> micrograms per cubic meter annual arithmetic mean concentration. The standard is met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 45.0 <u>12.0</u> micrograms per cubic meter.</p> <p>35 micrograms per cubic meter 24-hour average concentration. The standard is met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.</p>
Sulfur Dioxide	0.075 parts per million (196 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.075 parts per million, as determined in accordance with 40 CFR 50, Appendix T.
	0.5 parts per million (1309 micrograms per cubic meter of air) maximum 3-hour concentration, not to be exceeded more than once per calendar year.
Hydrogen Sulfide	10.0 parts per million (14 milligrams per cubic meter of air), maximum instantaneous (ceiling) concentration not to be exceeded
	0.20 parts per million (280 micrograms per cubic meter of air), maximum 1-hour average concentration not to be exceeded more than once per month
	0.10 parts per million (140 micrograms per cubic meter of air), maximum 24-hour average concentration not to be exceeded more than once per year
	0.02 parts per million (28 micrograms per cubic meter of air), maximum arithmetic mean concentration averaged over three consecutive months
Carbon Monoxide	9 parts per million (10 milligrams per cubic meter of air), maximum 8-hour concentration not to be exceeded more than once per year

	35	parts per million (40 milligrams per cubic meter of air), maximum 1-hour concentration not to be exceeded more than once per year
Ozone	0.075	parts per million (147 micrograms per cubic meter of air) daily maximum 8-hour average concentration. The standard is met when the three-year average of the annual fourth-highest daily maximum 8-hour average concentration at an ambient air quality monitoring site is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR 50, Appendix P.
Nitrogen Dioxide	0.053	parts per million (100 micrograms per cubic meter of air), maximum annual arithmetic mean
	0.100	parts per million (188 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.100 parts per million, as determined in accordance with 40 CFR 50, Appendix S.
Lead	0.15	micrograms per cubic meter of air, arithmetic mean averaged over a 3-month rolling period. The standard is met when the maximum 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR 50, Appendix R, is less than or equal to 0.15 micrograms per cubic meter.

History: Amended effective December 1, 1994; April 1, 2009; April 1, 2011; April 1, 2014.

CHAPTER 33-15-03

~~33-15-03-05. Method of measurement. Compliance with visible emission standards in chapter 33-15-03 shall be determined by conducting observations in accordance with Reference Method 9 of Appendix A to chapter 33-15-12. Per hour for Reference Method 9 means any contiguous sixty-minute time period. When Reference Method 9 opacity readings are not available, continuous opacity monitors may be substituted. Per hour for monitors means any sixty-minute period commencing on the hour. The results of continuous monitoring by transmissometer, which indicate that the opacity at the time visible emissions were taken, were not in excess of the standard, are probative but not conclusive evidence of the actual opacity of an emission; provided, that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B, has been properly maintained and (at the time of the alleged violation) calibrated, and that the resulting data have not been tampered with in any way.~~

1. Method 9. Compliance with visible emission standards in chapter 33-15-03 shall be determined by conducting observations in accordance with Reference Method 9 of Appendix A to chapter 33-15-12. Per hour for Reference Method 9 means any contiguous sixty-minute time period. When Reference Method 9 opacity readings are not available, continuous opacity monitors may be substituted. Per hour for monitors means any sixty-minute period commencing on the hour. The results of continuous monitoring by transmissometer, which indicate that the opacity at the time visible emissions were taken, were not in excess of the standard, are probative but not conclusive evidence of the actual opacity of an emission; provided, that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B, has been properly maintained and (at the time of the alleged violation) calibrated, and that the resulting data have not been tampered with in any way.
2. Method 22. When a visible emissions limit is specified in a permit issued in accordance with this article as zero percent opacity except for a certain frequency, compliance shall be determined using Reference Method 22 of Appendix A to chapter 33-15-12.

History: Amended effective October 1, 1987; April 1, 2014.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-04

33-15-04-02. Permissible open burning. The open burning of refuse or other combustible material may be conducted as specified in this section if the burning is not prohibited by, and is conducted in compliance with, other applicable laws, ordinances, and regulations. Burning is prohibited if the fire index is in the extreme category as issued by the national weather service or if a burning ban is declared by state or local officials. The authority to conduct open burning under this section does not exempt or excuse a person from the consequences, damages, or injuries that may result therefrom.

1. The following types of burning are specifically authorized but are subject to the conditions listed in subsection 2 as well as any condition included as part of this subsection:
 - a. Fires purposely set for the instruction and training of public and industrial firefighting personnel.
 - b. Fires set for the elimination of a fire hazard that cannot be abated by any other means when authorized by the department or its designee.
 - c. Fires set for the removal of dangerous or hazardous material, where there is no other practical or lawful method of disposal and burning is approved in advance by the department. Where there is imminent danger to human health or safety and where there is no other practical or lawful method of disposal, burning may be initiated without prior notice to the department, provided notice is furnished as soon as practical.
 - d. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, or for outdoor preparation of food.
 - e. Fires purposely set to forest or rangelands for a specific reason in the management of forest, rangeland, or game in accordance with practices recommended by state or federal agencies, as appropriate, and the burning is approved in advance by the department. The state or federal agency shall, upon request by the department, submit an annual report that estimates the number of acres burned, the fuel loading, and the amount of emissions.
 - f. The burning of trees, brush, grass, wood, and other vegetable matter in the clearing of land, right-of-way maintenance operations, and agricultural crop burning.
 - g. The burning of refuse and other combustible materials generated in the operation of a domestic household if the following conditions are met:

- (1) No collection and disposal service is required or directed by a municipality or other government entity.
 - (2) The material to be burned is from a building accommodating no more than one family.
 - (3) The burning is conducted on the property on which the waste is generated.
- h. The burning of liquid hydrocarbons that are spilled or lost as a result of pipeline breaks or other accidents involving the transportation of such materials or which are generated as wastes as the result of oil exploration, development, production, refining, or processing operations if the following conditions are met:
- (1) The material cannot be practicably recovered or otherwise lawfully disposed of in some other manner.
 - (2) The burning must be approved in advance by the department, except as provided in subdivision c.
2. The following conditions apply to all types of permissible burning listed in subsection 1.
- a. ~~No public nuisance is or will be created.~~ Air pollution, as defined in section 33-15-01-04, will not be created.
 - b. The burning must not be conducted upwind of, or in proximity to, an occupied building such that the ambient air of such occupied building may be adversely affected by the air contaminants being emitted.
 - c. Care must be used to minimize the amount of dirt on the material being burned and the material must be dry enough to burn cleanly.
 - d. Oils, rubber, and other materials that produce unreasonable amounts of air contaminants may not be burned.
 - e. The burning may be conducted only when meteorological conditions favor smoke dispersion and air mixing.
 - f. The burning must not be conducted adjacent to any highway or public road so as to create a traffic hazard.
 - g. The burning must not be conducted adjacent to any operational military, commercial, county, municipal, or private airport or landing strip in such a manner as to create a hazard.

- h. Except in an emergency, burning may not be conducted in such proximity of any class I area, as defined in chapter 33-15-15, that the ambient air of such area is adversely impacted.
- i. Except in an emergency, the visibility of any class I area cannot be adversely impacted as defined in chapter 33-15-19.
- j. Burning activities must be attended and supervised at all times burning is in progress.
- k. If state or local fire officials determine conditions to be unsafe for open burning, such burning must cease until conditions are deemed safe by such officials.

History: Amended effective October 1, 1987; January 1, 1989; January 1, 1996; January 1, 2007; April 1, 2014.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-06

33-15-06-05. Reporting and recordkeeping requirements.

1. **Excess emissions reports.** Not later than thirty days following the end of a calendar quarter, any owner or operator required to monitor emissions in accordance with section 33-15-06-04 shall submit a report of excess emissions to the department. The report must include the following information:
 - a. The magnitude of excess emissions, any conversion factor or factors used, and the date and time of commencement and completion of each time period of excess emissions.
 - b. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.
 - c. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.
 - d. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired, or adjusted, such information must be stated in the report.
2. **Records.** Any owner or operator subject to continuous emission monitoring requirements shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by the department recorded in a permanent form suitable for inspection. The file must be retained for at least two years following the date of such measurements, maintenance, reports, and records.

History: Effective June 1, 1992; amended effective April 1, 2014.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-12

33-15-12-01.1. Scope. Except as noted below the title of the subpart, the subparts and appendices of title 40, Code of Federal Regulations, part 60, as they exist on ~~January 1, 2012~~ July 1, 2013, which are listed under section 33-15-12-02 are incorporated into this chapter by reference. Any changes to the standards of performance are listed below the title of the standard.

History: Effective June 1, 1992; amended effective December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-12-02. Standards of performance.

Subpart A - General provisions.

*60.2. The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the administrator of the United States environmental protection agency.

Subpart C - Emission guidelines and compliance times.

Subpart Cc - Emissions guidelines and compliance times for municipal solid waste landfills.

Designated facilities to which this subpart applies shall comply with the requirements for state plan approval in 40 CFR parts 60.33c, 60.34c, and 60.35c, except that quarterly surface monitoring for methane under part 60.34c shall only be required during the second, third, and fourth quarters of the calendar year.

Designated facilities under this subpart shall:

1. Submit a final control plan for department review and approval within twelve months of the date of the United States environmental protection agency's approval of this rule, or within twelve months of becoming subject to this rule, whichever occurs later.
2. Award contracts for control systems/process modification within twenty-four months of the date of the United States environmental protection agency's approval of this rule, or within twenty-four months of becoming subject to the rule, whichever occurs later.

3. Initiate onsite construction or installation of the air pollution control device or process changes within twenty-seven months of the date of the United States environmental protection agency's approval of this rule, or within twenty-seven months of becoming subject to the rule, whichever occurs later.
4. Complete onsite construction or installation of the air pollution control device or devices or process changes within twenty-nine months of the United States environmental protection agency's approval of this rule, or within twenty-nine months of becoming subject to the rule, whichever is later.
5. Conduct the initial performance test within one hundred eighty days of the installation of the collection and control equipment. A notice of intent to conduct the performance test must be submitted to the department at least thirty days prior to the test.
6. Be in final compliance within thirty months of the United States environmental protection agency's approval of this rule, or within thirty months of becoming subject to the rule, whichever is later.

Subpart Ce - Emission guidelines and compliance times for hospital/medical/infectious waste incinerators.

Except as noted below, designated facilities to which this rule applies shall comply with the minimum requirements for state plan approval listed in subpart Ce.

*60.39e(a) is deleted in its entirety.

*60.39e(b) is deleted in its entirety and replaced with the following:

- (b) Except as provided in paragraphs c and d of this section, designated facilities shall comply with all requirements of this subpart within one year of the United States environmental protection agency's approval of the state plan for hospital/medical/infectious waste incinerators regardless of whether a designated facility is identified in the state plan. Owners or operators of designated facilities who will cease operation of their incinerator to comply with this rule shall notify the department of their intention within six months of state plan approval.

*60.39e(c) is deleted in its entirety and replaced with the following:

- (c) Owners or operators of designated facilities planning to install the necessary air pollution control equipment to comply with the applicable requirements may petition the department for an extension of the compliance time of up to three years after the United States environmental protection agency's approval of the

state plan, but not later than September 16, 2002, for the emission guidelines promulgated on September 15, 1997, and not later than October 6, 2014, for the emission guidelines promulgated on October 6, 2009, provided the facility owner or operator complies with the following:

1. Submits a petition to the department for site specific operating parameters under 40 CFR 60.56c(i) of subpart Ec within thirty months of approval of the state plan and sixty days prior to the performance test.
2. Provides proof to the department of a contract for obtaining services of an architectural or engineering firm or architectural and engineering firm regarding the air pollution control device within nine months of state plan approval.
3. Submits design drawings to the department of the air pollution control device within twelve months of state plan approval.
4. Submits to the department a copy of the purchase order or other documentation indicating an order has been placed for the major components of the air pollution control device within sixteen months after state plan approval.
5. Submits to the department the schedule for delivery of the major components of the air pollution control device within twenty months after state plan approval.
6. Begins initiation of site preparation for installation of the air pollution control device within twenty-two months after state plan approval.
7. Begins initiation of installation of the air pollution control device within twenty-five months after state plan approval.
8. Starts up the air pollution control device within twenty-eight months after state plan approval.
9. Notifies the department of the performance test thirty days prior to the test.
10. Conducts the performance test within one hundred eighty days of the installation of the air pollution control device.
11. Submits a performance test report which demonstrates compliance within thirty-six months of state plan approval.

*60.39e(d) is deleted in its entirety and replaced with the following:

1. Designated facilities petitioning for an extension of the compliance time in paragraph b of this section shall, within six months after the United States environmental protection agency's approval of the state plan, submit:
 - i. Documentation of the analyses undertaken to support the need for more than one year to comply, including an explanation of why up to three years after United States environmental protection agency approval of the state plan is sufficient to comply with this subpart while one year is not. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and
 - ii. Documentation of measurable and enforceable incremental steps of progress to be taken toward compliance with this subpart.
2. The department shall review any petitions for the extension of compliance times within thirty days of receipt of a complete petition and make a decision regarding approval or denial. The department shall notify the petitioner in writing of its decision within forty-five days of the receipt of the petition. All extension approvals must include incremental steps of progress. For those sources planning on installing air pollution control equipment to comply with this subpart, the incremental steps of progress included in 40 CFR 60.39e(c) shall be included as conditions of approval of the extension.
3. Owners or operators of facilities which received an extension to the compliance time in this subpart shall be in compliance with the applicable requirements on or before the date three years after United States environmental protection agency approval of the state plan but not later than September 16, 2002, for the emission guidelines promulgated on September 15, 1997. For the amended emission guidelines published on October 6, 2009, compliance with the applicable requirements shall be attained on or before the date three years after United States environmental protection agency approval of the amended state plan but not later than October 6, 2014.

*60.39e(f) is deleted in its entirety.

After the compliance dates specified in this subpart, an owner or operator of a facility to which this subpart applies shall not operate any such unit in violation of this subpart.

Subpart D - Standards of performance for fossil-fuel fired steam generators for which construction is commenced after August 17, 1971.

Subpart Da - Standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978.

*The limits and other requirements for mercury are deleted.

Subpart Db - Standards of performance for industrial-commercial-institutional steam generating units.

Subpart Dc - Standards of performance for small industrial-commercial-institutional steam generating units.

Subpart E - Standards of performance for incinerators.

Subpart Ea - Standards of performance for municipal waste combustors for which construction is commenced after December 20, 1989, and on or before September 20, 1994.

Subpart Ec - Standards of performance for hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996.

Subpart F - Standards of performance for portland cement plants.

Subpart G - Standards of performance for nitric acid plants.

Subpart H - Standards of performance for sulfuric acid plants.

Subpart I - Standards of performance for hot mix asphalt facilities.

Subpart J - Standards of performance for petroleum refineries.

Subpart Ja - Standards of performance for petroleum refineries for which construction, reconstruction, or modification commenced after May 14, 2007.

Those portions of the subpart that have been stayed are not adopted.

Subpart K - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978.

*60.110(c) is deleted in its entirety and replaced with the following:

- (c) Any facility under part 60.110(a) that commenced construction, reconstruction, or modification after July 1, 1970, and prior to May 19, 1978, is subject to the requirements of this subpart.

Subpart Ka - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984.

Subpart Kb - Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984.

Subpart O - Standards of performance for sewage treatment plants.

Subpart T - Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants.

Subpart U - Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants.

Subpart V - Standards of performance for the phosphate fertilizer industry: diammonium phosphate plants.

Subpart W - Standards of performance for the phosphate fertilizer industry: triple superphosphate plants.

Subpart X - Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities.

Subpart Y - Standards of performance for coal preparation plants.

Subpart Z - Standards of performance for ferroalloy production facilities.

Subpart AA - Standards of performance for steel plants: electric arc furnaces: constructed after October 21, 1974, and before August 17, 1983.

Subpart AAa - Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983.

Subpart CC - Standards of performance for glass manufacturing plants.

Subpart DD - Standards of performance for grain elevators.

Subpart EE - Standards of performance for surface coatings of metal furniture.

Subpart FF - [Reserved]

Subpart GG - Standards of performance for stationary gas turbines.

Subpart HH - Standards of performance for lime manufacturing plants.

Subpart KK - Standards of performance for lead-acid battery manufacturing plants.

Subpart LL - Standards of performance for metallic mineral processing plants.

Subpart MM - Standards of performance for automobile and light-duty truck surface coating operations.

Subpart NN - Standards of performance for phosphate rock plants.

Subpart PP - Standards of performance for ammonium sulfate manufacture.

Subpart QQ - Standards of performance for the graphic arts industry: publication rotogravure printing.

Subpart RR - Standards of performance for pressure-sensitive tape and label surface coating operations.

Subpart SS - Standards of performance for industrial surface coating: large appliances.

Subpart TT - Standards of performance for metal coil surface coating.

Subpart UU - Standards of performance for asphalt processing and asphalt roofing manufacture.

Subpart VV - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions in the synthetic organic chemicals manufacturing industry.

Subpart VVa - Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after November 7, 2006.

Subpart WW - Standards of performance for the beverage can surface coating industry.

Subpart XX - Standards of performance for bulk gasoline terminals.

Subpart AAA - Standards of performance for new residential wood heaters.

Subpart BBB - Standards of performance for the rubber tire manufacturing industry.

Subpart CCC - [Reserved]

Subpart DDD - Standards of performance for volatile organic compound (VOC) emissions for the polymer manufacturing industry.

Subpart EEE - [Reserved]

Subpart FFF - Standards of performance for flexible vinyl and urethane coating and printing.

Subpart GGG - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions in petroleum refineries.

Subpart GGGa - Standards of performance for equipment leaks of VOC in petroleum refineries for which construction, reconstruction, or modification commenced after November 7, 2006.

Those portions of the subpart that are stayed are not adopted.

Subpart HHH - Standards of performance for synthetic fiber production facilities.

Subpart III - Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes.

Subpart JJJ - Standards of performance for petroleum drycleaners.

Subpart KKK - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions from onshore natural gas processing plants.

Subpart LLL - Standards of performance for onshore natural gas processing; SO₂ emissions.

Subpart MMM - [Reserved]

Subpart NNN - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations.

Subpart OOO - Standards of performance for nonmetallic mineral processing plants.

Subpart PPP - Standards of performance for wool fiberglass insulation manufacturing plants.

Subpart QQQ - Standards of performance for volatile organic compound (VOC) emissions from petroleum refinery wastewater systems.

Subpart RRR - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.

Subpart SSS - Standards of performance for magnetic tape coating facilities.

Subpart TTT - Standards of performance for industrial surface coating: surface coating of plastic parts for business machines.

Subpart UUU - Standards of performance for calciners and dryers in mineral industries.

Subpart VVV - Standards of performance for polymeric coating of supporting substrates facilities.

Subpart WWW - Standards of performance for municipal solid waste landfills.

Subpart AAAA - Standards of performance for small municipal waste combustion units for which construction is commenced after August 30, 1999, or for which modification or reconstruction is commenced after June 6, 2001.

Subpart CCCC - Standards of performance for commercial and industrial solid waste incineration units ~~for which construction is commenced after November 30, 1999, or for which modification or reconstruction is commenced on or after June 1, 2001.~~

Subpart DDDD - Emission guidelines and compliance times for commercial and industrial solid waste ~~incinerator~~ incineration units ~~that commenced construction on or before November 30, 1999.~~

Except as provided below, designated facilities to which this rule applies shall comply with 40 CFR 60.2575 through 60.2875, including tables 1 through ~~5~~ 9.

In the rule, you means the owner or operator of a commercial or industrial solid waste incineration unit.

Table 1 of the rule is deleted and replaced with the following:

Table 1 to Subpart DDDD - Model Rule Increments of Progress and Compliance Schedules	
<u>CISWI Units That Commenced Construction on or Before November 30, 1999</u>	
Comply with these increments of progress	By these dates
Increment 1 - Submit final control plan	One year after EPA approval of the state plan or December 1, 2004, whichever comes first.
Increment 2 - Final compliance	Three years after EPA approval of the state plan or December 1, 2005, whichever comes first.

<u>Incinerator CISWI units that commenced construction after November 30, 1999, but no later than June 4, 2010, or commenced modification or reconstruction after June 1, 2001, but no later than August 7, 2013. CISWI units other than incinerator units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010, but no later than August 7, 2013.</u>	
<u>Comply with these increments of progress</u>	<u>By these dates</u>
<u>Increment 1 - Submit final control plan</u>	<u>One year after EPA approval of the state plan or February 7, 2017, whichever comes first.</u>
<u>Increment 2 - Final compliance</u>	<u>Three years after EPA approval of the state plan or February 7, 2018, whichever comes first.</u>

Subpart GGGG - [Reserved]

Subpart IIII - Standards of performance for stationary compression ignition internal combustion engines.

Subpart JJJJ - Standards of performance for stationary sparks ignition internal combustion engines.

Subpart KKKK - Standards of performance for stationary combustion turbines.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of emission rate changes.

Appendix D - Required emission inventory information.

Appendix E - [Reserved]

Appendix F - Quality assurance procedures.

Appendix I - Removable label and owner's manual.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-15

33-15-15-01.2. Scope. The provisions of title 40, Code of Federal Regulations part 52, section 21, paragraphs (a)(2) through (e), (h) through (r), (v), (w), (aa), and (bb) as they exist on ~~January 1, 2012~~ July 1, 2013, are incorporated by reference into this chapter. This includes revisions to the rules that were published as a final rule in the Federal Register by this date but had not been published in the Code of Federal Regulations yet. Any changes or additions to the provisions are listed below the affected paragraph.

For purposes of this chapter, administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties listed below, or any others that cannot be delegated, administrator means the administrator of the United States environmental protection agency:

- (b)(17) - Definition of federally enforceable.
- (b)(37)(i) - Definition of repowering.
- (b)(43) - Definition of prevention of significant deterioration.
- (b)(48)(ii)(c) - Definition of baseline actual emissions.
- (b)(50)(i) - Definition of regulated NSR pollutant.
- (1)(2) - Air quality models.
- (p)(2) - Consultation with the federal land manager.

For purposes of this chapter, permit or approval to construct means a permit to construct. The procedures for obtaining a permit to construct are specified in section 33-15-14-02 and this chapter. When there is a conflict in the requirements between this chapter and section 33-15-14-02, the requirements of this chapter shall apply.

For purposes of this chapter, the term "40 CFR 52.21" is replaced with "this chapter".

40 CFR 52.21(b)(2)(iii)(a)	The following is deleted: Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc).
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40 CFR 52.21(b)(3)(iii)(a)	The words "the administrator or other reviewing authority" are replaced with "the department or the administrator of the United States environmental protection agency".
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40 CFR
52.21(b)(14)

The following is added:

- (v) The department shall provide a list of baseline dates for each contaminant for each baseline area.

40 CFR
52.21(b)(15)

The following is added:

- (iv) North Dakota is divided into two intrastate areas under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95]: the Cass County portion of region no. 130, the metropolitan Fargo-Moorhead interstate air quality control region; and region no. 172, the North Dakota intrastate air quality control region (the remaining fifty-two counties).

40 CFR
52.21(b)(22)

The following is added:

Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

40 CFR
52.21(b)(29)

The following is added:

This term does not include effects on integral vistas.

40 CFR
52.21(b)(30)

The term section 51.100(s) of this chapter is deleted and replaced with "40 CFR 51.100(s)".

40 CFR
52.21(b)(43)

The paragraph is deleted in its entirety and replaced with the following:

Prevention of significant deterioration (PSD) program means a major source preconstruction permit program administered by the department that has been approved by the administrator of the United States environmental protection agency and incorporated into the state implementation plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued by the department under the program is a major NSR permit.

40 CFR
52.21(b)(48)(ii)

The following words are deleted: "by the administrator for a permit required under this section or".

40 CFR
52.21(b)(49)

The following words are deleted "administrator in subchapter C of this chapter" and replaced with the following:

Administrator of the United States environmental protection agency in title 40, Code of Federal Regulations, chapter I subchapter C.

40 CFR 52.21(b)(49)(i)	"§ 86.181-12(a) of this chapter" is deleted and replaced with: 40 CFR 86.1818-12(a).
40 CFR 52.21(b)(49)(ii)(a)	"Table A-1 to subpart A of part 98 of this chapter" is deleted and replaced with the following: 40 CFR 98, subpart A, table A-1.
40 CFR 52.21(b)(50)(i)(c)	This paragraph is deleted in its entirety and replaced with the following: Nitrogen oxides are a precursor to PM _{2.5} in all attainment and unclassifiable areas.
40 CFR 52.21(b)(50)(i)(d)	This paragraph is deleted in its entirety and replaced with the following: Volatile organic compounds are not a precursor to PM _{2.5} in any attainment or unclassifiable areas.
40 CFR 52.21(b)(51)	The paragraph is deleted in its entirety and replaced with the following: Reviewing authority means the department.
40 CFR 52.21(b)(53)	This paragraph is deleted in its entirety and replaced with the following: Lowest achievable emission rate (LAER) has the meaning given in 40 CFR 51.165(a)(1)(xiii) which is incorporated by reference.
40 CFR 52.21(b)(54)	This paragraph is deleted in its entirety and replaced with the following: Reasonably available control technology (RACT) has the meaning given in 40 CFR 51.100(o) which is incorporated by reference.
40 CFR 52.21(b)(58)	This paragraph is deleted in its entirety.
40 CFR 52.21(d)	The paragraph is deleted and replaced with the following: No concentration of a contaminant shall exceed: (1) The concentration permitted under the national primary and secondary ambient air quality standards. (2) The concentration permitted by the ambient air quality standards in chapter 33-15-02.
40 CFR 52.21(e)	The following is added: (5) The class I areas in North Dakota are the Theodore Roosevelt National Park - north and south units and the Theodore Roosevelt Elkhorn Ranch Site in Billings County - and the Lostwood National Wilderness Area in Burke County.

- 40 CFR 52.21(h) The paragraph is deleted and replaced with the following:
The stack height of any source subject to this chapter must meet the requirements of chapter 33-15-18.
- 40 CFR 52.21(i) The following subparagraphs are added:
(11) The class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply to sources or modifications for which complete applications were filed after July 1, 1982. The impact of emissions from sources or modifications for which permits under this chapter have been issued or complete applications have already been filed will be counted against the increments after July 1, 1982.
(12) Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.
- 40 CFR 52.21(k)(1) This subparagraph is deleted and replaced with the following:
(1) Any national ambient air quality standard or any standard in chapter 33-15-02.
- 40 CFR 52.21(l)(1) This subparagraph is deleted and replaced with the following:
All estimates of ambient concentrations required under this chapter shall be based on applicable air quality models, technical data bases (including quality assured air quality monitoring results), and other requirements specified in appendix w of 40 CFR 51 ("guideline on air quality models" as it exists on January 1, 2012) as supplemented by department guidance. Technical inputs for these models shall be based upon credible technical data approved in advance by the department. In making such determinations, the department shall review such technical data to determine whether it is representative of actual source, meteorological, topographical, or local air quality circumstances.
- 40 CFR 52.21(m)(3) "Appendix B to part 58 of this chapter" is replaced with 40 CFR 58, appendix B.
- 40 CFR 52.21(p)(6) "paragraph (q)(4)" is replaced with "paragraph (p)(4)" and "(q)(7)" is replaced with "(p)(7)".

- 40 CFR 52.21(p)(7) "paragraph (q)(7)" is replaced with "paragraph (p)(7)".
- 40 CFR 52.21(p)(8) "paragraphs (q)(5) or (6)" is replaced with "paragraphs (p)(5) or (6)".
- 40 CFR 52.21(p) The following is added:
 - (9) Notice to the United States environmental protection agency. The department shall transmit to the administrator of the United States environmental protection agency through the region VIII regional administrator a copy of each permit application relating to a major stationary source or major modification received by the department and provide notice to the administrator of every action related to the consideration of such permit.
- 40 CFR 52.21(q) This paragraph is deleted and replaced with the following:

q. Public participation.

- (1) Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant as to the completeness of the application or of any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.
- (2) With respect to a completed application, the department shall:
 - (a) Within one year after receipt, make a preliminary determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.
 - (b) Make available, in at least one location in each region in which the proposed source or modification would be constructed, a copy of all materials submitted by the applicant, a copy of the department's preliminary determination, and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.
 - (c) Notify the public, by prominent advertisement in newspapers of general circulation in each region in

which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source. The department shall allow at least thirty days for public comment.

- (d) Send a copy of the notice required in subparagraph c to the applicant, the United States environmental protection agency administrator, and to officials and agencies having cognizance over the location where the source or modification will be situated as follows: the chief executive of the city and county where the source or modification would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.
- (e) Hold a public hearing whenever, on the basis of written requests, a significant degree of public interest exists or at its discretion when issues involved in the permit decision need to be clarified. A public hearing would be held during the public comment period for interested persons, including representatives of the United States environmental protection agency administrator, to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.
- (f) Consider all public comments submitted in writing within a time specified in the public notice required in subparagraph c and all comments received at any public hearing conducted pursuant to subparagraph e in making its final decision on the approvability of the application. No later than thirty days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The department may extend the time to respond to comments based on a written request by the applicant. The department shall consider the applicant's response in making its final decision. All comments must be made available for public inspection in the same locations where the department

made available preconstruction information relating to the source or modification.

- (g) Make a final determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.
- (h) Notify the applicant in writing of the department's final determination. The notification must be made available for public inspection in the same locations where the department made available preconstruction information and public comments relating to the source or modification.

40 CFR 52.21(r)(2)

The following is added:

In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit to construct a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

40 CFR 52.21(v)(1)

This subparagraph is deleted and replaced with the following:

- (1) An owner or operator of any proposed major stationary source or major modification may request the department to approve a system of innovative control technology.

40 CFR
52.21(v)(2)(iv)(a)

This subitem is deleted and replaced with the following:

- (a) Cause or contribute to a violation of an applicable national ambient air quality standard or any ambient air quality standard in chapter 33-15-02; or

40 CFR
52.21(w)(1)

This subparagraph is deleted and replaced with the following:

- (1) Any permit issued under this chapter or a prior version of this chapter shall remain in effect, unless and until it expires under 40 CFR 52.21(r) or is rescinded.

40 CFR
52.21(aa)(15)

This paragraph is deleted in its entirety

History: Effective February 1, 2005; amended effective April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04.1

CHAPTER 33-15-22

33-15-22-01. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 63, as they exist on ~~January 1, 2012~~ July 1, 2013, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to an emissions standard are listed below the title of the standard.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-22-03. Emissions standards.

Subpart A - General provisions.

Subpart B - Requirements for control technology determinations for major sources in accordance with Federal Clean Air Act sections 112(g) and 112(j).

*Sections 63.42(a) and 63.42(b) are deleted in their entirety.

Subpart C - List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

Subpart D - Regulations governing compliance extensions for early reductions of hazardous air pollutants.

Subpart F - National emissions standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National emissions standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

Subpart H - National emissions standards for organic hazardous air pollutants for equipment leaks.

Subpart I - National emissions standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

Subpart M - National perchloroethylene air emissions standards for drycleaning facilities.

Subpart N - National emissions standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

Subpart O - Ethylene oxide emissions standards for sterilization facilities.

Subpart Q - National emissions standards for hazardous air pollutants for industrial process cooling towers.

Subpart R - National emissions standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

Subpart T - National emissions standards for halogenated solvent cleaning.

Appendix A to subpart T - Test of solvent cleaning procedures.

Appendix B to subpart T - General provisions applicability to subpart T.

Subpart CC - National emissions standards for hazardous air pollutants from petroleum refineries.

Subpart GG - National emissions standards for aerospace manufacturing and rework facilities.

Subpart HH - National emissions standards for hazardous air pollutants from oil and natural gas production facilities.

* Only the requirements that are applicable to major sources of hazardous air pollutants are adopted.

Subpart JJ - National emissions standards for wood furniture manufacturing operations.

Subpart KK - National emissions standards for the printing and publishing industry.

Table 1 to subpart KK - Applicability of general provisions to subpart KK.

Appendix A to subpart KK - Data quality objective and lower confidence limit approaches for alternative capture efficiency protocols and test methods.

Subpart OO - National emissions standards for tanks - Level 1.

Subpart PP - National emissions standards for containers.

Subpart QQ - National emissions standards for surface impoundments.

Subpart RR - National emissions standards for individual drain systems.

Subpart SS - National emissions standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process.

Subpart TT - National emissions standards for equipment leaks - Control level 1.

Subpart UU - National emissions standards for equipment leaks - Control level 2 standards.

Subpart VV - National emissions standards for oil-water separators and organic water separators.

Subpart WW - National emissions standards for storage vessels (tanks) - Control level 2.

Subpart YY - National emissions standards for hazardous air pollutants for source categories: generic maximum achievable control technology standards.

Subpart HHH - National emissions standards for hazardous air pollutants from natural gas transmission and storage facilities.

Subpart RRR - National emission standards for hazardous air pollutants for secondary aluminum production.

Table 1 to Subpart RRR - Emission standards for new and existing affected sources.

Table 2 to Subpart RRR - Summary of operating requirements for new and existing affected sources and emission units.

Table 3 to Subpart RRR - Summary of monitoring requirements for new and existing affected sources and emission units.

Appendix A to Subpart RRR - General provisions applicability to subpart RRR.

Subpart UUU - National emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units.

Subpart AAAA - National emission standards for hazardous air pollutants: municipal solid waste landfills.

Subpart CCCC - National emission standards for hazardous air pollutants: manufacturing of nutritional yeast.

Subpart EEEE - National emission standards for hazardous air pollutants: organic liquids distribution (nongasoline).

Subpart FFFF - National emission standards for hazardous air pollutants: miscellaneous organic chemical manufacturing.

Subpart GGGG - National emission standards for hazardous air pollutants: solvent extraction for vegetable oil production.

Subpart MMMM - National emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products.

Subpart VVVV - National emission standards for hazardous air pollutants for boat manufacturing.

Subpart WWWW - National emissions standards for hazardous air pollutants: reinforced plastics composites production.

Subpart YYYY - National emission standards for hazardous air pollutants for stationary combustion turbines.

Subpart ZZZZ - National emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines.

*Only the requirements that are applicable to major sources of hazardous air pollutants are adopted.

Subpart DDDDD - National emission standards for hazardous air pollutants for industrial, commercial, and institutional boilers and process heaters

Subpart GGGGG - National emission standards for hazardous air pollutants: site remediation.

Subpart UUUUU - National emission standards for hazardous air pollutants: coal-fired and oil-fired electric utility steam generating units.

Subpart JJJJJ - National emission standards for hazardous air pollutants for industrial, commercial, and institutional boilers area sources.

*Only the requirements that are applicable to boilers with a heat input of ten million Btu per hour or more are adopted.

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions.

Appendix C to part 63 - Determination of the fraction biodegraded (f_{bio}) in a biological treatment unit.

Appendix D to part 63 - Alternative validation procedure for environmental protection agency waste and wastewater methods.

Authority: 42 U.S.C. 7401 et seq.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-23

33-15-23-03. Minor source permit to operate fees.

1. The owner or operator of each installation subject to a permit issued under section 33-15-14-03 shall pay an annual permit fee based on the following table:

<u>Classification</u>	<u>Annual Fee (\$)</u>
Designated	300
Other	100
State and local government	0
Exempt	0

The following criteria are used to classify sources for determining minor source annual fees:

Designated:	A source that is designated for scheduled inspections.
Monitor:	A charge in addition to the annual fee for any source operating a continuous emission monitor system (CEMS) or an ambient monitoring site.
Other:	As designated by the department.
State and local government:	Any installation owned by the state of North Dakota or a local government.
Exempt:	As designated by the department.

2. The following activities conducted by the department are not included in the annual costs and will be charged to affected sources based on the actual costs incurred by the department:
 - a. Observation of source or performance specification testing, or both.
 - b. Audits of source operated ambient air monitoring networks.

An accounting of the actual costs incurred under this subsection must accompany the notice of the annual permit fee.

3. Annual emissions are derived using representative source test data, "compilation of air pollution emission factors (AP-42)" or other reliable data.

4. The classification of "other" and "exempt" shall be designated by the department on a case-by-case basis.
5. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following the date of such notice.

History: Effective August 1, 1995; amended effective April 1, 2009; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-04.2

CHAPTER 33-16-02.1

33-16-02.1-02. Purpose.

1. The purposes of this chapter are to establish a system for classifying waters of the state; provide standards of water quality for waters of the state; and protect existing and potential beneficial uses of waters of the state.
2. The state and public policy is to maintain or improve, or both, the quality of the waters of the state and to maintain and protect existing uses. Classifications and standards are established for the protection of public health and environmental resources and for the enjoyment of these waters, to ensure the propagation and well-being of resident fish, wildlife, and all biota associated with or dependent upon these waters; and to safeguard social, economical, and industrial development. Waters not being put to use shall be protected for all reasonable uses for which these waters are suitable. All known and reasonable methods to control and prevent pollution of the waters of this state are required, including improvement in quality of these waters, when feasible.
 - a. The "quality of the waters" shall be the quality of record existing at the time the first standards were established in 1967, or later records if these indicate an improved quality. Waters with existing quality that is higher than established standards will be maintained at the higher quality unless affirmatively demonstrated, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, that a change in quality is necessary to accommodate important social or economic development in the area in which the waters are located. In allowing the lowering of existing quality, the department shall assure that existing uses are fully protected and that the highest statutory and regulatory requirements for all point sources and cost-effective and reasonable best management practices for nonpoint sources are achieved.
 - b. Waters of the state having unique or high quality characteristics that may constitute an outstanding state resource shall be maintained and protected.
 - c. Any public or private project or development which constitutes a source of pollution shall provide the best degree of treatment as designated by the department in the North Dakota pollutant discharge elimination system. If review of data and public input indicates any detrimental water quality changes, appropriate actions will be taken by the department following procedures

approved by the environmental protection agency. (North Dakota Antidegradation Implementation Procedure, Appendix IV.)

History: Effective June 1, 2001; amended effective April 1, 2014.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-33, 61-28-04

33-16-02.1-04. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 61-28, except:

1. "Acute standard" means the one-hour average concentration does not exceed the listed concentration more than once every three years.
2. "Best management practices" are methods, measures, or procedures selected by the department to control nonpoint source pollution. Best management practices include, but are not limited to, structural and nonstructural measures and operation and maintenance procedures.
3. "Chronic standard" means the four-day average concentration does not exceed the listed concentration more than once every three years.
4. "Consecutive thirty-day average" is the average of samples taken during any consecutive thirty-day period. It is not a requirement for thirty consecutive daily samples.
5. "Department" means the North Dakota state department of health.
6. A standard defined as "dissolved" means the total quantity of a given material present in a filtered water sample, regardless of the form or nature of its occurrence.
7. "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor. Pollution includes discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state that will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare; domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or livestock, wild animals, birds, fish, or other aquatic biota.
8. "Site-specific standards" mean water quality criteria developed to reflect local environmental conditions to protect the uses of a specific water body.
9. A standard defined as "total" means the entire quantity of a given material present in an unfiltered water sample regardless of the form or nature of its occurrence. This includes both dissolved and suspended forms of a substance, including the entire amount of the substance

present as a constituent of the particulate material. Total recoverable is the quantity of a given material in an unfiltered aqueous sample following digestion by refluxing with hot dilute mineral acid.

10. "Water usage". The best usage for the waters shall be those uses determined to be the most consistent with present and potential uses in accordance with the economic and social development of the area. Present principal best uses are those defined in subdivisions a, b, c, d, and e. These are not to be construed to be the only possible usages.
 - a. Municipal and domestic water. Waters suitable for use as a source of water supply for drinking and culinary purposes after treatment to a level approved by the department.
 - b. Fish and aquatic biota. Waters suitable for the propagation and support of fish and other aquatic biota and waters that will not adversely affect wildlife in the area. Low flows or natural physical and chemical conditions in some waters may limit their value for fish propagation or aquatic biota.
 - c. Recreation. ~~Waters~~ Primary recreational waters are suitable for recreation where direct body contact is involved, such as bathing and swimming, and where secondary recreational activities such as boating, fishing, and wading are involved. Natural high turbidities in some waters and physical characteristics of banks and streambeds of many streams are factors that limit their value for bathing.
 - d. Agricultural uses. Waters suitable for irrigation, stock watering, and other agricultural uses, but not suitable for use as a source of domestic supply for the farm unless satisfactory treatment is provided.
 - e. Industrial water. Waters suitable for industrial purposes, including food processing, after treatment. Treatment may include that necessary for prevention of boiler scale and corrosion.

History: Effective June 1, 2001; amended effective October 1, 2006; April 1, 2014.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-33, 61-28

33-16-02.1-09. Surface water classifications, mixing zones, and numeric standards.

1. ~~Classifications~~ Surface water classifications. Procedures for the classifications of streams and lakes of the state shall follow this subsection. Classifications of streams and lakes are listed in appendix I and appendix II, respectively.

- a. Class I streams. The quality of the waters in this class shall be suitable for the propagation or protection, or both, of resident fish species and other aquatic biota and for swimming, boating, and other water recreation. The quality of the waters shall be suitable for irrigation, stock watering, and wildlife without injurious effects. After treatment consisting of coagulation, settling, filtration, and chlorination, or equivalent treatment processes, the water quality shall meet the bacteriological, physical, and chemical requirements of the department for municipal or domestic use.
- b. Class IA streams. The quality of the waters in this class shall be the same as the quality of class I streams, except that where natural conditions exceed class I criteria for municipal and domestic use, the availability of softening or other treatment methods may be considered in determining whether ambient water quality meets the drinking water requirements of the department.

The Sheyenne River from its headwaters to one-tenth mile downstream from Baldhill Dam is not classified for municipal or domestic use.

- c. Class II streams. The quality of the waters in this class shall be the same as the quality of class I streams, except that additional treatment may be required to meet the drinking water requirements of the department. Streams in this classification may be intermittent in nature which would make these waters of limited value for beneficial uses such as municipal water, fish life, irrigation, bathing, or swimming.
- d. Class III streams. The quality of the waters in this class shall be suitable for agricultural and industrial uses. Streams in this class generally have low average flows with prolonged periods of no flow. During periods of no flow, they are of limited value for recreation and fish and aquatic biota. The quality of these waters must be maintained to protect secondary contact recreation uses (e.g., wading), fish and aquatic biota, and wildlife uses.
- e. Wetlands. These water bodies, including isolated ponds, sloughs, and marshes, are to be considered waters of the state and will be protected under section ~~33-16-02-08~~ 33-16-02.1-08.
- f. Lakes and reservoirs. The type of fishery a lake or reservoir may be capable of supporting is based on the lake's or reservoir's geophysical characteristics. The capability of a lake or reservoir to support a fishery may be affected by seasonal or climatic variability or other natural occurrences, which may alter the physical and chemical characteristics of the lake or reservoir.

Class	Characteristics
1	Cold water fishery. Waters capable of supporting growth of cold water fish species (e.g., salmonids) and associated aquatic biota.
2	Cool water fishery. Waters capable of supporting natural reproduction and growth of cool water fishes (e.g., northern pike and walleye) and associated aquatic biota. These waters are also capable of supporting the growth and marginal survival of cold water species and associated biota.
3	Warm water fishery. Waters capable of supporting natural reproduction and growth of warm water fishes (e.g., largemouth bass and bluegill) and associated aquatic biota. Some cool water species may also be present.
4	Marginal fishery. Waters capable of supporting a fishery on a short-term or seasonal basis (generally a "put and take" fishery).
5	Not capable of supporting a fishery due to high salinity.

2. **Mixing zones.** North Dakota mixing zone and dilution policy is contained in appendix III.

3. **Numeric standards.**

- a. Class I streams. Unless stated otherwise, maximum limits for class I streams are listed in table 1 and table 2.
- b. Class IA streams. The physical and chemical criteria shall be those for class I, with the following exceptions:

Substance or Characteristic	Maximum Limit
Chlorides (total)	175 mg/l (30-day arithmetic average)
Sodium	60% of total cations as mEq/l
Sulfate (total)	450 mg/l (30-day arithmetic average)

Site-Specific Sulfate (total) Standard

The following site-specific standard applies to the Sheyenne River from its headwaters to one-tenth mile downstream from Baldhill Dam.

Sulfate (total)	750 mg/l
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131.10(b) requirement

The water quality standards for the Red River and the portions of the Sheyenne River located downstream from the segment of the Sheyenne River to which the site-specific sulfate standard applies must continue to be maintained. The Sheyenne River from 0.1 mile downstream from Baldhill Dam to the confluence with the Red River shall not exceed 450 mg/l sulfate (total) 30-day arithmetic average and the Red River shall not exceed 250 mg/l sulfate (total 30-day arithmetic average after mixing, downstream from the confluence of the Sheyenne River. Regulated pollution control efforts must be developed to achieve compliance with these water quality standards.

- c. Class II streams. The physical and chemical criteria shall be those for class IA, with the following exceptions:

Substance or Characteristic	Maximum Limit
Chlorides (total)	250 mg/l (30-day arithmetic average)
pH	6.0-9.0 (up to 10% of representative samples collected during any 3-year period may exceed this range provided that lethal conditions are avoided)

- d. Class III streams. The physical and chemical criteria shall be those for class II, with the following exceptions:

Substance or Characteristic	Maximum Limit
Sulfate (total)	750 mg/l (30-day arithmetic average)

- e. Lakes and reservoirs.

- (1) The beneficial uses and parameter limitations designated for class I streams shall apply to all classified lakes or reservoirs. However, specific background studies and information may require that the department revise a standard for any specific parameter.
- (2) In addition, ~~these nutrient parameters are guidelines~~ a guideline for use as ~~goals~~ a goal in any lake or reservoir improvement or maintenance program: is a growing season (April through November) average chlorophyll-a concentration of 20.0 µg/l.

Parameter	Limit
NO₃-as-N	.25 mg/l
PO₄-as-P	.02 mg/l

- (3) The temperature standard for class I streams does not apply to Nelson Lake in Oliver County. The temperature of any discharge to Nelson Lake shall not have an adverse effect on fish, aquatic biota, recreation, and wildlife.
- (4) A numeric temperature standard of not greater than fifty-nine degrees Fahrenheit [15 degrees Celsius] shall be maintained in the hypolimnion of class I lakes and reservoirs during periods of thermal stratification.
- (5) The numeric dissolved oxygen standard of five mg/l as a daily minimum does not apply to the hypolimnion of class III and IV lakes and reservoirs during periods of thermal stratification.
- (6) Lake Sakakawea must maintain a minimum volume of water of five hundred thousand-acre feet [61674-hectare meters] that has a temperature of fifty-nine degrees Fahrenheit [15 degrees Celsius] or less and a dissolved oxygen concentration of not less than five mg/l.

History: Effective June 1, 2001; amended effective October 1, 2006; July 1, 2010; April 1, 2014.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 23-33, 61-28

TABLE 1

MAXIMUM LIMITS FOR SUBSTANCES IN
OR CHARACTERISTICS OF CLASS I STREAMS

<u>CAS¹ No.</u>	<u>Substance or Characteristic</u>	<u>Maximum Limit</u>
		Acute Standard
7429905	Aluminum	750 ug/l
		Chronic Standard
		87 ug/l
		Where the pH is equal to or greater than 7.0, and the hardness is equal to or greater than 50 mg/l as CaCO ₃ in the receiving water after mixing, the 87 ug/l chronic total recoverable aluminum criterion will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute total recoverable aluminum criterion.
		Acute Standard
7446-41-7	Ammonia (Total as N)	The one-hour average concentration of total ammonia (expressed as N in mg/l) does not exceed, more often than once every three years on the average, the numerical value given by the following formula:
		$\frac{0.411}{1 + 10^{7.204-pH}} + \frac{58.4}{1+10^{pH-7.204}},$
		where salmonids are absent; or
		$\frac{0.275}{1 + 10^{7.204-pH}} + \frac{39.0}{1 + 10^{pH-7.204}},$
		where salmonids are present.
		Chronic Standard
		The 30-day average concentration of total ammonia (expressed as N in mg/l) does not exceed, more often than once every three years on the average, the numerical value given by the following formula; and the highest 4-day average concentration of total ammonia within the 30-day averaging period does not exceed 2.5 times the numerical value given by the following formula:
		$= \left(\frac{0.0577}{\text{_____}} + \frac{2.487}{\text{_____}} \right) \bullet \text{Criteria Variable (CV);}$

<u>CAS¹</u> <u>No.</u>	<u>Substance</u> <u>or</u> <u>Characteristic</u>	<u>Maximum Limit</u>
		$\left(\frac{1}{1 + 10^{7.688 - \text{pH}}} + \frac{1}{1 + 10^{\text{pH} - 7.688}} \right)$ <p>where CV = 2.85, when T ≤ 14° C; or CV = 1.45 x 10^{0.028·(25-T)}, when T > 14° C.</p> <p>Site-Specific Chronic Standard</p> <p>The following site-specific standard applies to the Red River of the North beginning at the 12th Avenue North bridge in Fargo, North Dakota, and extending approximately 32 miles downstream to its confluence with the Buffalo River, Minnesota. This site-specific standard applies only during the months of October, November, December, January, and February. During the months of March through September, the statewide chronic ammonia standard applies.</p> <p>The 30-day average concentration of total ammonia (expressed as N in mg/l) does not exceed, more often than once every three years on the average, the numerical value given by the following formula; and the highest 4-day average concentration of total ammonia within the 30-day averaging period does not exceed 2.5 times the numerical value given by the following formula:</p> $= \left(\frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} \right) \bullet \text{CV};$ <p>where CV = 4.63, when T ≤ 7° C; or CV = 1.45 x 10^{0.028·(25-T)}, when T > 7° C.</p>
7440-39-3	Barium (Total)	1.0 mg/l (one-day arithmetic average)
	Boron (Total)	.75 mg/l (30-day arithmetic average)
16887-00-6	Chlorides (Total)	100 mg/l (30-day arithmetic average)
7-782-50-5	Chlorine Residual (Total)	Acute .019 mg/l Chronic .011 mg/l
7782-44-7	Dissolved Oxygen	5 mg/l as a daily minimum (up to 10% of representative samples collected during any 3-year period may be less than this value provided that lethal conditions are avoided)

<u>CAS¹</u> <u>No.</u>	<u>Substance</u> <u>or</u> <u>Characteristic</u>	<u>Maximum Limit</u>
	E. coli ^{2 3}	Not to exceed 126 organisms per 100 ml as a geometric mean of representative samples collected during any 30-day consecutive period, nor shall more than 10 percent of samples collected during any 30-day consecutive period individually exceed 409 organisms per 100 ml. For assessment purposes, the 30-day consecutive period shall follow the calendar month. This standard shall apply only during the recreation season May 1 to September 30.
14797-55-8	Nitrates (N) (Diss.) ^{† 2}	1.0 mg/l (up to 10% of samples may exceed)
	pH	7.0-9.0 (up to 10% of representative samples collected during any three-year period may exceed this range, provided that lethal conditions are avoided)
32730 <u>108-95-2</u>	Phenols (Total)	0.3 mg/l (organoleptic criterion) (one-day arithmetic average)
	Sodium	50 percent of total cations as mEq/l
	Sulfates (Total as SO ₄)	250 mg/l (30-day arithmetic average)
	Temperature	Eighty-five degrees Fahrenheit [29.44 degrees Celsius]. The maximum increase shall not be greater than five degrees Fahrenheit [2.78 degrees Celsius] above natural background conditions.
	Combined radium 226 and radium 228 (Total)	5 pCi/l (30-day arithmetic average)
	Gross alpha particle activity, including radium 226, but excluding radon and uranium	15 pCi/l (30-day arithmetic average)

- ¹ CAS No. is the chemical abstract service registry number. The registry database contains records for specific substances identified by the chemical abstract service.
- ^{† 2} The standard for nitrates (N) is intended as an interim guideline limit. Since each stream or lake has unique characteristics which determine the concentration of this constituent that will cause excessive plant growth (eutrophication), the department reserves the right to review this standard after additional study and to set specific limitations on any waters of the state. However, in no case shall the concentration for nitrate plus nitrite N exceed 10 mg/l for any waters used as a municipal or domestic drinking water supply.
- ^{≈ 3} Where the E. coli criteria are exceeded and there are natural sources, the criteria may be considered attained, provided there is reasonable basis for concluding that the indicator bacteria density attributable to anthropogenic sources is consistent with the level of water quality required by the criteria. This may be the situation, for example, in headwater streams that are minimally affected by anthropogenic activities.

TABLE 2
WATER QUALITY CRITERIA¹
(MICROGRAMS PER LITER)

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II ²	Class III ³
83-32-9	Acenaphthene			670	990
107-02-8	Acrolein	<u>3.0</u>	<u>3.0</u>	6	9
107-13-1	Acrylonitrile ⁴			0.051	0.25
71-43-2	Benzene ⁴			2.2	51
92-87-5	Benzidine ⁴			0.000086	0.00020
<u>63-25-2</u>	<u>Carbaryl (1-naphthyl-N-methylcarbamate)</u>	<u>2.1</u>	<u>2.1</u>		
56-23-5	Carbon tetrachloride ⁴ (Tetrachloromethane)			0.23	1.6
108-90-7	Chlorobenzene (Monochlorobenzene)			100 ⁷	1,600
2921-88-2	Chlorpyrifos	0.083	0.041		
120-82-1	1,2,4-Trichlorobenzene			35	70
118-74-1	Hexachlorobenzene ⁴			0.00028	0.00029
107-06-2	1,2-Dichloroethane ⁴			0.38	37
71-55-6	1,1,1-Trichloroethane			200 ⁷	
67-72-1	Hexachloroethane ⁴			1.4	3.3
79-00-5	1,1,2-Trichloroethane ⁴			0.59	16
79-34-5	1,1,2,2-Tetrachloroethane ⁴			0.17	4.0
111-44-4	Bis(2-chloroethyl) ether ⁴			0.030	0.53
91-58-7	2-Chloronaphthalene			1,000	1,600
88-06-2	2,4,6-Trichlorophenol ⁴			1.4	2.4
59-50-7	p-Chloro-m-cresol (4-Chloro-3-methylphenol)			3000	
67-66-3	Chloroform (HM) ⁴ (Trichloromethane)			5.7	470
95-57-8	2-Chlorophenol			81	150
95-50-1	1,2-Dichlorobenzene ⁷			420	1,300
541-73-1	1,3-Dichlorobenzene			320	960
106-46-7	1,4-Dichlorobenzene ⁷			63	190
91-94-1	3,3'-Dichlorobenzidine ⁴			0.021	0.028
75-35-4	1,1-Dichloroethylene ⁴			7 ⁷	7,100
156-60-5	1,2-trans-Dichloroethylene ⁷			100 ⁷	10,000
120-83-2	2,4-Dichlorophenol			77	290
542-75-6	1,3-Dichloropropylene (1,3-Dichloropropene) (cis and trans isomers)			0.34	21
78-87-5	1,2-Dichloropropane			0.50	15
105-67-9	2,4-Dimethylphenol			380	850

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II ²	Class III ³
121-14-2	2,4-Dinitrotoluene ⁴			0.11	3.4
122-66-7	1,2-Diphenylhydrazine ⁴			0.036	0.20
100-41-4 100-41-4	Ethylbenzene ⁷			530	2,100
206-44-0	Fluoranthene			130	140
39036-32-9 108-60-1	Bis(2-chloroisopropyl) ether			1400	65,000
75-09-2	Methylene chloride (HM) ⁴ (Dichloromethane)			4.6	590
74-83-9	Methyl bromide (HM) (Bromomethane)			47	1,500
75-25-2	Bromoform (HM) ⁵ (Tribromomethane)			4.3	140
75-27-4	Dichlorobromomethane (HM) ⁵			0.55	17
124-48-1	Chlorodibromomethane (HM) ⁵			0.40	13
87-68-3	Hexachlorobutadiene ⁴			0.44	18
77-47-4	Hexachlorocyclopentadiene			40	1,100
78-59-1	Isophorone ⁴			35	960
98-95-3	Nitrobenzene			17	690
51-28-5	2,4-Dinitrophenol			69	5,300
534-52-1	4,6-Dinitro-o-cresol (4,6-Dinitro-2-methylphenol)			13	280
62-75-9	N-Nitrosodimethylamine ⁴			0.00069	3.0
86-30-6	N-Nitrosodiphenylamine ⁴			3.3	6.0
621-64-7	N-Nitrosodi-n-propylamine ⁴			0.005	0.51
87-86-5	Pentachlorophenol	19 ^g g	15 ^g g	0.27	3.0
108-95-2	Phenol			10,000	860,000
117-81-7	Bis(2-ethylhexyl)phthalate ⁴			1.2	2.2
85-68-7	Butyl benzyl phthalate			1,500	1,900
84-74-2	Di-n-butyl phthalate			2,000	4,500
84-66-2	Diethyl phthalate			17,000	44,000
131-11-3	Dimethyl phthalate			270,000	1,100,000
56-55-3	Benzo(a)anthracene (PAH) ⁴ (1,2-Benzanthracene)			0.0038	0.018
50-32-8	Benzo(a)pyrene (PAH) ⁴ (3,4-Benzopyrene)			0.0038	0.018
205-99-2	Benzo(b)fluoranthene (PAH) ⁴ (3,4-Benzofluoranthene)			0.0038	0.018
207-08-9	Benzo(k)fluoranthene (PAH) ⁴ (11,12-Benzofluoranthene)			0.0038	0.018
218-01-9	Chrysene (PAH) ⁴			0.0038	0.018
120-12-7	Anthracene (PAH) ⁵			8,300	40,000
86-73-7	Fluorene (PAH) ⁵			1,100	5,300

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II ²	Class III ³
53-70-1 <u>53-70-3</u>	Dibenzo(a,h)anthracene (PAH) ⁴ (1,2,5,6-Dibenzanthracene)			0.0038	0.018
193-39-5	Indeno(1,2,3-cd)pyrene (PAH) ⁴			0.0038	0.018
129-00-0	Pyrene (PAH) ⁵			830	4,000
127-18-4	Tetrachloroethylene ⁴			0.69	3.3
108-88-3	Toluene			1,000 ⁷	15,000
79-01-6	Trichloroethylene ⁴			2.5	30
75-01-4	Vinyl chloride ⁴ (Chloroethylene)			0.025	2.4
309-00-2	Aldrin ⁴	1.5		0.000049	0.000050
60-57-1	Dieldrin ⁴	0.24	0.056	0.000052	0.000054
57-74-9	Chlordane ⁴	1.2	0.0043	0.00080	0.00081
60-29-3 <u>50-29-3</u>	4,4'-DDT ⁴	0.55 ^{T3} 12	0.001 ^{T3} 12	0.00022	0.00022
75-55-9	4,4'-DDE ⁴			0.00022	0.00022
72-54-8	4,4'-DDD ⁴			0.00031	0.00031
115-29-7 <u>959-98-8</u>	alpha-Endosulfan	0.11 ^{T2} 11	0.056 ^{T2} 11	62	89
115-29-7 <u>33213-65-9</u>	beta-Endosulfan	0.11 ^{T2} 11	0.056 ^{T2} 11	62	89
1031-07-8	Endosulfan sulfate			62	89
72-20-8	Endrin	0.09	0.036	0.059	0.060
7421-93-4	Endrin aldehyde			0.29	0.30
76-44-8	Heptachlor ⁴	0.26	0.0038	0.000079	0.000079
1024-57-3	Heptachlor epoxide ⁴	0.26	0.0038	0.000039	0.000039
319-84-6	alpha-BHC ⁴ (Hexachlorocyclohexane-alpha)			0.0026	0.0049
319-85-7	beta-BHC ⁴ (Hexachlorocyclohexane-beta)			0.0091	0.017
58-89-9	gamma-BHC (Lindane) ⁴ (Hexachlorocyclohexane-gamma)	0.95		0.2 ⁷	1.8
319-86-8	delta-BHC ⁴ (Hexachlorocyclohexane-delta)				
1336-36-3 <u>53469-21-9</u>	PCB 1242 (Arochlor 1242) ⁴		0.014 ^{TT} 10	0.000064 ^{TT} 10	0.000064 ^{TT} 10
1336-36-3 <u>11097-69-1</u>	PCB-1254 (Arochlor 1254) ⁴		0.014 ^{TT} 10	0.000064 ^{TT} 10	0.000064 ^{TT} 10
1336-36-3 <u>11104-28-2</u>	PCB-1221 (Arochlor 1221) ⁴		0.014 ^{TT} 10	0.000064 ^{TT} 10	0.000064 ^{TT} 10
1336-36-3 <u>11141-16-5</u>	PCB-1232 (Arochlor 1232) ⁴		0.014 ^{TT} 10	0.000064 ^{TT} 10	0.000064 ^{TT} 10
1336-36-3 <u>12672-29-6</u>	PCB-1248 (Arochlor 1248) ⁴		0.014 ^{TT} 10	0.000064 ^{TT} 10	0.000064 ^{TT} 10
1336-36-3 <u>11096-82-5</u>	PCB-1260 (Arochlor 1260) ⁴		0.014 ^{TT} 10	0.000064 ^{TT} 10	0.000064 ^{TT} 10

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II ²	Class III ³
1336-36-3 <u>12674-11-2</u>	PCB-1016 (Arochlor 1016) ⁴		0.014 ^{TT 10}	0.000064 ^{TT 10}	0.000064 ^{TT 10}
8001-35-2	Toxaphene ⁴	0.73	0.0002	0.00028	0.00028
7440-36-0	Antimony			5.6	640
7440-38-2	Arsenic ⁷	340 ^{TT 9}	150 ^{TT 9}	10 ⁷	
1332-21-4	Asbestos ^{4 7}			7,000,000 f/l	7000000 f/l
7440-41-7	Beryllium ⁴			4 ⁷	
7440-43-9	Cadmium	2.1 ^{6,15}	0.27 ^{6,15}	5 ⁷	
7440-47-3 <u>16065-83-1</u>	Chromium (III)	1800 ^{6,15}	86 ^{6,15}	100(total) ⁷	
<u>18540-29-9</u>	Chromium (VI)	16	11	100(total) ⁷	
7440-50-8	Copper	14.0 ^{6,15}	9.3 ^{6,15}	1000	
57-12-5	Cyanide (total)	22	5.2	140	140
7439-92-1	Lead	82 ⁶	3.2 ⁶	15 ⁷	
7439-97-6	Mercury	1.7	0.012	0.050	0.051
7440-02-0	Nickel	470 ^{6,15}	52 ^{6,15}	100 ⁷	4,200
7782-49-2	Selenium	20	5	50 ⁷	
7440-22-4	Silver	3.8 ^{6,15}			
7440-28-0	Thallium			0.24	0.47
7440-66-6	Zinc	120 ^{6,15}	120 ^{6,15}	7,400	26,000
56-39-9 <u>688-73-3</u>	Tributyltin	0.46	0.072		
1746-01-6	Dioxin (2,3,7,8-TCDD) ⁴			5.0E-9	5.1E-9
15972-60-8	Alachlor			2 ⁷	
1912-24-9	Atrazine			3 ⁷	
56-38-2	Parathion	0.065	0.013		
1563-66-2	Carbofuran			40 ⁷	
94-75-7	2,4-D			70 ⁷	
75-99-0	Dalapon			200 ⁷	
103-23-1	Di(2-ethylhexyl)adipate			400 ⁷	
333-41-5	Diazinon	0.17	0.17		
84852-15-3	Nonylphenol (Isomer mixture) ^{14 13}	28	6.6		
*67708-83-2	Dibromochloropropane			0.2 ⁷	
156-59-2	Dichloroethylene (cis-1,2-)			70 ⁷	
88-85-7	Dinoseb			7 ⁷	
85-00-7	Diquat			20 ⁷	
145-73-3	Endothall			100 ⁷	
106-93-4	Ethylene dibromide (EDB)			0.05 ⁷	
107-83-6 <u>1071-83-6</u>	Glyphosate			700 ⁷	
72-43-5	Methoxychlor			40 ⁷	

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II ²	Class III ³
23135-22-0	Oxamyl (Vydate)			200 ⁷	
1918-02-1	Picloram			500 ⁷	
122-34-9	Simazine			4 ⁷	
100-42-5	Styrene			100 ⁷	
1330-20-7	Xylenes			10,000 ⁷	
7782-41-4	Fluoride			4,000 ⁷	
14797-65-0	Nitrite			1,000 ⁷	
12587-47-2	Beta/photon emitters			4 mrem/yr ⁷	
7440-61-1	Uranium			30 ⁷	
15541-45-4	Bromate			10 ⁷	
<u>14998-27-7</u>	Chlorite			1,000 ⁷	
	Halocetic acids ^{75 14}			60 ⁷	

CAS No. Chemical Abstracts Service Registry Number

- 1 Except for the aquatic life values for metals, the values given in this appendix refer to the total (dissolved plus suspended) amount of each substance. For the aquatic life values for metals, the values refer to the total recoverable method for ambient metals analyses.
- 2 Based on two routes of exposure - ingestion of contaminated aquatic organisms and drinking water.
- 3 Based on one route of exposure - ingestion of contaminated aquatic organisms only.
- 4 Substance classified as a carcinogen, with the value based on an incremental risk of one additional instance of cancer in one million persons.
- 5 Chemicals which are not individually classified as carcinogens but which are contained within a class of chemicals, with carcinogenicity as the basis for the criteria derivation for that class of chemicals; an individual carcinogenicity assessment for these chemicals is pending.
- 6 Hardness dependent criteria. Value given is an example only and is based on a CaCO₃ hardness of 100 mg/l. Criteria for each case must be calculated using the following formula:

CMC = $\exp (ma [\ln (\text{hardness})] + ba)$ For the Criterion Maximum Concentration (CMC):

	ma	ba
Cadmium	1.0166 CMC = $e^{\frac{(1.0166 \ln (\text{hardness}) - 3.9240)}{(\text{hardness})}}$	-3.924
Copper Chromium (III)	0.9422 CMC = $e^{\frac{(0.8190 \ln (\text{hardness}) + 3.7256)}{(\text{hardness})}}$	-1.700
Chromium (III) Copper	0.8190 CMC = $e^{\frac{(0.9422 \ln (\text{hardness}) - 1.7000)}{(\text{hardness})}}$	3.7256
Lead	1.273 CMC = $e^{\frac{(1.2730 \ln (\text{hardness}) - 1.4600)}{(\text{hardness})}}$	-1.460
Nickel	0.8460 CMC = $e^{\frac{(0.8460 \ln (\text{hardness}) + 2.2550)}{(\text{hardness})}}$	2.255
Silver	1.72 CMC = $e^{\frac{(1.7200 \ln (\text{hardness}) - 6.5900)}{(\text{hardness})}}$	-6.59
Zinc	0.8473 CMC = $e^{\frac{(0.8473 \ln (\text{hardness}) + 0.8840)}{(\text{hardness})}}$	0.884

CMC = Criterion Continuous Concentration (acute exposure value)
 The threshold value at or below which there should be no unacceptable effects to freshwater aquatic organisms and their uses if the one-hour concentration does not exceed that CMC value more than once every three years on the average.

~~CCC =~~ $\exp(mc [\ln(\text{hardness})] + bc)$ For the Criterion Continuous Concentration (CCC):

	mc	bc
Cadmium	0.7409 $CMC = \frac{e^{(0.7409 \ln(\text{hardness}) - 4.7190)}}{(\text{hardness})}$	-4.719
Copper Chromium (III)	0.8545 $CMC = \frac{e^{(0.8190 \ln(\text{hardness}) + 0.6848)}}{(\text{hardness})}$	-1.702
Chromium Copper	0.8190 $CMC = \frac{e^{(0.8545 \ln(\text{hardness}) - 1.7020)}}{(\text{hardness})}$	0.6848
Lead	1.273 $CMC = \frac{e^{(1.2730 \ln(\text{hardness}) - 4.7050)}}{(\text{hardness})}$	-4.705
Nickel	0.8460 $CMC = \frac{e^{(0.8460 \ln(\text{hardness}) + 0.0584)}}{(\text{hardness})}$	0.0584
Silver	--- <u>No CCC criterion for silver</u> ---	---
Zinc	0.8473 $CMC = \frac{e^{(0.8473 \ln(\text{hardness}) + 0.8840)}}{(\text{hardness})}$	0.884

CCC = Criterion Continuous Concentration (chronic exposure value)
 The threshold value at or below which there should be no unacceptable effects to freshwater aquatic organisms and their uses if the four-day concentration does not exceed that CCC value more than once every three years on the average.

7 Safe Drinking Water Act (MCL).

8 ~~Note 8 intentionally omitted.~~

9 9 Freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH. Values displayed in the table correspond to a pH of 7.8 and are calculated as follows:

$$CMC = \exp [1.005 (\text{pH}) - 4.869] \quad CCC = \exp [1.005 (\text{pH}) - 5.134]$$

10 9 This criterion applies to total arsenic.

11 10 This criterion applies to total PCBs (i.e., the sum of all congener or all isomer or homolog or Arochlor analyses).

12 11 This criterion applies to the sum of alpha-endosulfan and beta-endosulfan.

13 12 This criterion applies to DDT and its metabolites (i.e., the total concentration of DDT and its metabolites should not exceed this value).

14 13 The nonylphenol criteria address CAS numbers 84852-15-3 and 25154-52-3.

15 14 The criterion is for a total measurement of 5 haloacetic acids, dichloroacetic acid, trichloroacetic acid, monochloroacetic acid, bromoacetic acid, and dibromoacetic acid.

16 15 Hardness values shall be no greater than 400 mg/l. For waters with hardness ~~levels~~ concentrations greater than 400 mg/l. The actual ambient hardness may be used where a site-specific water effect ratio has been determined consistent with the environmental protection agency's water effect ratio procedure.

33-16-02.1-10. Ground water classifications and standards.

1. Class I ground waters. Class I ground waters shall have a total dissolved solids concentration of less than 10,000 mg/l. Class I ground waters are not exempt under the North Dakota underground injection control program in section ~~33-25-01-08~~ 33-25-01-05.

2. Class II ground waters. Class II ground waters shall have a total dissolved solids concentration of 10,000 mg/l or greater. Class II ground waters are exempt under the North Dakota underground injection control program in section ~~33-25-04-08~~ 33-25-01-05.

History: Effective June 1, 2001; amended effective April 1, 2014.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-02.1-11. Discharge of wastes. On-surface discharges. The following are general requirements for all waste discharges or chemical additions:

1. No untreated domestic sewage shall be discharged into the waters of the state.
2. No untreated industrial wastes or other wastes which contain substances or organisms which may endanger public health or degrade the water quality of water usage shall be discharged into the waters of the state.
3. The department must be notified at least twenty days prior to the application of any herbicide or pesticide to surface waters of the state for control of aquatic pests. Only certified applicators are allowed to apply chemicals. The notification must include the following information:
 - a. Chemical name and composition.
 - b. Map which identifies the area of application and aerial extent (e.g., acres or square feet).
 - c. A list of target species of aquatic biota the applicant desires to control.
 - d. The calculated concentration of the active ingredient in surface waters immediately after application.
 - e. Name, address, and telephone number of the certified applicator.
4. Any spill or discharge of waste which causes or is likely to cause pollution of waters of the state must be reported immediately. The owner, operator, or person responsible for a spill or discharge must notify the department as soon as possible (701-328-5210) or the North Dakota hazardous materials emergency assistance and spill reporting number (1-800-472-2121) and provide all relevant information about the spill. Depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:
 - a. Take immediate remedial measures;

- b. Determine the extent of pollution to waters of the state;
- c. Provide alternate water sources to water users impacted by the spill or accidental discharge; or
- d. Any other actions necessary to comply with this chapter.

History: Effective June 1, 2001; amended effective October 1, 2006; July 1, 2010.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 23-33, 61-28

APPENDIX I

STREAM CLASSIFICATIONS

The following intrastate and interstate streams are classified as the class of water quality which is to be maintained in the specified stream or segments noted. There are a number of minor or intermittently flowing watercourses, unnamed creeks, or draws, etc., which are not listed. All tributaries not specifically mentioned are classified as Class III streams.

<u>RIVER BASINS, SUBBASINS, AND TRIBUTARIES</u>	<u>CLASSIFICATION</u>
Missouri River, including Lake Sakakawea and Oahe Reservoir	I
Yellowstone	I
Little Muddy Creek near Williston	II
White Earth River	II
Little Missouri River	II
Knife River	II
Spring Creek	IA
Square Butte Creek below Nelson Lake	IA
Heart River	IA
Green River	IA
Antelope Creek	II
Muddy Creek	II
Apple Creek	II
Cannonball River	II
Cedar Creek	II
Beaver Creek near Linton	II
Grand River	IA
Spring Creek	II
Souris River	IA

RIVER BASINS, SUBBASINS, AND TRIBUTARIES

CLASSIFICATION

Des Lacs River	II
Willow Creek	II
Deep River	III
Mauvais Coulee	I
James River	IA
Pipestem	IA
Cottonwood Creek	II
Beaver Creek	II
Elm River	II
Maple River	II
Bois de Sioux	I
Red River	I
Wild Rice River	II
Antelope Creek	III
Sheyenne River (except as noted below)	IA
Baldhill Creek	II
Maple River	II
Rush River	III
Elm River	II
Goose River	IA
Turtle River	II
Forest River	II
North Branch	III
Park River	II
North Branch	III

RIVER BASINS, SUBBASINS, AND TRIBUTARIES

CLASSIFICATION

South Branch

II

Middle Branch

III

Cart Creek

III

Pembina River

IA

Tongue River

II

The Sheyenne River from its headwaters to 0.1 mile downstream from Baldhill Dam is not classified for municipal or domestic use.

APPENDIX II

LAKE AND RESERVOIR CLASSIFICATION

Lakes and reservoirs are classified according to the water characteristics which are to be maintained in the specified lakes and reservoirs. The beneficial water uses and parameter limitations designated for Class I streams shall apply to all classified lakes and reservoirs. For lakes not listed, the following default classification applies: Class 4.

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Adams	Mirror Lake	3
Adams	N. Lemmon Lake	1
Barnes	Lake Ashtabula	3
Barnes	Moon Lake	2
Barnes	Clausen Springs	3
Benson	Wood Lake	2
Benson	Graves	3
Benson	Reeves	3
Bottineau	Lake Metigoshe	2
Bottineau	Long Lake	2
Bottineau	Pelican Lake	3
Bottineau	Carbury Dam	2
Bottineau	Cassidy Lake	4
Bottineau	Strawberry Lake	2
Bowman	Bowman-Haley Dam	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Bowman	Gascoyne Lake	3
Bowman	Kalina Dam	3
Bowman	Lutz Dam	2
Bowman	Spring Lake	3
Burke	Powers Lake	3
Burke	Short Creek Dam	2
Burke	Smishek Dam	2
Burke	Northgate Dam	2
Burleigh	McDowell Dam	3
Burleigh	Mitchell Lake	3
Burleigh	New Johns Lake	2
Cass	Casselton Reservoir	3
Cass	Brewer Lake	2
Cavalier	Mt. Carmel Dam	2
Dickey	Moore's Lake	3
Dickey	Pheasant Lake	3
Dickey	Wilson Dam	3
Divide	Baukol-Noonan Dam	2
Divide	Baukol-Noonan East Mine Pond	2

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Divide	Skjermo Dam	2
Dunn	Lake Ilo	3
Eddy	Battle Lake	3
Eddy	Warsing Dam	3
Emmons	Braddock Dam	3
Emmons	Nieuwsma Dam	2
Emmons	Rice Lake	3
Foster	Juanita Lake	3
<u>Golden Valley</u>	<u>South Buffalo Gap Dam</u>	<u>4</u>
Golden Valley	Camel Hump Dam	1
Golden Valley	Odland Dam	3
Grand Forks	Fordville Dam	2
Grand Forks	Kolding Dam	3
Grand Forks	Larimore Dam	2
Grant	Heart Butte Dam (Lake Tschida)	2
Grant	Niagara Dam	3
Grant	Raleigh Reservoir	2
Grant	Sheep Creek Dam	2
Griggs	Carlson-Tande Dam	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Griggs	Red Willow Lake	2
Hettinger	Blickensderfer Dam	2
Hettinger	Castle Rock Dam	4
Hettinger	Indian Creek	2
Hettinger	Larson Lake	3
Hettinger	Mott Watershed Dam	3
Kidder	Alkaline Lake	2
Kidder	Cherry Lake	3
Kidder	Crystal Springs	3
Kidder	Fretum <u>Fretum</u> Lake	2
Kidder	George Lake	5
Kidder	Horsehead Lake	2
Kidder	Lake Isabel	3
Kidder	Lake Josephine	2
Kidder	Lake Williams	3
Kidder	Round Lake	2
LaMoure	Heinrich-Martin Dam	3
LaMoure	Kalmbach Lake	3
LaMoure	Kulm-Edgeley Dam	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
LaMoure	Lake LaMoure	3
LaMoure	Lehr Dam	3
LaMoure	Limesand-Seefeldt Dam	3
LaMoure	Schlecht-Thom Dam	3
LaMoure	Schlecht-Weix Dam	3
Logan	Beaver Lake	3
Logan	Mundt Lake	3
Logan	Rudolph Lake	3
McHenry	Cottonwood Lake	3
McHenry	George Lake	3
McHenry	Round Lake	3
McHenry	Buffalo Lodge Lake	3
McIntosh	Blumhardt Dam	2
McIntosh	Clear Lake	3
McIntosh	Coldwater Lake	3
McIntosh	Dry Lake	2
McIntosh	Green Lake	2
McIntosh	Lake Hoskins	3
McKenzie	Arnegard Dam	4
McKenzie	Leland Dam	2

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
McKenzie	Sather Dam	2
McLean	Brush Lake	3
McLean	Crooked Lake	3
McLean	Custer Mine Pond	2
McLean	East Park Lake	2
McLean	Lake Audubon	2
McLean	Lake Brekken	2
McLean	Lake Holmes	2
McLean	Lightning Lake	1
McLean	Long Lake	4
McLean	Riverdale Spillway Lake	1
McLean	Strawberry Lake	3
McLean	West Park Lake	2
Mercer	Harmony Lake	3
Morton	Crown Butte Dam	3
Morton	Danzig Dam	3
Morton	Fish Creek Dam	1
<u>Morton</u>	<u>Harmon Lake</u>	<u>3</u>
Morton	Nygren Dam	2

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Morton	Sweetbriar Dam	2
Mountrail	Clearwater Lake	3
Mountrail	Stanley City Pond	3
Mountrail	Stanley Reservoir	3
Mountrail	White Earth Dam	2
Nelson	McVile Dam	2
Nelson	Tolna Dam	2
Nelson	Whitman Dam	2
Oliver	East Arroda Lake	2
Oliver	Nelson Lake	3
Oliver	West Arroda Lake	2
Pembina	Renwick Dam	3
Pierce	Balta Dam	3
Pierce	Buffalo Lake	3
Ramsey	Cavanaugh Lake	3
Ramsey	Devils Lake	2
Ransom	Dead Colt Creek Dam	3
Renville	Lake Darling	2
Richland	Lake Elsie	3
Richland	Mooreton Pond	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Rolette	Belcourt Lake	2
Rolette	Carpenter Lake	2
Rolette	Dion Lake	2
Rolette	Gordon Lake	2
Rolette	Gravel Lake	2
Rolette	Hooker Lake	2
Rolette	Island Lake	3
Rolette	Jensen Lake	3
Rolette	School Section Lake	2
Rolette	Upsilon Lake	2
Rolette	Shutte Lake	2
Sargent	Alkali Lake	3
Sargent	Buffalo Lake	3
Sargent	Lake Tewaukon	3
Sargent	Silver Lake	3
Sargent	Sprague Lake	3
Sheridan	Hecker Lake	2
Sheridan	South McClusky Lake (Hoffer Lake)	2
Sioux	Froelich Dam	2

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Slope	Cedar Lake	3
Slope	Davis Dam	2
Slope	Stewart Lake	3
Stark	Belfield Pond	1
Stark	Dickinson Dike	1
Stark	Patterson Lake	3
Steele	North Golden Lake	3
Steele	North Tobiason Lake	3
Steele	South Golden Lake	3
Stutsman	Arrowwood Lake	4
Stutsman	Bader Lake	3
Stutsman	Barnes Lake	3
Stutsman	Clark Lake	3
Stutsman	Crystal Springs	3
Stutsman	Hehn-Schaffer Lake	3
Stutsman	Jamestown Reservoir	3
Stutsman	Jim Lake	4
Stutsman	Spiritwood Lake	3
Stutsman	Pipestem Reservoir	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Towner	Armourdale Dam	2
Towner	Bisbee Dam	2
Walsh	Bylin Dam	3
Walsh	Homme Dam	3
Walsh	Matejcek Dam	3
Ward	Hiddenwood Lake	3
Ward	Makoti Lake	4
Ward	North-Carlson Lake	3
Ward	Rice Lake	3
Ward	Velva Sportsmans Pond	1
Wells	Harvey Dam	3
Wells	Lake Hiawatha (Sykeston Dam)	4
Williams	Blacktail Dam	3
Williams	Cottonwood Lake	3
Williams	East Spring Lake Pond	3
Williams	Epping-Springbrook Dam	3
Williams	Iverson Dam	2
Williams	Kettle Lake	2
Williams	Kota-Ray Dam	1

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Williams	McCleod (Ray) Reservoir	3
Williams	McGregor Dam	1
Williams	Tioga Dam	3
Williams	Trenton Lake	2
Williams	West Spring Lake Pond	3
	Lake Oahe	1
	Lake Sakakawea	1

APPENDIX III

MIXING ZONE AND DILUTION POLICY AND IMPLEMENTATION PROCEDURE

PURPOSE

This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

MIXING ZONES

Where dilution is available and the discharge does not mix at a near instantaneous and complete rate with the receiving water (incomplete mixing), an appropriate mixing zone may be designated. In addition, a mixing zone may only be designated if it is not possible to achieve chemical-specific standards and whole effluent toxicity objectives at the end-of-pipe with no allowance for dilution. The size and shape of a mixing zone will be determined on a case-by-case basis. At a maximum, mixing zones for streams and rivers shall not exceed one-half the cross-sectional area or a length 10 times the stream width at critical low flows, whichever is more limiting. Also, at a maximum, mixing zones in lakes shall not exceed 5 percent of lake surface area or 200 feet in radius, whichever is more limiting. Individual mixing zones may be limited or denied in consideration of designated beneficial uses or presence of the following concerns in the area affected by the discharge:

- 1) There is the potential for bioaccumulation in fish tissues or wildlife.
- 2) The area is biologically important, such as fish spawning/nursery areas.
- 3) The pollutant of concern exhibits a low acute to chronic ratio.
- 4) There is a potential for human exposure to pollutants resulting from drinking water use or recreational activities.
- 5) The effluent and resultant mixing zone results in an attraction of aquatic life to the effluent plume.
- 6) The pollutant of concern is extremely toxic and persistent in the environment.
- 7) The mixing zone would prohibit a zone of passage for migrating fish or other species (including access to tributaries).
- 8) There are cumulative effects of multiple discharges and their mixing zones.

Within the mixing zone designated for a particular pollutant, certain numeric water quality criteria for that substance may not apply. However, all mixing zones shall

meet the general conditions set forth in Section 33-16-02-08 of the State Water Quality Standards.

While exceedences of acute chemical specific numeric standards are not allowed within the entire mixing zone, a portion of the mixing zone (the zone of initial dilution or ZID) may exceed acute chemical-specific numeric standards established for the protection of aquatic life. The ZID shall be determined on a case-by-case basis where the statement of basis for the discharge permit includes a rationale for concluding that a zone of initial dilution poses no unacceptable risks to aquatic life. Acute whole effluent toxicity (WET) limits shall be achieved at the end-of-pipe with no allowance for a ZID.

DILUTION ALLOWANCES

An appropriate dilution allowance may be provided in calculating chemical-specific acute and chronic and WET discharge limitations where: 1) the discharge is to a river or stream, 2) dilution is available at low-flow conditions, and 3) available information is sufficient to reasonably conclude that there is near instantaneous and complete mixing of the discharge with the receiving water (complete mixing). The basis for concluding that such near instantaneous and complete mixing is occurring shall be documented in the statement of basis for the NDPDES permit. In the case of field studies, the dilution allowance for continuous dischargers shall be based on the critical low flow (or some portion of the critical low flow). The requirements and environmental concerns identified in the paragraphs above may be considered in deciding the portion of the critical low flow to provide as dilution. The following critical low flows shall be used for streams and effluents:

Stream Flows

Aquatic life, chronic	4-day, 3-year flow (biologically based*)**
Aquatic life, acute	1-day, 3-year flow (biologically based)
Human health (carcinogens)	harmonic mean flow
Human health (non-carcinogens)	4-day, 3-year flow (biologically based) or 1-day, 3-year flow (biologically based)

Effluent Flows

Aquatic life, chronic	Mean daily flow
Aquatic life, acute	Maximum daily flow
Human health (all)	Mean daily flow

* Biologically based refers to the biologically based design flow method developed by EPA. It differs from the hydrologically based design flow method in that it directly uses the averaging periods and frequencies specified in the aquatic life water quality criteria for individual pollutants and whole effluents for determining design flows.

** A 30-day, 10-year flow (biologically based) can be used for ammonia or other chronic standard with a 30-day averaging period.

For chemical-specific and chronic WET limits, an appropriate dilution allowance may also be provided for certain minor publicly owned treatment works (POTWs) where allowing such dilution will pose insignificant environmental risks. For acute WET limits, an allowance for dilution is authorized only where dilution is available and mixing is complete.

For controlled discharges, such as lagoon facilities that discharge during high ambient flows, the stream flow to be used in the mixing zone analysis should be the lowest statistical flow expected to occur during the period of discharge.

Where a discharger has installed a diffuser in the receiving water, all or a portion of the critical low stream flow may be provided as a dilution allowance. The determination shall depend on the diffuser design and on the requirements and potential environmental concerns identified in the above paragraphs. Where a diffuser is installed across the entire river/stream width (at critical low flow), it will generally be presumed that near instantaneous and complete mixing is achieved and that providing the entire critical low flow as dilution is appropriate.

OTHER CONSIDERATIONS

Where dilution flow is not available at critical conditions (i.e., the water body is dry), the discharge limits will be based on achieving applicable water quality criteria (i.e., narrative and numeric, chronic and acute) at the end-of-pipe; neither a mixing zone or an allowance for dilution will be provided.

All mixing zone dilution assumptions are subject to review and revision as information on the nature and impacts of the discharge becomes available (e.g., chemical or biological monitoring at the mixing zone boundary). At a minimum, mixing zone and dilution decisions are subject to review and revision, along with all other aspects of the discharge permit upon expiration of the permit.

For certain pollutants (e.g., ammonia, dissolved oxygen, metals) that may exhibit increased toxicity or other effects on water quality after dilution and complete mixing is achieved, the waste load allocation shall address such effects on water quality, as necessary, to fully protect designated and existing uses. In other words, the point of compliance may be something other than the mixing zone boundary or the point where complete mixing is achieved.

The discharge will be consistent with the Antidegradation Procedure.

IMPLEMENTATION PROCEDURE

This procedure describes how dilution and mixing of point source discharges with receiving waters will be addressed in developing discharge limitations for point source discharges. For the purposes of this procedure, a mixing zone is defined as a designated area or volume of water surrounding or downstream of a point

source discharge where the discharge is progressively diluted by the receiving water and numerical water quality criteria may not apply. Based on site-specific considerations, such a mixing zone may be designated in the context of an individual permit decision. Discharges may also be provided an allowance for dilution where it is determined that the discharge mixes with the receiving water in near instantaneous and complete fashion. Such mixing zones and allowances for dilution will be granted on a parameter-by-parameter and criterion-by-criterion basis as necessary to fully protect existing and designated uses.

The procedure to be followed is composed of six individual elements or steps. The relationship of the six steps and an overview of the mixing zone/dilution procedure is shown in Figure 1.

Step 1 - No Dilution Available During Critical Conditions

Where dilution flow is not available at critical low flow conditions, discharge limitations will be based on achieving applicable narrative and numeric water quality criteria at the end-of-pipe.

Step 2 - Dilution Categorically Prohibited for Wetland Discharges

Permit limitations for discharges to a wetland shall be based on achieving all applicable water quality criteria (i.e., narrative and numeric, chronic and acute) at end-of-pipe.

Step 3 - Procedure for Certain Minor POTWs

Minor POTWs that discharge to a lake or to a river/stream at a dilution greater than 50:1 qualify for this procedure. Minor POTWs with dilution ratios less than 50:1 may also qualify (at the discretion of the permit writer) where it can be adequately demonstrated that this procedure poses insignificant environmental risks. For the purposes of this procedure, the river/stream dilution ratio is defined as the chronic low flow of the segment upstream of the POTW discharge divided by the mean daily flow of the POTW. For controlled discharges from lagoon facilities (discharging during high flows), the river/stream dilution ratio is defined as the lowest upstream flow expected during the period of discharge divided by the mean daily flow of the discharge.

For minor POTWs that qualify for this procedure and discharge to lakes, the allowance for dilution for chemical-specific and chronic WET limits will be determined on a case-by-case basis. Dilution up to 19:1 (5 percent effluent) may be provided.

For minor POTWs that qualify for this procedure and discharge to a river/stream segment, dilution up to the full chronic aquatic life, acute aquatic life, and human health critical flows may be provided.

Step 4 - Site-Specific Risk Considerations

Where allowing a mixing zone or a dilution allowance would pose unacceptable environmental risks, the discharge limitations will be based on achieving applicable narrative and numeric water quality criteria at the end-of-pipe. The existence of environmental risks may also be the basis for a site-specific mixing zone or dilution allowance. Such risk determinations will be made on a case-by-case and parameter-by-parameter basis. These decisions will take into account the designated and existing uses and all relevant site-specific environmental concerns, including the following:

1. Bioaccumulation in fish tissues or wildlife
2. Biologically important areas such as fish spawning areas
3. Low acute to chronic ratio
4. Potential human exposure to pollutants resulting from drinking water or recreational areas
5. Attraction of aquatic life to the effluent plume
6. Toxicity/persistence of the substance discharged
7. Zone of passage for migrating fish or other species (including access to tributaries)
8. Cumulative effects of multiple discharges and mixing zones

Step 5 - Complete Mix Procedures

For point source discharges to rivers/streams where available data are adequate to support a conclusion that there is near instantaneous and complete mixing of the discharge with the receiving water (complete mix) the full critical low flow or a portion thereof may be provided as dilution for chemical-specific and WET limitations. Such determinations of complete mixing will be made on a case-by-case basis using best professional judgement. Presence of an effluent diffuser that covers the entire river/stream width at critical low flow will generally be assumed to provide complete mixing. Also, where the mean daily flow of the discharge exceeds the chronic low stream flow of the receiving water, complete mixing will generally be assumed. In addition, where the mean daily flow of the discharge is less than or equal to the chronic low flow of the receiving water, it will generally be assumed that complete mixing does not occur unless otherwise demonstrated by the permittee. Demonstrations for complete mixing should be consistent with the study plan developed in cooperation with the states/tribes and EPA Region VIII. Near instantaneous and complete mixing is defined as no more than a 10 percent difference in bank-to-bank concentrations within a longitudinal distance not greater than two river/stream widths. For controlled discharges (lagoon facilities), the test of near instantaneous and complete mixing will be made using the expected rate of effluent discharge and the lowest upstream flow expected to occur during the period of discharge.

The following critical low flows shall be applied for streams and effluents:

Stream Flows

Aquatic life, chronic	4-day, 3-year flow (biologically based*)**
Aquatic life, acute	1-day, 3-year flow (biologically based)
Human health (carcinogens)	Harmonic mean flow
Human health (non-carcinogens)	4-day, 3-year flow (biologically based) or 1-day, 3-year flow (biologically based)

Effluent Flows

Aquatic life, chronic	Mean daily flow
Aquatic life, acute	Maximum daily flow
Human health (all)	Mean daily flow

* Biologically based refers to the biologically based design flow method developed by EPA. It differs from the hydrologically based design flow method in that it directly uses the averaging periods and frequencies specified in the aquatic life water quality criteria for individual pollutants and whole effluents for determining design flows.

** A 30-day, 10-year flow (biologically based) can be used for ammonia or other chronic standard with a 30-day averaging period.

Where complete mixing can be concluded and the environmental concerns identified in step 4 do not justify denying dilution, but are nevertheless significant, some portion of the critical low flows identified above may be provided as dilution. Such decisions will take site-specific environmental concerns into account as necessary to ensure adequate protection of designated and existing uses.

Step 6 - Incomplete Mix Procedures

This step addresses point source discharges that exhibit incomplete mixing. Because acute WET limits are achieved at the end-of-pipe in incomplete mix situations, this step provides mixing zone procedures for chronic aquatic life, human health, and WET limits, and ZID procedures for acute chemical-specific limits. Where a ZID is allowed for chemical limits, the size of the ZID shall be limited as follows:

- Lakes: The ZID volume shall not exceed 10 percent of the volume of the chronic mixing zone.
- Rivers and Streams: The ZID shall not exceed 10 percent of the chronic mixing zone volume or flow, nor shall the ZID exceed a maximum downstream length of 100 feet, whichever is more restrictive.

The following provides guidelines for determining the amount of dilution available for dischargers that exhibit incomplete mixing.

Default Method

This method addresses situations where information needed for modeling is not available or there are concerns about potential environmental impacts of allowing a mixing zone. The default method provides a conservative dilution allowance.

Stream/River Dischargers: Dilution calculation which uses up to 10 percent of the critical low flow for chronic aquatic life limits or human health limits. However, this allowance may be adjusted downward on a case-by-case basis depending upon relevant site-specific information, designed and existing uses of the segment, and especially the uses of the segment portion affected by the discharge.

Lake/Reservoir Dischargers: Dilution up to 4:1 ratio (20 percent effluent) may be provided for chronic aquatic life analyses or human health analyses. However, this allowance may be adjusted downward on a case-by-case basis depending upon discharge flow, lake size, lake flushing potential, designated and existing uses of the lake, and uses of the lake portion affected by the discharge.

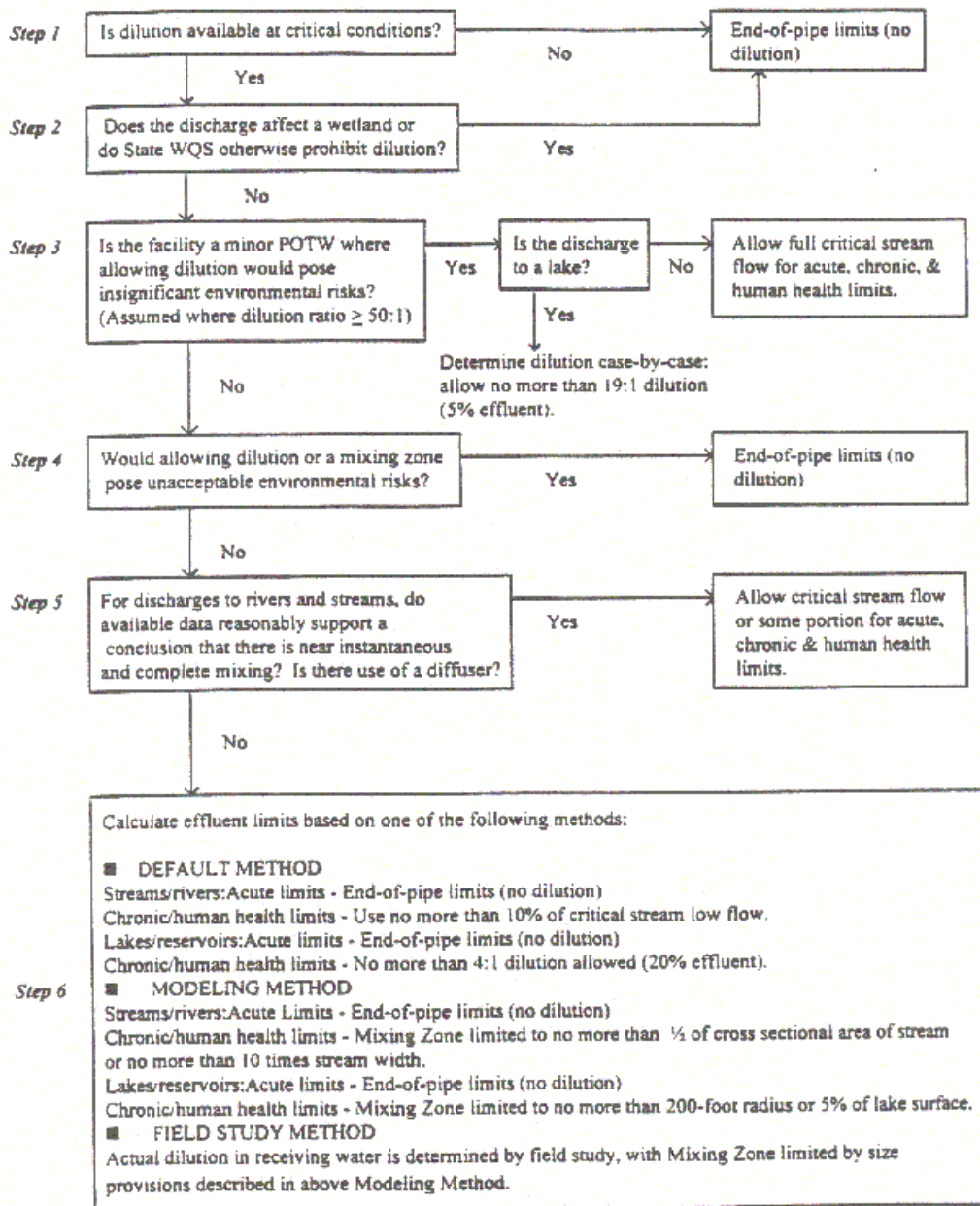
Modeling Method

An appropriate mixing zone model is used to calculate the dilution flow that will allow mixing zone limits to be achieved at the critical low flow. Prior to initiating modeling studies, it should be determined that compliance with criteria at the end-of-pipe is not practicable.

Field Study Method

Field studies which document the actual mixing characteristics in the receiving water are used to determine the dilution flow that will allow mixing zone size limits to be achieved at the critical low flow. For the purposes of field studies, "near instantaneous and complete mixing" is operationally defined as no more than a 10 percent difference in bank-to-bank concentrations within a longitudinal distance not greater than two stream/river widths.

FIGURE 1
NORTH DAKOTA MODEL MIXING ZONE/DILUTION PROCEDURE*



* This procedure is applied to both chemical-specific and WET limits. In the case of complex discharges, the dilution or mixing zone may vary parameter-by-parameter.

APPENDIX IV

NORTH DAKOTA ANTIDegradation PROCEDURE

I. INTRODUCTION

This antidegradation implementation procedure delineates the process that will be followed by the North Dakota State Department of Health for implementing the antidegradation policy found in the Standards of Water Quality for the State of North Dakota, Rule 33-16-02.

Under this implementation procedure, all waters of the state are afforded one of three different levels of antidegradation protection. All existing uses, and the water quality necessary for those uses, shall be maintained and protected. Antidegradation requirements are necessary whenever a regulated activity is proposed that may have some effect on water quality. Regulated actions include permits issued under Section 402 (NDPDES) and 404 (Dredge and Fill) of the Clean Water Act (CWA), and any other activity requiring Section 401 water quality certification. Nonpoint sources of pollution are not included. When reviewing 404 nationwide permits, the department will issue 401 certifications only where it determines that the conditions imposed by such permits are expected to result in attainment of the applicable water quality standards, including the antidegradation requirements. However, it is anticipated that the department will exclude certain nationwide permits from the antidegradation procedures for Category 1 waters on the basis that the category of activities covered by the permit is not expected to have significant permanent effects on the quality and beneficial uses of those waters, or the effects will be appropriately minimized and temporary.

II. EXISTING USE PROTECTION FOR CATEGORY 1, 2, AND 3 WATERS

Existing use means a use that was actually attained in the water body on or after 1967, whether or not it is included in the water quality standards. This procedure presumes that attainment of the criteria assigned to protect the current water body classification will serve to maintain and protect all existing uses. However, where an existing use has water quality requirements that are clearly defined, but are not addressed by the current classification and criteria, the department will ensure that such existing uses are protected fully, based on implementation of appropriate numeric or narrative water quality criteria or criteria guidance. In some cases, water quality may have improved in the segment since the classification was assigned, resulting in attainment of a higher use. In other cases, the classification may have been assigned based on inadequate information, resulting in a classification that does not describe or adequately protect actual uses of the segment. In such cases, the department will develop

requirements necessary to protect the existing uses and, where appropriate, recommend reclassification of the segment.

III. ANTIDegradation REVIEW PROCEDURE

The department will complete an antidegradation review for all proposed regulated activities. The findings of these reviews will be summarized using an antidegradation worksheet. A statement of basis for all conclusions will be attached to the completed worksheet. The level of detail of the review will depend upon the antidegradation protection applicable to the various classes of water.

In conducting an antidegradation review, the Division of Water Quality will sequentially apply the following steps:

- A. Determine which level of antidegradation applies.
- B. Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.
- C. Review existing water quality data and other information submitted by the project applicant.
- D. Determine if additional information or assessment is necessary to make a decision.
- E. A preliminary decision is made by the department and subsequently distributed for public participation and intergovernmental coordination.
 - The content of public notices will be determined case by case. In preparing a public notice, the department may address: a) the department's preliminary antidegradation review conclusions; b) a request for public input on particular aspects of the antidegradation review that might be improved based on public input (e.g., existing uses of a segment that needs to be protected); c) notice of the availability of the antidegradation review worksheet; d) notice of the availability of general information regarding the state antidegradation program; and e) a reference to the state antidegradation policy.
 - The antidegradation review findings will be available for public comment; however, publication of a separate notice for purposes of antidegradation is not necessary. For example, the antidegradation preliminary findings may be included in the public notice issued for purposes of an NDPDES permit or CWA § 401 certification.

The department will ensure appropriate intergovernmental coordination on all antidegradation reviews. At a minimum, the department will provide copies of the completed antidegradation review worksheet and/or the public notice to appropriate local, state, and federal government agencies, along with a written request to provide comments by the public comment deadline.

- F. Comments are considered.
- G. The department determines if the change in quality is necessary to accommodate important economic or social development.
- H. The department makes a final decision.

The level of antidegradation protection afforded each water body in the state is consistent with beneficial uses of those water bodies. Appendix I and Appendix II of the Standards of Water Quality for the State of North Dakota identify rivers, streams, and lakes in the state with their classification. The classification shall be consistent with the following categories:

Category 1: Very high level of protection that automatically applies to Class I and Class IA streams and Class I, II, and III lakes, and wetlands that are functioning at their optimal level. In addition, Category 1 is presumed to apply to Class II and Class III streams. Particular Class II and Class III streams may be excluded from Category 1 if, at the time of the antidegradation review, it is determined that one or both of the following criteria are applicable: 1) there is no remaining assimilative capacity for any of the parameters that may potentially be affected by the proposed regulated activity in the segment in question, or 2) an evaluation submitted by the project applicant demonstrates (based on adequate and representative chemical, physical, and biological data) that aquatic life and primary contact recreation uses are not currently being attained because of stressors that will require a long-term effort to remedy. Evaluations in response to Criterion #2 must include more than an identification of current water quality levels. They must include evidence of the current status of the aquatic life and primary contact recreation uses of the segment.

Category 2: Class IV and Class V lakes and particular wetlands after antidegradation review. In addition, Class II and Class III streams or wetlands meeting one of the criteria identified above at the time of the antidegradation review shall be included in Category 2.

Category 3: Highest level of protection; Outstanding State Resource Waters.

Procedures for Category 1 Waters

Regulated activities that result in a new or expanded source of pollutants to this category of water are subject to the review process, unless the source would have no significant permanent effect on the quality and beneficial uses of those waters, or if the effects will be appropriately minimized and temporary.

- Proposed activities that would lower the ambient quality in a water body of any parameter by more than 15 percent, reduce the available assimilative capacity by more than 15 percent, or increase permitted pollutant loadings to a water body by more than 15 percent will be deemed to have significant effects.
- The department will identify and eliminate from further review those proposed activities that will have no significant effect on water quality or beneficial uses. Category 1 reviews will be conducted where significant effects are projected for one or more water quality parameters. Findings of significant effects may be based on the following factors: a) percent change in ambient concentrations predicted at the appropriate conditions; b) percent change in loadings for the individual discharge or to the segment from all discharges; c) reduction in available assimilative capacity; d) nature, persistence, and potential effects of the parameter; e) potential for cumulative effects; f) predicted impacts to aquatic biota; and g) degree of confidence in any modeling techniques utilized.
- The applicant may be required to provide available monitoring data or other information about the affected water body and/or proposed activity to help determine the significance of the proposed degradation for specific parameters. The information includes recent ambient chemical, physical, or biological monitoring data sufficient to characterize, during the appropriate conditions, the spatial and temporal variability of existing background quality of the segment for the parameters that would be affected by the proposed activity. The information would also describe the water quality that would result if the proposed activity were authorized.

The project applicant is required to provide an evaluation of the water quality effects of the project. This evaluation may consist of the following components:

1. Pollution prevention measures.
2. Reduction in scale of the project.
3. Water recycle or reuse.
4. Process changes.

5. Alternative treatment technology.
6. Advanced treatment technology.
7. Seasonal or controlled discharge options to avoid critical water quality periods.
8. Improved operation and maintenance of existing facilities.
9. Alternative discharge locations.

The primary emphasis of the Category 1 reviews will be to determine whether reasonable nondegrading or less-degrading alternatives to the proposed degradation are available. The department will first evaluate any alternatives analysis submitted by the applicant for adherence to the minimum requirements described below. If an acceptable analysis of alternatives was completed and submitted to the department as part of the initial project proposal, no further evaluation of alternatives will be required of the applicant. If an acceptable alternatives analysis has not been completed, the department will work with the project applicant to ensure that an acceptable alternatives analysis is developed.

Once the department has determined that feasible alternatives to allowing the degradation have been adequately evaluated, the department shall make a preliminary determination regarding whether reasonable nondegrading or less-degrading alternatives are available. This determination will be based primarily on the alternatives analysis developed by the project applicant, but may be supplemented with other information or data. As a rule-of-thumb, nondegrading or less-degrading pollution control alternatives with costs that are similar to the costs of the applicant's favored alternative shall be considered reasonable. If the department determines that reasonable alternatives to allowing the degradation do not exist, the department shall continue with the antidegradation review and document the basis for the preliminary determination.

If the department makes a preliminary determination that one or more reasonable alternatives exist, the department will work with the applicant to revise the project design. If a mutually acceptable resolution cannot be reached, the department will document the alternative analysis findings and provide public notice of a preliminary decision to deny the activity.

Although it is recognized that any activity resulting in a discharge to surface waters may have positive and negative aspects, the applicant must show that any discharge or increased discharge will be of economic or social importance in the area. Where there are existing regulated sources located in the area, the department will assure that those sources are complying with applicable requirements prior to authorizing the proposed regulated activity. New sources of a particular parameter will not be allowed where there are existing unresolved compliance problems (involving the same

parameter) in the zone of influence of the proposed activity. The "zone of influence" is determined as appropriate for the parameter of concern, the characteristics of the receiving water body (e.g., lake versus river, etc.), and other relevant factors. Where available, a Total Maximum Daily Load analysis or other watershed-scale plan will be the basis for identifying the appropriate zone of influence. The department may conclude that such compliance has not been achieved where existing sources are violating their NPDES permit limits. However, the existence of a compliance schedule in the NPDES permit may be taken into consideration in such cases. Required controls on existing regulated sources need not be finally achieved prior to authorizing a proposed activity provided there is reasonable assurance of future compliance.

Procedures for Category 2 Waters

Regulated activities that result in a permanent or temporary, new or expanded source of pollution to this category of water are permitted if the following conditions are met:

1. The classified uses of the water would be maintained.
2. The assimilative capacity of the water is available for the parameters that would be affected by the regulated activity, and existing uses would be protected as discussed in Section II.

A decision will be made on a case-by-case basis, using available data and best professional judgment. The applicant may be required to provide additional information necessary for the department to characterize or otherwise predict changes to the physical, chemical, and/or biological condition of the water.

Procedures for Category 3 Waters

Outstanding State Resource Waters - Eligibility. Outstanding state resource waters may be designated Category 3 waters only after they have been determined to have exceptional value for present or prospective future use for public water supplies, propagation of fish or aquatic life, wildlife, recreational purposes, or agricultural, industrial, or other legitimate beneficial uses. The factors that may be considered in determining whether a water body is eligible for inclusion in Category 3 include the following: a) location, b) previous special designations, c) existing water quality, d) physical characteristics, e) ecological value, and f) recreational value.

Nomination. Any person may nominate any waters of the state for designation as outstanding state resource waters. The nomination must be made in writing to the department, must describe its specific location and present uses, and must state the reasons why the resource has exceptional value for present or prospective future beneficial use.

Review Process. The department with cooperation of the State Water Commission shall review any nomination to determine whether the nominated waters of the state are eligible, clearly defined, and identify beneficial uses of exceptional value for present or prospective future use. The State Department of Health with cooperation of the State Water Commission shall provide as a part of its assessment: 1) a verification of the uses, properties, and attributes that define the proposed "exceptional" value; 2) an evaluation of the current and historical condition of the water with respect to the proposed value using the best data available; and 3) an estimate of likely regulatory measures needed to achieve the desired level of protection. If the identified waters of the state are eligible, clearly defined, and appear to identify beneficial uses of exceptional value for present or prospective future use, the Water Pollution Control Board, the department, and the State Water Commission will solicit public comment and/or hold a public hearing regarding the nomination. The Water Pollution Control Board will review the application record and the public comments, and make a recommendation to the department. After reviewing the board's recommendation, the department jointly with the State Water Commission will make a decision on whether to designate the defined water body as an Outstanding State Water Resource. If both the department and the State Water Commission agree that the defined water body should be designated as an Outstanding State Water Resource, the department shall submit the recommendation to the State Health Council as part of the water quality standard revision process. The designation, if made, may be reviewed on a periodic basis.

Implementation Process. Effects on Category 3 waters resulting from regulated activity will be determined by appropriate evaluation and assessment techniques and best professional judgment. Any proposed regulated activity that would result in a new or expanded source of pollutants to a segment located in or upstream of a Category 3 segment will be allowed only if there are appropriate restrictions to maintain and protect existing water quality. Reductions in water quality may be allowed only if they are temporary and negligible. Factors that may be considered in judging whether the quality of a Category 3 water would be affected include: a) percent change in ambient concentrations predicted at the appropriate critical conditions; b) percent change in loadings; c) percent reduction in available assimilative capacity; d) nature, persistence, and potential effects of the parameter; e) potential for cumulative effects; and f) degree of confidence in any modeling techniques utilized.

TITLE 37
DEPARTMENT OF TRANSPORTATION

APRIL 2014

CHAPTER 37-09-01

37-09-01-02. Damage disclosure statement - Contents. The damage disclosure statement must contain the name and address of the transferor, a statement as to whether the motor vehicle has sustained damage during the time period the transferor owned the vehicle, and the name and address of the transferee. The damage disclosure statement must be completed, signed, and certified by the transferor.

History: Effective April 1, 1992; amended effective April 1, 2014.

General Authority: NDCC 24-02-01.2, 39-02-03

Law Implemented: NDCC 39-05-17.2

CHAPTER 37-12-04

37-12-04-01. Procedure. If a North Dakota resident owns a vehicle for which the resident is unable to obtain a proper certificate of title, the motor vehicle division will use the following forms and procedures to determine ownership of a vehicle and issue a certificate of title:

1. A check of the records of the motor vehicle division, as well as the records of other appropriate states, will be conducted to determine if a certificate of title has previously been issued.
2. If no record of a previous certificate of title is found, the motor vehicle division will issue a North Dakota certificate of title to the applicant upon receipt of:
 - a. A notarized bill of sale.
 - b. A vehicle statement of ownership from the applicant (form SFN 2903).
 - c. An inspection of the vehicle by ~~the North Dakota highway patrol~~ a business that is registered with the secretary of state, is in good standing, and offers vehicle repair to the public. The business completing the certificate of inspection may not be the business that reconstructed the vehicle and must state the vehicle is in compliance with the requirements of North Dakota Century Code chapter 39-21 (form SFN 2486).
 - d. Appropriate title fee, license fees, and motor vehicle excise tax.
3. When there is no record of a previous title, the motor vehicle division will check the national crime information center computer to determine that the vehicle is not listed as a stolen vehicle.
4. If a record of a previous certificate of title is found, the motor vehicle division will advise the applicant of the name and address of the last owner of the vehicle but will take no further action to issue a certificate of title. The applicant must obtain the certificate of title from the last owner or obtain an order of the court awarding ownership to the applicant.

History: Effective July 1, 2008; amended effective April 1, 2014.

General Authority: NDCC 39-05-20(1)

Law Implemented: NDCC 39-05-20(1)

CHAPTER 37-12-05

37-12-05-01. Procedure. A ~~highway patrol officer~~ business that is registered with the secretary of state, is in good standing, and offers motor vehicle repair to the public, when inspecting a salvage vehicle under the provisions of North Dakota Century Code section 39-05-20.2, must inspect the following equipment to determine it is in compliance with the provisions of North Dakota Century Code chapter 39-21 and North Dakota Administrative Code article 52-04: headlights, turn signals, windshield, mirrors, horn, brakes, exhaust system, taillights, stoplights, license plate lights, clearance lights and reflectors, bumper heights, tires, fenders, steering wheel, steering and suspension, hood latches, door latches, floor pan, and fuel system. In addition to inspecting the listed equipment, a ~~highway patrol officer~~ business qualified to perform inspections may require an additional statement from the rebuilder of the salvage vehicle prior to the completion of the certificate of inspection. The additional signed statement, as a part of form SFN 2486, shall require the rebuilder to certify the following:

1. The frame of the salvage vehicle was not in need of repair or has been repaired in such a manner that the repairs will not detract from the overall performance of the vehicle and the frame is now in a condition that would be comparable to the frame of a similar vehicle which had not been damaged in an accident.
2. The wheel alignment is within the tolerances allowed for vehicles of the same make, year model, and style. ~~Highway patrol officers~~ A business qualified to perform inspections may require this additional certification when they determine the salvage vehicle may have suffered damage to frame, chassis, or wheel alignment as a result of an accident.

History: Effective July 1, 2008; amended effective April 1, 2014.

General Authority: NDCC 28-32-02, 39-02-03

Law Implemented: NDCC 39-05-20.2

CHAPTER 37-12-06
MOTOR VEHICLE BRANCH OFFICES

Section

37-12-06-01

Motor Vehicle Branch Office Fees

37-12-06-01. Motor vehicle branch office fees. Maximum fees for motor vehicle branch office transactions are listed below.

<u>Motor Vehicle Transaction</u>	<u>Maximum Fee</u>
<u>Motor vehicle/New title*</u>	<u>\$10.00</u>
<u>Motor vehicle/Title transfer*</u>	<u>10.00</u>
<u>Motor vehicle/Duplicate title</u>	<u>8.00</u>
<u>Motor vehicle/Registration</u>	<u>10.00</u>
<u>Motor vehicle/Duplicate registration</u>	<u>8.00</u>
<u>Motor vehicle/New registration*</u>	<u>5.00</u>
<u>Motor vehicle/Registration change</u>	<u>10.00</u>
<u>Motor vehicle/Renewal</u>	<u>5.00</u>
<u>Motor vehicle/Title correction</u>	<u>10.00</u>
<u>Other/New mobility-impaired</u>	<u>10.00</u>
<u>Other/Duplicate mobility-impaired</u>	<u>10.00</u>
<u>Other/Renewal mobility-impaired</u>	<u>10.00</u>
<u>Other/New personal inventory</u>	<u>10.00</u>
<u>Other/Duplicate personal inventory</u>	<u>8.00</u>
<u>Other/Renewal personal inventory</u>	<u>7.00</u>
<u>Other/Standard permit</u>	<u>10.00</u>
<u>Motor vehicle/New title branch admin</u>	<u>2.00</u>
<u>Motor vehicle/Title transfer branch admin</u>	<u>2.00</u>
<u>Motor vehicle/Duplicate title branch admin</u>	<u>2.00</u>
<u>Motor vehicle/Title correction branch admin</u>	<u>2.00</u>

*The maximum fee for combined new title and registration and for combined title transfer and registration is \$12.00.

Each fee to be charged by the motor vehicle branch office must be set forth in an agreement between the branch office and the director. The director must approve the fees for each branch office.

History: Effective April 1, 2014.

General Authority: NDCC 39-02-03

Law Implemented: NDCC 39-02-03

TITLE 43
INDUSTRIAL COMMISSION

APRIL 2014

**CHAPTER 43-02-03
OIL AND GAS CONSERVATION**

Section	
43-02-03-01	Definitions
43-02-03-02	Scope of Chapter
43-02-03-03	Promulgation of Rules, Regulations, or Orders [Repealed]
43-02-03-04	Emergency Rule, Regulation, or Order [Repealed]
43-02-03-05	Enforcement of Laws, Rules, and Regulations Dealing With Conservation of Oil and Gas
43-02-03-06	Waste Prohibited
43-02-03-07	United States Government Leases
43-02-03-08	Classifying and Defining Pools [Repealed]
43-02-03-09	Forms Upon Request
43-02-03-10	Authority to Cooperate With Other Agencies
43-02-03-11	Organization Reports
43-02-03-12	Reservoir Surveys
43-02-03-13	Record of Wells
43-02-03-14	Access to Records
43-02-03-14.1	Verification of Certified Welders [Repealed]
43-02-03-14.2	Oil and Gas Metering Systems
43-02-03-15	Bond and Transfer of Wells
43-02-03-16	Application for Permit to Drill and Recomplete
43-02-03-16.1	Designation and Responsibilities of Operator
43-02-03-16.2	Revocation and Limitation of Drilling Permits
43-02-03-16.3	Recovery of a Risk Penalty
43-02-03-17	Sign on Well <u>or Facility</u>
43-02-03-18	Drilling Units - Well Locations
43-02-03-18.1	Exception Location
43-02-03-19	Site Construction
43-02-03-19.1	Fencing, Screening, and Netting of Drilling and Reserve Pits
43-02-03-19.2	Disposal of Waste Material
43-02-03-19.3	Earthen Pits and Open Receptacles
43-02-03-19.4	Drilling Pits
43-02-03-19.5	Reserved Pit for Drilling Mud and Drill Cuttings From Shallow Wells

43-02-03-20	Sealing Off Strata
43-02-03-21	Casing, Tubing, and Cementing Requirements
43-02-03-22	Defective Casing or Cementing
43-02-03-23	Blowout Prevention
43-02-03-24	Pulling String of Casing
43-02-03-25	Deviation Tests and Directional Surveys
43-02-03-26	Multiple Zone Completions
43-02-03-27	Perforating, Fracturing, and Chemically Treating Wells
43-02-03-27.1	Hydraulic Fracture Stimulation
43-02-03-28	Safety Regulation
43-02-03-29	Well and Lease Equipment
43-02-03-30	Notification of Fires, Leaks, Spills, or Blowouts
43-02-03-30.1	Leak and Spill Cleanup
43-02-03-31	Well Log, Completion, and Workover Reports
43-02-03-32	Stratigraphic Test or Core Holes
43-02-03-33	Notice of Intention to Plug Well
43-02-03-34	Method of Plugging
43-02-03-34.1	Reclamation of Surface
43-02-03-35	Conversion of Mineral Wells to Freshwater Wells
43-02-03-36	Liability
43-02-03-37	Slush Pits [Repealed]
43-02-03-38	Preservation of Cores and Samples [Repealed]
43-02-03-38.1	Preservation of Cores and Samples
43-02-03-39	Limiting Gas-Oil Ratio
43-02-03-39.1	Oil Production Limitation
43-02-03-40	Gas-Oil Ratio Test
43-02-03-41	Subsurface Pressure Tests
43-02-03-42	Commingling of Oil From Pools
43-02-03-43	Control of Multiply Completed Wells [Repealed]
43-02-03-44	Metered Casinghead Gas
43-02-03-45	Vented Casinghead Gas
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43-02-03-47	Produced Water
43-02-03-48	Measurement of Oil
43-02-03-48.1	Central Production Facility - Commingling of Production
43-02-03-49	Oil Production Equipment, Dikes, and Seals
43-02-03-50	Tank Cleaning Permit
43-02-03-51	Treating Plant
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43-02-03-57	Determination of Gas Well Potential
43-02-03-58	Method and Time of Shut-In Pressure Tests [Repealed]
43-02-03-59	Production From Gas Wells to Be Measured and Reported
43-02-03-60	Natural Gas Utilization [Repealed]
43-02-03-60.1	Valuation of Flared Gas
43-02-03-60.2	Flaring Exemption
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43-02-03-61	Storage Gas
43-02-03-62	Carbon Dioxide, Coal Bed Methane, Helium, and Nitrogen
43-02-03-63	Regulation of Pools
43-02-03-64	Rate of Producing Wells
43-02-03-65	Authorization for Production, Purchase, and Transportation
43-02-03-66	Application for Allowable on New Oil Wells
43-02-03-67	Oil Proration
43-02-03-68	Gas-Oil Ratio Limitation
43-02-03-69	Allocation of Gas Production
43-02-03-70	Gas Proration Period
43-02-03-71	Adjustment of Gas Allowables
43-02-03-72	Gas Proration Units
43-02-03-73	Permit for Injection of Gas, Air, or Water [Repealed]
43-02-03-74	Casing and Cementing of Injection Wells [Repealed]
43-02-03-75	Notice of Commencement and Discontinuance of Injection Operations [Repealed]
43-02-03-76	Records [Repealed]
43-02-03-77	Application for Unitized Management Under Commission Order
43-02-03-78	Illegal Sale Prohibited [Repealed]
43-02-03-79	Purchase of Liquids From Gas Wells
43-02-03-80	Reports of Purchasers and Transporters of Crude Oil
43-02-03-81	Authorization to Transport Oil From a Well, <u>Treating Plant</u> , or Central Production Facility
43-02-03-81.1	Reports of Purchases for Resale and Transporting of Dry Gas
43-02-03-82	Refinery Reports
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43-02-03-84	Additional Information May Be Required
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43-02-03-86	Public Hearing Required [Repealed]
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43-02-03-88	Application for Hearing
43-02-03-88.1	Special Procedures for Increased Density Wells, Pooling, Flaring Exemption, Underground Injection, Commingling, Converting Mineral Wells to Freshwater Wells, and Central Tank Battery or Central Production Facilities Applications
43-02-03-88.2	Hearing Participants by Telephone
43-02-03-89	Upon Application Hearing Is Set [Repealed]
43-02-03-90	Hearings - Complaint Proceedings - Emergency Proceedings - Other Proceedings
43-02-03-90.1	Investigatory Hearings
43-02-03-90.2	Official Record

43-02-03-90.3	Petitions for Review of Recommended Order and Oral Arguments Prohibited
43-02-03-90.4	Notice of Order by Mail
43-02-03-90.5	Service and Filing
43-02-03-91	Rehearing [Repealed]
43-02-03-92	Burden of Proof [Repealed]
43-02-03-93	Designation of Examiners
43-02-03-94	Matters to Be Heard by Examiner [Repealed]
43-02-03-95	Powers and Duties of Examiner
43-02-03-96	Matters Heard by Commission [Repealed]
43-02-03-97	Examiner Disinterested Umpire [Repealed]
43-02-03-98	Report of Examiner
43-02-03-99	Commission Order From Examiner Hearing
43-02-03-100	Hearing De Novo Before Commission [Repealed]
43-02-03-101	Prehearing Motion Practice

43-02-03-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.
2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units therein in accordance with proration schedules.
3. "Allowable production" means that number of barrels of oil or cubic feet of natural gas authorized to be produced from the respective proration units in an allocated pool.
4. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].
5. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.
6. "Bottom hole or subsurface pressure" means the pressure in pounds per square inch gauge under conditions existing at or near the producing horizon.
7. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.

8. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.
9. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.
10. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.
11. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.
12. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
13. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into tanks from the ultimate producing interval after casing has been run. A gas well shall be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole shall be considered complete when all provisions of plugging are complied with as set out in this chapter.
14. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
15. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].
16. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.
17. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of:

- a. Aiding in the lifting of fluids in the well; or
 - b. Stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.
18. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.
 19. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
 20. "Gas-oil ratio" means the ratio of the gas produced in cubic feet to a barrel of oil concurrently produced during any stated period.
 21. "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.
 22. "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.
 23. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.
 24. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.
 25. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.
 26. "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil-producing units within that particular pool.
 27. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs.
 28. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.

29. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
30. "Occupied dwelling" or "permanently occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.
31. "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.
32. "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.
33. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.
34. "Operator" is the principal on the bond covering a well and such person shall be responsible for drilling, completion, and operation of the well, including plugging and reclamation of the well site.
35. "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.
36. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.
37. "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.
38. "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.
39. "Proration month" means the calendar month which shall begin at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.
40. "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.

41. "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.
42. "Recomplete" means the subsequent completion of a well in a different pool.
43. "Reservoir" means pool or common source of supply.
44. "Saltwater handling facility" means and includes any container such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with the drilling or operation of wells.
45. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.
46. "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.
47. "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information in connection with the oil and gas industry with no intent to produce oil or gas from such well.
48. "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsalable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.
49. "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or ~~in any manner making~~ recycling tank bottoms or any other waste oils marketable, drilling mud, waste from drilling operations, produced water, and other wastes related to crude oil and natural gas exploration and production. This is not to be construed as to include saltwater handling and disposal operations which typically recover skim oil from their operations, treating mud or cuttings at a

well site during drilling operations, or treating flowback water during completion operations at a well site.

History: Amended effective January 1, 1983; May 1, 1992; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; January 1, 2008; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-11. Organization reports. Every person acting as principal or agent for another or independently engaged in the drilling of oil or gas wells, or in the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of crude oil or natural gas, engaged in the disposal of produced water, or engaged in treating plant operations in North Dakota shall immediately file with the director the name under which such business is being conducted or operated; and name and post-office address of such person, the business or businesses in which the person is engaged; the plan of organization, and in case of a corporation, the law under which it is chartered; and the names and post-office addresses of any person acting as trustee, together with the names and post-office addresses of any officials thereof on an organization report (form 2). In each case where such business is conducted under an assumed name, such organization report shall show the names and post-office addresses of all owners in addition to the other information required. A new organization report shall be filed when and if there is a change in any of the information contained in the original report.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-14. Access to records. The commission, director, and their representatives shall have access to all well records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, operation, or servicing oil and gas wells, injection wells, or treating plants shall permit the commission, director, and their representatives to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with state safety rules, and to inspect the records and operation of such wells, and to have access at all times to any and all records of wells. If requested, copies of such records must be filed with the commission. The confidentiality of any data submitted which is confidential pursuant to subsection 6 of North Dakota Century Code section 38-08-04 and section 43-02-03-31 must be maintained.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

1. **Bond requirements.** Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, or injection shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

2. **Bond amounts and limitations.** The bond shall be in the amount of fifty thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. Wells utilized for commercial disposal operations must be bonded in the amount of fifty thousand dollars. A blanket bond covering more than one well shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than six of the following in aggregate:
 - a. A well that is a dry hole and is not properly plugged;
 - b. A well that is plugged and the site is not properly reclaimed; and
 - c. A well that is abandoned pursuant to section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. **Unit bond requirements.** Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond. An

alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

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

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

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

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

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.
 - c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.
6. **Treating plant bond.** Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section ~~43-02-03-51~~ 43-02-03-51.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
7. **Bond termination.** The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.
8. **Director's authority.** The director is vested with the power to act for the commission as to all matters within this section, except requests

for alternative forms of security, which may only be approved by the commission.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2012; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16. Application for permit to drill and recomplete. Before any person shall begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall file an application for permit to drill (form 1) with the director, together with a permit fee of one hundred dollars. Verbal approval may be given for site preparation by the director in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is completed.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section. ~~The plat shall also include~~ the latitude and longitude of the proposed well location to the nearest tenth of a second, the ground elevation, confirmation that a legal street address has been requested for the well site, and well facility if separate from the well site, and the proposed road access to the nearest existing public road. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed mud program, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, the proposed pad layout, including cut and fill diagrams, and the proposed amount of cement to be used, including the estimated top of cement.

For wells permitted on new pads built after July 31, 2013, permit conditions imposed by the commission may include, upon request of the owner of a permanently occupied dwelling within one thousand feet of the proposed well, requiring the location of all flares, tanks, and treaters utilized in connection with the permitted well be located at a greater distance from the occupied dwelling than the oil and gas well head, if the location can be reasonably accommodated within the proposed pad location. If the facilities are proposed to be located farther from the dwelling than the well bore, the director can issue the permit without comment from the dwelling owner. The applicant shall give any such owners written notice of the proposed facilities personally or by certified mail, return receipt requested, and addressed to their last-known address listed with the county property tax department. The commission must receive written comments from such owner within five business days of the owner receiving said notice. An application for permit must include an affidavit from the applicant identifying each owner's name

and address, and the date written notice was given to each owner. The owner's notice must include:

1. A copy of North Dakota Century Code section 38-08-05.
2. The name, telephone number, and if available the electronic mail address of the applicant's local representative.
3. A sketch of the area indicating the location of the owner's dwelling, the proposed well, and location of the proposed flare, tanks, and treaters.
4. A statement indicating that any such owner objecting to the location of the flare, tanks, or treaters, must notify the commission within five business days of receiving the notice.

Prior to the commencement of recompletion operations or drilling horizontally in the existing pool, an application for permit shall be filed with the director. Included in such application shall be the notice of intention (form 4) to reenter a well by drilling horizontally, deepening, or plugging back to any source of supply other than the producing horizon in an existing well. Such notice shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the anticipated hydrogen sulfide content in produced gas from the proposed source of supply, the weight and grade of all casing currently installed in the well unless waived by the director, the casing program to be followed, and the original total depth with a permit fee of fifty dollars. The director may deny any application if it is determined, in accordance with the latest version of ANSI/NACE MR0175/ISO 15156, that the casing currently installed in the well would be subject to sulfide stress cracking.

The applicant shall provide all information, in addition to that specifically required by this section, if requested by the director. The director may impose such terms and conditions on the permits issued under this section as the director deems necessary.

The director shall deny an application for a permit under this section if the proposal would cause, or tend to cause, waste or violate correlative rights. The director of oil and gas shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled below surface casing. A permit to

recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; July 1, 2002; April 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 38-08-05

Law Implemented: NDCC 38-08-05

43-02-03-16.1. Designation and responsibilities of operator. The principal on the bond covering a well or a treating plant is the operator ~~of the well~~. The operator is responsible for compliance with all applicable laws ~~relating to the well and well site~~. A dispute over designation of the operator ~~of a well~~ may be addressed by the commission. In doing so, the factors the commission may consider include those set forth in subsection 1 of section 43-02-03-16.2.

History: Effective December 1, 1996; amended effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

1. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-08, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the risk and cost of drilling a well, including reentering a plugged and abandoned well, or the risk and cost of reentering an existing well to drill deeper or a horizontal lateral. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.
 - a. The invitation to participate in drilling must contain the following:
 - (1) The approximate surface location of the proposed or existing well ~~and its~~, proposed completion and total depth and, objective zone, and completion location if other than a vertical well.
 - (2) An itemization of the estimated costs of drilling and completion.
 - (3) The approximate date upon which the well was or will be spudded or reentered.

- (4) A statement indicating the invitation must be accepted within thirty days of receiving it.
 - (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
 - (6) Drilling or spacing unit description.
- b. An election to participate must be in writing and must be received by the owner giving the invitation within thirty days of the participating party's receipt of the invitation.
 - c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
 - d. An election to participate is only binding upon an owner electing to participate if the well is spudded or reentry operations are commenced on or before ninety days after the date the owner extending the invitation to participate sets as the date upon which a response to the invitation is to be received. It also expires if the permit to drill or reenter expires without having been exercised. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
2. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-09.4, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the unit expense. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.
 - a. The invitation to participate in the unit expense must contain the following:
 - (1) A description of the proposed unit expense, including the location, objectives, and plan of operation.
 - (2) An itemization of the estimated costs.
 - (3) The approximate date upon which the proposal was or will be commenced.

- (4) A statement indicating the invitation must be accepted within thirty days of receiving it.
 - (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
- b. An election to participate must be in writing and must be received by the owner giving the invitation within thirty days of the participating party's receipt of the invitation.
 - c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
 - d. An election to participate is only binding upon an owner electing to participate if the unit expense is commenced within ninety days after the date the owner extending the invitation request to participate sets as the date upon which a response to the request invitation is to be received. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
 - e. An invitation to participate in a unit expense covering monthly operating expenses shall be effective for all such monthly operating expenses for a period of five years if the unit expense identified in the invitation to participate is first commenced within ninety days after the date set in the invitation to participate as the date upon which a response to the invitation to participate must be received. An election to participate in a unit expense covering monthly operating expenses is effective for five years after operations are first commenced. If an election to participate in a unit expense comprised of monthly operating expenses expires or lapses after five years, a risk penalty may only be assessed and collected if the owner seeking the penalty once again complies with this section.
- 3. Upon its own motion or the request of a party, the commission may include in a pooling order requirements relating to the invitation and election to participate, in which case the pooling order will control to the extent it is inconsistent with this section.

History: Effective December 1, 1996; amended effective May 1, 2004; January 1, 2006; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 38-08-04

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

43-02-03-17. Sign on well or facility. Every well or facility associated with the production, transportation, purchasing, or processing of oil and gas except plugged wells shall be identified by a sign ~~posted on the derrick or not more than twenty feet [6.10 meters] from the well.~~ The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition ~~and shall be large enough to be legible under normal conditions at a distance of fifty feet [15.24 meters].~~ The wells on each lease or property shall be numbered in nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign must show the well name and number (which shall be different or distinctive for each well), the name of the operator, file number, and the location by quarter-quarter, section, township, and range. For all wells and associated facilities, the sign shall also include the legal street address, if available.

Existing well identification signs that are otherwise in accord with this section except that well locations are shown by quarter section rather than quarter-quarter section or show the permit number rather than the file number shall be allowed to remain.

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-19. Site construction. In the construction of a ~~drill~~ site, access road, and all associated facilities, the topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top eight inches [20.32 centimeters] of soil. Soil stabilization additives, liners, fabrics, and other materials to be used onsite, on access roads, or associated facilities, must have approval from be reported on a sundry notice (form 4) to the director before within thirty days after application. The reclamation plan for such materials shall also be included.

When necessary to prevent pollution of the land surface and freshwaters, the director may require the ~~drill~~ site to be sloped and diked.

Well sites and associated facilities shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. Sites and associated facilities shall be designed to divert surface drainage from entering the site.

Well sites and associated facilities or appropriate parts thereof shall be fenced if required by the director.

Within six months after the completion of a well, the portion of the well site not used for well operations shall be reclaimed, unless waived by the director. Well sites and all associated facilities shall be stabilized to prevent erosion.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1992; July 1, 2002; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-19.4. Drilling pits. A pit may be utilized to bury drill cuttings and solids generated during well drilling and completion operations, providing the pit can be constructed, used, and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. In special circumstances, the director may prohibit construction of a cuttings pit or may impose more stringent pit construction and reclamation requirements. Reserve and circulation of mud system through earthen pits are prohibited unless a waiver is granted by the director. All pits shall be inspected by an authorized representative of the director prior to lining and use. Under no circumstances shall pits be used for disposal, dumping, or storage of fluids, wastes, and debris other than drill cuttings and solids recovered while drilling and completing the well.

Drill cuttings and solids must be stabilized in a manner approved by the director prior to placement in a cuttings pit. Any liquid accumulating in the cuttings pit shall be promptly removed. The pit shall be diked in a manner to prevent surface water from running into the pit.

A small lined pit can be authorized by the director for temporary containment of incidental fluids such as trench water and rig wash, if emptied and covered prior to the rig leaving the site.

Pits shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. No pit shall be wholly or partially constructed in fill dirt unless approved by the director.

When required by the director, the drilling pit or appropriate parts thereof shall be fenced.

Within thirty days after the drilling of a well or expiration of a drilling permit, drilling pits shall be reclaimed. The director may grant an extension of the thirty-day time period to no more than one year for good reason. Prior to reclaiming the pit, the operator or the operator's agent shall ~~file a sundry notice (form 4) with~~ obtain verbal approval from the director ~~and obtain approval~~ of a pit reclamation plan. ~~Verbal approval to reclaim the pit may be given. The notice shall include:~~

A subsequent sundry notice (form 4) shall be filed detailing the pit reclamation and shall include:

1. The name and address of the reclamation contractor;

2. The name and address of the surface owner; and
- ~~3. The location and name of the disposal site for the pit water when applicable; and~~
4. ~~3.~~ A description of the ~~proposed~~ work completed, including details on treatment and disposition of the drilling waste.

Any water or oil accumulated on the pit must be removed prior to reclamation. Drilling waste shall be encapsulated in the pit and covered with at least four feet [1.22 meters] of backfill and topsoil and surface sloped, when practicable, to promote surface drainage away from the reclaimed pit area.

History: Effective April 1, 2012; amended effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-19.5. Reserve pit for drilling mud and drill cuttings from shallow wells. For wells drilled to a strata or formation, including lignite or coal strata or seam, located above the depth of five thousand feet [1524 meters] below the surface, or located more than five thousand feet [1524 meters] below the surface but above the top of the Rierdon formation, a container or reserve pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings may be utilized to contain solids and fluids used and generated during well drilling and completion operations, providing the pit can be constructed, used and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. A reserve pit may be allowed by an order of the commission after notice and hearing, provided the reserve pit can be constructed, used, and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. for (a) wells drilled within a specified field and pool more than five thousand feet [1524 meters] below the surface and below the top of the Rierdon formation provided the proposed well or wells utilized a low sodium content water-based mud system, ~~and the reserve pit can be constructed, used, and reclaimed in a manner that will prevent pollution of the land surface and freshwaters~~ or (b) for wells drilled and completed, outside an established field which has defined the pool to include the Bakken or Three Forks formation, when separate reserve pits will be utilized to segregate each mud system and associated drill cuttings and any oil skim accumulated on any reserve pit utilized for a water-based mud system will be removed immediately after completion of drilling operations so as not to cause any significant delay in the reclamation of the reserve pit. In special circumstances, based on site-specific conditions, the director or authorized representative may prohibit construction of a reserve pit or may impose more stringent pit construction and reclamation requirements, including reserve pits previously authorized by a commission order within a specified field and pool. Under no circumstances shall reserve pits be used for disposal, dumping, or storage of fluids, wastes, and debris other than drill cuttings and fluids used or recovered while drilling and completing the well.

Reserve pits shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. No reserve pit shall be wholly or partially constructed in fill dirt unless approved by the director.

Within a reasonable time, but not more than one year after the completion of a shallow well, or prior to drilling below the surface casing shoe on any other well, the reserve pit shall be reclaimed. Prior to reclaiming the pit, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a pit reclamation plan. Verbal approval to reclaim the pit may be given. The notice shall include:

1. The name and address of the reclamation contractor;
2. The name and address of the surface owner;
3. The location and name of the disposal site for the pit water; and
4. A description of the proposed work, including details on treatment and disposition of the drilling waste.

All pit water must be removed prior to reclamation. Drilling waste should be encapsulated in the pit and covered with at least four feet [1.22 meters] of backfill and topsoil and surface sloped, when practicable, to promote surface drainage away from the reclaimed pit area.

History: Effective April 1, 2012; amended effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-27.1. Hydraulic fracture stimulation.

1. For hydraulic fracture stimulation performed through a frac string run inside the intermediate casing string:
 - a. The frac string must be either stung into a liner or run with a packer set at a minimum depth of one hundred feet [30.48 meters] below the top of cement or one hundred feet [30.48 meters] below the top of the Inyan Kara formation, whichever is deeper.
 - b. The intermediate casing-frac string annulus must be pressurized and monitored during frac operations.
 - c. An adequately sized, function tested pressure relief valve must be utilized on the treating lines from the pumps to the wellhead, with suitable check valves to limit the volume of flowback fluid should the relief valve open. The relief valve must be set to limit line pressure to no more than eighty-five percent of the internal yield pressure of the frac string or no greater than the pressure test on

the intermediate casing, less one hundred pounds per square inch gauge, whichever is less.

- d. An adequately sized, function tested pressure relief valve and an adequate sized diversion line must be utilized to divert flow from the intermediate casing to a pit or containment vessel in case of frac string failure. The relief valve must be set to limit annular pressure to no more than eighty-five percent of the lowest internal yield pressure of the intermediate casing string.
 - e. The surface casing valve must be fully open and connected to a diversion line rigged to a pit or containment vessel.
 - f. An adequately sized, function tested remote operated frac valve must be utilized ~~between the treating line and the wellhead~~ at a location on the christmas tree that provides isolation of the well bore from the treating line and must be remotely operated from the edge of the location or other safe distance.
 - g. Within sixty days after the hydraulic fracture stimulation is performed, the owner, operator, or service company shall post on the fracfocus chemical disclosure registry all elements made viewable by the fracfocus website.
2. For hydraulic fracture stimulation performed through an intermediate casing string:
- a. The maximum treating pressure shall be no greater than eighty-five percent of the American petroleum institute rating of the intermediate casing.
 - b. Casing evaluation tools to verify adequate wall thickness of the intermediate casing shall be run from the wellhead to a depth as close as practicable to one hundred feet [30.48 meters] above the completion formation and a visual inspection with photographs shall be made of the top joint of the intermediate casing and the wellhead flange.

If the casing evaluation tool or visual inspection indicates wall thickness is below the American petroleum institute minimum or a lighter weight of intermediate casing than the well design called for, calculations must be made to determine the reduced pressure rating. If the reduced pressure rating is less than the anticipated treating pressure, a frac string shall be run inside the intermediate casing.
 - c. Cement evaluation tools to verify adequate cementing of the intermediate casing shall be run from the wellhead to a depth as

close as practicable to one hundred feet [30.48 meters] above the completion formation.

- (1) If the cement evaluation tool indicates defective casing or cementing, a frac string shall be run inside the intermediate casing.
 - (2) If the cement evaluation tool indicates the top of the cement behind the intermediate casing is below the top of the Mowry formation, a frac string shall be run inside the intermediate casing.
 - d. The intermediate casing and wellhead must be pressure tested to a minimum depth of one hundred feet [30.48 meters] below the top of the Tyler formation for at least thirty minutes with less than five percent loss to a pressure equal to or in excess of the maximum frac design pressure.
 - e. If the pressure rating of the wellhead does not exceed the maximum frac design pressure, a wellhead and blowout preventer protection system must be utilized during the frac.
 - f. An adequately sized, function tested pressure relief valve must be utilized on the treating lines from the pumps to the wellhead, with suitable check valves to limit the volume of flowback fluid should be the relief valve open. The relief valve must be set to limit line pressure to no greater than the test pressure of the intermediate casing, less one hundred pounds per square inch [689.48 kilopascals].
 - g. The surface casing valve must be fully open and connected to a diversion line rigged to a pit or containment vessel.
 - h. An adequately sized, function tested remote operated frac valve must be utilized between the treating line and the wellhead.
 - i. Within sixty days after the hydraulic fracture stimulation is performed, the owner, operator, or service company shall post on the fracfocus chemical disclosure registry all elements made viewable by the fracfocus website.
3. If during the stimulation, the pressure in the intermediate casing-surface casing annulus exceeds three hundred fifty pounds per square inch [2413 kilopascals] gauge, the owner or operator shall verbally notify

the director as soon as practicable but no later than twenty-four hours following the incident.

History: Effective April 1, 2012; amended effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler, ~~portable~~ electric ~~lighting~~ generator, or treater shall be placed nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank. Placement as close as one hundred twenty-five feet [38.10 meters] may be allowed if a spark or flame arrestor is utilized on the equipment. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production equipment to eliminate a fire hazard.

The director may require remote operated or automatic shutdown equipment to be installed on, or shut in for no more than forty days, any well that is likely to cause a serious threat of pollution or injury to the public health or safety.

No well shall be drilled nor production or injection equipment installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

The operator of any well approved after March 31, 2014, shall submit the legal street address of the well site, and well facility if separate from the well site, to the commission on a sundry notice (form 4) immediately upon receiving the legal street address.

Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment. The operator conducting any well simulation shall give prior written notice, up to seven days and not less than three business days, to any operator of a well completed in the same pool, if publicly available information indicates or if the operator is made aware, if the completion intervals are within one thousand three hundred twenty feet of one another.

History: Amended effective January 1, 1983; May 1, 1990; September 1, 2000; January 1, 2006; January 1, 2008; April 1, 2012; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

All newly constructed underground gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids. All such pipelines installed in a trench must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, the possibility of damage to the pipe, and tracer wire shall be buried with any nonconductive pipes installed. When a trench for an oil and gas underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material.

1. The operator of any underground gathering pipeline placed into service on August 1, 2011, to June 30, 2013, shall file with the director, by January 1, 2015, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline. The operator of any underground gathering pipeline placed into service after June 30, 2013, shall file with the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Ersi) shape file format showing the location of the pipeline centerline. An affidavit of completion shall accompany each layer containing the following information:
 - a. A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.
 - b. The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
 - c. The anticipated operating pressure of the pipeline.
 - d. The type of fluid that will be transported in the pipeline and direction of flow.
 - e. Pressure to which the pipeline was tested prior to placing into service.

- f. The minimum pipeline depth of burial.
 - g. In-service date.
 - h. Leak detection and monitoring methods that will be utilized after in-service date.
 - i. Pipeline name.
 - j. Accuracy of the geographical information system layer.
2. When an oil and gas underground gathering pipeline or any part of such pipeline is abandoned, the operator shall leave such pipeline in a safe condition by conducting the following:
- a. Disconnect and physically isolate the pipeline from any operating facility or other pipeline.
 - b. Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.
 - c. Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.
 - d. Remove cathodic protection from the pipeline.
 - e. Permanently plug or cap all open ends by mechanical means or welded means.
3. Within one hundred eighty days of completing the abandonment of an underground gathering pipeline the operator of the pipeline shall file with the director a geographical information system layer utilization North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Ersi) shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:
- a. A statement that the pipeline was abandoned in compliance with section 43-02-03-29.
 - b. The type of fluid used to purge the pipeline.

The requirement to submit a geographical information system layer is not to be construed to be required on buried piping utilized to connect flares, tanks, treaters.

or other equipment located entirely within the boundary of a well site or production facility.

History: Amended effective January 1, 1983; January 1, 2006; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-30. Notification of fires, leaks, spills, or blowouts. All persons controlling or operating any well, pipeline, receiving tank, storage tank, or production facility into which oil, gas, or water is produced, received, stored, processed, or through which oil, gas, or water is injected, piped, or transported, shall verbally notify the director immediately and follow up utilizing the online initial notification report within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. The initial report must include the name of the reporting party, including telephone number and address, date and time of the incident, location of the incident, type and cause of the incident, estimated volume of release, containment status, waterways involved, immediate potential threat, and action taken. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time also notify the surface owners upon whose land the incident occurred or traveled. Notification requirements prescribed by this section shall not apply to any leak, spill, or release of fluid that is less than one barrel total volume and remains onsite of a facility. The ~~verbal~~ initial notification must be followed by a written report within ten days after cleanup of the incident, unless deemed unnecessary by the director. Such report must include the following information: the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, cause of the accident, and action taken to prevent reoccurrence, and if applicable, any additional information pursuant to subdivision e of subsection 1 of North Dakota Century Code section 37-17.1-07.1. The signature, title, and telephone number of the company representative must be included on such report. The persons, as named above, responsible for proper notification shall within a reasonable time also provide a copy of the written report to the surface owners upon whose land the incident occurred or traveled.

The commission, however, may impose more stringent spill reporting requirements if warranted by proximity to sensitive areas, past spill performance, or careless operating practices as determined by the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 2008; April 1, 2010; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-34. Method of plugging. All wells shall be plugged in a manner which will confine permanently all oil, gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be

approved by the director. All casing strings shall be cut off at least three feet [91.44 centimeters] below the final surface contour, and a cap shall be welded thereon. Core or stratigraphic test holes drilled to or below sands containing freshwater shall be plugged in accordance with the applicable provisions recited above. After plugging, the site must be reclaimed pursuant to section ~~43-02-03-19~~ 43-02-03-34.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; July 1, 2002; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-34.1. Reclamation of surface.

1. Within a reasonable time, but not more than one year, after a well is plugged, or if a permit expires, has been canceled or revoked, or a treating plant is decommissioned, the ~~well~~ site, access road, and other associated facilities constructed ~~for the well~~ shall be reclaimed as closely as practicable to original condition. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a reclamation plan. The operator or operator's agent shall provide a copy of the proposed reclamation plan to the surface owner at least ten days prior to commencing the work unless waived by the surface owner. Verbal approval to reclaim the site may be given. The notice shall include:
 - a. The name and address of the reclamation contractor;
 - b. The name and address of the surface owner and the date when a copy of the proposed reclamation plan was provided to the surface owner;
 - c. A description of the proposed work, including topsoil redistribution and reclamation plans for the access road and other associated facilities; and
 - d. Reseeding plans, if applicable.

The commission will mail a copy of the approved notice to the surface owner.

All equipment, waste, and debris shall be removed from the site. Flow lines shall be purged in a manner approved by the director. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

2. Gravel or other surfacing material shall be removed, stabilized soil shall be remediated, and the well site, access road, and other

associated facilities constructed for the well shall be reshaped as near as practicable to original contour.

3. The stockpiled topsoil shall be evenly distributed over the disturbed area and, where applicable, the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
4. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.
5. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged and shall record documentation of the waiver with the recorder of the county in which the site or road is located.

History: Effective April 1, 2012; amended effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

The operator of any well drilled for oil or gas in North Dakota, during the drilling of or immediately following the completion of any well, shall inform the ~~state geologist or the geologist's representative~~ director of all intervals that are to be cored, or have been cored. ~~At~~ Unless specifically exempted by the director, all cores taken shall be preserved and, placed in a standard core box and the entire core forwarded to the state ~~geologist~~ geologist core and sample library, free of cost, within ~~ninety one hundred eighty~~ days after completion of drilling operations, ~~unless specifically exempted by the state geologist.~~ The director may grant an extension of the one hundred eighty-day time period for good reason. If an exemption is granted, the operator shall advise the state geologist of the final disposition of the core.

This section does not prohibit the operator from taking such samples of the core as the operator may desire for identification and testing. The operator shall furnish the state geologist with the results of all identification and testing procedures within thirty days of the completion of such work. The state geologist may grant an extension of the thirty-day time period for good reason.

The size of the standard envelopes, sample boxes, and core boxes shall be determined by the director and indicated in the cores and samples letter.

History: Effective October 1, 1990; amended effective January 1, 2006; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-48. Measurement of oil. Oil production may not be transported from a well premises or central production facility until its volume has been determined through the use of properly calibrated meter measurements or tank measurements. All meter and tank measurements, and volume determinations must conform to American petroleum institute standards and be corrected to a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51. Treating plant. ~~Before construction of a treating plant and upon~~ No treating plant may be constructed without obtaining a permit from the commission after notice and hearing. A written application for a treating plant permit ~~stating~~ shall state in detail the location, type, capacity of the plant contemplated, method of processing proposed, and the plan of operation for all plant waste, ~~the commission shall set such application for hearing to determine whether the proposed plant and method of processing will actually and efficiently process, treat, and reclaim tank bottom emulsion and other waste oils, and whether there is need for such a plant. The operator of any portable treating plant shall notify the director as to all changes in location of said plant. No treating plant shall operate except by order of the commission. The disposition of all products and waste must be reported monthly on form 5p. Upon approval of a treating plant and before construction begins, the permittee shall file with the commission a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond amount shall be specified in the commission order authorizing the treating plant and shall be based upon the location, type, and capacity of the plant, processing method, and plan of operation for all plant waste approved in the commission order and shall be payable to the industrial commission of North Dakota. In no case shall the bond amount be set lower than fifty thousand dollars.~~ The commission shall give the county auditor notice at least fifteen days prior to the hearing of any application in which a request for a treating plant is received.

History: Amended effective January 1, 1983; May 1, 1990; May 1, 1992; September 1, 2000; April 1, 2012; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51.1. Treating plant permit requirements.

1. The treating plant permit application shall be submitted on form 1tp and shall include at least the following information:
 - a. The name and address of the operator.
 - b. An accurate plat certified by a registered surveyor showing the location of the proposed treating plant and the center of the site with reference to true north and the nearest lines of a governmental section. The plat shall also include the latitude and longitude of the center of the proposed treating plant location to the nearest tenth of a second, the ground elevation, and the legal street address. The plat shall also depict the outside perimeter of the treating plant and verification that the site is at least five hundred feet from an occupied dwelling.
 - c. A schematic drawing of the proposed treating plant site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes, the location of all flowlines, and the location of the topsoil stockpile. It shall also include the proposed road access to the nearest existing public road and the authority to build such access.
 - d. Cut and fill diagrams.
 - e. An affidavit of mailing identifying each owner of any permanently occupied dwelling within one-quarter mile of the proposed treating plant and certifying that such owner has been notified of the proposed treating plant.
 - f. Appropriate geological data on the surface geology.
 - g. Schematic drawings of the proposed diking and containment, including all areas underlain by a synthetic liner.
 - h. Monitoring plans and leak detection for all buried or partially buried structures.
 - i. The capacity and operational capacity of the treating plant.
2. Permits may contain such terms and conditions as the commission deems necessary.
3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit, any directive of the commission, or any applicable rule or statute. Any permit issued under this section may be suspended by the director for cause.

4. Permits are transferable only with approval of the commission.
5. Permits may be modified by the commission.
6. A permit shall automatically expire one year after the date it was issued, unless dirtwork operations have commenced to construct the site.
7. If the treating plant is abandoned and reclaimed, the permit shall expire and be of no further force and effect.

History: Effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51.2. Treating plant siting. All treating plants shall be sited in such a fashion that they are not located in a geologically or hydrologically sensitive area.

History: Effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51.3. Treating plant construction and operation requirements.

1. Before construction of a treating plant begins, the operator shall file with the commission a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond amount shall be specified in the commission order authorizing the treating plant and shall be based upon the location, type, and capacity of the plant, processing method, and plan of operation for all plant waste approved in the commission order and shall be payable to the industrial commission. In no case shall the bond amount be set lower than fifty thousand dollars.
2. Treating plant sites and associated facilities or appropriate parts thereof shall be fenced if required by the director. All fences installed within or around any facility must be constructed in a manner that promotes emergency ingress and egress.
3. All storage tanks shall be kept free of leaks and in good condition. Storage tanks for saltwater shall be constructed of, or lined with, materials resistant to the effects of saltwater.
4. All waste, recovered solids, and recovered fluids shall be stored and handled in such a manner to prevent runoff or migration offsite.
5. Dikes of sufficient dimension to contain the total capacity of the maximum volume stored must be erected and maintained around all storage and processing tanks. Dikes as well as the base material

under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. All processing equipment shall be underlain by a synthetic impermeable material, unless waived by the director. A perimeter dike of sufficiently impermeable material shall be erected and maintained around the treating plant site. The site shall be sloped and diked to divert surface drainage away from the site. The operations of the treating plant shall be conducted in such a manner as to prevent leaks, spills, and fires. All accidentally discharged fluids and wastes shall be promptly and properly removed and shall not be allowed to remain standing within the diked area or on the treating plant premises. All such incidents shall be properly cleaned up, subject to approval by the director. All such incidents shall be promptly reported to the director and a detailed account of any such incident must be filed with the director in accordance with section 43-02-03-30.

6. Immediately upon the commencement of treatment operations, the operator shall notify the commission in writing of such date.
7. The operator of a treating plant shall provide continuing surveillance and conduct such monitoring and sampling as the commission may require.
8. Storage pits, waste pits, or other earthen storage areas shall be prohibited unless authorized by an appropriate regulatory agency. A copy of said authorization shall be filed with the commission.
9. Burial of waste at any treating plant site shall be prohibited. All residual water and waste, fluid or solid, shall be disposed of in an authorized facility.
10. The operator shall take steps to minimize the amount of residual waste generated and the amount of residual waste temporarily stored onsite. Solid waste shall not be stockpiled onsite unless authorized by an appropriate regulatory agency. A copy of said authorization shall be filed with the commission.
11. If deemed necessary by the director, the operator shall cause to be analyzed any waste substance contained onsite. Such chemical analysis shall be performed by a certified laboratory and shall adequately determine if chemical constituents exist which would categorize the waste as hazardous by state department of health standards.
12. Treating plants shall be constructed and operated so as not to endanger surface or subsurface water supplies or cause degradation to surrounding lands and shall comply with section 43-02-03-28 concerning fire hazards.

13. The beginning of month inventory, the amount of waste received and the source of such waste, the volume of oil sold, the amount and disposition of water, the amount and disposition of residue waste, fluid or solid, and the end of month inventory for each treating plant shall be reported monthly on form 5p with the director on or before the first day of the second succeeding month, regardless of the status of operations.
14. Records necessary to validate information submitted on form 5p shall be maintained in North Dakota.
15. An annual report for each treating plant shall be submitted to the commission, due on June first of each year. The report shall include at least the following:
 - a. A schematic drawing or drawings of the treating plant site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes, all areas underlain by a synthetic liner, the location of all flowlines, and the location of the topsoil stockpile. It shall also include the road access to the nearest existing public road.
 - b. Present inventory of fluids and solids on location.
 - c. Future plans for the next year.
 - d. Any other information requested by the director.
16. All proposed changes to any treating plant are subject to approval by the commission. Updated schematics shall be furnished to the commission within thirty days following any changes to the treating plant.
17. The operator shall comply with all applicable rules and orders of the commission. All rules in this chapter governing oil well sites shall also apply to any treating plant site.

History: Effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51.4. Treating plant abandonment and reclamation requirements.

1. Notice of intention to abandon. The operator or the operator's agent shall file a notice of intention (form 4) to abandon and obtain the approval of the director, prior to the commencement of abandonment operations. The notice shall state the name of the operator, the name and location of the treating plant, and a detailed account of proposed work. Within thirty days after the abandonment of any treating plant has been accomplished, the owner or operator thereof shall file a detailed

account of the abandonment procedures on a sundry notice (form 4), and if requested, a copy of any job receipt setting forth in detail the method and operations used in abandoning the treating plant.

2. After abandonment, the site must be reclaimed pursuant to section 43-02-03-34.1.

History: Effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-55. Abandonment of wells or treating plants - Suspension of drilling.

1. The removal of production equipment or the failure to produce oil or gas, or the removal of production equipment or the failure to produce water from a source well, for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. The failure to plug a stratigraphic test hole within one year of reaching total depth constitutes abandonment of the well. The removal of treating plant equipment or the failure to use a treating plant for one year constitutes abandonment of the treating plant. An abandoned well must be plugged and its site must be reclaimed and an abandoned treating plant must be removed and its site must be reclaimed, pursuant to sections 43-02-03-34 and 43-02-03-34.1.
2. The director may waive for one year the requirement to plug and reclaim an abandoned well by giving the well temporarily abandoned status. This status may only be given to wells that are to be used for purposes related to the production of oil and gas. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status ~~beyond one year~~ and each extension may be approved for up to one year. A fee of one hundred dollars shall be submitted for each application to extend the temporary abandonment status of any well.
3. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for any other good cause found by the director. If the director exercises this discretion, the director shall set a date or circumstance upon which the waiver expires.
4. The director may approve suspension of the drilling of a well. If suspension is approved, a plug must be placed at the top of the casing to prevent any foreign matter from getting into the well. When drilling has been suspended for thirty days, the well, unless otherwise

authorized by the director, must be plugged and its site reclaimed pursuant to sections 43-02-03-34 and 43-02-03-34.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; August 1, 1999; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-60.2. Flaring exemption. The connection of a well to a natural gas gathering line is "economically infeasible" under North Dakota Century Code section 38-08-06.4, if the direct costs of connecting the well to the line and the direct costs of operating the facilities connecting the well to the line during the life of the well, are greater than the amount of money the operator is likely to receive for the gas, less production taxes and royalties, should the well be connected. In making this calculation, the applicant may add ten percent to the amount of the cost of connecting the well and of operating the connection facilities used to determine whether a connection is economically infeasible. This ten percent may be added in consideration of the cost of money and other overhead costs that are not figured in the direct costs of connecting the well and operating the connecting facilities.

An applicant for an exemption under North Dakota Century Code section 38-08-06.4 must, at the minimum, present evidence covering the following areas:

1. Basis for the gas price used to determine whether it is economically infeasible to connect the well to a natural gas gathering line;
2. Cost of connecting the well to the line and operating the facilities connecting the well to the line;
3. Current daily rate of the amount of gas flared; ~~and~~
4. The amount of gas reserves and the amount of gas available for sale;
5. Documentation that it is economically infeasible to equip the well with an electrical generator to produce electricity from gas; and
6. Documentation that it is economically infeasible to equip the well with a system that intakes seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, and separating and collecting over fifty percent of the propane and heavier hydrocarbons.

History: Effective May 1, 1994; amended effective April 1, 2014.

General Authority: NDCC 38-07-04

Law Implemented: NDCC 38-08-06.4

43-02-03-60.3. Application to certify well for temporary gas tax exemption. Any operator desiring to certify a well for purposes of eligibility for the gas tax incentive provided in North Dakota Century Code chapter 57-51 shall submit to the director an application for certification as an oil or gas well employing a system to avoid flaring. The operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether a well is entitled to the tax exemption.

An application for a temporary gas tax exemption under North Dakota Century Code chapter 57-51 must, at the minimum, include the following information:

1. Name and address of the applicant and name and address of the person operating the well, if different.
2. Name and number of the well and the legal description of the location of the well for which a certification is requested.
3. If gas is collected and used at a well or facility site to power an electrical generator, the following information must be included:
 - a. Name and manufacturer of the electrical generator.
 - b. Date electrical generation commenced.
 - c. Volume of gas consumed by the electrical generator during a minimum seven-day test period and the volume of gas produced by the well during such test period.
4. If gas is collected at a well or facility site by a system that compresses gas and natural gas liquids for beneficial consumption, the following information must be included:
 - a. Name and manufacturer of the compression equipment.
 - b. Date compression commenced.
 - c. Destination of the compressed products (i.e., fuel use, processing facility, fertilizer plant, etc.).
 - d. Volume of gas compressed during a minimum seven-day test period and the amount of gas produced by the well during such test period.
 - e. Analysis of a representative gas sample produced from the well.

5. If gas is collected at a well or facility site for a value-added process that will reduce the volume or intensity of a flare by more than sixty percent, the following information must be included:
 - a. Name and manufacturer of the process equipment.
 - b. Date processing commenced.
 - c. Volume of gas processed during a minimum seven-day test period and the amount of gas produced by the well during such test period.
 - d. Analysis of a representative gas sample produced from the well, detailing the Btu value of the unprocessed gas and volume or mass as well as Btu value of each component removed from the flared gas stream for value added use.

If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51-02.6

43-02-03-80. Reports of purchasers and transporters of crude oil. On or before the first day of the second month succeeding that in which oil is removed, purchasers and transporters, including truckers, shall file with the director the appropriate monthly reporting forms. The purchaser shall file on form 10 and the transporter on form 10a the amount of all crude oil removed and purchased by them from each well or central production facility during the reported month. The transporter shall report the disposition of such crude oil on form 10b. All meter and tank measurements, and volume determinations of crude oil removed and purchased from a well or central production facility must conform to American petroleum institute standards and corrected to a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

Prior to removing any oil from a well or central production facility, purchasers and transporters shall obtain an approved copy of a producer's authorization to purchase and transport oil from a well or central production facility (form 8) from either the producer or the director.

The operator of any oil rail facility shall report the amount of oil received and shipped out of such facility on form 10rr.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-81. Authorization to transport oil from a well, treating plant, or central production facility. Before any crude oil is transported from a well, treating plant, or central production facility, the operator ~~of the well or central production facility~~ shall file with the director, and obtain the director's approval, an authorization to purchase and transport oil ~~from a well or central production facility~~ (form 8).

Oil transported ~~from a well or central production facility~~ before the authorization is obtained or if such authorization has been revoked shall be considered illegal oil.

The director may revoke the authorization to purchase and transport oil ~~from a well or central production facility~~ for failure to comply with any rule, regulation, or order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; September 1, 2000; April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-88.1. Special procedures for increased density wells, pooling, flaring exemption, underground injection, commingling, converting mineral wells to freshwater wells, and central tank battery or central production facilities applications.

1. Applications to amend field rules to allow additional wells on existing spacing units, for pooling under North Dakota Century Code section 38-08-08, for a flaring exemption under North Dakota Century Code section 38-08-06.4 and section 43-02-03-60.2, for underground injection under chapter 43-02-05, for commingling in one well bore the fluids from two or more pools under section 43-02-03-42, for converting a mineral well to a freshwater well under section 43-02-03-35, and for establishing central tank batteries or central production facilities under section 43-02-03-48.1, must be signed by the applicant or the applicant's representative. The application must contain or refer to attachments that contain all the information required by law as well as the information the applicant wants the commission to consider in deciding whether to grant the application. The application must designate an employee or representative of the applicant to whom the commission can direct inquiries regarding the application.
2. The commission shall give the county auditor notice at least fifteen days prior to the hearing of any application in which a request for a disposal under chapter 43-02-05 is received.
- ~~2.~~ 3. The applications referred to in subsection 1 will be advertised and scheduled for hearing as are all other applications received by the commission. The applicant, however, unless required by the director, need not appear at the hearing scheduled to consider the application, although additional evidence may be submitted prior to the hearing.

Any interested party may appear at the hearing to oppose or comment on the application. Any interested party may also submit written comments on or objections to the application no later than five p.m. on the last business day prior to the hearing date. Such submissions may be part of the record in the case if allowed by the hearing examiner.

- ~~3:~~ 4. The director is authorized, on behalf of the commission, to grant or deny the applications referred to in subsection 1.
- ~~4:~~ 5. In any proceeding under this section, the applicant, at the hearing, may supplement the record by offering testimony and exhibits in support of the application.
- ~~5:~~ 6. In the event the applicant is not required by the director to appear at the hearing and an interested party does appear to oppose the application or submits a written objection to the application, the hearing officer shall continue the hearing to a later date, keep the record open for the submission of additional evidence, or take any other action necessary to ensure that the applicant, who does not appear at the hearing as the result of subsection 2, is accorded due process.

History: Effective May 1, 1992; amended effective May 1, 1994; May 1, 2004; April 1, 2012; April 1, 2014.

General Authority: NDCC 38-08-04, 38-08-11

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

CHAPTER 43-02-05

43-02-05-04. Permit requirements.

1. No underground injection may be conducted without obtaining a permit from the commission after notice and hearing. The application shall be on a form 14 provided by the commission and shall include at least the following information:
 - a. The name and address of the operator of the injection well.
 - b. The surface and bottom hole location.
 - c. Appropriate geological data on the injection zone and the top and bottom confining zones including geologic names, lithologic descriptions, thicknesses, and depths.
 - d. The estimated bottom hole fracture pressure of the top confining zone.
 - e. Average and maximum daily rate of fluids to be injected.
 - f. Average and maximum requested surface injection pressure.
 - g. Geologic name and depth to base of the lowermost underground sources of drinking water which may be affected by the injection.
 - h. Existing or proposed casing, tubing, and packer data.
 - i. A plat depicting the area of review, (one-quarter-mile [402.34-meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.
 - j. The need for corrective action on wells penetrating the injection zone in the area of review.
 - k. Proposed injection program.
 - l. Quantitative analysis from a state-certified laboratory of freshwater from the two nearest freshwater wells within a one-mile [1.61-kilometer] radius. Location of the wells by quarter-quarter, section, township, and range must also be submitted. This requirement may be waived by the director in certain instances.

- m. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.
 - n. List identifying all source wells or sources of injectate.
 - o. A legal description of the land ownership within the area of review.
 - p. An affidavit of mailing certifying that all landowners within the area of review have been notified of the proposed injection well. If the proposed injection well is within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that comments or objections may be submitted to the commission within thirty days. If the proposed injection well is not within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that a hearing will be held at which comments or objections may be directed to the commission. A copy of the letter sent to each landowner must be attached to the affidavit.
 - q. All logging and testing data on the well which has not been previously submitted.
 - r. Schematic drawings of the injection system, including current and proposed well bore construction and proposed well bore and surface facility construction, including the size, location, and purpose of all tanks, the height and location of all dikes and containment, including all areas underlain by a synthetic liner, and the location of all flowlines. It shall also include the proposed road access to the nearest existing public road and the authority to build such access.
 - s. Traffic flow diagram of the site, depicting sufficient area to contain all anticipated traffic.
 - t. A review of the surficial aquifers within one mile of the proposed injection well site or surface facilities.
- u. Sundry notice detailing the proposed procedure.
2. Permits may contain such terms and conditions as the commission deems necessary.
 3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute. Any permit issued under this section may be suspended by the director for good cause.

4. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
5. No person shall commence construction of an underground injection well or site without prior approval of the director.
6. Permits are transferable only with approval of the commission.
7. Permits may be modified by the commission.
8. Before injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.
9. All injection wells permitted before November 1, 1982, shall be deemed to have a permit for purposes of this section; however, all such prior permitted wells are subject to all other requirements of this chapter.
10. A permit shall automatically expire one year after the date it was issued, unless operations have commenced to complete the well as an injection well.
11. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996; May 1, 2004; January 1, 2006; April 1, 2014.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-05. Siting. All new injection wells shall be sited in such a fashion that they inject into a formation which has confining zones that are free of known open faults or fractures within the area of review.

History: Effective November 1, 1982; amended effective April 1, 2014.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

CHAPTER 43-02-08
STRIPPER WELL AND STRIPPER WELL PROPERTY DETERMINATION

Section	
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43-02-08-01. Definitions. The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and 57-51.1, except:

1. "Commercial quantities" means production exceeding in value current operating costs.
2. "Condensate recovered in nonassociated production" means a liquid hydrocarbon recovered from a well classified as a gas well by the commission.
3. "Maximum efficient rate" means the maximum economic rate of production of oil which can be sustained under prudent operations, using sound engineering practices, without loss of ultimate recovery.
4. "Operator" means any person who owns a fee interest or an interest in an oil and gas leasehold, and has the right to produce oil therefrom.
5. "Qualifying period" means any preceding consecutive twelve-month period beginning after December 31, 1972, that the qualified maximum total production from a well or property did not exceed the production levels as specified in subsection 2 of section 43-02-08-03.
6. "Well depth":

- a. For a vertical or directional well means the lowest measured depth (measured in feet from the kelly bushing) producing from the pool during the qualifying period. In the event there is more than one vertical or directional well on a property producing from the same pool during the qualifying period, "well depth" means the average of the lowest measured depths producing from the pool of all vertical and directional wells in the property.
- b. For a horizontal well means the measured depth of the terminus of the horizontal lateral (measured in feet from the kelly bushing) producing from the pool during the qualifying period. In the event there is more than one horizontal well on a property producing from the same pool during the qualifying period, "well depth" means the average measured depth of the termini of the horizontal laterals producing from the pool of all of the horizontal wells on the property.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1994; May 1, 2004; April 1, 2014.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-02. Application for stripper well or stripper well property determination. Any operator desiring to classify a well or property as a stripper well or a stripper well property for purposes of exempting production from the imposition of the oil extraction tax as provided under North Dakota Century Code chapter 57-51.1 shall file an application for stripper well or stripper well property determination with the director and obtain a determination certifying the well or property as a stripper well property. The applicant has the burden of establishing entitlement to stripper well or stripper well property status and shall submit all data necessary for a determination by the director.

The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The legal description of the well or property for which a determination is requested.
3. The well name and number and legal description of the oil-producing well or each oil-producing well on the property during the qualifying period and at the time of application.
4. The depth of all perforations (measured in feet from ground level) from the producing well or each producing well on the property during the qualifying period which produces from the same pool.
5. Designation of the well or property which the applicant requests to be certified as a stripper well or a stripper well property. Such designation

must be accompanied by sufficient documentation for the director to determine (as set forth in section 43-02-08-02.1) that the well or property the applicant desires to be certified as a stripper well or a stripper well property constitutes a well or property as specified in North Dakota Century Code section 57-51.1-01.

6. The monthly production of the oil-producing well or each oil-producing well on the property during the qualifying period.
7. ~~An affidavit stating that all working interest owners of the property and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.~~

If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; May 1, 1994; July 1, 1996; August 1, 1999; July 1, 2002; April 1, 2014.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-02.1. Property determination. ~~For purposes of this chapter, property will be determined by reference to the geographical boundaries of the right to produce crude oil as such right existed on January 1, 1972, provided such right was in production in commercial quantities on that date. If such right was not in production in commercial quantities on January 1, 1972, the determination of property will be made by reference to the geographical boundaries of the right to produce crude oil when crude oil is first produced thereafter in commercial quantities. For purposes of determining what constitutes a property, the director shall recognize as separate properties the following: The director recognizes the following as properties:~~

1. ~~A unit, where the unit is the aggregation of separate interests into a single right to produce. For the purposes of property determination, a unit means the total geographical area incorporated in a unitization agreement approved by order of the commission. In cases where a property has been unitized, portions of the property outside the unit boundary are separate properties.~~
2. ~~Separate and distinct reservoirs, as defined by orders of the commission. A spacing unit.~~
3. ~~Noncontiguous tracts. (Tracts abutting solely at a corner are considered noncontiguous tracts.) Contiguous tracts within a lease.~~
4. ~~A single well, or any portion of a property which has been developed and produced separately. Any well or portion of a property previously qualified as a stripper well property may not be redesignated to be included in another property unless approved by the commission~~

after notice and hearing or unless such property lies within a unitized common source of supply drilled and completed prior to July 1, 2013, is considered a single well stripper well property. A single well drilled and completed after June 30, 2013, is considered a single well stripper well.

Any well or portion of a property previously qualified as a stripper well property may not be redesignated to be included in another property unless approved by the commission after notice and hearing or unless such property lies within a unitized common source of supply.

If a well that has previously qualified as a stripper well property is reentered and recompleted as a horizontal well, the stripper well property status on that well will terminate.

All wells on the property must have been completed prior to July 1, 2013. A well completed after July 1, 2013, cannot be added to an existing property.

History: Effective September 1, 1987; amended effective May 1, 1992; May 1, 2004; April 1, 2014.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-03. Director shall determine stripper well or stripper well property status.

1. Upon receipt of an application for stripper well or stripper well property determination, the director shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.
2. Stripper well or stripper well property status will be determined on the basis of the qualified maximum total production of oil from the well or property. In order to qualify production from a well or property as maximum total production, the oil-producing well or each oil-producing well on the property must have been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period. A property meets the requirements of a stripper well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:
 - a. Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day; A property meets the requirements of a stripper well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:

- (1) Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - (2) Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or
 - (3) Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day.
 - b. ~~Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or~~ A well meets the requirements of a stripper well if the qualified maximum total production of oil from the well, excluding condensate, did not exceed the following:
 - (1) Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - (2) Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day;
 - (3) Production from a well outside the Bakken and Three Forks formations with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day; or
 - (4) Production from a well in the Bakken or Three Forks formations with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty-five barrels per day.
 - c. ~~Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day.~~
3. Within thirty days of the receipt of a complete application for stripper well or stripper well property status, or a reasonable time thereafter, the director shall either grant or deny the application.
 4. If an application for stripper well or stripper well property status is denied, the director shall enter a written determination denying the

application and specify the basis for the denial. If an application for stripper well or stripper well property status is granted, the director shall enter a written determination granting the application. A copy of the determination either granting or denying the application must be forwarded by the director by mail to the applicant and all other persons submitting comments. It is the obligation of the applicant to notify and advise the state tax commissioner, all other operators in the well or property, and the purchaser of the crude oil of the determination of the director.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; July 1, 1996; May 1, 2004; April 1, 2014.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-04. Applicant adversely affected may submit amended application - Procedure. Any applicant adversely affected by a determination of the director made under sections 43-02-08-02 through 43-02-08-03 may within thirty days after the entry of such a determination submit an amended application. If an amended application is submitted, the director shall issue a determination of stripper well or stripper well property status within thirty days of the receipt of the amended application or a reasonable time thereafter.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; April 1, 2014.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-05. Person adversely affected may petition the commission - Procedure. Any person adversely affected by a determination of the director of either an application or an amended application for stripper well or stripper well property status made under sections 43-02-08-02 through 43-02-08-03 may within thirty days after the entry of such a determination petition the commission for a hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and chapter 43-02-03.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; April 1, 2014.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-11. Books and records to be kept to substantiate reports. Any operator desiring to classify a well or property as a stripper well property pursuant to this chapter shall make and keep records for a period of not less than six years,

covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective September 1, 2000; amended effective April 1, 2014.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

CHAPTER 43-02-12

43-02-12-04. Exploration permit - Application - Expiration.

1. Any person applying to the commission for an exploration permit must have a certificate to conduct geophysical exploration pursuant to subsection 3 of North Dakota Century Code section 38-08.1-03.1. A person may not commence geophysical exploration activities in this state without first obtaining an exploration permit from the commission. An application for an exploration permit must be submitted to the commission at least three business days before commencing operations and include the following:
 - a. The name, permanent address, and telephone number of the geophysical contractor and the geophysical contractor's local representative.
 - b. The name, permanent address, and telephone number of the drilling and hole plugging contractor, if different from the seismic contractor.
 - c. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
 - d. The bond number, type, and amount for the geophysical company.
 - e. The geophysical exploration method (i.e., shot hole, nonexplosive, 2D, or 3D).
 - f. The number, depth, and location of the seismic holes and the size of the explosive charges, if applicable.
 - g. The anticipated starting date of seismic and plugging operations.
 - h. The anticipated completion date of seismic and plugging operations.
 - i. A description of hole plugging procedures.
 - ~~j. A description of the identifying marks that will be on the nonmetallic plug to be used in the plugging of the seismic hole.~~
 - ~~k. j.~~ A preplot map displaying the proposed seismic source points and receiver lines and specifically identifying all source points that do not comply with section 43-02-12-05.
 - ~~h.~~ k. A fee of one hundred dollars.

2. The permit holder shall notify the commission at least twenty-four hours, excluding Saturdays and holidays, before commencing geophysical activity.
3. The permit holder shall immediately notify the commission of any revisions to an approved seismic permit.
4. An exploration permit expires one year after the date it was issued, unless geophysical exploration activities have commenced.

History: Effective December 1, 1997; amended effective September 1, 2000; May 1, 2004; April 1, 2010; April 1, 2014.

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-04.1

43-02-12-07. Drilling and plugging requirements.

1. Prior to commencement of any drilling or plugging operations, the director may require a field meeting with the geophysical contractor and subcontractors.
2. Except in those circumstances in which the director allows otherwise, all seismic shot holes must be plugged the same day as they were drilled and loaded. Any blown out shot holes must be plugged as soon as reasonably practicable, unless, upon application, the director grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped until final plugging.
3. If the number of drilling rigs on a proposed project exceeds the director's capacity to provide appropriate inspection, the director may limit the number of drilling rigs.
4. Bentonite materials used in seismic hole plugging must be derived from naturally occurring untreated, high swelling sodium bentonite which consists principally of the mineral montmorillonite.
5. A durable nonmetallic plug, designed to fit the hole, must be set at a depth of approximately three feet [91.44 centimeters] below the surface of every shot hole. ~~The plug must be designed to fit the hole and shall be imprinted with the mark of the operator responsible for the plugging, the mark of the permit holder, and the permitted project number.~~
6. Unless the contractor can prove to the satisfaction of the commission that another method will provide better protection to ground water and long-term land stability, seismic shot hole plugging shall be conducted in the following manner:
 - a. When water is used in conjunction with the drilling of seismic shot holes or when water is encountered in the hole, the shot holes are to

be filled with coarse ground bentonite approximately three-fourths of one inch [19.05 millimeters] in diameter from the top of the charge up to a depth above the final water level. Cuttings shall be added from the top of the bentonite to the surface. Only dry cuttings shall be utilized when plugging the shot hole. All cuttings added above the nonmetallic plug shall be tamped.

- b. When drilling with air only, and in completely dry holes, a plugging may be accomplished by returning the cuttings to the hole. A small mound must be left over the hole for settling allowance.
- c. Remaining cap leads must be cut off below ground level and any drilling fluid or cuttings which are deposited on the surface around the seismic hole will be spread out in such a manner that the growth of natural grasses or foliage will not be impaired.
- d. Any markings, including lath, pin flags, flagging, or any other debris left on the project area, including the powder magazine, must be removed and lawfully disposed of.

History: Effective December 1, 1997; amended effective September 1, 2000; May 1, 2004; April 1, 2014.

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-02, 38-08.1-06, 38-08.1-06.1

TITLE 45
INSURANCE COMMISSIONER

APRIL 2014

CHAPTER 45-03-15

45-03-15-01. Accounting practices and procedures. Every insurance company doing business in this state shall file with the commissioner, pursuant to North Dakota Century Code section 26.1-03-07, the appropriate national association of insurance commissioners annual statement blank, prepared in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March ~~2014~~ 2013 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance.

History: Effective January 1, 1992; amended effective January 1, 2000; December 1, 2001; March 1, 2004; January 1, 2006; January 1, 2008; April 1, 2010; July 1, 2012; April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-15-02. Reporting of financial information. Every insurance company licensed to do business in this state shall transmit to the commissioner and to the national association of insurance commissioners its most recent financial statements compiled on a quarterly basis, within forty-five days following the calendar quarters ending March thirty-first, June thirtieth, and September thirtieth. The financial statements must be prepared and filed in the form prescribed by the commissioner and in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March ~~2014~~ 2013 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance. The

commissioner may exempt any company or category or class of companies from the filing requirement.

History: Effective January 1, 1992; amended effective January 1, 2000; December 1, 2001; March 1, 2004; January 1, 2006; January 1, 2008; April 1, 2010; July 1, 2012; April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-03, 26.1-03-07, 26.1-03-11.1

CHAPTER 45-03-24
UNCLAIMED LIFE INSURANCE BENEFITS

Section

<u>45-03-24-01</u>	<u>Commissioner's Authority</u>
<u>45-03-24-02</u>	<u>Applicability</u>
<u>45-03-24-03</u>	<u>Requirements</u>

45-03-24-01. Commissioner's authority. Pursuant to North Dakota Century Code chapter 26.1-55, the commissioner may approve a transition plan and timeline temporarily waiving some or all of the requirements of chapter 26.1-55 to allow insurance companies to phase into compliance with chapter 26.1-55.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-55

45-03-24-02. Applicability. Companies failing to receive transition plan approval or failing to meet a timeline approved by the commissioner must comply with North Dakota Century Code chapter 26.1-55.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-55

45-03-24-03. Requirements. The commissioner may approve a transition plan temporarily waiving some or all of the requirements of North Dakota Century Code chapter 26.1-55 if:

1. The company demonstrates and the commissioner determines implementation of the requirements of chapter 26.1-55 will cause legitimate financial hardship;
2. The insurance company transition plan is submitted to the commissioner at least six months prior to the waiver date requested; and
3. The transition plan includes a timeline to convert electronic records and implement electronic searches within a reasonable time as determined by the commissioner.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-55

CHAPTER 45-06-15
SHORT-TERM CARE INSURANCE

Section

<u>45-06-15-01</u>	<u>Definition</u>
<u>45-06-15-02</u>	<u>Policy Definitions</u>
<u>45-06-15-03</u>	<u>Policy Practices and Provisions</u>
<u>45-06-15-04</u>	<u>Unintentional Lapse</u>
<u>45-06-15-05</u>	<u>Payment of Benefits</u>
<u>45-06-15-06</u>	<u>Required Disclosure of Rating Practices to Consumers</u>
<u>45-06-15-07</u>	<u>Prohibition Against Post-Claims Underwriting</u>
<u>45-06-15-08</u>	<u>Requirements for Application Forms and Replacement Coverage</u>
<u>45-06-15-09</u>	<u>Loss Ratio</u>
<u>45-06-15-10</u>	<u>Filing Requirements for Advertising</u>
<u>45-06-15-11</u>	<u>Standards for Marketing</u>
<u>45-06-15-12</u>	<u>Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates</u>
<u>45-06-15-13</u>	<u>Standards for Benefit Triggers</u>
<u>45-06-15-14</u>	<u>Standard Format Outline of Coverage</u>

45-06-15-01. Definition. "Short-term care insurance" means any insurance policy, group certificate, or rider primarily advertised, marketed, offered, or designed to provide coverage for less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital. Service settings may include a hospital unit licensed or certified to provide skilled nursing services in a skilled nursing facility, extended care facility, intermediate care facility, convalescent nursing home, basic care facility, personal care facility, adult day care facility, and assisted living facility. The term also includes home health care and personal care services provided by a home health care agency. Notwithstanding any other provision contained herein, any product advertised, marketed, or offered as short-term care insurance is subject to the provisions of this chapter.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-02. Policy definitions. No short-term care insurance policy or group certificate delivered or issued for delivery in this state shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

1. "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

2. "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain the individual's health status.
3. "Adult day care" means a program for six or more individuals of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly, or other disabled adults who can benefit from care in a group setting outside the home.
4. "Bathing" means washing oneself by sponge bath, or in either a tub or shower, including the task of getting into or out of the tub or shower.
5. "Certificate" or "group certificate" means the insurance document or certificate of insurance coverage issued to individuals covered under the group policy.
6. "Cognitive impairment" means a deficiency in a person's short-term or long-term memory; orientation as to person, place, and time; deductive or abstract reasoning; or judgment as it relates to safety awareness.
7. "Continence" means the ability to maintain control of bowel and bladder function, or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.
8. "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.
9. "Eating" means feeding oneself by getting food into the body from a receptacle such as a plate, cup, or table or by a feeding tube or intravenously.
10. "Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.
11. "Home health care services" means medical and nonmedical services provided to ill, disabled, or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living, and respite care services.
12. "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended" or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as The Health Insurance for the Aged Act, as then constituted

and any later amendments or substitutes thereof", or words of similar import.

13. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.
14. "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.
15. "Skilled nursing care", "intermediate care", "personal care", "home care", and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care must be delivered.
16. "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.
17. "Transferring" means moving into or out of a bed, chair, or wheelchair.
18. All providers of services, including "skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", and "home care agency", shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-03. Policy practices and provisions.

1. **Guaranteed renewable for life - Limitation on preexisting conditions.** Any short-term care insurance policy or group certificate must be guaranteed renewable for life. For purposes of this section, "guaranteed renewable for life" means the insured has the right to continue the policy or group certificate for life subject to the policy's terms by the timely payment of premiums during which the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force. The insurer may, however, in accordance with the provisions of the policy, make changes in premium rates as to all insureds who are placed in the same class for purposes of rate determination in the process of issuance of the policy or group certificate.

A policy or certificate of insurance, providing benefits for short-term care, which is sold to a consumer to replace a policy may not contain

any provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that the remaining waiting period for coverage of preexisting conditions shall apply to the new policy unless the policy otherwise provides.

2. Preexisting conditions.

- a. No short-term care insurance policy or group certificate may define "preexisting condition" as more restrictive than meaning a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person.
- b. No short-term care insurance policy or certificate issued on a group short-term care insurance policy may exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within six months following the effective date of coverage of an insured person.
- c. The limitation on defining a preexisting condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subdivision b expires. No short-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subdivision b.

3. Required information and disclosure provisions.

- a. Limitations. If a short-term nursing home insurance policy or group certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "preexisting condition limitations".
- b. Other limitations or conditions on eligibility for benefits. A short-term nursing home insurance policy or group certificate containing any limitations or conditions for eligibility, including any elimination period shall be clearly defined in the policy or certificate and shall be labeled as "limitations or conditions on eligibility for benefits".

- c. Insurers shall disclose whether or not inflation protection is offered with any short-term nursing home policy or group certificate.
- d. An elimination period shall be calculated based upon consecutive calendar days, beginning the first day eligible services are received by the individual and ending the first day benefits are payable.

4. Incontestability and rescission of short-term care insurance policy or certificate.

- a. If a policy or certificate has been in force for less than six months, an insurer may not rescind a short-term care insurance policy or certificate or deny an otherwise valid short-term care insurance claim except upon a showing of misrepresentation that is material to the acceptance for coverage.
- b. If a policy or certificate has been in force for at least six months but less than two years, an insurer may not rescind a short-term care insurance policy or certificate or deny an otherwise valid short-term care insurance claim except upon a showing of misrepresentation that is both material to the acceptance for coverage and that pertains to the condition for which benefits are sought.
- c. If a policy or certificate has been in force for two years, the policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health. The policy or certificate may not be contested based upon misrepresentation alone.
- d. A short-term care insurance policy or certificate may not be field-issued based on medical or health status. For purposes of this section, "field-issued" means a policy or certificate issued by an agent or a third-party administrator pursuant to the underwriting authority granted to the agent or third-party administrator by an insurer.
- e. If an insurer has paid benefits under the short-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer in the event that the policy or certificate is rescinded.

5. Prior institutionalization requirement prohibited.

- a. No short-term care insurance policy or certificate may be delivered or issued for delivery in this state if the policy:
 - (1) Conditions eligibility for any benefits on a prior hospitalization requirement.

- (2) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of such institutional care.
 - b. A short-term care insurance policy containing postconfinement, postacute care, or recuperative benefits must clearly label in a separate paragraph of the policy or certificate entitled "limitations or conditions on eligibility for benefits" the limitations or conditions, including any required number of days of confinement.
6. **Right to return policy.** Short-term care insurance applicants have the right to return the policy or certificate within thirty days of the date of its delivery or within thirty days of its effective date, whichever occurs later, and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Short-term care insurance policies and certificates must have a notice prominently printed on the first page or attached thereto stating in substance that the applicant has the right to return the policy or certificate within thirty days of the date of its delivery or within thirty days of its effective date, whichever occurs later, and to have the premium refunded if, after examination of the policy or certificate the applicant is not satisfied for any reason.
7. **Limitations and exclusions.** A policy may not be delivered or issued for delivery in this state as short-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:
 - a. Preexisting conditions or diseases:
 - b. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease:
 - c. Alcoholism and drug addiction:
 - d. Illness, treatment, or medical condition arising out of:
 - (1) War or act of war, whether declared or undeclared:
 - (2) Participation in a felony, riot, or insurrection:
 - (3) Service in the armed forces or units auxiliary thereto:
 - (4) Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or
 - (5) Aviation (this exclusion applies only to non-fare-paying passengers).

e. Treatment provided in a government facility, unless otherwise required by law, services for which benefits are available under medicare or other governmental program, except medicaid, any state or federal workers compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance.

This subsection is not intended to prohibit exclusions limitations by type of provider or territorial limitations.

8. Extension of benefits. Termination of short-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the short-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the short-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

9. Continuation or conversion.

a. Group short-term nursing home insurance issued in this state on or after the effective date of this administrative regulation shall provide:

(1) A covered individual with a basis for continuation or conversion of coverage without underwriting upon termination of coverage; and

(2) A converted policy or continued coverage, including benefits identical to or benefits determined by the executive director to be substantially similar to or in excess of those provided under the group policy from which conversion or continued coverage is made.

b. Written application for the converted policy or continued coverage shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one days following notice of continuation or conversion rights under the group policy.

c. The premium charged to an insured for short-term nursing home insurance shall not increase due to either:

(1) The increasing age of the insured at ages beyond sixty-five;
or

(2) The duration the insured has been covered under the policy.

10. **Discontinuance and replacement.** If a group short-term care policy is replaced by another group short-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:
- a. Shall not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced;
 - b. Shall not vary or otherwise depend on the individual's health or disability status, claim experience, or use of short-term care services; and
 - c. The premium charged to an insured shall not increase due to either:
 - (1) The increasing age of the insured at ages beyond sixty-five; or
 - (2) The duration the insured has been covered under the policy.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-04. Unintentional lapse. Each insurer offering short-term care insurance shall, as a protection against unintentional lapse, comply with the following:

- 1. a. Notice before lapse or termination. No individual short-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this short-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is

due and unpaid. I elect NOT to designate a person to receive this notice."

The insurer shall notify the insured of the right to change this written designation, no less often than once every two years.

b. When the policyholder or certificate holder pays premium for a short-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in subdivision a need not be met until sixty days after the policyholder or certificate holder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

c. Lapse or termination for nonpayment of premium. No individual short-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to subdivision a, at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first-class United States mail, postage prepaid, and notice may not be given until thirty days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

2. Reinstatement. In addition to the requirement in subsection 1, a short-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past-due premium, when appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-05. Payment of benefits. A short-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import shall include

a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-06. Required disclosure of rating practices to consumers.

1. A statement that the policy may be subject to rate increases in the future.
2. If a short-term care policy uses gender rating to determine the policy's premium rate, the short-term care policy must contain the following language in conspicuous font on the application, on the outline of coverage provided to the consumer at the time of solicitation, and on the front page of the insurance policy or certificate:

The cost for this product is based in part upon the gender of the person being insured. Buying this product means you agree to allow [insert Company or Agency Name Here] to determine the cost of this product based in part upon the gender of the person being insured.

The individual or individuals purchasing a short-term care insurance policy using gender rating to determine a policy's premium rate must specifically sign, initial or otherwise acknowledge the gender rating provision detailed above on the application. A copy of the acknowledged application must be retained by the insurance company selling the policy.

3. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least forty-five days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by this section when the rate increase is implemented.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-07. Prohibition against post-claims underwriting.

1. a. If an application for short-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it shall also ask the applicant to list all medication that has been prescribed.
- b. If the medications listed in the application were known by the insurer, or should have been known at the time of application,

to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

2. The following language, or language substantially similar to the following, shall be set out conspicuously on the short-term care insurance policy or certificate no later than when it is delivered:

"Caution: The issuance of this short-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer may have the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)."

3. A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than when the policy or certificate is delivered unless it was retained by the applicant at the time of application.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-08. Requirements for application forms and replacement coverage.

1. The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a short-term care insurance policy or certificate:

"Caution: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy."

2. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another short-term care or long-term care insurance policy or certificate in force or whether a short-term care policy or certificate is intended to replace any other accident and sickness or short-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except when the coverage is sold without an agent, containing the questions may be used. With regard to a replacement policy issued to a group, the following questions may be modified only to the extent necessary to elicit information about health or short-term care insurance policies

other than the group policy being replaced, provided that the certificate holder has been notified of the replacement.

- a. Do you have another short-term care or long-term care insurance policy or certificate in force, including health care service contract, health maintenance organization contract?
 - b. Did you have another short-term care or long-term care insurance policy or certificate in force during the last twelve months?
 - (1) If so, with which company?
 - (2) If that policy lapsed, when did it lapse?
 - c. Are you covered by medicaid?
 - d. Do you intend to replace any of your medical or health insurance coverage with this policy [certificate]?
3. Agents shall list any other health insurance policies they have sold to the applicant.
- a. List policies sold that are still in force.
 - b. List policies sold in the past five years that are no longer in force.
4. Replacements - Solicitations other than direct response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agent shall furnish the applicant, prior to issuance or delivery of the individual short-term care insurance policy, a notice regarding replacement of accident and sickness or short-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided as referenced in appendix A.
5. Direct response solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness, short-term care or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided as referenced in appendix B.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-09. Loss ratio. Benefits under short-term care insurance policies must be deemed reasonable in relation to premiums provided the expected loss ratio is at least seventy percent, calculated in a manner which provides for

adequate reserving of the insurance risk. In evaluating the expected loss ratio, due consideration must be given to all relevant factors, including:

1. Statistical credibility of incurred claims experience and earned premiums;
2. The period for which rates are computed to provide coverage;
3. Experienced and projected trends;
4. Concentration of experience within early policy duration;
5. Expected claim fluctuation;
6. Experience refunds, adjustments, or dividends;
7. Renewability features;
8. All appropriate expense factors;
9. Interest;
10. Policy reserves;
11. Mix of business by risk classification; and
12. Product features such as elimination periods, deductibles, and maximum limits.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-10. Filing requirements for advertising.

1. Every insurer, health care service plan, or other entity providing short-term care insurance or benefits in this state shall provide a copy of any short-term care insurance advertisement intended for use in this state whether through written, radio, or television medium to the insurance commissioner of this state for review or approval by the commissioner to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer, health care service plan, or other entity for at least three years from the date the advertisement was first used.

2. The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-11. Standards for marketing.

1. Display prominently on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with short-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

2. A short-term care policy shall state in on the front page of the policy and outline of coverage the following statement:

"This is a short-term care policy that offers benefits for less than twelve (12) months. This is not a long-term care policy."

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-12. Prohibition against preexisting conditions and probationary periods in replacement policies or certificates. If a short-term care insurance policy or certificate replaces another short-term care or long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new short-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-13. Standards for benefit triggers.

1. A short-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

2. a. Activities of daily living shall include at least the following:

(1) Bathing:

(2) Continence:

(3) Dressing:

(4) Eating:

(5) Toileting; and

(6) Transferring.

b. Insurers may use activities of daily living to trigger covered benefits in addition to those contained in subdivision a as long as they are defined in the policy.

3. An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however, the provisions shall not restrict, and are not in lieu of, the requirements contained in subsections 1 and 2.

4. For purposes of this section, the determination of a deficiency shall not be more restrictive than:

a. Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

b. If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

5. Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.

6. Short-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

45-06-15-14. Standard format outline of coverage.

1. The outline of coverage shall be a freestanding document, using no smaller than ten-point type.

2. The outline of coverage shall contain no material of an advertising nature.
3. Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.
4. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.
5. Format for outline of coverage:

[COMPANY NAME]

[ADDRESS - CITY AND STATE]

[TELEPHONE NUMBER]

SHORT-TERM CARE INSURANCE

OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this short-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).
2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. Terms Under Which the Policy OR Certificate May Be Continued in Force or Discontinued.

- a. [For short-term care health insurance policies or certificates describe the following permissible policy renewability provisions: Policies and certificates that are guaranteed renewable shall contain the following statement: RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy [certificate], to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.]
- b. [For group coverage, specifically continuation or conversion provisions applicable certificate and group policy.]
- c. [Describe waiver of premium provisions or state that there are not such provisions.]

4. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

5. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

- a. [Provide a brief description of the right to return - "free look" provision of the policy.]
- b. [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

6. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

- a. [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government, or any state government.
- b. [For direct response] [insert company name] is not representing Medicare, the federal government, or any state government.

7. SHORT-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered short-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

8. BENEFITS PROVIDED BY THIS POLICY.

a. [Covered services, related deductibles, waiting periods, elimination periods, and benefit maximums.]

b. [Institutional benefits, by skill level.]

c. [Noninstitutional benefits, by skill level.]

d. Eligibility for payment of benefits.

[Activities of daily living and cognitive impairment shall be used to measure an insured's need for short-term care and must be defined and described as part of the outline of coverage.]

e. [Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

9. LIMITATIONS AND EXCLUSIONS.

[Describe:

a. Preexisting conditions:

b. Noneligible facilities and provider:

c. Noneligible levels of care (e.g., unlicensed providers, care, or treatment provided by a family member, etc.):

d. Exclusions and exceptions; and

e. Limitations.].

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in Number 9 above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR SHORT-TERM CARE NEEDS.

10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

11. PREMIUM.

[a. State the total annual premium for the policy; and

b. If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

12. ADDITIONAL FEATURES.

[a. Indicate if medical underwriting is used; and

b. Describe other important features.]

13. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING SHORT-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR SHORT-TERM CARE INSURANCE POLICY OR CERTIFICATE.

History: Effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-36-48

Appendix A

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS, SHORT-TERM CARE OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness, short-term care or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness, short-term care or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT [BROKER OR OTHER REPRESENTATIVE]:

(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing short-term care or long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy.

This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

(Signature of Agent, Broker, or Other Representative)

[Typed Name and Address of Agent or Broker]

The above "Notice to Applicant" was delivered to me on:

(Applicant's Signature)

(Date)

Appendix B

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS, SHORT-TERM CARE OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness, short-term care or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness, short-term care or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing short-term care or long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any

information is not correct and complete, or if any past medical history has been left out of the application.

[Company Name]

**CHAPTER 45-10-02
GENERAL PROVISIONS**

Section	
45-10-02-01	Definitions
45-10-02-02	Tank Registration
45-10-02-03	Registration Fee
45-10-02-04	Notification of Release Procedures
45-10-02-05	Procedures for Investigation of Claims
45-10-02-06	Reimbursement
45-10-02-06.1	Reimbursement Disputes
45-10-02-07	Third-Party Claims
45-10-02-08	Board
45-10-02-09	Report to Legislative Assembly and Governor <u>[Repealed]</u>

45-10-02-01. Definitions. For the purposes of this chapter, the following definitions apply in addition to the definitions set forth in ~~section 2 of chapter 299 of the 1991 Session Laws~~ North Dakota Century Code chapter 23-37:

1. "Antifreeze" is not a petroleum product.
2. "Farm tank" means a tank located on a tract of land devoted to the production of crops or for raising animals and associated residences and improvements. A farm tank must be located on the farm property.
3. "Portable tank" means any storage tank, along with its piping and wiring, that is not stationary or affixed including, but not limited to, tanks which are on skids.
4. "Residential tank" means a tank located on property used primarily for dwelling purposes.
5. "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials.
6. Storage tanks used for collecting crude oil are considered flowthrough process tanks and are excluded from coverage.

History: Effective November 25, 1991; amended effective June 1, 1994; April 1, 2014.

General Authority: NDCC 23-37-05, 28-32-02; ~~S.L. 1991, ch. 299, § 5~~

Law Implemented: S.L. 1991, ch. 299 NDCC 23-37

45-10-02-02. Tank registration. On an annual basis (fiscal year July first through June thirtieth), the administrator will mail to all prior fund registrants and any other known petroleum tank owners and operators in North Dakota a registration letter and billing notice. The letter will explain the function of the fund and the requirement that the tank owner or operator must have all tanks owned or operated

registered and all fees paid prior to a petroleum release in order to be eligible for reimbursement. In the event of a petroleum release, no payment will be made to an owner or operator of a registered tank unless the owner or operator has complied with all other state and federal regulations regarding petroleum tanks.

History: Effective November 25, 1991; amended effective June 1, 1994.

General Authority: NDCC ~~23-37-05, 28-32-02~~; S.L. 1991, ch. 299, § 5

Law Implemented: ~~S.L. 1991, ch. 299, § 17~~ NDCC 23-37-17

45-10-02-03. Registration fee.

1. An annual registration fee is due and payable on July 1, 1991, and on July first of each successive year thereafter. ~~Registration fees must be paid from April 1991, or from the date a new tank was installed if it was after April 1991, to be in compliance with this section. The period of registration must run from July first to June thirtieth to coincide with the fiscal year of North Dakota.~~
2. No reregistration or fee modification will be made during any registration year when an owner or operator removes a tank or replaces an underground tank with an aboveground tank within a registration year. The renewal billing will reflect the tank status change. ~~However, a prorated registration fee is required for the installation of an additional tank within any registration year.~~
3. ~~In the event the legislative assembly may make any alterations or modifications of the registration fee, the administrator shall prorate the annual registration fee accordingly.~~

History: Effective November 25, 1991; amended effective June 1, 1994; January 1, 2000; April 1, 2014.

General Authority: NDCC ~~23-37-05, 28-32-02~~; S.L. 1991, ch. 299, § 5

Law Implemented: ~~S.L. 1991, ch. 299, § 17~~ NDCC 23-37-17

45-10-02-04. Notification of release procedures. Upon receiving notice of a release ~~from the state department of health, the administrator shall:~~

1. Verify that the tank and all other tanks owned or operated by the operator are registered with the fund.
2. Record the release information in the ~~claim register~~ registration file for the location.
3. Verify that the state department of health has received notice of the release.
3. ~~4.~~ 4. If the owner or operator has not registered all of the tanks owned ~~or~~ and operated by the operator at the location of the release, send a

letter of denial to the owner or operator with a ~~earbon~~ copy to the state department of health and close the file.

5. Obtain verification from the owner or operator that the affected tank, equipment, components, material, or dispenser is compatible and meet state requirements for the petroleum product stored and dispensed. If not compatible, send letter of denial to the owner operator with a copy to the state department of health and close file.
- 4- 6. If all tanks are registered and the affected tank, piping, fitting, or dispenser is compatible, notify the owner of the fund's claim filing procedures and send the tank owner or operator the fund's tank release guidelines with an application for reimbursement.

History: Effective November 25, 1991; amended effective June 1, 1994; August 1, 2000; April 1, 2014.

General Authority: NDCC 23-37-05, 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ ~~10, 19~~ NDCC 23-37-10, 23-37-19

45-10-02-05. Procedures for investigation of claims. In each release investigation, the administrator shall:

1. ~~Examine~~ Investigate the location and cause of the release.
2. Interview persons with knowledge of the release.
3. Examine records and documentation concerning the release, including documentation of the corrective action taken and expenses incurred.
4. Prepare a written report determining the validity of the claim and the ~~estimated~~ eligible cleanup ~~costs~~ expenses.
5. Complete other tasks as required.

History: Effective November 25, 1991; amended effective August 1, 2000; April 1, 2014.

General Authority: NDCC 23-37-05, 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ ~~18, 20, 23~~ NDCC 23-37-18, 23-37-20, 23-37-23

45-10-02-06. Reimbursement.

1. The fund will reimburse only reasonable and necessary eligible cleanup expenses as determined by the administrator in consultation with the state department of health and only if all tanks are properly registered prior to the discovery of the release.

2. No payment will be made from the fund unless a completed application form has been received by the administrator. ~~The application must contain at least the following information:~~
 - ~~a. Name and address of the owner, operator, or landowner.~~
 - ~~b. Street or highway description of the petroleum release location.~~
 - ~~c. The legal description of the release location.~~
 - ~~d. The substance released.~~
 - ~~e. The date the release was discovered.~~
 - ~~f. Name, address, and telephone number of the contact person.~~
 - ~~g. A narrative description of the release.~~
3. Eligible expenses for corrective action include the following:
 - a. Labor.
 - b. Testing.
 - c. Use of machinery.
 - d. Materials and supplies.
 - e. Professional services.
 - f. Expenses incurred ~~by order~~ through direction of federal, the state, or local government department of health.
 - g. Any other expenses the administrator and the board deem to be reasonable and necessary to remedy cleanup of the release and satisfy liability to any third party.
 - h. Consultant fees if authorized by the ~~North Dakota state department of health or other federal or state agency approving the cleanup procedures.~~
4. The following will not be considered eligible expenses under this regulation:
 - a. The cost of replacement, repair, and maintenance of affected tanks and associated piping.

- b. Pumping out of any product, including water, from any tanks which need to be removed.
 - c. The cost of upgrading existing affected tanks and associated piping.
 - d. The loss of income, profits, or petroleum product.
 - e. Decreased property value.
 - f. Bodily injuries or property damages except for injuries or damages suffered by third parties.
 - g. Attorney's fees.
 - h. Costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this regulation.
 - i. The costs of making improvements to the facility beyond those that are required for corrective action, including replacing concrete, asphalt, equipment, or buildings.
 - j. Any cleanup costs resulting from negligence or misconduct on the part of the owner or operator.
 - k. Marked-up costs.
 - ~~k.~~ l. Costs in excess of those considered reasonable by the fund.
 - ~~l.~~ m. Fines or penalties imposed by order of federal, state, or local government.
 - ~~m.~~ n. Finance charges, interest charges, or late payment charges.
5. To determine what expenses are reasonable and necessary, the owner, operator, or landowner must bid the excavation and consultant work. The lowest bid that meets the requirements of the state department of health will be deemed by the fund to be the reasonable cost for that project. The bid must be submitted according to the fund's excavation and consultant worksheets. Additional work over and above the original bid will be reimbursed according to unit costs on the original bid.
 6. The administrator may provide partial payments prior to the final determination of the amount of the loss, if it is determined that the cleanup is proceeding according to the proposed workplan of the state department of health for the site assessment. The payment may be made to the owner, operator, or landowner or that person's assigned representative if the appropriate assignment form is submitted to the

administrator with appropriate documentation verifying that the work has been completed by the assignee.

7. All claims for payment are subject to the availability of funds in the petroleum tank release compensation fund and must be submitted no later than one year after the work has been completed to be eligible.
8. Prior to payment for any loss, the owner, operator, or landowner shall subrogate to the fund all rights, claims, and interest which the owner, operator, or landowner has or may have against any party, person, persons, property, corporation, or other entity liable for the subject loss, and shall authorize the fund to sue, compromise, or settle in the name of the owner, operator, or landowner or otherwise, all such claims. The subrogation agreement required by this section must be prescribed and produced by the administrator.
9. Reimbursement will be considered when the owner, operator, or landowner has submitted complete excavation or consultant worksheets along with legible copies of all invoices, ~~providing and~~ a description of: the work performed.
 - a. ~~The work performed.~~
 - b. ~~The party who performed the work.~~
 - c. ~~The location where the work was performed.~~
 - d. ~~The date the work was performed.~~
 - e. ~~The unit cost.~~
 - f. ~~The total.~~
10. The owner, operator, or landowner must submit, prior to any payment, evidence that the amounts shown on the invoices for which the payment is requested were either paid in full by the owner, operator, or landowner or, if the owner, operator, or landowner has assigned the right to receive payment from the fund, that a contractor hired has expended time and materials for which payment must be made. This must include documentation that the work has been completed by the assignee.
11. Prior to payment, the administrator must be satisfied that the corrective action taken has met all state, ~~federal, and local laws or~~ regulations

and that the corrective action has satisfied public health, welfare, and environmental concerns.

History: Effective November 25, 1991; amended effective June 1, 1994; August 1, 2000; December 1, 2001; April 1, 2014.

General Authority: NDCC 23-37-05, 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ 18, 20, 23, 24 NDCC 23-37-18, 23-37-20, 23-37-23, 23-37-24

45-10-02-06.1. Reimbursement disputes. If the fund administrator denies or reduces payment to a tank owner, operator, or landowner, the tank owner, operator, or landowner may request a review by the board by filing a written request and supporting documentation with both the administrator and the board within thirty days of receiving a proof of loss. The board shall issue a written decision concerning the issues in dispute within thirty days of receiving the written notice and supporting documentation. If after review by the board a dispute still exists, the claimant or the administrator may appeal the board decision to the commissioner. The decision of the commissioner may be appealed under North Dakota Century Code chapter 28-32.

History: Effective August 1, 2000; amended effective December 1, 2001.

General Authority: NDCC 23-37-05, 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299 NDCC 23-37

45-10-02-07. Third-party damages. No reimbursement may be made for damage to employees as defined by the North Dakota Workers' Compensation Act or agents of the owner or operator.

History: Effective November 25, 1991.

General Authority: NDCC 23-37-05, 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ 26, 27 NDCC 23-37-26, 23-37-27

45-10-02-08. Board. The administrator shall advise the board of the fund's general operations and review claims either through written correspondence, telephone conference calls, or meetings. The board shall meet at least once each half of each calendar year.

History: Effective November 25, 1991; amended effective August 1, 2000; December 1, 2001.

General Authority: NDCC 23-37-05, 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, § 3 NDCC 23-37-03

45-10-02-09. Report to legislative assembly and governor. ~~This report, as required by section 29 of chapter 299 of the 1991 North Dakota Session Laws, must include, but is not limited to, the following information: Repealed effective April 1, 2014.~~

~~4. Total number of releases.~~

2. ~~Total number of releases denied because of nonregistered tanks.~~
3. ~~Total number of releases denied because of expenses not exceeding five thousand dollars.~~
4. ~~Total number of releases investigated by the fund.~~
5. ~~Total amount paid out for releases and the average payout per release.~~
6. ~~Brief summary of the fund's operating expenses.~~
7. ~~Recommended changes, if any, to 1991 House Bill No. 1439.~~
8. ~~Recommendation to continue or terminate the program.~~

History: ~~Effective November 25, 1991.~~

General Authority: ~~NDCC 28-32-02; S.L. 1991, ch. 299, § 5~~

Law Implemented: ~~S.L. 1991, ch. 299, § 29~~

TITLE 54
BOARD OF NURSING

APRIL 2014

CHAPTER 54-01-01

54-01-01-01. Organization of board of nursing.

1. **History and functions.** The 1915 legislative assembly passed a law governing the registration of nurses and created a board of nursing, codified as North Dakota Century Code chapter 43-12. The 1947 legislative assembly passed a law governing practical nurses, codified as North Dakota Century Code chapter 43-21. The 1977 legislative assembly passed a Nurse Practices Act which combined the two laws, codified as North Dakota Century Code chapter 43-12.1. The 1995 legislative assembly amended the law to define nursing and the requirements for the practice of nursing, and to require the governor to appoint a board of nursing to implement the law.
2. **Board membership.** The board consists of nine members appointed by the governor. Five members are registered nurses, ~~three~~ one member is an advanced practice registered nurse, two members are licensed practical nurses, and one member is a public member. Members of the board serve four-year terms with the public member's appointment coinciding with that of the governor. No member may be appointed for more than two consecutive terms.
3. **Executive director.** The executive director is employed by the board and is responsible for the administration of the board's office and activities.
4. **Inquiries.** Inquiries concerning the board and nursing practice in North Dakota may be addressed to:

North Dakota Board of Nursing
919 S. 7th St., Suite 504
Bismarck, North Dakota 58504-5881
www.ndbon.org

History: Amended effective July 1, 1982; November 1, 1985; October 1, 1987; December 1, 1989; November 1, 1996; April 1, 2004; April 1, 2014.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1, 43-12.1

CHAPTER 54-01-03

54-01-03-01. Definitions. The terms used in this title have the same meaning as in North Dakota Century Code chapter 43-12.1 and apply to North Dakota Administrative Code title 54 unless the context indicates otherwise.

1. "Abandonment" means accepting the client assignment and disengaging the nurse and client relationship without giving notice to a qualified person.
2. "Abuse" means any behavior that is designed to harass, intimidate, or injure another human being through the use of verbal, sexual, emotional, or physical harm.
3. "Accreditation" means the official authorization or status granted by a nationally recognized agency other than a state board of nursing.
4. "Activities of daily living" includes interventions associated with nutrition and hydration, elimination, maintaining mobility, assistance with self-administration of routine regularly scheduled medications, and personal cares. Personal care includes bathing, hair care, nail care, shaving, dressing, oral care, and supporting a safe and healthy environment.
5. "Acts or omissions" means patterns of unsafe behavior, nursing practice deficits, failure to comply with acceptable standards of nursing practice, or grounds for discipline identified in North Dakota Century Code chapter 43-12.1 or these rules.
6. "Advanced assessment" means the collection of the history, physical and psychological assessment data of a client's signs, symptoms, pathophysiologic status, and psychosocial variation in the determination of differential diagnoses and treatment by the advanced practice registered nurse.
- ~~6.~~ 7. "Applicant" means an individual seeking official action by the board.
- ~~7.~~ 8. "Approved" means that the standards established by the board are met.
- ~~8.~~ 9. "Assign" means a licensed nurse designates the responsibility for performance of nursing interventions to another licensed nurse.
- ~~9.~~ 10. "Assignment" means the distribution of work that each staff member is to accomplish.
- ~~10.~~ 11. "Assisting with self-administration of routine, regularly scheduled medications" means helping the client with one or more steps in the process of taking medications. Examples of "assisting" include opening the medication container or reminding the client of the proper time to

take the medication. Assisting with the administration of medication may be a delegated intervention.

- ~~41.~~ 12. "Authority" means legal authority to provide nursing care granted through licensure as a registered nurse, licensure as a practical nurse, or through delegation of nursing interventions from the licensed nurse.
- ~~42.~~ 13. "Certification" means a process of voluntary recognition by a national nursing organization or other entity of the person's specialty knowledge, skills, and abilities in a defined area of nursing practice. The certification process measures the theoretical and clinical content denoted in the specialty areas or scope of practice and is developed in accordance with generally accepted standards of validity and reliability.
- ~~43.~~ 14. "Client" means the recipient of nursing care, which may include an individual, family, group, or a community.
15. "Clinical learning experiences" means the planned, faculty-guided learning experiences that involve direct or indirect contact with clients.
- ~~44.~~ 16. "Competence" means the application and integration of knowledge, skills, ability, and judgment necessary to meet standards.
17. "Comprehensive nursing assessment" means analysis and synthesis of data collected by a registered nurse, which is used to establish a health status baseline, establish a plan of care, and address changes in a client's condition.
- ~~45.~~ 18. "Consultative nurse" means a licensed nurse who provides guidance and information related to nursing procedures and interventions to the facility or agency but is not individually responsible to direct the plan of care for the client.
- ~~46.~~ 19. "Continuing education" means planned, organized learning experiences designed to augment the knowledge, skills, and abilities for the delivery of safe and effective nursing care for the citizens of North Dakota which meets the criteria and reporting requirements established by the board.
- ~~47.~~ 20. "Criminal history record information" shall have the same meaning as the phrase is defined in North Dakota Century Code section 12-60-16.1.
- ~~48.~~ 21. "Delegation" means the authorization for the performance of selected nursing interventions from a licensed nurse to an unlicensed assistive person.
- ~~49.~~ 22. "Denial" means the board's refusal to issue or renew a current license or registration.

- ~~20.~~ 23. "Direction" means the provision of written or verbal guidance, or both, and supervision by a licensed nurse who is responsible to manage the provision of nursing interventions by another person.
24. "Distance nursing education program" means a program that is approved by the board of nursing of the jurisdiction in which the program is headquartered, and is equivalent to an "instate nursing program".
- ~~21.~~ 25. "Emergency suspension" means action by the board when there are reasonable grounds to believe the licensee, registrant, applicant, or any individual with authority to practice nursing under any privilege has violated a statute or rule the board is empowered to enforce and continued practice would constitute a continuing and imminent threat to the public welfare.
- ~~22.~~ 26. "Encumber" means to place on probation.
- ~~23.~~ 27. "Evidence-based practice" means integration of research findings with clinical expertise and client values for optimum care.
28. "Focused nursing assessment" means the collection and recording of baseline assessment data by a licensed practical nurse, which is used to observe, monitor, and report signs, symptoms, and changes in client condition in an ongoing manner. The licensed practical nurse reports to the supervising registered nurse or licensed practitioner.
- ~~24.~~ 29. "Impaired" means the ability to practice nursing safely has been affected by the use or abuse of alcohol or other drugs, psychiatric or physical disorders, or practice deficiencies.
30. "Inactive license or registration" means a license or registration which is not renewed.
- ~~25.~~ 31. "Incompetence" means conduct that deviates from either standards of nursing practice approved by the board or the definition of competence in this section.
- ~~26.~~ 32. "Instate nursing program", "nursing program", or "nursing education program" means a nurse program with faculty or facilities located in North Dakota and approved by the board.
- ~~27.~~ 33. "Interdisciplinary team" means a group of health care professionals currently licensed under North Dakota Century Code title 43.
34. "Internationally educated" means educated outside the United States.
35. "Jurisdiction" means a province, state, or territory that administers the national council licensure examination for the purpose of licensure.

- ~~28-~~ 36. "Licensed nurse" means a person licensed pursuant to North Dakota Century Code chapter 43-12.1 and North Dakota Administrative Code title 54.
- ~~29-~~ 37. "Licensed practitioner" means a person lawfully authorized to prescribe medications or treatments under North Dakota Century Code title 43.
- ~~30-~~ 38. "Licensee" means a person who has met all the requirements to practice as a licensed nurse pursuant to North Dakota Century Code chapter 43-12.1 and has been issued a license to practice nursing.
- ~~31-~~ 39. "Licensure" means the process by which the board grants legal authority privilege to an individual to engage in the practice of nursing as a licensed practical nurse, registered nurse, advanced practice registered nurse, or specialty practice registered nurse upon finding that the individual has attained the essential degree of education and competence necessary to ensure that the public health, safety, and welfare will be protected.
- ~~32-~~ 40. "Limit" means to restrict, qualify, or otherwise modify the license or registration.
- ~~33-~~ 41. "Major incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a high risk of harm to the client or another person.
- ~~34-~~ 42. "Medication administration" means the delivery of medication by a licensed nurse or an individual delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.
- ~~35-~~ 43. "Medication assistant III" means an individual who has a current registration as an unlicensed assistive person, has had additional training in administration of medication, and possesses a current registration from the board. ~~Medication assistant III is a person who has completed two semesters of an approved nursing education program, each of which must have included a clinical nursing component, or a graduate of a board-recognized medical assistant program.~~
44. "Medical assistant student" means an individual who is currently enrolled in an approved medical assistant program.
- ~~36-~~ 45. "Minor incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a low risk of harm to the client or another person.

- ~~37:~~ 46. "Misappropriation of property" means the patterned or knowing, willful, or intentional misplacement, exploitation, taking, or wrongful, temporary, or permanent use of a client's, employer's, or any other person's or entity's belongings, money, assets, or property without consent.
47. "NCLEX-PN®" means the national council licensure examination for practical nurses.
48. "NCLEX-RN®" means the national council licensure examination for registered nurses.
- ~~38:~~ 49. "Neglect" means a disregard for and departure from the standards of care which has or could have resulted in harm to the client.
- ~~39:~~ 50. "Nurse administrator" means a person responsible for organized nursing services and who manages from the perspective of the organization as a whole.
51. "Nurse faculty" means individuals employed by an academic institution who are responsible for developing, implementing, teaching, evaluating, and updating nursing program curricula.
- ~~40:~~ 52. "Nursing intervention" means the initiation and completion of client-focused actions necessary to accomplish the goals defined in the plan of care which may include activities of daily living.
- ~~41.~~ "~~Out-of-state nursing program~~" means ~~a program whose faculty and facilities are located outside North Dakota but within the United States, which is approved by the licensing board for nurses in the particular state or United States territory and is equivalent to an "instate nursing program"~~.
- ~~42:~~ 53. "Practice deficiency" means a practice activity that does not meet the standards of nursing practice.
- ~~43:~~ 54. "Practice site" means a facility that signs a written agreement with the nursing education program to provide practice experiences for students.
55. "Preceptor" means an individual at or above the level of licensure that an assigned student is seeking who may serve as a teacher, mentor, role model, or supervisor for the assigned student in a clinical setting.
56. "Prelicensure program" means a board-approved program of study that meets the requirements for nursing licensure.
- ~~44:~~ 57. "Probation" means ~~issuance of a current license or registration marked "encumbered" and identification of specific requirements, restrictions, or limitations against a nursing license or registration for a period of~~

time restrictions, requirements, or limitations placed against a licensee or registrant through monitoring for a prescribed period of time.

- ~~58.~~ 58. "Professional-boundary crossing" means a deviation from an appropriate boundary for a specific therapeutic purpose with a return to establish limits of the professional relationship.
- ~~59.~~ 59. "Professional-boundary violation" means a failure of a licensee or registrant to maintain appropriate boundaries with a client, client family member, or other health care provider.
- ~~45.~~ 60. "Professional boundaries" means the provision of nursing services within the limits of the nurse and client relationship which promote the client's dignity, independence, and best interests and refrain from inappropriate involvement in the client's or client's family personal relationships.
- ~~46.~~ 61. "Professional misconduct" means any practice or behavior that violates the applicable standards governing the individual's practice necessary for the protection of the public health, safety, and welfare.
- ~~47.~~ 62. "Reactivation" means issuance of a previously active license or registration in the absence of disciplinary action.
- ~~48.~~ 63. "Registrant" means an unlicensed assistive person as defined in North Dakota Century Code section 43-12.1-02.
- ~~49.~~ 64. "Reinstatement" means activation of a board-sanctioned license or registration from a surrendered, suspended, or revoked status.
65. "Reissuance" means issuance of a license from probationary status to full licensure status.
66. "Relicensure" means renewal, reinstatement, reactivation, or reissuance of a license or registration.
- ~~50.~~ 67. "Reprimand" means action of the board stating the board's concerns regarding the professional conduct of the licensee or registrant.
- ~~51.~~ 68. "Revocation" means the withdrawal by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is permanent.
- ~~52.~~ 69. "Scope of practice" means the delineation of the nature and extent of practice.

- ~~53.~~ 70. "Sponsor institution" means the governing organization that provides necessary administrative and fiscal resources for a nursing program.
- ~~54.~~ 71. "Stable" means a situation in which the client's clinical and behavioral status and nursing care needs are determined by the registered nurse or licensed practitioner to be predictable, nonfluctuating, and consistent or in which the fluctuations are expected and the interventions are planned.
- ~~55.~~ 72. "Stay" means the action of the board that does not immediately take place and may not take place if other conditions, such as probation terms, are met. Violations of the terms and conditions may result in lifting of the stay and imposition of the sanction.
- ~~56.~~ 73. "Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing nursing care.
- a. "Condition of supervision" means the method of supervision as direct or indirect, the identification of the persons to be supervised as well as the nursing interventions being provided, and the stability or predictability, or both, of the client's condition.
 - b. "Direct supervision" means that the responsible licensed nurse or licensed practitioner is physically present in the client care area and is available to assess, evaluate, and respond immediately. Direct supervision does not mean that the responsible licensed nurse or licensed practitioner must be in the same room or "looking over the shoulder" of the persons providing nursing care.
 - c. "Indirect supervision" means that the responsible licensed nurse or licensed practitioner is available through periodic inspection and evaluation or by telecommunication, or both, for direction, consultation, and collaboration.
74. "Surrender" means an agreement by a licensee or registrant, approved by the board, to relinquish the license or registration to the board.
- ~~57.~~ 75. "Survey" means an onsite visit or a paper review of a program approved by the board of nursing.
- ~~58.~~ 76. "Suspension" means withholding by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified or indefinite period of time.
- ~~59.~~ 77. "Technician" means an unlicensed assistive person who may perform limited nursing functions within the ordinary, customary, and usual

roles in the person's field. Examples may include surgical and dialysis technicians and medical assistants.

78. "Temporary permit" means the authority to practice nursing for a limited time period.

~~60:~~ 79. "Unlicensed assistive person registry" means a listing of all persons who are authorized by the board or included on another state registry, which has been recognized by the board to perform nursing interventions delegated and supervised by a licensed nurse.

~~61:~~ "Voluntary surrender" means ~~an agreement by a licensee or registrant, approved by the board, to relinquish the license or registration to the board.~~

80. "Work authorization" means the issuance of an authorization to practice nursing between the dates of graduation and notification of the results of the licensure examination.

~~62:~~ "Workplace impairment program" means ~~the program administered by the board as set out in the Nurse Practices Act permitting nurses with chemical dependency, psychiatric or physical disorders, or practice deficiencies to seek treatment and remediation and participate in monitored practice, voluntarily or by the board's order.~~

~~63:~~ "Workplace impairment program agreement" means ~~an individualized written agreement between the nurse and the program. The agreement must include the terms and conditions for successful completion of the program.~~

History: Effective June 1, 2002; amended effective April 1, 2004; August 1, 2005; July 1, 2008; April 1, 2011; October 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08(2)

Law Implemented: NDCC 43-12.1-08

ARTICLE 54-02

NURSE LICENSURE

Chapter	
54-02-01	Licensure by Examination
54-02-02	Reexamination
54-02-03	Proctored Examinations [Repealed]
54-02-04	Roster of Inactive Nurses [Repealed]
54-02-05	Renewal of License <u>Relicensure</u>
54-02-06	License by Endorsement
54-02-07	Disciplinary Action
54-02-08	Temporary License [Repealed]
54-02-08.1	Transitional License [Repealed]
54-02-09	Limited License
54-02-10	RN and LPN Nurse Licensure Compact
54-02-11	Short-Term Clinical Education
54-02-12	Criminal History Record Checks for Licensure

CHAPTER 54-02-01 LICENSURE BY EXAMINATION

Section	
54-02-01-01	Official Licensing Examination
54-02-01-02	Passing Score [Repealed]
54-02-01-03	Testing Dates [Repealed]
54-02-01-04	Examination Material [Repealed]
54-02-01-04.1	Board Authorization to Write Examination
54-02-01-05	Examination Results
54-02-01-06	Examination Fees
54-02-01-07	Transcript
54-02-01-08	Employment Verification [Repealed]
54-02-01-09	Foreign Graduates <u>Internationally Educated Applicants</u>
54-02-01-10	Employment of Unsuccessful Candidates
54-02-01-11	Qualifications for Admission to the Licensing Examination [Repealed]
54-02-01-12	Early Admission to the Licensing Examination [Repealed]
54-02-01-13	Authorization to Practice Nursing
54-02-01-14	Recognition of Programs From Other Jurisdictions

54-02-01-04.1. Board authorization to write examination. Candidates must complete application to the board for licensure by examination. Eligibility for testing will be ~~forwarded~~ submitted to the test center by the board when notification is received that all academic requirements have been met. In addition,

the applicant's registration with the testing vendor has been reported to the board office.

History: Effective January 1, 1994; amended effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(2)

54-02-01-05. Examination results. Examination results will be reported to individual candidates and recorded ~~on~~ in the candidate's permanent record in the board office. The examination results for the successful candidate will include the number of the permanent license that shall be issued to the candidate.

History: Amended effective November 1, 1979; October 1, 1989; December 1, 1991; January 1, 1994; May 1, 1996; February 1, 1998; April 1, 2014.

General Authority: NDCC 43-12.1-08(1)

Law Implemented: NDCC 43-12.1-09(2)

54-02-01-07. Transcript.

1. A graduate from another state or territory or an English-speaking Canadian nursing education program must provide an official completed transcript. The transcript must be sent directly from the nursing education program to the board office, as proof of satisfactory completion of the appropriate nursing education program.
2. ~~A graduate~~ Internationally educated applicants from a foreign country an international nursing education program, except for English-speaking Canadian programs, may be requested to provide an English translated evaluation of the full nursing education program academic record from a board-recognized national credential's evaluation service.

History: Amended effective June 1, 1982; January 1, 1994; February 1, 1998; April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(2)

54-02-01-09. ~~Foreign graduates~~ Internationally educated applicants.

A certificate issued by a credentials evaluation service approved by the board shall be required of any international graduate ~~from a foreign country~~, except for graduates of English-speaking Canadian programs, for admission to the national council licensure examination. Eligible ~~foreign~~ international graduates will be issued an authorization to practice nursing when declared eligible for licensure by examination and upon written verification of nursing employment in a North Dakota health care facility.

History: Effective November 1, 1979; amended effective June 1, 1982; February 1, 1998; April 1, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(2)

54-02-01-13. Authorization to practice nursing. Authorization to practice nursing between the dates of program completion and notification of results of the licensing examination will be issued to individuals accepted as candidates for the first licensing examination after program completion for which the candidate is eligible. Eligibility will be determined by the following criteria:

1. The applicant has submitted a completed application, the appropriate fee, and official transcript verifying program completion to the board office.
2. The applicant's registration with the testing center vendor has been reported to the board office confirmed.

~~Upon electronic posting of the work authorization, the applicant may use the appropriate title of graduate nurse or graduate practical nurse or the appropriate abbreviation of "G.N." or "G.P.N.". The applicant must practice under the supervision of a registered nurse while the authorization to practice is valid. The work authorization to practice will expire in ninety days or upon notification of the testing results, whichever occurs first. The work authorization is nonrenewable and available only to graduates who complete application for licensure within sixty days of graduation.~~

- a. The applicant may use the appropriate title of graduate nurse or graduate practical nurse or the appropriate abbreviation of "G.N." or "G.P.N.".
- b. The applicant must practice under the supervision of a registered nurse while the authorization to practice is valid. The work authorization to practice will expire in ninety days or upon notification of the testing results, whichever occurs first. The work authorization is nonrenewable and available only to graduates who complete an application for licensure within sixty days of graduation.

History: Effective October 1, 1989; amended effective December 1, 1991; January 1, 1994; May 1, 1996; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(2)

CHAPTER 54-02-05
RENEWAL OF LICENSE RELICENSURE

Section	
54-02-05-01	Residency or Employment Requirement [Repealed]
54-02-05-02	Renewal Dates
54-02-05-03	Renewal Fees
54-02-05-04	Increased <u>Late</u> Renewal Fee
54-02-05-05	Nonpracticing Nurses
54-02-05-05.1	Practice Requirements for License Renewal <u>Relicensure</u>
54-02-05-05.2	Limited License
54-02-05-06	Reactivating a License
54-02-05-07	Encumbered License [Repealed]
54-02-05-08	Continuing Education Requirement for License Renewal <u>Relicensure</u>

54-02-05-02. Renewal dates. Nursing licenses will be valid for two calendar years and will be subject to renewal before December thirty-first of the second year. Applicants for initial licensure by endorsement or examination shall receive a license expiring on December thirty-first of the ~~initial~~ following licensure year as a part of the application fee. Failure to receive the renewal notification does not relieve the licensee of the obligation to renew the license by the expiration date.

History: Amended effective November 1, 1990; April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(1)

54-02-05-04. Increased Late renewal fee. The relicensure renewal fee for any practicing nurse will be doubled for any renewal application received in the board office after the expiration date.

History: Amended effective November 1, 1979; June 1, 1982; July 1, 1987; November 1, 1990; September 1, 1994; April 1, 2014.

General Authority: NDCC 43-12.1-08(2)(d)

Law Implemented: NDCC 43-12.1-08(1)

54-02-05-05. Nonpracticing nurses. Any nurse who has not actively practiced nursing in North Dakota for four years or more must meet the following requirements before a license to practice is issued:

1. Complete the relicensure reactivation application.
2. ~~Pay~~ Submit the current ~~renewal~~ reactivation fee.
3. ~~Provide to the board for approval proof of~~ Certify on the application one of the following:
 - a. Practice as a licensed registered nurse or licensed practical nurse which meets or exceeds four hundred hours within the preceding

four years in another ~~state, territory, or country.~~ ~~Verification of employment is to be submitted~~ jurisdiction.

- b. Completion of a refresher course in nursing, in accordance with board guidelines, within the preceding year.
- c. Successful completion of a clinical nursing course in a board-recognized nursing program to further nursing education.
- d. Other evidence the licensee wishes to submit which would provide proof of nursing competence.

History: Amended effective June 1, 1982; May 1, 1996; February 1, 1998; April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-02-05-05.1. Practice requirements for ~~license renewal~~ relicensure.

Nursing practice for purposes of ~~relicense~~ renewal must meet or exceed four hundred hours within the preceding four years. Nursing is defined in subsection 5 of North Dakota Century Code section 43-12.1-02. Hours practiced in another regulated profession cannot be used for nursing practice hours.

History: Effective July 1, 1987; amended effective November 1, 1990; September 1, 1994; May 1, 1996; May 1, 2003; April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-02-05-08. Continuing education requirement for ~~license renewal~~ relicensure.

1. Continuing education for purposes of relicensure must be approved or recognized by the board and must meet or exceed twelve contact hours within the preceding two years.
2. All information concerning continuing education submitted with a renewal application is subject to audit. Upon request of the board, the licensee shall submit verification of successful completion of the required continuing education.
3. A licensee who does not meet the continuing education requirements for renewal or fails to provide verification of completion of the required continuing education will be ineligible for renewal and may be subject to grounds for disciplinary action.
4. A licensee who earns in excess of the number of contact hours of continuing education required during a reporting period shall not apply the excess hours to satisfy future continuing education requirements.

5. Continuing education that is required by the board pursuant to a board order shall not be accepted by the board to satisfy or partially satisfy the continuing education requirements for license renewal.

History: Effective April 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(2)(n)

**CHAPTER 54-02-06
LICENSE BY ENDORSEMENT**

Section	
54-02-06-01	Application and Fee for License by Endorsement
54-02-06-01.1	Temporary Permit
54-02-06-02	Fee Nonrefundable
54-02-06-03	Exceptions [Repealed]
<u>54-02-06-03.1</u>	<u>Military Spouses - Licensure</u>
<u>54-02-06-03.2</u>	<u>Military Spouses - Temporary Permit</u>

54-02-06-01. Application and fee for license by endorsement. Applicants licensed as a nurse by examination in another jurisdiction may apply for license by endorsement and must meet board requirements, including the following submission of:

1. ~~Submit a~~ A completed application ~~and submit to a criminal history record check according to chapter 54-02-12;~~
2. A criminal history record check according to chapter 54-02-12;
2. ~~3.~~ 3. ~~Pay the~~ The nonrefundable endorsement fee of one hundred forty dollars;
3. ~~4.~~ 4. ~~Completed~~ Evidence of completion of a ~~state-approved~~ nursing education program approved in a jurisdiction which meets or exceeds those requirements outlined in article 54-03.2; and
4. ~~5.~~ 5. ~~Has~~ Evidence of nursing practice to demonstrate continued competency which meets or exceeds four hundred hours within the preceding four years or as otherwise approved by the board.

A licensee from another jurisdiction ~~that does not meet the~~ who has an insufficient number of practice hours must meet ~~the~~ one of the alternative requirements ~~in~~ of section 54-02-05-05; ~~relating to nonpracticing nurses.~~

History: Amended effective November 1, 1979; March 1, 1986; March 1, 1992; May 1, 1996; February 1, 1998; June 1, 2001; June 1, 2002; April 1, 2004; July 1, 2008; April 1, 2011; October 1, 2012; April 1, 2014.

General Authority: NDCC 12-60-24.2(o), ~~43-12.1-09(2)(b)~~ 43-12.1-09(2)(b)

Law Implemented: NDCC 43-12.1-09(2)(b)

54-02-06-01.1. Temporary permit. Upon receipt of the application for license by endorsement, payment of the fee as set by the board, and evidence that an applicant will meet all the requirements for licensure in North Dakota, the board may issue a temporary permit to practice as a registered nurse or licensed practical nurse in this state until the license is issued. The temporary permit

expires at the end of ninety days and may be ~~renewed~~ extended only for reasons satisfactory to the board.

History: Effective May 1, 1996; amended effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09

54-02-06-03.1. Military spouses - Licensure. Military spouse applicants will be granted a license to practice nursing upon meeting board requirements and submission of:

1. A completed application;
2. A criminal history record check according to chapter 54-02-12;
3. Payment of the nonrefundable endorsement fee; and
4. Evidence that demonstrates continued competency which must include experience in nursing for at least two of the four years preceding the date of application or otherwise approved by the board and meet the requirements in section 54-02-06-01.

The military spouse who does not meet the practice requirements outlined above may apply for section 54-02-06-01.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-51-11.1

54-02-06-03.2. Military spouses - Temporary permit. Refer to section 54-02-06-01.1.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-51-11.1

**CHAPTER 54-02-07
DISCIPLINARY ACTION**

Section	
54-02-07-01	Definition of Unprofessional Conduct [Repealed]
54-02-07-01.1	Grounds for Discipline
54-02-07-02	Definitions [Repealed]
54-02-07-03	Complaints [Repealed]
54-02-07-03.1	Reporting Violations
54-02-07-04	Investigation
54-02-07-04.1	Evidence and Evaluation of Treatment
54-02-07-05	Settlements [Repealed]
54-02-07-05.1	Disposition
54-02-07-05.2	Emergency Suspension
54-02-07-05.3	Voluntary Surrender of License or Registration
54-02-07-05.4	Cease and Desist Order
54-02-07-06	Board Decision
54-02-07-07	Fees
54-02-07-08	Application for Reinstatement
54-02-07-09	Practice Without a License or Registration
54-02-07-10	Unlicensed Assistive Persons Without Registry Status [Repealed]
54-02-07-11	Applicant Statement
54-02-07-12	Unlicensed Assistive Persons on Board-Recognized Registries [Repealed]

54-02-07-01.1. Grounds for discipline. Practice inconsistent with acceptable standards of nursing practice by a licensee, applicant, or registrant means behavior that may place a client or other person at risk for harm or be in violation of the standards of nursing practice. Inconsistent practice includes incompetence by reason of negligence, patterns of behavior, or other behavior that demonstrates professional misconduct and includes the following:

1. Failure to provide nursing care because of client diagnosis, age, ~~sex~~ sexual preference, gender, marital status, socioeconomic status, disability, race, or religion, ~~creed, or color~~.
2. Cause or permit verbal, physical, emotional, or sexual abuse or harassment or intimidation to a client, client's family, or other health care provider.
3. Assign or delegate the responsibility for performance of nursing interventions to unqualified persons.
4. Failure to appropriately supervise persons to whom nursing interventions have been assigned or delegated.
5. Practice of nursing without sufficient knowledge, skills, or nursing judgment.

6. Performance of nursing interventions in a manner inconsistent with acceptable nursing standards.
7. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of board records or client, employee, or employer records.
8. Failure to adhere to the licensee's, registrant's, or applicant's professional code of ethics or other applicable standards governing the individual's practice.
9. Misappropriation of property, including any real or personal property of the client, employer, or any other person or entity or failure to take precautions to prevent such misappropriation.
10. Abandon or neglect a client who is in need of or receiving nursing care.
11. Failure to comply with mandatory requirements to report any violation of the Nurse Practices Act or duly promulgated rules, regulations, or orders of the board.
12. Practice nursing or assist in the practice of nursing while under the influence of alcohol or unauthorized drugs or while exhibiting impaired behavior.
13. Alter or falsify a license, registration, transcript, diploma, certificate, program of study, or continuing education document.
14. Use or permit the use of a nursing license or registration that has been fraudulently purchased, created, obtained, issued, counterfeited, or altered.
15. Failure to submit to a mental health, chemical dependency, or physical evaluation within the timeframe required by the board.
16. Violate any term of probation, condition, or limitation imposed by the board.
17. Failure to adhere to professional boundaries with a client or client's family.
18. Failure to comply with licensure or registration requirements.
19. Submit to a drug screen that results in a positive test for unauthorized drugs.

20. Failure to provide a written notice or report required under section 54-02-07-03.1 of this chapter.

History: Effective December 1, 1995; amended effective July 1, 1996; February 1, 1998; June 1, 2002; April 1, 2004; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-04. Investigation. Complaints, requests for investigation, and reports of acts or omissions that are in violation of North Dakota Century Code chapter 43-12.1 or are grounds for disciplinary action will be investigated by the board or by its direction in order to determine whether sufficient grounds exist to file a complaint according to North Dakota Century Code chapter 28-32. The board or its investigative panel may subpoena witnesses, records, and any other evidence relating to the investigation. Any medical record of an individual, or any other document containing personal health information which is obtained by the board, is an exempt record as defined in North Dakota Century Code section 44-04-17.1.

History: Effective August 1, 1988; amended effective December 1, 1995; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-13

54-02-07-04.1. Evidence and evaluation of treatment. The board may require the individual subject to an investigation to submit to a mental health, chemical dependency, or physical evaluation if, during the course of the investigation, there is reasonable cause to believe that any licensee, registrant, or applicant is unable to practice with reasonable skill and safety or has abused alcohol or drugs. The board may require a copy of the evaluation to be submitted from the evaluating professional directly to the board.

1. Upon failure of the person to submit to the evaluation within thirty days of the request, the board may suspend the individual's license or registration or deny or suspend consideration of any pending application until the person submits to the required evaluation.
2. The licensee, registrant, or applicant shall bear the cost of any mental health, chemical dependency, or physical evaluation and treatment required by the board.
3. The board may suspend or revoke an individual's license or registration if it is determined that the individual is unsafe to practice. The suspension or revocation will remain in effect until the individual demonstrates to the satisfaction of the board the ability to safely return to the practice of nursing or assist in the practice of nursing.
4. The board may deny the individual's application for licensure or registration if it is determined that the individual is unsafe to practice. The denial will remain in effect until the individual demonstrates to the

satisfaction of the board the ability to safely practice nursing or assist in the practice of nursing.

History: Effective June 1, 2002; amended effective July 1, 2008; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-05.1. Disposition. Requests for investigation may result in:

1. Informal resolution and disposition by the board;
2. Formal resolution and disposition by the board. The board may use an administrative law judge to preside over the entire administrative proceeding and prepare recommended findings of fact, conclusions of law, and recommended order for board consideration, or the board may use a procedural hearing officer for the conduct of the hearing at which a majority of board members must be present at the hearing;
3. Dismissal. If the board's investigative panel determines that the alleged violation is frivolous, would not constitute grounds for disciplinary action, is outside the jurisdiction of the board, or is otherwise inappropriate for board action, the complainant and the affected licensee or registrant shall be notified in writing that the board will not pursue the matter, stating the grounds for the decision;
4. Referral to another agency; or
5. Other action as directed by the board.

History: Effective December 1, 1995; amended effective June 1, 2002; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-05.2. Emergency suspension. The executive director or the executive director's authorized designee may issue, upon authorization from the board's investigative panel, an emergency suspension of a license, registration, permit, or privilege to practice when continued practice of a licensee, registrant, applicant, or any individual with authority to practice nursing under any privilege would constitute a continuing and imminent threat to the public welfare.

1. The order of emergency suspension shall take effect upon written notice to the licensee, registrant, applicant, or any other individual with authority to practice nursing under any privilege and shall remain in effect until either retracted, modified, or superseded by final disciplinary action by the board or upon agreement between the board and the licensee, registrant, applicant, or individual. If a hearing is not requested by the licensee, registrant, applicant, or individual within

twenty days of the notice, the emergency suspension shall become effective as a final order, for a suspension period of five years, without further notice.

2. In cases when disciplinary action is imposed, the board may additionally order that the emergency suspension continue in effect until the later of expiration of the time permitted for appeal or termination of the appellate process.

History: Effective June 1, 2002; amended effective April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-05.3. ~~Voluntary surrender~~ Surrender of license or registration.

The board may accept the return and surrender of a license or registration without formal charges, notice, or opportunity of hearing if the licensee or registrant ~~voluntarily~~ surrenders the license or registration to the board and executes a statement that the individual does not desire to be licensed or registered.

An individual who is under investigation for violation of North Dakota Century Code chapter 43-12.1 may ~~voluntarily~~ surrender a license or registration to the board. Any license or registration surrender shall be deemed to be an admission of the alleged facts of any pending investigation or disciplinary matter.

1. A ~~voluntary~~ surrender deactivates the license or registration at the time of its relinquishment.
2. The ~~voluntary~~ surrender of a license or registration is disciplinary action and shall be reported and processed in the same manner as final disciplinary actions of the board.
3. Surrender of a license or registration shall not preclude the board from investigating or completing a disciplinary proceeding.
4. Individuals who surrender their licenses or registrations are not eligible to seek reinstatement of their license or registration for a minimum of two years and shall comply with the requirements for reinstatement of license or registration.

History: Effective June 1, 2002; amended effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-06. Board decision. The final decision will be adopted by a simple majority of the board and will include findings of fact, conclusions of law, and order. The decision of the board to impose or modify any restrictions upon the licensee or registrant or the licensee's or registrant's practice or to reinstate a license or registration will be communicated to the licensee or registrant in the

form of a board order. In addition to the terms and conditions imposed by the board, the following may apply:

1. **Revocation.** If the board issues a revocation order, it may also indicate in the order the specific action necessary for the ~~reapplication~~ reinstatement for licensure or registration by the individual. The national nursing licensing examination may be waived by the board as a condition for the ~~reissuance~~ reinstatement of a previously revoked license. The initial licensure or registration fee will be assessed for the ~~reissuance~~ reinstatement of a revoked license or registration.
2. **Suspension.** If the board issues a suspension order, it may also indicate the specific action necessary for the ~~reissuance~~ reinstatement of the license or registration. An individual whose license or registration is suspended may request reinstatement by the board at any regularly scheduled meeting following the conclusion of the time period specified in the order. The current renewal fee will be required for ~~reissuance~~ reinstatement of a suspended license or registration.
3. **Encumbrance.** If the board issues an encumbrance order, ~~an encumbered license or registration shall be identified with the following statement: "License or registration is encumbered. Please contact the board of nursing."~~ the license shall be designated in the board's records as "encumbered" or as the board may otherwise require. If a licensee or registrant has more than one license ~~or~~ and registration, the encumbrance applies to all licenses ~~or~~ and registrations.

History: Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-13, 43-12.1-14

54-02-07-07. Fees.

1. Costs and disbursements, including witness fees and reimbursement of the board's expenses in any administrative hearing or other proceeding, may be recovered from the licensee, applicant, or registrant following any disciplinary action.
2. Penalty fees for each separate violation as established by the board may be imposed against the licensee, applicant, or registrant following any disciplinary action. ~~Administrative fees may be imposed by the board against the licensee, applicant, or registrant following the issuance of nondisciplinary action.~~
3. Administrative fees may be imposed by the board against the licensee, applicant, or registrant following the issuance of nondisciplinary action.

- ~~3.~~ 4. If a witness is subpoenaed by the board to appear at the request of the licensee or registrant, the licensee or registrant is to deposit with the board sufficient funds to cover expenses for mileage, food, lodging, and witness fees as allowed by state reimbursement policies.
- ~~4.~~ 5. In the case of any request by the licensee, applicant, or registrant for the subpoena by the board of an expert witness, sufficient funds will also be deposited with the board, prior to the issuance of such subpoena, to cover such expert witness fees. The deposit with the board of funds for witness fees and expenses must be made prior to the issuance of the subpoena. The request for the subpoena by the board of a witness for the licensee, applicant, or registrant must be made in writing.

History: Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-26, 43-12.1-13

54-02-07-08. Application for reinstatement. Any person whose license, privilege, or registration has been suspended, surrendered, or revoked by the board ~~or voluntarily surrendered~~ shall submit a written application for reinstatement in the manner and form required by the board at the conclusion of the time period specified in the order. The burden of proof is on the licensee or registrant to prove to the satisfaction of the board that the condition that led to a sanction no longer exists or no longer has a material bearing on the licensee's professional ability or registrant's ability, or both. The board will consider the written application for reinstatement at the next regularly scheduled board meeting. If the board votes for reinstatement, the board may impose reasonable terms and conditions to be imposed prior to reinstatement, or as a condition of reinstatement. If the board denies reinstatement, reasons for denial must be communicated to the applicant.

History: Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-09. Practice without a license or registration. ~~An individual seeking to initiate licensure or registration or to renew a license or registration who has failed to complete the registration process within the required time period and has been found to have been practicing nursing or assisting in the practice of nursing without a current license or registration shall be assessed the following:~~

1. ~~**Nondisciplinary action.** During the first month of unauthorized practice, an individual seeking to initiate licensure or registration or to renew a license or registration who has failed to complete the registration process within the required time period and has been found to have been practicing nursing or assisting in the practice of nursing without a current license or registration shall be required to:~~

- a. ~~A person who has duly applied for licensure or registration and whose license or registration has been expired for thirty calendar days or less and who has been practicing nursing or assisting in the practice of nursing may be issued a license or registration by paying to the board the required late licensure or registration fee and administrative fee as established by the board and complying with any other requirements of the board. Submit double the licensure or registration fee;~~
 - b. ~~Upon compliance with board rules regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued. Submit an administrative fee; and~~
 - c. ~~Complete all other licensure or registration requirements as established by the board.~~
2. **Disciplinary action:** After the first month of unauthorized practice, an individual who has been unintentionally practicing nursing or assisting in the practice of nursing without proper authorization shall be required to:
- a. ~~A person who has duly applied for licensure or registration and whose license or registration has been expired for more than thirty calendar days and who has been practicing nursing or assisting in the practice of nursing may be issued a license or registration by paying to the board the required late licensure or registration fee, penalty fee, duly complying with the imposition of any disciplinary sanction established by the board and complying with any other requirements of the board. Submit double the licensure or registration fee;~~
 - b. ~~A person who has not duly applied for licensure or registration and who has been practicing nursing or assisting in the practice of nursing without a current license or registration may be issued a license or registration by paying to the board the required late licensure or registration fee and penalty fee, duly complying with the imposition of any disciplinary sanction established by the board, and complying with any other requirements of the board. Submit an administrative fee;~~
 - c. ~~Upon compliance with board rules regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued. Submit to a criminal history check;~~
 - d. ~~Disciplinary action for practicing without a license or registration may be expunged from the licensee's or registrant's record if no further violations occur within five years after the imposition of the board's order. Successfully complete a course of study on the North Dakota Nurse Practices Act within sixty days; and~~

- e. Complete all other licensure or registration requirements as established by the board.
3. The license or registration of an individual who has unintentionally practiced nursing or assisted in the practice of nursing without proper authorization shall be automatically suspended without further proceedings if the requirements of the license or registration are not met within the time specified by the board. The suspension shall remain in effect until the board receives satisfactory evidence of successful completion of the requirements for licensure or registration.
4. If an unlicensed assistive person, whose registration has expired, assists in the practice of nursing without a current registration for a period not exceeding four months from the person's initial date of employment, and if the person has not previously been determined to have assisted in the practice of nursing without a current registration, then the provisions of subsections 1, 2, and 3 of this section shall not apply to that person; instead, the person shall receive a letter of concern and be required to complete all registration requirements as established by the board.
5. Upon compliance with the board rules regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued.
6. Disciplinary action for practicing without a license or registration may be expunged from the licensee's or registrant's record if no further violations occur within two years after the imposition of the board's order.

History: Effective August 1, 1988; amended effective September 1, 1994; December 1, 1995; June 1, 2002; April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-11. Applicant statement. If an applicant for initial or renewal of licensure or registry status ~~reports an arrest, charge, or prior conviction of a crime other than a minor traffic violation~~ has been arrested, charged, or convicted of a felony offense, the applicant must provide the necessary information to determine the bearing upon that person's ability to serve as a licensed nurse or an unlicensed assistive person. Upon receipt of evidence of sufficient rehabilitation as outlined in North Dakota Century Code section 12.1-33-02.1, the license or registration may be issued. If the information does not substantiate the rehabilitation, the applicant may ask for a hearing pursuant to North Dakota Century Code chapter 28-32.

History: Effective December 1, 1995; amended effective June 1, 2002; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

CHAPTER 54-02-10

54-02-10-02.1. Issuance of a license by a compact party state. For purposes of this compact as of July 1, 2005, an applicant for initial licensure will not be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX[®] examination or predecessor examination used for licensure.

1. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include:
 - a. Driver's license with a home address;
 - b. Federal income tax return declaring the primary state of residence;
 - c. Military form number 2058 - state of legal residence certificate; or
 - d. W2 form from United States government or any bureau, division, or agency thereof indicating the declared state of residence.
2. A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.
3. A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state that issued the license.
4. When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states, e.g., a single state license, the license shall be clearly marked with words indicating that it is valid only in the state of issuance.
5. A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed ~~thirty~~ ninety calendar days.
6. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the ~~thirty-day~~ ninety-day period shall be stayed until resolution of the pending investigation.
7. The former home state license shall no longer be valid upon the issuance of a new home state license.

8. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten business days and the former home state may take action in accordance with that state's laws and rules.

History: Effective August 1, 2005; amended effective July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-51

CHAPTER 54-03.2-01

54-03.2-01-03. Standards for nursing education. Programs of nursing education shall prepare nurses to deliver client-centered care as members of an interdisciplinary team emphasizing evidence-based practice, quality improvement approaches, and information management consistent with scope of practice and level of licensure sought.

1. The purpose and outcomes of the nursing education program must be consistent with the Nurse Practices Act and administrative rules and other relevant statutes.
2. The purpose and outcomes of the nursing education program must be consistent with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program education offered.
3. The input from the community of interest must be considered in the development and evaluation of the purpose and outcomes of the program.
4. The nursing education program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program and student learning outcomes and incorporates continuous improvement.
5. The faculty and students shall participate in program planning, implementation, evaluation, and continuous improvement.
6. The curriculum must be evidence-based and provide diverse learning experiences consistent with program and student learning outcomes.
7. The fiscal, human, physical, and learning resources must be adequate to support program processes and outcomes.
8. The nursing education program administrator must be a registered nurse who is academically qualified and has institutional authority with administrative responsibility for the program.
9. Academically and clinically qualified and registered nurse faculty must be sufficient in numbers and expertise to accomplish program outcomes and quality improvement.
10. Program information communicated by the nursing education program must be fair, accurate, inclusive, consistent, and readily available to the public.

History: Effective April 1, 2004; amended effective July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

**CHAPTER 54-03.2-02
ORGANIZATION AND ADMINISTRATION**

Section	
54-03.2-02-01	Accreditation Requirements
54-03.2-02-02	Organizational Design
54-03.2-02-03	Nursing <u>Education</u> Program Organizational Design
54-03.2-02-04	Nursing <u>Education</u> Program Consistency With Sponsor Institution
54-03.2-02-05	Nursing <u>Education</u> Program Evaluation
54-03.2-02-06	Financial Support

54-03.2-02-01. Accreditation requirements. The sponsor institution offering the nursing education program must be accredited by a United States department of education-recognized regional or national accreditation entity.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-02-02. Organizational design. There must be an organizational design of the sponsor institution that demonstrates the relationship of the nursing education program to the administration and to comparable programs within the institution, and that clearly delineates the lines of authority, responsibility, and channels of communication. The program faculty is given the opportunity to participate in the governance of the program and sponsor institution.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-02-03. Nursing education program organizational design. The nursing education program must have an organizational design with clearly defined authority, responsibility, and channels of communication that assures both faculty and student involvement.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-02-04. Nursing education program consistency with sponsor institution. The program must have a written purpose that is consistent with the

mission of the sponsor institution. The program must have written policies that are congruent with the sponsor institution policies and are periodically reviewed.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-02-05. Nursing education program evaluation. A comprehensive nursing education program evaluation must be ongoing and must include student achievement of program and student learning outcomes, multiple measures of student success after graduation, licensing examination pass rates, and evaluating program resources. Use of evaluation findings for relevant decisionmaking must be evident.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-02-06. Financial support. There must be evidence of financial support and resources adequate to achieve the purpose of the nursing education program. Resources include facilities, equipment, supplies, and qualified administrative, instructional, and support personnel.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

**CHAPTER 54-03.2-03
NURSE ADMINISTRATOR**

Section	
54-03.2-03-01	Administrator Responsibilities
54-03.2-03-02	Practical or Associate Degree Nurse <u>Education</u> Program Administrator Qualifications
54-03.2-03-03	Baccalaureate or Graduate <u>Master's Degree</u> Nurse <u>Education</u> Program Administrator Qualifications
<u>54-03.2-03-.03.1</u>	<u>Doctoral Degree Nurse Education Program Administrator Qualifications</u>
54-03.2-03-04	Graduate Program Qualifications [Repealed]
54-03.2-03-05	Employment of Academically Unqualified Administrator

54-03.2-03-02. Practical or associate degree nurse education program administrator qualifications. The qualifications for an administrator in a program leading to a certificate in practical nursing or associate degree in nursing are:

1. A minimum of a master's degree from an accredited institution with a major in nursing;
2. A current unencumbered registered nurse license or privilege to practice; ~~and~~
3. ~~Educational preparation or experience in teaching, curriculum development, and administration, including at least two years of nursing experience.~~ Experience in teaching and knowledge of learning principles for adult education, including nursing curriculum development, administration, and evaluation; and
4. A current knowledge of nursing practice at the practical or associate degree nurse level or as otherwise approved by the board.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(2)

54-03.2-03-03. Baccalaureate or ~~graduate~~ master's degree nurse education program administrator qualifications. The qualifications for an administrator in a program leading to a baccalaureate or master's degree of nursing are:

1. ~~A minimum of a master's degree and an earned doctoral degree~~ An earned doctoral degree in nursing or an earned master's degree in nursing and an earned doctoral degree from an accredited institution; ~~one of which is in nursing;~~

2. A current unencumbered registered nurse license or privilege to practice; and
3. ~~Educational preparation or experience in teaching, curriculum development, and administration, including at least two years of nursing experience.~~ Experience in teaching and knowledge of learning principles for adult education, including nursing curriculum development, administration, and evaluation; and
4. A current knowledge of nursing practice at the baccalaureate or master's degree nurse level or as otherwise approved by the board.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(3)

54-03.2-03-03.1. Doctoral degree nurse education program administrator qualifications. The qualifications for an administrator in a program leading to a doctoral degree of nursing are:

1. An earned doctoral degree in nursing or an earned master's degree in nursing and an earned doctoral degree from an accredited institution;
2. A current unencumbered registered nurse license or privilege to practice; and
3. A current knowledge or nursing practice at the doctoral degree level or as otherwise approved by the board.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-03-05. Employment of academically unqualified administrator.

The board may approve a nursing education program that employs an administrator who does not meet the educational requirements in section 54-03.2-03-03 in the following circumstances:

1. The program maintains full approval by the board and the sponsoring institution demonstrates to the satisfaction of the board that substantial effort was used to recruit a candidate with the required credentials, and the candidate is currently enrolled in a doctoral degree program offered by an accredited institution and can demonstrate to the satisfaction of the board a specific plan of completion within seven years of hire for a doctoral degree; and

- a. The institution demonstrates to the satisfaction of the board that eighty-five percent of the program's nursing faculty full-time equivalents have the required degree; or
 - b. A faculty of seven or fewer members will have no more than one nursing faculty full-time equivalent that is unqualified.
2. ~~Other circumstances~~ As otherwise as approved by the board.

History: Effective April 1, 2004; amended effective July 1, 2008; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17

CHAPTER 54-03.2-04 FACULTY

Section	
54-03.2-04-01	Faculty Responsibilities
54-03.2-04-02	Faculty Policies
54-03.2-04-03	Practical or Associate Degree Nurse <u>Education</u> Program Faculty Qualifications
54-03.2-04-04	Baccalaureate or Graduate <u>Master's Degree</u> Nurse <u>Education</u> Program Faculty Qualifications
<u>54-03.2-04-04.1</u>	<u>Doctoral Degree Nurse Education Program Faculty Qualifications</u>
54-03.2-04-05	Graduate Program Faculty Qualifications [Repealed]
54-03.2-04-06	Nonclinical <u>Nonnursing</u> Faculty Qualifications
54-03.2-04-07	Preceptors
54-03.2-04-08	Employment of Academically Unqualified Faculty
54-03.2-04-08.1	Faculty Developmental Program

54-03.2-04-01. Faculty responsibilities. There must be sufficient number of qualified faculty to meet the objectives and outcomes of the nursing education program. Nursing education program faculty responsibilities include the following:

1. Plan, implement, evaluate, and update the program and curriculum using a written plan;
2. Develop, implement, evaluate, and update policies for student admission, progression, retention, and graduation in keeping with the policies of the sponsor institution;
3. Participate in academic advisement and guidance of students;
4. Provide theoretical instruction and practice experiences;
5. Select, monitor, and evaluate preceptors and the student learning experience as defined in section 54-03.2-04-07;
6. Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;
7. Evaluate student learning outcomes and participate in the evaluation of program outcomes; and

8. Participate in activities that facilitate maintaining the faculty members' own nursing competence and professional expertise in the area of teaching responsibility.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-04-03. Practical or associate degree nurse education program faculty qualifications. There must be sufficient faculty with graduate preparation and nursing expertise to achieve the purpose of the program- and comply with the following:

1. The nurse faculty who have responsibility for planning, implementing, and evaluating a nursing course in a program leading to practice as a practical nurse or an associate degree-registered nurse must have:
 - a. A minimum of a master's degree from an accredited institution. If the master's degree is in a discipline other than nursing, evidence of acceptable graduate level coursework in nursing, which includes learning principles for adult education, nursing curriculum development, administration, and evaluation, must be submitted to the board;
 - b. A current unencumbered registered nurse license or privilege to practice; and
 - c. Evidence of prior nursing practice experience.
2. Clinical faculty that supervise nursing practice experiences of students enrolled in a program leading to practice as an associate degree-registered nurse shall meet the same requirements.
 - a. A minimum of a master's degree from an accredited institution. If the master's degree is in a discipline other than nursing, submit evidence of acceptable graduate level coursework in nursing ~~must be submitted to the board;~~ which includes learning principles for adult education, nursing curriculum development, administration, teaching, and evaluation.
 - b. A current unencumbered registered nurse license or privilege to practice; and
 - c. Evidence of prior nursing practice experience.
3. Clinical faculty that supervise nursing practice experiences of students enrolled in a practical nurse program shall meet the following requirements:

- a. A minimum of a baccalaureate degree in nursing;
- b. A current unencumbered registered nurse license or privilege to practice; and
- c. Evidence of prior nursing practice experience.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-04-04. Baccalaureate or graduate master's degree nurse education program faculty qualifications. There must be sufficient faculty with graduate preparation and nursing expertise to achieve the purpose of the program- and comply with the following:

1. Nurse faculty must have a minimum of a master's degree from an accredited institution. ~~If the a~~ the a master's degree is in a discipline other than nursing, the faculty member must submit evidence of acceptable graduate level coursework in nursing ~~must be submitted to the board;~~ which includes learning principles for adult education, nursing curriculum development, administration, and evaluation.
 - a. The majority of graduate program faculty must hold an earned doctoral degree;
 - b. Nurse faculty must be registered nurses with a current unencumbered license or privilege to practice; and
 - c. Evidence of prior nursing practice experience; ~~and.~~
2. Clinical faculty that supervise nursing practice experiences of students enrolled in a program leading to practice as baccalaureate or graduate master's degree registered nurse shall meet the same requirements.
 - a. A minimum of a master's degree from an accredited institution. If the master's degree is in a discipline other than nursing, the faculty member must submit evidence of acceptable graduate level coursework in nursing ~~shall be submitted to the board;~~ which includes learning principles for adult education, nursing curriculum development, administration, and evaluation;
 - b. A current unencumbered registered nurse license or privilege to practice; and

- c. Evidence of prior nursing practice experience.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-04-04.1. Doctoral degree nurse education program faculty qualifications. There must be sufficient faculty with doctoral graduate preparation and nursing expertise to achieve the purpose of the program and comply with the following:

1. Nurse faculty must have an earned doctoral degree in nursing or an earned master's degree in nursing and an earned doctoral degree from an accredited institution, and shall meet the following requirements:
 - a. An unencumbered registered nurse license or privilege to practice; and
 - b. Evidence of prior nursing practice experience.
2. Clinical faculty that supervise nursing practice experiences of students enrolled in a program leading to practice as a doctoral level degree registered nurse must have an earned doctoral degree in nursing, or an earned master's degree in nursing and an earned doctoral degree from an accredited institution, and shall meet the following requirements:
 - a. A current unencumbered registered nurse license or privilege to practice; and
 - b. Evidence of prior nursing practice experience.
3. An individual currently employed as a full-time equivalent faculty member in a doctoral program in this state as of March 31, 2014, shall be deemed to be qualified under the provisions of this chapter through December 31, 2025.
4. Other circumstances as approved by the board.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-04-06. Nonclinical Nonnursing faculty qualifications. Faculty, who have primary responsibility for teaching supportive courses in a nursing

education program, must hold a master's degree from an accredited institution or a comparable professional credential in their respective discipline.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-04-08. Employment of academically unqualified faculty. Any individual engaged in a teaching relationship who does not meet the qualifications in section 54-03.2-04-03 ~~or~~ 54-03.2-04-04, or 54-03.2-04-04.1 is considered academically unqualified faculty regardless of the title assigned by the institution. A program may receive continued approval with faculty who do not meet the educational requirements in section 54-03.2-04-03 ~~or~~ 54-03.2-04-04, or 54-03.2-04-04.1 in the following circumstances:

1. The program maintains full approval by the board and the administrator demonstrates to the satisfaction of the board that substantial effort was used to recruit a candidate with the required credentials, and the candidate is currently enrolled in a master's or doctoral degree program offered by an accredited institution and can demonstrate to the satisfaction of the board a specific plan of completion within four years of hire for the master's degree or seven years for a doctorate degree; and
 - a. The administrator demonstrates to the satisfaction of the board that eighty-five percent of the program's nursing faculty full-time equivalents have the required degree; or
 - b. A program with faculty of seven or fewer members will have no more than a total of one nursing faculty full-time equivalent held by an unqualified individual;
2. The board may extend the time allowed for the candidate to complete the degree by one year due to severe extenuating circumstances; or
3. Other circumstances as approved by the board.
4. A program with faculty holding less than a baccalaureate degree in nursing shall not be approved.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

CHAPTER 54-03.2-05

54-03.2-05-01. Student policies. Student policies shall facilitate mobility and articulation and be consistent with the sponsoring institution. Nursing education program policies, recruitment, and advertising shall demonstrate fair and ethical practices. The following policies must be in writing:

1. Admission, readmission, progression, retention, graduation, dismissal, and withdrawal;
2. Health requirements and other standards as may be required for protection of student health and public safety, including any required background checks;
3. Student responsibilities;
4. Student rights and grievance procedures;
5. Student opportunity to participate in nursing education program governance and evaluation; and
6. Refund of fees and tuition that complies with state law.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 15-20.4-06, 43-12.1-17(1)

CHAPTER 54-03.2-06 CURRICULUM

Section

54-03.2-06-01	General Curriculum
54-03.2-06-02	Programmatic Changes
54-03.2-06-03	Practice Sites
54-03.2-06-04	Practical Nurse Curriculum [Repealed]
54-03.2-06-05	Registered Nurse Curriculum [Repealed]
54-03.2-06-06	Graduate Program Curriculum [Repealed]
54-03.2-06-07	Nursing <u>Education Program</u> Curriculum

54-03.2-06-07. Nursing education program curriculum. The curriculum of the nursing education program must assure the development of evidence-based practice clinical judgement, and skills in clinical management for the level ~~and~~, scope, and standards of nursing practice. The program outcomes must reflect the scope of practice and level of licensure sought as defined in chapters 54-05-01, 54-05-02, and 54-05-03.1.

1. The curriculum of all practical nurse programs must include:
 - a. Content regarding biological, physical, social, and behavioral sciences and legal and ethical responsibilities for practical nursing practice;
 - b. Nursing process concepts;
 - c. Communication and documentation skills;
 - d. Pharmacologic concepts and medication administration;
 - e. Nutritional concepts;
 - f. Theory and clinical experience related to health promotion and disease prevention for individual clients across the lifespan and in a variety of clinical settings, including basic safety and infection control;
 - g. Learning experiences that promote client-centered care that:
 - (1) Involves clients in decisionmaking, self-care, and healthy lifestyles;
 - (2) Respects client differences, values, preferences, and expressed needs; and
 - (3) Is based on scientific evidence;

- h. Learning experiences that promote supervision skills and socialization consistent with role and scope of practice and:
 - (1) Promotes functioning as a part of an interdisciplinary team; and
 - (2) Supervised clinical practice that includes management and care of groups of clients and delegation and supervision of unlicensed assistive persons;
 - i. Sufficient practice experiences to assure the development of nursing competencies of the specific role and scope; and
 - j. Learning experiences and methods of instruction which are consistent with the written curriculum plan.
2. Additional requirements for associate degree practical nurse programs include:
- a. Historical trends in nursing;
 - b. Theory and clinical experience related to section 54-05-01-06 relating to role of the licensed practical nurse intravenous therapy;
 - c. Data collection skills;
 - d. Use of available health information:
 - (1) Contributing to plan of care and care implementation; and
 - (2) Computer literacy;
 - e. Management skills; and
 - f. Courses that meet the sponsoring institution's general education requirements for the associate degree.
3. The curriculum of an associate degree program leading to registered nurse licensure must include content and sufficient clinical experience to prepare the graduate to:
- a. Deliver client-centered care that respects client differences, values, preferences, and expressed needs and is based on scientific evidence:
 - (1) Biological, physical, social, and behavioral sciences, including disease process, nutrition, and pharmacology;

- (2) Content regarding legal, ethical responsibilities and historical trends in nursing;
 - (3) Nursing process;
 - (4) Written, verbal, and therapeutic communication;
 - (5) Basic decisionmaking skills;
 - (6) Data collection skills to obtain obvious information; and
 - (7) Health promotion and maintenance for the individual and families.
- b. Function effectively in an interdisciplinary team:
- (1) Group dynamics;
 - (2) Goal-setting strategies; and
 - (3) Management concepts, including delegation and supervision of other members of the health care team.
- c. Deliver evidence-based practice, including application of evidence in managing common clinical problems.
- d. Apply quality improvement concepts in nursing care:
- (1) Basic safety and infection control standards; and
 - (2) Quality improvement processes.
- e. Use available health information:
- (1) Documentation of care plan, nursing care implementation, and evaluation of care provided; and
 - (2) Computer literacy.
- f. Inform and counsel patients and families:
- (1) Concepts of informational readiness;
 - (2) Discharge planning; and
 - (3) Implementation of preestablished patient teaching plans.
- g. Demonstrate nursing values and roles consistent with the scope of practice:

- (1) Registered nurse standards of practice; and
 - (2) Ethical concepts.
- h. Courses that meet the sponsoring institution's general education requirements for the associate degree.
4. The curriculum of a baccalaureate nurse program or a direct entry, prelicensure graduate program must include:
- a. Content regarding legal and ethical issues; history, trends, and theories in nursing; biological, physical, social, and behavioral sciences, including pharmacotherapy; nutritional therapy; and pathophysiology;
 - b. Nursing process;
 - c. Didactic instruction and clinical experience in health promotion, prevention, restoration, and maintenance of clients across the lifespan and in a variety of clinical settings:
 - (1) Communicate, manage knowledge, and support decisionmaking using information technology; and
 - (2) Provide client-centered care that:
 - (a) Respects client differences, values, preferences, and expressed needs;
 - (b) Involves clients in decisionmaking and care management;
 - (c) Coordinates an interdisciplinary team to cooperate, collaborate, communicate, and integrate client care and health promotion;
 - (d) Employs evidence-based practice to integrate best research with clinical expertise and client values for optimal care; and
 - (e) Applies quality improvement processes:
 - [1] Quality improvement theory;
 - [2] Measurement of quality in terms of structure, process, and client outcomes; and
 - [3] Participation in development of changes in processes through utilization of change theory

and systems of care with the objective of improving quality;

- d. Experiences that promote the development of leadership and management skills and professional socialization:
 - (1) Responsibilities as a member of the profession;
 - (2) Management and leadership;
 - (3) Group dynamics and group leadership skills; and
 - (4) Systems and organizational theory;
 - e. Learning experiences and clinical practice to include management and care of groups of clients and delegation and supervision of health care providers:
 - (1) Infection control and safety;
 - (2) Quality and safety;
 - (3) Public or community health; and
 - (4) Case management;
 - f. Sufficient practice experiences to assure the development of nursing competencies to:
 - (1) Provide development of client-centered care;
 - (2) Provide opportunities to participate in interdisciplinary teams;
 - (3) Utilize or integrate research with clinical experience;
 - (4) Apply the principles of quality improvement; and
 - (5) Utilize technology and information management;
 - g. Learning experiences and methods of instruction must be consistent with the written curriculum plan; and
 - h. Courses that meet the sponsoring institution's general education requirements for the degree.
5. The curriculum preparing for licensure as an advanced practice registered nurse must include content and sufficient experience from nursing and related academic disciplines to meet requirements for a graduate degree with a nursing focus:

- a. The curriculum must prepare the graduate to practice:
 - (1) One of the following four identified advanced practice registered nursing roles as a certified registered nurse anesthetist, certified nurse midwife, clinical nurse specialist, and certified nurse practitioner; and
 - (2) At least one of the following six population foci: family individual across the lifespan, adult-gerontology, neonatal, pediatrics, women's health, or gender-related or psychiatric mental health.
- b. The curriculum shall include separate graduate level courses in the following:
 - (1) An advanced practice nursing core, including legal, ethical, and professional responsibilities of the advanced practice registered nurse.
 - (2) Advanced physiology and pathophysiology, including general principles that apply across the lifespan.
 - (3) Advanced health assessment, including assessment of all human systems, advanced assessment techniques, concepts, and approaches.
 - (4) Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics, and pharmacotherapeutics of all broad categories of agents.
- c. Each instructional track or major shall have supervised clinical experience that is directly related to the role and population foci, including pharmacotherapeutic management of patients.
 - (1) A preceptor for an advanced practice registered nurse student must be a licensed practitioner with graduate level preparation with comparable practice focus.
 - (2) Clinical supervision must be congruent with current national professional organizations and nursing accrediting body standards applicable to the advanced practice registered nurse role and population focus.
- d. The curriculum must include the following:
 - (1) Preparation that provides a basic understanding of the principles for decisionmaking in the identified role.

- (2) Provisions for the recognition of prior learning and advanced placement for individuals who hold a master's degree in nursing and are seeking preparation in a different role and population foci.
 - (3) Preparation in a speciality area of practice is optional, but if included, must build on the advanced practice registered nurse role and competencies in at least one of the six population foci.
 - (4) Courses to meet the sponsoring institution's requirements for a graduate degree.
 - (5) Additional required components of graduate education programs preparing advanced practice registered nurses as determined by the board.
- e. Post-master's nursing students shall complete the requirements of the master's advanced practice registered nurse program through a formal graduate level certificate in the desired role and population foci and must demonstrate the same advanced practice registered nurses outcome competencies as the master's level student.
6. Delivery of instruction by distance education methods must meet the standards for nursing education according to article 54-03.2, be congruent with the nursing program curriculum plan, and enable students to meet the goals, competencies, and objectives of the education program and standards of the board.
 7. ~~Out-of-state~~ Distance nursing education prelicensure programs provided in this state must meet the standards for nursing education according to article 54-03.2, and must apply for board recognition prior to clinical placement of students.

History: Effective April 1, 2004; amended effective August 1, 2005; July 1, 2008; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17

CHAPTER 54-03.2-07

54-03.2-07-01. Evaluation of compliance with the standards for nursing education programs. Evaluation of continuing compliance with the standards of nursing education involves the submission of a self-study report by the nursing education program and a survey by a board representative. This process includes the following elements:

1. Dates mutually acceptable to the board and the nursing education program will be set at least ~~six~~ three months in advance of the scheduled survey;
2. No less than one month prior to a survey, a program must submit a narrative self-evaluation report that provides evidence of compliance with the standards of nursing education;
3. Unscheduled surveys may be conducted at the discretion of the board;
4. The program shall schedule survey activities;
5. The surveyor shall make a verbal report to the program at the end of the survey;
6. The surveyor's written report shall be sent to the program prior to the review by the board;
7. The board shall assess a fee for each program surveyed; and
8. Written notification of the board action regarding the program approval must be sent to the nurse administrator.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-07-02. Initial approval status. ~~The board may grant initial approval status to a proposed nursing education program that complies with chapter 54-03.2-08.~~

1. ~~Before a nursing education program is permitted to admit students, the program shall submit evidence of the ability to meet the standards for nursing education according to chapter 54-03.2-01. The board may grant initial approval status to a proposed nursing education program that complies with chapter 54-03.2-08.~~
2. The board may continue initial approval status:

- a. Prior to the graduation of the first class, when review of materials specified in article 54-03.2, the most recent annual report, and the most recent survey report reveals substantial compliance with the rules; or
- b. After graduation of the first class, when review of the criteria for full approval reveals time is needed to fully comply with the rules.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-07-04. Conditional approval status. If the board determines that a nursing education program does not meet board rules, the ~~nursing~~ program must be notified in writing detailing the deficiencies requiring correction within a given time period set by the board. The board may impose conditional approval for a length of time to be determined by the board but not to exceed two years following the date of written notification. Conditional approval status allows the program to continue to operate while the program corrects the deficiencies and works toward full approval. If at the end of that time period established by the board the deficiencies have not been corrected, board approval shall be withdrawn and a date to discontinue the program shall be set by the board.

The deficiencies are evidenced by:

1. The review of the most recent annual report;
2. The most recent survey report; or
3. The program pass rate for first-time writers of the licensing examination fall below an average of eighty percent pass rate for two consecutive fiscal years.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-07-05. Withdrawal of approval. The board may withdraw approval of a nursing education program as specified in section 54-03.2-09-03.

- ~~4. The board may withdraw initial approval when a new program fails to qualify for full approval within eighteen months following the graduation date of the first class.~~

- ~~2. The board may withdraw any approval when a program fails to correct documented deficiencies within a period of time specified by the board but not to exceed two years following the date of written notification.~~

History: Effective November 1, 1996; amended effective April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-07-06. Reinstatement of approval status.

1. Upon receipt of notice of intent to withdraw approval, the administrator of the program may request a hearing pursuant to North Dakota Century Code chapter 28-32.
2. After demonstration of compliance with rules and nursing education standards, a program may petition the board in writing for reinstatement of approval status.
3. Upon written request, representatives of the program may appear before the board to review board findings regarding program deficiencies or the adequacy of corrective actions taken by the program.
4. If denied reinstatement, the school must comply with all rules for the development and implementation of a new nursing education program.

History: Effective November 1, 1996; amended effective April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

**CHAPTER 54-03.2-08
NEW NURSING EDUCATION PROGRAMS**

Section

54-03.2-08-01	Development of a New Program [Repealed]
54-03.2-08-02	Initial Requirements of a New <u>Nursing Education</u> Program
54-03.2-08-03	First Survey Visit
54-03.2-08-04	Board Review and Initial Approval <u>Status</u>
54-03.2-08-05	Admission of Students
54-03.2-08-06	Progress Reports
54-03.2-08-07	Annual Survey

54-03.2-08-02. Initial requirements of a new nursing education program. The sponsor institution shall employ a qualified nurse administrator to develop the program and submit a written application for approval to the board at least six months before the proposed starting date or at such earlier time as the board and the nursing education program may agree. The written application must include evidence of meeting the requirements in article 54-03.2. Three copies of the application for the new program must be submitted to the board.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-08-04. Board review and initial approval status. The board shall act on the application and the surveyor's report within three months of the survey. The program must be notified in writing of the board's decision whether to grant or deny initial approval status. The board may continue initial approval status as specified in section 54-03.2-07-02.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-08-05. Admission of students. Students may be admitted to the program only after initial approval status has been granted by the board according to section 54-03.2-07-02. The number of students admitted to a program must be determined by:

1. Number of qualified faculty;
2. Adequate educational facilities and resources; and

3. Availability of appropriate practice sites.

History: Effective November 1, 1996; amended effective April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

CHAPTER 54-03.2-09 CLOSURE OF A NURSING EDUCATION PROGRAM

Section

54-03.2-09-01	Closure of Nursing Education Program
54-03.2-09-02	Voluntary Closing
54-03.2-09-03	Closing as a Result of Withdrawal of Approval
54-03.2-09-04	Storage of <u>Academic</u> Records

54-03.2-09-01. Closure of a nursing education program. A nursing education program may close voluntarily or must be closed ~~due to~~ following withdrawal of board approval. ~~During the transition to closure, provision must be made for maintenance of the standards for nursing education; placement for students who have not completed the program; and for the storage of academic records and transcripts.~~

1. The board may withdraw initial approval status when a new program fails to qualify for full approval status within eighteen months following the graduation date of the first class.
2. The board may withdraw any approval status when a program fails to correct documented deficiencies within a period of time specified by the board.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-09-02. Voluntary closing. When the sponsor institution decides to close a nursing education program, the school shall notify the board in writing of the plan for discontinuation and the intended date of closing.

1. The nursing education program may choose one of the following closing procedures:
 - a. Continue the nursing education program until the last class enrolled is graduated; or
 - b. Transfer currently enrolled students to other board-approved nursing education programs.
2. The nursing education program shall continue to meet the standards for nursing education until closed.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-09-03. Closing as a result of withdrawal of approval. When the board withdraws approval of a nursing education program:

1. The board shall establish a date of closure.
2. The nursing education program shall present a plan for the transfer of students to other board-approved programs within a timeframe established by the board.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

54-03.2-09-04. Storage of academic records. When a nursing education program closes, the board must be advised of the arrangements for maintenance of academic transcripts. If the sponsor institution ceases to exist, the academic transcripts of each student and graduate must be transferred to the board.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-17

Law Implemented: NDCC 43-12.1-17(1)

CHAPTER 54-03.2-10

54-03.2-10-05. Review of application and board action.

1. Annually the board may establish the number of innovative approach applications it will accept, based upon board resources.
2. The board shall evaluate all applications to determine if they meet eligibility criteria in section 54-03.2-10-03 and the standards established in section 54-03.2-10-04.
3. The board shall inform the education program of the approval process.
4. If the application meets the standards, the board may:
 - a. Approve the application; or
 - b. Approve the application with modifications as agreed between the board and the nursing education program.
5. If the submitted application does not meet the criteria in sections 54-03.2-10-03 and 54-03.2-10-04, the board may deny approval or request additional information.
6. The board may rescind the approval or require program modifications if:
 - a. The board receives substantial evidence indicating adverse impact; or
 - b. The nursing education program fails to implement the innovative approach as presented and approved.

History: Effective April 1, 2011; amended effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-17

54-03.2-10-06. Periodic evaluation.

1. The education program shall submit progress reports conforming to the evaluation plan annually or as requested by the board.
2. The final evaluation report shall conform to the evaluation plan, detailing and analyzing the outcomes data.
3. If any report indicates that students were adversely impacted by the innovation, the nursing education program shall provide documentation of corrective measures undertaken and their effectiveness.

4. Nursing education programs must maintain eligibility with criteria in section 54-03.2-10-03.

History: Effective April 1, 2011; amended effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-17

CHAPTER 54-04.1-01

54-04.1-01-01. Nursing education loan program. The board of nursing shall create a nursing education loan program. The program may be funded by:

1. Ten dollars of each registered nurse and licensed practical nurse biennial renewal fee ~~or five dollars of each registered nurse and licensed practical nurse annual renewal fee.~~
2. Principle and interest payments made toward nursing education loans that do not qualify for repayment by employment.
3. Donations and bequests from individuals wishing to further the intent of the nursing education loan program.
4. Additional funds as may from time to time be designated by the board.

History: Effective October 1, 1987; amended effective November 1, 1990; March 1, 1992; February 1, 1998; May 1, 2003; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(2)(g)

CHAPTER 54-04.1-02

54-04.1-02-01. Qualifications. To qualify for a nursing education loan, the applicant must:

1. Have all necessary application forms completed and on file in the board office by July first of the year in which the applicant wishes to be considered by the board for a nursing education loan; and
2. Demonstrate one of the following:
 - a. Be accepted into and enrolled in a North Dakota board-approved undergraduate nursing education program for practical nurses or registered nurses;
 - b. Have a current North Dakota license and have been accepted into and enrolled in an educational program that is accredited by a United States department of education-recognized regional or national accreditation entity and acceptable to the board; or
 - c. Be a resident of North Dakota for refresher courses and accepted into a refresher course that meets board requirements.

History: Effective October 1, 1987; amended effective October 1, 1989; March 1, 1992; November 1, 1996; May 1, 2003; April 1, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(2)(g)

CHAPTER 54-04.1-04

54-04.1-04-03. Termination of employment. The interest will begin to accrue on the unpaid balance from the date of termination of employment. If employment in North Dakota is terminated before the loan is canceled, ~~nine percent interest will begin to accrue on the unpaid balance from the date of termination of employment~~ the applicable interest rate will be the rate designated on the signed note.

History: Effective October 1, 1987; amended effective March 1, 1992; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(2)(g)

54-04.1-04-04. Employment affidavits required. Employment credit will be given for those nursing education loans qualifying for loan repayment under section 54-04.1-04-01 upon receipt of a completed, ~~notarized~~ employment affidavit. The note will be returned to the recipient when the entire loan has been repaid.

History: Effective October 1, 1987; amended effective March 1, 1992; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(2)(g)

CHAPTER 54-04.1-05

54-04.1-05-01. Repayment requirements. Repayment of the loan must meet the following requirements:

1. Payments must begin within sixty days after graduation or withdrawal from the nursing program unless such period is extended by the board.
2. Payments of at least fifty dollars per month or other amount determined by the board must be made to the North Dakota board of nursing ~~by the fifth day of each month~~ monthly until the note is canceled.

History: Effective October 1, 1987; amended effective March 1, 1992; January 1, 1994; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(2)(g)

CHAPTER 54-05-01
STANDARDS OF PRACTICE FOR LICENSED PRACTICAL NURSES

Section

54-05-01-01	Statement of Intent [Repealed]
54-05-01-02	Licensed Practical Nurse's Contribution to, and Responsibility for, the Nursing Process [Repealed]
54-05-01-02.1	Licensed Practical Nurse's Contribution to, and Responsibility for, the Nursing Process [Repealed]
54-05-01-02.2	Assigning of Nursing Interventions [Repealed]
54-05-01-03	Licensed Practical Nurse Responsibilities as a Member of the Health Care Team
54-05-01-04	Criteria for Delegation to Licensed Practical Nurses [Repealed]
54-05-01-05	Criteria for Delegation Specialized Nursing Care to the Licensed Practical Nurse [Repealed]
54-05-01-06	Role of the Licensed Practical Nurse in Intravenous Therapy
<u>54-05-01-07</u>	<u>Standards Related to Licensed Practical Nurse Professional Accountability</u>
<u>54-05-01-08</u>	<u>Standards Related to Licensed Practical Nurse Scope of Practice</u>
<u>54-05-01-09</u>	<u>Standards Related to Licensed Practical Nurse Responsibility to Organize, Manage, and Supervise the Practice of Nursing</u>

~~**54-05-01-01. Statement of intent.** Each licensed practical nurse is responsible and accountable to practice according to the standards of practice prescribed by the board and the profession. The purpose of the standards is: Repealed effective April 1, 2014.~~

- ~~1. To establish practice parameters for safe nursing practice.~~
- ~~2. To serve as a guide for the board to regulate the practice of the licensed practical nurse.~~

~~**History:** Effective June 1, 1979; amended effective January 1, 1994; May 1, 1996; April 1, 2004.~~

~~**General Authority:** NDCC 43-12.1~~

~~**Law Implemented:** NDCC 43-12.1-08~~

~~**54-05-01-02.1. Licensed practical nurse's contribution to, and responsibility for, the nursing process.** The licensed practical nurse assists in implementing the nursing process. The licensed practical nurse under the direction of the registered nurse, advanced practice registered nurse, or licensed practitioner: Repealed effective April 1, 2014.~~

- ~~1. Contributes to the assessment of health status of individuals including interactions of individuals with family members or group members, by:~~

- a. ~~Collecting basic objective and subjective data from observations, examinations, interviews, and written records. The scope and the depth of data collection is determined by the knowledge, skills, and abilities of the licensed practical nurse and by the client's immediate condition or needs. Data collection will consider:~~
 - ~~(1) Physical and emotional status;~~
 - ~~(2) Growth and development;~~
 - ~~(3) Cultural, spiritual, and socioeconomic background;~~
 - ~~(4) Health history;~~
 - ~~(5) Information collected by other health team members;~~
 - ~~(6) Client understanding of health status and self-care needs;~~
 - ~~(7) Ability to perform activities of daily living and personal care;~~
 - ~~(8) Environmental factors (e.g., physical, social, emotional, and ecological);~~
 - ~~(9) Available and accessible human and material resources; and~~
 - ~~(10) Such additional data as may be necessary to assess health status.~~
 - b. ~~Recording and reporting the data.~~
 - c. ~~Assisting with validating, refining, and modifying the data by utilizing available resources including interactions with the client, family, significant others, and health team members.~~
2. ~~Contributes to establishing nursing diagnoses that identify the needs of the client by:~~
- a. ~~Identifying signs and symptoms of deviations from normal health status; and~~
 - b. ~~Identifying overt learning needs.~~
3. ~~Participates in the development of the plan of care for individuals which includes:~~
- a. ~~Recognition of the client's physical, psychological, social, cultural, ethnic, and spiritual needs;~~
 - b. ~~Recognition of the client's beliefs and rights to choice;~~

- ~~e. Contributing to the identification of priorities;~~
 - ~~d. Contributing to setting goals and outcomes;~~
 - ~~e. Assisting in identification of measures to maintain comfort;~~
 - ~~f. Assisting in supporting human functions and response;~~
 - ~~g. Assisting in maintaining an environment conducive to well-being;~~
 - ~~h. Consideration of the overt learning needs of the client; and~~
 - ~~i. Contributing to the identification of community resources for continued care.~~
4. ~~Participates in implementing the nursing plan of care and the nursing interventions for the client under the licensed practical nurse's care by:~~
- ~~a. Caring for clients whose conditions are stable or predictable;~~
 - ~~b. Assisting with clients whose conditions are critical or unpredictable;~~
 - ~~c. Implementing nursing care according to the priority of needs and established practices;~~
 - ~~d. Assigning nursing interventions as defined in section 54-05-01-02.2;~~
 - ~~e. Delegating components of nursing care to other members of the nursing care team as defined in chapter 54-05-04;~~
 - ~~f. Providing an environment conducive to safety and health;~~
 - ~~g. Documenting nursing interventions and client responses to care;~~
 - ~~h. Communicating nursing interventions and responses to care to appropriate members of the health care team; and~~
 - ~~i. Administering medications and treatments prescribed by a licensed practitioner.~~
5. ~~Contributes to the evaluation of the responses of individuals to nursing interventions by:~~
- ~~a. Documenting the evaluation data;~~
 - ~~b. Communicating the evaluation data to appropriate members of the health care team; and~~

- e. ~~Assisting in the modification of the plan of care based upon the evaluation.~~

~~History: Effective February 1, 1998; amended effective July 1, 2008.~~

~~General Authority: NDCC 43-12.1~~

~~Law Implemented: NDCC 43-12.1-08~~

~~**54-05-01-02.2. Assigning of nursing interventions.** In the administration and management of nursing care, licensed practical nurses may assign the responsibility for performance of nursing interventions to other persons. Assigned nursing interventions are made by licensed practical nurses to others who are authorized to provide nursing care through licensure as a licensed practical nurse. Repealed effective April 1, 2014.~~

1. ~~The licensed practical nurse shall:~~
 - a. ~~Assign only those nursing interventions authorized by the level of nurse licensure;~~
 - b. ~~Assign only those nursing interventions for which the nurse receiving the assigned nursing intervention is competent to provide; and~~
 - e. ~~Supervise the performance and documentation of the assigned nursing intervention.~~
2. ~~Standards for licensed practical nurses include the following:~~
 - a. ~~Accept only those assigned nursing interventions authorized by the level of nurse licensure;~~
 - b. ~~Accept only those assigned nursing interventions for which the nurse has the required knowledge, skills, and abilities;~~
 - e. ~~Acknowledge personal limitations in knowledge and skills, and communicate the need for specialized instruction prior to accepting any assigned nursing interventions; and~~
 - d. ~~Accept assigned nursing interventions only when direction by a registered nurse, advanced practice registered nurse, or licensed practitioner has been provided.~~

~~History: Effective July 1, 2008.~~

~~General Authority: NDCC 43-12.1-02(5)~~

~~Law Implemented: NDCC 43-12.1-08(1)~~

~~**54-05-01-03. Licensed practical nurse responsibilities as a member of the health care team.** The licensed practical nurse is responsible and accountable~~

~~for the care provided and assuring the safety and well-being of the clients. The licensed practical nurse's acceptance of assigned nursing responsibilities must be based upon client care needs; the knowledge, skills, and abilities of the practical nurse; and organization policy. The licensed practical nurse under the direction of the registered nurse, advanced practice registered nurse, or licensed practitioner will:~~ Repealed effective April 1, 2014.

- ~~1. Involve the client and significant others in the client's health restoration, promotion, and maintenance.~~
- ~~2. Utilize established lines of authority and communication to provide care to clients.~~
- ~~3. Participate in client teaching specific to the learning needs by implementing or modifying teaching plans.~~
- ~~4. Manage the environment and resources effectively and efficiently to meet clients' needs and attain expected outcomes.~~
- ~~5. Recognize and utilize the current knowledge base of nursing practice.~~
- ~~6. Recognize and protect clients' rights.~~
- ~~7. Practice within the ethical frameworks and standards of the nursing profession.~~
- ~~8. Evaluate own nursing practice in relation to professional nursing practice standards.~~
- ~~9. Participate in quality improvement activities to evaluate and modify practice.~~
- ~~10. Demonstrate knowledge and understanding of the statutes and rules governing nursing and function within the legal boundaries of practical nursing practice.~~
- ~~11. Observe and follow the duly adopted standards, policies, directives, and orders of the board as they may relate to the licensed practical nurse.~~
- ~~12. Retain accountability for interventions assigned or delegated to other members of the nursing care team.~~
- ~~13. Protect confidential information unless obligated by law to disclose the information.~~
- ~~14. Participate in peer review and other evaluation processes.~~

~~15. Acquire and maintain current knowledge in nursing practice.~~

~~History: Effective January 1, 1994; amended effective May 1, 1996; February 1, 1998.~~

~~General Authority: NDCC 43-12.1~~

~~Law Implemented: NDCC 43-12.1-08~~

54-05-01-07. Standards related to license practical nurse professional accountability. Each licensed practical nurse is responsible and accountable to practice according to the standards of practice prescribed by the board and the profession. It is not the setting or the position title that determines a nursing practice role, but rather the application of nursing knowledge. The licensed practical nurse practices nursing dependently under the direction of the registered nurse, advanced practice registered nurse, or licensed practitioner through the application of the nursing process and the execution of diagnostic or therapeutic regimens prescribed by licensed practitioners. The administration and management of nursing by the licensed practical nurse includes assigning and delegating nursing interventions. Unlicensed assistive persons complement the licensed nurse in the performance of nursing interventions but may not substitute for the licensed nurse. The licensed practical nurse practices within the legal boundaries for practical nursing through the scope of practice authorized in the Nurse Practices Act and rules governing nursing. The licensed practical nurse shall:

1. Demonstrate honesty and integrity in nursing practice;
2. Base nursing decisions on nursing knowledge and skills, the needs of clients, and licensed practical nursing standards;
3. Accept responsibility for individual nursing actions, competence, decisions, and behavior in the course of practical nursing practice;
4. Maintain competence through ongoing learning and application of knowledge in practical nursing practice; and
5. Report violations of the act or rules by self or other licensees and registrants.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1

Law Implemented: NDCC 43-12.1-02(5)

54-05-01-08. Standards related to licensed practical nurse scope of practice. The licensed practical nurse assists in implementing the nursing process. The licensed practical nurse practices under the supervision of the registered nurse, advanced practice registered nurse, or licensed practitioner. The licensed practical nurse shall:

1. Participate in nursing care, health maintenance, client teaching, counseling, collaborative planning, and rehabilitation, to the extent of

the licensed practical nurse's basic nursing education and additional skills through subsequent education and experiences;

2. Conduct a focused nursing assessment and contribute data to the plan of care;
3. Plan for client care, including planning nursing care for a client whose condition is stable or predictable;
4. Participate with other licensed practitioners in the development and modification of the client-centered plan of care;
5. Assist the registered nurse or other licensed practitioner in the identification of client needs, priorities of care, and goals. The licensed practical nurse:
 - a. Demonstrates attentiveness and provides client surveillance and monitoring;
 - b. Assists and contributes in the evaluation of the client-centered health care plan;
 - c. Obtains orientation or training for competency when encountering new equipment and technology or unfamiliar care situations;
 - d. Recognizes client characteristics that may affect the client's health status;
 - e. Implements nursing interventions and prescribed medical regimens in a timely and safe manner; and
 - f. Documents nursing care provided accurately and timely.
6. Collaborate and communicate relevant and timely client information with clients and other health team members to ensure quality and continuity of care;
7. Take preventive measures to promote an environment that is conducive to safety and health for clients, others, and self;
8. Respect client diversity and advocates for the client's rights, concerns, decisions, and dignity;
9. Maintain appropriate professional boundaries;
10. Participate in the health teaching approved by a licensed practitioner;
11. Participate in systems, clinical practice, and client care performance improvement efforts to improve client outcomes;

12. Contribute to evaluation of the plan of care by gathering, observing, recording, and communicating client responses to nursing interventions;
13. Modify the plan of care in collaboration with a registered nurse, advanced practice registered nurse, or licensed practitioner based on an analysis of client responses;
14. Function as a member of the health care team, contributing to the implementation of an integrated client-centered health care plan;
15. Assume responsibility for nurse's own decisions and actions;
16. Promote a safe and therapeutic environment by providing appropriate monitoring and surveillance of the care environment;
17. Participate in quality improvement activities to evaluate and modify practice;
18. Demonstrate knowledge and understanding of the statutes and rules governing nursing and function within the legal boundaries of licensed practical nursing practice; and
19. Observe and follow the duly adopted standards, policies, directives, and orders of the board as they may relate to the licensed practical nurse.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1

Law Implemented: NDCC 43-12.1-02(5)

54-05-01-09. Standards related to licensed practical nurse responsibility to organize, manage, and supervise the practice of nursing. In the administration and management of nursing care, a licensed practical nurse may assign or delegate the responsibility for performance of nursing interventions to other persons. In maintaining accountability for the delegation of nursing interventions, the licensed practical nurse shall:

1. Assign nursing interventions.
 - a. Assign nursing care within the licensed practical nurse scope of practice to other licensed practical nurses who are authorized to provide nursing care through licensure as a licensed practical nurse; and
 - b. Monitor and evaluate the care assigned to a licensed practical nurse.
2. Delegate to another only those nursing interventions for which that person has the necessary skills and competence to accomplish safely.

The delegation of the intervention must pose minimal risk to the client and consequences of performing the intervention improperly are not life-threatening. Unlicensed assistive persons complement the licensed nurse in the performance of nursing interventions but may not substitute for the licensed nurse. A licensed practical nurse may delegate an intervention to a technician who may perform limited nursing functions within the ordinary, customary, and usual roles in the individual's field. In maintaining accountability for the delegation, the licensed practical nurse shall:

- a. Ensure that the unlicensed assistive person is on a registry and has the education and demonstrated competency to perform the delegated intervention:
- b. Ensure that results of interventions are reasonably predictable;
- c. Ensure that interventions do not require assessment, interpretation, or independent decisionmaking during its performance or at completion;
- d. Provide clear directions and guidelines regarding the delegated intervention or routine interventions on stable clients;
- e. Verify that the unlicensed assistive person follows each written facility policy or procedure;
- f. Provide supervision and feedback to the unlicensed assistive person;
- g. Observe, evaluate, and communicate the outcomes;
- h. Intervene when problems are identified;
- i. Assist in the revisions to the plan of care; and
- j. Retain accountability for the nursing care.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1

Law Implemented: NDCC 43-12.1-08

CHAPTER 54-05-02
STANDARDS OF PRACTICE FOR REGISTERED NURSES

Section	
54-05-02-01	Statement of Intent [Repealed]
54-05-02-02	Registered Nurse Responsibility to Implement the Nursing Process [Repealed]
54-05-02-02.1	Registered Nurse Responsibility to Implement the Nursing Process [Repealed]
54-05-02-02.2	Assigning of Nursing Interventions [Repealed]
54-05-02-03	Registered Nurse Responsibilities as a Member of the Nursing Profession [Repealed]
<u>54-05-02-04</u>	<u>Standards Related to Registered Nurse Professional Accountability</u>
<u>54-05-02-05</u>	<u>Standards Related to Registered Nurse Scope of Practice</u>
<u>54-05-02-06</u>	<u>Standards Related to Registered Nurse Responsibility to Act as an Advocate for the Client</u>
<u>54-05-02-07</u>	<u>Standards Related to Registered Nurse Responsibility to Organize, Manage, and Supervise the Practice of Nursing</u>

~~**54-05-02-01. Statement of intent.** The registered nurse is responsible and accountable to practice according to the standards of practice prescribed by the board and the profession. The purpose of the standards is: Repealed effective April 1, 2014.~~

- ~~1. To establish practice parameters for safe nursing practice for the registered nurse.~~
- ~~2. To serve as a guide for the board to regulate the practice of the registered nurse.~~

~~**History:** Effective June 1, 1979; amended effective March 1, 1986; January 1, 1994; May 1, 1996; April 1, 2004.~~

~~**General Authority:** NDCC 43-12.1~~

~~**Law Implemented:** NDCC 43-12.1-08~~

~~**54-05-02-02.1. Registered nurse responsibility to implement the nursing process.** The registered nurse utilizes the nursing process to assess, diagnose, establish a plan with outcome criteria, intervene, evaluate, and document human responses to actual or potential health problems in nursing practice settings. The registered nurse: Repealed effective April 1, 2014.~~

- ~~1. Conducts and documents nursing assessments of health status of individuals, families, groups, and communities by:
 - ~~a. Collecting objective and subjective data from observations, examinations, interviews, and written records. The scope and depth of the nursing assessment is determined by the knowledge,~~~~

~~skills, and abilities of the registered nurse and by the client's immediate condition or needs. The assessment will consider:~~

- ~~(1) Biophysical and emotional status including patterns of coping and interacting;~~
- ~~(2) Growth and development;~~
- ~~(3) Cultural, spiritual, and socioeconomic background;~~
- ~~(4) Health history;~~
- ~~(5) Information collected by other health team members;~~
- ~~(6) Client knowledge and perception about health status and potential, or maintaining health status;~~
- ~~(7) Ability to perform activities of daily living and personal care;~~
- ~~(8) The client's health goals;~~
- ~~(9) Environmental factors (e.g., physical, social, emotional, and ecological);~~
- ~~(10) Available and accessible human and material resources; and~~
- ~~(11) Such additional data as may be necessary to assess health status.~~

~~b. Sorting, selecting, reporting, and recording the data.~~

~~c. Validating, refining, and modifying the data by utilizing available resources including interactions with the client, family, significant others, and health care team.~~

~~2. Analyzes the assessment data to establish or modify nursing diagnoses to be used as a basis for nursing interventions.~~

~~3. Develops a plan of care based on nursing assessment and diagnosis that prescribes interventions to attain expected outcomes. Planning nursing interventions will consider:~~

~~a. Identification of the physical, psychological, social, cultural, ethnic, and spiritual needs of the client;~~

~~b. Identification of the client's decisions regarding treatment;~~

~~c. Identification of priorities;~~

- d. Collaborating with the client to establish goals and outcomes;
 - e. Identifying measures to maintain comfort;
 - f. Supporting human functions and responses;
 - g. Maintaining an environment conducive to safety and well-being;
 - h. Providing health teaching and counseling;
 - i. Identifying community resources for continued care; and
 - j. Such additional interventions as may be necessary to achieve the expected outcomes.
4. Implements the plan of care and the nursing interventions for the client under the registered nurse's care by:
- a. Writing nursing orders;
 - b. Giving direct care;
 - c. Assisting with care;
 - d. Determining the responsibilities that can properly and safely be assigned as defined in section 54-05-02-02.2;
 - e. Determining the responsibilities that can safely be delegated as defined in chapter 54-05-04;
 - f. Providing an environment conducive to safety and health;
 - g. Documenting nursing interventions and client responses to care;
 - h. Communicating interventions and responses to other members of the health team; and
 - i. Executing the regimen prescribed by a licensed practitioner.
5. Evaluates the responses of individuals, families, groups, and communities to nursing interventions. The evaluation data must be:
- a. Documented and communicated to appropriate members of the health care team; and
 - b. Used as a basis for:

- ~~(1) Reassessing client health status;~~
- ~~(2) Measuring outcomes and goal attainment;~~
- ~~(3) Modifying nursing diagnoses;~~
- ~~(4) Revising strategies of care; and~~
- ~~(5) Prescribing changes in nursing interventions.~~

History: ~~Effective February 1, 1998; amended effective July 1, 2008.~~

General Authority: ~~NDCC 43-12.1~~

Law Implemented: ~~NDCC 43-12.1-08~~

54-05-02-02.2. Assigning of nursing interventions. ~~In the administration and management of nursing care, licensed registered nurses may assign the responsibility for performance of nursing interventions to other persons. Assigning of nursing interventions may be made by licensed registered nurses to others who are authorized to provide nursing care through licensure as a registered nurse or licensed practical nurse. Repealed effective April 1, 2014.~~

- ~~1. The licensed registered nurse shall:

 - ~~a. Assign only those nursing interventions authorized by the level of nurse licensure;~~
 - ~~b. Assign only those nursing interventions which the nurse receiving the assigned nursing intervention is competent to provide; and~~
 - ~~c. Provide direction to licensed nurses. Direction includes supervising the performance and documentation of the assigned nursing intervention.~~~~
- ~~2. The nursing service administrator is responsible to determine that licensed nurses have the required competencies expected for the nurses' current nursing practice roles.~~
- ~~3. Standards for licensed registered nurses include the following:

 - ~~a. Accept only those assigned nursing interventions authorized by the level of nurse licensure;~~
 - ~~b. Accept only those assigned nursing interventions for which the nurse has the required knowledge, skills, and abilities; and~~~~

- e. ~~Acknowledge personal limitations in knowledge and skills, and communicate the need for specialized instruction prior to accepting any assigned nursing interventions.~~

History: ~~Effective July 1, 2008.~~

General Authority: ~~NDCC 43-12.1-02(5)~~

Law Implemented: ~~NDCC 43-12.1-08(1)~~

54-05-02-03. Registered nurse responsibilities as a member of the nursing profession. ~~The registered nurse is responsible and accountable for the care provided and for assuring the safety and well-being of the client. The registered nurse provides care based upon client care needs; the knowledge, skills, and abilities of the registered nurse; and organization policy. The registered nurse functions as a member of a health care team by collaborating with the client and health care team in providing client care. The registered nurse will: Repealed effective April 1, 2014.~~

- ~~1. Assist the client to maximize the client's health through the direct implementation of the nursing plan of care.~~
- ~~2. Maximize the client's health by retaining professional accountability for nursing care when assigning or delegating nursing interventions.~~
- ~~3. Facilitate communication between the client, significant others, and health care team.~~
- ~~4. Design and implement a teaching plan specific to the needs of the client.~~
- ~~5. Utilize resources, environments, and programs to maximize client outcomes.~~
- ~~6. Utilize research findings appropriate to nursing practice.~~
- ~~7. Recognize and protect clients' rights.~~
- ~~8. Practice within the ethical frameworks and standards of the nursing profession.~~
- ~~9. Assume a leadership role in health care management.~~
- ~~10. Evaluate the nurse's own nursing practice in relation to professional practice standards.~~
- ~~11. Participate in quality improvement activities to evaluate and modify practice.~~
- ~~12. Demonstrate knowledge and understanding of the statutes and rules governing nursing and function within the legal boundaries of registered nursing practice.~~

- ~~13. Observe and follow the duly adopted standards, policies, directives, and orders of the board as they may relate to the registered nurse.~~
- ~~14. Protect confidential information unless obligated by law to disclose the information.~~
- ~~15. Contribute to the professional development of peers, colleagues, and others.~~
- ~~16. Acquire and maintain current knowledge in nursing practice.~~

History: Effective January 1, 1994; amended effective May 1, 1996; February 1, 1998.

General Authority: NDCC 43-12.1

Law Implemented: NDCC 43-12.1-08

54-05-02-04. Standards related to registered nurse professional accountability. Each registered nurse is responsible and accountable to practice according to the standards of practice prescribed by the board and the profession. It is not the setting or the position title that determines a nursing practice role, but rather the application of nursing knowledge. Through the application of the nursing process, the registered nurse practices nursing independently and interdependently. Registered nurses also practice nursing dependently through the execution of diagnostic or therapeutic regimens prescribed by licensed practitioners. The administration and management of nursing by registered nurses includes assigning and delegating nursing interventions that may be performed by others. The registered nurse practices within the legal boundaries for nursing through the scope of practice authorized in the Nurse Practices Act and rules governing nursing. The registered nurse shall:

1. Demonstrate honesty and integrity in nursing practice;
2. Base nursing decisions on nursing knowledge and skills, the needs of clients, and registered nursing standards;
3. Accept responsibility for judgements, individual nursing actions, competence, decisions, and behavior in the course of nursing practice;
4. Maintain competence through ongoing learning and application of knowledge in registered nursing practice; and
5. Report violations of the act or rules by self or other licensees and registrants.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1

Law Implemented: NDCC 43-12.1-02(5)

54-05-02-05. Standards related to registered nurse scope of practice.

The registered nurse utilizes the nursing process to assess, diagnose, establish a plan with outcome criteria, intervene, evaluate, and document health problems in nursing practice settings. The registered nurse shall:

1. Participate in nursing care, health maintenance, client teaching, counseling, collaborative planning, and rehabilitation, to the extent of the registered nurse's basic nursing education and additional skills through subsequent education and experiences;
2. Conduct a comprehensive nursing assessment determined by the knowledge, skills, and abilities of the registered nurse and by the client's immediate condition or needs;
3. Apply nursing knowledge based upon the integration of the biological, psychological, and social aspects of the client's condition;
4. Develop a plan of care based on nursing assessment and diagnoses that prescribe interventions to attain expected outcomes;
5. Revise nursing interventions consistent with the client's overall health care plan;
6. Utilize decisionmaking, critical thinking, and clinical judgment to make independent nursing decisions and nursing diagnoses;
7. Implement the plan of care which includes the nursing interventions, treatment, and therapy, including medication administration and delegated medical and independent nursing functions;
8. Evaluate and document the client's response to nursing care and other therapy;
9. Identify changes in client's health status and comprehend clinical implications of client's signs and symptoms as part of expected, unexpected, and emergent client situations;
10. Communicate, collaborate, and consult with other health team members;
11. Provide comprehensive nursing and health care education in which the registered nurse:
 - a. Assesses and analyzes educational needs of learners;
 - b. Plans educational programs based on learning needs and teaching-learning principles;

- c. Implements an educational plan either directly or by assigning selected aspects of the education to other qualified persons; and
 - d. Evaluates the education to meet the identified goals.
- 12. Participate in quality improvement activities to evaluate and modify practice;
- 13. Promote a safe and therapeutic environment;
- 14. Demonstrate knowledge and understanding of the statutes and rules governing nursing and function within the legal boundaries of registered nursing practice; and
- 15. Observe and follow the duly adopted standards, policies, directives, and orders of the board as they may relate to the registered nurse.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1

Law Implemented: NDCC 43-12.1-02(5)

54-05-02-06. Standards related to registered nurse responsibility to act as an advocate for the client. The registered nurse is responsible and accountable for the care provided and for assuring the safety and well-being of the client. The registered nurse provides care based upon client care needs; the knowledge, skills, and abilities of the registered nurse; and organization policy. The registered nurse functions as a member of a health care team by collaborating with the client and health care team in providing client care. The registered nurse shall:

- 1. Respect the client's rights, concerns, decisions, and dignity;
- 2. Promote safe client environment and takes appropriate preventive interventions to protect client, others, and self;
- 3. Communicate client choices, concerns, and special needs with other health team members regarding:
 - a. Client status and progress;
 - b. Client response or lack of response to therapies; and
 - c. Significant changes in client condition.
- 4. Maintain appropriate professional boundaries; and

5. Assume responsibility for nurse's own decisions and actions.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1

Law Implemented: NDCC 43-12.1-02(5)

54-05-02-07. Standards related to registered nurse responsibility to organize, manage, and supervise the practice of nursing. In the administration and management of nursing care, registered nurses may assign and delegate the responsibility for performance of nursing interventions to other persons. Assigning of nursing interventions may be made by registered nurses to others who are authorized to provide nursing care through licensure as a registered nurse or licensed practical nurse. The registered nurse shall:

1. Assign to another only those nursing interventions that are included within that nurse's scope of practice, education, experience, and competence including:
 - a. Assigning nursing care within the registered nurse scope of practice to other registered nurses;
 - b. Assigning nursing care to a licensed practical nurse within the licensed practical nurse scope of practice based on the registered nurse's assessment of the client and the licensed practical nurse's ability; and
 - c. Supervise, monitor, and evaluate the care assigned to a licensed practical nurse.
2. Delegate to another only those nursing interventions for which that person has the necessary skills and competence to accomplish safely. The delegation of the intervention must pose minimal risk to the client and consequences of performing the intervention improperly are not life-threatening. Unlicensed assistive persons complement the licensed nurse in the performance of nursing interventions but may not substitute for the licensed nurse. A licensed nurse may delegate an intervention to a technician who may perform limited nursing functions within the ordinary, customary, and usual roles in the individual's field. In maintaining accountability for the delegation of nursing interventions, the licensed registered nurse shall:
 - a. Ensure that the unlicensed assistive person is on a registry and has the education and demonstrated competency to perform the delegated intervention;
 - b. Ensure that results of interventions are reasonably predictable;

- c. Ensure that interventions do not require assessment, interpretation, or independent decisionmaking during its performance or at completion;
 - d. Provide clear directions and guidelines regarding the delegated intervention or routine interventions on stable clients;
 - e. Verify that the unlicensed assistive person follows each written facility policy or procedure;
 - f. Provide supervision, observation, and feedback to the unlicensed assistive person;
 - g. Observe, evaluate, and communicate the outcomes;
 - h. Monitor performance, progress, and outcomes and assure documentation of the delegated intervention;
 - i. Intervene and provide followup as needed;
 - j. Revise plan of care as needed; and
 - k. Retain professional accountability for the nursing care as provided.
3. The registered nurse administrator shall select nursing service delivery models for the provisions of nursing care, which does not conflict with this chapter and includes the following:
- a. Assess the health status of groups of clients, analyze the data, and identify collective nursing care needs, priorities, and necessary resources.
 - b. Be responsible to determine that licensed nurses have the required competencies expected for the nurses' current nursing practice roles.
 - c. Establish training, supervision, and competency requirements of all individuals providing nursing care.
 - d. Shall identify nursing personnel by a position title, job description, and qualifications.

- e. Ensure that the unlicensed assistive person is on a registry and has the education and demonstrated competency to perform the delegated intervention.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

CHAPTER 54-05-03.1
ADVANCED PRACTICE REGISTERED NURSE

Section	
54-05-03.1-01	Statement of Intent
54-05-03.1-02	Board Authority - Title - Abbreviation
54-05-03.1-03	Definitions [Repealed]
54-05-03.1-03.1	Standards of Practice for the Advanced Practice Registered Nurse
54-05-03.1-03.2	Scope of Practice as an Advanced Practice Registered Nurse
54-05-03.1-04	Initial Requirements for Advanced Practice Registered Nurse Licensure
54-05-03.1-05	Temporary Permit
54-05-03.1-06	Requirements for Advanced Practice Registered Nurse Licensure Renewal
54-05-03.1-06.1	Reactivation of a License
54-05-03.1-06.2	Change in Scope of Practice
54-05-03.1-07	Disciplinary Action Against Advanced Practice Registered Nurse License [Repealed]
54-05-03.1-08	Prescriptive Authority Review Committee [Repealed]
54-05-03.1-09	Requirements for Prescriptive Authority
54-05-03.1-10	Authority to Prescribe
54-05-03.1-11	Prescriptive Authority Renewal
54-05-03.1-12	Change in Physician Collaboration Regarding Prescriptive Authority [Repealed]
54-05-03.1-13	Suspension or Enjoining of Prescriptive Authority
54-05-03.1-14	Encumbered License [Repealed]
54-05-03.1-15	Recognition at Effective Date

54-05-03.1-02. Board authority - Title - Abbreviation. The board shall authorize advanced nursing practice to a registered nurse who has submitted evidence of advanced knowledge, skills, and abilities in a defined area of nursing practice. Individuals are licensed as advanced practice registered nurses in the roles of ~~nurse midwife, nurse anesthetist, clinical nurse specialist, or nurse practitioner~~ certified nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, or certified clinical nurse specialist and in the population foci of family across the lifespan, adult-gerontology, neonatal, pediatrics, women's health or gender related or psychiatric mental health. Each advanced practice registered nurse shall use the designation APRN and applicable role designation for purposes of identification and documentation. No person may use the advanced practice registered nurse (APRN) title plus the person's respective role title without the express authority of the board of nursing to do so.

History: Effective March 1, 1992; amended effective November 1, 1996; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-05-03.1-03.1. Standards of practice for the advanced practice registered nurse. The standards of practice for the registered nurse found in chapter 54-05-02 are the core standards of practice for all categories of advanced practice registered nurses. The advanced practice registered nurse has evolved into the roles of ~~clinical nurse specialist, nurse anesthetist, nurse midwife, and nurse practitioner~~ certified nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, or certified clinical nurse specialist.

The advanced practice registered nurse functions in any setting as a member of the interdisciplinary team and provides care to the fullest extent of the scope of practice which includes:

1. Complete the assessment of the health status and health needs based on interpretation of health-related data and preventive health practices;
2. Analyze multiple sources of data, identify alternative possibilities as to the nature of a health care problem and select appropriate treatment;
3. Coordinate human and material resources for the provision of care;
4. Maintain accountability and responsibility for the quality of nursing care provided; and
5. Collaborate with the interdisciplinary team.

History: Effective November 1, 1996; amended effective April 1, 2004; March 24, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-05-03.1-03.2. Scope of practice as an advanced practice registered nurse. The scope of practice must be consistent with the nursing education and advanced practice certification.

1. Practice as an advanced practice registered nurse may include:
 - a. Perform a comprehensive assessment of clients and synthesize and analyze data within a nursing framework;
 - b. Identify, develop, plan, and maintain evidence-based, client-centered nursing care;
 - c. Prescribe a therapeutic regimen of health care, including diagnosing, prescribing, administering, and dispensing legend drugs and controlled substances;
 - d. Evaluate prescribed health care regimen;

- e. ~~Participate in nursing care management according to chapter 54-05-04 relating to standards for delegation and section 54-05-02-02.2 assigning of nursing interventions~~ Assign and delegate nursing interventions that may be performed by others;
 - f. Promote a safe and therapeutic environment;
 - g. Provide health teaching and counseling to promote, attain, and maintain the optimum health level of clients;
 - h. Communicate and collaborate with the interdisciplinary team in the management of health care and the implementation of the total health care regimen;
 - i. Manage and evaluate the clients' physical and psychosocial health-illness status;
 - j. Manage, supervise, and evaluate the practice of nursing;
 - k. Utilize evolving client information management systems;
 - l. Integrate quality improvement principles in the delivery and evaluation of client care;
 - m. Teach the theory and practice of nursing;
 - n. Analyze, synthesize, and apply research outcomes in practice; and
 - o. Integrate the principles of research in practice.
2. Notwithstanding the above, all services rendered by the licensee shall be commensurate with the academic preparation, knowledge, skills, and abilities of the advanced practice licensed nurse's experience, continuing education, and demonstrated competencies. The nurse must recognize individual limits of knowledge, skills, and abilities and plan for situations beyond the licensee's expertise.

History: Effective April 1, 2004; amended effective March 24, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-05-03.1-04. Initial requirements for advanced practice registered nurse licensure. Applicants for advanced practice registered nurse licensure must:

1. Possess a current license to practice as a registered nurse in North Dakota or in a compact state;

2. Submit evidence of completion of an accredited graduate level advanced practice registered nurse program in one of the four roles and with at least one population focus;
 3. Submit evidence of current certification by a national nursing certifying body in the advanced practice registered nurse role and population foci appropriate to educational preparation. Primary source verification of certification is required;
 4. Not have an encumbered license or privilege to practice in any state or territory;
 5. Submit a completed notarized application and pay the fee of one hundred dollars; ~~and~~
 6. ~~Submit a~~ Certify that scope of practice ~~statement according to established board guidelines for review and approval by the board of nursing.~~ is consistent with their nursing education and nursing certification; and
 7. ~~Applicants who have been issued a registered nurse temporary permit and meet all of the qualifications for advanced licensure may be issued a temporary advanced practice registered nurse license with the same date of expiration. The advanced practice registered nurse license will be issued to coincide with the renewal date of the initial registered nurse license; and~~
8. 7. After December 31, 2015, all applicants for advanced practice registered nurse licensure must meet the licensure requirements in this chapter.

History: Effective March 1, 1992; amended effective November 1, 1996; December 1, 1997; June 1, 2001; April 1, 2004; July 1, 2008; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(2)(c)(d)

54-05-03.1-06. Requirements for advanced practice registered nurse licensure renewal. The advanced practice registered nurse license is valid for the same period of time as the applicant's registered nurse license. Applicants for renewal of the advanced practice registered nurse license must ~~have an active registered nurse license and~~ possess a current license to practice as a registered nurse in North Dakota or in a compact state and must comply with the following:

1. Complete the advanced practice registered nurse license renewal application;
2. Pay an advanced practice registered nurse licensure renewal fee of forty dollars; and

3. Submit evidence of current national certification in the appropriate advanced practice registered nurse role and with at least one population focus, or participate in a competence maintenance program recognized by the board.

Any individual holding a license to practice nursing as an advanced practice licensee in this state that is valid on December 31, 2015, shall be deemed to be licensed as an advanced practice registered nurse under the provisions of this chapter with the individual's current privileges and shall be eligible for renewal of such license under the conditions and standards prescribed in this chapter.

History: Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001; April 1, 2004; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(1)

~~**54-05-03.1-06.2. Change in scope**~~ **Scope of practice.** ~~The advanced practice registered nurse must notify the board in writing of a change in scope of practice within five working days and submit a completed scope of practice statement within sixty days of the change. The scope of practice of the advanced practice registered nurse must be consistent with the nursing education and nursing certification.~~

History: Effective April 1, 2011; amended effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(1)

54-05-03.1-10. Authority to prescribe. The advanced practice registered nurse plans and initiates a therapeutic regimen that includes ordering and prescribing medical devices and equipment, nutrition, diagnostic and supportive services including home health care, hospice, and physical and occupational therapy.

1. A permanent advanced practice registered nurse license with the addition of prescriptive authority shall be issued ~~following review and approval of the completed application by the board~~ upon meeting all requirements.
2. ~~Between meetings of the board, board staff may review the prescriptive authority application and grant a temporary permit to prescribe if all the requirements are met.~~
3. 2. The advanced practice registered nurse with prescriptive authority may prescribe drugs as defined by chapter 43-15-01 pursuant to applicable state and federal laws. ~~Notice of the prescriptive authority granted will be forwarded to the board of pharmacy.~~
4. 3. A prescriptive authority advanced practice registered nurse license does not include drug enforcement administration authority for

prescribing controlled substances. Each licensee must apply for and receive a drug enforcement administration number before writing prescriptions for scheduled drugs.

- ~~5.~~ 4. The licensee may prescribe, administer, sign for, dispense over-the-counter, legend, and controlled substances, and procure pharmaceuticals, including samples following state and federal regulations.
- ~~6.~~ 5. The signature on documents related to prescriptive practices must clearly indicate that the licensee is an advanced practice registered nurse.
- ~~7.~~ 6. The advanced practice registered nurse with prescriptive authority may not prescribe, sell, administer, distribute, or give to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- ~~8.~~ 7. Notwithstanding any other provision, a practitioner who diagnoses a sexually transmitted disease, such as chlamydia, gonorrhea, or any other sexually transmitted infection, in an individual patient may prescribe or dispense, and a pharmacist may dispense, prescription antibiotic drugs to that patient's sexual partner or partners, without there having been an examination of that patient's sexual partner or partners.

History: Effective March 1, 1992; amended effective November 1, 1996; April 1, 2004; January 1, 2009; April 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-05-03.1-15. Recognition at effective date. Any registered nurse with an advanced license as a ~~nurse clinician~~, nurse practitioner, clinical nurse specialist, nurse midwife, or certified registered nurse anesthetist on November 1, 1996, must continue to be recognized as an advanced practice registered nurse, and is eligible for renewal of the advanced practice registered nurse license under the provision of this title. These rules may not be construed to limit or restrict the advanced practice registered nurse's scope of practice statement previously approved by the board.

History: Effective March 1, 1992; amended effective November 1, 1996; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08

**CHAPTER 54-05-04
STANDARDS FOR DELEGATION**

[Repealed effective April 1, 2014]

Section

54-05-04-01	Statement of Intent
54-05-04-02	Assignment [Repealed]
54-05-04-03	Delegation Process for Nursing Interventions
54-05-04-04	Accountability and Responsibility Within the Delegation Process
54-05-04-05	Interventions That May Not Be Delegated
54-05-04-06	Training of Medicaid Recipient-Directed Care Providers [Repealed]

ARTICLE 54-07

UNLICENSED ASSISTIVE PERSON

Chapter	
54-07-01	General Provisions
54-07-02	Unlicensed Assistive <u>Person</u> Registry
54-07-02.1	Criminal History Record Checks for Registration
54-07-03	Nursing Tasks and Nursing Functions [Repealed]
54-07-03.1	<u>Role of the</u> Unlicensed Assistive Competence <u>Person and Technician</u>
54-07-04	Nurse Assistant Disciplinary Action [Repealed]
54-07-05	Medication Administration by a Medication Assistant III
54-07-06	Medication Assistant Program Requirements [Repealed]
54-07-06.1	Medication Assistant Program I Requirements [Repealed]
54-07-07	Medication Assistant Program II Requirements [Repealed]
54-07-08	Specific Delegation of Medication Administration

CHAPTER 54-07-01 GENERAL PROVISIONS

Section	
54-07-01-01	Statement of Intent
54-07-01-02	Definitions [Repealed]
54-07-01-03	Recognition of Other State Registries
54-07-01-04	Medicaid Waiver Recipient Service Providers
<u>54-07-01-05</u>	<u>Consumer-Directed Service Providers</u>

54-07-01-05. Consumer-directed service providers. A nurse licensed under North Dakota Century Code chapter 43-12.1 may verify the competence of an unlicensed assistive person to perform nursing interventions for individuals directing their own care or for individuals who have a legally responsible person acting on their behalf, when the licensed nurse is requested to train the unlicensed assistive person to provide services authorized by North Dakota Century Code section 50-24.1-18.1 to individuals found eligible by the department of human services to direct their own care or who have designated a legally responsible person to make health care decisions on their behalf.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1-02(5)

Law Implemented: NDCC 43-12.1-08(1), 50-24.1-18.1

CHAPTER 54-07-02
UNLICENSED ASSISTIVE PERSON REGISTRY

Section

54-07-02-01	Unlicensed Assistive Person Registry Application and Fee for <u>Unlicensed Assistive Person Registration</u>
54-07-02-01.1	Renewal of Registration
<u>54-07-02-01.2</u>	<u>Unlicensed Assistive Person Registration for Students</u>
<u>54-07-02-01.3</u>	<u>Temporary Permit</u>
54-07-02-02	Disciplinary Action of Registry Listing [Repealed]
54-07-02-02.1	Unlicensed Assistive Person Registry Status
54-07-02-02.2	Reactivation of a Registration
54-07-02-03	Limited Registration

54-07-02-01. ~~Unlicensed assistive person registry~~ Application and fee for unlicensed assistive person registration. ~~The board shall establish and maintain an unlicensed assistive person registry. The board shall enter identifying demographic information on each individual on the unlicensed assistive person registry upon receipt of information required.~~ Applicants for registration as a unlicensed assistive person must meet board requirements, including the following:

1. ~~An applicant for initial registry status shall submit~~ Submit a completed application and fee that includes verification of competency by an employer or licensed nurse. ~~A national nurse aide competency evaluation testing program may be used in lieu of the employer or licensed nurse validation of competency.;~~
2. Submit to a criminal history record check according to chapter 54-07-02.1;
- ~~2:~~ 3. ~~Upon receipt of the required information, and a~~ Pay a nonrefundable fee of thirty dollars, an initial registry listing card will be sent to the unlicensed assistive person.; and
- ~~3:~~ 4. ~~Initial registry listing will be subject to renewal on or before June thirtieth of the second year and every two years thereafter.~~ Submit verification of completion of a recognized formal training program or hold a current registration or certification by a recognized national body.

History: Effective November 1, 1992; amended effective September 1, 1994; February 1, 1998; June 1, 2002; April 1, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(2)(h)

54-07-02-01.1. ~~Renewal of registration.~~ Renewal of registration. ~~Each registration to practice as an unlicensed assistive person shall be renewed every two years prior to the expiration date.~~ Initial registration will be subject to renewal on or before June thirtieth of the second year following and every two years thereafter. Failure to receive the

renewal notification does not relieve the registrant of the obligation to renew the registration by the expiration date.

1. An applicant must submit: a completed application form.
 - ~~a. A completed application form;~~
 - ~~b. The nonrefundable renewal fee of thirty dollars; and~~
 - ~~c. Verification of competency.~~
2. An applicant must pay the nonrefundable renewal fee of thirty dollars.
3. An applicant shall submit verification of competency or verification of current certification or registration by board-recognized national bodies.
- ~~2.~~ 4. The registration fee for any practicing unlicensed assistive person will be doubled for any renewal application received in the board office after the expiration date.

History: Effective April 1, 2004; amended effective July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(2)

54-07-02-01.2. Unlicensed assistive person registration for students.
Students may provide limited nursing interventions consistent with their education.

1. In order to meet the requirement for the registry, the nursing student must:
 - a. Submit evidence of current enrollment in a board-approved nursing education program;
 - b. Be in good academic standing in the nursing education program; and
 - c. Provide satisfactory evidence of completion of a course in the fundamentals of nursing.
2. In order to meet the requirement for the registry, the technician student must:
 - a. Submit evidence of current enrollment in a board-recognized formal training program;
 - b. Be in good standing in the formal training program; and

C. Provide satisfactory evidence of completion of the theory component of the program.

3. Medical assistant student administering medications must adhere to the requirements in sections 54-07-05-09, 54-07-05-10, and 54-07-05-11.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09

54-07-02-01.3. Temporary permit. Upon receipt of an application for unlicensed assistive person registration, payment of the fee as set by the board, and evidence that the applicant will meet all of the requirements for registration in North Dakota, the board may issue a temporary permit to practice as an unlicensed assistive person in this state. The temporary permit expires at the end of ninety days.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(2)(h)

54-07-02-02.1. Unlicensed assistive person registry status. Unlicensed assistive persons who carry out delegated nursing interventions must hold current registry status either on the board registry or on another state registry recognized by the board.

- ~~1. Unlicensed assistive persons who carry out delegated nursing interventions must hold current registry status. An unlicensed assistive person may not work as an unlicensed assistive person with an expired registration.~~
- ~~2. Individuals holding current registry status on a board-recognized registry meet this requirement.~~
- ~~3. Individuals who are employed to perform nursing interventions delegated by a licensed nurse who have never held registry status have four months from the date of initial employment to achieve registry status.~~

History: Effective February 1, 1998; amended effective June 1, 2002; April 1, 2004; July 1, 2008; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08

54-07-02-02.2. Reactivation of a registration. An unlicensed assistive person previously registered in North Dakota who applies for reactivation must meet board requirements and includes the following:

1. ~~Complete the~~ Submit a completed application and ~~submit to a criminal history record check according to section 54-07-02.1-01.;~~
2. Submit to a criminal history record check according to chapter 54-07-02.1;
2. ~~3.~~ 3. Pay the nonrefundable ~~renewal~~ registry fee and thirty dollar reactivation fee; and
3. ~~4.~~ 4. Submit documentation of competency or evidence of current certification or ~~evaluation acceptable to the board~~ registration by board-recognized national bodies acceptable to the board.

History: Effective July 1, 2008; amended effective April 1, 2014.

General Authority: NDCC 12-60-24.2(o), 43-12.1-08

Law Implemented: NDCC 43-12.1-10(2)

CHAPTER 54-07-02.1

54-07-02.1-01. Criminal history record checks. Individuals must submit a set of fingerprints to the board or its agent for the purpose of obtaining a state and federal criminal history record check in the manner provided by North Dakota Century Code section 12-60-24 and as set forth by the board. An authorization and release form must be signed by the applicant authorizing the release of the criminal history record information to the board. The fingerprint card, authorization and release form, and fee for the criminal history record check must be submitted with the application.

1. The following individuals for registration must submit to a criminal history record check:
 - a. Applicants for initial unlicensed assistive person registration.
 - b. Applicants for reactivation or reinstatement of unlicensed assistive person or medication assistant III registration.
2. The following individuals for registration may be required to submit to a criminal history record check:
 - a. Applicants for renewal of unlicensed assistive person.
 - b. Applicants for medication assistant registration.
 - c. An individual who is under investigation for violation of North Dakota Century Code chapter 43-12.1. If a criminal history record check is required as part of a disciplinary investigation or proceeding, the fingerprint card, authorization and release form, and fee for the criminal history record check must be submitted within twenty days of the request.

History: Effective July 1, 2008; amended effective October 1, 2011; April 1, 2014.

General Authority: NDCC 12-60-24.2(o), 43-12.1-08(1)

Law Implemented: NDCC 43-12.1-09.1

CHAPTER 54-07-03.1
ROLE OF THE UNLICENSED ASSISTIVE COMPETENCE PERSON AND
TECHNICIAN

Section	
54-07-03.1-01	Minimum Competence Requirements for Unlicensed Assistive Persons
54-07-03.1-02	Process for Teaching Nursing Interventions [Repealed]
54-07-03.1-03	Licensed Nurse Delegation to Unlicensed Assistive Persons
<u>54-07-03.1-03.1</u>	<u>Licensed Nurse Interventions that May Not Be Delegated</u>
54-07-03.1-04	Unlicensed Assistive Person's Contribution to the Nursing Process [Repealed]
<u>54-07-03.1-05</u>	<u>Requirements for Unlicensed Assistive Person and Technician</u>

54-07-03.1-01. Minimum competence requirements for unlicensed assistive persons. Unlicensed assistive person competence means having the required knowledge, skills, and ability to perform delegated nursing interventions safely, accurately, and according to standard procedures. The unlicensed assistive person shall ~~demonstrate competencies in the following areas:~~ meet the criteria or requirements for their specific roles.

- ~~1. Infection control.~~
- ~~2. Safety and emergency procedures.~~
- ~~3. Collection and documentation of basic objective and subjective client data.~~
- ~~4. Activities of daily living.~~
- ~~5. Decisionmaking skills.~~
- ~~6. Client rights.~~
- ~~7. Communication and interpersonal skills.~~
- ~~8. Client cognitive abilities and age-specific needs.~~

History: Effective February 1, 1998; amended effective June 1, 2002; April 1, 2004; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-07-03.1-02. Process for teaching nursing interventions. ~~Nursing interventions must be taught to an unlicensed assistive person or to a group of unlicensed assistive persons using the following process:~~ Repealed effective April 1, 2014.

- ~~1. Provide step-by-step directions on how to perform the nursing interventions.~~
- ~~2. Demonstrate the proper method used to perform the nursing intervention.~~
- ~~3. Observe the unlicensed assistive person performing the nursing intervention to ensure the unlicensed assistive person performs the intervention safely and accurately.~~
- ~~4. Document the unlicensed assistive person's competency to perform the nursing intervention.~~
- ~~5. Provide written instructions for performance of the nursing intervention for the unlicensed assistive person's use as a reference.~~

~~The unlicensed assistive person may not have to be taught a nursing intervention again for each client provided the unlicensed assistive person's knowledge and skill have been maintained and are correct. The licensed nurse shall teach the unlicensed assistive person any difference in a nursing intervention due to idiosyncrasies of the client which may vary the nursing intervention.~~

~~The unlicensed assistive person shall perform the delegated nursing intervention only on the client for whom the delegation is specified, exactly as taught, and in accordance with the organization's policies.~~

~~**History:** Effective February 1, 1998; amended effective June 1, 2002.~~

~~**General Authority:** NDCC 43-12.1-08~~

~~**Law Implemented:** NDCC 43-12.1-08(1)~~

54-07-03.1-03. Licensed nurse delegation to unlicensed assistive persons. A licensed nurse may delegate a nursing intervention to an unlicensed assistive person only if all the conditions for delegation set forth in ~~chapter 54-05-04~~ chapters 54-05-01, 54-05-02, and 54-05-03.1 and this article are met.

History: Effective February 1, 1998; amended effective June 1, 2002; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-07-03.1-03.1. Licensed nurse interventions that may not be delegated. Interventions that require nursing knowledge, skill, and judgment may not be delegated by the licensed nurse to an unlicensed assistive person. These interventions include, but are not limited to:

1. Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or followup.
2. Development of nursing diagnosis and care goals.

3. Formulation of the plan of nursing care.
4. Evaluation of the effectiveness of the nursing care provided.
5. Teaching except for that related to promoting independence in activities of daily living.
6. Counseling, except that the unlicensed assistive person may be instructed to recognize and report basic deviations from healthy behavior and communication patterns, and may provide listening, empathy, and support.
7. Coordination and management of care, including collaborating, consulting, and referring.
8. Triage.
9. Medication administration may not be delegated unless the unlicensed assistive person has met the requirements of chapters 54-07-02 and 54-07-05 or has met the requirements of section 54-07-01-03. The exception is when a licensed nurse specifically delegates to a specific unlicensed assistive person the administration of a specific medication for a specific client according to chapter 54-07-08.
10. Receiving or transmitting verbal or telephone orders.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-07-03.1-04. Unlicensed assistive person's contribution to the nursing process. ~~The unlicensed assistive person as delegated by a licensed nurse:~~ Repealed effective April 1, 2014.

1. ~~Contributes to the assessment of the health status of clients, including interactions of clients with family members or group members by:~~
 - a. ~~Collecting basic subjective and objective data from observations and interviews. The data to be collected is identified by the licensed nurse.~~
 - b. ~~Reporting and recording the collected data.~~
2. ~~Identifies basic signs and symptoms of deviations from normal health status and provides basic information which licensed nurses use in identification of problems and needs.~~
3. ~~Contributes to the development of the plan of care for individuals by reporting basic data.~~

4. ~~Participates in the giving of direct care by:~~
 - a. ~~Assisting with activities of daily living and encouraging self-care;~~
 - b. ~~Providing comfort measures and emotional support to the client whose condition is stable and predictable;~~
 - c. ~~Assisting with basic maintenance and restorative nursing;~~
 - d. ~~Supporting a safe and healthy environment;~~
 - e. ~~Documenting and communicating completion of delegated nursing interventions and client responses; and~~
 - f. ~~Seeking guidance and direction when appropriate.~~
5. ~~Contributes to the evaluation by:~~
 - a. ~~Documenting and communicating client responses; and~~
 - b. ~~Assisting with collection of data.~~

~~History: Effective February 1, 1998; amended effective June 1, 2002.~~

~~General Authority: NDCC 43-12.1-08~~

~~Law Implemented: NDCC 43-12.1-08(1)~~

54-07-03.1-05. Requirements for unlicensed assistive person and technician. The unlicensed assistive person and technician shall meet the following requirements:

1. Competently performs nursing interventions and functions as delegated by the nurse and as authorized by the board.
2. Demonstrates honesty and integrity.
3. Performs nursing interventions based on education, training, and the direction of the supervising nurse.
4. Accepts accountability for one's behavior and actions while assisting the nurse and providing services to clients.
5. Assists in observing clients and identifying client needs.
6. Communicates progress toward completing delegated nursing interventions, as well as any problems or changes in a client's status.
7. Seeks clarification if unsure of expectations.

8. Uses educational and training opportunities as available.
9. Takes preventive measures to protect clients, others, and self.
10. Respects client's rights, concerns, decisions, and dignity.
11. Functions as a member of the health care team, contributing to the implementation of an integrated health care plan.
12. Respects patient property and the property of others.
13. Protects confidential information unless obligated by law to disclose the information.

History: Effective April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

CHAPTER 54-07-05
MEDICATION ADMINISTRATION BY A MEDICATION ASSISTANT III

Section	
54-07-05-01	Statement of Intent
54-07-05-02	Definitions [Repealed]
54-07-05-03	Medication Management Regimen
54-07-05-04	Requirements for Supervision
54-07-05-05	Eligibility for Medication Assistant III Registration
54-07-05-06	Medication Assistant III Registration Renewal
54-07-05-07	Reactivation of a Lapsed Medication Assistant III Registration
54-07-05-08	Medication Assistant III Registration Disciplinary Action
54-07-05-09	Routes or Types of Medication Administration
54-07-05-10	Pro Re Nata Medications
54-07-05-11	Medication Interventions That May Not Be Delegated

54-07-05-01. Statement of intent. North Dakota Century Code chapter 43-12.1 allows the licensed nurse to delegate and supervise nursing interventions to individuals authorized by the board to perform those functions. Medication administration is a nursing intervention. Medication administration is the responsibility of licensed nurses and requires the knowledge, skills, and abilities of the licensed nurse to ensure public safety and accountability. ~~Unlicensed assistive persons who have been delegated the delivery of a specific medication for a specific client may perform the intervention of giving or applying routine, regularly scheduled medications to the client.~~ The medication assistant III may perform the intervention of administering medications to the client in an ambulatory health care setting. The licensed nurse must be available to monitor the client's progress and effectiveness of the prescribed medication regimen. Delegation of medication administration ~~in acute care settings or~~ for individuals with unstable or changing nursing care needs is specifically precluded by these rules.

History: Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005; October 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-07-05-04. Requirements for supervision. A licensed nurse who delegates medication administration to a medication assistant III must provide supervision as follows:

1. In a licensed nursing facility or acute care setting, the licensed nurse must be on the unit and available for immediate direction.
2. In an ambulatory health care setting where the licensed nurse delegates the intervention of giving medications to another individual, the licensed nurse must be available for direction.
3. In any other setting where the licensed nurse delegates the intervention of giving medications to another individual, the licensed nurse must

~~establish in writing the process~~ follow facility policy for providing the supervision in order to provide the recipient of the medication appropriate safeguards.

History: Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005; October 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-07-05-05. Eligibility for medication assistant III registration. An application for registration as a medication assistant III and a forty dollar fee must be submitted by the applicant to the board office. The applicant for medication assistant III registration must have registration on the unlicensed assistive person registry. Upon receipt of the required materials, a medication assistant III registration will be issued to correspond with the applicant's registration as an unlicensed assistive person. Unlicensed assistive persons may obtain initial medication assistant III registration by:

1. Submitting evidence of successful completion of ~~two semesters of a course which includes medication administration from~~ an approved nursing education program, ~~each of~~ which must have included a clinical nursing component. The ~~two semesters combined~~ course must have included basic clinical skills, basic pharmacology, principles of medication administration, and mathematics competency; or
2. Submitting evidence of:
 - a. Successful completion of a board-recognized medical assistant program; and
 - b. ~~Certification from the American association of medical assistants or its successor organization awarding the certified medical assistant credential or registration from the American medical technologists or its successor organization awarding the registered medical assistant credential.~~ Submit verification of current certification from one of the following examinations:
 - (1) Certified medical assistant examination through the American association of medical assistants;
 - (2) Registered medical assistant certification examination through the American medical technologists;
 - (3) Clinical medical assistant certification examination through the national health career association;
 - (4) National certified medical assistant examination through the national center for competency testing; or

(5) The successor organization.

History: Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005; October 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(2)(e)

54-07-05-06. Medication assistant III registration renewal. The medication assistant III registration expiration date must correspond to the individual's unlicensed assistive person registration expiration date and must be renewable at the same time that the unlicensed assistive person registration is renewed. ~~Medication assistant III registry listing renewal requires verification of continued competence. An enrolled nursing student or unlicensed graduate of an approved nursing education program may renew with the clinical practice hours in the nursing program within the past two years. The graduate from a board-recognized medical assistant program must show evidence of current certification from the American association of medical assistants or successor organization or current registration from the American medical technologists or successor organization.~~ The applicant for renewal must:

1. Submit a completed medication assistant III renewal application that includes the unlicensed assistant person registration.
2. Pay the unlicensed assistive person registry renewal fee of thirty dollars and the forty dollar renewal fee for medication assistant III.
3. Submit verification of current certification from one of the following examinations:
 - a. Certified medical assistant examination through the American association of medical assistants;
 - b. Registered medical assistant certification examination through the American medical technologists;
 - c. Clinical medical assistant certification examination through the national health career association;
 - d. National certified medical assistant examination through the national center for competency testing;
 - e. The successor organization; or

- f. Provide evidence of the clinical practice hours in a nursing education program within the past two years.

History: Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005; October 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(2)

54-07-05-07. Reactivation of a ~~lapsed~~ medication assistant III registration. ~~An individual with previous A medication assistant III training who has not performed medication assistant III duties within the last two years and was~~ previously registered in North Dakota who applies for reactivation must meet board requirements, including the following:

1. Complete the application and submit to a criminal history record check according to section 54-02.1-01.
2. Pay the nonrefundable renewal fee and thirty dollar reactivation fee; ~~and.~~
3. ~~Demonstrate performance of medication administration to a licensed nurse; or~~ Submit verification of current certification from one of the following examinations:
 - a. Certified medical assistant examination through the American association of medical assistants;
 - b. Registered medical assistant certification examination through the American medical technologists;
 - c. Clinical medical assistant certification examination through the national health career association;
 - d. National certified medical assistant examination through the national center for competency testing; or
 - e. The successor organization.
4. ~~Submit documentation of continued competency and verification of current certification from the American association of medical assistants or successor organization or current registration from the American medical technologists or successor organization.~~

History: Effective September 1, 1994; amended effective May 1, 1999; April 1, 2004; August 1, 2005; July 1, 2008; October 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(2)

54-07-05-09. Routes or types of medication administration.

1. Administration of the initial dose of a medication that has not been previously administered to the client must be administered according to organization policy.
2. Conversion or calculation of a medication dosage must be verified with a licensed nurse.
- 2- 3. Medication ~~assistant students and medication~~ assistants III may administer medications by the following routes to individuals or groups of individuals with stable, predictable conditions according to organization policy:
 - a. Oral, sublingual, and buccal medications;
 - b. Eye medications;
 - c. Ear medications;
 - d. Nasal medications;
 - e. Rectal medications and enemas;
 - f. Vaginal medications;
 - g. Skin ointments, topical medications, including patches and transdermal medications;
 - h. Metered hand-held inhalants; ~~and~~
 - i. Unit dose nebulizers;
 - j. Intramuscular injections;
 - k. Subcutaneous injections;
 - l. Intradermal injections;
 - m. Gastrostomy;
 - n. Jejunostomy;
 - o. Nasogastric tube;
 - p. Nonmetered inhaler; and
 - q. Non-unit dose aerosol or nebulizer.

- ~~3.~~ Medication assistants III may administer medications by the following routes to individuals or groups of individuals with stable, predictable conditions according to organization policy:
- ~~a.~~ Intramuscular injections;
 - ~~b.~~ Subcutaneous injections;
 - ~~c.~~ Intradermal injections;
 - ~~d.~~ Gastrostomy; and
 - ~~e.~~ Jejunostomy.
4. Medication assistants III may not administer medications by the following routes:
- a. Central lines;
 - b. Colostomy;
 - c. Intravenous;
 - d. Intravenous lock; or
 - ~~e.~~ Nasogastric tube;
 - f. Nonmetered inhaler;
 - ~~g.~~ Nonunit dose aerosol/nebulizer; or
 - ~~h.~~ e. Urethral catheter.
5. Medication ~~assistant students and medication~~ assistants III may not administer the following kinds of medications:
- a. Barium and other diagnostic contrast media;
 - b. Chemotherapeutic agents except oral maintenance chemotherapy;
or
 - c. Through any medication pumps, nor assume responsibility for medication pumps, including client-controlled analgesia.

History: Effective May 1, 1999; amended effective April 1, 2004; August 1, 2005; July 1, 2008; October 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-07-05-11. Medication interventions that may not be delegated. The following acts shall not be delegated to a medication assistant III:

- ~~1.~~ ~~Conversion or calculation of medication dosage;~~
- ~~2.~~ 1. Assessment of client need for or response to medication. See section ~~54-07-03.1-04. Unlicensed assistive person's contribution to the nursing process~~ 54-07-03.1-05. Accountability and responsibility within the delegation process; and
- ~~3.~~ 2. Nursing judgment regarding the administration of PRN medication.

History: Effective July 1, 2008; amended effective October 1, 2011; April 1, 2014.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

TITLE 55.5
BOARD OF OCCUPATIONAL THERAPY PRACTICE

APRIL 2014

CHAPTER 55.5-02-01
INITIAL LICENSURE AND RENEWALS

Section	
55.5-02-01-01	Licensure Application
<u>55.5-02-01-01.1</u>	<u>Requirements for Licensure</u>
55.5-02-01-02	Licensure Renewal
55.5-02-01-03	Fees
55.5-02-01-04	Continued Competency
55.5-02-01-05	Passing Score
55.5-02-01-06	Duration of Limited Permit

55.5-02-01-01.1. Requirements for licensure.

1. To be licensed as an occupational therapist an applicant must meet all of the following requirements:
 - a. The applicant has a degree from an occupational therapy program accredited by the accreditation council for occupational therapy education or a degree from a foreign occupational therapy program which the national board for certification in occupational therapy deems comparable.
 - b. The applicant has passed the occupational therapist registered certification examination administered by the national board for certification in occupational therapy.
 - c. Grounds for denial of the application under North Dakota Century Code section 43-40-16 do not exist.
 - d. The applicant has completed a self-assessment of the applicant's knowledge of North Dakota laws and rules.
2. To be licensed as an occupational therapy assistant an applicant must meet all of the following requirements:

- a. The applicant has a degree from an occupational therapy program accredited by the accreditation council for occupational therapy education or a degree from a foreign occupational therapy program which the national board for certification in occupational therapy deems comparable.
- b. The applicant has passed the certified occupational therapy assistant certification examination administered by the national board for certification in occupational therapy.
- c. Grounds for denial of the application under North Dakota Century Code section 43-40-16 do not exist.
- d. The applicant has completed a self-assessment of the applicant's knowledge of North Dakota laws and rules.

History: Effective April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-08, 43-40-11, 43-40-16

55.5-02-01-02. Licensure renewal. Licenses are renewable biennially in even-numbered years.

1. Licensure renewal for occupational therapist.

- a. Applications for renewal of occupational therapy licenses will be ~~mailed sent~~ by the board on or before April first of the renewal year to all licenseholders. Renewal applications, continued competency documentation, and fees must be postmarked ~~by the United States postal service~~ or delivered to the board's office on or before June first of the renewal year.
- b. Occupational therapists are considered delinquent and a late charge shall be assessed if the renewal application, renewal license fee, and continued competency documentation are not postmarked ~~by the United States postal service~~ or delivered to the board's office on or before June first of the renewal year.
- c. Occupational therapy licenses will expire if the renewal application, continued competency documentation, and fees are not postmarked ~~by the United States postal service~~ or delivered to the board's office by June thirtieth of the renewal year. To reinstate an expired license, an applicant must submit:
 - (1) A renewal application form;
 - (2) The renewal license fee;
 - (3) Continued competency documentation; and

(4) Late charges as assessed by the board.

No late renewal of an occupational therapy license may be granted more than three years after expiration, at which time the initial application process is required.

- d. The renewal of an occupational therapy license will be ~~mailed~~ sent to the applicant by July first of the renewal year if the renewal request is complete and postmarked on or before June first of the renewal year.
- e. The board may require a completed self-assessment of the licensee's knowledge of the North Dakota laws, rules, and regulations of occupational therapy.
- f. The board may extend the renewal deadline or waive continued competency or late fees for an applicant providing proof of medical or other hardship rendering the applicant unable to meet the renewal deadline or complete continued competency.
- g. The board may require evidence of a supervision plan from those who have signatures on a substantiating supervision form of the occupational therapy assistant.

2. **Licensure renewal for occupational therapy assistant.**

- a. Application for renewal of an occupational therapy assistant license will be ~~mailed~~ sent by the board on or before April first of the renewal year to all licenseholders. Renewal applications, continued competency documentation, and fees must be postmarked ~~by the United States postal service~~ or delivered to the board's office on or before June first of the renewal year.
 - (1) An occupational therapy assistant supervised during the renewal period shall submit a renewal application, substantiation of supervision, a renewal license fee, and continued competency documentation.
 - (2) An occupational therapy assistant not practicing occupational therapy during the renewal period shall submit the renewal application, renewal license fee, and continued competency documentation. Upon resumption of occupational therapy practice, the occupational therapy assistant shall submit substantiation of supervision.
 - (3) The board may require evidence of a supervision plan.
- b. Delinquency and late charges.

- (1) Occupational therapy assistants who are supervised at the time of renewal are considered delinquent and a late charge will be assessed if the renewal application, renewal licensure fee, continued competency documentation, and substantiation of supervision are not submitted and postmarked ~~by the United States postal service~~ or delivered to the board's office on or before June first of the renewal year.
 - (2) Occupational therapy assistants who are not practicing occupational therapy at the time of renewal are considered delinquent and a late charge shall be assessed if the renewal application, renewal license fee, and continued competency are not submitted and postmarked ~~by the United States postal service~~ or delivered to the board's office on or before June first of the renewal year.
- C. Licenses will expire if the renewal form, renewal license fee, continued competency documentation, and substantiation of supervision form are not postmarked ~~by the United States postal service~~ or delivered to the board's office by June thirtieth of the renewal year. To reinstate an expired license, an applicant must submit:
- (1) A renewal application;
 - (2) The renewal license fee;
 - (3) Substantiation of supervision (if supervised);
 - (4) Continued competency documentation; and
 - (5) Late charges as assessed by the board.
- No late renewal of a license may be granted more than three years after expiration, at which time the initial application process is required.
- d. The renewal of license will be ~~mailed~~ sent to the applicant by July first of the renewal year if the renewal request is completed and postmarked on or before June first of the renewal year.
 - e. The board may require a completed self-assessment of the licensee's knowledge of the North Dakota laws, rules, and regulations of occupational therapy.
 - f. The board may extend the renewal deadline or waive continued competency or late fees for an applicant providing proof of medical

or other hardship rendering the applicant unable to meet the renewal deadline or complete continued competency.

History: Effective April 1, 1988; amended effective November 1, 2000; February 1, 2004; April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-15

55.5-02-01-04. Continued competency. Continued competency is the ongoing application and integration of knowledge, critical thinking, interpersonal, and psychomotor skills essential to safely and effectively deliver occupational therapy services within the context of a ~~practitioner's~~ licensee's role and environment.

1. The board requires a minimum of twenty contact hours within the twenty-four months prior to the completed application for renewal of licensure. One contact hour is equal to one clock-hour.
 - ~~a. One contact hour is equal to one clock-hour.~~
 - ~~b. Ten contact hours are equal to one continuing education unit.~~
2. Any ~~practitioner~~ licensee initially licensed between July first and December thirty-first of the odd-numbered year is required to complete ten contact hours for that licensing period with twenty contact hours for each subsequent licensing period.
3. Any ~~practitioner~~ licensee initially licensed on or after January first of the even-numbered year has no contact hour requirement until the following licensing period when the licensee is required to complete twenty contact hours for that licensing period and each subsequent licensing period.
4. When a ~~practitioner~~ applicant for renewal has not been licensed for up to three years, the ~~practitioner~~ applicant must submit evidence of a minimum of twenty contact hours of continued competency earned within the twenty-four months prior to the completed application for renewal of license.
5. Board-approved continued competency must meet all the following requirements:
 - a. Be directly related to or supportive of occupational therapy practice; and
 - b. Enhance the ~~occupational therapist's or occupational therapy assistant's~~ licensee's professional development and competence; and

- c. Be specific to the ~~applicant's~~ or licensee's current area of practice or an intended area of practice within the next year.
6. Continued competency includes:
- a. Workshops, refresher courses, professional conferences, seminars, or education programs presented by organizations such as ~~AOTA, NBCOT, NDOTA~~ the American occupational therapy association, the national board for certification in occupational therapy, the North Dakota occupational therapy association, medical associations, or educational and national or state health organizations or approved by the North Dakota board of occupational therapy practice. There is no limit on hours that may be earned under this subdivision.
 - b. Presentations by licensee:
 - (1) Professional presentations, ~~e.g. for example~~, inservices, workshops, or institutes. ~~Any such~~ A presentation may be counted only one time. There is no limit on hours that may be earned under this paragraph.
 - (2) Community or service organization presentations. ~~Any such~~ A presentation may be counted only one time. No more than eight hours may be earned under this paragraph.
 - c. Formal academic coursework.
 - (1) One or two credit hour class is equal to five contact hours.
 - (2) Three or four credit hour class is equal to ten contact hours.
 - d. Authoring professional publications. There is no limit on hours that may be earned under this subdivision. Publications include:
 - (1) ~~Book;~~ chapter.

Primary or coauthor of chapter in practice area-related professional textbook. One chapter is equal to ten contact hours as evidenced by a copy of published chapter or letter from the editor.
 - (2) ~~Chapter in a book;~~ Article.

Primary or coauthor of practice area-related article in nonpeer-reviewed professional publication. One article is equal to five contact hours as evidenced by a copy of published article.

Primary or coauthor of practice area-related article in peer-reviewed professional publication. One article is equal to ten contact hours.

Primary or coauthor of practice area-related article in lay publication (e.g., community newspaper or newsletter). One article is equal to two contact hours.

(3) ~~Thesis or dissertation;~~ Multimedia.

Developing instructional materials - training manuals, multimedia, or software programs - that advance the professional skills of others (not for proprietary use; must not be part of one's primary role) as evidenced by program description (materials may be requested by MBCOT). Five contact hours.

(4) ~~Article;~~ or Research activities.

Primary or coprimary investigator in extensive scholarly research activities or outcomes studies. Method of substantiation includes a copy of a research study that indicates certificant as primary or coprimary investigator. Ten contact hours.

Externally funding service or training projects associated with grants or postgraduate studies. Method of substantiation includes grant funding number or abstract or executive summary or completed report. Ten contact hours.

~~(5) Multimedia.~~

e. Formal self-study course with a completion certificate. There is no limit on hours that may be earned under this subdivision.

f. ~~Research approved by the board.~~ Direct supervision of occupational therapy students performing level II fieldwork in an occupational therapy program accredited by the accreditation council for occupational therapy education. The licensee must be the primary supervisor. The supervision may not be the primary responsibility of the licensee's employment. The licensee must submit to the board a record of the students supervised and the dates and times of supervision and a certification of the supervision from the occupational therapy program. No more than twelve contact hours in a licensing period may be earned under this subdivision.

~~g. Supervised clinical practice preapproved by the board.~~

- h. ~~g.~~ Professional leadership. This category encompasses leadership responsibilities or committee involvement in professional organizations, including officer or committee chairperson in an occupational therapy or related practice area of a professional organization or item writing for a professional certification examination. No more than six hours may be earned under this subdivision.
 - i. ~~h.~~ Facility-based continued competency education program. Employer-based continued competency education program with measurable learning outcomes at least one hour in length. No more than six hours may be earned under this subdivision.
 - j. ~~i.~~ Distance learning activities.
7. Licensees and continuing education providers may submit continuing education courses to the board for preapproval.
 8. A copy of a continuing education ~~unit~~ certificate must be submitted for board approval. The continuing education ~~unit~~ certificate must contain the person's name, dates of attendance, title of the course, and contact hours. If the program was not formally granted contact hours ~~or continuing education units~~, the licensee must submit written verification of attendance signed by a supervisor or program coordinator which includes the name of the participant, dates of attendance, title of the course, and hours of the course, not including breaks and lunch.
 9. Failure to meet the continuing competency requirements as outlined in this section will result in denial of an application for renewal and may subject a licensee to disciplinary action ~~as outlined in North Dakota Century Code section 43-40-16~~. The board may waive or allow exceptions due to extraordinary circumstances.
 10. Continued competency hours may only be used once to satisfy the requirements of this section.

History: Effective April 1, 1988; amended effective November 1, 2000; February 1, 2004; April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-15

**CHAPTER 55.5-02-03
SUPERVISION**

Section	
55.5-02-03-01	Supervision
<u>55.5-02-03-01.1</u>	<u>Definitions</u>
<u>55.5-02-03-01.2</u>	<u>Supervision of Occupational Therapy Assistants</u>
<u>55.5-02-03-01.3</u>	<u>Supervision of Limited Permitholders</u>
55.5-02-03-02	Delineation <u>Delegation</u> of Tasks to Unlicensed Persons <u>Occupational Therapy Aides</u>

55.5-02-03-01. Supervision. The occupational therapist ~~and occupational therapy assistant~~ shall exercise appropriate supervision over ~~persons~~ individuals who are authorized to practice only under the supervision of the licensed therapist. ~~No occupational therapist may supervise more than three occupational therapy assistants at the same time providing that at least one of the occupational therapy assistants has five or more years of experience in occupational therapy.~~

- ~~1. Supervision is a collaborative process that requires both the licensed occupational therapist and the licensed occupational therapy assistant to share responsibility. Supervision is providing direction in the performance of specific, delineated tasks and responsibilities that are delivered by a licensed occupational therapy assistant and includes the responsibility of reviewing the results of any occupational therapy procedure conducted by the supervisee. Appropriate supervision will include consideration given to factors such as level of skill, the establishment of service competency, experience, and work-setting demands, as well as the complexity and stability of the client population to be treated. Supervisors who take a leave of absence or vacation must make arrangements to have their supervisory responsibilities filled by another qualified supervisor.~~
- ~~2. Any occupational therapy assistant who has practiced occupational therapy less than one thousand six hundred fifty hours shall receive onsite supervision from a licensed occupational therapist. Onsite supervision means daily, direct, face-to-face collaboration at least twenty five percent of the workday and for the remaining seventy five percent of the workday, the supervisor must be on the premises and readily available by methods such as telephone or electronic communication for face-to-face consultation.~~
- ~~3. The occupational therapy assistant, with greater than one thousand six hundred fifty hours but less than five years of work experience in occupational therapy, shall receive monthly, direct, face-to-face collaboration at the worksite by a licensed occupational therapist at least five percent of the total occupational therapy work hours as a practicing occupational therapy assistant with interim supervision occurring by other methods such as telephone or electronic communication.~~

- ~~4. The occupational therapy assistant with greater than five years of occupational therapy work experience shall receive monthly, direct, face-to-face collaboration by a licensed occupational therapist a minimum of two and one-half percent of the total occupational therapy work hours with interim supervision occurring by other methods such as telephone or electronic communication.~~
- ~~5. Licensed occupational therapy assistants, regardless of their years of experience, may require closer supervision by the licensed occupational therapist for interventions that are more complex or evaluative in nature and for areas in which service competencies have not been established.~~
- ~~6. Supervision of the occupational therapist limited permitholder and occupational therapy assistant limited permitholder shall include initial and periodic inspection of written evaluations, written intervention plans, patient notes, and periodic evaluation of client interaction. Such reviews and evaluations must be conducted in person by a licensed occupational therapist. Supervision is required for a minimum of twenty-five percent of the weekly work hours. An occupational therapy assistant limited permitholder must have onsite supervision by a licensed occupational therapist.~~
- ~~7. Any documentation written by a limited permitholder for inclusion in the client's official record shall also be reviewed and signed by the supervising licensed occupational therapist.~~
- ~~8. The supervising occupational therapist shall determine that limited permitholders and occupational therapy assistants hold current permits or licenses to practice or assist in the practice of occupational therapy prior to allowing the limited permitholders and occupational therapy assistants to engage in or assist in the practice of occupational therapy.~~

Supervision is a cooperative process in which two or more people participate in a joint effort to establish, maintain, and elevate a level of competence and performance. Within the scope of occupational therapy practice, supervision is aimed at ensuring the safe and effective delivery of occupational therapy services and fostering professional competence and development. Supervision involves guidance and oversight related to the delivery of occupational therapy services and the facilitation of professional growth and competence. It is the responsibility of the occupational therapist and the occupational therapy assistant to seek the appropriate quality and frequency of supervision to ensure safe and effective occupational therapy service delivery.

History: Effective April 1, 1988; amended effective November 1, 2000; February 1, 2004; April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC ~~43-40-01(3)~~ 43-40-01, 43-40-03.1, 43-40-13

55.5-02-03-01.1. Definitions. For purposes of sections 55.5-02-03-01.2 and 55.5-02-03-01.3:

1. "Direct supervision" means face-to-face contact, including observation, modeling, cotreatment, discussions, teaching, and video conferencing.
2. "Indirect supervision" means other than face-to-face contact, including phone conversations, written correspondence, electronic exchanges, and other methods using secure telecommunication technology.

History: Effective April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-01, 43-40-13

55.5-02-03-01.2. Supervision of occupational therapy assistants. An occupational therapy assistant must be supervised by an occupational therapist.

1. An occupational therapist may not supervise more than three occupational therapy assistants at the same time.
2. An occupational therapy assistant must be directly supervised as needed by evidence of clinical practice, and indirectly supervised as is necessary. In determining the methods, frequency, and content of supervision, an occupational therapist shall consider all of the following:
 - a. Complexity of clients' needs.
 - b. Number and diversity of clients.
 - c. Skills of the occupational therapy assistant.
 - d. Type of practice setting.
 - e. Changes in practice settings.
 - f. Requirements of the practice setting.
 - g. Other regulatory requirements.
3. An occupational therapist and a supervised occupational therapy assistant shall make a written supervision plan, including all of the following:
 - a. Documentation that the occupational therapy assistant is competent to perform the services provided.

- b. Documentation of the frequency, methods, and content of supervision.
 - c. Documentation of periodic evaluation of the occupational therapy assistant's competence and the supervision necessary.
4. An occupational therapist shall file with the board a substantiation of supervision form for each occupational therapy assistant supervised before the occupational therapy assistant may practice. If there is a change in supervisors, the new supervisor shall immediately file a new substantiation of supervision form. The form is available from the board.
 5. An occupational therapist, who is unavailable to supervise an occupational therapy assistant for more than one day, shall arrange to have supervision available by another occupational therapist as necessary.

History: Effective April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-01

55.5-02-03-01.3. Supervision of limited permitholders. A limited permitholder must be supervised by an occupational therapist.

1. A limited permitholder must be directly supervised for at least twenty percent of the hours practiced in each week, and indirectly supervised as is necessary.
2. Supervision of limited permitholders must include periodic review of evaluations, intervention plans, and patient notes and evaluation of client interaction. Documentation prepared by a limited permitholder for clients' records must be reviewed and cosigned by the supervising occupational therapist and limited permitholder.
3. An occupational therapist who is unavailable to supervise a limited permitholder for more than one day, shall arrange to have the supervision available by another occupational therapist as necessary.
4. An occupational therapist shall verify that the individual supervised holds a current limited permit.

History: Effective April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-01, 43-40-13

55.5-02-03-02. Delineation Delegation of tasks to unlicensed persons occupational therapy aides.

1. The primary function of ~~unlicensed supportive personnel~~ occupational therapy aides functioning in an occupational therapy setting is to perform designed routine tasks related to the operation of an occupational therapy service. An occupational therapist or an occupational therapy assistant may delegate to ~~unlicensed persons~~ occupational therapy aides only specific tasks which are neither evaluative, assessive, task selective, nor recommending in nature, and only after ensuring that the ~~unlicensed person has been~~ occupational therapy aides are appropriately trained and ~~has~~ have supportive documentation for the performance of the tasks. Such tasks may include:
 - a. Routine department maintenance;_
 - b. Transportation of patients and clients;_
 - c. Preparation or setting up of treatment equipment and work area;_
 - d. Taking care of patient's and client's personal needs during treatments;_
 - e. Assisting the occupational therapist or occupational therapy assistant in the construction of adaptive equipment;_ ~~and~~_
 - f. Clerical, secretarial duties.
2. The occupational therapist or occupational therapy assistant may not delegate to ~~unlicensed persons~~ occupational therapy aides:
 - a. Performance of occupational therapy evaluative procedures;_
 - b. Initiation, planning, adjustment, modification, or performance of occupational therapy treatment procedures;_
 - c. Making occupational therapy entries directly in patient's or client's official records;_ ~~and~~_
 - d. Acting on behalf of the occupational therapist or occupational therapy assistant in any matter related to occupational therapy intervention which requires decisionmaking.

History: Effective November 1, 2000; amended effective April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-01, 43-40-03.1

CHAPTER 55.5-03-01 SCOPE OF PRACTICE

Section

55.5-03-01-01	Definitions [Repealed]
55.5-03-01-02	Educational Background and Scope of Practice
55.5-03-01-03	Specific Occupational Therapy Services
55.5-03-01-04	Occupational Therapy Evaluation
55.5-03-01-05	Occupational Therapy Intervention

55.5-03-01-01. Definitions. Repealed effective April 1, 2014.

- ~~1. Unless otherwise specifically set out in this chapter, the terms used in this chapter, have the same meaning as in North Dakota Century Code chapter 43-40.~~
- ~~2. "Modality" means the employment of or the method of employment of a therapeutic agent.~~
- ~~3. "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities include, but are not limited to, paraffin baths, hot packs, cold packs, fluidotherapy, contrast baths, ultrasound, whirlpool, and electrical stimulation units.~~

History: Effective November 1, 1992.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-01, 43-40-05

55.5-03-01-02. Educational background and scope of practice.

Occupational therapy education includes a broad foundation in liberal arts and sciences. Biological, physical, social, and behavioral sciences prepare the entry-level therapist to understand occupation across the lifespan. The accreditation council for occupational therapy education (ACOTE) establishes educational standards that are routinely reviewed to ensure that entry-level occupational therapists and occupational therapy assistants are prepared as generalists who have had a broad exposure to delivery models and systems; occupational theory and evidenced-based approaches to evaluation and intervention; and analysis and application of occupation as intervention. Occupational therapy education requires the successful completion of fieldwork (ACOTE, 2012).

- ~~1. The educational background of the occupational therapist includes anatomy, physiology, kinesiology, neuroanatomy, psychology, and other courses from the liberal arts and sciences, and enables the occupational therapist to assess and address an individual's deficits in occupational performance through the use of specific procedures, activities, modalities, and techniques, as taught in an accredited occupational therapy professional education program recognized by~~

~~the board. The educational preparation and scope of practice of the occupational therapist to perform assessment and intervention may include the following:~~

~~a. Neurological and physiological sciences:~~

- ~~(1) Sensory integrative approaches;~~
- ~~(2) Developmental approaches;~~
- ~~(3) Sensorimotor approaches;~~
- ~~(4) Neurophysiological treatment approaches;~~
- ~~(5) Neuromuscular treatment approaches;~~
- ~~(6) Sensory education and reeducation;~~
- ~~(7) Visual and perceptual training;~~
- ~~(8) Integrational and cognitive components;~~
- ~~(9) Daily life tasks; and~~
- ~~(10) Such other approaches in the neurological and physiological sciences as may be recognized by the board.~~

~~b. Behavioral and social sciences:~~

- ~~(1) Behavioral approaches;~~
- ~~(2) Sensory integration;~~
- ~~(3) Interpersonal and intrapersonal skill development;~~
- ~~(4) Movement therapy;~~
- ~~(5) Vocational approaches;~~
- ~~(6) Entry into community living;~~
- ~~(7) Retirement planning;~~
- ~~(8) Self-management training;~~
- ~~(9) Leisure and play activities;~~
- ~~(10) Daily life tasks;~~

- ~~(11) Creative-dramatics;~~
- ~~(12) Disability prevention and health promotion; and~~
- ~~(13) Such other approaches in the behavioral and social sciences as may be recognized by the board.~~

~~c. Biomechanical sciences:~~

- ~~(1) Work-related programs;~~
- ~~(2) Vocational programs and activities;~~
- ~~(3) Range of motion;~~
- ~~(4) Positioning and seating;~~
- ~~(5) Design, fabrication, and selection of orthotic devices;~~
- ~~(6) Design, fabrication, and selection of adaptive equipment;~~
- ~~(7) Prosthetic training;~~
- ~~(8) Therapeutic exercise and activity;~~
- ~~(9) Environmental accessibility;~~
- ~~(10) Design, provision, and training of assistive technology;~~
- ~~(11) Daily life tasks; and~~
- ~~(12) Such other approaches in the biomechanical sciences as may be recognized by the board.~~

~~d. Liberal arts and sciences:~~

~~2. The occupational therapist and occupational therapy assistant are responsible for proving competency in the use of specific procedures, activities, modalities, and techniques. Competency may be displayed through documented educational programs in accordance with section 55.5-02-01-04.~~

~~a. The board recognizes that the occupational therapist may be qualified and competent in the use of a variety of modalities and that the occupational therapy assistant may utilize modalities under the direct supervision of the occupational therapist.~~

- ~~b. When physical or therapeutic agents are selected, they may be used in preparation for, or as an adjunct to, purposeful activity to enhance occupational performance.~~
- ~~c. These qualifications and competencies may be obtained through programs recognized by the board, including accredited educational programs (including fieldwork education), specific certification, appropriate continuing education, inservice education, and postbaccalaureate higher education.~~
- ~~d. The occupational therapist and occupational therapy assistant shall:
 - ~~(1) Document and demonstrate these qualifications and competencies at the request of the board;~~
 - ~~(2) Comply with federal and state laws which, in the opinion of the board, have a direct bearing upon the ability to serve as an occupational therapist and occupational therapy assistant;~~
 - ~~(3) Comply with the occupational therapy code of ethics and ethic standards (2010) of the American occupational therapy association adopted by the representative assembly in 2010 and the occupational therapy standards of practice (2010) as revised in 2010 by the American occupational therapy association; and~~
 - ~~(4) Provide services in the best interests of the client.~~~~
- ~~e. Continuing competency offerings specific to modalities and techniques must conform with:
 - ~~(1) Occupation as the common core of occupational therapy;~~
 - ~~(2) The applicable provisions of the rules of the board;~~
 - ~~(3) Occupational therapy code of ethics and ethic standards, as revised in 2010, by the American occupational therapy association; and~~
 - ~~(4) Occupational therapy standards of practice (2010), as revised in 2010, of the American occupational therapy association.~~~~
- ~~f. Occupational therapist, occupational therapy assistants, and students of occupational therapy use modalities and techniques only when the individual has received the theoretical and technical preparation necessary for safe and appropriate integration of the intervention in occupational therapy.~~

~~9- When an occupational therapist delegates the use of modalities to an occupational therapy assistant or student, both shall:~~

~~(1) Comply with appropriate supervision requirements; and~~

~~(2) Assure that their use is based on service competency.~~

History: Effective November 1, 1992; amended effective November 1, 2000; February 1, 2004; July 1, 2011; April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-01, 43-40-05

55.5-03-01-03. Specific occupational therapy services. ~~The occupational therapist may apply those procedures, activities, modalities, or techniques that are preparatory to the individual's acquisition of functional skills or facilitative to the performance of purposeful activities, or both. The practice of occupational therapy means the therapeutic use of occupations, including everyday life activities with individuals, groups, populations, or organizations to support participation, performance, and function in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for habilitation, rehabilitation, and the promotion of health and wellness, including methods delivered via telerehabilitation to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory-perceptual, and other aspects of performance in a variety of contexts and environments to support engagement in occupations that affect physical and mental health, well-being, and quality of life.~~

History: Effective November 1, 1992; amended effective April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-01, 43-40-05

55.5-03-01-04. Occupational therapy evaluation. ~~Evaluation is the planned process of obtaining, interpreting, and documenting the functional status of the individual. The purpose of the evaluation is to identify the individual's abilities and limitations, including deficits, delays, or maladaptive behavior that can be addressed in occupational therapy intervention. Data can be gathered through a review of records, observation, interview, and the administration of test procedures. Such procedures may include the use of standardized and nonstandardized tests, questionnaires, performance checklists, activities, and tasks designed to assess specific performance abilities. Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), rest and sleep, education, work, play, leisure, and social participation, includes:~~

1. Client factors, including body functions (such as neuromusculoskeletal, sensory-perceptual, visual, mental, cognitive, and plain factors) and body structures (such as cardiovascular, digestive, nervous,

integumentary, genitourinary systems, and structures related to movement), values, beliefs, and spirituality.

2. Habits, routines, roles, rituals, and behavior patterns.
3. Physical and social environments, cultural, personal, temporal, and virtual contexts and activity demands that affect performance.

Performance skills, including motor and praxis, sensory-perceptual, emotional regulation, cognitive, communication and social skills.

History: Effective November 1, 1992; amended effective November 1, 2000; April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-01, 43-40-05

55.5-03-01-05. Occupational therapy intervention.

- ~~1. Occupational therapy addresses function and uses specific procedures, activities, modalities, and techniques to do any or all of the following:
 - ~~a. Develop, maintain, improve, or restore the performance of necessary functions.~~
 - ~~b. Compensate for dysfunction.~~
 - ~~c. Minimize or prevent debilitation.~~
 - ~~d. Promote health and wellness.~~~~
- ~~2. Categories of function are occupational performance areas and performance components. Occupational performance areas include activities of daily living, work and productive activities, and play or leisure activities. Performance components refer to the functional abilities required for occupational performance, including sensorimotor, motor, neuromuscular, cognitive, and psychological or psychosocial components, as well as cognitive integration and psychosocial skills. Deficits or delays in these occupational performance areas may be addressed by occupational therapy intervention.~~
1. Methods or approaches selected to direct the process of interventions include:
 - a. Establishment, remediation, or restoration of a skill or ability that has not yet developed, is impaired, or in decline.
 - b. Compensation, modification, or adaptation of activity or environment to enhance performance or to prevent injuries, disorders, or other conditions.

- c. Retention and enhancement of skills or abilities without which performance in everyday life activities would decline.
 - d. Promotion of health and wellness, including the use of self-management strategies, to enable or enhance performance in everyday life activities.
 - e. Prevention of barriers to performance and participation, including injury and disability prevention.
2. Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), rest and sleep, education, work, play, leisure, and social participation, including:
- a. Therapeutic use of occupations, exercises, and activities.
 - b. Training in self-care, self-management, health management and maintenance, home management, community or work reintegration, and school activities and work performance.
 - c. Development, remediation, or compensation of neuromusculoskeletal, sensory-perceptual, visual, mental, and cognitive functions, pain tolerance and management, and behavioral skills.
 - d. Therapeutic use of self, including one's personality, insights, perceptions, and judgements, as part of the therapeutic process.
 - e. Education and training of individuals, including family members, caregivers, groups, populations, and others.
 - f. Care coordination, case management, and transition services.
 - g. Consultative services to groups, programs, organizations, or communities.
 - h. Modification of home, work, school, or community environments and adaptation of processes, including the application of ergonomic principles.
 - i. Assessment, design, fabrication, application, fitting, and training in seating and positioning, assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.
 - j. Assessment, recommendations, and training in techniques to enhance functional mobility, including management of wheelchairs and other mobility devices.

- k. Low vision rehabilitation.
- l. Driver rehabilitation and community mobility.
- m. Management of feeding, eating, and swallowing to enable eating and feeding performance.
- n. Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management, interventions to enhance sensory-perceptual and cognitive processing, and manual therapy) to enhance performance skills.

An occupational therapist may purchase, store, and administer topical medications, including aerosol medications, as part of the practice of occupational therapy, but shall not dispense or sell any of the medications to patients. An occupational therapist shall comply with any protocols of the United States pharmacopoeia for storage of medications.

A valid order or prescription for medication classified as a legend drug is needed before administration to a patient. Occupational therapy facilities must work with a pharmacist to assist with proper protocols for storage of medications. A record of dosage, for quantity, and strength of medication administered to each patient is required in the medical record.

- o. Facilitating the occupational performance of groups, populations, or organizations through the modification of environments and the adaptation of processes.

History: Effective November 1, 1992; amended effective November 1, 2000; April 1, 2014.

General Authority: NDCC 43-40-05

Law Implemented: NDCC 43-40-01, 43-40-05

TITLE 71
PUBLIC EMPLOYEES RETIREMENT SYSTEM

APRIL 2014

**CHAPTER 71-01-02
ELECTION RULES**

Section

71-01-02-01	Election Committee
71-01-02-02	Eligible Voters
71-01-02-03	Candidate Eligibility
71-01-02-04	Election Notification
71-01-02-05	Petition Format
71-01-02-06	Procedure for Completing and Filing Petitions
71-01-02-07	Election Ballots
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71-01-02-09	Canvassing Rules
71-01-02-10	Notification of Election Results
71-01-02-11	Special Elections
71-01-02-12	Penalties
<u>71-01-02-13</u>	<u>Election Voting</u>

71-01-02-04. Election notification.

1. The director of the North Dakota public employees retirement system shall ensure that notification of an active member vacancy and the election is given to all employees through publication of a notice in the North Dakota public employees retirement system newsletter and any other method of communication as deemed appropriate by the director at least three weeks in advance of a filing date for nomination petitions. The director shall ensure that notification of the vacancy of a retiree member and the election is given to all persons who have accepted a retirement allowance ~~or who are eligible to receive deferred vested retirement benefits~~ through publication of a notice in the North Dakota public employees retirement system newsletter and any other method of communication as deemed appropriate by the director at least three weeks in advance of a filing date for nomination petitions.

2. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of election, and where to obtain the nomination petitions for filing.

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008; April 1, 2014.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-13. Election voting. In lieu of sections 71-01-02-07 and 71-01-02-08, the retirement board may allow for a process by which electronic ballots are submitted to elect an active or retiree candidate to the board.

History: Effective April 1, 2014.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

CHAPTER 71-02-01

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

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

7. "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period.
8. "Contribution" means the payment into the fund as a percentage of the salary of a member.
9. "Correctional officer" means a person who has completed a correctional officer course approved or certified by the North Dakota department of corrections and rehabilitation and is employed by a correctional facility as defined in North Dakota Century Code chapter 12-44.1.
10. "County judge" means a judge who was elected pursuant to North Dakota Century Code section 27-07.1-01 or an individual holding the position of county judge, county justice, or judge of county court prior to the general election in 1982, who meets all the eligibility requirements established under North Dakota Century Code chapter 54-52.
11. "Interruption of employment" is when an individual is inducted (enlists or is ordered or called to active duty into the armed forces of the United States) and leaves an employment position with a state agency or political subdivision, other than a temporary position. The individual must have left employment to enter active duty and must make application in accordance with the Uniformed Services Employment and Reemployment Rights Act.
12. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years, or indefinitely if the leave of absence is due to interruption of employment.
13. "Medical consultant" means a person or committee appointed by the board of the North Dakota public employees retirement system to evaluate medical information submitted in relation to disability applications, recertifications, and rehabilitation programs or other such duties as assigned by the board.
14. "Normal retirement age", except for members of the national guard and law enforcement, means age sixty-five unless otherwise provided. For members of the national guard and law enforcement, normal retirement age means age fifty-five, unless otherwise provided.
15. "Office" means the administrative office of the public employees retirement system.

16. "Participating employer" means an employer who contributes to the North Dakota public employees retirement system. For confidentiality purposes, "participating employer" means the person or group of persons with the ultimate authority over personnel decisions within the agency or political subdivision with which the member is employed or the person's or group's official designee.
17. "Pay status" means a member is receiving a retirement allowance from the fund.
18. "Permanent and total disability" for members of the main retirement system and the national guard/law enforcement retirement plan means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. For members of the judge's retirement plan, "permanent and total disability" is determined pursuant to subdivision e of subsection 3 of section 54-52-17 of the North Dakota Century Code.
19. "Plan administrator" means the executive director of the North Dakota public employees retirement system or such other person or committee as may be appointed by the board of the North Dakota public employees retirement system from time to time.
20. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.
21. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.
22. "Regularly funded" means a legislatively authorized full-time equivalent (FTE) position for state agencies. For all governmental units other than state agencies, regularly funded means a similar designation by the unit's governing board which is created through the regular budgeting process and receives traditional employee benefits such as sick leave and annual leave.
23. "Retiree" means an individual receiving a monthly retirement allowance pursuant to chapter 54-52.
24. "Retirement allowance" means a reoccurring, periodic benefit from an eligible employer-sponsored retirement plan as approved by the board.
25. "Service credit" means increments of time to be used in the calculation of retirement benefits. Service credit may be earned as stated in section 71-02-03-01 or may be purchased or repurchased according to section 71-02-03-02.1.

26. "Substantial gainful activity" is to be based upon the totality of the circumstances including consideration of an individual's training, education, and experience; an individual's potential for earning at least seventy percent of the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.
27. "Termination of employment" for the purposes of determination for eligibility for benefit payments means a severance of employment by not being on the payroll of a covered employer for a minimum of one month. Approved leave of absence or if reemployed by any covered employer prior to receiving a lump sum distribution of the member's account balance does not constitute termination of employment.
28. "Termination of participation" means termination of eligibility to participate in the retirement plan.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1991; January 1, 1992; September 1, 1992; June 1, 1993; July 1, 1994; June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2010; April 1, 2014.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52

CHAPTER 71-02-04

71-02-04-01. Retirement benefits - Application. Except as provided in section 71-02-04-02 for retirement options, applications for retirement, surviving spouse, and disability benefits must be filed at the public employees retirement system office at least thirty days before the retirement date or before the commencement of benefits. A member shall file a photocopy of the member's birth certificate, and if a benefit election is an optional benefit under subsection 1 or 2 of section 71-02-04-04, the member must provide a photocopy of the spouse's birth certificate and marriage certificate with the office. A surviving spouse shall file a photocopy of the surviving spouse's birth certificate, deceased spouse's birth certificate and certified copy of the death certificate, and marriage certificate if a benefit election is under subdivision b of subsection 6 of North Dakota Century Code section ~~54-54-17~~ 54-52-17. If a birth certificate is not available, a member or surviving spouse may submit other documentation based on policy and procedure adopted by the board.

History: Amended effective November 1, 1990; July 1, 1994; May 1, 2004; April 1, 2014.

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

Law Implemented: NDCC 54-52-17

71-02-04-04.1. Benefit modifications. A member may elect as provided in section 71-02-04-02 to receive one of the following benefit modifications:

- ~~1. **Level social security option.** A member who retires prior to receiving social security benefits may elect the level social security option. Under this option, the member's monthly benefit is adjusted so the combined benefits received from the fund and social security remain level before, and after, the date social security benefits begin. The adjusted benefit payable from the fund must be determined on an actuarial equivalent based on an age no earlier than sixty two and no later than full retirement age as specified by the social security administration as chosen in writing by the member. A member shall submit an estimated benefit from social security that was computed no more than six months before commencement of retirement benefits. A member may only select this option if the member has selected to receive a single life/normal retirement option.~~
- ~~2. 1. **Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve monthly payments determined under the single life annuity option. The member is permitted to choose one of the optional forms of payment as defined in section 71-02-04-04 for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.~~

- ~~3.~~ **2. Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The member is permitted to choose one of the optional forms of payment as defined in section 71-02-04-04. The ongoing benefits will be actuarially increased to reflect the lump sum.
4. **3. Graduated benefit option.** The graduated benefit option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The member is permitted to choose one of the optional forms of payment for ongoing benefits as defined in section 71-02-04-04. The ongoing benefits will be actuarially reduced to reflect the election of the graduated benefit option.

History: Effective July 1, 2010; amended effective April 1, 2014.

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

Law Implemented: NDCC 54-52-17

71-02-04-09. Dual membership - Receipt of retirement benefits while contributing to the teachers' fund for retirement, the highway patrolmen's retirement system, or the teachers' insurance and annuity association of America - college retirement equities fund. Dual members must select one of the following options:

1. Begin receiving retirement benefits from one plan prior to ceasing employment covered by the alternate plan, subject to termination of employment or termination of participation.
2. Begin receiving retirement benefits from one plan and begin work in a job covered by the alternate plan. If this option is chosen, benefits will be calculated based on the method provided in subsection 2 of North Dakota Century Code section 54-52-17.2.
3. Continue as a dual member and begin receiving retirement benefits from both plans after ceasing employment.

History: Effective June 1, 1996; amended effective May 1, 2004; April 1, 2014.

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

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

CHAPTER 71-02-10

71-02-10-02. Qualified domestic relations orders procedures.

1. Upon receipt of a proposed domestic relations order, the public employees retirement system shall send an initial notice to each person named therein, including the member and the alternate payee named in the order, together with an explanation of the procedures followed by the fund.
2. If a member who is not in pay status at the time the proposed domestic relations order, or notice of intent to submit a proposed domestic relations order, was received from the member, the member's legal representative, or an individual authorized to receive confidential information under subsection 8 of North Dakota Century Code section 54-52-26, makes application for a lump sum distribution due to termination of employment, the application for lump sum distribution will be held until such time as the proposed domestic relations order is determined to be qualified and a certified copy of such order is received at the North Dakota public employees retirement system office or until the end of the eighteen-month review period, or until the North Dakota public employees retirement system office receives notice that a proposed domestic relations order will not be submitted, whichever occurs first.
3. Upon receipt of a domestic relations order, the public employees retirement system shall review the domestic relations order to determine if it is a qualified order as established by the model language format specified by the board.
4. The domestic relations order shall be considered a qualified order when the executive director notifies the parties the order is approved and a certified copy of the court order has been submitted to the office.
5. If the order becomes qualified, the executive director shall:
 - a. Send notice to all persons named in the order and any representatives designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.
 - b. Comply with the terms of the order.
6. If the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order, the public employees retirement system shall send written notification of termination of review to all parties at least forty-five days prior to the end of the eighteen-month review period. At the end of the eighteen-month

review period, the proposed order is deemed to be withdrawn and of no legal effect.

- a. If a member who was not in pay status at the time the proposed domestic relations order was received made application for a lump sum distribution due to termination of employment, the application for lump sum distribution will be processed at the end of the eighteen-month review period.
- b. If determined after the expiration of the eighteen-month period the order is a qualified domestic relations order, the qualified domestic relations order must be applied prospectively only.

History: Effective November 1, 1990; amended effective July 1, 1994; July 1, 2006; April 1, 2012; April 1, 2014.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.6

CHAPTER 71-03-03

71-03-03-08. Continuation of life insurance after retirement. An employee who is enrolled in the group life insurance program may continue the basic and supplemental life insurance coverage upon retirement or disability if the employee is entitled to a retirement allowance from an eligible retirement system by making application and remitting timely payments to the board. Supplemental life insurance coverage can only be continued until age sixty-five.

History: Effective October 1, 1986; amended effective June 1, 1996; May 1, 2004; April 1, 2014.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

CHAPTER 71-03-04

71-03-04-02. Information to employee. Each agency shall inform its employees of their right to group insurance and the process necessary to enroll. ~~The agency shall provide each eligible employee such forms as necessary to enroll in the group insurance program.~~

History: Effective October 1, 1986; amended effective November 1, 1990; April 1, 2014.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

CHAPTER 71-03-05

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

1. The amount of the health premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or July of the earliest contract period still open, whichever is more recent.
2. The amount of the life premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.
3. The amount of the dental premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.
4. The amount of the vision premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.

History: Effective April 1, 2002; amended effective April 1, 2008; April 1, 2014.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

CHAPTER 71-03-07

71-03-07-07. Minimum requirements for political subdivisions. An enrolled political subdivision must extend the benefits of the group insurance program to its eligible employees and paid members of its board, commission, or association subject to minimum requirements established by the retirement board and a minimum period of participation of sixty months. If the political subdivision withdraws from participation before completing sixty months of participation, unless federal or state laws or rules are modified or interpreted in a way that makes participation by the political subdivision in the uniform group insurance program no longer allowable or appropriate, the political subdivision must make payment to the retirement board equal to the expenses incurred on behalf of that political subdivision's employees which exceed the income received by the retirement board on behalf of that political subdivision's employees during the time of participation. For purposes of this section:

1. "Expenses incurred" means:
 - a. Claims incurred by the political subdivision during the enrolled period and paid during or within three months after the enrolled period and includes capitated payments to providers;
 - b. Reasonable administrative expenses as incurred by the public employees retirement system and the claims administrator as set forth in the master contract; and
 - c. The cost of any premium buydown provided.
2. "Income received" means all premiums paid by the political subdivision to the retirement board.

Full payment is due within three months after receipt of notice from the executive director, unless an alternative payment schedule has been approved by the retirement board. A late payment charge must be assessed on all money due on an account at a rate of one and three-fourths percent per month.

History: Effective June 1, 1996; amended effective April 1, 2014.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-02, 54-52.1-03, 54-52.1-03.1

CHAPTER 71-04-03

71-04-03-01. Enrollment. Public employees may enroll in the deferred compensation plan by completing a participant agreement and submitting the agreement to the retirement board. ~~The employee must also complete the necessary forms required by the provider and submit them to the retirement board for signature by the plan administrator.~~

History: Effective April 1, 1989; amended effective April 1, 2014.

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

Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-05

71-04-05-02. Payroll deductions. The employer shall authorize employee payroll deductions only after receiving ~~a completed and signed participant agreement~~ notification from the public employees retirement system. The participant agreement ~~must be signed by a designated representative of the retirement board~~ and indicate the date the payroll deduction is to start, the provider, and the contribution amount. Payroll deductions must be remitted to the retirement board within ten days after each payroll period. Along with each payment, the employer must provide the retirement board with a listing of deferred compensation deductions for all employees participating in the deferred compensation plan using the deferred compensation transmittal of deduction form or the approved electronic format.

History: Effective April 1, 1989; amended effective July 1, 2006; April 1, 2014.

General Authority: NDCC 28-32-02, 54-52-03.2

Law Implemented: NDCC 54-52.2-02

CHAPTER 71-05-05

71-05-05-01. Normal and early retirement benefits - Application.

Except as provided in section 71-05-05-02 for retirement options, applications for retirement, surviving spouse, and disability benefits must be filed at the public employees retirement system at least thirty days before normal or early retirement date or before the commencement of benefits. A member shall file a photocopy of the member's birth certificate and, if the member is married, a photocopy of the member's spouse's birth certificate and marriage certificate. A surviving spouse shall file a photocopy of the surviving spouse's birth certificate, deceased member's birth certificate, and marriage certificate for a benefit election under subsection 6 of North Dakota Century Code section 39-03.1-11. If a birth certificate is not available, a member or surviving spouse may submit other documentation based on policy and procedure adopted by the board.

History: Effective October 1, 1991; amended effective May 1, 2004; April 1, 2014.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

CHAPTER 71-05-08

71-05-08-02. Qualified domestic relations orders procedures.

1. Upon receipt of a proposed domestic relations order, the public employees retirement system shall send an initial notice to each person named therein, including the member and the alternate payee named in the order, together with an explanation of the procedures followed by the fund.
2. If a member who is not in pay status at the time the proposed domestic relations order, or notice of intent to submit a proposed domestic relations order, was received from the member, the member's legal representative, or an individual authorized to receive confidential information under subsection 8 of North Dakota Century Code section 39-03.1-28, makes application for a lump sum distribution due to termination of employment, the application for lump sum distribution will be held until such time as the proposed domestic relations order is determined to be qualified and a certified copy of such order is received at the North Dakota public employees retirement system office or until the end of the eighteen-month review period, or until the North Dakota public employees retirement system office receives notice that a proposed domestic relations order will not be submitted, whichever occurs first.
3. Upon receipt of a domestic relations order, the public employees retirement system shall review the domestic relations order to determine if it is a qualified order as established by the model language format specified by the board.
4. The domestic relations order shall be considered a qualified order when the executive director notifies the parties the order is approved and a certified copy of the court order has been submitted to the office.
5. If the order becomes qualified, the executive director shall:
 - a. Send notice to all persons named in the order and any representatives designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.
 - b. Comply with the terms of the order.
6. a. If the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order, the public employees retirement system shall send written notification of termination of review to all parties at least forty-five days prior to the end of the eighteen-month review period. At the

end of the eighteen-month review period, the proposed order is deemed to be withdrawn and of no legal effect.

- b. If a member who was not in pay status at the time the proposed domestic relations order was received made application for a lump sum distribution due to termination of eligible employment, the application for lump sum distribution will be processed at the end of the eighteen-month review period.
- c. If determined after the expiration of the eighteen-month period the order is a qualified domestic relations order, the qualified domestic relations order must be applied prospectively only.

History: Effective October 1, 1991; amended effective July 1, 1994; July 1, 2006; April 1, 2012; April 1, 2014.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-14.2

CHAPTER 71-07-01

71-07-01-01. Plan document. The board must prepare a plan document for the pretax benefits program. The plan document must meet applicable requirements of the Internal Revenue Code. The board must annually review ~~the~~ any plan document updates prior to the beginning of each new plan year if necessary due to changes in federal law. Modifications must be made to reflect changes in the program and to maintain a qualifiable program pursuant to the Internal Revenue Code.

History: Effective April 1, 1992; amended effective April 1, 2014.

General Authority: NDCC 54-52-04, 54-52.3-02

Law Implemented: NDCC 54-52.3-02

CHAPTER 71-08-04

71-08-04-02. Qualified domestic relations orders procedures.

1. Upon receipt of a proposed domestic relations order, the public employees retirement system shall:
 - a. Send an initial notice to each person named therein, including the member and the alternate payee named in the order, with an explanation of the procedures followed by the fund.
 - b. If a member who is not in pay status at the time the proposed domestic relations order, or notice of intent to submit a proposed domestic relations order, was received from the member, the member's legal representative, or an individual authorized to receive confidential information under subsection 8 of North Dakota Century Code section 54-52-26, makes application for a lump sum distribution due to termination of employment, the application for lump sum distribution will be held until such time as the proposed domestic relations order is determined to be qualified and a certified copy of such order is received at the North Dakota public employees retirement system office or until the end of the eighteen-month review period, or until the North Dakota public employees retirement system office receives notice that a proposed domestic relations order will not be submitted, whichever occurs first.
 - c. Review the domestic relations order to determine if it is a qualified order as established by the model language format specified by the board.
2. The domestic relations order shall be considered a qualified order when the executive director notifies the parties the order is approved and a certified copy of the court order has been submitted to the office.
3. If the order becomes qualified, the executive director shall:
 - a. Send notice to all persons named in the order and any representative designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.
 - b. Comply with the terms of the order.
 - c. Allow the alternate payee to choose the appropriate investment options for the alternate payee's account.
 - d. Allow the alternate payee to choose the same payout options allowed for the member.

4. If the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order, the public employees retirement system shall send written notification of termination of review to all parties at least forty-five days prior to the end of the eighteen-month review period. At the end of the eighteen-month review period, the proposed order is deemed to be withdrawn and of no legal effect.
 - a. If a member who was not in pay status at the time the proposed domestic relations order was received made application for a lump sum distribution due to termination of employment, the application for lump sum distribution will be processed at the end of the eighteen-month review period.
 - b. If determined after the expiration of the eighteen-month period the order is a qualified domestic relations order, the qualified domestic relations order must be applied prospectively only.

History: Effective July 1, 2000; amended effective July 1, 2006; April 1, 2012; April 1, 2014.

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

Law Implemented: NDCC 54-52.6-12

TITLE 75
DEPARTMENT OF HUMAN SERVICES

APRIL 2014

CHAPTER 75-02-01.3
CHILD CARE ASSISTANCE

Section	
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75-02-01.3-13	Reconsideration and Appeal Requests

75-02-01.3-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-33. In addition, as used in this chapter unless the context or subject matter otherwise requires:

1. "Applicant" means an individual who is seeking assistance under this program.
4. ~~2.~~ "Eligible child" means a child member of a child care assistance unit eligible for payment under the child care and development state plan.
2. ~~3.~~ "Intentional program violation" means an individual's intentional action or failure to act which consists of:
 - a. Making a false or misleading statement or misrepresenting, concealing, or withholding facts; or

- b. Being convicted in federal or state court of having made a fraudulent statement or representation with respect to child care assistance.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33

75-02-01.3-02. Decision and notice.

1. The county agency shall notify the applicant or recipient in writing of any determination of eligibility or ineligibility the approval, denial, or termination. If an applicant's applications is denied or a recipient's eligibility is terminated, the written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the applicant's or recipient's right to request reconsideration or appeal, or both.
2. The effective date a case is closed or suspended is the last calendar day of the month identified in the notice.
3. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-03. Closing a case. A case must be closed when:

1. The ~~parent or other~~ caretaker is not participating in an allowable activity.
2. The child care assistance unit includes no eligible child.
3. The ~~redetermination~~ review form:
 - a. Is not submitted timely;
 - b. Is incomplete so further eligibility cannot be determined; or
 - c. Indicates the family's income exceeds the upper income limit for the family size.

4. The family moves out of state.
5. ~~For four consecutive months the payment share of the child care assistance program has been less than ten dollars and the child care assistance program has issued no payment.~~
- 6- 5. The ~~client~~ recipient requests that the case be closed.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-05. Approved relative provider's background check information. ~~Before approving an individual as an approved relative provider, the department shall review available public records.~~

1. Before approving an individual as an approved relative provider, the department shall review available public records and the child abuse information index.
2. The department periodically may review available public records and the child abuse information index on an approved relative provider.
3. Based on information from public records, a relative provider applicant's request will be approved or denied; and an approved relative provider will be terminated at the end of the month written notification is given; if he or she has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

- c. An offense other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on the relative provider applicant's or approved relative provider's ability to serve as an approved relative provider.
5. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
6. If a services required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by the applicant or relative provider, that decision has a direct bearing on the applicant's or relative provider's ability to serve as an approved relative provider and the application or certificate may be denied or revoked. If a services required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant or relative provider, the applicant or relative provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or relative provider's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability to the applicant or relative provider for consideration and action on the application or relative provider's certificate.
7. The department shall notify the relative provider applicant and approved relative provider in writing of the approval, denial, or termination. If a relative provider applicant's request is denied or an approved relative provider's certificate is terminated, the written notice must include:
- a. A statement of the proposed action;
- b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and

- c. An explanation of the applicant's or provider's right to request reconsideration or appeal, or both.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-06. Payments to providers - Child care certificate.

1. Unless a provider otherwise elects in a signed and dated writing, all payments of child care assistance must be made to a provider.
2. No payment may be made except on presentation of a claim in a form and manner required by the department for periods during which all ~~parents or other~~ caretakers in the child care assistance unit were engaged in an allowable activity.
3. No payment to a provider may be made at a rate in excess of that charged by the provider for services to individuals who do not receive child care assistance.
4. The department will issue to the eligible caretaker a child care certificate.
5. When a caretaker fails to pay the provider, the family is ineligible for child care assistance until:
 - a. The payment is made; or
 - b. The family reaches an agreement for payment with the provider and the family continues to comply with the payment agreement.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-06-06.1, 50-09-02, 50-33

75-02-01.3-07. Treatment of income.

1. A caretaker's child care assistance unit's earned income from wages or any other source must be considered received in the month it is normally received or available.
2. A caretaker's child care assistance unit's earned income from self-employment is computed by use of a federal income tax return and ~~must be prorated over a twelve-month period that coincides with either the calendar year or the fiscal year used on the caretaker's federal tax return. Depreciation and other costs of doing business that do not require outlays during the period covered by the tax return must be added to the net income.;~~

- a. From information in the following order of priority by:
 - (1) Using a federal income tax return and must be prorated over a twelve-month period that coincides with either a calendar year or the fiscal year used on the child care assistance unit member's federal tax return;
 - (2) Annualizing the income for the period of time the business has been in operation;
 - (3) Using income and costs of good ledgers; or
 - (4) Estimating the effect on the annual income based on the best information available from the child care assistance unit.
- b. By considering the type of business activity, expenses, and income.
 - 3. Depreciation and other costs of doing business associated with a child care assistance unit's self-employment that do not require outlays during the period covered by the tax return must be added to the net income.
 - ~~3.~~ 4. A caretaker's child care assistance unit's earned income that is received on a contractual basis must be prorated over the period of the contract, regardless of when it is actually received.
 - ~~4.~~ 5. Expenses necessarily incurred to maintain the source of the caretaker's child care assistance unit's unearned income may be deducted to determine countable unearned income. All countable unearned income must be considered received in the month in which it is normally received or normally available.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-08. Disregarded income. The following types of income must be disregarded in determining child care assistance eligibility and benefits.

- 1. Money payments made by the department in connection with foster care, subsidized guardianship, family subsidy, or the subsidized adoption program;
- 2. Temporary assistance for needy families benefits and support services payments;
- 3. Benefits received through the low-income home energy assistance program;

4. County general assistance;
5. Bureau of Indian affairs general assistance;
6. Irregular cash gifts received by a ~~caretaker~~ child care assistance unit;
7. A loan from any source that is subject to a written agreement requiring repayment by the ~~caretaker~~ child care assistance unit;
8. A ~~caretaker's~~ child care assistance unit's income tax refunds and earned income credits;
9. A ~~caretaker's~~ child care assistance unit's educational loans, scholarships, grants, and awards; educational assistance provided under the Montgomery GI Bill, Public Law No. 95-525 [98 Stat. 2553; 38 U.S.C. 101 et seq.]; and vocational rehabilitation payments; ~~job service payments; and work study received by a caretaker who is an allowable postsecondary student in allowable vocational training~~;
10. Any fellowship or gift or portion of a gift used to pay the cost of a ~~caretaker's~~ child care assistance unit's tuition and fees at any educational institution;
11. Training funds received by a ~~caretaker~~ child care assistance unit from vocational rehabilitation;
12. Training allowances of up to thirty dollars per week provided to a ~~caretaker~~ child care assistance unit member through a tribal native employment works program;
13. Needs-based payments, support services, and relocation expenses provided to a ~~caretaker~~ child care assistance unit through programs established under the Workforce Investment Act of 1998 [Pub. L. 105-220, August 7, 1998; 112 Stat. 936];
14. Training stipends provided by private, charitable organizations to a ~~caretaker~~ child care assistance unit member who is a victim of domestic violence for the ~~caretaker~~ member of the child care assistance unit to attend educational programs;
15. The first two thousand dollars per year of lease payments deposited in an individual Indian monies account for a ~~caretaker~~ child care assistance unit member;
16. Any income required by federal law to be disregarded;
17. Earned income of all children in the child care assistance unit;

18. A one-time bonus incentive payment or commission to a ~~caretaker~~ child care assistance unit member;
19. Vendor payments or other payments made to a third party on behalf of the child care assistance unit;
20. Stipend payments to a ~~caretaker~~ child care assistance unit that do not require work as a condition of receipt;
21. Nonrecurring lump sum payments to a ~~caretaker~~ child care assistance unit;
22. Irregular income from sale of craft items and rummage sales;
23. Payments made by cafeteria or flex compensation plans to a ~~caretaker~~ child care assistance unit member;
24. Funds raised on behalf of the child care assistance unit, or any member of that unit, if the child care assistance unit does not have access to the funds; and
25. Income from contracts for deed; ~~and~~
26. ~~A fifth paycheck received in a single month by an individual who is paid a weekly wage or a third paycheck received in a single month by an individual who is paid a biweekly wage.~~

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-09. Deduction for child support and spousal support.

~~Child~~ Court-ordered child support and court-ordered spousal support, including arrearages, interest, and fees charged for income withholding, paid by or collected from a child care assistance unit member, whose income is counted in determining eligibility and benefit amounts, may be deducted from the child care assistance unit's income.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-10. Parental Caretaker choice - Contract between parent

~~or caretaker and provider.~~ The ~~parent~~ caretaker of each eligible child who receives or is offered child care services for which financial assistance is provided through the child care and development fund may choose the approved relative provider, registered registrant, holder of a self-declaration, or licensed provider of services to that child. The department is not bound by or responsible for either

party's compliance with the terms of any contract entered between a provider and a caretaker.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-12. Intentional program violation - Disqualification penalties.

1. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court is subject to the penalties provided in this section. An individual who waives the individual's right to appear at an intentional program violation hearing is subject to the penalties provided in this section.
2. The county agency shall notify an individual in writing of an intentional program violation. The written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the individual's right to request an administrative hearing under chapter 75-01-03.
- ~~2.~~ 3. During any period of disqualification, if a disqualified individual:
 - a. Is a provider, the individual may not receive any child care assistance payment;
 - b. Is employed by a provider, that provider may not receive any child care assistance payment; and
 - c. Is a member of a child care assistance unit, that child care assistance unit is ineligible for child care assistance benefits.
- ~~3.~~ 4. The duration of the penalty described in this section is:
 - a. ~~One year~~ Six months for the first offense;
 - b. ~~Two years~~ One year for the second offense; and
 - c. Permanently for the third offense.

- 4- 5. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until a court of appropriate jurisdiction subsequently reverses the finding upon which the penalty was based.
- 5- 6. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
- 6- 7. The department shall issue a written notice informing the individual of the period of disqualification.
- 7- 8. Overpayments may be recovered from:
 - a. The child care assistance unit that includes the disqualified individual;
 - b. Any child care assistance unit of which the disqualified individual subsequently becomes a member;
 - c. Any individual members of the child care assistance unit that included the disqualified individual;
 - d. The provider who was disqualified; and
 - e. The provider who employed the disqualified individual.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-13. Reconsideration and appeal requests.

1. An applicant ~~or~~ recipient, relative provider applicant, or approved relative provider of child care assistance aggrieved by a determination made under this chapter may request reconsideration of that decision by the department, and must request reconsideration before appealing that decision unless the decision is based on an intentional program violation. ~~A~~ An applicant, recipient, relative provider applicant, or approved relative provider ~~or member of a~~ child care assistance unit aggrieved by a decision issued after a request for reconsideration must appeal in writing and include documentation of all of the following information:
 - a. A copy of the letter received from the department advising of the department's decision on the request for reconsideration;
 - b. A statement of disputed facts, if any;

- c. The authority in statute or rule upon which the applicant for or recipient of relative provider applicant, or approved relative provider of child care assistance relies for each disputed item; and
 - d. The name, address, and telephone number of the individual to whom the department will send all notices and information regarding the appeal.
2. A request for reconsideration must be made within thirty days after notice of a determination made under this chapter. An appeal must be filed within thirty days after the date of mailing of a decision issued pursuant to a request for reconsideration.
 3. Chapter 75-01-03 governs an appeal made under this chapter.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID

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

1. The home occupied by the medicaid unit, including trailer homes being used as living quarters.
2. Personal effects, wearing apparel, household goods, and furniture.
3. One motor vehicle if the primary use of the vehicle is to serve the needs of members of the medicaid unit.
4. Indian trust or restricted lands and the proceeds from the sale thereof, so long as those proceeds are impressed with the original trust.
5. Indian per capita funds and judgment funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exemption.
6. a. In determining the eligibility of an individual with respect to skilled nursing services, swing-bed, or home and community-based

benefits, the individual will be ineligible for those medicaid benefits if the individual's equity interest in the individual's home exceeds five hundred thousand dollars.

- b. The dollar amount specified in this subsection will be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers, all items, United States city average, rounded to the nearest one thousand dollars.
 - c. This subsection does not apply to an individual whose spouse, or child who is under age twenty-one or is blind or disabled, lawfully resides in the individual's home.
 - d. This subsection may not be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.
 - e. This subsection applies only to individuals who made application for medicaid with respect to skilled nursing facility services, swing-bed, or home and community-based benefits on or after January 1, 2006.
7. a. ~~Notwithstanding~~ Notwithstanding any other provision to the contrary, the assets of an individual must be disregarded when determining medicaid eligibility in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that:
- (1) Covers an insured who was a resident of North Dakota when coverage first became effective under the policy;
 - (2) Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, issued not earlier than the effective date of the state plan amendment described in subdivision b;
 - (3) The agency determines meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the state insurance commissioner certifies that the policy meets such requirements; and
 - (4) Is sold to an individual who:
 - (a) Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;

- (b) Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or
 - (c) Has attained age seventy-six as of the date of purchase.
 - b. This subsection applies only to individuals who have purchased a long-term care insurance policy described in this subsection with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets:
 - (1) To the extent that payments are made under such a long-term care insurance policy; or
 - (2) Because an individual has received or is entitled to receive benefits under such a long-term care insurance policy.
- 8. Property that is essential to earning a livelihood.
 - a. Property may be excluded as essential to earning a livelihood only during months in which a member of the medicaid unit is actively engaged in using the property to earn a livelihood, or during months when the medicaid unit is not actively engaged in using the property to earn a livelihood, if the medicaid unit shows that the property has been in such use and there is a reasonable expectation that the use will resume:
 - (1) Within twelve months of the last use; or
 - (2) If the nonuse is due to the disabling condition of a member of the medicaid unit, within twenty-four months of the last use.
 - b. Property consisting of an ownership interest in a business entity that employs anyone whose assets are used to determine eligibility may be excluded as property essential to earning a livelihood if:
 - (1) The individual's employment is contingent upon ownership of the property; or
 - (2) There is no ready market for the property.
 - c. A ready market for property consisting of an ownership interest in a business entity exists if the interest may be publicly traded. A ready market does not exist if there are unreasonable limitations on the sale of the interest, such as a requirement that the interest be sold at a price substantially below its actual value or a requirement that effectively precludes competition among potential buyers.

- d. Property currently enrolled in the conservation reserve program is considered to be property essential to earning a livelihood.
 - e. Property from which a medicaid unit is receiving only rental or lease income is not essential to earning a livelihood.
 - f. Liquid assets, to the extent reasonably necessary for the operation of a trade or business, are considered to be property essential to earning a livelihood. Liquid assets may not otherwise be treated as essential to earning a livelihood.
9. Property which is not saleable without working an undue hardship. Such property may be excluded no earlier than the first day of the month in which good-faith attempts to sell are begun, and continues to be excluded only for so long as the asset continues to be for sale and until a bona fide offer for at least seventy-five percent of the property's fair market value is made. Good-faith efforts to sell must be repeated at least annually in order for the property to continue to be excluded.
- a. Persons seeking to establish retroactive eligibility must demonstrate that good-faith efforts to sell were begun and continued in each of the months for which retroactive eligibility is sought. Information concerning attempts to sell, which demonstrate that an asset is not saleable without working an undue hardship, are relevant to establishing eligibility in the month in which the good-faith efforts to sell are begun, but are not relevant to months prior to that month and do not relate back to prior months.
 - (1) A good-faith effort to sell real property or a mobile home must be made for at least three calendar months in which no bona fide offer for at least seventy-five percent of the property's fair market value is received before the property can be shown to be not saleable without working an undue hardship. The three calendar months must include a good-faith effort to sell through the regular market for three calendar months.
 - (2) A good-faith effort to sell property other than real property, a mobile home, or an annuity must be made for at least thirty days in which no bona fide offer for at least seventy-five percent of the property's fair market value is received before the property can be shown to be not saleable without working an undue hardship.
 - b. Property may not be shown to be not saleable without working an undue hardship if the owner of the property fails to take action to collect amounts due and unpaid with respect to the property or otherwise fails to assure the receipt of regular and timely payments due with respect to the property.

10. a. Any pre-need burial contracts, prepayments, or deposits up to the amount set by the department in accordance with state law and the medicaid state plan, which are designated by an applicant or recipient for the burial of the applicant or recipient. Earnings accrued on the total amount of the designated burial fund are excluded.
- (1) The burial fund must be identifiable and may not be commingled with other funds. Checking accounts are considered to be commingled.
 - (2) The value of an irrevocable burial arrangement shall be considered toward the burial exclusion. The irrevocable amount may not exceed the amount of the burial asset exclusion at the time of the contract is entered, plus the portion of the three thousand dollar asset limitation the purchaser designates for funeral expenses.
 - (3) The prepayments on a whole life insurance policy or annuity are the lesser of the face value or the premiums that have been paid.
 - (4) Any fund, insurance, or other property given to another person or entity in contemplation that its value will be used to meet the burial needs of the applicant or recipient shall be considered part of the burial fund. If an applicant or recipient's burial is funded by an insurance policy, the amount considered set aside for the burial is the lesser of the cost basis or the face value of the insurance policy.
 - (5) At the time of application, the value of a designated burial fund shall be determined by identifying the value of the prepayments which are subject to the burial exclusion and asset limit amounts.
 - (6) Designated burial funds which have been decreased prior to application for medicaid shall be considered redesignated as the date of last withdrawal. The balance at that point shall be considered the prepayment amount and earnings from that date forward shall be disregarded.
 - (7) Reductions made in a designated burial fund after eligibility is established must first reduce the amount of earnings.
 - (8) An applicant shall be determined eligible for the three-month prior period when a burial fund is established at the time of application if the value of all assets are within the medicaid burial fund exclusion and asset limit amounts for each of the

three prior months. Future earnings on the newly established burial fund must be excluded.

- b. A burial plot for each family member.
- 11. Home replacement funds, derived from the sale of an excluded home, and if intended for the purchase of another excluded home, until the last day of the third month following the month in which the proceeds from the sale are received. This asset must be identifiable and not commingled with other assets.
- 12. Unspent assistance, and interest earned on unspent assistance, received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288] or some other federal statute, because of a presidentially declared major disaster, and comparable disaster assistance received from a state or local government, or from a disaster assistance organization. This asset must be identifiable and not commingled with other assets.
- 13. Payments, interest earned on the payments, and in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets are excluded for nine months, and may be excluded for an additional twenty-one months, if circumstances beyond the person's control prevent the repair or replacement of the lost, damaged, or stolen assets, and keep the person from contracting for such repair or replacement. This asset must be identifiable and not commingled with other assets.
- 14. For nine months, beginning after the month of receipt, unspent assistance received from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient demonstrates that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
- 15. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
- 16. Payments made pursuant to the Confederate Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, [Pub. L. 103-436; 108 Stat. 4577 et seq.]. This asset must be identifiable and not commingled with other assets.
- 17. Stock in regional or village corporations held by natives of Alaska issued pursuant to section 7 of the Alaska Native Claims Settlement Act, [Pub. L. 92-203; 42 U.S.C. 1606].

18. For nine months beginning after the month of receipt, any educational scholarship, grant, or award and any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution. This asset must be identifiable and not commingled with other assets.
19. For nine months beginning after the month of receipt, any income tax refund, any earned income tax credit refund, or any advance payments of earned income tax credit. This asset must be identifiable and not commingled with other assets.
20. Assets set aside, by a blind or disabled, but not an aged, supplemental security income recipient, as a part of a plan to achieve self-support which has been approved by the social security administration.
21. The value of a life estate.
22. Allowances paid to children of Vietnam veterans who are born with spina bifida. This asset must be identifiable and not commingled with other assets.
23. The value of mineral acres.
24. Funds, including interest accruing, maintained in an individual development account established under title IV of the Assets for Independence Act, as amended [Pub. L. 105-285; 42 U.S.C. 604, note].
25. Property connected to the political relationship between Indian tribes and the federal government which consists of:
 - a. Any Indian trust or restricted land, or any other property under the supervision of the secretary of the interior located on a federally recognized Indian reservation, including any federally recognized Indian tribe's pueblo or colony, and including Indian allotments on or near a reservation as designated and approved by the bureau of Indian affairs of the department of interior.
 - b. Property located within the most recent boundaries of a prior federal reservation, including former reservations in Oklahoma and Alaska native regions established by the Alaska Native Claims Settlement Act.
 - c. Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.

- d. Property with unique Indian significance such as ownership interests in or usage rights to items not covered by subdivisions a through c that have unique religious, spiritual, traditional, or cultural significance, or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

26. Funds held in ~~employer-sponsored~~ retirement plans ~~but not private that are considered qualified~~ retirement plans in the Internal Revenue Code [26 U.S.C.]. ~~An employer-sponsored retirement plan is a benefit plan that an employer offers for the benefit of the employer's employees at no or a relatively low cost to the employees.~~

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; August 1, 2005; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012; April 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-02.3

75-02-02.1-32. Valuation of assets. It is not always possible to determine the value of assets with absolute certainty, but it is necessary to determine a value in order to determine eligibility. The valuation must be based on reasonably reliable information. It is the responsibility of the applicant or recipient, or the persons acting on behalf of the applicant or recipient, to furnish reasonably reliable information. Because an applicant or recipient may not be knowledgeable of asset values, and particularly because that person may have a strong interest in the establishment of a particular value, whether or not that value is accurate, some verification of value must be obtained. If a valuation from a source offered by an applicant or recipient is greatly different from generally available or published sources, the applicant or recipient must provide a convincing explanation for the differences particularly if the applicant or recipient may be able to influence the person providing the valuation. If reasonably reliable information concerning the value of assets is not made available, eligibility may not be determined. Useful sources of verification include:

1. With respect to liquid assets: reliable account records.
2. With respect to personal property other than liquid assets:
 - a. Publicly traded stocks, bonds, and securities: stockbrokers.
 - b. Autos, trucks, mobile homes, boats, farm equipment, or any other property listed in published valuation guides accepted in the trade: the valuation guide.
 - c. With respect to harvested grains or produce: grain buyers, grain elevator operators, produce buyers; and, for crops grown on contract: the contract.

- d. With respect to stock in corporations not publicly traded: appraisers, accountants.
 - e. With respect to other personal property: dealers and buyers of that property.
 - f. With respect to a life insurance policy: the life insurance company.
3. Real property.
- a. With respect to mineral interests:
 - (1) If determining current value, the best offer received following a good-faith effort to sell the mineral interests. A good-faith effort to sell means offering the mineral interests to at least three companies purchasing mineral rights in the area, or by offering for bids through public advertisement.
 - (2) If determining a past value for mineral rights previously sold or transferred:
 - (a) If producing, the value is an amount equal to any lease income received after the transfer plus three times the annual royalty income based on actual royalty income from the ~~thirty-six~~ sixty months following the transfer, or if ~~thirty-six~~ sixty months have not yet passed, based on actual royalty income in the months that have already passed plus an estimate for the remainder of the ~~thirty-six-month~~ sixty-month period.
 - (b) If not producing, but the mineral rights are leased, the value is an amount equal to two times the total lease amount; or
 - (c) If not leased, the value is an amount equal to the greater of two times the estimated lease amount or the potential sale value of the mineral rights, as determined by a geologist, mineral broker, or mineral appraiser.
 - (3) In determining current or past value, an applicant, recipient, or the department may provide persuasive evidence establishing a value different from the value established using the process described in this subdivision.
 - b. With respect to agricultural lands: appraisers, real estate agents dealing in the area, loan officers in local agricultural lending institutions, and other persons known to be knowledgeable of land sales in the area in which the lands are located, but not the "true and full" value from tax records.

- c. With respect to real property other than mineral interests and agricultural lands: market value or "true and full" value from tax records, whichever represents a reasonable approximation of fair market value; real estate agents dealing in the area; and loan officers in local lending institutions.
4. Divided or partial interests. Divided or partial interests include assets held by the applicant or recipients; jointly or in common with persons who are not in the medicaid unit; assets where the applicant or recipient or other persons within the medicaid unit own only a partial share of what is usually regarded as the entire asset; and interests where the applicant or recipient owns only a life estate or remainder interest in the asset.
- a. Liquid assets. The value of a partial or shared interest in a liquid asset is equal to the total value of that asset.
 - b. Personal property other than liquid assets and real property other than life estates and remainder interests. The value of a partial or shared interest is a proportionate share of the total value of the asset equal to the proportionate share of the asset owned by the applicant or recipient.
 - c. Life estates and remainder interests.
 - (1) The life estate and remainder interest tables must be used to determine the value of a life estate or remainder interest. In order to use the table, it is necessary to first know the age of the life tenant or, if there are more than one life tenants, the age of the youngest life tenant; and the fair market value of the property which is subject to the life estate or remainder interest. The value of a life estate is found by selecting the appropriate age in the table and multiplying the corresponding life estate decimal fraction times the fair market value of the property. The value of a remainder interest is found by selecting the appropriate age of the life tenant in the table and multiplying the corresponding remainder interest decimal fraction times the fair market value of the property.

Life Estate and Remainder Interest Table

<u>Age</u>	<u>Life Estate</u>	<u>Remainder Interest</u>
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992

4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750

35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626
49	.85578	.14422
50	.84743	.15257
51	.83674	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648

65	.67970	.32030
66	.66551	.33449
67	.65098	.34902
68	.63610	.36390
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739
73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643
80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113

96	.22181	.77819
97	.21550	.78450
98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468
102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

- (2) The life estate and remainder interest tables are based on the anticipated lifetimes of individuals of a given age according to statistical tables of probability. If the life tenant suffers from a condition likely to cause death at an unusually early age, the value of the life estate decreases and the value of the remainder interest increases. An individual who requires long-term care, who suffers from a condition that is anticipated to require long-term care within twelve months, or who has been diagnosed with a disease or condition likely to reduce the individual's life expectancy is presumed to suffer from a condition likely to cause death at an unusually early age, and may not rely upon statistical tables of probability applicable to the general population to establish the value of a life estate or remainder interest. If an individual is presumed to suffer from a condition likely to cause death at an unusually early age, an applicant or recipient whose eligibility depends upon establishing the value of a life estate or remainder interest must provide a reliable medical statement that estimates the remaining duration of life in years. The estimated remaining duration of life may be used, in conjunction with a life expectancy table, to determine the comparable age for application of the life estate and remainder interest table.

5. Contractual rights to receive money payments:

- a. Except during any disqualifying transfer penalty period as established by subdivision d, the value of contractual rights to receive money payments in which payments are current is an amount equal to the total of all outstanding payments of principal required to be made by the contract unless evidence is furnished that establishes a lower value.
- b. Except during any disqualifying transfer penalty period as established by subdivision d, the value of contractual rights to receive money payments in which payments are not current is the current fair market value of the property subject to the contract.
- c. Except during any disqualifying transfer penalty period as established by subdivision d, if upon execution the total of all principal payments required under the terms of the contract is less than the fair market value of the property sold, the difference is a disqualifying transfer governed by section 75-02-02.1-33.1 or 75-02-02.1-33.2, and the value of the contract is determined under subdivision a or b.
- d. A contractual right to receive money payments that consists of a promissory note, loan, or mortgage is a disqualifying transfer governed by section 75-02-02.1-33.2 of an amount equal to the outstanding balance due as of the date the lender or purchaser, or the lender's or purchaser's spouse, first applies for medicaid to secure nursing care services, as defined in section 75-02-02.1-33.2, if:
 - (1) Any payment on the contract is due after the end of the contract payee's life expectancy as established in accordance with actuarial publications of the office of the chief actuary of the social security administration;
 - (2) The contract provides for other than equal payments or for any balloon or deferred payment; or
 - (3) The contract provides for any payment otherwise due to be diminished after the contract payee's death.
- e. The value of a secured contractual right to receive money payments that consists of a promissory note, loan, or mortgage not described in subdivision d shall be determined under subdivision a or b. For an unsecured note, loan, or mortgage, the value is the outstanding payments of principal and overdue interest unless evidence is furnished that establishes a lower value.

6. Contract values.

- a. The value of a contract under which payments are made to an applicant or a recipient and in which payments are current is equal to the total of all outstanding payments of principal required to be made by the contract, unless evidence is furnished that establishes a lower value.
- b. The value of a contract under which payments are made to an applicant or a recipient and in which payments are not current is an amount equal to the current fair market value of the property subject to the contract. If the contract is not secured by property, the value of the contract is the total of all outstanding payments of principal and past-due interest required to be made under the contract.
- c. If the contractual right to receive money payments is not collectible and is not secured, the debt has no collectible value and is not a countable asset. An applicant or recipient can establish that a note has no collectible value if:
 - (1) The debtor is judgement proof which means a money judgement has been secured, an execution has been served upon the debtor which has been returned as wholly unsatisfied, and the debtor's affidavit and claim for exemptions exempt all of the debtor's property; or
 - (2) The applicant or recipient verifies the debt is uncollectible due to a statute of limitations which may be shown, among other ways, by an attorney's letter identifying the applicable statute and the facts that make the debt uncollectible under that statute of limitations.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

75-02-02.1-33.2. Disqualifying transfers made on or after February 8, 2006.

1. This section applies to transfers of income or assets made on or after February 8, 2006.
2. Except as provided in subsections 7 and 16, an individual is ineligible for skilled nursing care, swing-bed, or home and community-based benefits if the individual or the individual's spouse disposes of assets or income for less than fair market value on or after the look-back date. The look-back date is a date that is sixty months before the first date on which the individual is both receiving skilled nursing care, swing-bed, or

home and community-based services and has applied for benefits under this chapter, without regard to the action taken on the application.

3. An applicant, recipient, or anyone acting on behalf of an applicant or recipient, has a duty to disclose any transfer of any asset or income made by or on behalf of the applicant or recipient, or the spouse of the applicant or recipient, for less than full fair market value:
 - a. When making an application;
 - b. When completing a redetermination; and
 - c. If made after eligibility has been established, by the end of the month in which the transfer was made.
4. The date that a period of ineligibility begins is the latest of:
 - a. The first day of the month in which the income or assets were transferred for less than fair market value;
 - b. The first day on which the individual is receiving nursing care services and would otherwise have been receiving benefits for institutional care but for the penalty; or
 - c. The first day thereafter which is not in a period of ineligibility.
5.
 - a. The number of months and days of ineligibility for an individual shall be equal to the total cumulative uncompensated value of all income and assets transferred by the individual, or individual's spouse, on or after the look-back date divided by the average monthly cost or average daily cost, as appropriate, of nursing facility care in North Dakota at the time of the individual's first application.
 - b. A fractional period of ineligibility may not be rounded down or otherwise disregarded with respect to any disposal of assets or income for less than fair market value.
 - c. Notwithstanding any contrary provisions of this section, in the case of an individual or an individual's spouse who makes multiple fractional transfers of assets or income in more than one month for less than fair market value on or after the look-back date established under subsection 2, the period of ineligibility applicable to such individual must be determined by treating the total, cumulative uncompensated value of all assets or income transferred during all months on or after the look-back date as one transfer and one penalty period must be imposed beginning on the earliest date applicable to any of the transfers.

6. For purposes of this section, "assets" includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least one year after the date of the purchase.
7. An individual may not be ineligible for medicaid by reason of subsection 2 to the extent that:
 - a. The assets transferred were a home, and title to the home was transferred to:
 - (1) The individual's spouse;
 - (2) The individual's son or daughter who is under age twenty-one, blind, or disabled;
 - (3) The individual's brother or sister who has an equity interest in the individual's home and who was residing in the individual's home for a period of at least one year immediately before the date the individual became an institutionalized individual; or
 - (4) The individual's son or daughter, other than a child described in paragraph 2, who was residing in the individual's home for a period of at least two years immediately before the date the individual began receiving nursing care services, and who provided care to the individual which permitted the individual to avoid receiving nursing care services;
 - b. The income or assets:
 - (1) Were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
 - (2) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;
 - (3) Were transferred to, or to a trust established solely for the benefit of, the individual's child who is blind or disabled; or
 - (4) Were transferred to a trust established solely for the benefit of an individual less than sixty-five years of age who is disabled;
 - c. The individual makes a satisfactory showing that:
 - (1) The individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;

- (2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid; or
 - (3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the individual; or
- d. The asset transferred was an asset excluded for medicaid purposes other than:
- (1) The home or residence of the individual or the individual's spouse;
 - (2) Property that is not saleable without working an undue hardship;
 - (3) Excluded home replacement funds;
 - (4) Excluded payments, excluded interest on those payments, and excluded in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets;
 - (5) Life estate interests;
 - (6) Mineral interests;
 - (7) An asset received from a decedent's estate during any period it is considered to be unavailable under subsection 5 of section 75-02-02.1-25; or
 - (8) An annuity.
8. a. An individual shall not be ineligible for medicaid by reason of subsection 2 to the extent the individual makes a satisfactory showing that an undue hardship exists for the individual. Upon imposition of a period of ineligibility because of a transfer of assets or income for less than fair market value, the department shall notify the applicant or recipient of the right to request an undue hardship exception. An individual may apply for an exception to the transfer of asset penalty if the individual claims that the ineligibility period will cause an undue hardship to the individual. A request for a determination of undue hardship must be made within ninety days after the circumstances upon which the claim of undue hardship is made were known or should have been known to the affected individual or the person acting on behalf of that individual if incompetent. The individual must provide to the department sufficient documentation to support the claim of undue hardship. The department shall determine whether a hardship exists upon

receipt of all necessary documentation submitted in support of a request for a hardship exception. An undue hardship exists only if the individual shows that all of the following conditions are met:

- (1) Application of the period of ineligibility would deprive the individual of food, clothing, shelter, or other necessities of life or would deprive the individual of medical care such that the individual's health or life would be endangered;
 - (2) The individual who transferred the assets or income, or on whose behalf the assets or income were transferred, has exhausted all lawful means to recover the assets or income or the value of the transferred assets or income, from the transferee, a fiduciary, or any insurer;
 - (3) A person who would otherwise provide care would have no cause of action, or has exhausted all causes of action, against the transferee of the assets or income of the individual or the individual's spouse under North Dakota Century Code chapter 13-02.1, the Uniform Fraudulent Transfers Act, or any substantially similar law of another jurisdiction; and
 - (4) The individual's remaining available assets and the remaining assets of the individual's spouse are less than the asset limit in subsection 1 of section 75-02-02.1-26 counting the value of all assets except:
 - (a) A home, exempt under section 75-02-02.1-28, but not if the individual or the individual's spouse has equity in the home in excess of twenty-five percent of the amount established in the approved state plan for medical assistance which is allowed as the maximum home equity interest for nursing facility services or other long-term care services;
 - (b) Household and personal effects;
 - (c) One motor vehicle if the primary use is for transportation of the individual, or the individual's spouse or minor, blind, or disabled child who occupies the home; and
 - (d) Funds for burial up to the amount excluded in subsection 10 of section 75-02-02.1-28 for the individual and the individual's spouse.
- b. Upon the showing required by this subsection, the department shall state the date upon which an undue hardship begins and, if applicable, when it ends.

- c. The agency shall terminate the undue hardship exception, if not earlier, at the time an individual, the spouse of the individual, or anyone with authority to act on behalf of the individual, makes any uncompensated transfer of income or assets after the undue hardship exception is granted. The agency shall deny any further requests for an undue hardship exception due to either the disqualification based on the transfer upon which the initial undue hardship determination was based, or a disqualification based on any subsequent transfer.
- 9. If a request for an undue hardship waiver is denied, the applicant or recipient may request a fair hearing in accordance with the provisions of chapter 75-01-03.
- 10. There is a presumption that a transfer for less than fair market value was made for purposes that include the purpose of qualifying for medicaid:
 - a. In any case in which the individual's assets and the assets of the individual's spouse remaining after the transfer produce income which, when added to other income available to the individual and to the individual's spouse, total an amount insufficient to meet all living expenses and medical costs reasonably anticipated to be incurred by the individual and by the individual's spouse in the month of transfer and in the fifty-nine months following the month of transfer;
 - b. In any case in which an inquiry about medicaid benefits was made, by or on behalf of the individual to any person, before the date of the transfer;
 - c. In any case in which the individual or the individual's spouse was an applicant for or recipient of medicaid before the date of transfer;
 - d. In any case in which a transfer is made by or on behalf of the individual or the individual's spouse, if the value of the transferred income or asset, when added to the value of the individual's other countable assets, would exceed the asset limits in section 75-02-02.1-26; or
 - e. In any case in which the transfer was made, on behalf of the individual or the individual's spouse, by a guardian, conservator, or attorney in fact, to a relative of the individual or the individual's spouse, or to the guardian, conservator, or attorney in fact or to any parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew, whether by birth, adoption, and whether by whole or half-blood, of the guardian, conservator, or attorney in fact or the spouse or former spouse of the guardian, conservator, or attorney in fact.

11. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid must show that a desire to receive medicaid benefits played no part in the decision to make the transfer and must rebut any presumption arising under subsection 10. The fact, if it is a fact, that the individual would be eligible for the medicaid coverage for nursing care services, had the individual or the individual's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid.
12. If a transfer results in a period of ineligibility under this section for an individual receiving nursing care services, and if the individual's spouse is otherwise eligible for medicaid and requires nursing care services, the remaining period of ineligibility shall be apportioned equally between the spouses. If one such spouse dies or stops receiving nursing care services, any months remaining in that spouse's apportioned period of ineligibility must be assigned or reassigned to the spouse who continues to receive nursing care services.
13. No income or asset transferred to a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, stepsister, stepbrother, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew of the individual or the individual's spouse, purportedly for services or assistance furnished by the transferee to the individual or the individual's spouse, may be treated as consideration for the services or assistance furnished unless:
 - a. The transfer is made pursuant to a valid written contract entered into prior to rendering the services or assistance;
 - b. The contract was executed by the individual or the individual's fiduciary who is not a provider of services or assistance under the contract;
 - c. Compensation is consistent with rates paid in the open market for the services or assistance actually provided; and
 - d. The parties' course of dealing included paying compensation upon rendering services or assistance, or within thirty days thereafter.
14. A transfer is complete when the individual or the individual's spouse making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.
15. For purposes of this section:
 - a. "Annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or

other valuable consideration to the other party in return for the right to receive payments in the future, but does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals must begin by age seventy and one-half.

- b. "Average monthly cost of nursing facility care" means the cost determined by the department under section 1917(c)(1)(E)(i)(II) of the Act [42 U.S.C. 1396p(c)(1)(E)(i)(II)].
- c. "Fair market value" means:
 - (1) In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;
 - (2) In the case of real or personal property that is subject to reasonable dispute concerning its value:
 - (a) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or
 - (b) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and
 - (3) In the case of income, one hundred percent of apparent fair market value.
- d. "Major medical policy" includes any policy, certificate, or subscriber contract issued on a group or individual basis by any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization, which provides a plan of health insurance or health benefit coverage, including medical, hospital, and surgical care, approved for issuance by the insurance regulatory body in the state of issuance, but does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance.

- e. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1965, as amended [42 U.S.C. 1395 et seq; Pub. L. 92-603; 86 Stat. 1370].
- f. "Medicare supplement policy offering plan F benefits" means a policy, group, or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract under section 1876 or 1833 of the Social Security Act [42 U.S.C. 1395 et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act that:
 - (1) Is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;
 - (2) Is not a policy or contract of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization;
 - (3) Is approved for issuance by the insurance regulatory body in the state of issuance; and
 - (4) Includes:
 - (a) Hospitalization benefits consisting of medicare part A coinsurance plus coverage for three hundred sixty-five additional days after medicare benefits end;
 - (b) Medical expense benefits consisting of medicare part B coinsurance;
 - (c) Blood provision consisting of the first three pints of blood each year;
 - (d) Skilled nursing coinsurance;
 - (e) Medicare part A deductible coverage;
 - (f) Medicare part B deductible coverage;
 - (g) Medicare part B excess benefits at one hundred percent coverage; and

(h) Foreign travel emergency coverage.

- g. "Relative" means a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew, great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse.
 - h. "Someone in a confidential relationship" includes an individual's attorney in fact, guardian, conservator, legal custodian, caretaker, trustee, attorney, accountant, or agent, and may include a relative or other person with a close and trusted relationship to the individual.
 - i. "Uncompensated value" means the difference between fair market value and the value of any consideration received.
16. The provisions of this section do not apply in determining eligibility for medicare savings programs.
17. An individual disposes of assets or income when the individual, or anyone on behalf of the individual or at the request of the individual, acts or fails to act in a manner that effects a transfer, conveyance, assignment, renunciation, or disclaimer of any asset or income in which the individual had or was entitled to claim an interest of any kind.
18. An individual who disposes of assets or income to someone in a confidential relationship is presumed to have transferred the assets or income to an implied trust in which the individual is the beneficiary and which is subject to treatment under section 75-02-02.1-31.1. The presumption may be rebutted only if the individual shows:
- a. The compensation actually received by the individual for the assets or income disposed of was equal to at least one hundred percent of fair market value, in which case this section has no application; or
 - b. The individual is competent and disposed of the assets or income, or directed the disposal if made by someone in a confidential relationship, with full knowledge of the motives of the transferee and all other facts concerning the transaction which might affect the individual's own decision and without the use of any influence on the part of the transferee, in which case the transaction is governed by this section.
19. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at

least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home care and long-term care coverage, purchased on or before July 31, 2003, with a daily benefit at least equal to 1.25 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:

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

20. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage, purchased on or after August 1, 2003, and before January 1, 2007, with a daily benefit at least equal to 1.57 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:

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

21. With respect to an annuity transaction which includes the purchase of, selection of an irrevocable payment option, addition of principal to, elective withdrawal from, request to change distribution from, or any other transaction that changes the course of payments from an annuity which occurs on or after February 8, 2006, an individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid, if the asset was used to acquire an annuity, only if:

- a. The owner of the annuity provides documentation satisfactory to the department that names the department as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant or the department is named in the second position after the community spouse or minor or disabled child, and that establishes that any attempt by such spouse or a representative of such child to dispose of any such remainder shall cause the department to become the remainder beneficiary for at least the total amount of medical assistance paid on behalf of the annuitant;
- b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
- c. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
- d. The annuity provides substantially equal monthly payments of principal and interest that vary by five percent or less from the total annual payment of the previous year, and does not have a balloon or deferred payment of principal or interest;
- e. The annuity will return the full principal and interest within the purchaser's life expectancy as determined in accordance with actuarial publications of the office of the chief actuary of the social security administration; and
- f. All annuities owned by the purchaser produce total monthly gross income that:
 - (1) Does not exceed the minimum monthly maintenance needs allowance for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5; and
 - (2) When combined with the purchaser's other monthly income at the time the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse applies for benefits under this chapter, does not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5.

History: Effective April 1, 2008; amended effective January 1, 2010; January 1, 2011; April 1, 2012; April 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

75-02-02.1-40. Income levels.

1. Levels of income for maintenance shall be used as a basis for establishing financial eligibility for medicaid. The income levels applicable to individuals and units are:
 - a. Categorically needy income levels.
 - (1) Family coverage income levels established in the medicaid state plan are applied to the family coverage group. The family size is increased for each unborn child when determining the appropriate family size.
 - (2) Except for individuals subject to the nursing care income level, the income level for categorically needy aged, blind, or disabled recipients is that which establishes supplemental security income eligibility.
 - b. Medically needy income levels.
 - (1) Medically needy income levels established in the medicaid state plan are applied when a medicaid individual or unit resides in the individual's or the unit's own home or in a specialized facility, and when a medicaid individual has been screened as requiring nursing care, but elects to receive home and community-based services. The family size is increased for each unborn child when determining the appropriate family size.
 - (2) The nursing care income levels established in the medicaid state plan are applied to residents receiving care in a nursing facility, an intermediate care facility for individuals with intellectual disabilities, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, or receiving swing-bed care in a hospital.
 - (3) The community spouse income level for a medicaid eligible community spouse is subject to subdivision a, paragraph 1 of subdivision b, or subdivision c. The level for an ineligible community spouse is the greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under section 1924(d)(3)(c) of the Act [42 U.S.C. 1396r-5(d)(3)(C)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
 - (4) The income level for each ineligible family member in a spousal impoverishment prevention case is equal to one-third of an amount determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member. For purposes

of this paragraph, "family member" has the meaning given in subsection 1 of section 75-02-02.1-24.

C. Poverty income level.

- (1) The income level for pregnant women and children under age six is equal to one hundred and thirty-three percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (2) Qualified medicare beneficiaries. The income level for qualified medicare beneficiaries is equal to one hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (3) The income level for children aged six to nineteen is equal to one hundred percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (4) The income level for transitional medicaid benefits is equal to one hundred and eighty-five percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (5) The income level for qualified working and disabled individuals is equal to two hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (6) The income level for specified low-income medicare beneficiaries is equal to one hundred twenty percent, of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (7) The income level for qualified individuals is equal to one hundred thirty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (8) The income level for workers with disabilities is two hundred twenty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

- (9) The income level for children with disabilities is two hundred percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

2. Determining the appropriate income level in special circumstances.

- a. A child who is away at school is not treated as living independently, but shall be allowed the appropriate income level for one during all full calendar months. This is in addition to the income level applicable for the family unit remaining at home.
- b. A child who is living outside of the parental home, but who is not living independently, or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse, shall be allowed a separate income level during all full calendar months during which the child or spouse lives outside the home. No separate income level is otherwise available.
- c. During a month in which an individual enters a specialized facility or leaves a specialized facility to return home, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate income level. An individual residing in a specialized facility shall be allowed the appropriate medically needy, workers with disabilities, or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.
- d. During a month in which an individual with eligible family members in the home enters or leaves a nursing facility to return home, or elects to receive home and community-based services or terminates that election, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate medically needy, workers with disabilities, or children with disabilities income level. An individual in a nursing facility shall be allowed ~~fifty~~ sixty-five dollars to meet maintenance needs during all full calendar months in which the individual resides in the nursing facility. A recipient of home and community-based services shall be allowed the medically needy income level for one during all full calendar months in which the individual receives home and community-based services. In determining eligibility for workers with disabilities or children with disabilities coverage, individuals in a nursing facility, or in receipt of home and community-based services, will be allowed the appropriate workers with disabilities or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.

- e. For an institutionalized spouse with an ineligible community spouse, the ~~fifty~~ sixty-five dollar income level is effective in the month of entry, during full calendar months, and in the month of discharge. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.
- f. For a spouse electing to receive home and community based services, who has an ineligible community spouse, the medically needy income level for one is effective in the month the home and community-based services begin, during full calendar months, and in the month the home and community-based services are terminated. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.
- g. An individual with no spouse, disabled adult child, or child under age twenty-one at home who enters a nursing facility may receive the medically needy income level for one if a physician certifies that the individual is likely to return to the individual's home within six months. The six-month period begins with the first full calendar month the individual is in the nursing facility. If, at any time during the six-month period, the individual's status changes and the stay in the nursing facility is expected to exceed the six months, the individual may have only the nursing care income level beginning in the month following the month of the status change. An individual may receive the medically needy income level for only one six-month period per stay in a nursing facility. If an individual is discharged, then readmitted to a nursing facility, there must be a break of at least one full calendar month between the periods of institutionalization in order for the new stay to be considered a new period of institutionalization.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; January 1, 2011; July 1, 2012; April 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

75-02-02.1-43. Payment for services by attorney-in-fact.

- 1. For purposes of determining an individual's eligibility under this chapter, if payment is made by the individual to the individual's attorney-in-fact for services or assistance furnished to the individual by the attorney-in-fact, the department may not treat the services or assistance furnished as consideration for the transferred income or asset unless:

- a.
 - (1) The payment is made pursuant to a valid written contract entered between the individual and the attorney-in-fact prior to the attorney-in-fact rendering the services;
 - (2) The contract was executed by the individual or the individual's fiduciary who is not the provider or services or assistance under the contract;
 - (3) Compensation is reasonable and consistent with rates paid in the open market for the services actually provided; and
 - (4) The services are necessary and reasonable; or
 - b. The prior course of dealing between the individual and the attorney-in-fact included the individual paying compensation to the attorney-in-fact upon the attorney-in-fact's rendering of services or assistance to the individual, or within thirty days thereafter.
2. Reasonable payments are allowed as a spend-down of assets but not as a deduction from income.

History: Effective April 1, 2014.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-24.1-02

**CHAPTER 75-02-05
PROVIDER INTEGRITY**

Section	
75-02-05-01	Purpose
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75-02-05-07	Activities Leading to and Including Sanction
75-02-05-08	Imposition and Extent of Sanction [Repealed]
75-02-05-09	Appeal Review and Reconsideration Appeal
75-02-05-10	Provider Information Sessions [Repealed]

75-02-05-07. Activities leading to and including sanction.

1. a. When the division determines that a provider has been rendering care or services in a form or manner inconsistent with program requirements or rules, or has received payment for which the provider may not be properly entitled, the division shall notify the provider in writing of the discrepancy noted. The notice to the provider may set forth:
 - (1) The nature of the discrepancy or inconsistency.
 - (2) The dollar value, if any, of such discrepancy or inconsistency.
 - (3) The method of computing such dollar values.
 - (4) Further actions which the division may take.
 - (5) Any action which may be required of the provider.
- b. When the division has notified the provider in writing of a discrepancy or inconsistency, it may withhold payments on pending and future claims awaiting a response from the provider.
2. If the department determines that a provider's claims were not submitted properly or that a provider has engaged in suspected fraud or abuse, the division may require the provider to participate in and complete an educational program.
 - a. If the division decides that a provider should participate in an educational program, the division shall provide written notice to the provider, by certified mail, setting forth the following:
 - (1) The reason the provider is being directed to attend the educational program;

- (2) The educational program determined by the division; and
 - (3) That continued participation as a provider in medicaid is contingent upon completion of the educational program identified by the division.
- b. An educational program may be presented by the department. The educational program may include:
 - (1) Instruction on the correct submission of claims;
 - (2) Instruction on the appropriate utilization of services;
 - (3) Instruction on the correct use of provider manuals;
 - (4) Instruction on the proper use of procedure codes;
 - (5) Education on statutes, rules, and regulations governing the medicaid program;
 - (6) Education on reimbursement rates and payment methodologies;
 - (7) Instructions on billing or submitting claims; and
 - (8) Other educational tools identified by the division.
3. If a provider who is required to participate in an educational program refuses to participate in that program, the department shall suspend the provider from participation in medicaid until the provider successfully completes the required program. The timeframe to successfully complete the educational program may be extended upon provider request and with department approval.
4. If the department determines that a provider's claims were not submitted properly or that a provider has engaged in suspected fraud or abuse, the division of medical services may require the provider to implement a business integrity agreement. If the department requires a provider to enter a business integrity agreement and the provider refuses, the department shall ensure the provider is suspended from participation in medicaid until the provider implements the required agreement.
5. The division shall suspend all medicaid payments to a provider after the division determines there is a credible allegation of fraud for which an investigation is pending under the medicaid program unless the provider has demonstrated good cause why the division should not suspend payments or should suspend payment only in part.

6. The director of the division, or the director's designee, shall determine the appropriate sanction for a provider under this chapter. The following may be considered in determining the sanction to be imposed:
 - a. Seriousness of the provider's offense.
 - b. Extent of the provider's violations.
 - c. Provider's history of prior violations.
 - d. Prior imposition of sanctions against the provider.
 - e. Prior provision of information and training to the provider.
 - f. Provider's agreement to make restitution to the department.
 - g. Actions taken or recommended by peer groups or licensing boards.
 - h. Access to care for recipients.
 - i. Provider's self-disclosure or self-audit discoveries.
 - j. Provider's willingness to enter a business integrity agreement.
7. When a provider has been excluded from the medicare program, the provider will also be terminated or excluded from participation.
8. If the division determines there is a credible allegation of fraud, the division may impose any one or a combination of the following temporary sanctions:
 - a. Prepayment review of claims;
 - b. Postpayment review of claims;
 - c. Recovery of costs associated with an investigation;
 - d. Requirement of a provider self-audit;
 - e. Notification and referral to the appropriate state regulatory agency or licensing agency;
 - f. Suspension from participation in the medicaid program and withholding of payments to a provider;
 - g. Prior authorization of all services; and
 - h. Peer review at the provider's expense.

9. After the completion of a further investigation, the division shall document its findings in writing and provide a copy of that documentation to the provider. Following a determination by the division that the provider has engaged in fraud or abuse; the division may terminate, exclude or impose sanctions with conditions, including the following:
 - a. Recovery of overpayments;
 - b. Recovery of excess payments;
 - c. Recovery of costs associated with an investigation;
 - d. Requirement of a provider self-audit;
 - e. Prepayment review of claims;
 - f. Postpayment review of claims;
 - g. Notification and referral to the appropriate state regulatory agency or licensing agency;
 - h. Prior authorization of all services;
 - i. Penalties as established by the department; and
 - j. Peer review at the provider's expense.
10. A sanction may be applied to all known affiliates of a provider, provided that each sanctioned affiliate knew or should have known of the violation.
11. A provider subject to termination or exclusion from participation may not submit claims for payment, either personally or through claims submitted by any clinic, group, corporation, or other association to the department or its fiscal agent for any services or supplies provided under the medicaid program except for any services or supplies provided prior to the effective date of the termination or exclusion.
12. A clinic, group, corporation, or other organization which is a provider may not submit claims for payment to the department or its fiscal agent for any services or supplies provided by a person within the clinic, group, corporation, or organization who has been terminated or is under exclusion from participation in this state or any other state or who has been excluded from medicare except for those services or supplies provided prior to the effective date of the termination or exclusion.
13. When the division determines there is a need to sanction a provider, the director of the division, or the director's designee, shall notify the

provider in writing of the sanction imposed. The notice must advise the provider of the right ~~of appeal~~ to a review, when applicable.

14. After the division sanctions a provider, the director of the division may notify the applicable professional society, board of registration or licensure, and any appropriate federal, state, or county agency of the reasons for the sanctions and the sanctions imposed.
15. If the department sanctions a provider who also serves as a billing agent for other providers, the department may also impose sanctions against the other providers upon a finding that the actions performed as the billing agent fails to meet department standards.

History: Effective July 1, 1980; amended effective July 1, 2012; April 1, 2014.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04, 50-24.1-36; 42 CFR 455.13, 42 CFR 455.14, 42 CFR 455.15, 42 CFR 455.16, 42 CFR 455.17, 42 CFR 455.23

75-02-05-09. ~~Appeal~~ Review and ~~reconsideration~~ appeal.

1. A provider may not ~~appeal~~ request a review of a temporary sanction until further investigation has been completed and the division has made a final decision.
2. After completion of further investigation, if there is an imposition of a subsequent sanction, the provider may ~~appeal the decision to impose sanctions unless the sanction imposed is termination or suspension and the notice states that the basis for the sanction is:~~ request a review of the sanction pursuant to subsection 6 of North Dakota Century Code section 50-24.1-36.
 - ~~a. The provider's failure to meet standards of licensure, certification, or registration where those standards are imposed by state or federal law as a condition to participation in the medicaid program.~~
 - ~~b. Because the provider has been similarly sanctioned by the medicare program or by another state's medicaid program.~~
3. ~~An appeal must be filed with the department within thirty days of the date the notice of sanction is mailed to the provider. A provider who is aggrieved by the decision the department issues in response to a request for review may appeal as set forth in subsection 6 of North Dakota Century Code section 50-24.1-36.~~
4. ~~Appeals taken are governed by chapter 75-01-03, and providers will be treated as claimants under that chapter.~~
5. ~~Without prejudice to any right of appeal, the provider, upon receipt of notice of decision may in writing, request reconsideration. The request~~

~~for reconsideration must include a statement refuting the stated basis for the imposition of the sanction. The division shall, within ten days after receipt of a request for reconsideration, make written response to the request, stating that imposition of the sanction has been affirmed or reversed.~~

History: Effective July 1, 1980; amended effective July 1, 2012; April 1, 2014.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 23-01-03, 23-16-01, 23-17.1-01, 23-20.1-04, 23-27-01, 25-16-02, 26.1-18-02, 43-05-09, 43-06-08, 43-12.1-03, 43-13-15, 43-15-15, 43-17-34, 43-26-13, 43-28-10, 43-32-17, 43-33-02, 43-37-03, 50-11.1-03, 50-24.1-36; NDAC 75-01-03; 42 USC 1396a(a)(39); 42 CFR 431.151; 42 CFR 455.13

CHAPTER 75-03-07

75-03-07-04. In-home registration and standards.

1. An application for a registration document must be submitted to the authorized agent in the county wherein the applicant proposes to provide in-home services. Application must be made in the form and manner prescribed by the department.
2. An applicant for an in-home registration document shall be directly responsible for the care, supervision, and guidance of the child or children in the child or children's home and shall comply with the following standards, certifying in the application that the applicant:
 - a. Is at least eighteen years of age.
 - b. Is physically, cognitively, socially, and emotionally healthy and will use mature judgment when making decisions impacting the quality of child care.
 - c. Shall devote adequate time and attention to the children in the applicant's care and provide an environment that is physically and socially adequate for children.
 - d. Shall participate in specialized training related to child care if provided by or approved by the department.
 - e. Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the applicant's care.
 - f. Shall provide proper care, supervision, and protection for children in the applicant's care. Supervision means the provider being within sight or hearing range of an infant, toddler, or preschooler at all times so the provider is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider being available for assistance and care so that the child's health and safety are protected.
 - g. Shall provide for a safe and sanitary environment while children are in care.
 - h. May not use or be under the influence of any illegal drugs or alcoholic beverages while children are in care.
 - i. May not leave children without supervision.

- j. Shall ensure that discipline is constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect or abuse, to any child is grounds for denial or revocation of an in-home registration.
- (1) Authority to discipline may not be delegated to children nor may discipline be administered by children.
 - (2) Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of the in-home provider. An in-home provider may not isolate a child in a locked room or closet.
 - (3) A child may not be punished for lapses in toilet training.
 - (4) An in-home provider may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing the child or in the presence of a child.
 - (5) An in-home provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
 - (6) An in-home provider may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.
 - (7) An in-home provider may not use deprivation of meals or snacks as a form of discipline or punishment.
 - (8) An in-home provider may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
 - (9) An in-home provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
 - (10) An in-home provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

- k. Shall discuss methods of discipline and child management with the parent or parents.
3. If the physical or mental, cognitive, social, or emotional health capabilities of an in-home applicant or provider appear to be questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
4. In-home providers shall ensure safe care for the children receiving services in their care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by the applicant or in-home provider, that decision has a direct bearing on the applicant's or in-home provider's ability to serve the public in a capacity involving the provision of child care and the application or in-home registration may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant or in-home provider, the applicant or in-home provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or in-home provider's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability to the applicant or in-home provider and to the director of the regional human service center or the director's designee for consideration and action on the in-home registration document. Each applicant shall complete a department-approved authorization for background check form no later than the first day of employment.

History: Effective December 1, 1981; amended effective January 1, 1987; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02, 50-11.1-06, 50-11.1-07, 50-11.1-08

75-03-07-06. Denial or revocation of in-home registration.

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the registration as listed in section 75-03-07-04.
2. A fraudulent or untrue representation is grounds for revocation or denial.
3. a. The applicant or in-home provider may not have been found guilty of, pled guilty to, or pled no contest to:

- (1) An offense described in North Dakota Century Code ~~chapter~~ chapters 12.1-16, homicide; ~~12.1-17, assaults—threats—coercion—harassment;~~ 12.1-18, kidnapping; ~~or~~ 12.1-27.2 sexual performances by children; ~~or~~ 12.1-40, human trafficking; or in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - (2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or
 - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
- b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's or provider's ability to serve the public in a capacity as a provider.
 - c. In the case of misdemeanor ~~simple assault~~ offense described in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective January 1, 2011; amended effective April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-06, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

CHAPTER 75-03-07.1

75-03-07.1-06. Denial or revocation of self-declaration document.

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the application as listed in section 75-03-07.1-02.
2. A fraudulent or untrue representation is grounds for revocation or denial.
3. a. The applicant, self-declaration provider, emergency designee, staff members, and household members may not have been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code ~~chapter~~ chapters 12.1-16, homicide; ~~12.1-17, assaults~~ ~~threats~~ ~~coercion~~ ~~harassment~~; 12.1-18, kidnapping; ~~or~~ 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - (2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or
 - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

- b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public in a capacity as a provider, emergency designee, or staff member.
 - c. In the case of misdemeanor ~~simple assault offense~~ described in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
- 4. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.
 - 5. A provider shall ensure safe care for the children receiving services in the provider's residence. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or self-declaration document may be denied or revoked.
 - a. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information to the department, from which the department can determine the applicant's, provider's, or staff member's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of ability to the applicant or provider and to the director of the regional human service center or the director's designee for consideration and action on the application or self-declaration document.

- b. Each applicant, provider, emergency designee, and staff member shall complete, and the provider shall submit to the authorized agent, a department-approved authorization for background check form no later than the first day of employment.
- c. Household members over the age of twelve shall complete, and the provider shall submit to the authorized agent, a department-approved authorization for background check form at the time of application or upon obtaining residence at the location of the child care.

History: Effective June 1, 1995; amended effective January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08, 50-11.1-09

Law Implemented: NDCC 50-11.1-06.2, 50-11.1-08, 50-11.1-09, 50-11.1-16, 50-11.1-17

75-03-07.1-10. Correction of violations.

1. A provider shall correct violations noted in a correction order within the following times:
 - a. For a violation of subsection ~~23~~ 24 of North Dakota Century Code section 50-11.1-02, North Dakota Century Code section 50-11.1-02.2, paragraph 5 or 7 of subdivision a of subsection 3 of section 75-03-07.1-02, subdivision b of subsection 3 of section 75-03-07.1-02, or subsection 4 of section 75-03-07.1-02, within twenty-four hours.
 - b. For a violation of subdivision g or h of subsection 1 of North Dakota Century Code section 50-11.1-17 or all other deficiencies of chapter 75-03-07.1, within twenty days.
2. All periods of correction begin on the date of the receipt of the correction order by the provider.
3. The regional supervisor of early childhood services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
4. The provider shall furnish a written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms the corrections have been made.

5. The provider shall notify the parent of each child receiving care at the residence and each staff member how to report a complaint or suspected rule violation.
6. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care by this provider that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also must post the correction order in a conspicuous location within the residence until the violation has been corrected or five days, whichever is longer.
7. A provider who has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the provider has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the provider. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.

History: Effective January 1, 2011; amended effective January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-08

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75-03-08-14. Minimum requirements of the facility.

1. The family child care must contain adequate space, indoors and out, for the daily activities of the children. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. Operators who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child are exempt from the outdoor space requirement.
2. The family child care must be clean and maintained to protect the health and safety of children. The family child care and outdoor play area must be free of clutter, accumulation of refuse, standing water, unprotected wells, debris, and other health and safety hazards. Garbage must be regularly removed.
3. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children.
4. The provider shall ensure that the family child care is equipped with one properly installed smoke detector located in each sleeping area used by the children, and one properly installed smoke detector and one fire extinguisher per level. Properly installed means installed according to manufacturer's or fire inspector's directions.
5. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
6. The provider shall ensure that the family child care has a drinking water supply from an approved community water system or from a source tested and approved by the state department of health.
7. The provider shall ensure that each child has a comfortable and clean place to sleep or rest and an individual blanket. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, and free from drafts. A provider caring for a child between the hours of eight p.m. and six a.m. shall ensure that the child has an individual sleeping place.
8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas.

Outdoor play areas must be inspected daily for hazards and necessary maintenance.

9. The provider shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. The provider shall ensure indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and sanitary. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
11. The provider shall ensure that exit doorways and pathways are not blocked.
12. The provider shall ensure that the family child care has a working telephone in the location used for child care. The provider shall post emergency numbers of parents and first responders.
13. The family child care must have an indoor bathroom with a minimum of one sink and one flush toilet.
14. The family child care must have hot and cold running water. The water in the faucets used by children must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
15. The family child care must meet the local minimum fire and safety standards. If the fire, safety, health, or sanitation environment of the family child care appears questionable, the department or authorized agent may require the provider to obtain an appropriate inspection from the appropriate fire authority or state department of health, and to submit the results of the inspection to the authorized agent. The provider shall obtain fire and safety inspections prior to licensure if the family child care is located in a manufactured home, a mobile home, an apartment building, a home in which care is provided to children in the basement, or a home having alternate heating devices, such as wood burning stoves, propane heaters, or fireplaces. Any inspection fees are the provider's responsibility. The provider shall ensure that any problems found are corrected.
16. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.

17. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-27. Effect of conviction on licensure and employment.

1. An applicant or provider may not be, and a family child care may not employ or allow, in any capacity that involves or permits contact between the emergency designee, staff member, or household member and any child cared for by the family child care, a provider, emergency designee, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code ~~chapter chapters~~ 12.1-16, homicide; ~~42.1-17, assaults — threats — coercion — harassment;~~ 12.1-18, kidnapping; ~~or~~ 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~section sections~~ 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child; or
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of an applicant, provider, or household member, or the provider in the case of a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public in a capacity as a provider, emergency designee, or staff member.
3. In the case of a misdemeanor ~~simple assault offense~~ described in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault: 12.1-17-03, reckless endangerment: 12.1-17-06, criminal coercion: 12.1-17-07.1, stalking: or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff members.
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-08-28. Child abuse and neglect decisions.

1. A provider shall ensure safe care for the children receiving services in the provider's family child care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists, indicating that

any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider and to the regional director of the human service center or the director's designee for consideration and action on the application or license.

2. Each applicant, provider, emergency designee, and staff member in the family child care shall complete, and the provider shall submit to the authorized agent, a department-approved authorization for background check form no later than the first day of employment.
3. Household members over the age of twelve shall complete, and the provider shall submit to the authorized agent, a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the family child care.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-29. Correction of violations.

1. A provider shall correct violations noted in a correction order within the following times:
 - a. For a violation of subsection 8 of North Dakota Century Code section 50-11.1-02, North Dakota Century Code section 50-11.1-02.2, section 75-03-08-04 ~~or~~, subsection 4 or 11 of section 75-03-08-08.1, section 75-03-08-09, subsection 2 or 9 of section 75-03-08-14, section 75-03-08-23, or subsection 1 of section 75-03-08-24, within twenty-four hours.
 - b. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-08-14, within sixty days.
 - c. For a violation that requires substantial building remodeling, construction, or change, within sixty days.
 - d. For all other violations, within twenty days.
2. All periods for correction begin on the date of receipt of the correction order by the provider.

3. The regional supervisor of early childhood services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
4. The provider shall furnish a written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms the corrections have been made.
5. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the family child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also shall post the correction order in a conspicuous location within the family child care until the violation has been corrected or for five days, whichever is longer.
6. A family child care program that has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the program has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a family child care program receives more than one correction order in a single year, the provider may be referred by the department for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

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75-03-09-03. Definitions. The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Attendance" means the total number of children present at any one time at the group child care.
2. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
3. "Emergency designee" means an individual designated by the operator to be a backup caregiver for emergency assistance or to provide substitute care.
- ~~4.~~ ~~"Group child care" means a child care program licensed to provide early childhood services for eighteen or fewer children.~~
- ~~5.~~ 4. "Group child care supervisor" means an individual responsible for overseeing the day-to-day operation of a group child care.
- ~~6.~~ 5. "Infant" means a child who is less than twelve months of age.
- ~~7.~~ 6. "Medications" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~8.~~ 7. "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a group child care.
- ~~9.~~ 8. "Provider" means the group child care owner or operator.
- ~~10.~~ 9. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~11.~~ 10. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-09-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the provider may continue the operation of the group child care pending the final administrative determination or until the license expires, whichever occurs first, unless continued operation would jeopardize the health and safety of the children attending the group child care. This subsection does not limit the actions the department may take pursuant to North Dakota Century Code sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a group child care without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

75-03-09-06. Provisional license.

1. The director of a regional human service center, or the director's designee, in consultation with the department, may issue a provisional license for the operation of a group child care although the applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. State that the provider has failed to comply with all applicable standards and rules of the department;
 - b. State the items of noncompliance;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or provider demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or provider who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the director of the regional human service center or the director's designee and must be acknowledged in writing by the provider.
5. Subject to the exceptions contained in this section, a provisional license entitles the operator to all rights and privileges afforded the operator of an unrestricted license.
6. The department may not issue a provisional license if the group child care is not in compliance with section 75-03-09-17 or 75-03-09-18.

7. The provider shall display prominently the provisional license and agreement.
8. The provider shall provide parents written notice that the group child care is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-09-09. Staffing requirements.

1. The number of staff members and their responsibilities must reflect program requirements, individual differences in the needs of the children enrolled, and may permit flexible groupings, if necessary.
2. a. A provider may provide early childhood services for no more than seven children at any one time, which includes no more than three children under twenty-four months of age. A provider may also provide early childhood services to two additional school-age children ~~during the three hours immediately before and after the schoolday and all day, except for Saturday and Sunday, when school is not in session during the official school year; or~~
- b. A provider may elect to staff according to the following minimum ratio of staff members responsible for caring for or teaching children to children in group child care:
 - (1) For children younger than eighteen months of age, a ratio of .25 in decimal form is assigned;
 - (2) For children eighteen months of age to thirty-six months of age, a ratio of .20 in decimal form is assigned;
 - (3) For children thirty-six months of age to four years of age, a ratio of .14 in decimal form is assigned;
 - (4) For children four years of age to five years of age, a ratio of .10 in decimal form is assigned;
 - (5) For children five years of age to six years of age, a ratio of .08 in decimal form is assigned;
 - (6) For children six years to twelve years of age, a ratio of .05 in decimal form is assigned; and

- (7) When there is a mixed-aged group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped. No more than four children under the age of eighteen months per staff member are allowed in any mixed-aged group.
3. A provider licensed for at least two years may apply for a waiver of the required ratio, not to exceed .25 decimal point. The department shall consider demonstration of need, health and safety of children, age of children, number of children, and licensing history of the provider in determining whether to approve the application for a waiver. The department may deny an application for waiver and may revoke a waiver granted under this subsection. The decision to deny or revoke a waiver is not an appealable decision. The department shall review each waiver granted under this subsection at least every twelve months to determine if the circumstances which led to granting the waiver continue to exist.
4. The provider of a group child care shall ensure that the group child care is sufficiently staffed at all times to meet the child and staff ratios for children in attendance, and that no more children than the licensed capacity are served at one time.
5. If a child with special needs is admitted to the group child care, the child's developmental age level must be used in determining the number of children for which care can be provided.
6. The provider shall ensure that children with special needs requiring more than usual care and supervision have adequate care and supervision provided to them without adversely affecting care provided to the remaining children in the group child care.
7. Children using the group child care for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

75-03-09-14. Minimum requirements for facility.

1. The provider shall ensure that the group child care is properly lighted. If the lighting of the group child care appears questionable, the department or authorized agent may require the provider to obtain additional lights.
2. The provider shall ensure that safe and comfortable arrangements for naps for enrolled children are provided.
 - a. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, free from drafts, and when each child has an individual blanket or sleeping mat.
 - b. The provider shall ensure that aisles between cots and cribs are a minimum space of two feet [58.42 centimeters] and are kept free of all obstructions while cots and cribs are occupied.
 - c. The provider shall ensure that there is a room available, separate from the nap room, where an individual child can go for supervised play if the child is unable to nap, so as not to disrupt the other children's rest.
 - d. The provider shall ensure that a child who is in care between the hours of eight p.m. and six a.m. has an individual sleeping place.
3. Water supply:
 - a. The provider shall ensure that the group child care has a drinking supply from a community water system or from a source tested and approved by the state department of health.
 - b. The group child care must have hot and cold running water. The water in the faucets used by children must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
4. Toilet and sink facilities:
 - a. The provider shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff.
 - b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping. A minimum of one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained. ~~Two toilets must be provided for each sixteen to eighteen children, excluding those children who are not toilet trained.~~

- c. The provider shall provide child-sized toilet adapters, training chairs, or potty chairs for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
 - d. The provider shall provide at least one handwashing sink per toilet room facility or diapering area. The provider shall provide sanitary hand-drying equipment, individually designated cloth towels, or paper towels near handwashing sinks.
 - e. The provider shall provide safe step stools to allow standard-size toilets and sinks to be used by the children or the provider shall ensure the availability of child-size toilets and sinks.
5. The operator of a group child care not on a municipal or public water supply or wastewater disposal system shall ensure the group child care's sewage and wastewater system has been approved by the state department of health.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-18. Minimum sanitation and safety requirements.

1. In facilities other than an occupied private residence ~~with license capabilities of up to eighteen children~~ and where meals are prepared, the provider shall ensure that the state department of health conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The provider shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.
2. The provider shall ensure that the group child care bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
3. The provider shall ensure that the group child care building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and the staff members.
4. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each sink.
5. The provider shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
6. The provider shall ensure that the group child care ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
7. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The provider shall keep indoor garbage in covered containers. The provider may allow paper waste to be kept in open waste containers.
8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas.

Outdoor play areas must be inspected daily for hazards and necessary maintenance.

9. The provider shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks . The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. The provider shall ensure that indoor floors and steps are not slippery and do not have splinters. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.
11. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
12. The provider shall take steps to keep the group child care free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the group child care. Insect repellent may be applied outdoors on children with parental permission.
13. The provider shall ensure that exit doorways and pathways are not blocked.
14. The provider shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
15. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.
16. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the group child care is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
17. A provider shall ensure that all group child care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of

lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.

18. The provider shall ensure that personal items, including combs, pacifiers, and toothbrushes, are individually identified and stored in a sanitary manner.
19. Pets and animals.
 - a. The provider shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The provider shall ensure parents are aware of the presence of pets and animals in the group child care.
 - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.

- h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
20. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the group child care and shall empty, clean, and sanitize wading pools daily.
21. All swimming pools used by children must be approved annually by the local health unit.

History: Effective December 1, 1981; amended effective January 1, 1999; January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-19. Minimum requirements regarding space. Each group child care shall provide adequate indoor and outdoor space for the daily activities of all children within the licensed capacity of the group child care.

1. There must be a minimum of thirty-five square feet [3.25 square meters] of appropriate indoor space per child in the group child care. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space that children are not permitted to occupy.
2. There must be a minimum of seventy-five square feet [6.97 square meters] of appropriate outdoor play space per child for the group child care. If available outdoor play space does not accommodate the licensed capacity of the group child care at one time, the total appropriate outdoor play space available must be no less than the number of children in the largest class or group of the group child care multiplied by seventy-five square feet [6.97 square meters]. Operators who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child for the largest class or group are exempt from the outdoor space requirement. The provider shall prepare a written schedule of outdoor or separate indoor recreation space playtime which limits the use of the play area to its capacity, giving each class or group an opportunity to play ~~outdoors~~ daily.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-27. Effect of conviction on licensure and employment.

1. An applicant or provider may not be, and a group child care may not employ or allow, in any capacity that involves or permits contact between the emergency designee, group child care supervisor, staff member, or household member and any child cared for by the group child care, a provider, emergency designee, group child care supervisor, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code ~~chapter~~ chapters 12.1-16, homicide; ~~12.1-17, assaults—threats—coercion—harassment;~~ 12.1-18, kidnapping; ~~or~~ 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a group child care applicant, provider, or group child care supervisor, or household member, or the provider in the case of a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public as a provider, emergency designee, or staff member.
3. In the case of a misdemeanor ~~simple assault offense~~ described in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault;

12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff.
5. If the department determines that a criminal history record check as described in North Dakota Century Code section 50-11.1-06.2 is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-09-28. Child abuse and neglect decisions.

1. A provider shall ensure safe care for the children receiving services in the provider's group child care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, emergency designee's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the

determination of current ability to the applicant or provider and to the regional director of the human service center or the director's designee for consideration and action on the group child care application or license.

2. Each applicant, provider, emergency designee, and staff member in the group child care shall complete, and the provider shall submit to the authorized agent, a department-approved authorization for background check form no later than the first day of employment.
3. Household members over the age of twelve shall complete, and the provider shall submit to the authorized agent, a department-approved authorization for background check form at the time of application or relicensure or upon obtaining residence at the location of the group child care.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-29. Correction of violations.

1. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the group child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider shall post the correction order in a conspicuous location within the facility until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-09-04; subdivision i of subsection 1 of section 75-03-09-08; section 75-03-09-09; subsection 4 or 7 of section 75-03-09-12; subsection 3, 6, 9, or 10 of section 75-03-09-18; section 75-03-09-23; or subsection 1 of section 75-03-09-24, within twenty-four hours;
 - b. For a violation requiring the hiring of a group child care supervisor with those qualifications set forth in section 75-03-09-10, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-09-17, within sixty days;

- d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the provider.
 4. The regional supervisor of early childhood services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
 5. The provider shall furnish written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms the corrections have been made.
 6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a group child care that has been issued a correction order. If, upon reinspection, it is determined that the group child care has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the group child care. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 7. If a group child care receives more than one correction order in a single year, the department or its authorized agent may refer the group child care for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-10

75-03-10-08. Staffing and group size requirements.

1. The number of staff members and their responsibilities must reflect program requirements and individual differences in the needs of the children enrolled, and may permit mixed-age groups, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child to staff ratio for periods of time when they are engaged in housekeeping or food preparation.
2. a. The operator shall ensure that the center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at one time. The minimum ratio of staff members responsible for caring for or teaching children to children in child care centers and maximum group size of children must be:
 - (1) For children less than eighteen months of age, one staff member may care for four children, a ratio of .25 in decimal form, with a maximum group size of ~~eight~~ ten children;
 - (2) For children eighteen months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form, with a maximum group size of ~~ten~~ fifteen children;
 - (3) For children three years of age to four years of age, one staff member may care for seven children, a ratio of .14 in decimal form, with a maximum group size of ~~fourteen~~ twenty children;
 - (4) For children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form, with a maximum group size of ~~twenty~~ twenty-five children;
 - (5) For children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form, with a maximum group size of ~~twenty-four~~ thirty children; and
 - (6) For children six years to twelve years of age, one staff member may care for twenty children, a ratio of .05 in decimal form, with a maximum group size of forty children.
- b. The provisions in subdivision a relating to maximum group size do not apply to operators licensed prior to January 1, 1999, if those operators are otherwise qualified to operate a child care center. Any operator who discontinues operation of the child care

center under a valid license or who fails to renew the operator's license upon its expiration will not be exempt subsequently from the requirements relating to maximum group size. The exemption for operators licensed prior to January 1, 1999, will end on January 1, 2015, after which time all operators will be subject to the requirements of this subsection.

- c. When there are mixed-age groups in the same room, the operator shall ensure:
 - (1) The maximum group size is consistent with the:
 - (a) Age of the majority of the children; or
 - (b) Highest number of children in the youngest age group;
 - (2) When children age zero to eighteen months are in the mixed-age group, the maximum group size does not exceed eight children;
 - (3) The mixed-age group does not exceed the acceptable ratio pursuant to subdivision d of subsection 2 of section 75-03-10-08 and the maximum number of children per staff member pursuant to subdivision a of subsection 2 of section 75-03-10-08; and
 - (4) If the mixed-age group contains the maximum number of children per staff member pursuant to subdivision a of subsection 2 of section 75-03-10-08, the mixed-age group may only contain additional older children.
 - d. When there is a mixed-age group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.
- 3. If a child with special needs is admitted to the child care center, the child's developmental age level must be used to determine into which age group the child should be placed for determining child to staff ratios.
 - 4. The operator shall ensure that a child with special needs requiring more than usual care and supervision has adequate care and supervision

without adversely affecting care provided to the other children in the child care center.

5. Children using the child care center for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.
6. An operator licensed for at least two years may apply for a waiver of the required ratio and maximum group size, not to exceed .25 decimal point per group. The department shall consider demonstration of need, health and safety of children, age of children, number of children, and licensing history of the operator in determining whether to approve the application for a waiver. The department may deny an application for waiver and may revoke a waiver granted under this subsection. The decision to deny or revoke a waiver is not an appealable decision. The department shall review each waiver granted under this subsection at least every twelve months to determine if the circumstances which led to granting the waiver continue to exist.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

75-03-10-19. Minimum requirements regarding space and lighting.

1. Each operator shall provide adequate indoor and outdoor space for the daily activities of all children within the licensed capacity of the child care center.
2. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the child care center at one time, the total appropriate outdoor play space available must not be less than what is required for the number of children in the largest class or group of the center multiplied by seventy-five square feet [6.97 square meters]. Operators who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child for the largest class or group are exempt from the outdoor space requirement. The child care center operator shall prepare a written schedule of outdoor or separate indoor recreation space playtime which limits use

of the play area to its capacity, giving every child an opportunity to play outdoors daily.

3. The child care center must be properly lighted. If the lighting of the child care center appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-24. Specialized types of care and minimum requirements.

1. Infant care.

a. Environment and interactions.

- (1) A child care center serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- (2) The operator shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children or emergency designee such as the staff member or emergency designee holding, rocking, talking with, or singing to the child.
- (3) A staff member shall respond to comfort an infant's or toddler's physical and emotional distress:
 - (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
 - (b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
- (4) The operator shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, uncluttered area.
- (5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the child

care center for a part of each day to provide children with some change of physical surroundings and to allow them to interact with other children.

- (6) The operator shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
- (7) The operator shall ensure that infants are not shaken or jostled.
- (8) The operator shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

- (1) The operator shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider.
- (2) The operator shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.
- (3) The operator shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
- (4) The operator shall ensure that frozen breast milk is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.
- (5) The operator shall ensure that an infant is not fed by propping the bottle.
- (6) The operator shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
- (7) The operator shall ensure that staff members responsible for caring for or teaching children, emergency designee, or

substitute staff are within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

- (1) The operator shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the child care center if children requiring diapering are in care.
- (2) The operator shall ensure that diapers are changed promptly and in a sanitary manner when needed.
- (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- (4) The operator shall ensure that soiled or wet diapers are stored in a sanitary, covered container, separate from other garbage and waste until removed from the child care center.

d. Sleeping.

- (1) The operator shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- (2) The operator shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The operator shall ensure that if an infant falls asleep while not in a crib, ~~unless the infant's parent has provided a note from the infant's medical provider specifying otherwise or portable crib,~~ the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The operator shall ensure that all items are removed from and that no toys or objects are hung over or attached to the crib or portable crib when an infant is sleeping or preparing to sleep. With written parental permission, the provider may place one individual infant blanket or sleep sack, a pacifier, and a security item that does not pose a risk of suffocation to

the infant in the crib or portable crib while the infant is sleeping or preparing to sleep.

- (6) The operator shall ensure that mattresses and sheets are properly fitted. The operator shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when used by different infants, or at least weekly.
 - (7) The operator shall ensure that a staff member responsible for caring for or teaching children checks on sleeping infants regularly or that a monitor is in the room with the infants.
- e. The operator shall ensure that parents of each infant receive a written daily report detailing the infant's sleeping and eating processes for the day, and the infant's diapering schedule for the day.

2. Night care.

- a. Any child care center offering night care shall provide program modifications for the needs of children and their parents during the night.
- b. In consultation with parents, attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care appropriate to the child's needs.
- c. The operator shall encourage parents to leave their children in care and pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parent's work schedule.
- d. The operator shall ensure that children under the age of six are supervised when bathing.
- e. The operator shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available and shall ensure:
 - (1) Pillows and mattresses have clean coverings;
 - (2) Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, but at least weekly. If beds are used by different children, sheets and pillowcases are laundered before use by other children; and
 - (3) Each bed or cot has sufficient blankets available.
- f. The operator shall require each child in night care to have night clothing and a toothbrush marked for identification.

9. The operator shall ensure that during sleeping hours, staff members are awake and within hearing range to provide for the needs of children and to respond to an emergency.
3. Drop-in child care.
 - a. If a child care center serves drop-in children, schoolchildren, or before-school and afterschool children, the child care center must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.
 - b. The operator shall ensure that the program reflects the individual needs of the children who are provided drop-in care.
 - c. The operator shall ensure that admission records comply with all enrollment requirements contained in section 75-03-10-22, except the immunization verification record requirement.
 - d. The operator shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the child care center, its equipment, and the staff members.
 - e. A child care center may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the child care center to exceed the total number of children for which the child care center is licensed.
 4. An operator shall ensure that a child care center serving only drop-in care children complies with this chapter, but is exempt from the following provisions:
 - a. The maximum group size requirements listed in section 75-03-10-08;
 - b. Subsections 5, 9, 12, 13, 14, 15, and 19 of section 75-03-10-20; subsections 6 and 7 of section 75-03-10-21; subdivision f of subsection 2 of section 75-03-10-22; and subsection 1 of section 75-03-10-25; and
 - c. A child care center serving only drop-in care children is exempt from the outdoor space requirements.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules

Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-27. Effect of conviction on licensure and employment.

1. An applicant, operator, director, or supervisor may not be, and a child care center may not employ or allow, in any capacity that involves or permits contact between the emergency designee, substitute staff member, or staff member and any child cared for by the child care center, an operator, emergency designee, substitute staff member, director, supervisor, or staff member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code ~~chapter~~ chapters 12.1-16, homicide; ~~12.1-17, assaults—threats—coercion—harassment;~~ 12.1-18, kidnapping; ~~or~~ 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense other than an offense identified in subdivision a or b, if the department in the case of a child care center applicant, operator, director, or supervisor, or the operator in the case of an emergency designee, substitute staff, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.
3. In the case of a misdemeanor ~~simple assault offense~~ described in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault: 12.1-17-03, reckless endangerment: 12.1-17-06, criminal coercion: 12.1-17-07.1, stalking: or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The operator shall establish written policies and engage in practices that conform to those policies to effectively implement this section before hiring any staff member.
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-10-28. Child abuse and neglect decisions. An operator shall ensure safe care for the children receiving services in the child care center.

1. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that decision has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provisions of child care and the application or

license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator and to the director of the regional human service center or the director's designee for consideration and action on the application or license.

2. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete, and the operator shall submit to the authorized agent, a department-approved authorization for background check form no later than the first day of employment.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-29. Correction of violations.

1. Within three business days of the receipt of the correction order, the operator shall notify the parents of each child receiving care at the child care center that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the child care center until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-10-04 or 75-03-10-08; subsection 12 of section 75-03-10-09; subdivision e of subsection 1 of section 75-03-10-12; subsection 3 of section 75-03-10-12; subsection 3, 6, 9, or 10 of section 75-03-10-18; section 75-03-10-23; or subsection 1 of section 75-03-10-24, within twenty-four hours;
 - b. For a violation requiring the hiring of a child care supervisor with those qualifications set forth in section 75-03-10-11.1, or a child

care center director with those qualifications set forth in section 75-03-10-10, within sixty days;

- c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-10-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the operator.
 4. The regional supervisor of early childhood services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violations.
 5. The operator shall furnish a written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms that the corrections have been made.
 6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a child care center that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the child care center has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the child care center. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 7. If a child care center receives more than one correction order in a single year, the operator may be referred by the department for consulting services to assist the operator in maintaining compliance and to avoid future corrective action.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-11

75-03-11-27. Effect of conviction on licensure and employment.

1. An applicant, operator, or director may not be, and a preschool may not employ or allow, in any capacity that involves or permits contact between the teacher, assistant, emergency designee, or staff member and any child cared for by the preschool, an operator, director, staff member, teacher, assistant, or emergency designee, who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code ~~chapter~~ chapters 12.1-16, homicide; ~~12.1-17, assaults — threats — coercion — harassment;~~ 12.1-18, kidnapping; ~~or~~ 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of an applicant, operator, or director, or the operator in the case of a staff member, teacher, assistant, substitute staff member, or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, operator's, director's, teacher's, assistant's, substitute staff member's, emergency designee's, or a staff member's ability to

serve the public as an operator, director, teacher, assistant, emergency designee, or a staff member.

3. In the case of a misdemeanor ~~simple assault offense~~ described in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault: 12.1-17-03, reckless endangerment: 12.1-17-06, criminal coercion: 12.1-17-07.1, stalking: or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The operator shall establish written policies and engage in practices that conform to those policies to effectively implement this section, before hiring any directors, staff members, teachers, assistants, substitute staff members, or emergency designees.
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective January 1, 1999; amended effective January 2, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11-28. Child abuse and neglect determinations. An operator shall ensure safe care for the children receiving services in the preschool.

1. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by any applicant, operator, director, teacher, assistant, staff member, substitute staff member, or emergency designee, it has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant, operator, director, teacher, assistant, staff member, substitute staff member, or emergency designee, the applicant or

operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, operator's, director's, teacher's, assistant's, staff member's, substitute staff member's, or emergency designee's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator and to the director of the regional human service center or the director's designee for consideration and action on the preschool application or license.

2. Each applicant, operator, director, teacher, assistant, staff member, substitute staff member, and emergency designee shall complete, and the operator shall submit to the authorized agent, a department-approved authorization for background check form no later than the first day of employment.

History: Effective January 1, 1999; amended effective January 2, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-29. Correction of violations.

1. Within three business days of receipt of the correction order, the operator shall notify the parents of each child enrolled in the preschool that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the preschool until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section ~~75-03-11-05~~ 75-03-11-04; subsection 13 of section 75-03-11-08; section 75-03-11-09; subsection 4 of section 75-03-11-10; subsection 3 of section 75-03-11-13 ~~or 75-03-11-23~~; ~~or~~ subsection 2, 7, or 8 of section 75-03-11-18; or section 75-03-11-23, within twenty-four hours;
 - b. For a violation requiring the hiring of a director with those qualifications set forth in section 75-03-11-08.1 or a teacher with those qualifications as set forth in section 75-03-11-08.2, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and

- e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the operator.
 4. The regional supervisor of early childhood services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violation.
 5. The operator shall furnish written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms that the corrections have been made.
 6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a preschool that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the preschool has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the preschool. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 7. If a preschool receives more than one correction order in a single year, the operator may be referred by the department for consulting services. The consulting services will be offered to assist the operator in maintaining compliance and to avoid future corrective action.

History: Effective January 1, 1999; amended effective January 2, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-11.1

75-03-11.1-08.3. Minimum qualifications of school-age child care program supervisor.

1. A supervisor shall hold at least one of the following qualifications:
 - a. An associate degree in the field of early childhood development or elementary education, or a secondary degree with an emphasis on middle school or junior high training;
 - b. Current certification as a child development associate;
 - c. Certification from a Montessori teacher training program; or
 - d. A high school diploma or high school equivalency with at least one year of experience in a child care program or similar setting.
2. The supervisor shall demonstrate the ability to work with children and the willingness to increase skills and competence through experience, training, and supervision.
3. The supervisor shall be an adult of good physical, emotional, social, and cognitive health, and shall use mature judgment when making decisions impacting the quality of child care. A supervisor must possess knowledge and experience in building and maintaining interpersonal relationships.
- ~~4.~~ ~~The supervisor shall meet current certification requirements in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other department-approved cardiopulmonary resuscitation training programs.~~
- ~~5.~~ 4. The supervisor shall be certified or trained in a department-approved program to provide first aid.
- ~~6.~~ 5. The supervisor shall certify annual completion of a minimum of thirteen hours of department-approved training related to child care annually.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-19. Minimum requirements regarding space and lighting.

1. Each school-age child care program shall provide adequate indoor and outdoor space for the daily activities of all children within the licensed capacity of the school-age child care program.

2. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the school-age child care program at one time, the total appropriate outdoor space available must not be less than what is required for the number of children in the largest class or group of the program multiplied by seventy-five square feet [6.96 square meters]. Operators who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child for the largest class or group are exempt from the outdoor space requirement. The operator shall prepare a written schedule of outdoor or separate indoor recreation space playtime which limits use of the play area to its capacity, giving every child an opportunity to play ~~outdoors~~ daily.

3. The school-age child care program must be properly lighted. If the lighting of the school-age child care program appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-27. Effect of conviction on licensure and employment.

1. An applicant, operator, director, or supervisor may not be, and a school-age child care program may not employ or allow, in any capacity that involves or permits contact between the emergency designee, substitute staff member, or staff member and any child cared for by the school-age child care program, an operator, emergency designee, substitute staff member, director, supervisor, or staff member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code ~~chapter~~ chapters 12.1-16, homicide; ~~12.1-17, assaults — threats — coercion — harassment;~~ 12.1-18, kidnapping; ~~or~~ 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03,

gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;

- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a school-age child care program applicant, operator, director, or supervisor, or the school-age child care program operator in the case of an emergency designee, substitute staff member, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.
 3. In the case of a misdemeanor ~~simple assault~~ offense described in North Dakota Century Code ~~section~~ sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
 4. The operator shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section before hiring any staff member.
 5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2,

is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11.1-28. Child abuse and neglect decisions. An operator shall ensure safe care for the children receiving services in the school-age child care program.

1. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that decision has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that a child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department from which the department can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator and to the director of the regional human service center or the director's designee for consideration and action on the application or license.
2. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete, and the operator shall submit to the authorized agent, a department-approved authorization for background check form no later than the first day of employment.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24,

1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-29. Correction of violations.

1. Within three business days of the receipt of a correction order, the operator shall notify the parents of each child receiving care at the school-age child care program that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the school-age child care program and applicable satellite location until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; subsection 13 of section 75-03-11.1-08; subsection 4 or 5 of section 75-03-11.1-08.4; section 75-03-11.1-09; subsection 2, 3, 10, or 20 of section 75-03-11.1-18; or section 75-03-11.1-23, within twenty-four hours.
 - b. For a violation requiring the hiring of a school-age child care program director with those qualifications set forth in section 75-03-11.1-08.1 or a child care supervisor with those qualifications set forth in section 75-03-11.1-08.3, within sixty days.
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11.1-17, within sixty days.
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days.
 - e. For all other violations, within twenty days.
3. All time periods for correction begin on the date of receipt of the correction order by the operator.
4. The regional supervisor of early childhood program services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violation.
5. The operator shall furnish a written notice to the authorized agent upon completion of the required corrective action. The correction order

remains in effect until the authorized agent confirms that the corrections have been made.

6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a school-age child care program that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the school-age child care program has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the school-age child care program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a school-age child care program receives more than one correction order in a single year, the department or authorized agent may refer the school-age child care program for consulting services to assist the operator in maintaining compliance to avoid future corrective action.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-16
LICENSING OF GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES

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75-03-16-01. Definitions. As used in this chapter:

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

- ~~2.~~ 2. "Employee" means an individual compensated by the facility to work in a part-time, full-time, intermittent, or seasonal capacity for the facility. This definition is not inclusive to contracted service providers who come onsite to conduct trainings, treatment groups, individual therapy, or other program services.
- ~~2.~~ 3. "Facility" means a residential child care facility or group home.
4. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern.
- ~~3.~~ 5. "Out-based program" means a sequence of planned activities designed to provide therapeutic outdoor physical, environmental educational, athletic, or other activities which:
- a. Involve physical and psychological challenges;
 - b. Are designed to:
 - (1) Stimulate competence and personal growth;
 - (2) Expand individual capabilities;
 - (3) Develop self-confidence and insight; or
 - (4) Improve interpersonal skills and relationships; and
 - c. Take place in a setting of twenty-four-hour participant supervision.
6. "Overnight hours" means from eleven p.m. until seven a.m.
- ~~4.~~ 7. "Participant" means a child participating in an out-based program.
- ~~5.~~ 8. "Solo activity" means an experience in which an individual cares for himself or herself in a solitary setting away from others, but under ~~staff~~ employee supervision.
- ~~6.~~ 9. "Utilization review" means a process that applies established criteria to evaluate the services provided in terms of cost-effectiveness, necessity, and effective use of resources.

History: Effective July 1, 1987; amended effective January 1, 1995; March 1, 1999; April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-02.6. Residential bed conversion.

1. A facility may not increase or decrease bed capacity without approval of the department.
2. To qualify for an increase, a facility must:
 - a. Be in compliance with this chapter;
 - b. Submit a plan for the use of its beds; and
 - c. Submit a projected twelve-month budget based on predictable funds for the forthcoming year of operation as required by subsection 3 of section 75-03-16-04.
3. The department shall review the facility's request and may approve or deny the request considering the programming need for the beds and the number of beds available.

History: Effective April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 25-03.2-03.1

75-03-16-12.1. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code ~~chapter~~ chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code ~~section~~ sections 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code section 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
 - b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.

- (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if ~~fifteen~~ five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction. The department may not be compelled to make such determination.
4. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; or
 - c. Reported to the facility as the result of an employee background check.
5. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.

History: Effective March 1, 1999; amended effective April 1, 2004; April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-13. Minimum ~~staff~~ employee requirements.

1. For purposes of this section:

- a. "Reside" means to sleep and keep personal effects; and
 - b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.
2. For purposes of this section, social service, program director, and administrator ~~staff~~ positions are expressed in full-time equivalents.
 3. ~~Every~~ Each facility shall adopt a policy declaring ~~the normal sleeping employee coverage for overnight hours for in the facility which shall not exceed eight hours per day.~~
 4. Each facility shall comply with the following minimum ~~staff-to-child employee-to-child~~ ratio requirements for social service ~~staff~~ employees, program director, and administrator:
 - a. One social service ~~staff~~ employee and a half-time administrator for a facility providing services for one to nine children; and
 - b. No less than one social service ~~staff~~ employee for each sixteen children, one program director, and one administrator for a facility providing services for ten or more children.
 5. During ~~waking~~ awake hours each facility shall have:
 - a. One ~~child care staff~~ direct care employee on duty during times when one to nine children are present in the facility; and
 - b. No less than one ~~child care staff~~ direct care employee on duty for each eight children during times when ten or more children are present in the facility.
 6. During ~~sleeping~~ overnight hours each facility shall have ~~no less than one child care staff on duty for each sixteen children who are present in the facility.;~~
 - a. Awake direct care employees:
 - b. No less than one direct care employee on duty for each sixteen children who are present in the facility; and
 - c. A policy describing how often employees will check on children in placement during overnight hours.

7. During ~~sleeping overnight~~ hours each facility structure in which ~~a child resides~~ children reside must meet ~~staff-to-child ratio requirements for child care staff~~ the employee-to-child ratio requirements.
8. A facility which operates more than one structure in which children reside shall count the children in all structures collectively for purposes of determining the number of children for which the facility provides services, the need to employ a program director, ~~and~~ the required number of social service staff employees, and to determine the appropriate employee-to-child ratios.
9. Educational ~~staff~~ program employees may not be counted as ~~child care staff~~ direct care employees, social service ~~staff~~ employees, an administrator, or a program director during any time ~~the educational staff provides~~ educational services are provided.
10. ~~Subsections 4, 5, 6, and 8 are effective January 1, 2000, with respect to any facility licensed as of the effective date of this subsection provided that facility maintains staff-to-child ratios no less than those in effect on the effective date of this subsection. This subsection is ineffective after December 31, 1999.~~

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-19.1. Sentinel event reporting.

1. Facilities shall immediately notify the child's custodian, parent, or guardian and the human service center regional child welfare supervisor of a sentinel event.
2. A sentinel event is an unexpected occurrence involving death or serious physical or psychological injury that is not related to the natural course of a child in placement's illness or underlying condition, including any process variation for which a recurrence would carry a significant chance of a serious adverse outcome. Serious injury includes inappropriate sexual contact.

History: Effective April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-19.2. Suicide prevention. The facility shall develop a suicide prevention plan that addresses several key components, including:

1. Employee training:
2. Initial and ongoing child assessments:

3. Levels of supervision for children in placement:
4. Intervention options:
5. Facility communication, notification, and referral procedures:
6. Reporting and documentation: and
7. Sentinel event debriefing procedures.

History: Effective April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-23. Medical care.

1. The facility shall adopt a comprehensive written plan of preventive, routine, and emergency medical care including first aid, dental care, and administration of prescription and nonprescription medicine.
2. ~~A~~ The facility shall maintain first-aid supplies, including the red cross first-aid manual, in quantities and locations so that they are reasonably accessible at all times.
3. ~~Any serious accident or illness requiring hospitalization or resulting in death must be reported to the parent, guardian, or legal custodian. Any death must be reported immediately to the department.~~ The facility shall have policies governing the use of psychotropic medications. The custodian, parent, or guardian of a child in placement must each be informed of benefits, risks, side effects, and potential effects of psychotropic medications prescribed for the child. Written consent from the legal custodian must be obtained for the use of the medication and must be placed in the child's file. When a psychotropic medication is prescribed or discontinued for a child in placement, the child's medication regime must be reviewed by a psychiatrist or medical doctor as determined medically necessary by the prescribing professional.
4. A record must be kept of prescription and nonprescription medication dispensed to ~~each child~~ children in placement, including the physician's medication order, the time, means, and frequency of administration, and the individual administering such medication.
5. All prescription and nonprescription medicines ~~and drugs~~ must be labeled and stored in a locked compartments ~~except those storage compartment~~ at the facility and during transport. Medication requiring refrigeration ~~which~~ must be properly stored and locked at the proper temperature.

- ~~6. Facility staff shall retain possession of nonprescription medications.~~
- ~~7. All pet inoculations must comply with local and state requirements.~~
8. 6. Unless effective measures are taken to prevent transmission, any child suffering from a serious communicable disease must be isolated from other children who have not been infected.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-29. Buildings, grounds, and equipment.

1. A facility shall comply with all state, county, and local building and zoning codes and ordinances as well as all applicable state, county, and local safety, sanitation laws, codes, and ordinances.
2. A facility must be inspected annually by the local fire department or the state fire marshal's office. A facility shall correct any deficiencies found during these inspections. The facility shall keep a written report of the annual inspection ~~on file at the facility or other designated location~~, and provide a copy sent to the licensing authority department.
3. All chimneys, flues, and vent attachments to combustion-type devices must be structurally sound, appropriate to the unit or units attached to them, and cleaned and maintained as necessary to provide safe operation. The heating system of each facility, including chimneys and flues, must be inspected at least once each year by a qualified individual.
4. There shall be at least one 2A 10BC fire extinguisher on each floor and in or immediately adjacent to the kitchen, incinerator, and combustion-type heating units. Additional fire extinguishers must be provided so it is never necessary to travel more than seventy-five feet [22.86 meters] to an extinguisher. Fire extinguishers must be mounted on a wall or a post where they are clearly visible and at a readily accessible height. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag or label securely attached indicating the month and year the maintenance check was performed last and identifying the individual who performed the service.
5. The facility shall provide the following smoke detectors:
 - a. One unit for each bedroom hallway;
 - b. One unit at the top of each interior stairway; and

- c. One unit for each room with a furnace or other heat source.
- 6. Battery-operated smoke detectors must signal when the battery is exhausted or missing, and be tested at least once a month.
- 7. A facility shall have written plans and procedures for meeting disasters and emergencies.
 - a. ~~Staff members~~ Employees must know all plans and procedures for meeting disasters and emergencies.
 - b. The facility shall advise ~~each child in the facility~~ children in placement of all emergency and evacuation procedures upon admission to the facility. These procedures shall be reviewed ~~with the children~~ every ~~two months~~ month, including ~~the~~ performance and documentation of fire evacuation drills.
 - c. The facility shall have telephones centrally located and readily available for ~~staff~~ use in each living unit of the facility. Emergency numbers including the fire department, police, hospital, physician, and ambulance must be written and posted by each telephone. There must be telephone service in all buildings housing children in placement.
 - d. There must be at least two independent exits from every floor. The exits must be located so that children in placement can exit from each floor in two separate directions, without going through a furnace room, storage room, or other hazardous area.
 - e. Flashlights must be available ~~to all staff~~ for emergency purposes.
- 8. Any vehicle used by a facility for the transportation of children ~~or staff in placement, employees, or nonemployees~~ must be licensed in accordance with the laws of North Dakota and must be maintained and periodically inspected to ensure its safe operating condition.
 - a. Vehicles used to transport children in placement must be covered by liability insurance.
 - b. The number of persons in a vehicle used to transport children in placement may not exceed the number of available seats. All individuals shall wear seatbelts in vehicles that are equipped with seatbelts.
 - c. Any operator of any vehicle shall hold a valid driver's license of the appropriate class from the operator's jurisdiction of residence.

9. All buildings must be equipped with furnishings suitable to needs of the children in placement. Recreational space and equipment must be safe, functional, and available for all children in ~~the facility~~ placement.
10. The facility shall have one centrally located living room for the informal use of children in placement.
11. The facility shall have a dining room area large enough to accommodate the number of individuals who normally are served.
12. A facility shall provide space and privacy for individual interviewing and counseling sessions. This space must be separate and apart from rooms used for ongoing program activities.
13. A facility shall have bedroom accommodations for the children in placement.
 - a. The facility shall have at least one bedroom for each four children in placement.
 - b. The facility may not permit nonambulatory children in placement to sleep above or below the ground floor.
 - c. There must be no more than one child in placement per bed. Triple bunks may not be used.
 - d. No child in placement six years of age or older may share a bedroom with a child in placement of the opposite sex.
 - e. All bedrooms must have at least one window which opens to the outside.
 - f. No sleeping room may be in an unfinished attic, hallway, or other room not normally used for sleeping purposes.
 - g. A basement which has over half its outside walls below grade and no door opening directly to the outside may not be used for bedrooms.
 - h. Furnishings must be safe, attractive, easy to maintain, and selected for suitability to the age and development of the children in ~~care~~ placement.
 - i. A facility shall have sufficient individual storage areas to accommodate ~~each child's~~ children in placement's clothing and other personal belongings.

14. A facility shall have one complete bathroom for each six ~~residents~~ children in placement. A complete bathroom includes toilet, washbasin, and a tub or shower.
 - a. All bathroom facilities must be indoors, equipped with hot and cold running water, and kept clean.
 - b. When bathroom units contain more than one toilet, tub, or shower, each must be in a separate compartment.
 - c. The facility shall provide bathrooms with nonslip surfaces in showers or tubs.
15. Facilities shall ensure that kitchen equipment and area meet the standards prescribed by the state department of health for food and beverage establishments. Compliance with these standards must be documented annually and ~~the inspection documentation kept on file at the facility or other designated location within the state of North Dakota shall be provided to the department.~~
 - a. Food storage space must be clean and containers must be covered and stored off the floor.
 - b. Dishes, cups, and drinking glasses used by the children in placement must be free of chips, cracks, and other defects, and must be sanitized after every use by a washing process, sanitization solution, and air-drying or commercial dishwasher.
 - c. Kitchen floors must be reasonably impervious to water, slip-resistant, and maintained in a clean and dry condition.
16. Laundry facilities must be located in an area separate from areas occupied by children in placement. Space for sorting, drying, and ironing must be made available to children in placement who are capable of handling personal laundry.
17. The water supply of a facility must be from an approved municipal system where available. Where a municipal system is not available, the facility shall obtain approval for the water supply from the state department of health. Each water outlet accessible to children in placement must be supplied with safe and potable water.
18. All agricultural chemicals, pesticides, and other poisons must be stored in a locked cabinet.
19. Firearms are prohibited in program or living areas of a facility premises. Firearms kept at any other location on the facility premises must be stored in a locked and secure area.

20. A facility shall have a quiet area to be used for studying and furnished for that purpose.
21. All rooms in a facility must have adequate lights, heat, and ventilation. All baths and toilet rooms must have a window which opens to the outside or exhaust ventilation.
22. Buildings and grounds of a facility must be maintained in a clean, comfortable, sanitary, and safe condition.
 - a. The facility may not be located within three hundred feet [91.44 meters] of an aboveground storage tank containing flammable liquids used in connection with a bulk storage or other similar hazards.
 - b. The grounds must be attractive, well-kept, and spacious enough to accommodate recreational areas that take into consideration the age and interest levels of ~~the~~ children in placement.
 - c. Rooms, exterior walls, exterior doors, skylights, and windows must be weathertight and watertight.
 - d. Stairways, porches, and elevated walks and ramps must have structurally sound and safe handrails.
 - e. Buildings must be free of unabated asbestos.
 - f. Lead paint may not be used within a building or on the exterior, grounds, or recreational equipment.
23. Any nonhousing buildings located on the facility property must be locked when not in use by facility employees, nonemployees, or children in placement. Children in placement must be supervised by an employee when entering a nonhousing building.
24. All pet inoculations must comply with the local and state requirements.
- ~~23.~~ 25. A facility must immediately notify the ~~responsible placing agency custodian, parent, or guardian~~ and the department of a fire or other disaster which endangers or requires the removal of children for reasons of health and safety.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-31. ~~[Reserved]~~ Outcomes data collection. The department may require a facility to engage in data management practices to collect and report outcomes every six months. Data collection efforts will offer facilities a continuous

improvement process that measures and monitors the safety, well-being, and service delivery provided to children in placement. Facilities must have written policy to identify a plan to implement, collect, and measure outcomes data requirements.

History: Effective April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

CHAPTER 75-03-17
PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN

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75-03-17-01. Definitions.

1. "Applicant" means the entity requesting licensure as a psychiatric residential treatment facility for children under this chapter.
2. "Child" or "children" means a person or persons under the age of twenty-one.
3. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery provided by qualified mental health professionals.
4. "Department" means the department of human services.
5. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a ~~mentally ill~~ person with a mental illness using diagnostic, interview, and other relevant assessment techniques provided by a mental health professional.

6. "Discharge planning" means the multidisciplinary process that begins at the time of admission that identifies the child's and family's needed services and supports upon discharge.
7. "Family-driven" means the family has a primary decisionmaking role in the care of its own children.
- 6- 8. "Individual person-centered treatment plan" means a written plan of intervention, treatment, and services ~~for a mentally ill person~~ that is developed under the clinical supervision of a mental health professional on the basis of a diagnostic assessment.
- 7- 9. "Initial license" means a license for a new facility that is in effect for one year.
- 8- 10. "Mental health professional" means:
- a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota state board of psychologist examiners;
 - b. A social worker with a master's degree in social work from an accredited program;
 - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program;
 - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse, as defined by subdivision c, or an expert examiner;
 - e. A licensed addiction counselor; or
 - f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond a master's degree, as required by the national academy of mental health counselors, or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.
- 9- 11. ~~"Mentally ill person~~ Person with a mental illness" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. ~~"Mentally ill person~~ Person with a mental illness" does not include an individual with intellectual disabilities of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who has

intellectual disabilities may suffer from a mental illness. Chemical dependency does not constitute mental illness, although an individual suffering from that condition may be suffering from mental illness.

- ~~40.~~ 12. "Psychiatric residential treatment facility for children" means a facility or a distinct part of a facility that provides to children and adolescents a total, twenty-four-hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting. The facility must be in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of Federal Regulations, part 441.
- ~~41.~~ 13. "Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomat in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing.
- ~~42.~~ 14. "Residential treatment" means a twenty-four-hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of ~~mentally ill~~ persons with mental illness.
15. "Serious injury" means any significant impairment of the physical condition of the child as determined by qualified medical personnel. This includes burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.
16. "Serious occurrence" means an incident in which a resident has died, has sustained a serious injury, or has attempted suicide.
- ~~43.~~ 17. "Special treatment procedures" are defined as follows:
- a. "Drug used as a restraint" means any drug that:
- (1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;
 - (2) Has a temporary effect of restricting the resident's freedom of movement; and

- (3) Is not a standard treatment for the resident's medical or psychiatric condition.
- b. "Emergency safety interventions" means the use of restraint or seclusion as an immediate response to an emergency safety situation.
 - c. "Emergency safety situation" means unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.
 - d. "Mechanical restraint" means any device attached or adjacent to the resident's body that the resident cannot easily remove that restricts freedom of movement or normal access to the resident's body.
 - e. "Personal restraint" means the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident in order to calm or comfort the resident, or holding a resident's hand to safely escort a resident from one area to another.
 - f. "Physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a resident who is acting out to walk to a safe location.
 - g. "Restraint" means a personal restraint, mechanical restraint, or drug used as a restraint.
 - h. "Seclusion" means the voluntary confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving.
 - i. ~~"Serious injury" means any significant impairment of the physical condition of the resident as determined by qualified medical personnel. This includes burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.~~
 - j. ~~i.~~ "Timeout" means the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.

18. "Trauma-informed" means an understanding of the prevalence of traumatic experiences in a child who receives mental health services

and of the profound neurological, biological, psychological, and social effect of trauma and violence on the child being treated.

19. "Youth-guided" means a child has the right to be empowered, educated, and given a decisionmaking role in the care of the child's own life.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; July 1, 2012; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-01, 25-03.2-03

75-03-17-02. Procedures for licensing.

1. **Application.** An application for license or for renewal as a facility must be submitted to the department ~~which~~. The department shall determine the suitability of the applicant for licensure under this chapter. The application must contain any materials ~~that~~ the department may require, including:
 - a. An architectural plan;~~;~~
 - b. A comprehensive list and description of the program plan which includes:
 - (1) A plan demonstrating compliance with this chapter;
 - (2) A copy of current accreditation certification, accreditation letter, and findings report;
 - (3) The facility's organizational chart;
 - ~~(2)~~ (4) The treatment modalities offered, including milieu therapy, family therapy, psychopharmacology, and psychotherapy;
 - ~~(3)~~ (5) Prohibited treatment modalities; and
 - ~~(4)~~ (6) The services provided directly by the facility and those provided by other community resources, including special education as required by law; and contracted services.
 - c. The funding base for building and operating the facility, including a projected twelve-month budget based on predictable funds and, for a new facility, a statement of available funds or documentation of available credit sufficient to meet the operating costs for the first twelve months of operation;~~;~~ and
 - d. A copy of all policies and procedures as required by this chapter with a detailed plan for their implementation.

- e. A list of qualified mental health professionals and mental health professional staff employed or to be employed by the facility.
- f. ~~The license to operate a psychiatric residential treatment facility for children must specify:~~
 - ~~(1) The name of the licensee;~~
 - ~~(2) The premises to which the license is applicable;~~
 - ~~(3) The number of children who may be received in the premises at any one time; and~~
 - ~~(4) The date of expiration of the license.~~

2. **License contents.** The license to operate a psychiatric residential treatment facility for children must specify:

- a. The name of the licensee;
- b. The premises for which the license is applicable;
- c. The number of children who may reside at the facility at any one time;
- d. The date of expiration of the license;
- e. The facility license number; and
- f. The name of the accreditation body.

2- 3. **Initial license and license renewal.** ~~An initial license for a new facility is in effect for one year. Subsequent licenses shall be renewed every two years, either through a full onsite license review or the facility may receive deemed status, at the discretion of the department. The license must identify the number and age groupings of children who may receive care, is valid only on the premises indicated, and is not transferable.~~

- a. An initial license for a new facility is in effect for one year. Subsequent licenses shall be renewed at least once every two years, either through a full onsite license review or the facility may receive deemed status, at the discretion of the department.
- b. The license is valid only on the premises indicated and is not transferable.

- c. License renewals are based on the outcomes of the department's licensure reviews, the facility's ongoing compliance with the licensure rules set forth in this chapter, and the facility's accreditation standings. The facility must list the department as a confidential inquiry for the accrediting body on their accreditation intent to survey prior to each accreditation review. If the accrediting body determines a facility to not be in good standing, the facility shall report that determination to the department within five working days after the facility has learned of that determination.
 - d. A facility shall submit a license renewal application on a form required by the department to the department licensor forty-five days prior to the date of the department has notified the facility will be the date the facility's licensure review will begin.
3. **4. Provisional license.** ~~A~~ The department may issue a provisional license, effective for up to ninety days, to a facility ~~may receive a provisional license for ninety days if the facility~~ that has failed to comply with any of the standards of this chapter or with any other state law or regulation ~~is cause for issuance of a provisional license, compliance with which is required for licensure.~~ The facility will have ~~ninety~~ thirty days from the issuance of the provisional license to submit a written plan of correction for the department's review and approval. The department may perform an onsite followup visit to assure that the standards have been met by the facility.
- a. The department may renew a provisional license if the licensee demonstrates to the department that it has made progress towards compliance and can be fully compliant within the next ninety days. A provisional license may be renewed but may not exceed one hundred eighty consecutive days.
 - b. When a facility operating under a provisional license notifies the department that it has corrected its deficiencies, the department must ascertain whether all deficiencies have been corrected. Upon finding compliance and sustainability, the department shall issue an unrestricted license for the balance of the licensing period.
 - c. The department may apply restrictions to a provisional license to limit the number of children in residence or the ages of the children in residence while the provisional license is in effect.
5. **License display.** A facility shall display its license in a conspicuous place within the facility.
6. **Notice of change.** A facility shall notify the department in writing at least thirty days before any of the following changes occur:
- a. Transfer of or change in ownership.

b. Transfer of operating rights, including a lease of the facility where the lessor retains no control of the operation or management of the facility.

c. Change in the name of the facility.

4. 7. **Denial and revocation of a license.** Failure to comply with any of the standards of this chapter or other state law or regulation is cause for refusal or revocation of a license. Conviction of an offense by an owner or operator of a facility does not disqualify the facility from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a psychiatric residential treatment facility for children, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

5. 8. **Appeal.** An applicant may appeal a license denial or a department decision not to allow an increase or decrease in bed capacity in accordance with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code chapter 75-01-03.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-02, 25-03.2-03, 25-03.2-05

75-03-17-03. Organization and administration.

1. **Governing body.** The applicant must have a governing body that designates or assigns responsibility for the operation, policies, program, and practice of the facility. The governing body shall:

a. Define:

(1) The facility's philosophy;

(2) The facility's purpose;

(3) The facility's function;

(4) The geographical area served by the facility;

(5) The ages and types of children accepted for care by the facility; and

(6) The clinical disorders addressed by the facility's program;

- b. Ensure that all policies and procedures required by this chapter are in writing and on file at the facility and are accessible to all staff and residents;
- c. Develop a records retention policy and procedures consistent with state and federal law;
- d. Assure that all vehicles transporting children are:
 - (1) Subject to routine inspection and maintenance;
 - (2) Licensed by the state motor vehicle department;
 - (3) Equipped with seatbelts for every passenger;
 - (4) Equipped with a first-aid kit and a fire extinguisher;
 - (5) Carrying no more individuals than the manufacturer's recommended maximum capacity;
 - (6) Disability accessible where appropriate; and
 - (7) Driven by an individual who holds a valid driver's license, of a class appropriate to the vehicle driven, issued by the driver's jurisdiction of residence; and
- e. Obtain sufficient insurance, including:
 - (1) Liability insurance covering bodily injury, property damage, personal injury, professional liability; and
 - (2) Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.

2. **Legal status.** The applicant shall provide to the department:

- a. A copy of the articles of incorporation, bylaws, partnership agreement, or articles of organization and any evidence of required legal registration of the entity;
- b. A current list of partners or members of the governing body and any advisory board, including the address, telephone number, principal occupation, and term of office of each listed person;
- c. A statement disclosing the owner of record of any building, facility, or major piece of equipment occupied or used by the applicant, the relationship of the owner to the applicant, the cost of such use, if

any, to the applicant, and the identity of the entity responsible for the maintenance and upkeep of the property; and

- d. Whether the owner, operator, or an employee of the facility is or has been found guilty of an offense determined by the department to have a direct bearing on the person's ability to serve as an owner, operator, or employee, or the department determined, following conviction of an offense, that the person is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.
3. **Financial plan.** The applicant shall have a financing plan which includes a twelve-month budget, and which shows the facility's financial ability to carry out its purposes and function. A new applicant shall have sufficient funds available for the first year of operation.
 4. **Audits.** All financial accounts must be audited annually by a certified public accountant. The facility shall make the audit report ~~must be made~~ a part of the facility's records ~~and~~. The report must contain the accountant's opinion about the facility's present and predicted financial solvency. The facility shall submit the report ~~must be submitted~~ with an application for license renewal.
 5. **Quality assurance.** The applicant shall ~~have~~ implement a quality assurance program ~~that monitors~~ approved by the department for assessing and improving the quality of services and care provided to residents. The applicant shall create policies and procedures and have them in place to implement its facility's quality assurance program. The program must monitor and evaluates evaluate the quality and appropriateness of ~~child care~~ of children, and ~~provides~~ provide a method for problem identification, corrective action, and outcome monitoring. The quality assurance program must include:
 - a. A plan for child and staff safety and protection;
 - b. A method to evaluate personnel performance and the utilization of personnel;
 - c. A system of credentialing, granting, and withholding staff privileges;
 - d. A method to review and update policies and procedures assuring the usefulness and appropriateness of policies and procedures;
 - e. A method to review the appropriateness of admissions, care provided, and staff utilization;
 - f. A plan for the review of individual treatment plans;

- g. A plan for program evaluations that includes measurements of progress toward the facility's stated goals and objectives; and
 - h. A method to evaluate and monitor standards of resident care.
6. **Children's case records.** The ~~applicant facility shall maintain~~ establish and implement policies and procedures to ensure the facility maintains a confidential record for each child which must be current and reviewed monthly. Each record must contain:
- a. An application for service;
 - b. A social history;
 - c. A release of information and medical treatment consent form signed by a person who may lawfully act on behalf of the child and any consent for the use of psychotropic medications as required under subdivision d of subsection 10 of section 75-03-17-07;
 - d. The name, address, and telephone number of individuals to be contacted in an emergency;
 - e. Reports on medical examinations, including immunizations, any medications received, allergies, dental examinations, and psychological and psychiatric ~~examinations~~ evaluations which occurred prior to the placement;
 - f. An explanation of custody and legal responsibility for the child and relevant court documents, including custody or guardianship papers;
 - ~~g.~~ Documentation on all medical examinations, including immunizations, all medications received, allergies, dental examinations, and psychological and psychiatric evaluations received during placement.
 - ~~g.~~ h. A record of the medical care given at the facility Documentation of medical care given during placement as a result of an admission to the hospital or inpatient care, including:
 - (1) Hospitalization admission and discharge records to include history and physical;
 - (2) ~~Prescriptions used~~ Medications administered, with the quantity, directions, physician's name, date of issue, and name of the pharmacy indicated; and
 - (3) Significant illnesses or accidents; ~~and~~

i. Records of the annual medical examination required under section 75-03-17-07; and

h. j. A written agreement between a person who may lawfully act on behalf of the child and the facility and a record that the person who acted on behalf of the child received a copy. The agreement must include:

- (1) A statement as to who has financial responsibility;
- (2) How payments are to be made to cover the cost of care;
- (3) Which items are covered by the normal or regular facility charges for care;
- (4) Medical arrangements, including the cost of medical care;
- (5) Visiting arrangements and expectations;
- (6) Arrangements for clothing and allowances;
- (7) Arrangements for therapeutic leave;
- (8) Regulations about gifts permitted;
- (9) Arrangements for participation by the person who acted on behalf of the child through regularly scheduled interviews with designated staff;
- (10) The facility's policy on personal monetary allowance to be provided to the child at the facility;
- (11) Records of special treatment orders; and
- (12) Educational arrangements.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-04. Admissions.

1. A child may be admitted to a psychiatric residential treatment facility for children if the child has been diagnosed by a psychiatrist or psychologist as suffering from a mental illness or emotional disturbance and the child is in need of and is able to respond to active psychotherapeutic intervention and cannot be effectively treated in the child's family, in another home, or in a less restrictive setting. The facility shall take

into account the age and diagnosis of the child in order to provide an environment that is safe and therapeutic for all children. The facility may admit only those ~~prospective~~ children who are found eligible according to the facility's admission policies. Every facility shall have specific admission policies that describe which professional staff have admission authority and describe the membership of the facility's admission committee or committees. Admission committee membership must include a psychiatrist.

2. a. ~~Admission~~ A facility shall base admission decisions ~~must be based~~ upon:
 - (1) A social history which includes presenting problems, family background, developmental history, educational history, and employment;
 - (2) A ~~medical~~ psychosocial history which includes current status, any relevant findings of previous physical or psychiatric evaluations, and a list of the ~~prospective~~ child's current medications and allergies ~~and the facility will provide for a medical and psychological assessment of each child within seventy-two hours of admission and thereafter as needed by the child; and;~~
 - (3) Prior psychological and addiction evaluations; and
 - (4) Other assessments, including trauma, suicide, substance use or abuse, and eating disorders.
- b. The facility shall obtain the child's known history and prior evaluations ~~should be obtained from the referral source before admission, and if not obtained before admission, then the information must be requested within three working days after admission.~~
3. The facility shall grant or deny admission within fourteen days of receipt of a completed universal application.
4. If admission is denied, the facility shall indicate the reason in writing to the individual or referral source making the application for placement.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-06

75-03-17-05. Diagnosis and treatment while at the facility.

1. **Duties of the facility.** The facility shall:

- a. Provide for a medical and psychological assessment of each child within seventy-two hours of admission and thereafter as needed by the child;
- a. b. Keep the child in contact with the child's family and relatives if possible by initiating family therapy upon admission and developing a plan for continued family therapy throughout placement for timely reunification of the child with the family. The plan must include therapeutic telemedicine options, such as web cam, polycom access, telephone therapy, or other means of electronic contact to provide ongoing therapeutic connection with the child's family;
- b. c. Involve the families and the person who may lawfully act on behalf of the child in the person-centered treatment plan if possible;
- e. d. Provide or arrange for ongoing and consistent family therapy when necessary for all residents with supporting documentation that ties therapeutic treatment to the person-centered plan. When family therapy is not occurring or is not in the best interest of the child, the child's case file must include documentation explaining why family therapy is not occurring;
- d. e. Provide conferences involving the facility, the person who may lawfully act on behalf of the child, the referring agency, and when appropriate, the child, to review the case status and progress on a monthly basis;
- e. f. Provide a progress report to the referring agency, and the person who acted lawfully may act on the child's behalf every three months; and
- f. g. Complete a written biopsychosocial assessment for each child admitted for care within five business days and develop an individual person-centered treatment plan that includes:
 - (1) A psychiatric history;
 - (2) A mental status examination, including a suicide screening;
 - (3) A trauma screening;
 - (4) Intelligence and projective tests, as necessary; and
 - (5) A behavioral appraisal; and
- h. Therapeutic leave such as weekend overnight visits or day passes with family must be documented in the child's case file and be tied to family therapy and therapeutic goals of the child and family, or it must be documented in the child's case file why weekend overnight

visits or day passes are not tied to therapy and therapeutic goals of the child and family.

2. **Specialists.** The services of specialists in the fields of medicine, psychiatry, nursing, psychology, and education must be used as needed. Each facility shall provide a minimum of one-half hour per week per bed of psychiatric time and twenty hours per week of nursing time.
3. **Individual person-centered treatment plan.**
 - a. The facility shall develop and implement an individual person-centered treatment plan that includes the child's input giving the child a voice and a choice in the treatment planning and interventions used. The plan must be based upon a comprehensive interdisciplinary diagnostic assessment, which includes the role of the family, identifies the goals and objectives of the therapeutic activities and treatment; The plan provides a schedule for accomplishing the therapeutic activities and treatment goals and objectives, and identifies the individuals responsible for providing services to children consistent with the individual person-centered treatment plan. Clinical supervision for the individual person-centered treatment plan must be accomplished by full-time or part-time employment of or contracts with qualified mental health professionals. Clinical supervision must be documented by the qualified mental health professionals cosigning individual person-centered treatment plans and by entries in the child's record regarding supervisory activity. ~~To the extent possible, the~~ The child, and the person who acted lawfully may act on the child's behalf, must be involved in all phases of developing and implementing the individual person-centered treatment plan. The child may be excluded from planning if excluding the child is determined to be in the best interest of the child and the reasons for the exclusion are documented in the child's plan
 - b. The plan must be:
 - (1) Based on a determination of a diagnosis using the first three axes of the multiaxial classification of the current Diagnostic and Statistical Manual of Mental Disorders and a biopsychosocial assessment. In cases where a current diagnosis by a mental health professional has been completed within thirty days preceding admission, only updating is necessary;
 - (2) Developed within five business days of admission; and

- (3) Reviewed at least monthly and updated or amended to meet the needs of the child by an interdisciplinary team including one qualified mental health professional.

c. The person-centered treatment plan must identify:

- (1) Treatment goals ~~to that~~ address the ~~problems~~ therapeutic treatment needs of the child and family;
- (2) Timeframes for achieving the goals;
- (3) Indicators of goal achievement;
- (4) The individuals responsible for coordinating and implementing child and family treatment goals;
- (5) ~~Staff~~ Therapeutic intervention or techniques or both for achieving the child's treatment goals;
- (6) The projected length of stay and ~~next placement~~ discharge plan; and
- (7) ~~When referrals are~~ Referrals made to other service providers based on treatment needs, and the reasons referrals are made.

4. **Work experience.**

a. If a facility has a work program, it shall:

- (1) Provide work experience that is appropriate to the age and abilities of the child, therapeutically relevant to the child's treatment plan and treatment needs, and approved by the treatment team;
- (2) Differentiate between the chores that ~~children are~~ the child is expected to perform as ~~their~~ the child's share in the process of living together, specific work assignments available to ~~children~~ the child as a means of earning money, and jobs performed in or out of the facility to gain vocational training; and
- (3) Give ~~children~~ the child some choice in ~~their~~ the child's chores and offer change from routine duties to provide a variety of experiences.

b. Work may not interfere with the child's time for school study periods, play, sleep, normal community contacts, or visits with the child's family.

C. The facility shall obtain written authorization for work experience in writing from a person who lawfully may act on behalf of the child.

5. **Solicitation of funds.** A facility may not use a child for advertising, soliciting funds, or in any other way that may cause harm or embarrassment to a child or the child's family. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any child or member of a child's immediate family, without first securing the child's written consent and the written consent of the person who may lawfully act on behalf of the child. The written consent must apply to an event that occurs no later than ninety days ~~from~~ after the date the consent was signed and must specifically identify the image or information that may be disclosed by reference to dates, locations, and other event-specific information. Consent documents that do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes. The duration of an event identified in a consent document may not exceed fourteen days.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-06. Special treatment procedures. A facility shall have written policies and procedures ~~on~~ regarding implementation of special treatment procedures. Special treatment procedures must be therapeutic and meaningful interventions and may not be used for punishment, for the convenience of staff, or as substitute for therapeutic programming. The facility shall provide education to the children, providing instructions each child the opportunity to express the child's opinion and educating the child on alternative behaviors that would have allowed the staff behavior choices to avoid the use of special treatment procedures. Physicians Alternatives to behaviors must be documented in each child's individual person-centered treatment plan. The health, safety, and well-being of children receiving care and treatment in the facility must be properly safeguarded. A physician shall review the use of special treatment procedures.

1. Timeout. ~~Use~~ Staff shall supervise the use of timeout procedures ~~must be supervised by staff at all times, and appropriate entries must be documented~~ shall document the use of timeout procedures in the child's file. The use of the resident's bedroom for timeout is prohibited.
2. Physical escort. ~~Use~~ Staff shall supervise the use of physical escort procedures ~~shall be supervised by staff at all times and appropriate entries shall be documented~~ shall document the use of physical escort in the child's file.
3. Physical restraints.

- a. ~~Restraints are~~ Physical restraints must be ordered by a physician and may be imposed only in emergency circumstances and only must be used with extreme caution to ensure the immediate physical safety of the child, a staff member, or others and less restrictive interventions have been determined to be ineffective. The health, safety, and well-being of the children cared for and treated in the facility must be properly safeguarded after all other less intrusive alternatives have failed or have been deemed inappropriate;
 - b. All safety holds must be applied by staff ~~trained~~ who are certified in the use of safety holds and emergency safety interventions; and
 - c. The facility staff shall have established protocols that require:
 - (1) Entries made in the child's file as to the date, time, staff involved, reasons for the use of, and the extent ~~of~~ to which physical restraints were used, and which identify less restrictive measures attempted;
 - (2) ~~Timely notification~~ Notification within twenty-four hours of the individual who ~~may~~ lawfully may act on behalf of the child; and
 - (3) Face-to-face assessment of children in restraint ~~must be~~ completed by a physician, registered nurse, or other licensed health care professional or practitioner who is trained in the use of safety, emergency interventions. The face-to-face assessment must be documented in the child's case file and include assessing the mental and physical well-being of the child. The face-to-face assessment must take place be completed as soon as possible, ~~but in~~ and no case later than one hour after the initiation of restraint or seclusion.
4. Seclusion. Seclusion must be ordered by the attending physician and may be imposed only in emergency circumstances after all other less intrusive alternatives have failed or have been deemed inappropriate. Seclusion is to be used with extreme caution, and only to ensure the immediate physical safety of the child, a staff member, or others and after less restrictive interventions have been determined to be ineffective. A child's bedroom may not be used for seclusion. If seclusion is indicated, the facility shall ensure that:
- a. The proximity of the staff allows for visual and auditory contact with the child at all times ~~and includes assessments every fifteen minutes;~~
 - b. Staff conduct assessments of the child every fifteen minutes and document the assessments in the child's case file;

- c. The seclusion room is not locked;
 - ~~b.~~ d. All nontherapeutic objects are removed from the ~~child's presence area in which the seclusion occurs;~~
 - ~~e.~~ e. All fixtures within the room are tamperproof, with switches located outside the room;
 - ~~f.~~ f. Smoke-monitoring or fire-monitoring devices are an inherent part of the seclusion room;
 - ~~e.~~ g. ~~Mattresses are security~~ Security mattresses used are made of fire-resistant material;
 - f. h. The room is properly ventilated;
 - ~~g.~~ i. ~~Timely notification within twenty-four hours~~ Notification of the individual who may lawfully may act on behalf of the child is made within twenty-four hours of a seclusion and is documented in the child's case file;
 - ~~h.~~ j. A child under special treatment procedures is provided the same diet that other children in the facility are receiving;
 - ~~i.~~ k. No child remains in seclusion:
 - (1) For more than four hours in a twenty-four-hour period; and
 - (2) Without physician approval;
 - ~~j.~~ l. Seclusion is limited to the maximum timeframe per episode for fifteen minutes for children aged nine and younger and one hour for children aged ten and older; and
 - ~~k.~~ Physicians shall review the use of seclusion procedures; and
 - ~~l.~~ m. Face-to-face assessment of children in seclusion is completed by a physician, registered nurse, or other licensed health care professional or practitioner who is trained in the use of safety, emergency interventions and is documented in the child's case file. The face-to-face assessment must include assessing the mental and physical well-being of the child. The face-to-face assessment must ~~take place as soon as possible, but in~~ occur no case later than one hour after the initiation of restraint or seclusion.
5. Following Within twenty-four hours of each use of seclusion or physical restraint, the facility shall conduct a debriefing must be conducted within twenty-four hours that which includes appropriate personnel and the child and which:

- a. Evaluates and documents in the child's case file the well-being of the child served and identifies the need for counseling or other therapeutic services related to the incident;
 - b. Identifies antecedent behaviors and modifies the child's individual person-centered treatment plan as appropriate; ~~and~~
 - c. Analyzes ~~how~~ the incident ~~was handled~~ and identifies needed changes to policy and procedures ~~or~~, staff training, or both.
6. Special treatment procedure training. Each facility must have a ~~specific~~ policies and procedures regarding annual training in the use of ~~physical restraints and seclusion, which includes training on the needs and behaviors of the population served, relationship building, alternatives to restraint and seclusion, de-escalation methods, conflict resolution, thresholds for restraints and seclusion, the physiological and psychological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits, the process for obtaining approval for continuation of restraints and seclusion, documentation, debriefing techniques, and investigation for injuries and complaints~~ all special treatment procedures listed in this section, which comply with the standards set forth by the facility's accrediting body.
7. Reporting requirement for serious occurrences that include a death, serious injury, or death suicide attempt.
- a. Each facility shall notify the medical services division of the department of each death serious occurrence that occurs at ~~each~~ the facility- as follows:
 - (1) The report must include the name and date of birth of the child involved.
 - (2) The facility shall provide the report within twenty-four hours of the serious occurrence.
 - (3) The report must contain information on the use of any specialized treatment procedures for the child involved preceding the serious occurrence.
 - b. ~~The report must include the name of the child.~~ Each facility shall notify its accrediting body of any serious occurrence.
 - c. ~~The report must be provided no later than twenty-four hours after the time of the child's death.~~ Each facility shall notify the regional supervisor of child welfare programs at the human service center

serving the region within which the facility is located of any serious occurrence.

- d. ~~The report must contain information on the use of seclusion or restraints as related to the child.~~ Each facility shall report all deaths to the committee on protection and advocacy, unless prohibited by state law, by the close of business the day following the date the death was discovered.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 50-11-03, 50-11-03.2

75-03-17-07. Medical care. The facility shall institute policies and procedures to address the medical and psychiatric care for each child during placement at the facility, including:

1. **Medical examination.** Each child ~~shall~~ must have a medical examination within thirty days prior to admission or within seventy-two hours of admission.
2. **Immunizations.** ~~A~~ Each child ~~shall~~ must have current immunizations as required by North Dakota Century Code section 23-07-17.1.
3. **Medical care arrangements.** A facility shall make arrangements with a physician and a psychiatrist for medical and psychiatric care of ~~children~~ each child.
4. **Annual medical examination.** ~~Every~~ Each child shall have a medical examination at least annually.
5. **Staff instruction.** The facility shall ~~inform~~ train staff members ~~as to~~ what medical care, including first aid, may be given by staff without specific orders from a physician. ~~Staff~~ The facility shall ~~be instructed as to~~ instruct staff how to obtain further medical care and how to handle emergency cases.
 - a. ~~At least one staff member on duty shall have satisfactorily completed current first aid, therapeutic crisis intervention and crisis prevention intervention, universal infection control precautions, and cardiopulmonary resuscitation training and have on file at the facility a certificate of satisfactory completion.~~
 - b. ~~Each staff member shall be able to recognize the common symptoms of illnesses of children and to note any marked physical defects of children. A sterile clinical thermometer and a complete first-aid kit must be available.~~

6. **Hospital admission.** ~~Arrangements must be~~ Each facility shall institute policies and procedures regarding transfers and discharges from an admission to the hospital. A facility's policies and procedures must include arrangements made with a hospital for the admission of children from the facility in the event of serious illness or an emergency.
7. **Medical records.** ~~A child's medical records must include:~~
- ~~a. Current medical, psychological, or psychiatric records;~~
 - ~~b. A record of the child's immunizations;~~
 - ~~c. The consent for medical care by a person with lawful authority to act on behalf of the child;~~
 - ~~d. Records of the annual medical examination; and~~
 - ~~e. A record of the medical care given at the facility, including:~~
 - ~~(1) Hospitalization records;~~
 - ~~(2) Prescriptions used with the quantity, directions, physician's name, date of issue, and name of the pharmacy indicated; and~~
 - ~~(3) Significant illnesses or accidents.~~
8. **7. Hospitalization or death reports.** ~~Any accident or illness requiring hospitalization must be reported~~ A facility shall report all hospitalizations immediately to an individual who may lawfully may act on behalf of the involved child. Deaths must The facility shall report any death immediately be reported to the department, an individual who may lawfully may act on behalf of the child, a law enforcement agency, and the county coroner. The facility shall document these contacts in the involved child's case file.
9. **8. Prescription labels.** ~~Prescribed drugs and medicines must be obtained~~ The facility shall obtain prescribed medications on an individual prescription basis with the following labeling: and labeled according to state and federal rules.
- ~~a. The name of the pharmacy;~~
 - ~~b. The child's name;~~
 - ~~c. The prescription number;~~
 - ~~d. The prescribing practitioner;~~

- e. ~~The directions for use;~~
- f. ~~The date of original issue or renewal;~~
- g. ~~The name of the drug;~~
- h. ~~The potency of the drug;~~
- i. ~~The quantity of the drug; and~~
- j. ~~The expiration date, when applicable.~~

40. 9. **Administration of medications.**

- a. The facility shall institute policies and procedures for guidance in the administration of all medications. Medications must be administered by a designated staff person ~~in accordance with medical instructions~~ who is medication-certified. All medications must be labeled and stored in a locked cabinet, with the keys for the cabinet kept under the supervision of the designated staff person assigned to administer the medications. The medication cabinet must be equipped with separate cubicles, plainly labeled with the each child's name.
- b. ~~Medications~~ The facility shall return medications belonging to the a child ~~must be returned~~ to the person who ~~may~~ lawfully may act on behalf of the child upon discharge, or ~~must be destroyed in the presence of a witness by the designated person in charge of medication storage by flushing the medications into the sewer system and removing and destroying the labels from the container and documentation of the return or destruction must be included in the child's file~~ the designated person in charge of medication storage shall dispose of the medications according to the facility's policies and procedures for the disposal of medications. The facility's policies and procedures for the disposal of medications must be in accordance with state and federal requirements for the disposal of medications.
- c. The facility may possess a limited quantity of nonprescription medications. The medications must be ordered by a physician and administer them administered under the supervision of designated medication-certified staff.
- d. ~~The facility shall have policies governing the use of psychotropic medications. A person with lawful authority to act on behalf of a child who receives psychotropic medication must be informed of benefits, risks, side effects, and potential effects of medications. Written consent for use of the medication must be obtained from that person and filed in the child's record.~~

d. (1) The facility shall obtain written consent, including via electronic mail, or shall obtain verbal consent witnessed by another person, from a person who lawfully may act on behalf of the child prior to administering:

(a) A newly prescribed medication to the child except in an emergency situation;

(b) A psychotropic medication; or

(c) A medication dosage change.

A person who lawfully may act on behalf of the child who receives medication must be informed of benefits, risks, and the potential side effects of all prescribed medication. The facility shall obtain written consent within fourteen days verifying verbal consent received. The facility shall document and file all consents in the child's case file.

(2) The facility shall institute policies and procedures governing the use of psychotropic medications, which require documentation in the case file justifying the necessity and therapeutic advantages for the child receiving psychotropic medication. Documentation must reflect that a trauma screening has been completed and that the symptomology that the psychotropic medication is attempting to treat is not more effectively treated through therapeutic interventions that specifically address symptomology related to trauma.

e. Upon admission, when a new psychotropic medication is prescribed, and when a psychotropic medication is discontinued, a child's psychotropic medication regime must be reviewed by the attending psychiatrist every seven days for the first thirty days and every thirty days thereafter. Additionally, the facility's nursing staff shall complete an involuntary movement assessment prior to the start of, or a change in the dose of, a psychotropic medication. An involuntary movement assessment must be repeated every three months, or sooner if determined necessary, following completion of the initial involuntary movement assessment to monitor the child for side effects of the psychotropic medication.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-09. General health.

1. **Sleep.** Each child ~~shall have~~ must receive enough sleep for the child's age at regular and reasonable hours, and under conditions conducive to rest.
2. **Personal hygiene.** ~~Children~~ The facility shall be encouraged and helped to keep themselves clean educate children on age-appropriate hygiene.
3. **Bathing facilities.** ~~Bathing~~ The facility shall maintain properly and keep clean toilet facilities ~~must be properly maintained and kept clean.~~
4. **Personal articles.** ~~Each~~ The facility shall ensure that each child shall have has a toothbrush, comb, and an adequate supply of towels, washcloths, and personal toiletry articles.
5. **Daily diet.** ~~Menus must~~ The facility shall provide a varied diet menus for all dietary needs that meets a meet each child's daily nutritional requirements, including special dietary needs, such as food allergies and diabetes.
6. **Clothing.** Each child shall have clothing for the child's exclusive use. The clothing must be comfortable and appropriate for current weather conditions.
7. **Play.** The facility shall provide safe, age-appropriate equipment for indoor and outdoor play. The facility shall provide safety instructions on all equipment prior to the child participating in the activity.
8. **Services.** The facility shall provide education on general health and promote positive healthy activities, such as sufficient therapeutic treatment, and educational, recreational, and leisure, ~~and physical services and facilities must be available to the children in the facility activities.~~
9. **Spirituality.** The facility shall make a reasonable effort to make opportunities available for children to attend spiritual ceremonies within the area in which the facility is located, giving reasonable consideration to requests by the child or a person with lawful authority to act on behalf of the child. The facility shall respect the spiritual beliefs of the child and the child's family.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-10. Education and training.

1. **Public education.** Any primary or secondary program offered by a facility must be in compliance with standards established by the department of public instruction. The facility shall ensure that children comply with all state school attendance laws.
2. **Staff training.** The facility shall provide ~~annual~~ quarterly training to staff which is relevant to address the changing needs of the client population milieu and according to the requirements of the facility's accrediting body.
 - a. All staff members on duty must have satisfactorily completed annual training on current first aid, therapeutic crisis intervention or crisis prevention intervention, suicide awareness and prevention training, standard precautions as used by the centers for disease control and prevention, and cardiopulmonary resuscitation training and have on file at the facility a certificate of satisfactory completion prior to having direct contact with residents. A staff member who is in orientation status, who has successfully completed the background check, and who is in the process of completing the required trainings may be allowed to job shadow with a staff member who has a minimum of one year of experience at the facility and who has successfully completed all of the required training. The facility ensures that staff who are in orientation status are always under the supervision of experienced staff and are not left alone with the children until all required training has been completed.
 - b. Each staff member must be able to recognize the common symptoms of illnesses of children, signs and symptoms of an overdose, and to note any marked physical defects of children. The facility shall ensure a sterile clinical thermometer and a complete first-aid kit are available.
3. **Discipline.** ~~Discipline must be constructive or educational in nature. Discipline may include diversion, separation from a problem situation, and discussion with the child about the situation, and praise for appropriate behavior. A facility shall create a trauma-informed culture that promotes respect, healing, and positive behaviors and which minimizes the use of restrictive behavior management interventions to the extent possible. Discipline must be constructive or educational in nature and follow the discipline guidelines of the facility's accrediting body. A facility shall adopt and implement written policies and procedures for discipline and behavior management consistent with the following:~~
 - a. Only staff members of the facility may prescribe, administer, or supervise the discipline of children. Authority to discipline may not be delegated to children, volunteers, or interns.

- b. A child may not be slapped, punched, spanked, shaken, pinched, roughly handled, struck with an object, or ~~otherwise~~ receive any inappropriate physical treatment.
- c. Verbal abuse and derogatory actions or remarks about the child, the child's family, religion, or cultural background may not be used or permitted.
- d. A child may not be locked in any room ~~or other enclosure unless seclusion is indicated and the procedures under section 75-03-17-06 are followed.~~
- e. The facility shall ~~request that a person with lawful authority to act on behalf of the child to assist the facility in the development of~~ develop and implement a youth-guided, family-driven plan of discipline as part of the child's person-centered treatment planning, to include therapeutic interventions, that promote an effective means of discipline. Daily documentation must reflect whether the interventions are effective and if they need revising.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-12. Discharge.

- 1. ~~The decision that a child no longer needs or cannot benefit from the facility's treatment must be made by a discharge committee comprised of three staff or consultants involved in the child's care and treatment and a person with lawful authority to act on behalf of the child.~~ Discharge planning for each child must begin during the admission process. The facility shall develop an evolving discharge plan within thirty days of admission that identifies the child's and family's needed services and supports upon discharge and include the discharge plan in the treatment plan. Prior to discharge, the facility shall complete a discharge plan and coordinate related community services with each child's family, school, and community to ensure continuity of care. The discharge plan must address and include:
 - a. Psychiatric, medical, educational, psychological, social, behavioral, developmental, and chemical dependency treatment needs;
 - b. The reason for discharge;
 - c. A progress report, including an update on the child's psychiatric care and treatment recommendations;

- d. An assessment of community-based service needs for the child and family;
 - e. A statement that the discharge plan recommendations have been reviewed with the child and the person who lawfully may act on behalf of the child;
 - f. The name and title of the individual into whose care the child was discharged.
2. As part of the discharge planning requirements, facilities shall ensure the child has a seven-day supply of needed medication and a written prescription for medication to last through the first outpatient visit in the community with a prescribing provider. Prior to discharge, the facility must identify a prescribing provider in the community and schedule an outpatient visit. The facility shall include documentation of the medication plan and arrangements for the outpatient visit in the medical records in the child's case file. If medication has been used during the child's treatment in the facility but is not needed upon discharge, the reason the medication is being discontinued must be documented in the medical records in the child's case file.
3. The discharge committee shall review and approve each discharge from a facility prior to the discharge. The discharge committee must include the following:
- a. Treating psychiatrist;
 - b. Attending therapist;
 - c. Assigned social worker;
 - d. Facility nurse;
 - e. Facility educator;
 - f. Facility residential staff; and
 - g. A person who lawfully may act on behalf of the child.
- ~~2.~~ 4. The facility shall assist the child and the person with lawful authority to who lawfully may act on behalf of the child in preparing for termination of placement in the facility, whether the move is the transition from residential treatment to return the child home, to a foster family, adoptive family, an institution, or to the home of relatives.
- ~~3.~~ 5. Prior to discharge, the facility shall complete a discharge plan and coordinate facility services and related community services with partial

~~discharge plans with each child's family, school, and community to ensure continuity of care. The plan must include: A child's discharge from the facility may not be based on the child's need for short-term inpatient treatment at a psychiatric facility.~~

- ~~a. A progress report, including an update on the child's psychiatric care and treatment recommendations;~~
- ~~b. The reason for discharge;~~
- ~~c. An assessment of the child's and the family's needs and recommended services;~~
- ~~d. A statement that the discharge plan recommendations have been reviewed with the child and a person with lawful authority to act on behalf of the child;~~
- ~~e. The potential for readmission; and~~
- ~~f. The name and title of the individual to whom the child was discharged.~~

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-13. Responsibility for notification - Elopement of runaway children. When a facility confirms that a child's whereabouts are unknown, the facility shall immediately notify law enforcement officials and the individual who may lawfully act on behalf of the child. The child's return must be reported immediately to law enforcement and the individual who may lawfully act on behalf of the child. The facility shall institute policies and procedures for responding to the elopement of children from the facility.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-14. Employee health qualifications.

1. All personnel, including volunteers and interns, must be in good health and physically and mentally capable of performing assigned tasks.
2. ~~Except as specified in subsection 4, the good physical health of each employee must be verified by~~ All personnel must have a health screening, ~~including that includes~~ a test for tuberculosis, performed by or under the supervision of a physician not more than one year

prior to or thirty days after employment. The individual performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to children of the facility or other staff members.

3. Unless effective measures are taken to prevent transmission, an employee suffering from a serious communicable disease shall be isolated from other employees and children of the facility who have not been infected.
4. Information obtained concerning the medical condition or history of an employee must be collected and maintained on forms and in medical files separate from other forms and files and must be treated as a confidential medical record.
5. The facility shall develop a policy regarding health requirements for volunteers, interns, and student placements that addresses tuberculin testing.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-04, 25-03.2-07

75-03-17-15. Staff to child ratio.

1. The ratio of staff to children during must meet the standards of the facility's accrediting body and be included in the facility's policies and procedures. The facility shall follow the staff to child ratio set by its accrediting body, or the ratios set forth in this subsection require a greater number of staff to children than the ratios set by the accrediting body. The staff to child ratio for waking hours is dependent on the needs of the children and the requirements of the individualized individual person-centered treatment plans, but may not be less than two staff members. At night, night staff must be awake and within hearing distance of children and other staff must be available to be summoned in an emergency.:
 - a. Two direct care staff must be present for one to six residents.
 - b. Three direct care staff must be present for seven to nine residents.
 - c. Four direct care staff must be present for ten to twelve residents.
 - d. Five direct care staff must be present for thirteen to sixteen residents.
2. At night, from 10:30 p.m. until 6:00 a.m., the ratio of staff to children is dependent on the needs of the children and the requirements of the

individualized treatment plans and must meet the minimum standards of the accrediting body. All night staff must be awake and within hearing distance of children and other staff must be available to be summoned in an emergency. Evening and night staff shall perform bedroom checks at a minimum of every fifteen minutes to assure that each child is in his or her assigned room and is safe.

- 2- ~~3.~~ The ratio of professional staff to children is dependent on the needs of the children.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-16. Personnel policies.

1. The facility shall have clearly written personnel policies. The policies must be made available to each employee and must include:
 - a. A staff training and development plan;
 - b. Procedures for reporting suspected child abuse and neglect;
 - c. Procedures for staff evaluation, disciplinary actions, and termination;
 - d. A prohibition of sexual contact between staff and children in accordance with the Prison Rape Elimination Act of 2003 [Pub. L. 108-79];
 - e. Procedures for employee grievances;
 - f. Both oral and written instructions regarding employee responsibility for preserving confidentiality;
 - g. Evaluation procedures that include a written evaluation following the probationary period for new staff and at least annually thereafter; and
 - h. A plan for review of the personnel policies and practices with staff participation at least once every three years, or more often if necessary.
2. A facility operator may not be, and a facility may not employ, in any capacity, that involves or permits contact between the employee and any child of the facility, any individual who has been found guilty of, pled guilty to, or pled no contest to:

- a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; ~~12.1-17, assaults - threats - coercion;~~ ~~or~~ 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ~~North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting - prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or 14-09-22, abuse or neglect of a child;~~
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - ~~b.~~ c. An offense, other than an offense identified in subdivision a or b, if the department, in the case of the facility operator, or the facility, in the case of an employee, determines that the individual has not been sufficiently rehabilitated.
3. A facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement subsection 2.
 4. For purposes of subdivision ~~b~~ c of subsection 2, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
 5. The department has determined that the offenses enumerated in ~~subdivision~~ subdivisions a and b of subsection 2 have a direct bearing on ~~the~~ an individual's ability to serve the public as a facility operator or employee.
 6. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1,

stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

- ~~6.~~ 7. Interns, volunteers, and student placement workers are subject to ~~the provisions of~~ this section.
7. ~~A prospective employee shall consent to and have completed background checks in criminal conviction records and child abuse or neglect records prior to direct care and contact with children residing in the facility.~~
8. a. The facility shall ensure that a prospective employee shall consent to and have completed background checks in criminal conviction records and child abuse or neglect records prior to direct care and contact with children residing in the facility.
- b. All employees of psychiatric residential treatment facilities shall have background checks to determine whether the employee is disqualified from employment under subsection 2.
- ~~8.~~ ~~When a position involves transporting children by motor vehicle, the prospective employee must authorize release of a complete motor vehicle operator's license background report.~~
9. If a prospective employee has previously been employed by one or more group homes, residential child care facilities, or facilities, the facility shall request a reference from all previous group home, residential child care facility, and facility employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.
10. ~~The department may~~ The facility shall perform a background check for reported suspected child abuse or neglect each year on each facility employee. Each employee, including direct care staff, supervisors, administrators, administrative, and facility maintenance staff, shall complete a department-approved authorization for child abuse and neglect background check form no later than the first day of employment and annually thereafter to facilitate the background checks required under this subsection.
11. A facility shall maintain an individual personnel file on each employee. ~~The personnel file~~ which must include:

- a. The application for employment, including a record of previous employment, and the applicant's answer to the question, "Have you been convicted of a crime?";
 - b. Annual performance evaluations;
 - c. Annual staff development and training records, including first-aid training, cardiopulmonary resuscitation training, universal infection control precautions training, and therapeutic crisis intervention or crisis prevention intervention training records. "Record" means documentation, including with respect to development or training presentations the:
 - (1) Name of presenter;
 - (2) Date of presentation;
 - (3) Length of presentation; and
 - (4) Topic of presentation;
 - d. Results of background checks for criminal conviction records, motor vehicle violations, and child abuse or neglect records;
 - e. Any other evaluation or background check deemed necessary by the administrator of the facility;
 - f. Documentation of the existence of any license or qualification for position or the tasks assigned to the employee; and
 - g. All direct care staff not currently under orientation status must have satisfactorily completed first aid, therapeutic crisis intervention or crisis prevention intervention, universal infection control precautions, and cardiopulmonary resuscitation and have on file at the facility a certificate of completion.
12. ~~A facility shall maintain an individual personnel file on each volunteer, student, and intern. The personnel file must include:~~
- ~~a. Personal identification information; and~~
 - ~~b. Results of background checks for criminal conviction records, motor vehicle violations, and child abuse or neglect records.~~
12. a. A facility shall maintain an individual personnel file on each volunteer, student, and interim which must include:
- (1) Personal identification information; and

(2) Results of background checks for criminal conviction records, motor vehicle violations, and child abuse or neglect records.

b. When a position involves transporting children by motor vehicle, the prospective employee must authorize release of a complete motor vehicle operator's license background report.

13. The facility shall adopt a policy regarding the retention of personnel records.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-16.1. Child abuse and neglect reporting.

1. All facility employees, interns, volunteers, and student placement workers shall certify having read the law requiring the reporting of suspected child abuse or neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect reporting procedures.
2. The facility shall adopt written procedures requiring an employee to report cases of suspected child abuse and neglect. The procedures must include the following statements:

All employers shall comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. It is the policy of this facility that an employee who knows or reasonably suspects that a child in residence has been, or appears to have been, harmed in health or welfare as a result of abuse, neglect, or sexual molestation shall immediately report this information to the regional human service center in the region in which the facility is located.

Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment and referral of the employee to the office of the state's attorney for investigation of possible criminal violation.

3. The facility's procedure must address:
 - a. To whom a report is made;
 - b. When a report must be made;
 - c. The contents of the report;
 - d. The responsibility of each individual in the reporting chain;

- e. The status of an employee who is the alleged perpetrator subject of a report pending assessment, administrative proceeding, or criminal proceeding;
 - f. The discipline of an employee who is the perpetrator subject of a decision that services are required or a determination that institutional child abuse or neglect is indicated, up to and including termination; and
 - g. The status and discipline of an employee who fails to report suspected child abuse or neglect.
4. The facility shall cooperate fully with the department throughout the course of an investigation of an allegation of child abuse or neglect concerning care furnished to a child. The facility shall, at a minimum, provide the investigators or reviewers with all documents and records available to the facility and reasonably relevant to the investigation, and shall permit confidential interviews with both staff and children.
 5. The facility shall notify the licenser in writing of an "indicated" finding by the state institutional child protection team that includes the corrective action that the facility has taken, or plans to take, to comply with the institutional child protection team's recommendations within thirty days of the written notification of the institutional child protection team's findings.

History: Effective September 1, 1998; amended effective April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-18. Safety, buildings, and grounds.

1. **Compliance with fire, sanitation, and zoning standards.** An applicant shall demonstrate compliance with applicable state or local fire, sanitation, and zoning standards. The premises to be used must be in fit, safe, and sanitary condition and properly equipped to provide good care and treatment.
 - a. Fire. For fire safety, the facility shall meet the applicable life safety standards established by the city. If the city has not established life safety standards, the facility shall comply with chapter 21 of the Life Safety Code of the national fire protection association, 1985 edition, and amendments thereto.
 - (1) Compliance is shown by submitting the written report of an authorized fire inspector, following an initial or subsequent inspection of a building which states the:

- (a) Rated occupancy and approval of the building for occupancy; or
 - (b) Existing hazards, and recommendations for correction which, if followed, would result in approval of the building for occupancy.
- (2) All electrical and heating equipment must be approved by underwriters laboratories, incorporated, or another nationally recognized testing laboratory.
- b. Sanitation. Compliance with sanitation standards is shown by submitting a statement prepared by a licensed environmental health professional or authorized public health officer, following an initial or subsequent annual inspection, that the building's plumbing, sewer disposal, water supply, milk supply, and food storage and handling comply with the applicable rules of the state department of health.
 - c. Zoning. Compliance with zoning requirements is shown by submitting a statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances.

2. **Safety.** Safety requirements of a facility must include:

- a. Prohibition of smoking on the premises;
- b. Procedures for water safety where swimming facilities are on the grounds;
- c. A copy of the Red Cross manual on first-aid measures, or a book of its equivalent, and first-aid supplies;
- d. Prohibiting a child's possession and use of any firearms while at the facility;
- e. Advising children of emergency and evacuation procedures upon admission and thereafter every two months;
- f. Training in properly reporting a fire, in extinguishing a fire, and in evacuation from the building in case of fire. Fire drills must be held monthly. Fire extinguishers must be provided and maintained throughout each building in accordance with standards of the state fire marshal; and
- g. Telephones with emergency numbers posted by each telephone in all buildings that house children.

3. **Buildings and grounds.** The facility must have sufficient outdoor recreational space, and the facility's buildings must meet the following standards:
 - a. Bedrooms. Each child must have eighty square feet [7.43 square meters] in a single sleeping room, and sixty square feet [5.57 square meters] per individual in a multiple occupancy sleeping room; the child's own bed, and bed covering in good condition; and a private area to store the child's personal belongings. A facility may not permit more than two children in each sleeping room; children to sleep in basements or attics; nonambulatory children to sleep above the first floor; and a child to share a bedroom with a child of the opposite sex.
 - b. Bathrooms. The facility's bathroom facilities must have an adequate supply of hot and cold water; be maintained in a sanitary condition; have separate toilet and bath facilities for male and female children, and employees; and have one bathroom that contains a toilet, washbasin, and tub or shower with hot and cold water for every four children.
 - c. Dining and living rooms must have suitably equipped furnishings designed for use by children within the age range of children served by the facility.
 - d. The facility shall provide sufficient space for indoor quiet play and active group play.
 - e. ~~Adequate~~ The facility shall provide adequate heating, lighting, and ventilation ~~must be provided.~~
 - f. Staff quarters must be separate from those of children, although near enough to assure proper supervision of children.
 - g. A facility shall provide a quiet area for studying.
 - h. A facility shall lock all outbuildings on the property at all times when not in use by facility staff.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-20. Rights and obligations of the applicant.

1. **Right to apply for license.** An applicant has the right to apply to receive a license to operate a facility under this chapter.

2. **Entry and inspection.** ~~The applicant shall allow authorized representatives of the department to enter any of the applicant's buildings or facilities in order to determine the extent to which the applicant is in compliance with the rules of the department, to verify information submitted with an application for licensure or license renewal, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the facility unless the effectiveness of the inspection would be substantially diminished by prearrangement.~~
 - a. The department may evaluate a facility's compliance with this chapter at any time through:
 - (1) An announced or unannounced onsite review; or
 - (2) A request for written documentation verifying compliance.
 - b. The applicant shall allow authorized representatives of the department to enter any of the applicant's buildings or facilities to determine the extent to which the applicant is in compliance with the rules of the department, to verify information submitted with an application for licensure or license renewal, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the facility unless the effectiveness of the inspection would be substantially diminished by prearrangement.
3. **Access to records.** The applicant shall allow duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department.
4. **Denial of access to facilities and records.** Any applicant or licensee which denies access, by the authorized representative of the department, to a facility or records for the purpose of determining the applicant's or licensee's state of compliance with the rules of the department shall have its license revoked or application denied.
5. **License refusal or revocation.** Failure to comply with any of the standards of this chapter or other state law or regulation is cause for refusal or revocation of a license. Conviction of an offense by an owner or operator of a facility does not disqualify the facility from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a psychiatric residential treatment facility for children or that, following conviction of any offense, the person is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.

6. **Appeal.** An applicant may appeal a license denial in accordance with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code chapter 75-01-03.
7. **Deemed status.** The department ~~recognizes~~ may recognize "deemed status" for those providers who are accredited by nationally recognized bodies who review and certify providers of psychiatric residential treatment services for children. When applying for licensure or licensure renewal, proof of accreditation or "deemed status" in the form of the accreditation agency's most recent review and certification must be submitted to the department. "Deemed status" means status conferred on a program accredited by a national accreditation body based on standards that exceed the standards set forth in these licensure rules.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-02, 25-03.2-03, 25-03.2-07, 25-03.2-08, 25-03.2-09

75-03-17-21. Increase or decrease in the number of licensed beds in a facility.

1. A facility may not increase or decrease bed capacity without approval of the department. A facility requesting a bed capacity change shall submit a request to the department licensor. To qualify for an increase, a facility must:
 - a. Be in compliance with this chapter.
 - b. Submit a plan for the use of its beds.
2. The department shall review the facility's request and may approve or deny the request considering the programming need for the beds and the number of beds available.

History: Effective April 1, 2014.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03.1

CHAPTER 75-09.1-10
LICENSING AND TREATMENT STANDARDS FOR OPIOID TREATMENT PROGRAMS

<u>Section</u>	
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<u>75-09.1-10-07</u>	<u>Opioid Treatment Program Requirements</u>
<u>75-09.1-10-08</u>	<u>Care of Adolescents in Opioid Treatment Program</u>
<u>75-09.1-10-09</u>	<u>Treatment</u>
<u>75-09.1-10-10</u>	<u>Opioid Treatment Program Administrative Organization and Responsibilities</u>
<u>75-09.1-10-11</u>	<u>Facility and Clinical Environment</u>
<u>75-09.1-10-12</u>	<u>Risk Management</u>
<u>75-09.1-10-13</u>	<u>Opioid Treatment Program Closure</u>
<u>75-09.1-10-14</u>	<u>Diversion Control</u>
<u>75-09.1-10-15</u>	<u>Medical and Behavioral Standards</u>

75-09.1-10-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Accreditation" means the process of review and acceptance by an accreditation body.
2. "Accreditation body" means a body that has been approved by the administration under title 42, Code of Federal Regulations, part 8 to accredit opioid treatment programs using opioid agonist treatment medications.
3. "Administration" means the substance abuse and mental health services administration of the United States department of health and human services.
4. "Certification" means the process by which the administration determines that an opioid treatment program is qualified to provide opioid treatment under federal opioid treatment standards.
5. "Certification application" means the application filed by an opioid treatment program for purposes of obtaining certification from the administration, as described in title 42, Code of Federal Regulations, part 8.
6. "Center" means the center for substance abuse treatment within the administration which promotes the quality and availability of

community-based substance abuse treatment services to which the administration has delegated certain responsibilities for the certification of opioid treatment programs.

7. "Critical incident" means an event that could have a negative impact on a patient, a patient's family members, or the opioid treatment program or its staff, including an event that involves the loss of life or function, a serious physical or psychological injury, and a medication error.
8. "Detoxification treatment" means the dispensing of an opioid agonist treatment medication in decreasing doses to a patient to alleviate adverse physical or psychological effects incident to withdrawal from the continuous or sustained use of an opioid and to bring the patient to a drug-free state.
9. "Department" means the North Dakota department of human services.
10. "Division" means the division of mental health and substance abuse services of the department.
11. "Division of pharmacologic therapies" means a division of the center, which manages the day-to-day regulatory oversight activities, including supporting the certification and accreditation of opioid treatment programs, necessary to implement title 42, Code of Federal Regulations, part 8, on the use of opioid agonist medications.
12. "Federal opioid treatment standards" means the standards in title 42, Code of Federal Regulations, part 8 that are used to determine whether an opioid treatment program is qualified to engage in opioid treatment and that set forth patient admission criteria.
13. "Health care professional" means a physician assistant or an advanced practice registered nurse working under the medical director's supervision.
14. "Long-term detoxification treatment" means detoxification treatment for longer than thirty days but not in excess of one hundred eighty days.
15. "Maintenance treatment" means the dispensing of an opioid agonist treatment medication at stable dosage levels for a period in excess of thirty days in the treatment of an individual for opioid use disorder.
16. "Medical and rehabilitative services" means services, such as medical evaluations, counseling, and rehabilitative and other social programs such as vocational and educational guidance, and employment placement, intended to help a patient become and remain a productive member of society.

17. "Medical director" means a physician, licensed to practice medicine in the state, who assumes responsibility for administering all medical services performed by the opioid treatment program by whom the medical director is employed, either by performing the services directly or by delegating specific responsibility to authorized opioid treatment program physicians and health care professionals functioning under the medical director's direct supervision.
18. "Medication unit" means a facility established as part of, but geographically separate from, an opioid treatment program from which licensed private medical practitioners or pharmacists dispense or administer an opioid agonist treatment medication or collect biological specimen samples for drug testing or analysis.
19. "Opioid use disorder" reflects compulsive, prolonged self-administration of opioid substances that are used for no legitimate medical purpose or, if another medical condition is present that requires opioid treatment, that are used in doses greatly in excess of the amount needed for that medical condition.
20. "Opioid agonist treatment medication" means any opioid agonist drug that is approved by the United States food and drug administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid use disorder.
21. "Opioid" means any drug with the natural derivative of opium or synthetic psychoactive substance similar to morphine with capability to create physical dependence.
22. "Opioid treatment" means the dispensing of an opioid agonist treatment medication, and the provision of a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological or physical effects of an opioid use disorder.
23. "Opioid treatment program" means a program engaged in opioid treatment, which is:
 - a. Certified as an opioid treatment program by the center;
 - b. Registered by the United States department of justice, drug enforcement administration under 21 U.S.C. section 823(g);
 - c. Accredited by an opioid treatment program accreditation body; and
 - d. Licensed as an opioid treatment program by the division.
24. "Patient" means an individual who undergoes treatment in an opioid treatment program.

25. "Program sponsor" means the person named in the application for certification under title 42, Code of Federal Regulations, part 8 as responsible for the operation of the opioid treatment program.
26. "Short-term detoxification treatment" means detoxification treatment for a period not in excess of thirty days.
27. "Treatment plan" means a plan that outlines for each patient attainable short-term treatment goals that are mutually acceptable to the patient and the opioid treatment program and which specifies the services to be provided and the frequency and schedule for their provision.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-02. Requirements for opioid treatment program license - Application.

1. An applicant for licensure to operate an opioid treatment program, must hold a current license in good standing, or be eligible and become licensed prior to operating an opioid treatment program, as a substance abuse treatment program under any of the following chapters: 75-09.1-02, 75-09.1-02.1, 75-09.1-03, 75-09.1-03.1, 75-09.1-04, 75-09.1-04.1, 75-09.1-05, 75-09.1-05.1, 75-09.1-06, 75-09.1-06.1, 75-09.1-07, or 75-09.1-07.1. Chapter 75-09.1-01 applies to this chapter with the following exceptions:
 - a. Section 75-09.1-01-20. Discharge and transfer criteria.
 - b. Section 75-09.1-01-25. Accreditation as a basis for licensing.
 - c. Section 75-09.1-01-26. Sanctions.
2. Prior to applying for a license to operate an opioid treatment program in this state, a prospective opioid treatment program provider shall provide documentation proving the need for an opioid treatment program in the specific area of the state being considered, and shall obtain written approval from the division to pursue licensure. The potential provider's documentation must include an assessment of the following criteria:
 - a. Whether other existing services and facilities of the type proposed are available or accessible to meet the needs of the population proposed to be served.
 - b. The extent to which the underserved need will be met adequately by the proposed program.

- c. The impact of the service on the ability of low-income persons, racial and ethnic minorities, women, persons with disabilities, the elderly, and other underserved groups to obtain needed health care.
- 3. If the applicant is applying for licensure for the first time in this state, but operates an opioid treatment program in another state, the applicant shall submit a copy of national and state certification and accreditation documentation, and copies of all survey reports written by national and state certification and accreditation organizations for each site where they have operated an opioid treatment program over the past six years.
- 4. After receiving approval, the prospective opioid treatment program shall obtain:
 - a. Accreditation by an accreditation body.
 - b. Certification from the United States department of health and human services substance abuse and mental health services administration. An opioid treatment program that has applied to the administration for provisional certification while the opioid treatment program is working towards accreditation with an accrediting body may apply for licensure under this chapter.
 - c. Registration from the United States department of justice, drug enforcement administration, office of diversion control.
 - d. As determined necessary for any physician with the opioid treatment program, a data 2000 waiver for buprenorphine.
- 5. A potential opioid treatment program shall:
 - a. Submit documentation to the division showing the potential opioid treatment program provider has completed an assessment of need to determine there is a need for the proposed opioid treatment program as required under subsection 2.
 - b. Provide documentation ensuring the location for the new opioid treatment program meets county, tribal, or city land use ordinances.
 - c. Submit a completed community relations plan developed in consultation with the county, city, or tribal authority, or their designees, to minimize the impact of the opioid treatment program on the business and residential neighborhoods in which the program will be located. The plan must include documentation of strategies used to:
 - (1) Obtain community input regarding the proposed location:

- (2) Address any concerns identified by the community; and
 - (3) Develop an ongoing community relations plan to address new concerns expressed by the community as the concerns arise.
 - d. Submit a copy of the application for registration to the United States department of justice, drug enforcement administration.
 - e. Submit a copy of the application for certification to the center.
 - f. Submit a copy of the application for accreditation by an accreditation body.
 - g. Submit a plan describing reasonable transportation opportunities available to persons in need of treatment in their proposed service area to access the opioid treatment program.
 - h. Submit any additional information required by the division to assure the state and efficient operation of the facility.
6. An opioid treatment program shall enroll as an approved Medicaid provider in this state within ninety days of licensure under these rules.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-03. Denial of application for opioid treatment program license.

- 1. The division shall deny an applicant's license:
 - a. When it fails to meet the requirements of section 75-09.1-10-02.
 - b. If the applicant has been denied, or has had revoked, the registration, accreditation, or certification required to be an opioid treatment program as set forth in subsection 22 of section 75-09.1-10-01.
 - c. If any of the following occurred and was not resolved at a facility under the control of the applicant:
 - (1) A license for a substance use disorder treatment service or health care agency was denied, revoked, or suspended in the past;
 - (2) Found to have discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;

- (3) Misappropriation of patient property or resources;
- (4) Failed to meet financial obligations or contracted service commitments that affected patient care;
- (5) Has a history of noncompliance with state or federal regulations in providing substance abuse treatment;
- (6) Refused to allow the division access to records, files, books, or portions of the premises relating to operation of the substance abuse treatment program;
- (7) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;
- (8) Advertised itself as licensed when a license has not been issued, or a license has been suspended or revoked; or
- (9) Has not demonstrated the capability to provide the appropriate services to assist patients in meeting goals, including:
 - (a) Abstinence from opioids and opioid substitutes;
 - (b) Obtaining mental health treatment;
 - (c) Improving economic independence; and
 - (d) Reducing adverse consequences associated with illegal use of controlled substances.

d. If an owner or administrator of a facility under the control of the applicant:

- (1) Has been convicted of child abuse or has been adjudicated as a perpetrator of child abuse;
- (2) Has obtained or attempted to obtain a substance abuse treatment program license or health care provider license by fraudulent means or misrepresentation;
- (3) Has been found guilty of, has pled guilty to, or has pled no contest to any of the offenses identified in paragraph 1 of subdivision c of subsection 1 of section 75-09.1-01-17;
- (4) Has been found to have discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;

- (5) Has misappropriated patient property or resources;
- (6) Has failed to meet financial obligations or contracted service commitments that affect patient care;
- (7) Has knowingly, or with reason to know, made a false statement of fact in the application or materials attached to the application;
- (8) Has knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in any matter under investigation by the division; or
- (9) Does not meet criminal background check requirements.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-04. Issuing license to opioid treatment program. The division shall issue a license after a review of application materials and an onsite visit confirms the applicant has the capacity to operate in compliance with this chapter. The division may issue an initial license for up to one year and subsequent licenses for up to two years.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-05. Suspension and revocation of license - Appeal.

1. a. The division may suspend or revoke a license for one or more of the following reasons:
 - (1) The opioid treatment program has violated any of the opioid treatment program licensing rules;
 - (2) The opioid treatment program has procured any license through fraud or deceit;
 - (3) The department, or any other state agency, has revoked any other license issued to the opioid treatment program;
 - (4) Any principal of the opioid treatment program has been found guilty of, has pled guilty to, or has pled no contest to any of the offenses identified in paragraph 1 of subdivision c of subsection 1 of section 75-09.1-01-17;

- (5) The opioid treatment program has failed to report any important change in the information about a project as required;
 - (6) The opioid treatment program has failed to operate in accordance with the representations made in its application;
 - (7) The opioid treatment program has failed to operate in compliance with any applicable law, rule, or regulation;
 - (8) The opioid treatment program ceases to provide, or within one hundred eighty days from the date the license takes effect fails to commence to provide, the services it is authorized to provide.
- b. The division shall provide the opioid treatment program written notice of which of the following actions is being taken and the basis for that action:
 - (1) Revocation of the operating license, without which the opioid treatment program may no longer operate;
 - (2) Suspension of the operating license, during which time, the opioid treatment program may not continue its operations;
 - (3) Limitation placed on the license temporarily or permanently prohibiting the opioid treatment program from operating certain identified programs or services, reducing the number of beds, restricting the number or types of patients served or imposing any other limitation determined appropriate by the division.
2. If an inspection of the opioid treatment program identifies that an opioid treatment program is not in compliance with any of the licensure requirements set forth by the division, the division shall notify the opioid treatment program in writing of the deficiencies identified.
3. The opioid treatment program shall respond to the notification of deficiencies within the time the division sets forth in the notice. The opioid treatment program shall include in its response a plan for the correction of the identified deficiencies or an explanation for its deviation from licensure requirements.
4. If the opioid treatment program fails to correct deficiencies or fails to provide a sufficient explanation for its failure to take action, the division may suspend or revoke the opioid treatment program's license or may require other corrective measures from the opioid treatment program. The division shall notify the opioid treatment program in writing of the action being taken.

5. If there are reasonable grounds for the division to believe that continued operation of the opioid treatment program presents an immediate danger to the health and welfare of the public or any person receiving services, the division may immediately suspend a license.
6. An opioid treatment program may request a hearing regarding any suspension, revocation, or limitation as provided in section 75-09.1-01-27.
7. If a license is revoked, the division may consider a new application for a license if the conditions upon which the revocations were based have been corrected and evidence of the corrections has been provided. A new license may be issued after the division has inspected the opioid treatment program and has found that the applicant has complied with all requirements for licensure.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-06. Subsequent licensing inspection and review. The division shall conduct licensure reviews of each licensed opioid treatment program at least once per year, with or without prior notice. The division shall inspect the opioid treatment program's services for compliance with all licensure requirements to determine the renewal term of the license. At the time of inspection, the opioid treatment program must have:

1. Maintained accreditation through an accreditation body;
2. Maintained certification from the administration;
3. Maintained registration with the United States department of justice, drug enforcement administration;
4. Maintained licensure as a substance abuse treatment program under any of the following chapters: 75-09.1-02, 75-09.1-02.1, 75-09.1-03, 75-09.1-03.1, 75-09.1-04, 75-09.1-04.1, 75-09.1-05, 75-09.1-05.1, 75-09.1-06, 75- 09.1-06.1, 75-09.1-07, and 75-09.1-07.1;
5. Must not have had any of the following occur without being resolved at a facility under the control of the applicant:
 - a. The facility's license for a substance abuse treatment program or health care agency denied, revoked, or suspended and was not reinstated without restrictions or limitations;
 - b. A finding that the facility discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;

- c. Misappropriation of patient property or resources:
 - d. Failure to meet financial obligations or contracted service commitments which affected patient care:
 - e. Noncompliance with state or federal regulations in providing substance abuse treatment:
 - f. Refusal to allow the division access to records, files, books, or portions of the premises relating to operation of the substance abuse treatment program:
 - g. Willful interference with the preservation of material information or attempt to impede the work of an authorized department representative:
 - h. The facility advertised itself as licensed when a license has not been issued, or a license has been suspended or revoked; or
 - i. Failure to demonstrate the capability to provide the appropriate services to assist patients in meeting goals, including:
 - (1) Abstinence from opioids and opioid substitutes:
 - (2) Obtaining mental health treatment:
 - (3) Improving economic independence; and
 - (4) Reducing adverse consequences associated with illegal use of controlled substances.
6. Must not have had an owner or administrator of a facility under the control of the applicant:
- a. Be convicted of child abuse or be adjudicated as a perpetrator of child abuse:
 - b. Has obtained or attempted to obtain a health care provider license or substance abuse treatment program license by fraudulent means or misrepresentation:
 - c. Found guilty of, plead guilty to, or plead no contest to any of the offenses identified in paragraph 1 of subdivision c of subsection 1 of section 75-09.1-01-17:
 - d. Found to have discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient:

- e. Misappropriate patient property or resources:
- f. Fail to meet financial obligations or contracted service commitments in a way that affected patient care:
- g. Knowingly, or with reason to know, made a false statement of fact in the application or materials attached to the application:
- h. Knowingly, or with reason to know, made a false statement of fact or fail to submit necessary information in any matter under investigation by the division: or
- i. Not meet criminal background check requirements.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-07. Opioid treatment program requirements. All licensed opioid treatment programs must comply with the following:

1. Patients must receive appropriate, comprehensive behavioral therapy from a licensed clinical professional, such as a licensed addiction counselor, a licensed independent clinical social worker, a licensed psychologist, or a licensed psychiatrist who is providing intervention beyond pharmacological management.
2. The opioid treatment program may continue medication-assisted treatment as long as the patient derives benefit from the treatment, desires to continue treatment and the physician or health care professional agrees to continue the treatment. A fixed length of time in treatment is not required as indefinite medication-assisted treatment may be clinically indicated. The medical director shall consider other medications during the course of treatment.
3. Federally approved pharmacological treatments for opioid addiction may be dispensed only by a licensed opioid treatment program.
4. The opioid treatment program shall establish comprehensive education and training requirements for physicians and other health care professionals, pharmacists, and licensed alcohol and drug abuse and behavioral health counselors affiliated with the opioid treatment program, which include relevant aspects of behavioral therapy and pharmacological treatment.
5. The opioid treatment program shall establish written rules of conduct for patients, which include a clear description of violations that may result in a patient's discharge from the treatment program. These rules

must require a patient to participate in urinalysis as the opioid treatment program may direct.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-08. Care of adolescents in opioid treatment program. For a patient younger than eighteen years of age to be eligible for maintenance treatment in the opioid treatment program, the patient is required to have had two documented attempts at short-term detoxification treatment or drug-free treatment within a 12-month period. The program physician or other health care professional shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic drugs. A patient under eighteen years of age may not be admitted to a maintenance treatment program unless a parent, legal guardian, or other person authorized by law to consent to treatment for the patient completes and signs consent form, "Form FDA 2635 Consent to Methadone Treatment".

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-09. Treatment.

1. The opioid treatment program shall ensure the clinical assessment of each patient takes into account the patient's history of opioid addiction.
2. At all stages of treatment, psychosocial and medical treatment must be of sufficient intensity and duration to be effective.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-10. Opioid treatment program administrative organization and responsibilities.

1. Each opioid treatment program shall develop a referral and consultative relationship with a network of agencies and providers capable of providing primary and specialty services for the range of behavioral difficulties, psychiatric comorbid conditions, medical complications, and communicable diseases that may be part of a patient's treatment needs. Any information exchanged across this network must facilitate treatment and protect patient privacy, consistent with the Health Insurance Portability and Accountability Act, and title 42, Code of Federal Regulations, part 2.

2. Each opioid treatment program shall create a written statement of its mission and goals for patient care.
3. An opioid treatment program shall maintain individualized personnel files as a record of employment. These files must contain employment and credentialing data, employment application data, date of employment, updated licensing and credentialing data, detailed job descriptions, performance evaluations, and appropriate training records.
4. An opioid treatment program shall require a criminal history record investigation as set forth under section 75-09.1-01-17 for an employee prior to allowing the employee to work with either adult or adolescent patients.
5. An opioid treatment program shall complete outcomes and data reports as requested by the division.
6. An opioid treatment program shall utilize the prescription drug monitoring program at least monthly for each patient.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-11. Facility and clinical environment.

1. Each opioid treatment program shall ensure that its facility:
 - a. Has sufficient space and adequate equipment for the provision of services, including diagnosis, evaluation, and treatment of other medical, psychiatric, and behavioral disorders, if they are to be provided onsite.
 - b. Is clean and well-maintained.
2. Each opioid treatment program shall ensure protection of patient confidentiality, in accordance with federal and state confidentiality requirements.
3. The program sponsor is the responsible party and assumes responsibility for all of the opioid treatment program's employees, including a practitioner, agent, or other person providing medical, rehabilitative, or counseling services at the opioid treatment program or any of its medication units. The program sponsor need not be a licensed physician but shall employ a licensed physician in the position of medical director. An opioid treatment program shall submit a proposed change in its program sponsor to the division for approval at least sixty days prior to the effective date of the proposed change.

4. The medical director of an opioid treatment program is responsible for monitoring and supervising all medical services provided by the program. Only a licensed physician may serve as the medical director of an opioid treatment program. If there is a change in medical director, the opioid treatment program shall notify the division in writing within thirty days of the change.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-12. Risk management.

1. Each opioid treatment program shall:
 - a. Establish procedures to guard against critical incidents.
 - b. Provide a mechanism to address patient emergencies by establishing an emergency contact system, as appropriate within confidentiality requirements.
 - c. Ensure that there are staff members on duty who are trained and proficient in cardiopulmonary resuscitation, management of opioid overdose, medical emergencies, and other techniques as appropriate.
 - d. Establish and regularly update policies and procedures which address safety and security issues for patients and staff, including training for staff to handle physical or verbal threats, acts of violence, inappropriate behavior, and other escalating and potentially dangerous situations, especially those in which security guards or police need to be summoned.
 - e. Shall provide information to patients on an ongoing basis, on the risks of discontinuing services, and on the potential consequences of using other substances.
 - f. Establish a policy on creation and use of individualized induction and dosing schedules for each patient.
 - g. Establish a policy for patients to take home medication for unsupervised use.
2. Each opioid treatment program shall create and maintain a plan for continuity of care for patients, including emergency procedures for obtaining access to medications in case of temporary program closure during service disruptions, such as those that may occur due to a major disaster or a more routine event, such as a snow storm. Each opioid treatment program shall develop and maintain an electronic database

consisting of client identification, emergency contact information, patient's current dose, last date medication administered, and number of take-home doses allowed as part of the patient's plan and must include a mechanism for informing each patient of the emergency arrangements. If there is a service disruption, the opioid treatment program shall implement its emergency plan and shall forward its database and plan to the division.

3. Each opioid treatment program shall:
 - a. Develop procedures for reporting critical incidents to appropriate opioid treatment program staff, to the facility's accrediting body, and to the division within twenty-four hours of the critical incident.
 - b. Establish procedures to ensure:
 - (1) Full documentation of each critical incident.
 - (2) Prompt investigation and review of the situation surrounding each critical incident.
 - (3) Implementation of timely and appropriate corrective action.
 - (4) Corrective actions are monitored until their effectiveness is assured.
 - (5) Medication is dispensed safely if a patient presents with concerning behavioral or medical signs and symptoms.
4. If a patient chooses to discontinue services against medical advice, the opioid treatment program shall explain the risks of discontinuing services and offer information about, and referral to, alternative treatment options.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-13. Opioid treatment program closures. If an opioid treatment program closes involuntarily or voluntarily, the opioid treatment program shall:

1. Provide the division with a plan detailing procedures to ensure continuity of care for patients. The plan must include steps for the orderly transfer of patients, records, and assets to other programs or practitioners to:
 - a. Assure appropriate referral of patients to avoid disruption in patient care;
 - b. Preserve the confidentiality of patient records; and

- c. Ensure appropriate access to financial records and accounts.
- 2. The opioid treatment program shall notify the division of the anticipated closure at least ninety days prior to the closure, and identify the rationale for closure and the efforts to establish continuity of care for the patients. An opioid treatment program experiencing difficulties in maintaining its operations shall exercise due diligence to ensure patients have access to reasonable care upon the opioid treatment program's closure.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-14. Diversion control. Each opioid treatment program shall develop:

- 1. A diversion control plan that demonstrates accountability to its patients and to the community. The diversion control plan should reflect the efficient use of personnel and other resources to achieve the highest quality of patient care, while reducing possibilities for diversion of controlled substances from legitimate treatment to illicit use.
- 2. Each opioid treatment program shall inform its patients that diversion will be reported to law enforcement and the division and shall indicate how suspicions or evidence of diversion will be handled clinically. Each opioid treatment program shall establish clinical procedures to minimize diversion risk to ensure appropriate treatment, such as:
 - a. Routine toxicology screens;
 - b. Pill call backs for counting;
 - c. Bubble packing of prescriptions; and
 - d. Making copies of the identification numbers listed on the "strip" packaging to be available for call backs.
- 3. Each opioid treatment program shall:
 - a. Provide regular and continuous staff education.
 - b. Review program policies and procedures at least annually.

- c. Adhere to universal or standard infection control precautions promulgated by the centers for disease control and prevention.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

75-09.1-10-15. Medical and behavioral health standards.

- 1. a. A physician or other health care professional for the opioid treatment program must diagnose opioid use disorder for an individual to be admitted for opioid treatment. The physician or other health care professional shall document or cosign the diagnosis, and admit each patient to maintenance treatment or detoxification treatment, as medically necessary. If pharmacological treatment is medically appropriate and prior to prescribing methadone, the physician or other health care professional shall assess whether it is appropriate to treat the patient with buprenorphine.
- b. An individual must have a one-year history of addiction to be admitted to a maintenance treatment program. An individual with less than a one-year history of dependence may be admitted to undergo detoxification treatment. The absence of current physiological dependence is not an exclusion criterion; admission is acceptable when clinically justified. An opioid treatment program may accept arrest and medical records, information from significant others and relatives, and other information as documentation of the one-year history of addiction.
- c. An opioid treatment program may waive the requirement that the individual have a one-year history of active addiction for an individual with a history of narcotic dependence who does not have current or active use, as a result of being released from a penal institution or having been previously treated.
- d. A physician or other health care professional shall assess and review assessment results with each patient before the patient is approved for treatment with an opioid agonist treatment medication. If the physician or other health care professional determines admission of an individual is an emergency, the physician or other health care professional may review a medical examination performed by another qualified health care professional to make the required diagnosis that would allow admission of the individual, provided the physician or other health care professional reviews and countersigns the patient record within seventy-two hours of the patient's admission. The physician or other health care professional would subsequently review the

assessment with the patient and discuss the medical services to be provided.

e. An opioid treatment program shall make an intravenous drug injecting individual or a pregnant woman a priority when prioritizing individuals for admission.

2. At a minimum, an opioid treatment program shall provide each patient with the following:

a. A comprehensive physical examination of the patient, including a review of health history, identification of other chronic or acute health conditions, current objective measures of health, pregnancy status of female patients, and laboratory work determined to be medically appropriate by a physician or other health care professional.

b. Based on the individual's history and physical examination, an evaluation of the possibility of infectious disease, liver or pulmonary conditions, cardiac abnormalities, psychiatric problems, dermatologic sequelae of addiction, and possible concurrent surgical and other problems.

3. An opioid treatment program shall:

a. Obtain voluntary, written, program-specific informed consent to treatment from each patient at admission, and written releases of information for all ancillary providers.

b. Inform each patient about all relevant treatment procedures and services and about other policies and regulations throughout the course of the patient's treatment.

c. Obtain, before medicating a patient, voluntary, written, informed consent from the patient to the specific pharmacotherapy ordered by the physician or other health care professional.

d. Inform each patient that:

(1) The goal of medication-assisted treatment is stabilizing of the patient's functioning.

(2) At periodic intervals of the patient's present level of functioning, course of treatment, and future goals, without placing pressure on the patient to withdraw from opioid agonist treatment medication or to remain on maintenance treatment unless the physician or other health care professional determines the proposed action to be medically indicated.

- e. Inform each patient, at admission, about specific requirements and program policies regarding the report of suspected child abuse and neglect, danger of harm to self or others or both, abuse or neglect of a vulnerable individual, and other behaviors having negative impact on the patient or others.
 - f. Adhere to all requirements of federal confidentiality regulations, including the Health Insurance Portability and Accountability Act (Public Law 104-191; 110 Stat. 1936).
4. a. The medical director or other health care professional of an opioid treatment program shall refer a patient for medical or psychiatric treatment when the medical director or other health care professional determines it to be appropriate.
- b. An opioid treatment program shall retain a patient in opioid treatment as long as treatment is clinically appropriate, medically necessary, acceptable to the patient, and the patient is considered to be adherent with the established rules of the program.
- c. (1) When a patient relocates, transfers to another treatment program, or needs temporary care at another program, the original opioid treatment program shall ensure the patient makes as smooth a transition as is feasible, and when possible shall avoid interruptions in treatment that could lead to relapse.
- (2) The original opioid treatment program shall forward relevant records to the receiving opioid treatment program, with patient consent in accordance with the privacy standards of title 42, Code of Federal Regulations, part 2.
- d. The opioid treatment program shall continue to provide psychosocial treatment for a patient who elects to discontinue pharmacotherapy. The opioid treatment program may continue to offer treatment, or referrals for continued psychosocial supports to patients as needed.
5. An opioid treatment program shall retain all records required by title 42, Code of Federal Regulations, part 8.12 for a minimum of seven years from the last date of service.
- a. An opioid treatment program is required under title 42, Code of Federal Regulations, part 8.11(f)(3) to comply with confidentiality requirements set forth under title 42, Code of Federal Regulations, part 2.
- b. A physician or other appropriate health care professional with the opioid treatment program shall write each medication order and

dosage change on an acceptable order sheet and shall sign the sheet.

(1) Appropriate staff of the opioid treatment program shall make a record of each dosage the opioid treatment program dispenses, prepares, or receives and shall sign each entry to ensure a perpetual and accurate inventory of all medications and prescriptions, including controlled substances in stock at all times.

(2) Appropriate staff of the opioid treatment program shall document clearly the patient's individual medication dose history, the time that each dose is administered or dispensed, and the identification of who administered or dispensed the medication.

6. a. A physician or other health care professional:

(1) Who is with the opioid treatment program must be trained in the use of medication-assisted treatment to determine the individual dose of opioid medication for a patient.

(2) Who is with the opioid treatment program shall provide opioid agonist treatment medication as clinically indicated, and shall assess the patient's ability to tolerate the medication and whether the patient suffers negative effects.

(3) Who is with the opioid treatment program may not prescribe methadone on the first day it is administered to a patient in excess of thirty milligrams unless the physician documents a treatment need to prescribe an initial dose of forty milligrams.

(4) As clinically appropriate, may prescribe the admission of a patient to an opioid treatment program for detoxification treatment. Detoxification treatment is conducted as a voluntary and therapeutic process, agreed on between physician or health care professional and patient using current best practices.

b. An opioid treatment program shall have a procedure for calibrating medication-dispensing instruments, consistent with manufacturers' recommendations, to ensure accurate patient dosing and substance tracking.

c. An opioid treatment program may not adjust medication doses to reinforce positive behavior or to punish negative behavior, unless the patient is noncompliant with programmatic expectations and the taper constitutes the start of a detoxification treatment or a dosage increase needed to address the patient's symptoms.

- d. The opioid treatment program should have the capability to obtain serum methadone levels when clinically indicated or urine-based buprenorphine or nor-buprenorphine levels.
7. An opioid treatment program shall take reasonable measures to prevent its patients from enrolling in treatment from more than one opioid treatment program.
8. a. If an opioid treatment program administratively discharges a patient from treatment using an opioid agonist treatment medication, the opioid treatment program shall offer a humane schedule of detoxification treatment, if clinically appropriate, provided doing so does not compromise the safety of staff or patients of the opioid treatment program.
- b. An opioid treatment provider may determine during the process of ongoing assessment that a patient is not appropriate for treatment through the opioid treatment program and may be better served by other treatment modalities. Specifically, if a patient continues to use substances, engages in medication diversion, or fails to respond to the treatment plan, the opioid treatment program may find the patient is not appropriate for treatment through its programming and may administratively discharge the patient.
- c. An opioid treatment program shall work with a patient to develop a plan of continuing care that includes discharge and recovery planning. An opioid treatment program shall ensure the discharge planning process includes procedures that address the patient's physical and mental health problems following detoxification treatment. The opioid treatment program shall include in the discharge plan, a plan for continuing care following the last dose of medication, including making a referral for continuing outpatient care as needed, and planning for reentry to maintenance treatment if relapse occurs and resumption of care continues to be appropriate.
9. Each opioid treatment program shall:
- a. Use drug and alcohol screening and testing as aids in monitoring and evaluating patient's progress in treatment.
 - b. Ensure that treatment personnel in a medication-assisted treatment program understand the benefits and limitations of toxicological testing procedures.
 - c. Address results of toxicology testing with patients promptly.
 - d. Document in the patient record the results of toxicology tests and shall follow therapeutic interventions.

- e. Ensure compliance with all federal regulations related to urine toxicology results, title 42, Code of Federal Regulations, part 8.12(f). An opioid treatment program must provide adequate testing of or analysis for drugs of abuse according to best practices.
- f. For patients in short-term detoxification treatment, the opioid treatment program shall perform at least one initial drug abuse test.

History: Effective April 1, 2014.

General Authority: NDCC 50-31-08

Law Implemented: NDCC 50-31-08

TITLE 81
TAX COMMISSIONER

APRIL 2014

CHAPTER 81-03-09.1
DIVISION OF INCOME FOR FINANCIAL INSTITUTIONS

Section	
81-03-09.1-01	Apportionment of Income of Corporations Excluded by the Uniform Division of Income Tax Act <u>Special Rules - Financial Institutions</u>
<u>81-03-09.1-02</u>	<u>Definitions</u>
<u>81-03-09.1-03</u>	<u>Apportionment and Allocation - Property Factor</u>
<u>81-03-09.1-04</u>	<u>Apportionment and Allocation - Receipts Factor</u>
<u>81-03-09.1-05</u>	<u>Apportionment and Allocation - Payroll Factor</u>
<u>81-03-09.1-06</u>	<u>Taxable Years</u>

~~**81-03-09.1-01. Apportionment of income of corporations excluded by the Uniform Division of Income Tax Act Special rules - Financial institutions.**~~
~~Income of a corporation excluded by the Uniform Division of Income Tax Act whose business is conducted both within and without this state is apportioned according to the formula which is a part of this section unless the tax commissioner prescribes a different method. Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this chapter. The provisions of North Dakota Century Code chapter 57-38.1, including section 57-38.1-18, not inconsistent with this chapter, shall apply to the allocation and apportionment of the income of a financial institution. All items of nonbusiness income that are not includable in the apportionable income tax base must be allocated under North Dakota Century Code chapter 57-38.1.~~

~~Expenditures for salaries and wages are considered within this state if the service is performed in this state. Receipts from sales and other business sources which originate in this state are within this state. Receipts from sales of any tangible property located in this state at the time of sale are within the state.~~

APPORTIONMENT OF NET INCOME TO NORTH DAKOTA

(X) Within North	(Y) Without North	(Z) Total	North Dakota
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	Dakota	Dakota	Ratio
1. Tangible property held and owned in connection with business			(X divided by Z)
2. Business of Corporation:			
(a) Wages, salaries paid for services performed	\$.....	
(b) Receipts from sales and other business sources as defined in section 57-38-13(6)	\$.....	
(c) Total of (a) and (b)	(X divided by Z)
3. Total of North Dakota property and business ratios	
4. Average ratio of North Dakota property and business to total (one-half of item 3)	

History: Effective July 1, 1985; amended effective April 1, 2014.

General Authority: NDCC 57-38-56

Law Implemented: NDCC ~~57-38-12(3)(a)(b)~~, ~~57-38-13~~ 57-38, 57-38.1, 57-38.1-18

81-03-09.1-02. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on a later date in the taxable year when the customer relationship began, as the address where any notice, statement, or bill relating to a customer's account is mailed.
2. "Borrower or credit card holder located in this state" means:
 - a. A borrower, other than a credit card holder, who is engaged in a trade or business that maintains its commercial domicile in this state; or

- b. A borrower who is not engaged in a trade or business or a credit card holder whose billing address is in this state.
- 3. "Commercial domicile" means:
 - a. The headquarters of the trade or business, meaning the place from which the trade or business is principally managed and directed; or
 - b. If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, the taxpayer's commercial domicile must be deemed for the purposes of this chapter to be the state of the United States or the District of Columbia from which the taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of the employees are performed, as of the last day of the taxable year.
- 4. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal service that are included in the employees' gross income under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, such as those employed in foreign countries, the determination of whether payments would constitute gross income to employees under the Internal Revenue Code must be made as though those employees were subject to the Internal Revenue Code.
- 5. "Credit card" means a credit, travel, or entertainment card.
- 6. "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.
- 7. "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.
- 8. "Financial institution" means:
 - a. A corporation or other business entity registered under state law as a bank holding company, registered under the Bank Holding Company Act of 1956, as amended [Pub. L. 84-240; 70 Stat. 133; 12 U.S.C. 1841 et seq.], or registered as a savings and loan holding

company under the National Housing Act, as amended [Pub. L. 73-847; 48 Stat. 1246; 12 U.S.C. 1701 et seq.];

- b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act [1864 ch. 106, 5; 13 Stat. 100; 12 U.S.C. 21 et seq.];
- c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 873; 12 U.S.C. 1813(b)(1)];
- d. A bank or thrift institution incorporated or organized under the laws of any state;
- e. A trust company organized under the laws of any state, the United States, a dependency or insular possession of the United States, or a foreign country;
- f. A corporation organized under the provisions of Public Law No. 63-6, 25A [38 Stat. 273; 12 U.S.C. 611 to 631];
- g. An agency or branch of a foreign depository as defined in Public Law No. 95-369 [92 Stat. 607; 12 U.S.C. 3101];
- h. A production credit association organized under the Farm Credit Act of 1933 [Pub. L. 73-98; 48 Stat. 257; 12 U.S.C. 1131 et seq.], all of the stock of which held by the federal production credit corporation has been retired;
- i. A corporation the voting stock of which is more than fifty percent owned, directly or indirectly, by any person or business entity described in subdivisions a through h other than an insurance company taxable under North Dakota Century Code chapter 26.1-03; or
- j. A corporation or other business entity that derives more than fifty percent of its total gross income for financial accounting purposes from finance lease. For purposes of this subdivision, a "finance lease" means any lease transaction that is the functional equivalent of an extension of credit and which transfers substantially all of the benefits and risks incident to the ownership of property. The phrase includes any "direct financing lease" or "leverage lease" that meets the criteria of financial accounting standards board statement no. 13, "accounting for leases", or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles. For the classification under this subdivision to apply;

- (1) The average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement; and
 - (2) Gross income from incidental or occasional transactions must be disregarded.
9. "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

a. Gross rents includes:

- (1) Any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;
- (2) Any amount payable as additional rent or in lieu of rent, including interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and
- (3) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination or a lease or other arrangement. The amount to be included in gross rents is the amount of the amortization or depreciation allowed in computing the taxable income base for the taxable year. However, if a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

a. Gross rents does not include:

- (1) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;
- (2) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;
- (3) Reasonable amounts payable for storage, provided the amounts are payable for space not designated and not under the control of the taxpayer; and
- (4) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

10. "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of the extension of credit from another. Loans include participation, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include properties treated as loans under section 595 of the Internal Revenue Code; futures or forward contracts; options, notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest-bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in an REMIC, or other mortgage-backed or asset-backed security; and other similar items.
11. "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.
12. "Merchant discount" means the fee or negotiated discount charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the credit card holder.
13. "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
14. "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly starts the employee's work and to which the employee customarily returns in order to receive instructions from the employee's employer, communicates with the employee's customers or other persons, or performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points.
15. "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively, on which the taxpayer may claim depreciation for federal income tax purposes, or to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax. Real and tangible personal

property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

16. "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer.
17. "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
18. "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to the property, including rolling stock, barges, trailers, or the like.

History: Effective April 1, 2014.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-38.1-18

81-03-09.1-03. Apportionment and allocation - Property factor.

1. General. The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all property located or used within and without this state during the taxable year.
2. Property included. The property factor includes only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.
3. Value of property owned by the taxpayer.
 - a. The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of the property for federal income tax purposes without regard to depletion, depreciation, or amortization.
 - b. Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged off in

whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines which is treated as charged off for federal income tax purposes must be treated as charged off for purposes of this section.

c. Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the receivable charged off is not outstanding.

4. Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the commissioner may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the commissioner or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the commissioner or the commissioner requires a different method of determining average value.

5. Average value of real property and tangible personal property rented to the taxpayer.

a. The average value of real property and tangible personal property that the taxpayer has rented from another, and which is not treated as property owned by the taxpayer for federal income tax purposes, must be determined annually by multiplying the gross rents payable during the taxable year by eight.

b. If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the commissioner or by the taxpayer when approved in writing by the commissioner. Once approved, the other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the commissioner or the commissioner requires a different method of valuation.

6. Location of real property and tangible personal property owned by or rented to the taxpayer.

- a. Except as described in subdivision b, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.
- b. Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

7. Location of loans.

- a. (1) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.
- (2) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state must be presumed to have been properly assigned if:
 - (a) The taxpayer has assigned, in the regular course of the taxpayer's business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements.
 - (b) The assignment on the taxpayer's records is based upon substantive contacts of the loan to that regular place of business; and
 - (c) The taxpayer uses those records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.
- (3) The presumption of proper assignment of a loan provided in paragraph 2 may be rebutted upon a showing by the commissioner, supported by a preponderance of the evidence, that the preponderance of substantive contacts

regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan must then be located within this state if the taxpayer had a regular place of business within this state at the time the loan was made and the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

- b. In the case of a loan that is assigned by the taxpayer to a place without this state which is not a regular place of business, it must be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made, the taxpayer's commercial domicile, as defined in subsection 3 of section 81-03-09.2-02, was within this state.
- c. To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issues must be reviewed on a case-by-case basis and consideration must be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan. For purposes of this subdivision:
- (1) "Administration" means the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. This activity is located at the regular place of business which oversees this activity.
 - (2) "Approval" means the procedure by which employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. This activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of the employees were actually performed. If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.
 - (3) "Investigation" means the procedure by which employees of the taxpayer determine the creditworthiness of the customer as well as the degree of risk involved in making a particular agreement. This activity is located at the regular place of business which the taxpayer's employees are regularly

connected with or working out of, regardless of where the services of the employees were actually performed.

(4) "Negotiation" means the procedure by which employees of the taxpayer and the taxpayer's customer determine the terms of the agreement, including the amount, duration, interest rate, frequency of repayment, currency denomination, and security required. This activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of the employees were actually performed.

(5) "Solicitation" means either active or passive solicitation. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. This activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of the employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

8. Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables must be treated as loans and are subject to the provisions of subsection 7.

9. Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state, absent any change of material fact, must remain assigned to that state for the length of the original term of the loan. Thereafter, that loan may be properly assigned to another state if that loan has a preponderance of substantive contact to a regular place of business there.

History: Effective April 1, 2014.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-38.1-18

81-03-09.1-04. Apportionment and allocation - Receipts factor.

1. General. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for the purpose of the numerator. The

receipts factor includes only those receipts described in this section which constitute business income and are included in the computation of the apportionable income base for the taxable year.

2. Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state or receipts from the sublease of real property if the property is located within this state.
3. Receipts from the lease of tangible personal property.
 - a. Except as described in subdivision b, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.
 - b. Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.
4. Interest from loans secured by real property.
 - a. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the receipts described in this subsection must be included in the numerator of the receipts factor if the borrower is located in this state.
 - b. The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

5. Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.
6. Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code.
 - a. The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under subsection 4 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.
 - b. The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction, the numerator of which is amount included in the numerator of the receipts factor under subsection 5 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.
7. Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to cardholders, such as annual fees, if the billing address of the cardholder is in this state.
8. Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under subsection 7 and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to cardholders.
9. Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under subsection 7 and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to cardholders.

10. Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder chargebacks but may not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders.
11. Loan servicing fees.
- a. (1) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under subsection 4 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.
- (2) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under subsection 5 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.
- b. In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor must include the fees if the borrower is located in this state.
12. Receipts from services. The numerator of the receipts factor includes receipts from the services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the income-producing activity is performed in this state based on cost of performance.
13. Receipts from investment assets and activities and trading assets and activities.
- a. Interest; dividends; net gains, but not less than zero; and other income from investment assets and activities and from trading assets and activities must be included in the receipts factor. Investment assets and activities and trading assets and activities include investment securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts, such as swaps, equities, and foreign

currency transactions. With respect to the investment and trading assets and activities described in paragraphs 1 and 2, the receipts factor must include the amounts described in those paragraphs.

(1) The receipts factor must include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(2) The receipts factor must include the amount by which interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceeds amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from these assets and activities.

b. The numerator of the receipts factor includes interest; dividends; net gains, but not less than zero; and other income from investment assets and activities and from trading assets and activities described in subdivision a which are attributable to this state.

(1) The amount of interest; dividends; net gains, but not less than zero; and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all income from these assets and activities by a fraction, the numerator of which is the average value of the assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 1 of subdivision a from such funds and securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and securities.

(3) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts

described in paragraph 1 or 2, attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 2 of subdivision a by a fraction, the numerator of which is the average value of the trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(4) For purposes of this subdivision, average value must be determined using the rules for determining the average value of tangible personal property set forth in subsections 3 and 4 of section 81-03-09.1-03.

C. In lieu of using the method set forth in subdivision b, the taxpayer may elect, or the commissioner may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subdivision.

(1) The amount of interest; dividends; net gains, but not less than zero; and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 1 of subdivision a from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(3) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in paragraphs 1 and 2, attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 2 of subdivision a by a fraction, the numerator of which is the gross income

from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

- d. If the taxpayer elects or is required by the commissioner to use the method set forth in subdivision c, the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the commissioner to use, or the commissioner requires, a different method.
 - e. The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, the asset or activity must be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, the investment or trading policies and guidelines are presumed to be established at the commercial domicile of the taxpayer.
14. All other receipts. The numerator of the receipts factor includes all other receipts under the rules set forth in North Dakota Century Code chapter 57-38.1 and North Dakota Administrative Code chapter 81-03-09, to the extent not inconsistent with this section.
15. Attribution of certain receipts to commercial domicile. All receipts that would be assigned under this section to a state in which the taxpayer is not taxable must be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

History: Effective April 1, 2014.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-38.1-18

81-03-09.1-05. Apportionment and allocation - Payroll factor.

- 1. General. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without this state during the taxable year. The payroll factor must include only that compensation that is included in

the computation of the apportionable income tax base for the taxable year.

2. Compensation relating to nonbusiness income. The compensation of any employee for services or activities that are connected with the production of nonbusiness income, meaning income which is not includable in the apportionable income base, and payments made to any independent contractor or any other person not properly classifiable as an employee must be excluded from both the numerator and denominator of the factor.
3. When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:
 - a. The employee's services are performed entirely within this state.
 - b. The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service that is temporary or transitory in nature or which is rendered in connection with an isolated transaction.
 - c. If the employee's services are performed both within and without this state, the employee's compensation must be attributed to this state:
 - (1) If the employee's principal base of operations is within this state:
 - (2) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state:
or
 - (3) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

History: Effective April 1, 2014.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-38.1-18

81-03-09.1-06. Taxable years. This chapter is applicable to tax years beginning after December 31, 2012.

History: Effective April 1, 2014.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-38.1-18

TITLE 92
WORKFORCE SAFETY AND INSURANCE

APRIL 2014

CHAPTER 92-01-02

92-01-02-11.1. Attorney's fees. Upon receipt of a certificate of program completion from the decision review office, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The organization shall pay attorneys at one hundred ~~thirty-five~~ forty dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at ~~sixty-five~~ seventy dollars per hour.
2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to ~~seventy~~ eighty-five dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at ~~thirty-five~~ forty dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.
3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:
 - a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.

- b. ~~Two thousand six~~ Three thousand five hundred dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the hearing is called to order.
 - c. Five thousand ~~three~~ five hundred dollars, plus reasonable costs incurred, if the employee prevails after the hearing is called to order by the administrative law judge. If the employee prevails after the hearing, and the organization appeals the final order, the organization shall pay attorney's fees at a rate of one hundred twenty-five percent of the maximum fees specified in subdivisions d and e when the employee prevails on appeal, as defined by North Dakota Century Code section 65-02-08, to the district court or to the supreme court. However, the organization may not pay attorney's fees if the employee prevails at the district court but the organization prevails at the supreme court in the same appeal.
 - d. ~~Five thousand nine~~ Six thousand one hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. ~~Seven thousand nine~~ Eight thousand two hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.
 - e. Nine thousand ~~six~~ nine hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. Ten thousand ~~four~~ eight hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.
 - f. One thousand ~~five~~ six hundred dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.
 - g. Should a settlement or order amendment offered during the DRO process be accepted after the DRO certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.
4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial

appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.

5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).
6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.
7. The following costs will be reimbursed:
 - a. Actual postage, if postage exceeds three dollars per parcel.
 - b. Actual toll charges for long-distance telephone calls.
 - c. Copying charges, at eight cents per page.
 - d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.
 - e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.
8. The following costs will not be reimbursed:
 - a. Facsimile charges.
 - b. Express mail.
 - c. Additional copies of transcripts.
 - d. Costs incurred to obtain medical records.
 - e. Online computer-assisted legal research.

- f. Copy charges for documents provided by the organization.

The organization shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

History: Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 65-02-08, 65-02-15

Law Implemented: NDCC 65-02-08, 65-02-15, 65-10-03

92-01-02-12. Mileage and per diem for travel to and from medical treatment. Workforce safety and insurance recognizes payment for travel to and from medical treatment as a reasonable and necessary medical expense. Lodging expenses will be reimbursed if they are necessary and reasonable. These expenses will be paid according to North Dakota Century Code section 65-05-28, except that reimbursement for out-of-state lodging may not exceed one hundred twenty-five percent of the allowance for in-state lodging. The number of miles actually traveled is rebuttably presumed to be the least number of miles listed by MapQuest at www.mapquest.com between the start and end points of travel.

History: Effective August 1, 1988; amended effective April 1, 1997; July 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-08, 65-05-28

92-01-02-23. Installment payment of premiums.

1. On March thirty-first of each year, the organization shall establish the interest rate to be charged to accounts with policy periods renewing between July first and June thirtieth of the following year, which elect to pay premium by installments. For the purposes of North Dakota Century Code sections 65-04-20 and 65-04-33, the interest rate is the base rate posted by the Bank of North Dakota plus two and one-half percent. The interest rate may not be lower than six percent.
2. Premium subject to installments will be limited to the premium for the advance premium only. The organization may apply alternative installment options. Prior period premium deficiencies must be paid in full within the original premium due date.
3. Default of any installment payment causes the entire premium balance to be due immediately.

History: Effective November 1, 1991; amended effective January 1, 1996; May 1, 2002; April 1, 2014.

General Authority: NDCC 65-02-08, 65-04-20

Law Implemented: NDCC 65-04-20, 65-04-24

92-01-02-29. Medical services - Definitions. The definitions found in North Dakota Century Code title 65 apply to terms contained in this title. In addition, unless the context otherwise requires, for purposes of sections 92-01-02-27 through 92-01-02-48:

1. "Attending doctor" means a doctor who is primarily responsible for the treatment of a claimant's compensable injury.
2. "Bill audit" means the review of medical bills and associated medical records by the organization or the managed care vendor, including review for duplications, omissions, actual delivery of billed services and items, accuracy of charges and associated coding, coding documentation ~~in accordance with health care finance administration~~ guidelines, coverage, concurrent billing ~~for services~~ for covered and noncovered services, and application of fee schedules.
3. "Case management" means the ongoing coordination of medical services provided to a claimant, including:
 - a. Developing a treatment plan to provide appropriate medical services to a claimant.
 - b. Systematically monitoring the treatment rendered and the medical progress of the claimant.
 - c. Assessing whether alternative medical services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards.
 - d. Ensuring the claimant is following the prescribed medical plan.
 - e. Formulating a plan for keeping the claimant safely at work or expediting a safe return to work.
4. "Concurrent review" means the monitoring by the organization or the managed care vendor for medical necessity and appropriateness, throughout the period of time in which designated medical services are being provided to the claimant, of the claimant's condition, treatments, procedures, and length of stay.
5. "Consulting doctor" means a licensed doctor who examines a claimant, or the claimant's medical record, at the request of the attending doctor to aid in diagnosis or treatment. A consulting doctor, at the request of the attending doctor, may provide specialized treatment of the compensable injury and give advice or an opinion regarding the treatment being rendered or considered for a claimant's injury.
6. "Elective surgery" means surgery that may be required in the process of recovery from an injury or illness but need not be done as an emergency

to preserve life, function, or health. Pain, of itself, does not constitute a surgical emergency.

7. "Emergency" means a medical condition that manifests itself by symptoms of sufficient severity, which may include severe pain, to cause a prudent layperson possessing an average knowledge of health and medicine to reasonably conclude that immediate medical treatment is required to avoid serious impairment of a bodily function, or serious dysfunction of any body part, or jeopardizing the person's life.
8. "Fee schedule" means the publication entitled "Workforce Safety and Insurance Medical and Hospital Fees".
9. "Functional capacity evaluation" means an objective, directly observed, measurement of a claimant's ability to perform a variety of physical tasks combined with subjective analyses of abilities by the claimant and the evaluator. A physical tolerance screening and a Blankenship's functional evaluation are functional capacity evaluations.
10. "Managed care" means services performed by the organization or a managed care vendor, including utilization review, preservice reviews, disability management services, case management services, ambulatory reviews, concurrent reviews, retrospective reviews, preadmission reviews, and medical bill audit.
11. "Managed care vendor" means an organization that is retained by the organization to provide managed care services.
12. "Medical service" means a medical, surgical, chiropractic, psychological, dental, hospital, nursing, ambulance, and other related or ancillary service, including physical and occupational therapy and drugs, medicine, crutches, a prosthetic appliance, braces, and supports, and physical restoration and diagnostic services, or a service outlined in section 92-01-02-30.
13. "Medical service provider" means a doctor, health care provider, hospital, medical clinic, or vendor of medical services.
14. "Medically stationary" means the "date of maximum medical improvement" as defined in North Dakota Century Code section 65-01-02 has been reached.
15. "Notice of nonpayment" means the form by which a claimant is notified of charges denied by the organization which are the claimant's personal responsibility.
16. "Palliative care" means a medical service rendered to alleviate symptoms without curing the underlying condition.

17. "Physical conditioning" means an individualized, graded exercise program designed to improve the overall cardiovascular, pulmonary, and neuromuscular condition of the claimant prior to or in conjunction with the claimant's return to any level of work. Work conditioning is the same as physical conditioning.
18. "Preservice review" means the evaluation by the organization or a managed care vendor of a proposed medical service for medical necessity, appropriateness, and efficiency prior to the services being performed.
19. "Remittance advice" means the form used by the organization to inform payees of the reasons for payment, reduction, or denial of medical services.
20. "Retrospective review" means the organization's or a managed care vendor's review of a medical service for medical necessity, appropriateness, and efficiency after treatment has occurred.
21. "Special report" means a medical service provider's written response to a specific request from the organization for information, including information on causation, aggravation, preexisting conditions, and clarification of complex medical conditions, requiring the creation of a new document or the previously unperformed analysis of existing data. The explanatory reports required for procedures designated as "by report" under section 92-01-02-27 are not special reports.
22. "Utilization review" means an evaluation of the necessity, appropriateness, efficiency, and quality of medical services provided to a claimant, based on medically accepted standards and an objective evaluation of the medical services.
23. "Utilization review department" means the organization's utilization review department.
24. "Work hardening" means an individualized, medically prescribed and monitored, work-oriented treatment process which involves the claimant participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the claimant to a specified job.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; April 1, 2014.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-29.1. Medical necessity.

1. A medical service or supply necessary to diagnose or treat a compensable injury, which is appropriate to the location of service, is medically necessary if it is widely accepted by the practicing peer group and has been determined to be safe and effective based on published, peer-reviewed, scientific studies.
2. Services that present a hazard in excess of the expected medical benefits are not medically necessary. Services that are controversial, obsolete, experimental, or investigative are not reimbursable unless specifically preapproved or authorized by the organization. Requests for authorization must contain a description of the treatment and the expected benefits and results of the treatment.
3. The organization will not authorize or pay for the following treatment:
 - a. Massage therapy or acupuncture unless specifically preapproved or otherwise authorized by the organization. Massage therapy must be provided by a licensed physical therapist, licensed occupational therapist, licensed chiropractor, or licensed massage therapist.
 - b. Chemonucleolysis; acupressure; reflexology; rolfing; injections of colchicine except to treat an attack of gout precipitated by a compensable injury; injections of chymopapain; injections of fibrosing or sclerosing agents except where varicose veins are secondary to a compensable injury; and injections of substances other than cortisone, anesthetic, or contrast into the subarachnoid space (intrathecal injections).
 - c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking) unless specifically preapproved or otherwise authorized by the organization. Over-the-counter medications may be allowed in lieu of prescription medications when approved by the organization and prescribed by the attending doctor. Dietary supplements, including minerals, vitamins, and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.
 - d. Articles such as beds, hot tubs, chairs, Jacuzzis, vibrators, heating pads, home furnishings, waterbeds, exercise equipment, cold packs, and gravity traction devices are not compensable except at the discretion of the organization under exceptional circumstances.
 - e. Vertebral axial decompression therapy (Vax-D treatment).

- f. Intradiscal electrothermal annuloplasty (IDET).
 - g. Prolotherapy (sclerotherapy).
 - h. Surface electromyography (surface EMG).
 - i. Athletic trainer services that are provided to a claimant via an agreement, or a contract of employment between a trainer and a claimant's employer, or an entity closely associated with the employer.
4. If a claimant has had opioids continually prescribed during a period after the claim has been filed which exceeds ninety consecutive days, the organization may require a claimant to undergo testing conducted by a health care provider, qualified technician, or chemist to assess the appropriateness of opioid treatment. A claimant who refuses or fails, without good cause, to submit to testing required by the organization forfeits entitlement to payment of any further opioid prescriptions under all existing claims.
5. It is rebuttably presumed that no opioid treatment is appropriate after a second time within twenty-four months that testing indicates that any prescribed opioids are absent from a claimant's body and thereafter the organization may not pay for any opioids under any existing claim for a period of thirty-six months. As used in this subsection, "testing" means a test that is administered after a claim is filed and is conducted by a health care provider, qualified technician, or chemist, and is not limited to testing required by the organization.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-29.3. Motor vehicle purchase or modification.

- 1. An injured worker must obtain a doctor's order of medical necessity before the purchase of a specially equipped motor vehicle or modification of a vehicle may be approved.
- 2. The organization may require assessments to determine the functional levels of an injured worker who is being considered for a specially equipped motor vehicle or vehicle modification and to determine what modifications are medically necessary.
- 3. If an existing vehicle cannot be repaired or modified, the organization, in its sole discretion, may approve the purchase of a specially equipped motor vehicle.

4. A minimum of two itemized cost quotes may be requested by the organization. The organization may decrease or add the number of cost quotes needed accordingly.
5. Actual vehicle or modification purchase may not occur until the organization reviews the request and issues recommendations or decisions as to whether eligible for the benefit.
6. Cost quotes must be itemized.
7. Any available vehicle rebates or tax exemptions shall be applied back to the lifetime benefit ~~of one hundred thousand dollars~~ amount as provided in subsection 5 of North Dakota Century Code section 65-05-07.
8. Any appeal of a decision under this section shall be adjudicated pursuant to North Dakota Century Code section 65-02-20.

History: Effective April 1, 2009; amended effective April 1, 2012; April 1, 2014.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-07(5)(b)

92-01-02-29.4. Home modifications.

1. An injured worker must obtain a doctor's order of medical necessity before the payment for home modifications can be approved.
2. The organization may require assessments to determine the functional levels of an injured worker who is being considered for home modifications and to determine what modifications are medically necessary.
3. A minimum of two itemized cost quotes may be requested by the organization. The organization may decrease or add the number of cost quotes needed accordingly.
4. Actual construction or modification cannot occur until the organization reviews the request and issues recommendations or decisions as to eligibility for the benefit.
5. Cost quotes must be itemized.
6. Payment by the organization may not occur until the modification work is completed, or at least, completed in documented phases or at the discretion of the organization.
7. The organization may request that the contractor for proposed home modification be in good standing (example: licensed in the state, bonded, etc.)

8. Real estate modifications to driveways, sidewalks, or passageways may only be approved if evidence supports that those routes are needed to provide safe passageway for the injured worker.
9. Any appeal of a decision under this section shall be adjudicated pursuant to North Dakota Century Code section 65-02-20.

History: Effective April 1, 2012; amended effective April 1, 2014.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-07

92-01-02-34. Treatment requiring authorization, preservice review, and retrospective review.

1. Certain treatment procedures require prior authorization or preservice review by the organization or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; their relationship to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, and expected prognosis.
2. Requesting prior authorization or preservice review is the responsibility of the medical service provider who provides or prescribes a service for which prior authorization or preservice review is required.
3. Medical service providers shall request prior authorization directly from the claims analyst for the items listed in this subsection. The claims analyst shall respond to requests within fourteen days.
 - a. Durable medical equipment.
 - (1) The organization will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The claims analyst shall grant or deny authorization for reimbursement of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the claims analyst. If the equipment is needed on a long-term basis, the organization may purchase the equipment. The claims analyst shall base its decision to purchase the equipment on a comparison of the projected rental costs of the equipment to its purchase price. The organization shall purchase the equipment from the most cost-efficient source.

- (2) The claims analyst will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the attending doctor. If those items are furnished by the attending doctor or another provider, the organization will reimburse the doctor or the provider pursuant to its fee schedule. Providers and doctors shall supply the organization with a copy of their original invoice showing actual cost of the item upon request of the organization. The organization will repair or replace originally provided damaged, broken, or worn-out prosthetics, orthotics, or special equipment devices upon documentation from the attending doctor that replacement or repair is needed. Prior authorization for replacements is required.
 - (3) If submitted charges for supplies and implants exceed the usual and customary rates, charges will be reimbursed at the provider's purchase invoice plus twenty percent.
 - (4) Equipment costing less than five hundred dollars does not require prior authorization. This includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics, but specifically excludes tens units.
 - (5) An injured worker must obtain a doctor's order of medical necessity before the purchase of a mobility assistance device.
 - (6) The organization may require assessments to determine the functional levels of an injured worker who is being considered for a mobility assistance device.
- b. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and work hardening programs; chronic pain management programs; and other programs designed to treat special problems.
- c. Concurrent care. In some cases, treatment by more than one medical service provider may be allowed. The claims analyst will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the claims analyst with the name, address, discipline, and specialty of all other medical service providers assisting in the treatment of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the organization will recognize one primary attending doctor, who is responsible for

prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved medical service providers; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The claims analyst will approve concurrent care on a case-by-case basis. Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.

- d. Telemedicine. The organization may pay for audio and video telecommunications instead of a face-to-face "hands on" appointment for the following appointments: office or other outpatient visits that fall within CPT codes 99241 through 99275, inclusive; new and established evaluation and management visits that fall within CPT codes 99201 through 99215, inclusive; individual psychotherapy visits that fall within CPT codes 90804 through 90809, inclusive; and pharmacologic management visits that fall within CPT code 90862. As a condition of payment, the patient must be present and participating in the telemedicine appointment. The professional fee payable is equal to the fee schedule amount for the service provided. The organization may pay the originating site a facility fee, not to exceed twenty dollars.
4. Notwithstanding the requirements of subsection 5, the organization may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.
 5. Medical service providers shall request preservice review from the utilization review department for:
 - a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery and outpatient surgical procedures. ~~For an inpatient stay that exceeds fourteen days, the provider shall request, on or before the fifteenth day, additional review of medical necessity for a continued stay.~~
 - b. All nonemergent major surgery. When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the utilization review department actual notice at least twenty-four hours prior to the proposed surgery. Notice must give the medical information that substantiates the need for surgery, an estimate of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed. When elective surgery is recommended, the utilization review department may require an independent consultation with a doctor of the organization's

choice. The organization shall notify the doctor who requested approval of the elective surgery, whether or not a consultation is desired. When requested, the consultation must be completed within thirty days after notice to the attending doctor. Within seven days of the consultation, the organization shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the organization may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the organization believes the proposed surgery is excessive, inappropriate, or ineffective and the organization cannot resolve the dispute with the attending doctor, the requesting doctor may request binding dispute resolution in accordance with section 92-01-02-46.

- c. Magnetic resonance imaging, a myelogram, discogram, bonescan, arthrogram, or computed axial tomography. Tomograms are subject to preservice review if requested in conjunction with a myelogram, discogram, bonescan, arthrogram, computed axial tomography scan, or magnetic resonance imaging. Computed axial tomography completed within thirty days from the date of injury may be performed without prior authorization. The organization may waive preservice review requirements for procedures listed in this subdivision when requested by a doctor who is performing an independent medical examination or permanent partial impairment evaluation at the request of the organization.
- d. Physical therapy and occupational therapy treatment beyond the first ten treatments or beyond sixty days after first prescribed, whichever occurs first, or physical therapy and occupational therapy treatment after an inpatient surgery, outpatient surgery, or ambulatory surgery beyond the first ten treatments or beyond sixty days after therapy services are originally prescribed, whichever occurs first. Postoperative physical therapy and occupational therapy may not be started beyond ninety days after surgery date. The organization may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers. Modalities for outpatient physical therapy services and outpatient occupational therapy services are limited to two per visit during the sixty-day or ten-treatment ranges set out in this subsection.
- e. Electrodiagnostic studies may only be performed by electromyographers who are certified or eligible for certification by the American board of electrodiagnostic medicine, American board of physical medicine and rehabilitation, or the American board of neurology and psychiatry's certification in the specialty of clinical neurophysiology. Nerve conduction study reports must include

either laboratory reference values or literature-documented normal values in addition to the test values.

- f. Thermography.
 - g. Intra-articular injection of hyaluronic acid.
 - h. Trigger point injections if more than three injections are required in a two-month period. No more than twenty injections may be paid over the life of a claim. If a trigger point injection is administered, the organization may not pay for additional modalities such as cryotherapy and osteopathic manipulations performed in conjunction with the trigger point injection. For purposes of this paragraph, injections billed under CPT code 20552 or 20553 will count as a single injection. Only injections administered on or after May 1, 2002, will be applied toward the maximum number of injections allowed under this subdivision.
 - i. Facet joint injections.
 - j. Sacroiliac joint injections.
 - k. Facet nerve blocks.
 - l. Epidural steroid injections.
 - m. Nerve root blocks.
 - n. Peripheral nerve blocks.
 - o. Botox injections.
 - p. Stellate ganglion blocks.
 - q. Cryoablation.
 - r. Radio frequency lesioning.
 - s. Facet rhizotomy.
 - t. Implantation of stimulators and pumps.
6. Chiropractic providers shall request preservice review from the organization's chiropractic managed care vendor for chiropractic treatment beyond the first twelve treatments or beyond ninety days after the first treatment, whichever occurs first. The evaluation to determine a treatment plan is not subject to review. The organization may waive this subsection in conjunction with programs designed to

ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers. Modalities for chiropractic services are limited to two per visit during the ninety-day or twelve-treatment ranges set out in this subsection.

- ~~7.~~ ~~Concurrent review of emergency admissions is required within twenty-four hours, or the next business day, of emergency admission.~~
- ~~8.~~ 7. The organization may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting.
- ~~9.~~ 8. The organization or managed care vendor must respond to the medical service provider within three business days of receiving the necessary information to complete a review and make a recommendation on the service. Within the time for review, the organization or managed care vendor must recommend approval or denial of the request, request additional information, request the claimant obtain a second opinion, or request an examination by the claimant's doctor. A recommendation to deny medical services must specify the reason for the denial.
- ~~10.~~ 9. The organization may conduct retrospective reviews of medical services and subsequently reimburse medical providers only:
 - a. If preservice review or prior authorization of a medical service is requested by a provider and a claimant's claim status in the adjudication process is pending or closed; or
 - b. If preservice review or prior authorization of a medical service is not requested by a provider and the provider can prove, by a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not know, that the condition was, or likely would be, covered under workers' compensation.

All medical service providers are required to cooperate with the managed care vendor for retrospective review and are required to provide, without additional charge to the organization or the managed care vendor, the medical information requested in relation to the reviewed service.

- ~~11.~~ 10. The organization must notify provider associations of the review requirements of this section prior to the effective date of these rules.

- 42- 11. The organization must respond to the medical service provider within thirty days of receiving a retrospective review request.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; March 1, 2003; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-40. Palliative care.

1. After the employee has become medically stationary, palliative care is compensable without prior approval from the organization only when it is necessary to monitor administration of prescription medication required to maintain the claimant in a medically stationary condition or to monitor the status of a prosthetic device.
2. If the organization or its managed care vendor believes palliative care provided under subsection 1 is excessive, inappropriate, ineffectual, or in violation of the rules regarding the performance of medical services, review must be performed according to section 92-01-02-46.
3. After the claimant has reached medically stationary status and the claimant's doctor believes that palliative care is necessary, the doctor shall request authorization for palliative care through the managed care vendor prior to the commencement of the treatment. If the palliative care request is approved, services are payable from the date the approved treatment begins. The request must:
 - a. Contain all objective findings, and specify if there are none.
 - b. ~~Identify~~ Before the date on which centers for medicare and medicaid services implements ICD-10-CM, identify the medical condition by ICD-9-CM diagnosis for which the palliative treatment is proposed. On and after the date on which centers for medicare and medicaid services implements ICD-10-CM, identify the medical condition by ICD-10-CM diagnosis for which the palliative treatment is proposed.
 - c. Provide a proposed treatment plan that includes the specific treatment modalities, the name of the provider who will perform the treatment, and the frequency and duration of the care to be given.
 - d. Describe how the requested palliative care is related to the accepted compensable condition.
 - e. Describe how the proposed treatment will enable the claimant to continue employment or to perform the activities of daily living, and

what the adverse effect would be to the claimant if the palliative care is not approved.

- f. Any other information the organization or managed care vendor may request.
4. The managed care vendor shall approve palliative care only when:
 - a. Other methods of care, including patient self-care, structural rehabilitative exercises, and lifestyle modifications are being utilized and documented;
 - b. Palliative care reduces both the severity and frequency of exacerbations that are clinically related to the compensable injury; and
 - c. Repeated attempts have been made to lengthen the time between treatments and clinical results clearly document that a significant deterioration of the compensable condition has resulted.
 5. If the attending doctor does not receive written notice from the organization within thirty days of the receipt of the request for palliative care, which approves or disapproves the care, the request will be considered approved.
 6. When the request for palliative care is not approved, the organization shall provide, in writing, specific reasons for not approving the care.
 7. When the organization approves or disapproves the requested palliative care, the attending doctor, employer, or claimant may request binding dispute resolution under section 92-01-02-46.
 8. For the purposes of this section only, a claimant's condition must be determined to be medically stationary when the attending doctor or a preponderance of medical evidence indicates the claimant is "medically stationary" or uses other language meaning the same thing. When there is a conflict in the medical opinions, more weight must be given to medical opinions that are based on the most accurate history, on the most objective findings, on sound medical principles, and on clear and concise reasoning. When expert analysis is important, deference must be given to the opinion of the doctor with the greatest expertise in the diagnosed condition. The date a claimant is medically stationary is the earliest date that a preponderance is established under this section. The date of the examination, not the date of the report, controls the medically stationary date. When a specific date is not indicated but the medical opinion states the claimant is medically stationary, the claimant is presumed medically stationary on the date of the last examination.

This subsection does not govern determination of maximum medical improvement relating to a permanent impairment award.

History: Effective January 1, 1994; amended effective October 1, 1998; May 1, 2002; July 1, 2004; April 1, 2014.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-45.1. Provider responsibilities and billings.

1. A provider may not submit a charge for a service which exceeds the amount the provider charges for the same service in cases unrelated to workers' compensation injuries.
2. All bills must be fully itemized, including ~~ICD-9-CM~~ ICD codes, and services must be identified by code numbers found in the fee schedules or as provided in these rules. The definitions of commonality in the guidelines found in the current procedural terminology must be used as guides governing the descriptions of services, except as provided in the fee schedules or in these rules. All bills must be submitted to the organization within one year of the date of service or within one year of the date the organization accepts liability for the work injury or condition. Before the date on which centers for medicare and medicaid services implements ICD-10-CM, all bills must be coded with ICD-9-CM codes. On and after the date on which centers for medicare and medicaid services implements ICD-10-CM, all bills must be coded with ICD-10-CM codes.
3. All medical service providers shall submit bills referring to one claim only for medical services on current form UB 04 or form CMS 1500, except for dental billings which must be submitted on American dental association J510 dental claim forms and pharmacy billings which must be submitted electronically to the organization's pharmacy managed care vendor using the current pharmacy transaction standard. Bills and reports must include:
 - a. The claimant's full name and address;
 - b. The claimant's claim number and social security number;
 - c. Date and nature of injury;
 - d. Area Before the date on which centers for medicare and medicaid services implements ICD-10-CM, area of body treated, including ICD-9-CM code identifying right or left, as appropriate. On and after the date on which centers for medicare and medicaid services implements ICD-10-CM, area of body treated, including ICD-10-CM code identifying right or left, as appropriate;

- e. Date of service;
 - f. Name and address of facility where the service was rendered;
 - g. Name of medical service provider providing the service;
 - h. Physician's or supplier's billing name, address, zip code, telephone number; physician's ~~unique physician identification number (UPIN)~~ or national provider identifier (NPI), ~~or both~~; physician assistant's North Dakota state license or certification number; physical therapist's North Dakota state license number; or advanced practice registered nurse's ~~UPIN or NPI, or both~~, or North Dakota state license number;
 - i. Referring or ordering physician's ~~UPIN or NPI, or both~~;
 - j. Type of service;
 - k. Appropriate procedure code or hospital revenue code;
 - l. Description of service;
 - m. Charge for each service;
 - n. Units of service;
 - o. If dental, tooth numbers;
 - p. Total bill charge;
 - q. Name of medical service provider providing service along with the provider's tax identification number; and
 - r. Date of bills.
4. All records submitted by providers, including notes, except those provided by an emergency room physician and those on forms provided by the organization, must be typed to ensure that they are legible and reproducible. Copies of office or progress notes are required for all followup visits. Office notes are not acceptable in lieu of requested narrative reports. Communications may not refer to more than one claim. Addendums and late entries to notes or reports must be signed and must include the date they were created. Addendums or late entries to notes or reports created more than sixty calendar days after the date of service may be accepted at the organization's sole discretion.

5. Providers shall submit with each bill a copy of medical records or reports which substantiate the nature and necessity of a service being billed and its relationship to the work injury, including the level, type, and extent of the service provided to claimants. Documentation required includes:
 - a. Laboratory and pathology reports;
 - b. X-ray findings;
 - c. Operative reports;
 - d. Office notes, physical therapy, and occupational therapy progress notes;
 - e. Consultation reports;
 - f. History, physical examination, and discharge summaries;
 - g. Special diagnostic study reports; and
 - h. Special or other requested narrative reports.
6. When a provider submits a bill to the organization for medical services, the provider shall submit a copy of the bill to the claimant to whom the services were provided. The copy must be stamped or printed with a legend that clearly indicates that it is a copy and is not to be paid by the claimant.
7. If the provider does not submit records with a bill, and still does not provide those records upon request of the organization, the charges for which records were not supplied may not be paid by the organization, unless the provider submits the records before the decision denying payment of those charges becomes final. The provider may also be liable for the penalty provided in subsection 6 of North Dakota Century Code section 65-05-07.
8. Disputes arising out of reduced or denied reimbursement are handled in accordance with section 92-01-02-46. In all cases of accepted compensable injury or illness under the jurisdiction of the workers' compensation law, a provider may not pursue payment from a claimant for treatment, equipment, or products unless a claimant desires to receive them and has accepted responsibility for payment, or unless the payment for the treatment was denied because:
 - a. The claimant sought treatment from that provider for conditions not related to the compensable injury or illness.

- b. The claimant sought treatment from that provider which was not prescribed by the claimant's attending doctor. This includes ongoing treatment by the provider who is a nonattending doctor.
 - c. The claimant sought palliative care from that provider not compensable under section 92-01-02-40 after the claimant was provided notice that the palliative care service is not compensable.
 - d. The claimant sought treatment from that provider after being notified that the treatment sought from that provider has been determined to be unscientific, unproven, outmoded, investigative, or experimental.
 - e. The claimant did not follow the requirements of subsection 1 of North Dakota Century Code section 65-05-28 regarding change of doctors before seeking treatment of the work injury from the provider requesting payment for that treatment.
 - f. The claimant is subject to North Dakota Century Code section 65-05-28.2, and the provider requesting payment is not a preferred provider and has not been approved as an alternative provider under subsection 2, 3, or 4 of North Dakota Century Code section 65-05-28.2.
- 9. A medical service provider may not bill for services not provided to a claimant and may not bill multiple charges for the same service. Rebilling must indicate that the charges have been previously billed.
 - 10. Pursuant to North Dakota Century Code section 65-05-33, a medical service provider may not submit false or fraudulent billings.
 - 11. Only one office visit designation may be used at a time except for those code numbers relating specifically to additional time.
 - 12. When a claimant is seen initially in an emergency department and is admitted subsequently to the hospital for inpatient treatment, the services provided immediately prior to the admission are part of the inpatient treatment.
 - 13. Hot and cold pack as a modality will be considered as a bundled charge and will not be separately reimbursed.
 - 14. When a medical service provider is asked to review records or reports prepared by another medical service provider, the provider shall bill review of the records using CPT code 99080 with a descriptor of "record review". The billing must include the actual time spent reviewing the records or reports and must list the medical service provider's normal hourly rate for the review.

15. When there is a dispute over the amount of a bill or the necessity of services rendered, the organization shall pay the undisputed portion of the bill and provide specific reasons for nonpayment or reduction of each medical service code.
16. If medical documentation outlines that a non-work-related condition is being treated concurrently with the compensable injury and that condition has no effect on the compensable injury, the organization may reduce the charges submitted for treatment. In addition, the attending doctor must notify the organization immediately and submit:
 - a. A description or diagnosis of the non-work-related condition.
 - b. A description of the treatment being rendered.
 - c. The effect, if any, of the non-work-related condition on the compensable injury.

The attending doctor shall include a thorough explanation of how the non-work-related condition affects the compensable injury when the doctor requests authorization to treat the non-work-related condition. Temporary treatment of a non-work-related condition may be allowed, upon prior approval by the organization, provided the condition directly delays recovery of the compensable injury. The organization may not approve or pay for treatment for a known preexisting non-work-related condition for which the claimant was receiving treatment prior to the occurrence of the compensable injury, which is not delaying recovery of the compensable injury. The organization may not pay for treatment of a non-work-related condition when it no longer exerts any influence upon the compensable injury. When treatment of a non-work-related condition is being rendered, the attending doctor shall submit reports monthly outlining the effect of treatment on both the non-work-related condition and the compensable injury.

17. In cases of questionable liability when the organization has not rendered a decision on compensability, the provider has billed the claimant or other insurance, and the claim is subsequently allowed, the provider shall refund the claimant or other insurer in full and bill the organization for services rendered.
18. The organization may not pay for the cost of duplicating records when covering the treatment received by the claimant. If the organization requests records in addition to those listed in subsection 5 or records prior to the date of injury, the organization shall pay a minimum charge of five dollars for five or fewer pages and the minimum charge of five dollars for the first five pages plus thirty-five cents per page for every page after the first five pages.

19. The provider shall assign the correct approved billing code for the service rendered using the appropriate provider group designation. Bills received without codes will be returned to the provider.
20. Billing codes must be found in the most recent edition of the physician's current procedural terminology; health care financing administration common procedure coding system; code on dental procedures and nomenclature maintained by the American dental association; or any other code listed in the fee schedules.
21. A provider shall comply within thirty calendar days with the organization's request for copies of existing medical data concerning the services provided, the patient's condition, the plan of treatment, and other issues pertaining to the organization's determination of compensability, medical necessity, or excessiveness or the organization may refuse payment for services provided by that provider.
22. A provider may not bill a claimant a fee for the difference between the maximum allowable fee set forth in the organization's fee schedule and usual and customary charges, or bill the claimant any other fee in addition to the fee paid, or to be paid, by the organization for individual treatments, equipment, and products.

History: Effective January 1, 1994; amended effective April 1, 1996; October 1, 1998; January 1, 2000; May 1, 2002; April 1, 2008; July 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07, 65-05-28.2

92-01-02-50. Other states' coverage.

1. The terms used in this section have the same meaning as in North Dakota Century Code title 65 and in North Dakota Administrative Code title 92, except:
 - a. "Covered employment" means hazardous employment principally localized in this state which involves incidental operations in another state. The term "covered employment" does not include employment in which the employer is required by the laws of that other state to purchase workers' compensation coverage in that other state.
 - b. "Employee" means any North Dakota employee as that term is defined in North Dakota Century Code section 65-01-02 who engages in covered employment and who is eligible to file for workers' compensation benefits in another state if the employee suffers a work-related illness or injury or dies as a result of work activities in that state. The term "employee" also includes a person with optional workers' compensation coverage in this state under

North Dakota Century Code section 65-04-29 or 65-07-01 who engages in covered employment and is eligible to file for workers' compensation benefits in another state if that person suffers a work-related illness or injury or dies as a result of work activities in that state.

- c. "Employer" means an employer as defined in North Dakota Century Code section 65-01-02, who is not materially delinquent in payment of premium, and who has employees engaged in covered employment. An employer is not materially delinquent in payment of premium if the premium is no more than thirty days delinquent.
 - d. "Incidental operations" means business operations of an employer for fewer than thirty consecutive days in which the employer has no contacts sufficient, under the workers' compensation laws of that other state to subject the employer to liability for payment of workers' compensation premium in that other state and which operations do not require the employer to purchase workers' compensation insurance under the laws of that state.
2. If an employee, hired in this state for covered employment by an employer covered by the Workers' Compensation Act of this state, receives an injury while employed in incidental operations outside this state, the injury is subject to the provisions of this section if the employee elects to receive benefits under the workers' compensation laws of that other state in lieu of a claim for benefits in this state. This section applies only if the workers' compensation laws of the other state allow the employee to elect to receive benefits under the laws of that state. If the employee does not or cannot elect coverage under the laws of another state, the injury is subject to the provisions of North Dakota Century Code chapter 65-08.

The provisions of this section do not apply to:

- a. States having a monopolistic state fund.
- b. States having a reciprocal agreement with this state regarding extraterritorial coverage.
- c. Compensation received under any federal act.
- d. Foreign countries.
- e. Maritime employment.
- f. Employer's liability or "stop-gap" coverage.

3. An employee who elects to receive benefits under the workers' compensation laws of another state waives the right to seek compensation under North Dakota Century Code title 65.
4. The organization may pay, on behalf of an employer, any regular workers' compensation benefits the employer is obligated to pay under the workers' compensation laws of a state other than North Dakota, with respect to personal injury, illness, or death sustained as a result of work activities by an employee engaged in covered employment in that state, if the employee or the employee's dependents elect to receive benefits under the other state's laws in lieu of benefits available under the North Dakota Workers' Compensation Act. The term "dependents" includes an employee's spouse. The organization may pay benefits on behalf of an employer but may not act nor be deemed as an insurer, nor may the organization indemnify an employer for any liabilities, except as specifically provided in this section.

The benefits provided by this section are those mandated by the workers' compensation laws of the elected state. This includes benefits for injuries that are deemed compensable in that other state but are not compensable under North Dakota Century Code chapters 65-05 and 65-08. Medical benefits provided pursuant to this section are subject to any fee schedule and other limitations imposed by the workers' compensation law of the elected state. The North Dakota fee schedule does not apply to this section.

The organization may reimburse an employer covered by this section for legal costs and for reasonable attorney's fees incurred, at a rate of no more than one hundred ~~thirty~~ forty dollars per hour, if the employer is sued in tort in another state by an injured employee or an injured employee's dependents relative to a work-related illness, injury, or death; or if the employer is alleged to have failed to make payment of workers' compensation premium in that other state by the workers' compensation authorities of that state. This reimbursement may be made only if it is determined by the organization or by a court of competent jurisdiction that the employer is subject to the provisions of this section and was not required to purchase workers' coverage in that other state relative to the employment of the injured employee.

The organization may not reimburse any legal costs, attorney's fees, nor any other costs to a coemployee sued in tort by an injured employee.

5. The organization may contract with a qualified third-party administrator to adjust and administer claims arising under this chapter. The organization shall pay the costs of the third-party administrator from the general fund.
6. Benefits paid on behalf of an employer pursuant to this section will be charged against the employer's account for experience rating

purposes. The experience rating loss will be equal to the actual claim costs. The assessment charge plus appropriate penalties and interest, if any, levied pursuant to North Dakota Century Code section 65-05-07.2, will be assessed on all claims brought under this section.

7. The employer shall notify the organization when a claim is filed in another state by an employee covered by this section. The employer shall notify the organization of the claim in writing. The employer has thirty days after actual knowledge of the filing of a claim in which to notify the organization. That time can be extended for thirty days by the organization if the employer shows good cause for failing to timely notify the organization. If the employer fails to timely notify the organization when a claim is filed in another state by an employee covered under this section, the organization may not pay benefits under this section.

The organization may not pay costs, charges, or penalties charged against an employer for late reporting of an injury or claim to the workers' compensation authorities of the state of injury.

8. The exclusive remedy provisions of North Dakota Century Code sections 65-01-01, 65-01-08, 65-04-28, and 65-05-06 apply to this section.

History: Effective January 1, 1994; amended effective April 1, 1997; July 1, 2004; July 1, 2006; July 1, 2010; April 1, 2014.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-08.1-02, 65-08.1-05

CHAPTER 92-02-01

92-02-01-01. References to other standards. Any update, amendment, or revision to title 29 of the Code of Federal Regulations, part 1910, occupational safety and health standards for general industry, and, part 1926, occupational safety and health standards for the construction industry, both promulgated by the occupational safety and health administration of the United States department of labor effective as of July 1, 2010, and, any update, amendment, or revision to title 30 of the Code of Federal Regulations promulgated by the mine safety and health administration of the United States department of labor effective July 1, 2012, are the standards of safety and conduct for the employers and employees of the state of North Dakota.

History: Amended effective August 1, 1987; June 1, 2000; July 1, 2004; July 1, 2010; April 1, 2014.

General Authority: NDCC 65-03-01

Law Implemented: NDCC 65-03-01

CHAPTER 92-05-02

92-05-02-03. Eligibility - Billing. All employers, except participants in the retrospective rating and deductible programs are eligible to participate in the organization's risk management programs.

An employer may elect, subject to the organization's approval, to participate in an alternative risk management program.

The organization, in its discretion, shall determine eligibility for the risk management program. Pursuant to this program, the organization will serve the sector of industry and business that has historically generated high frequency or severity rates, or both.

Volunteer accounts are not eligible for participation in risk management programs.

At the organization's discretion, an employer account that is delinquent, uninsured, or not in good standing pursuant to section 92-05-02-01 may not be eligible for discounts under this article.

Discounts are automatically calculated by the organization. ~~At the organization's discretion, discounts earned under section 92-05-02-06 may be payable either~~ and are applied as a credit to the employer's premium billing statement ~~or as a cash payment to the employer.~~

History: Effective July 1, 2006; amended effective April 1, 2008; July 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04, 65-04-19.1

CHAPTER 92-05-03

92-05-03-01. Grant programs - Purpose. The organization may create grant programs to fund safety interventions or develop other programs to reduce workplace injury and illness. A decision to discontinue a grant program is at the discretion of the organization. A grant award under this section is within the discretion of the organization.

History: Effective July 1, 2006; amended effective April 1, 2008; April 1, 2009; April 1, 2014.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04

TITLE 109
PEACE OFFICER STANDARDS AND TRAINING BOARD

APRIL 2014

CHAPTER 109-01-01

109-01-01-01. History and function.

1. In 1981 the legislative assembly established a peace officer standards and training board under the law enforcement standards training and statistics division of the office of attorney general. In 2003 the legislative assembly repealed the statutory provisions relating to the law enforcement standards training and statistics division and established separate statutory authority for the board.
2. The function of the peace officer standards and training board is to prescribe criteria for certification of peace officer training, instructors, and schools, to certify curriculum, schools, and officers that have met the training certification criteria, to establish curriculum for peace officer training, to prescribe minimum standards for sidearm training and ~~certification~~ licensing for peace officers, ~~and~~ to issue peace officer licenses to persons who meet board-prescribed peace officer standards, training, and licensing requirements, and to take adverse license action for violations of state and federal laws and the rules of the board.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

ARTICLE 109-02

PEACE OFFICER STANDARDS

Chapter	
109-02-01	General Provisions
109-02-02	Licensing and Training Requirements
109-02-03	Minimum Standards of Training Prior to Carrying a Weapon
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CHAPTER 109-02-01 GENERAL PROVISIONS

Section	
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109-02-01-01. Definitions. The terms used throughout this article have the same meaning as in the North Dakota Century Code except:

1. "Agency" means a criminal justice agency, or an agency of the state of North Dakota or one of its political subdivisions ~~that employs,~~ authorized to employ licensed peace officers. For purposes of this title, an agency includes the North Dakota stockmen's association and a railroad that employs licensed peace officers.
2. "~~Auxiliary personnel~~" means ~~personnel utilized by a municipal, county, or state law enforcement agency to provide service to that jurisdiction on a nonsalaried basis. Auxiliary personnel may be members of organized groups, including posse, search and rescue, and security at dances, who operate adjunct to a police or sheriff's department and who do not have arrest powers or peace officer authority.~~
3. 2. "Basic law enforcement full-time peace officer training course" means a board-certified entrance-level training course based on performance objectives essential for ~~law enforcement~~ full-time licensed peace officers in the state of North Dakota.

4. ~~3.~~ "Basic part-time ~~law enforcement~~ peace officer training course" means a board-certified entrance-level training course based on performance objectives essential for part-time licensed peace officers in the state of North Dakota.
5. ~~4.~~ "Certified instructor" means an instructor certified by the board to instruct law enforcement ~~subjects~~ or basic correctional officer training courses.
5. "Certified shooting course" means a shooting course that meets the requirements of these rules.
6. "Certified training ~~course~~" means ~~a course of training that has been approved by the board.~~
7. "College credits" means credits earned for studies satisfactorily completed ~~at~~ through an accredited institution of higher learning in a program leading to an academic degree.
8. "Criminal justice agency" means a unit of government of the state of North Dakota or one of its political subdivisions charged by law with criminal law enforcement duties.
9. "Duty equipment" means the equipment issued or approved by the peace officer's employing agency and normally carried by a peace officer in the performance of the peace officer's duties.
10. "Duty weapon" means the sidearm issued or approved by the peace officer's employing agency and normally carried by the peace officer in the performance of the peace officer's duties.
11. ~~"In-service training" refers to a certified training program conducted by an agency for peace officers employed by the agency.~~ "Full-time peace officer" means a full-time salaried public servant employed by an agency of the state of North Dakota or one of its political subdivisions, or a peace officer employed by the North Dakota stockmen's association or a railroad, to enforce the law or to conduct or engage in investigations or prosecutions for violations of law.
12. "Law enforcement training academy" means the highway patrol law enforcement training center.
13. "License requirement" means any term, or condition, ~~or requirement~~ established by the board that must be met before the board may issue, renew, or reinstate a peace officer's license.
14. "Limited license" means a conditional license granted by the board to an individual who has been hired or appointed by an agency but who

has not completed a basic full-time peace officer training course and has not successfully passed the licensing examination.

- ~~14.~~ 15. "Moral turpitude" means conduct ~~contrary to justice, honesty, modesty, or good morals.~~ that:
- a. Involves falsification or fraud;
 - b. Involves harm or injury directed to another individual or entity or another individual's or entity's property; or
 - c. Is in violation of North Dakota Century Code chapter 12.1-20, 12.1-27.1, or 12.1-27.2 or the equivalent laws of another state or the federal government.
- ~~15.~~ 16. "Part-time peace officer" means a public servant who has a part-time peace officer license and is employed or appointed by a criminal justice agency of the state of North Dakota or one of its political subdivisions to enforce the law or to conduct or engage in investigations or prosecutions for violations of law within the scope of the part-time peace officer's training.
- ~~16.~~ 17. "Peace officer" means a salaried public servant employed by a criminal justice agency of the state of North Dakota or one of its political subdivisions, or a peace officer employed by the North Dakota stockmen's association or a railroad, to enforce the law or to conduct or engage in investigations or prosecutions for violations of law.
- ~~17.~~ 18. "Peace officer license" means a license issued by the board ~~and includes a part-time peace officer license.~~
- ~~18.~~ "Reserve officer" ~~means any person utilized by a criminal justice agency to provide service in that jurisdiction on a nonsalaried basis and who may be granted full arrest authority.~~
- ~~19.~~ "Salaried peace officer" ~~means a peace officer who is employed by a criminal justice agency and who receives regular compensation on a weekly, biweekly, semimonthly, or monthly basis.~~
- ~~20.~~ 19. "School" means a facility, agency, or academy that conducts board-certified basic, advanced, and specialized peace officer training courses or basic correctional officer training courses.
- ~~21.~~ 20. "Sidearm" means a handgun, including a semiautomatic handgun or revolver, carried by a peace officer as the officer's authorized duty weapon.
21. "Sidearm qualification" means the test a peace officer must complete on a certified shooting course with the peace officer's duty weapon.

22. "Training provider" means an individual, school, facility, or academy that conducts certified basic, advanced, specialized peace officer training courses, or basic correctional officer training courses.

~~22.~~ 23. "Weapon" includes a handgun, shotgun, and rifle.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014.

General Authority: NDCC 12-63-02.1(7), 12-63-04(2)(d)

Law Implemented: NDCC 12-44.1-01(10), 12-44.1-04(4), 12-63-02.1, 12-63-04

109-02-01-02. Background investigation required.

1. The agency ~~administrator~~ shall conduct a criminal history background investigation when the agency hires ~~a person~~ or appoints an individual to perform peace officer duties. The agency ~~administrator~~ shall file ~~a copy~~ verification of the completed criminal history background investigation and results on a form provided by the board. In addition to the form required, the agency shall ~~require that each person~~ submit a complete set of the ~~person's~~ individual's fingerprints and all other information necessary to complete a state and nationwide criminal history record check with the bureau of criminal investigation ~~for state processing and filing with the federal bureau of investigation for federal processing.~~
2. A school shall conduct a criminal history background investigation on each enrollee in the school, unless the enrollee has a limited license or is attending the law enforcement training academy. The school shall file ~~a copy~~ verification of the completed criminal history background investigation and results on a form provided by the board. In addition to the form required, the school shall require each enrollee to submit a complete set of the enrollee's fingerprints and all other information necessary to complete a state and nationwide criminal history record check with the bureau of criminal investigation ~~for state processing and filing with the federal bureau of investigation for federal processing.~~

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a), 12-63-06(3)

109-02-01-03. Minimum license requirements. An applicant for a peace officer license:

1. Must be a United States citizen, or in resident alien status, as defined by United States ~~bureau of~~ citizenship and immigration services laws and regulations.
2. Must be a high school graduate or have a general educational development (GED) certificate.

3. Must not have pled guilty to, pled nolo contendere to, or have been found guilty, in any state or federal court, of a felony offense.
- ~~3-~~ 4. Must not have pled guilty to, pled nolo contendere to, or have been convicted in any state or federal court ~~for any felony, crime of an offense involving~~ moral turpitude, ~~crime of an offense involving~~ domestic violence or violation of a domestic violence restraining order, an offense involving child abuse or neglect, an offense involving firearms under North Dakota Century Code title 12.1 or 62.1, or any other criminal offense that the board determines has a direct bearing on the applicant's ability to serve as a peace officer.
- 4- 5. Must not be prohibited from using or possessing a firearm under state or federal law.
- 5- 6. Must have a valid driver's license.
- ~~6-~~ 7. Must have undergone a criminal history background investigation by the employing agency and have fingerprint clearance from the North Dakota bureau of criminal investigation and the United States department of justice federal bureau of investigation.
- 7- 8. Must have ~~been administered~~ passed a ~~board-approved~~ medical examination and psychological examination. The psychological examination must be administered by a board-approved psychological provider.
- ~~8-~~ 9. Must be employed as a ~~salaried~~ full-time peace officer by ~~a criminal justice~~ an agency, or for a part-time peace officer license, employed or appointed by ~~a criminal justice~~ an agency.
10. Must not be prohibited from access to national crime information center and criminal justice information sharing databases.
11. Must not have been dishonorably discharged or administratively discharged from United States military service for conduct that would be in violation of the peace officer code of conduct.
- 9- 12. ~~Must~~ Shall submit all required documentation and application materials to the board no less than five days prior to attendance of any required basic peace officer training course.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014.

General Authority: NDCC 12-63-02.1(7), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.1, 12-63-04, 12-63-12

109-02-01-04. Other license requirements.

1. In addition to other requirements of law when an agency employs or appoints ~~a person as~~ an individual to be a peace officer, the agency ~~administrator~~ shall notify the board of the employment of the individual on a form provided by the board and verify that the person individual meets the requirements of ~~the board~~ North Dakota Century Code chapter 12-63 and these rules before the individual may begin performing peace officer duties. The agency shall submit on a form provided by the board verification of completion of the criminal history background investigation, medical examination, and psychological examination. The agency shall also forward a complete record of ~~that peace officer's~~ the individual's previous training and law enforcement experience to the board.
2. ~~A person may not legally exercise the authority of a peace officer unless the board has issued a license or a limited license and the person is employed by a criminal justice agency as a salaried peace officer, or the person meets one of the exceptions of North Dakota Century Code section 12-63-03, or the person has been employed or appointed by a criminal justice agency as a part-time peace officer and the board has issued a part-time peace officer license to the person.~~
3. ~~2.~~ 2. Only a salaried peace officer ~~that~~ who has a limited license may attend the basic ~~law enforcement full-time peace officer~~ peace officer training course at the law enforcement training academy. The peace officer's employing agency shall submit a verified statement to the board that the peace officer is a ~~salaried full-time~~ salaried full-time peace officer of the agency in connection with the peace officer's application to attend the law enforcement training academy for the basic ~~law enforcement full-time peace officer~~ peace officer training course and that the peace officer is receiving a salary while attending the law enforcement training academy.
4. ~~3.~~ 3. Only ~~a salaried~~ an individual hired to be a full-time peace officer may apply for a limited license or a peace officer license ~~or take the licensing examination, apply for renewal of a license, except for renewal of an inactive license, or apply for reinstatement of a license.~~ The peace officer's employing agency shall submit a verified statement to the board that the peace officer is a ~~salaried full-time~~ salaried full-time peace officer of the agency in connection with the peace officer's application for a limited license; ~~peace officer license, an application to take the licensing examination, or an application for renewal or reinstatement of a license.~~
5. ~~A person employed or appointed by a criminal justice agency to be a part-time peace officer may attend the law enforcement training academy for the purpose of taking any part of the basic part-time law enforcement training course.~~

- ~~6- An agency that is employing or appointing a person to be a peace officer with a part-time peace officer license shall submit a verified statement to the board in connection with the person's application for a part-time peace officer license that the agency will employ or appoint the person to be a peace officer and that the applicant has completed the basic part-time law enforcement training course.~~

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014.

General Authority: NDCC 12-63-02.1(7), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.1, 12-63-04(1), 12-63-06, 12-63-07, 12-63-09

109-02-01-05. Agency's responsibility.

1. Every agency shall provide or obtain the necessary training for its peace officers in order that its peace officers meet all board license requirements.
2. Every agency shall maintain records of training provided to its peace officers, ~~including:~~ and make the records available to the board upon request.
 - ~~a. Curriculum.~~
 - ~~b. Listing of instructors.~~
 - ~~c. Attendance.~~
 - ~~d. Test and examination scores.~~
3. Every agency shall notify the board when it hires a peace officer, when it terminates the employment of a peace officer, or when a peace officer resigns from employment with the agency. The agency shall submit the notification on the form provided by the board within thirty days from the date of the officer's employment, termination, or resignation.
4. It is the responsibility of each agency to investigate and submit a written report to the board of any of the following:
 - a. A violation of North Dakota Century Code chapter 12-63 by a peace officer employed by the agency;
 - b. An arrest, plea of guilty, or finding of guilt for a felony offense by a peace officer employed by the agency;
 - c. An arrest, plea of guilty, or finding of guilt by an officer employed by the agency for an offense involving moral turpitude, an offense involving domestic violence or violation of a domestic violence restraining order, an offense involving child abuse or neglect, an

offense involving firearms under North Dakota Century Code title 12.1 or 62.1; or

- d. Any other criminal offense the board may determine has a direct bearing on the applicant's ability to serve as a peace officer.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04, 12-63-12

109-02-01-06. Record of certified instructors and shooting courses.

~~The board shall maintain a record of certified instructors, certified training courses, and certified shooting courses. Repealed effective April 1, 2014.~~

~~**History:** Effective October 1, 2004.~~

~~**General Authority:** NDCC 12-63-04(2)(d)~~

~~**Law Implemented:** NDCC 12-63-04(1)(b)(d)~~

109-02-01-07. Waiver. The board may waive the requirements of ~~any of the rules in this article~~ upon a showing of good cause. Good cause means a situation involving extreme hardship that places an undue burden on a peace officer or agency.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04

109-02-01-09. Hearings and appeals. Hearings and appeals must be in accordance with North Dakota Century Code chapters 28-32 and 54-57. An aggrieved person individual may waive the provisions of North Dakota Century Code ~~chapters 28-32 and 54-57~~ these requirements and consent to disposition by the board. Appeals must be in accordance with North Dakota Century Code ~~chapter 28-32 and subsection 3 of North Dakota Century Code section 12-63-12.~~

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04, 12-63-12

**CHAPTER 109-02-02
LICENSING AND TRAINING REQUIREMENTS**

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109-02-02-01. Compliance with minimum training standards.

1. Each applicant for a peace officer's license shall successfully complete the first available board-certified basic ~~law enforcement~~ full-time peace officer training course from the date of the issuance of the peace officer's limited license, except as extended by the board under these rules and successfully pass the licensing examination. The applicant must successfully pass the licensing examination before the board may issue a full-time peace officer's license.
2. Each applicant for a part-time peace officer's license shall successfully complete the basic part-time ~~law enforcement~~ peace officer training course within two years after the applicant commenced taking the classes in the basic part-time ~~law enforcement~~ peace officer training course. ~~The applicant must successfully pass a licensing examination prescribed by the board before the board may issue the applicant a part-time peace officer's license.~~

3. ~~Training for reserve officers is the responsibility of the reserve officer's agency. An individual who has never been employed or appointed by an agency for up to two years after successfully completing the basic full-time peace officer training course and licensing examination is eligible for a peace officer license and may be issued a license upon employment or appointment as a peace officer with an agency.~~
4. ~~Training for auxiliary personnel is the responsibility of the auxiliary personnel's agency. An individual who has never been employed or appointed by an agency for two years or more, but less than three years, after successfully completing the full-time basic peace officer training course and licensing examination shall obtain a limited license, attend the criminal and traffic portions of the basic full-time peace officer training course, successfully pass the licensing examination, and be employed by an agency in order to receive a peace officer license.~~
5. ~~An individual who has never been employed or appointed by an agency as a peace officer for more than three years after successfully completing the basic full-time peace officer training course and licensing examination shall obtain a limited license, complete the entire basic full-time peace officer training course, successfully pass the licensing examination, and be employed by an agency in order to receive a peace officer license.~~
5. 6. The board may grant an extension of time to a peace officer to complete required courses upon written request by the agency administrator upon a showing of ~~extreme hardship~~ good cause.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014.

General Authority: NDCC 12-63-02.1(7), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.1, 12-63-03(1)(2), 12-63-06, 12-63-07

109-02-02-02. Auxiliary personnel Supervision of a part-time licensed peace officer. ~~These rules do not preclude payment of compensation to auxiliary personnel who assist in maintaining order and in security functions, including traffic and crowd control at sporting events, parades, or similar events. Supervision of a peace officer with a part-time license means the supervising officer has the ability to have direct personal contact with the part-time peace officer within a reasonable time and the part-time peace officer is able to have direct personal contact with the supervising full-time peace officer within a reasonable time.~~

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-02.1(3)(7), 12-63-04(2)(d)

Law Implemented: NDCC ~~12-63-03(1)~~ 12-63-02.1, 12-63-04

109-02-02-03. Reserve officers. ~~These rules do not preclude payment of compensation to reserve officers who assist in maintaining order and in security functions, including traffic and crowd control at sporting events, parades, and other similar events. No agency may pay a reserve officer on a full-time or part-time~~

basis for the performance of peace officer duties unless the reserve officer meets all board license requirements. Repealed effective April 1, 2014.

History: Effective October 1, 2004.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-03(2)

109-02-02-04. Limited peace officer license. ~~The board may issue a limited peace officer license to a person who has completed the educational, medical, and psychological examination licensing requirements and has been qualified to carry a sidearm. A limited license is effective until the person has successfully completed a certified basic training course and has successfully completed the licensing examination. The board may renew the limited license once if the person failed the examination. A person shall take the licensing examination within thirty days after completing the certified basic training course. A person may not take the examination more than three times. After the second unsuccessful attempt and before retaking the licensing examination, the person must successfully complete a board-approved law enforcement basic training course. An applicant for a part-time peace officer license may not receive a limited peace officer license.~~

1. The board may issue a limited peace officer license to an individual who has completed the educational, medical, and psychological examination licensing requirements and has been qualified to carry a sidearm.
2. The application for the limited license must be made by the individual's employing agency. A peace officer with a limited license must work under the supervision of an officer with a full-time peace officer license. Supervision of a peace officer with a limited license means the supervising officer has the ability to have direct personal contact with the peace officer with a limited license within a reasonable time and the peace officer with a limited license is able to have direct personal contact with the supervising full-time peace officer within a reasonable time.
3. A limited license is effective until the individual has successfully completed the first available basic full-time peace officer training course and has successfully completed the licensing examination.
4. The board may authorize an individual to attend a subsequent basic full-time peace officer training course upon a showing of good cause by the agency or individual. The board may renew the limited license once if the individual failed the licensing examination. An individual with a limited license may retake the licensing examination within thirty days after the first examination and upon payment of the examination fee. If an individual with a limited license fails the licensing examination a second time, the individual shall successfully complete a basic full-time peace officer training course before the individual may retake the licensing examination. The individual shall obtain a limited license if

the individual will attend the basic full-time peace officer training course at the law enforcement training academy.

5. If a peace officer with a limited license is no longer employed with the agency that applied for the limited license, or if the peace officer fails to attend and successfully complete the first available basic full-time peace officer training course without the prior approval of the board, the peace officer's limited license expires.
6. An applicant for a part-time peace officer license may not receive a limited peace officer license.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014.

General Authority: NDCC 12-63-02.1(7), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.1, 12-63-06, 12-63-07, 12-63-09

109-02-02-05. Waiver of required training - Out-of-state and federal peace officers.

1. ~~A person~~ An individual having peace officer experience or having ~~completed an equivalent basic full-time peace officer training not certified by the board~~ completed an equivalent basic full-time peace officer training course conducted in another state or by a federal law enforcement agency may qualify for a partial waiver of ~~applicable basic full-time peace officer training or license~~ requirements. The administrator of the agency employing the ~~person~~ individual may apply to the board for a partial waiver. The board shall review all ~~such~~ applications for a waiver and may grant a ~~complete or partial~~ waiver. ~~The person must be currently licensed or certified in another state, must have a minimum of one year of full-time experience as a certified or licensed peace officer, and must successfully complete the licensing examination and sidearm qualification before the board may grant a partial or complete waiver of the license requirement and issue a peace officer license.~~
 - a. ~~Training received in states~~ a state or from a federal law enforcement agency with laws governing or regulating peace officer training must have been approved or certified ~~in the state by the governing or regulating body of the state or federal agency in which the training was individual~~ received the training.
 - b. The board may prescribe additional training as a license requirement for ~~a person in order for the person to comply with board requirements~~ an individual applying for a partial waiver under this rule.
 - c. Applicants for a partial waiver of basic full-time peace officer training shall submit complete documentation of prior basic full-time peace officer training, including current licensing or certification, to the board.

2. ~~If the board has granted a peace officer a waiver or an applicant a partial waiver, the board may only allow the peace officer one attempt~~ applicant two attempts to successfully complete the licensing examination. ~~If a passing score is not obtained on the first attempt, the board shall deny the application for the waiver and the peace officer must complete the full certified basic training course before taking the licensing examination for the second time~~ applicant may retake the examination, but only if the applicant retakes the examination within thirty days from the date of the first examination. If a passing score is not obtained on the second attempt, the applicant shall complete the entire basic full-time peace officer training course before retaking the licensing examination.
3. An individual without peace officer experience who has completed an equivalent basic full-time peace officer training course in another state or with a federal law enforcement agency may only qualify for a partial waiver of the basic full-time peace officer training course if it has been less than three years since the individual completed the other state's or federal agency's peace officer training course.
4. An individual with peace officer experience who has been employed as a certified or licensed peace officer in another state or with a federal law enforcement agency may only qualify for a partial waiver of the basic full-time peace officer training course if it has been less than three years since the individual has been employed as a peace officer in another state or with a federal law enforcement agency.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC ~~12-63-04(2)(d)~~ 12-63-04(2)

Law Implemented: NDCC ~~12-63-08(1)~~ 12-63-04, 12-63-06

109-02-02-06. Licensing examinations.

1. **Application Examination requirements.** ~~Licensing examinations must be according to board requirements.~~ An individual is eligible to take the licensing examination upon completion of or during the basic full-time peace officer training course. A minimum score of seventy percent is necessary for successful completion of the licensing examination. ~~The applicant for any licensing examination shall submit a request prior to the date of the examination.~~ The appropriate nonrefundable individual shall pay the examination fee established by the board must accompany the request prior to taking the examination.
2. **Retaking examinations.** An applicant individual who fails an the first examination may retake ~~that the~~ the examination one time upon furnishing to the board ~~a renewed request and the required~~ examination fee. After the second unsuccessful attempt ~~and before retaking the examination,~~ the applicant must individual shall successfully complete ~~a board approved law enforcement~~ the entire basic full-time peace

officer training program course before the individual may retake the examination a third time. The individual shall obtain a limited license if the individual will attend the basic full-time peace officer training course at the law enforcement training academy.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04, 12-63-07

109-02-02-07. Licensing Employment of peace officers.

~~4. **Notification.**—The employing agency shall notify the board of the appointment of any person to the position of peace officer before the first day of the person’s employment. The agency shall provide the notification on a form provided by the board.~~

~~2.~~ 1. **Application procedures for a full-time peace officer license.** If the person an individual is not already a licensed peace officer when hired by an agency, but the individual is eligible to be licensed, the person individual shall apply to be licensed at the time of appointment or hire. The application must be made on a form provided by the board, and both the person applicant and the agency administrator shall verify that the applicant is eligible to be licensed. The applicable license fee must accompany the application.

~~3.~~ 2. **Application procedures for a part-time peace officer license.** The employing or appointing agency shall notify the board of any person it will employ or appoint to be a part-time peace officer. The agency shall provide the notification on a form provided by the board. If an agency has hired or appointed an individual to be a part-time peace officer, and the individual does not have a part-time peace officer license, but has completed all requirements for a part-time peace officer license, the individual shall apply for a part-time peace officer license at the time of appointment or hire. The application must be made on a form provided by the board. The applicant and the agency administrator shall verify the applicant is eligible for a part-time peace officer license. The applicable license fee must be submitted with the application.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014.

General Authority: NDCC 12-63-02.1(7), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.1, 12-63-04, 12-63-06, 12-63-07, 12-63-09

109-02-02-08. Medical and psychological evaluation examination.

An applicant for a peace officer license shall ~~undergo~~ successfully complete a board-approved psychological and ~~medical evaluation and examination by a board-approved provider.~~ An applicant shall also successfully complete a medical examination. The employing agency shall submit the results of the evaluations

psychological examination and documentation of the medical examination with the application for the peace officer license or limited license.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-06(4)

109-02-02-09. Compliance with sidearm qualification as a license requirement. The board may not issue, renew, or reinstate a peace officer license or limited license unless the peace officer has complied with all sidearm qualification requirements. The board may suspend an officer's license if the officer fails to comply with all sidearm qualification requirements under these rules.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(d)

109-02-02-10. License certificate. ~~The board shall issue a license certificate to a person who has complied with the requirements of law and whose affirmations are consistent with the board's records and payment of required fees. The period of the initial licensure must be determined according to section 109-02-02-11. Repealed effective April 1, 2014.~~

~~**History:** Effective October 1, 2004.~~

~~**General Authority:** NDCC 12-63-04(2)(d), 12-63-05~~

~~**Law Implemented:** NDCC 12-63-05, 12-63-10~~

109-02-02-11. Fees Licensing, renewal, and reinstatement fees.

1. The following fees are nonrefundable:
 - a. ~~Application for Licensing~~ examination fee - twenty-five dollars.
 - b. ~~License Initial license~~ fee - the initial license fee is forty-five dollars if the licensee is to be licensed for thirty to thirty-six months; thirty dollars if the licensee is to be licensed for at least eighteen months but less than thirty months; and fifteen dollars if the licensee is to be licensed for less than eighteen months.
 - c. ~~Renewal License renewal~~ fee - forty-five dollars for a three-year period.
 - d. Late license renewal fee for up to thirty days after expiration of license - one hundred dollars.
 - e. Reinstatement fee Late license renewal fee from thirty-one days to three hundred sixty-five days after expiration of license - two hundred fifty dollars.

- f. License reinstatement fee after revocation of license - five hundred dollars.
 - f. g. Duplicate license fee - ~~twenty-five~~ ten dollars.
 - h. Late sidearm qualification fee - one hundred dollars.
 - i. Reinstatement fee for sidearm suspension or revocation - two hundred fifty dollars.
2. License period and renewal terms renewals are every three years on a calendar-year basis. License renewal dates are based on the following surname divisions: A-G, H-M, N-Z.
- a. ~~If the peace officer's surname begins with the letters A through G, the peace officer's license term is for the period July 1, 2002, through December 31, 2005, and the peace officer shall renew the license by December thirty-first every third year thereafter.~~
 - b. ~~If the surname begins with the letters H through M, the peace officer's license term is for the period July 1, 2003, through December 31, 2006, and the peace officer shall renew the license by December thirty-first every third year thereafter.~~
 - c. ~~If the surname begins with the letters N through Z, the peace officer's license term is for the period July 1, 2001, through December 31, 2004, and the peace officer shall renew the license by December thirty-first every third year thereafter.~~
 - d. ~~If a peace officer is newly hired during the three-year cycle, the officer shall meet the prorated share of the requirements needed until the officer's renewal date arrives.~~

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d), 12-63-05

Law Implemented: NDCC 12-63-05, 12-63-10

109-02-02-12. Surrender of license certificate. Licenses remain the property of the board. A peace officer shall surrender the officer's license certificate ~~and any renewal certificates~~ if the board has suspended or revoked the peace officer's license or if the peace officer has not requested inactive status and has allowed the peace officer license to expire.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02, 12-63-04, 12-63-11(2)

109-02-02-13. Lapse Reinstatement of license. A peace officer that does not perform duties as a peace officer, is no longer employed by an agency, or

otherwise allows the peace officer's license to expire shall comply with the following conditions for reinstatement:

1. ~~A person who has not been employed by a law enforcement agency for less than two years may apply for reinstatement of the person's peace officer license. The person shall pay the reinstatement fee. The person shall obtain sufficient makeup continuing education hours within three months of reinstatement. If the board has revoked an individual's peace officer license by adverse license action under North Dakota Century Code section 12-63-12, the individual may not apply for reinstatement of the license until one year from the date of revocation of the license.~~
2. ~~A person who has not been employed by a law enforcement agency for two to five years may apply for reinstatement of the person's peace officer license. The person shall successfully complete the licensing examination and obtain sufficient continuing education hours within six months of reinstatement. The person shall pay the reinstatement fee and the application for examination fee. Before the board may accept the application for reinstatement, the individual shall comply with the following conditions for reinstatement:~~
 - a. The individual shall pay the reinstatement fee and shall meet the same continuing education requirements applicable for renewal of a peace officer license under this chapter.
 - b. The individual shall successfully complete the written examination and sidearm qualification requirements under chapter 109-02-03 of these rules prior to reinstatement.
 - c. If the individual does not apply for reinstatement within one year after becoming eligible to apply for reinstatement, the board may not accept the application for reinstatement.
3. ~~A person who has not been employed as a peace officer by a law enforcement agency for five to seven years may apply for reinstatement of the person's peace officer license. The person shall successfully complete the licensing examination and pay the reinstatement fee and the application for examination fee. The person shall attain the sufficient makeup continuing education hours within six months of reinstatement. If the person fails the licensing examination on the first attempt, the person shall successfully complete the process that is required for a new peace officer.~~
4. ~~A person who has not been employed as a peace officer by a law enforcement agency for seven or more years shall meet all license~~

~~requirements necessary for an original application for a peace officer license.~~

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04, 12-63-12

109-02-02-14. Inactive status. ~~A person~~ An individual who does not perform duties as a licensed peace officer or is no longer employed by an agency may request ~~that the person's license be placed~~ the board place the individual on inactive status. The individual shall make the request for inactive status in writing on a form provided by the board. ~~The person's license~~ individual may remain on inactive status indefinitely if the ~~person~~ individual meets the same requirements for a peace officer on active status, including annual sidearm qualification requirements, and maintains continuing education requirements and renews the license in accordance with board requirements the rules of the board. An individual who has been hired by an agency but who has been on inactive status for three or more years when the individual was hired by the agency shall attend the first available criminal and traffic law portions of the full-time peace officer basic course, and successfully complete the licensing examination before the board may restore the individual's license to active status.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-11(2)

109-02-02-15. ~~License requirements to remain licensed or to obtain renewal or reinstatement of a license~~ Continuing education requirements.

1. In order for a peace officer to remain licensed, the peace officer shall ~~continue to meet~~ comply with all the ~~minimum~~ license requirements and shall receive a minimum of sixty hours of ~~board-certified or board-approved~~ certified training every three years; ~~including up to sixty hours of certified law enforcement training or up to sixty hours attending board-approved or board-certified criminal justice seminars or a combination of both, as long as there is a total of sixty hours. Certified training in online, web-based, or video format cannot constitute more than twenty hours of the sixty-hour requirement for continuing education requirements.~~ Training may not be in increments of less than one hour. ~~The training may be attended in any hour grouping, as long as it totals a minimum of sixty hours within a three-year period. A~~ If an officer has received more than sixty hours in a three-year period, the surplus in training hours may not be carried forward into the next three-year period.
2. ~~All~~ Every peace ~~officers~~ officer shall meet the sixty-hour continuing ~~certified training license~~ education requirements ~~by the following dates:~~ within the officer's three-year license period or the peace officer's

license expires at the expiration of the officer's three-year license period.

- a. ~~If the peace officer's surname begins with the letters A through G, the peace officer shall meet the sixty-hour continuing education requirement for the period July 1, 2002, through December 31, 2005, and shall meet the sixty-hour continuing education requirement within every three years by December thirty-first of the third year thereafter.~~
 - b. ~~If the surname begins with the letters H through M, the peace officer shall meet the sixty-hour continuing education requirement for the period July 1, 2003, through December 31, 2006, and shall meet the sixty-hour continuing education requirement within every three years by December thirty-first of the third year thereafter.~~
 - c. ~~If the surname begins with the letters N through Z, the officer shall meet the sixty-hour continuing education requirement for the period July 1, 2001, through December 31, 2004, and shall meet the sixty-hour continuing education requirement within every three years by December thirty-first of the third year thereafter.~~
 - d. ~~If an officer is newly hired during the three-year cycle, the peace officer shall meet the prorated share of the sixty-hour continuing education requirements needed until the peace officer's license renewal date arrives.~~
- ~~3.~~ It shall be the duty of each agency that employs peace officers to forward a record of each peace officer's board-approved training to the board prior to the peace officer's license renewal date.
4. 3. A peace officer ~~that~~ who has enrolled and completed college courses may request a waiver of the sixty-hour training requirement for renewal of the peace officer's license. The board may grant the request upon a showing of successful completion of at least: four semester credit hours of college credit in a criminal justice-related or job-related topic. The peace officer shall submit documentation of successful course completion within thirty days after completion of the college course.
 - a. ~~Three semester hours of college credit in a criminal justice-related or job-related topic; or~~
 - b. ~~Five quarter hours of college credit in a criminal justice-related or job-related topic.~~
- ~~5.~~ If a training course or seminar does not have board preapproval, the peace officer or the peace officer's employing agency shall request approval of the training course or seminar at least thirty days prior to the commencement of the training course or seminar. A course

~~or seminar that has not been approved by the board may not qualify toward the sixty-hour continuing training requirement.~~

- ~~6.~~ 4. If a peace officer fails to complete the required sixty-hour continuing education within the time period specified in this section, or the peace officer or the peace officer's agency fails to submit a record of the peace officer's approved continuing education to the board within the time period specified in this section, the peace officer's license expires ~~and is no longer in effect and the peace officer must go through the reinstatement process.~~
5. A training course or seminar must be certified training to qualify for the continuing education training requirement for license renewal under this chapter.
 - a. If a training course or seminar has not been approved by the board, the peace officer or the peace officer's employing agency shall notify the board of the proposed training course or seminar prior to commencement of the training course or seminar. The peace officer, or the peace officer's employing agency, shall provide the board the course name and subject matter, the training location, the dates and times of training, and if available, a training syllabus or agenda.
 - b. Within thirty days after completion of training, the officer or the officer's employing agency shall submit verification of the officer's attendance at the training or seminar. If the training or seminar agenda was not previously submitted, the training or seminar agenda must be submitted within thirty days following completion of the training or seminar.
 - c. The board may waive the required number of training hours upon a showing of good cause. For purposes of this section, good cause means a situation in which the officer is unable to complete the required training because of factors beyond the control of either the officer or the officer's employing agency. Under this section, good cause includes a situation in which the officer has suffered a physical injury or ailment that prevents the officer from successfully completing required training or when the officer is called to active military service and is unable to successfully complete the required training.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04

109-02-02-16. License renewal.

1. **Application.** An application for renewal of a peace officer license must be made on forms issued by the board. A peace officer applying for renewal shall verify compliance with sidearm and continuing education requirements on the application for renewal and submit the application for renewal prior to the expiration of the peace officer's license.
2. ~~Certificate of renewal~~ **Renewal.** The board shall issue a certificate of license renewal, which is valid for three years, to each peace officer ~~that~~ who has submitted the appropriate fee on or before December thirty-first of the year the peace officer's license ~~must be renewed~~ expires and who has ~~complied~~ verified compliance with all licensing requirements, including continuing education and annual sidearm qualification requirements. ~~If the peace officer fails to apply for renewal by December thirty-first, the peace officer's license expires and is no longer in effect.~~
3. **Late renewal.** If a peace officer fails to renew a license by December thirty-first ~~of the year the peace officer's license expires,~~ the peace officer's license is no longer in effect and the peace officer may not perform peace officer duties until the peace officer has renewed the license in accordance with the requirements of this section. The peace officer may apply for late renewal no later than ~~January~~ December thirty-first of the following year upon payment of the late renewal fee and verification of compliance with all licensing requirements, including continuing education and sidearm qualification requirements. The board may not renew the officer's license unless the officer has completed all required continuing education and annual sidearm qualification requirements.
4. ~~Reinstatement of expired~~ **Expiration of license.** If a peace officer fails to apply for renewal of a license within one ~~month after the application for renewal is due,~~ the peace officer may only apply for reinstatement of the license. ~~The application for reinstatement must include payment of the reinstatement fee provided in these rules. The board may reinstate the applicant's peace officer license after the applicant has complied with all board license requirements, including continuing education and sidearm qualification requirements~~ year after the expiration of the officer's license, the board may not renew the officer's license.
5. **Application for limited license and partial waiver.** If an individual fails to renew the license within one year after expiration of the license, the individual's employing agency may apply to the board for a limited license. The individual's employing agency may request a partial waiver of basic training after the board has issued a limited license to the individual.
6. **No partial waiver.** If an individual has not been employed or appointed by an agency as a peace officer within three years after the individual's

peace officer license has expired, the individual shall complete the enter basic full-time peace officer training course, successfully pass the licensing examination, and must be employed by an agency. The individual shall obtain a limited license if the individual will attend the basic full-time peace officer training course at the law enforcement training academy.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04, 12-63-11

109-02-02-17. Termination of peace officer status employment. An agency's termination of a ~~person's peace officer status as defined in North Dakota Century Code section 12-63-04~~ officer's employment, whether the termination is voluntary or involuntary, may not preclude ~~revocation, suspension, or denial of the person's peace officer license~~ adverse license action against the individual by the board under North Dakota Century Code section 12-63-12.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-12, 12-63-13, ~~12-63-14~~

109-02-02-18. Notice of termination. If an agency terminates a peace officer's employment, the agency ~~administrator~~ shall notify the board within ~~five~~ thirty days of the termination on a form ~~prescribed~~ provided by the board. The notice of termination must include:

1. The nature and cause of the termination.
2. The effective date of the termination.
3. A statement from the agency ~~administrator~~ indicating whether or not the agency ~~administrator~~ is recommending denial, suspension, or revocation of the peace officer license ~~to the board.~~

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-01(2), 12-63-12, 12-63-13

109-02-02-19. Notice of denial, suspension, or revocation - Hearing. The board shall notify a peace officer in writing when ~~there is a reasonable basis~~ the board has made a determination to deny, refuse to renew or reinstate, suspend, revoke, or impose probationary conditions on a peace officer's license. The notice must specify the basis of the denial, refusal to renew or reinstate, suspension, revocation, or probationary conditions. The peace officer may request an administrative hearing on the denial, refusal to renew or reinstate suspension, revocation, or probationary conditions. The board may take adverse license action by service of an administrative complaint on the peace officer. The board shall ~~also~~

notify a peace officer's employing agency if the board has commenced adverse license action against a peace officer currently employed by the agency.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-12, 12-63-13

CHAPTER 109-02-03
MINIMUM STANDARDS OF TRAINING PRIOR TO CARRYING A WEAPON

Section	
109-02-03-01	Sidearm Authorization and Qualification
109-02-03-02	Weapons Use of Force Examination and Weapons Safety and Proficiency Examination
109-02-03-03	Shotgun, Rifle, and Special Weapons Certification <u>[Repealed]</u>
109-02-03-04	Requalification <u>Sidearm Qualification</u> Required Annually
109-02-03-05	Certified Shooting Course
109-02-03-06	Criteria for a Certified Shooting Course
109-02-03-07	Issuance, Denial, or Revocation of Qualification
109-02-03-08	Waiver <u>[Repealed]</u>
109-02-03-09	Notice of Denial or Revocation of Qualification - Hearing <u>[Repealed]</u>

109-02-03-02. ~~Weapons~~ Use of force examination and weapons safety and proficiency examination. The board shall establish and certify a weapons safety and proficiency qualification examination, including:

1. A written examination, ~~including weapons safety, weapons handling, mechanical operations, covering~~ criminal and civil liability and North Dakota law on the use of force, ~~and North Dakota laws on the use of force and on firearms requirements.~~ A minimum score of ~~seventy percent overall with one hundred percent required for the North Dakota law portion~~ is necessary for successful completion of the written examination.
2. A certified sidearm shooting course using the peace officer's duty weapon, duty equipment, and duty ammunition or ammunition ballistically similar to the ammunition carried the peace officer carries on duty. Successful completion of ~~this~~ the weapons safety and proficiency portion of the qualification examination requires a minimum score of seventy percent and the demonstration of competence in sidearm skills, including the safe handling, loading, and unloading of the sidearm, as determined by a certified weapons instructor.
3. A peace officer may not take the written examination or sidearm qualification test more than three times in any twelve-month period. After the third unsuccessful attempt, the peace officer must wait one year before retaking the examination or sidearm qualification test.

4. Only a certified weapons instructor may administer the weapons safety and proficiency, North Dakota law, and use of force examination or sidearm qualification test.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC ~~12-63-04(1)(d)~~ 12-63-04

109-02-03-03. Shotgun, rifle, and special weapons certification. ~~An agency may require peace officers that carry a shotgun, rifle, or special weapons, including assault rifles, sniper or countersniper rifles, or automatic weapons, to complete a certified rifle, shotgun, or special weapons examination. Repealed effective April 1, 2014.~~

History: ~~Effective October 1, 2004.~~

General Authority: ~~NDCC 12-63-04(2)(d)~~

Law Implemented: ~~NDCC 12-63-04~~

109-02-03-04. Requalification Sidearm qualification required annually.

Every peace officer shall ~~requalify~~ qualify with the peace officer's duty weapon each year as a license requirement.

1. Sidearm ~~requalification~~ qualification requires successful completion of a certified shooting course at least once during each calendar year. If a peace officer fails to qualify by the end of the calendar year, the peace officer may not carry a duty weapon until the officer successfully completes the sidearm qualification and pays the late sidearm qualification fee required under these rules.
2. For ~~those~~ peace officers employed by an agency who are not required to carry a sidearm in the performance of their duties, the peace officer's agency may apply to the board for a waiver of the sidearm qualification requirements.
3. Peace officers who have not ~~requalified in over~~ successfully completed the annual sidearm qualification requirements for two consecutive years shall successfully complete both the written examination and a certified shooting course as a condition of licensing, license renewal, or license reinstatement. The peace officer shall also pay the sidearm qualification reinstatement fee required under these rules.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC ~~12-63-04(1)(d)~~ 12-63-04

109-02-03-05. Certified shooting course. ~~All agencies that use their own shooting course must have certification of the course from the board. A peace~~

officer may not qualify ~~or requalify~~ with the officer's duty weapon on a noncertified shooting course.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC ~~12-63-04(1)(d)~~ 12-63-04

109-02-03-07. Issuance, denial, or revocation of qualification.

1. The board shall review all applications for sidearm qualification ~~and requalification~~. The board may deny or revoke an application for sidearm qualification ~~or requalification~~:
 - a. If the applicant failed to successfully complete the written examination or the shooting course;
 - b. Upon a finding that the applicant falsified any information required to obtain qualification or requalification;
 - c. Upon the written recommendation of a certified instructor; or
 - d. If the shooting course was not board-certified.
2. The board may require any peace officer to ~~requalify~~ repeat a sidearm qualification test based upon the written recommendation of the agency administrator or certified weapons instructor or when the board deems it necessary.
3. Documentation for sidearm qualification ~~and requalification~~ must be submitted to the board on forms provided by the board and must include:
 - a. Identification of the peace officer.
 - b. Identification of the weapons instructor.
 - c. Identification of the duty weapon, including model and manufacturer.
 - d. Date of the peace officer's sidearm qualification ~~or requalification~~.
 - e. ~~Shooting~~ Identification of the certified shooting course.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(d)

109-02-03-08. Waiver. ~~The board may waive the requirement of any provision of this chapter upon presentation of documentary evidence by an agency that a peace officer has satisfactorily completed equivalent training or has equivalent experience.~~ Repealed effective April 1, 2014.

History: Effective October 1, 2004.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(d)

109-02-03-09. Notice of denial or revocation of qualification - Hearing. ~~The board shall notify in writing any peace officer and the agency administrator when the board believes there is a reasonable basis for revoking or denying qualification or requalification of the peace officer. The notice must specify the basis of the revocation or denial. Every peace officer has the right to a hearing on the issue of denial or revocation.~~ Repealed effective April 1, 2014.

History: Effective October 1, 2004.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04

CHAPTER 109-02-04
INSTRUCTOR AND TRAINING COURSE CERTIFICATION

Section	
109-02-04-01	Certification of Instructors
109-02-04-02	Requirements for Certification of Law Enforcement Instructors
109-02-04-03	Certification Duration
109-02-04-04	Application for Instructor Certification
109-02-04-05	Requirements for Weapons Instructor Certification
109-02-04-06	Weapons Instructors Must Be Recertified <u>Requirements</u>
109-02-04-07	Certification of Qualified Schools and Qualified Training Courses <u>Training Providers</u>
<u>109-02-04-07.1</u>	<u>Certified Training Provider Denial, Suspension, Revocation, or Imposition of Probationary Terms.</u>
109-02-04-08	Basic Law Enforcement <u>Full-Time Peace Officer</u> Training Course Requirements
109-02-04-08.1	Basic Part-Time Law Enforcement Training Course
109-02-04-09	Application for Course Certification
109-02-04-10	Notice of <u>Suspension, Revocation, Denial, or Denial of Renewal</u> - Hearing

109-02-04-01. Certification of instructors. The board shall certify law enforcement instructors who the board has determined are qualified, based on the instructor's education, training, and experience, to teach one or more law enforcement subjects in accordance with the requirements of this chapter.

1. The board may deny, deny renewal of, or suspend an instructor's certification if it determines that the instructor fails to meet the requirements of this chapter to teach one or more law enforcement subjects.
2. The board may deny, deny renewal of, suspend, or revoke an instructor's certification if the board finds that false information was willfully submitted to the board for purposes of obtaining instructor certification or renewal of certification.
3. ~~It is the responsibility of each agency administrator or agency training officer to regularly supervise its instructors to ensure that its instructors meet the requirements of this article and maintain quality instruction.~~ The board shall maintain a record of certified instructors, certified training courses, and certified shooting courses.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-02. Requirements for certification of law enforcement instructors.

1. A ~~person~~ North Dakota licensed peace officer applying for certification as a law enforcement instructor to teach peace officer subjects, including patrol, investigation, or the use of weapons, must have:
 - ~~a.~~ A high school diploma or its equivalent;
 - ~~b.~~ a. Two years' experience as a licensed or certified peace officer ~~or equivalent;~~
 - ~~c.~~ b. Verified training or documented experience in each subject to be taught;
 - ~~d.~~ c. Compliance with all board requirements, including successful completion of a course of instructor development training or its equivalent approved by the board, ~~including training in the areas of communication, psychology of learning, techniques of instruction, use of instructional aids, preparation and use of lesson plans, preparing and administering tests, teaching resources, and motivation;~~ and
 - ~~e.~~ d. A recommendation by the applicant's agency administrator or training officer.

2. The board may waive any part of the requirements of this section if it finds that a person who does not satisfy all requirements of this section is otherwise qualified to be an instructor.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-03. Certification duration. A law enforcement instructor's certification is effective for no more than ~~four years~~ the instructor's peace officer license period. At the end of the ~~four-year instructor's peace officer license period~~, the board may renew the instructor's certification provided that:

1. The instructor has completed a ~~board-approved~~ certified instructor refresher course at least once during the certification period;
2. The instructor is recommended by the agency administrator or training officer ~~under whose supervision the instructor last instructed;~~ and
3. A law enforcement instructor who has not completed a ~~board-approved~~ certified instructor refresher course during the ~~forty-eight-month period of certification~~ instructor's peace officer license period may not apply for renewal and instead must apply for new certification, including successful completion of a course of instructor development training certified by the board.

4. The law enforcement instructor's initial certification period will expire the same date as the instructor's peace officer license. Subsequent instructor certification periods will run concurrent with the instructor's three-year peace officer license period.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-04. Application for instructor certification.

1. Applications for instructor certification must be made on a board-approved form.
2. The board shall review all applications for certification. The board may issue an instructor's certificate, issue an instructor's certificate subject to conditions, or deny issuance of the certificate.
- ~~3. The board shall forward an instructor's certificate to an applicant upon approval of an application by the board.~~

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-05. Requirements for weapons instructor certification. ~~To be certified as a weapons instructor, a peace officer shall successfully complete a board-certified method of instruction course and a board-certified weapons instructor course. If the peace officer is only going to conduct qualification testing on a certified shooting course, the peace officer only needs to successfully complete a board-certified weapons instructor course.~~

1. In order to be certified as a weapons instructor, a peace officer shall successfully complete a certified instructor development course and a certified weapons instructor development course.
2. If the peace officer is only going to conduct sidearm qualification testing on a certified shooting course, the peace officer only needs to successfully complete a certified weapons instructor course.
3. Each instructor shall successfully complete a certified weapons instructor refresher course at least once during the instructor's certification period in order to be eligible for recertification.
4. The initial weapons instructor certification period will expire the same date as the instructor's peace officer license. Subsequent weapons

instructor certification periods will run concurrent with the three-year license period.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-06. Weapons instructors ~~must be recertified~~ requirements.

- ~~1. Weapons instructors must apply to the board for instructor recertification every four years by the anniversary date of the instructor's original certification. Each instructor shall successfully complete a board-certified weapons instructor refresher course at least once during the four-year period in order to be eligible for recertification.~~
- ~~2. 1. Within fifteen thirty days after a peace officer or applicant has completed a certified shooting course, the weapons instructor shall forward a completed sidearm qualification ~~or requalification~~ form for the peace officer or applicant to the ~~executive secretary~~ board.~~
- ~~3. 2. The board may suspend a weapons instructor's certification if the weapons instructor fails to submit a peace officer's or applicant's sidearm qualification ~~or requalification~~ form to the ~~executive secretary~~ board within fifteen thirty days after the peace officer has completed the sidearm qualification on a certified shooting course.~~
- ~~4. 3. The board shall notify a weapons instructor in writing if it suspends the instructor's certification. The notice must specify the basis of the suspension. The weapons instructor may request an administrative hearing on the issue of suspension of the weapons instructor's certification.~~

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-07. Certification of ~~qualified schools and qualified training courses~~ training providers. ~~The board shall certify those schools it has determined are qualified to teach one or more law enforcement-related subjects and qualified training courses. Training providers must be certified by the board prior to the commencement of training. Certification may not exceed four years.~~

- ~~1. The board shall issue temporary certification to qualified schools offering training programs on a one-time or infrequent basis and for qualified training courses that are offered on a one-time or infrequent basis. Temporary certification may only be for a specific program and may only be issued for a specified period of time not to exceed one year. The board may not issue temporary certification for training conducted within an agency on an unscheduled or infrequent basis for less~~

~~than an hour per session or by an uncertified instructor. The training provider shall file satisfactory proof of adequate training equipment, facilities, and qualified instructors with the board prior to certification. Adequate training equipment and facilities include sufficient supplies and safety assurances. The training provider's instructors must have experience, training, and education in law enforcement subjects or basic correctional officer training courses before the board may certify the instructor.~~

- ~~2. The board shall grant continuing certification to qualified schools conducting peace officer training on a regular basis and for qualified training courses that are conducted on a regular basis. Continuing certification remains effective until surrendered or revoked, but may not exceed four years. Upon review of the training provider's request for certification and after determination the training provider has met the requirements of the board, the board may grant provisional certification until the board completes additional evaluation and inspection.~~
- ~~3. The training provider's certification is subject to periodic review by the board.~~

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-44.1-01(1), 12-44.1-04(4), 12-63-04(1)(a)(b)(c)

109-02-04-07.1. Certified training provider denial, suspension, revocation, or imposition of probationary terms.

- ~~1. The board may deny, suspend, or revoke a training provider's certification, or impose probationary conditions on the training provider, or suspend or revoke certification of a training course if the training provider:
 - ~~a. Fails to provide instruction consistent with the prescribed performance objectives in the subject areas for which the training provider or training course was certified;~~
 - ~~b. Fails to comply with or cooperate in a board investigation of the training provider or training course, including an investigation of misconduct by students, faculty, or staff. For purposes of this requirement, the term "misconduct" includes cheating on a licensing examination or tests required by the training provider or the board, helping another individual to cheat on a licensing examination or tests required by the training provider or the board, filing a false report or information with the board, or obstructing a board investigation; or~~
 - ~~c. Failure to comply with North Dakota Century Code chapter 12-63 or the rules of the board.~~~~

2. Failure to comply with board requirements may result in one or more of the following:
 - a. A letter of censure to the training provider;
 - b. Formal or informal probation for the certified training provider; or
 - c. Denial, denial of renewal, suspension, or revocation of certification of the certified training provider or training course.

History: Effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-08. ~~Basic law enforcement full-time peace officer training~~ course requirements.

1. The basic ~~law enforcement full-time peace officer~~ training course must ~~be include training~~ based on performance objectives essential for law enforcement in the state of North Dakota, ~~regardless of agency or assignment~~ and must include classroom training, field training, and firearms training.
2. ~~The board may waive the requirement to take any part of the basic law enforcement training course upon application by an agency and submission of sufficient documentation that the peace officer has equivalent training or experience.~~
3. 2. The basic ~~law enforcement full-time peace officer~~ training course ~~shall~~ must include testing to determine whether a trainee has learned and can perform the performance objectives on the performance objectives. The ~~academy~~ training provider conducting the basic ~~law enforcement full-time peace officer~~ training course shall maintain ~~accurate~~ records of tests and testing procedures.
4. 3. The academy shall notify the board and the trainee's agency whenever ~~the trainee fails to complete or pass any part of the basic law enforcement training course.~~ Before a certified training provider offers any course from the basic full-time peace officer training courses at another site not included in the original certification, the training provider shall notify the board in writing.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-08.1. Basic part-time law enforcement training course requirements.

1. The basic part-time law enforcement training course must ~~be~~ include training based on performance objectives essential ~~for~~ to part-time peace officers in the state of North Dakota, ~~regardless of agency or assignment~~ and must include classroom training, field training, and firearms training.
2. The basic part-time ~~law enforcement~~ peace officer training course ~~shall~~ must include testing ~~to determine whether an applicant has learned and can perform on~~ the performance objectives. The school or agency conducting the basic part-time ~~law enforcement~~ peace officer training course shall maintain ~~accurate~~ records of tests and testing procedures.
3. An applicant for a part-time peace officer license must successfully complete the basic part-time ~~law enforcement~~ peace officer training course within two years after the applicant started the basic part-time ~~law enforcement~~ peace officer training course.
4. The school or agency conducting the basic part-time peace officer training course shall notify the board ~~and the trainee's agency whenever the trainee~~ if the applicant for a part-time peace officer license fails to complete or pass any part of the basic part-time ~~law enforcement~~ peace officer training course.

History: Effective July 1, 2006; amended effective April 1, 2014.

General Authority: NDCC 12-63-02.1(7)

Law Implemented: NDCC 12-63-02.1

109-02-04-09. Application for course certification. The following procedures apply to all training courses for which certification is requested:

1. ~~The person who plans or coordinates a training program~~ individual or training provider seeking course certification shall submit an application and course description for program certification to the board ~~no later than thirty days in advance of the date the training program~~ on a form provided by the board at least fifteen days before the training is to commence.
2. The application must include:
 - a. A course ~~curriculum~~ description showing the ~~date and location of the course;~~ title of course, name of person or agency preparing the training program, ~~students;~~ course objective, ~~terminal performance objectives;~~ testing methods if applicable, ~~method of instruction;~~ course content, ~~schedule of presentation~~ estimated length of course, and references, ~~and supporting materials;~~ and
 - b. Information concerning the instructors' education and experience if the instructors have not been certified by the board.

3. Within ~~fifteen~~ thirty days after the completion of a training program, the training coordinator shall submit to the board a completed student roster on a form ~~approved~~ provided by the board. The completed form must include each peace officer's name ~~and~~, license number, employing agency, hours attended, course name ~~and~~, subject matter, ~~the~~ training location, and the dates and times of training.
4. Course certification will not be granted unless the course meets the following criteria:
 - a. Meets a law enforcement educational need:
 - b. Is law enforcement or law enforcement administrative function related:
 - c. Is based on knowledge, skills, or abilities needed to be a peace officer; and
 - d. Is a minimum of one hour in length and is offered in one-hour increments.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-10. Notice of suspension, revocation, denial, or denial of renewal - Hearing. The board shall notify in writing any ~~instructor or school~~ training provider when ~~there is a basis for revoking or denying certification or renewal of the board will deny, deny renewal of, suspend, or revoke certification of an instructor or school~~ a training provider. The notice must specify the basis of the denial, denial of renewal, suspension, or revocation or denial of the certification. The ~~instructor or school has the right to~~ training provider may request a hearing in accordance with North Dakota Century Code chapter 28-32 on the issue of denial, denial of renewal, suspension, or revocation of the training provider's certification.

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

Chapter 109-02-05
PEACE OFFICER CODE OF CONDUCT AND OATH

Section

109-02-05-01

Peace Officer Code of Conduct

109-02-05-02

Peace Officer Oath

109-02-05-01. Peace officer code of conduct.

1. This section applies to every peace officer licensed by the board and every applicant for a peace officer license, including applicants for limited and part-time licenses. This section applies to on-duty and off-duty officers.
2. All applicants for a peace officer license, including a part-time license or limited license shall sign a code of conduct on a form provided by the board and shall submit the code of conduct with the application. In the absence of a signed code of conduct, a license may not be issued.
3. All applicants for a renewal of a peace officer license shall sign a code of conduct on a form provided by the board and shall submit the code of conduct with the application for renewal. In the absence of a signed code of conduct no license will be issued.
4. It is a violation of this section:
 - a. To possess or consume alcoholic beverages on duty or while in uniform on duty or off duty except as authorized or required for the lawful performance of the peace officer's duties.
 - b. To possess, sell, consume, use, or assist in the use of any illegal or unauthorized controlled substances or medications whether on duty or off duty.
 - c. To engage in conduct that is in violation of the criminal laws of the state or federal government or ordinances of a political subdivision of the state of North Dakota.
 - d. To engage in acts of corruption or bribery or to condone acts of corruption or bribery by other peace officers.
 - e. To willfully lie, provide false testimony, provide misleading information, or falsify written or verbal communications in reports when the information may be relied upon by the courts, state's attorneys, or other law enforcement officials.
 - f. To willfully provide false testimony, evidence, or misleading information in an application for a search warrant, arrest warrant, or criminal complaint.

- g. To engage in illegal harassment or intimidation of another individual, or to condone acts of illegal harassment or intimidation by other peace officers.
- h. To willfully fail to report the violation of a criminal law or North Dakota Century Code chapter 12-63 by a peace officer.

History: Effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(2)(d)

109-02-05-02. Peace officer oath. Every peace officer must be sworn in as a peace officer and take an oath that substantially complies with the following:

1. The peace officer will uphold the constitution and laws of the United States, the constitution and laws of the state of North Dakota, and the laws of the community that the peace officer has been entrusted to enforce.
2. The peace officer will not betray the peace officer's code of conduct, the trust of a fellow peace officer, and the trust of the public.

History: Effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(2)(d)