

# **NORTH DAKOTA ADMINISTRATIVE CODE**

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

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**TITLE 6**  
**AERONAUTICS COMMISSION**



APRIL 2016

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AERONAUTICS COMMISSION

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AERIAL APPLICATORS

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### 6-02-02-01. General provisions.

The following air traffic rules, orders, regulations, procedures, knowledge of agricultural chemicals, and minimum standards governing aerial ~~spraying, dusting, fertilizing, or insect control of crops or areas by means of aircraft or helicopter flight~~ application are necessary for the public safety, the safety of those engaged in such activities, and for protection of property, are adopted by the North Dakota aeronautics commission, after a public hearing, pursuant to authority set forth in North Dakota Century Code section 2-05-18.

**History:** Amended effective April 1, 2016.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18, 2-05-19, 2-05-20

### 6-02-02-02. Application for aerial applicator license - Fees.

No person may engage in the activity or business of aerial ~~spraying, dusting, fertilizing, or insect control of crops or areas by aircraft or helicopter~~ application without first obtaining an aerial applicator's license from the North Dakota aeronautics commission. The application for an aerial applicator's license shall include a fee ~~of one hundred fifty dollars for a commercial aerial sprayer or fifty dollars for a private aerial sprayer~~ as established by the commission and shall be completed and filed on forms furnished by the commission ~~and shall set forth the following information:~~

- ~~1. The name and address of applicant and whether applicant is a person, partnership, company, corporation, association, or organization.~~
- ~~2. The name and address of all persons designated to pilot all aircraft or helicopters and federal airman certificate numbers.~~
- ~~3. The name of the applicant's operator or chief pilot who attended the aerial applicator safety meeting in the calendar quarter preceding the date of the application or received substitute instruction provided by the commission as required in section 6-02-02-04.1.~~
- ~~4. The name and address of the owner of each aircraft or helicopter.~~
- ~~5. The make, model, and type of each aircraft or helicopter to be used together with the current number of its certificate of registration under the laws of this state.~~
- ~~6. The identification mark or number assigned to the aircraft or helicopter by the federal aviation administration.~~
- ~~7. If applicant hires any employees, the applicant's workers' compensation policy and number.~~

**History:** Amended effective June 1, 2002; September 1, 2005; April 1, 2016.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

### 6-02-02-03. Inspection and duration of aerial applicator's license.

North Dakota aerial applicator's license shall be presented for inspection upon request of any authorized representative of the state of North Dakota or of the federal government or municipal official charged with the duty of enforcing local, state, or federal laws or regulations. The aerial applicator's license decal shall be displayed one per airplane ~~or helicopter~~ on the pilot side (left) of the airplane engine cowl. Each aerial applicator's license issued shall expire December thirty-first of the year of issuance and may be revoked at any time for cause.

**History:** Amended effective April 1, 2016.

**General Authority:** NDCC 2-05-18

**6-02-02-04. Commercial pilot safety standards.**

1. **General.** The following rules and regulations relating to pilot experiences and skill have been adopted in the interest of the pilot and public safety and the general public interest.
2. **Chief pilot.** All operators or contractors employing one or more commercial pilots for the purpose of conducting aerial ~~spraying, dusting, fertilizing, or insect control~~application by aircraft ~~or helicopter~~ in this state shall employ at least one chief pilot who shall have the qualifications set forth in this section.
3. **Chief pilot qualifications.** A chief pilot must produce evidence of a commercial federal aviation administration license with a minimum of seven hundred fifty flight hours as pilot in command, of which a minimum of two hundred fifty flight hours as pilot in command must be in the class of aircraft in which the sprayer or duster equipment will be installed and used for ~~agricultural~~aerial application. In addition, the chief pilot ~~shall be one who has had~~must have at least two years apprentice commercial aerial ~~spraying flying~~application experience as pilot in command and ~~who~~ has accumulated at least two hundred hours total aerial ~~spraying~~application flying time as an employee, supervised by a North Dakota chief pilot who holds a federal aviation administration part 137 certificate, who may recommend the applicant and certify the applicant's qualifications for the operational level sought, or certified to by an affidavit of the applicant, subject to investigation by the aeronautics commission, which may approve or deny the application.
4. **Pilot employees of contractor.** An operator or aerial applicator or contractor in the business of aerial ~~spraying~~application that employs a chief pilot, meeting the qualifications of this section, may employ pilots for aerial ~~spraying, dusting, fertilizing, and insecticiding~~application with a minimum of a valid federal aviation administration commercial license, except that a license will be revoked or denied to an operator or contractor who employs an unqualified aerial ~~spray~~application pilot who has been designated as unqualified to conduct aerial ~~spraying~~application in North Dakota, for just cause, by the aeronautics commission. Pilots supervised and employed under the supervision of the chief pilot, who have never aerial ~~sprayed~~application before, must be given a minimum of ten hours of simulated ~~dual spraying~~application time under supervision of the chief pilot before they are permitted to conduct aerial ~~spray~~application as pilot in command, and in addition, must be given ten hours of direct ground-supervised solo flight at operational loads while conducting aerial ~~spraying~~application. The chief pilot shall ~~certify in writing the name of the pilot under the chief pilot's supervision who has never aerial sprayed before and the fact that the chief pilot has given such pilot at least ten hours of simulated dual spraying flight time, and in addition, given such pilot ten hours of direct ground-supervised solo flight at operational loads while aerial spraying~~document and maintain written records verifying the pilot has fulfilled the flight requirements.
5. **Chief pilot ~~located~~based within the state of North Dakota required.** It is the responsibility of the chief pilot to determine the amount of supervision a pilot requires. The chief pilot must be familiar with the area in which the supervised pilot or pilots are flying and be able to contact each pilot daily as needed. Pilots with less than two years' experience and less than two hundred fifty hours of actual aerial application must be under the direct, personal supervision of a chief pilot and must be ~~flying~~based out of the same airport as the airport in which the chief pilot is operating. The chief pilot or the chief pilot's designated representative of every aerial ~~spraying, dusting, and fertilizing~~application operation licensed by the aeronautics commission must be located within North Dakota during the time of actual aerial ~~spraying, dusting, fertilizing, or insecticiding~~application operations and the chief pilot shall be responsible for the actions of all pilots under the chief pilot's supervision.

6. ~~Commercial pilot operating own equipment qualifications.~~ A pilot with a commercial federal aviation administration license may operate one's own equipment, but not hire or supervise other pilots, for the purpose of engaging in aerial spraying, dusting, fertilizing, or insecticiding with a minimum of five hundred flight hours as pilot in command, of which a minimum of two hundred fifty flight hours as pilot in command must be in the class of aircraft in which the sprayer or duster will be installed for agricultural application, provided such pilot has had at least two years of apprentice commercial aerial spraying flight time as pilot in command and who has accumulated at least one hundred hours of aerial spraying flying time as an employee, supervised by a North Dakota chief pilot, who may recommend the applicant and certify the applicant's qualifications for the operational level sought, or certified to by an affidavit of the applicant, subject to investigation by the aeronautics commission, which may approve or deny the application.

~~7. Commercial-rated pilots who graduate from an agricultural flying school.~~ Commercial-rated pilots who graduate from a qualified agricultural flying and ground school shall ~~undergo the same apprentice commercial aerial spraying flight training provided for in this section for the operational level sought, except the chief pilot may issue a credit of up to fifty percent of the ten hours of simulated dual spraying time~~be supervised by the chief pilot before such pilot is permitted to aerial spray as pilot in command, and in addition, the chief pilot may issue a credit up to fifty percent of the~~for~~ ten hours of direct ground-supervised solo flight at operational loads while conducting aerial spraying application. The chief pilot shall document and maintain written records verifying the pilot has fulfilled the requirements of this chapter.

**History:** Amended effective July 1, 1998; April 1, 2016.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

#### **6-02-02-04.1. Aerial applicator safety instruction.**

For the safety and protection of persons and property, each operator of a business engaged in aerial spraying application must ~~attend~~receive the information provided by the annual aerial applicator safety meeting ~~scheduled~~or attend approved training by the North Dakota aeronautics commission. A chief pilot employed by an operator may attend the meeting in place of the operator. The meeting will be held in the first calendar quarter of each year and address aviation safety, business and operation security, and chemical storage. The commission will provide substitute instruction for operators and chef pilots who for good cause are unable to attend the annual safety meeting. An application for a license for aerial spraying under section 6-02-02-02 will not be approved by the commission unless the applicant's operator or chief pilot has attended the annual safety meeting in the calendar quarter preceding the date of the application or received substitute instruction or information provided by the commission.

**History:** Effective June 1, 2002; amended effective April 1, 2016.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

#### **6-02-02-05. Private pilot aerial sprayer who obtains a commercial federal aviation administration license.**

Repealed effective April 1, 2016.

~~—A private pilot who has been previously licensed for private aerial spraying by the North Dakota aeronautics commission and who has acquired two years and accumulated one hundred hours actual private aerial spraying flying time as pilot in command may be licensed as a commercial pilot operating that person's own equipment, but not hiring or supervising other commercial pilots, provided the pilot has obtained all of the following:~~



- ~~1. A valid commercial federal aviation administration license.~~
- ~~2. Five hundred hours flying experience as pilot in command, of which a minimum of two hundred fifty hours must be in the class of aircraft in which aerial spraying will be conducted or in the class of aircraft in which the sprayer or duster will be installed for agricultural application.~~
- ~~3. Five hours of simulated dual aerial spraying flight time from a North Dakota chief pilot who has logged a minimum of two hundred hours aerial spraying and dusting time as pilot in command. (The five hours simulated dual is in addition to the ten hours of simulated dual and ten hours of direct ground supervised solo flight at operational loads while aerial spraying required before the private pilot was initially licensed for private aerial spraying.)~~

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

**6-02-02-06. Private pilot's safety standards for aerial ~~crop spraying and dusting~~ application on one's own property or land farmed under a bona fide lease.**

A private pilot with a valid federal aviation administration private pilot's rating may aerial crop spray, dust, seed, fertilize, or insecticide the pilot's own land or land farmed by the pilot under a bona fide lease, provided:

1. That the applicant submits satisfactory evidence that the applicant has a minimum of ~~five~~seven hundred ~~fifty~~ hours flying experience as pilot in command, of which a minimum of two hundred fifty flying hours must be in the class of aircraft in which the sprayer or duster will be installed for agricultural aerial application and has produced acceptable evidence of a minimum of ten hours simulated ~~dual~~ spraying time under the supervision of a chief pilot before such pilot is permitted to conduct aerial spray application as pilot in command, and in addition, such private pilot must obtain ten hours of direct ground-supervised solo flight at operational loads while aerial ~~spraying~~applying given by a chief pilot, with a commercial federal aviation administration license, who has at least two hundred hours of logged aerial ~~spraying~~applying time as pilot in command.
2. That the applicant sets forth, in writing, upon the application the legal description of the land owned or land farmed under a bona fide lease, including range, township, section, and quarter, or parts and apportionments pertaining thereto, or both.
3. That the applicant's services are not offered to others for hire, compensation, remuneration, or trade for other services.

For the purpose of these regulations, the term bona fide lease shall be construed to mean a lease whereby the lessee has a reasonable interest in the land under lease for a period not less than the current growing, grazing, or harvesting season.

All other rules and regulations set forth in this chapter governing commercial aerial ~~crop spraying and dusting~~ application standards, including aircraft registration, aerial applicator's license, equipment standards, chemical knowledge and procedures, registration as a certified agricultural chemical aerial applicator, and reports to the aeronautics commission shall govern the operations of all private pilots licensed by the aeronautics commission for aerial ~~spraying, dusting, seeding, insecticiding, and fertilizing~~ application of their own land or land operated under a bona fide lease.

**History:** Amended effective April 1, 2016.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

### 6-02-02-07. Grandfather rights.

All chief pilot ratings, commercial pilots operating their own equipment, and private pilots rated for aerial ~~crop spraying and dusting~~ application on their own property, flying ratings granted and on record in the offices of the aeronautics commission prior to the adoption of this chapter shall continue to be effective unless revoked for cause.

**History:** Amended effective April 1, 2016.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

### 6-02-02-09. Registration and license of aircraft and equipment standards.

1. **Registration.** All aircraft ~~or helicopters~~ operated in aerial ~~spraying, dusting, fertilizing, and insecticiding~~ application requiring a North Dakota aerial applicator's license shall be registered with the North Dakota aeronautics commission prior to actual use of the aircraft in this state and prior to the issuance of an aerial applicator's license. Annual registration fees shall be in accordance with the schedule set forth in North Dakota Century Code sections 2-05-11 and 2-05-18 and shall be paid in full in advance.
2. **Equipment standards.** Each aircraft ~~spraying rig~~ used for aerial application ~~or dissemination of 2,4D or 2,4,5-T or other herbicides~~ shall be satisfactorily equipped with a positive shutoff device at each discharge nozzle (manually controlled shutoff valves, spring-loaded valves, or ball checks will be acceptable), which will absolutely prevent the dissemination of material on any portion of the terrain over which flight is made other than the area being treated or sprayed. Each aircraft ~~dusting rig shall~~ must be satisfactorily equipped with a shutoff between hopper and discharge orifice. The entire aircraft ~~spray or dusting rig shall~~ must be in good usable condition and free from any obvious points of leakage.

**History:** Amended effective April 1, 2016.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

### 6-02-02-10. Application knowledge and procedures.

Repealed effective April 1, 2016.

~~—To protect adjacent crops and to maintain minimum aerial applicator standards for the safety of the farmer and the pilot, the following rules are established:~~

- ~~—1. **Flagmen.** The use of flagmen is left to the discretion of the operator, owner-pilot, or chief pilot, except flagmen are required for all aerial spraying or fertilizing conducted by an employed apprentice agricultural pilot with no previous aerial spraying experience until such time as the pilot's supervisor decides that the pilot is proficient and may use an accepted method of flagging.~~
- ~~—2. **Automatic flagman.** An automatic flagman may be used at the discretion of the operator, owner-pilot, or chief pilot, except as provided by subsection 1.~~
- ~~—3. **Smoke generators to measure wind conditions.** Aircraft engine smoke generators may be used at the discretion of the operator, owner-pilot, or chief pilot.~~

**History:** ~~Amended effective June 1, 2002.~~

**General Authority:** ~~NDCC 2-05-18~~

**Law Implemented:** ~~NDCC 2-05-18~~

**6-02-02-11. Aerial ~~spraying~~application in vicinity of turkey farms.**

No aerial applicator shall conduct aerial ~~spraying~~operationsapplication on or over farm lands adjoining or adjacent to turkey farms unless the applicator has coordinated the aerial ~~spraying~~application with the owner or operator of the turkey farm and with the farmer for which the aerial ~~spraying~~application is to be done.

**History:** Amended effective April 1, 2016.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

**6-02-02-12. Reports available to aeronautics commission.**

The operator, owner, manager, pilot, or supervisor in charge of the aerial application ~~of agricultural chemicals or fertilizer~~ shall maintain a record of each aerial application job which ~~may be inspected by~~must be available to officials of the aeronautics commission on demand. Copies of such reports ~~shall~~must be kept by the licensee for a period of three years from the date of aerial application. Upon request, these reports shall be submitted to the aeronautics commission; provided that nonresident aerial applicators shall file copies of such reports with the aeronautics commission ~~prior to departure from North Dakota, and such reports shall contain the following information:~~

- ~~1. Customer's name.~~
- ~~2. Mailing address.~~
- ~~3. Date and time of spraying or treatment.~~
- ~~4. Property description (location of field).~~
- ~~5. Crop or property treated.~~
- ~~6. State of crop growth.~~
- ~~7. Weeds, pests, or other purpose of treatment.~~
- ~~8. Number of acres.~~
- ~~9. Wind direction and velocity.~~
- ~~10. Temperature.~~
- ~~11. Brand and type of chemical or material used.~~
- ~~12. Solution in water, fuel oil, or other.~~
- ~~13. Amount active ingredient per gallon or pound.~~
- ~~14. Total gallons or pounds per acre [.40 hectare].~~
- ~~15. Remarks.~~

The report must be the same as, or contain the same information, as the records required for the state department of agriculture.

\_\_\_The licensee shall file with the aeronautics commission not later than December first of the year of application a summary of the total number acres treated ~~or sprayed~~ by category such as for weed control, insect control, fertilizer application, fungicide application, etc. Failure of any licensed aerial applicator to furnish copies of such reports upon request of the aeronautics commission, in a reasonable time, shall be grounds for suspension of an aerial applicator's state license.

**History:** [Amended effective April 1, 2016.](#)

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

#### **6-02-02-13. Unsettled claims and court judgments.**

Evidence of prior unsettled claims or unsatisfied judgments for damages resulting from aerial ~~spraying, dusting, fertilizing, or insecticiding~~[application](#) operations may be just cause for denial of a state aerial applicator's license or revocation of an existing license, provided that the aeronautics commission may, at its discretion, require a bond or cash bond in an amount equal to the estimated claim and reasonable court costs from such applicator before a license will be issued.

**History:** [Amended effective April 1, 2016.](#)

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

#### **6-02-02-14. License reciprocity between states - Nonresidents.**

[Repealed effective April 1, 2016.](#)

~~— License reciprocity may be granted to nonresidents who meet the aeronautical experience requirements for the operational level sought, except chemical knowledge certification of nonresident aerial applicators must be obtained in North Dakota in accordance with this chapter.~~

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

#### **6-02-02-15. Shoulder harness must be installed and in use by pilot.**

[Repealed effective April 1, 2016.](#)

~~— A pilot shoulder harness shall be installed and maintained in each airplane utilized for aerial spraying, dusting, or fertilizing and the pilot shall wear the harness at all times while engaging in aerial spraying, dusting, or fertilizing operations.~~

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

#### **6-02-02-16. Airworthiness certificate required.**

[Repealed effective April 1, 2016.](#)

~~— Every airplane or helicopter licensed for aerial spraying, dusting, or fertilizing operations in North Dakota shall have a current and valid federal aviation administration airworthiness certificate.~~

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

#### **6-02-02-17. Crash helmet required for safety of pilots.**

[Repealed effective April 1, 2016.](#)

~~— Every pilot, while engaging in aerial spraying, dusting, or fertilizing operations, shall wear an approved protective crash helmet or hard hat in all aircraft, except in open cockpit type of aircraft, wherein the decision to wear or not to wear a crash helmet is optional, with the chief pilot being responsible for making the determination.~~

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

**6-02-02-18. Revocation of aerial ~~spraying~~applicator license - Refusal of license.**

The North Dakota aeronautics commission or its duly appointed director reserves the right to revoke or refuse to issue ~~an~~ a state-issued aerial applicator's license for just cause, or for violation of any rule, regulation, procedure, or standard set forth in this chapter after a hearing has been held, provided that on the basis of proper cause shown, the director or the aeronautics commission may suspend a license or refuse to issue a license until such time as a hearing has been held.

**History:** Amended effective April 1, 2016.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

**6-02-02-19. Penalty for violation of the rules and regulations.**

~~Attention is drawn to North Dakota Century Code section 2-05-18, which relates to the licensing of aerial applicators of agricultural chemicals and provides that any~~ Any ~~person convicted of violating any~~ a provision of ~~that~~ this section ~~or rules or regulations promulgated under the authority of that section shall~~ be ~~is~~ guilty of a class B misdemeanor.

**History:** Amended effective April 1, 2016.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18, 2-05-19, 2-05-20

**CHAPTER 6-02-03  
AIRPORT RUNWAY APPROACH HAZARDS**

[Repealed effective April 1, 2016]

Section

~~6-02-03-01 — General~~

~~6-02-03-02 — Procedure for Determining Obstructions~~

~~6-02-03-03 — Airport Referenced Imaginary Surfaces~~

~~6-02-03-04 — Procedure for Determining Limiting Heights Above Ground for Obstructions~~

~~6-02-03-05 — Other Limiting Heights Above Ground~~

## **CHAPTER 6-02-03.1**

### **AIRPORT RUNWAY APPROACH HAZARDS**

#### Section

<u>6-02-03.1-01</u>	<u>Definitions</u>
<u>6-02-03.1-02</u>	<u>General</u>
<u>6-02-03.1-03</u>	<u>Procedure for Determining Obstructions</u>
<u>6-02-03.1-04</u>	<u>Airport Referenced Imaginary Surfaces</u>
<u>6-02-03.1-05</u>	<u>Penalty</u>

#### **6-02-03.1-01. Definitions.**

1. "Nonprecision instrument runway" means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved, or planned, and for which no precision approach facilities are planned, or indicated on a planning document.
2. "Precision instrument runway" means a runway having an existing instrument approach procedure utilizing an instrument landing system, or a precision approach radar. It also means a runway for which a precision approach system is planned and is so indicated by an approved airport layout plan or planning document.
3. "Utility runway" means a runway that is constructed for and intended to be used by propeller-driven aircraft of twelve thousand five hundred pounds maximum gross weight and less.
4. "Visual runway" means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an approved airport layout plan, or by any planning document submitted to the North Dakota aeronautics commission by a competent authority.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-05-07

**Law Implemented:** NDCC 2-03-12

#### **6-02-03.1-02. General.**

Obstructions to air navigation are prohibited. The following rules, criteria, regulations, and minimum standards governing the construction or maintenance of hazards or obstructions near runway approaches to any airport that is open for public use in North Dakota, whether publicly or privately owned, is hereby adopted by the North Dakota aeronautics commission pursuant to authority set forth in North Dakota Century Code section 2-03-12.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-03-12, 2-05-07, 2-05-21

**Law Implemented:** NDCC 2-03-12

#### **6-02-03.1-03. Procedure for determining obstructions.**

This part establishes standards for determining obstructions to air navigation. It applies to existing and proposed manmade objects, objects of natural growth, and terrain. The standards apply to the use of navigable airspace by aircraft and to existing public airports. Additionally, the standards apply to a planned public airport, or a change in an existing public airport, if a proposal therefore is on file with the North Dakota aeronautics commission.



1. An existing object, including a mobile object, is, and a future object would be, an obstruction to air navigation if it is of greater height than any of the following heights or surfaces:

- a. A height of four hundred ninety-nine feet above ground level at the site of the object.
- b. A height that is two hundred feet above ground level or above the established airport elevation, whichever is higher, within three nautical miles of the established reference point of an airport, excluding heliports, with its longest runway more than three thousand two hundred feet in actual length, and that height increases in the proportion of one hundred feet for each additional nautical mile of distance from the airport up to a maximum of four hundred ninety-nine feet.
- c. A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.
- d. A height within an en route obstacle clearance area, including turn and termination areas, of a federal airway or approved off-airway route, that would increase the minimum obstacle clearance altitude.
- e. The surface of a takeoff and landing area of an airport or any airport imaginary surface. However, no part of the takeoff or landing area itself will be considered an obstruction.

2. Except for traverse ways on or near an airport with an operative ground traffic control service, furnished by an air traffic control tower or by the airport management and coordinated with the air traffic control service, the standards of subsection 1 of this section apply to traverse ways used or to be used for the passage of mobile objects only after the heights of these traverse ways are increased by:

- a. Seventeen feet for an interstate highway that is part of the national system of military and interstate highways where overcrossings are designed for a minimum of seventeen feet vertical distance.
- b. Fifteen feet for any other public roadway.
- c. Ten feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.
- d. Twenty-three feet for a railroad.
- e. For a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

Failure to comply with the above regulations regarding obstructions to air navigation is prohibited under this chapter.

**History:** April 1, 2016.

**General Authority:** NDCC 2-03-12

**Law Implemented:** NDCC 2-03-12

#### 6-02-03.1-04. Airport referenced imaginary surfaces.

The following airport imaginary surfaces are established with relation to the airport and to each runway. The size of each imaginary surface is based on the classification of each runway and the type of approach available or planned for that runway. Refer to Exhibit A for a table showing the



classification and dimensional standards. Refer to Exhibit B and C for a graphical depiction of the imaginary surfaces.

1. **Primary surface.** A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends two hundred feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface is:

a. Two hundred fifty feet for utility runways having only visual approaches.

b. Five hundred feet for utility runways having nonprecision instrument approaches.

c. For other than utility runways the width is:

(1) Five hundred feet for visual runways having only visual approaches.

(2) Five hundred feet for nonprecision instrument runways having visibility minimums greater than three-fourths statute mile.

(3) One thousand feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths of a statute mile, and for precision instrument runways.

The width of the primary surface of a runway will be that width prescribed in this section for the most precise approach existing or planned for either end of that runway.

2. **Approach surface.** A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

a. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

(1) One thousand two hundred fifty feet for that end of a utility runway with only visual approaches;

(2) One thousand fifty feet for that end of a runway other than a utility runway with only visual approaches;

(3) Two thousand feet for that end of a utility runway with a nonprecision instrument approach;

(4) Three thousand five hundred feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths of a statute mile;

(5) Four thousand feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths statute mile; and

(6) Sixteen thousand feet for precision instrument runways.

b. The approach surface extends for a horizontal distance of:

(1) Five thousand feet at a slope of twenty to one for all utility and visual runways;

(2) Ten thousand feet at a slope of thirty-four to one for all nonprecision instrument runways other than utility; and

(3) Ten thousand feet at a slope of fifty to one with an additional forty thousand feet at a slope of forty to one for all precision instrument runways.

3. **Horizontal surface.** A horizontal plane one hundred fifty feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

a. Five thousand feet for all runways designated as utility or visual:

b. Ten thousand feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a five thousand-foot arc is encompassed by tangents connecting two adjacent ten thousand-foot arcs, the five thousand-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

4. **Conical surface.** A surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty to one for a horizontal distance of four thousand feet.

5. **Transitional surface.** These surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of seven to one from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of five thousand feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

**History:** April 1, 2016.

**General Authority:** NDCC 2-03-12

**Law Implemented:** NDCC 2-03-12

**6-02-03.1-05. Penalty.**

In accordance with North Dakota Century Code section 2-03-13, failure to comply with this section constitutes a class A misdemeanor.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-03-12

**Law Implemented:** NDCC 2-03-12

**EXHIBIT A**

DIM	Item	Dimensional Standards (Feet)						Precision Instrument Runway PIR
		Visual Runway		Nonprecision Instrument Runway				
		A	B	A	B			
		A	B	A	C	D	Precision Instrument Approach	
A	Width of primary surface and approach surface width at inner end	250	500	500	500	1,000	1,000	
B	Radius of horizontal surface	5,000	5,000	5,000	10,000	10,000	10,000	
C	Approach surface width at end	1,250	1,500	2,000	3,500	4,000	16,000	
D	Approach surface length	5,000	5,000	5,000	10,000	10,000	*	
E	Approach slope	20:1	20:1	20:1	34:1	34:1	*	

A - Utility runways  
 B - Runways larger than utility  
 C - Visibility minimums greater than three-fourths mile  
 D - Visibility minimums as low as three-fourths mile  
 \* - Precision instrument approach is 50:1 for inner ten thousand feet and 40:1 for an additional forty thousand feet

**EXHIBIT B**

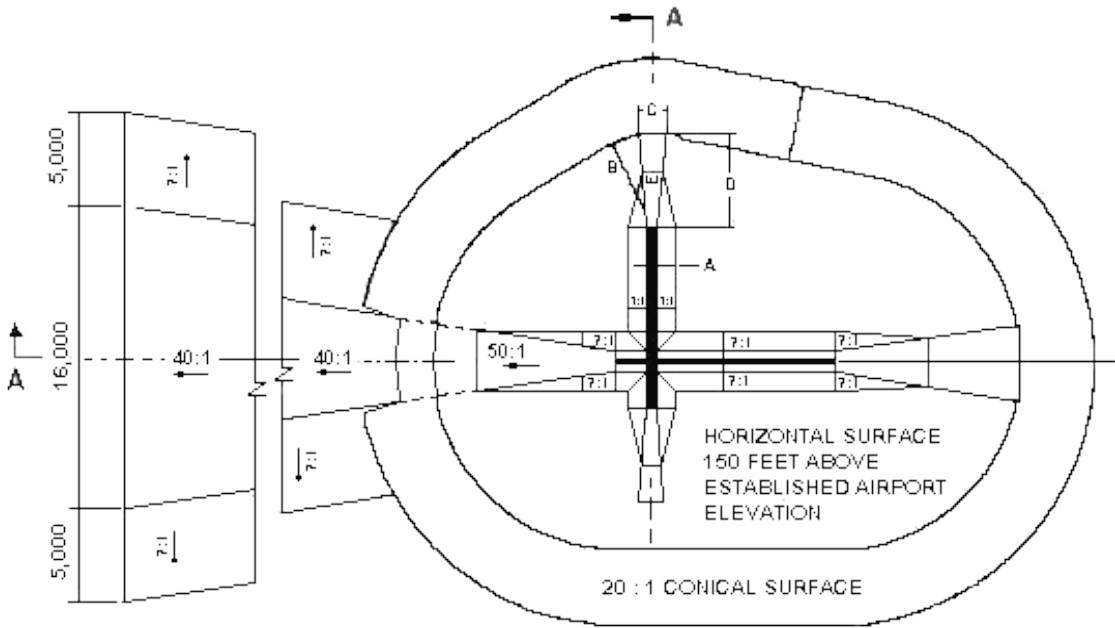
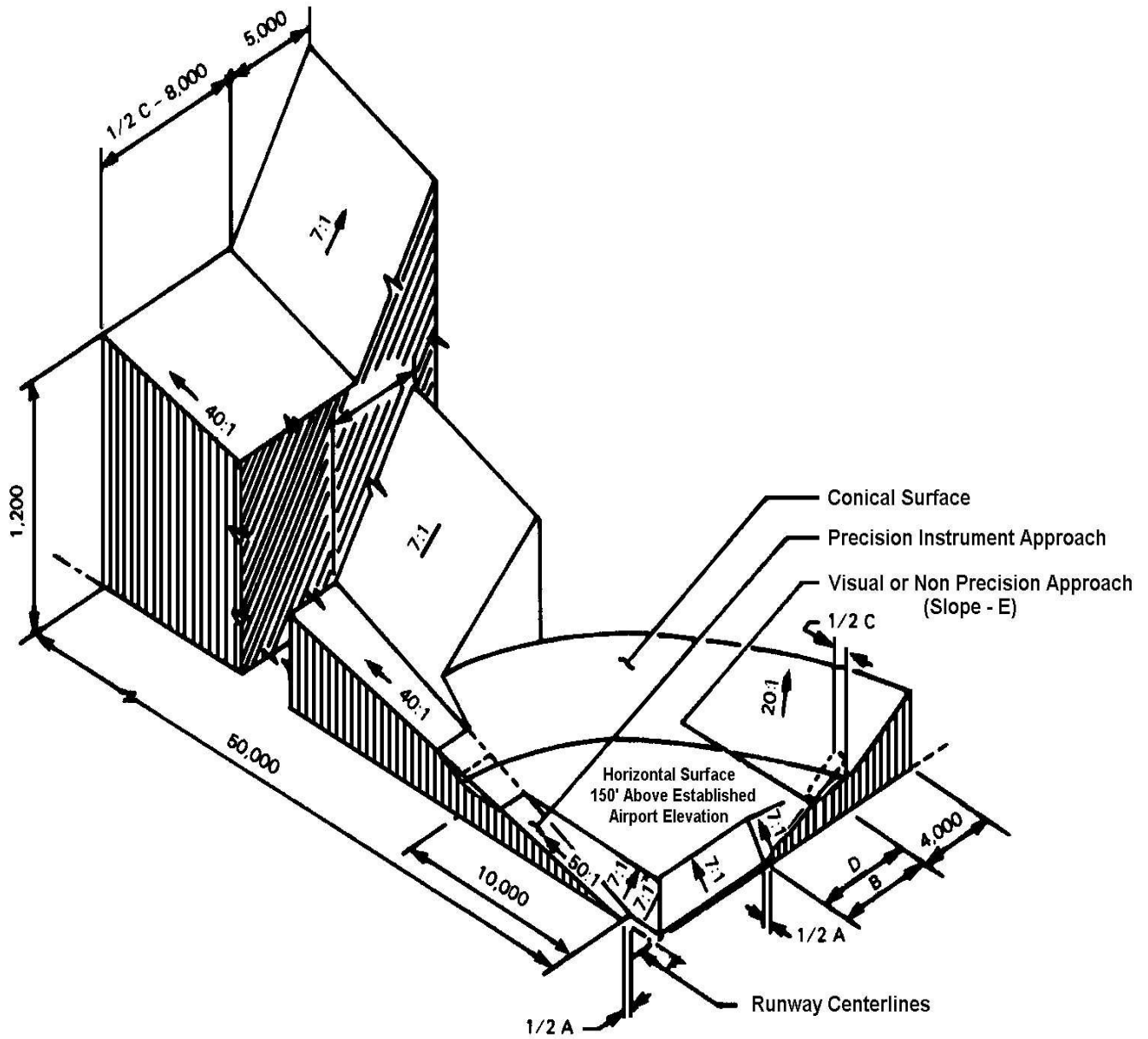


EXHIBIT C



**CHAPTER 6-02-04  
INTRASTATE AIR CARRIERS**

[Repealed effective April 1, 2016]

Section

- ~~6-02-04-01 Application for Common Carrier Certificate or Transfer of Certificate Additional Information~~
- ~~6-02-04-02 Insurance~~
- ~~6-02-04-03 Other Standards~~

## **CHAPTER 6-02-05 AIRPORT GRANTS**

### Section

<u>6-02-05-01</u>	<u>General Provisions</u>
<u>6-02-05-02</u>	<u>Eligible Applicants</u>
<u>6-02-05-03</u>	<u>Grant Application Process</u>
<u>6-02-05-04</u>	<u>Grant Evaluation Criteria</u>
<u>6-02-05-05</u>	<u>Application Review</u>
<u>6-02-05-06</u>	<u>Applicant Notification</u>
<u>6-02-05-07</u>	<u>Distribution of Grants</u>
<u>6-02-05-08</u>	<u>Supplemental Requests</u>

### **6-02-05-01. General provisions.**

Public airports in North Dakota may be provided financial assistance from the aeronautics commission for airport improvement projects in accordance with the policies and guidelines established by the commission.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-05-06.5

**Law Implemented:** NDCC 2-05-06.5

### **6-02-05-02. Eligible applicants.**

Any person, or governing body operating a current or planned public airport may apply for grants from the aeronautics commission for funding of airport project costs.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-05-06.5

**Law Implemented:** NDCC 2-05-06.5

### **6-02-05-03. Grant application process.**

1. The applicant shall complete an application form and submit it to the aeronautics commission by the deadline established by the commission.
2. The applicant may amend its application at any time before the application deadline. After the application deadline, the applicant may amend its application only upon the approval of the commission staff.
3. The applicant must amend its application if it is aware of any new or previously undisclosed information that is materially relevant to the project. Failure to do so may result in denial of the application or recoupment of any grant funds awarded to the applicant.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-05-06.5

**Law Implemented:** NDCC 2-05-06.5

### **6-02-05-04. Grant evaluation criteria.**

All applications will be evaluated based on criteria established by the aeronautics commission.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-05-06.5

**Law Implemented:** NDCC 2-05-06.5

#### **6-02-05-05. Application review.**

The following process will be used to review applications submitted to the commission.

1. Upon receipt of an application, the commission staff shall determine whether the application is complete and meets the eligibility requirements.
2. The commission staff shall review completed applications for eligible projects and assess their merits using the criteria established by the commission.
3. After receiving the commission staff recommendations, the commission may grant preliminary approval of applications based on the grant review criteria and staff recommendations. A preliminary approval determination is subject to change if any information submitted in the project application changes.
4. The commission shall schedule an annual state grant meeting to obtain additional information about applications, if necessary, and to make final decisions regarding grant approvals. At least one week prior to that meeting, the commission shall provide a list of the grant requests given preliminary approval to all grant applicants. Applicants whose applications received preliminary approval may request a modification of the approved funding prior to the annual state grant meeting.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-05-06.5

**Law Implemented:** NDCC 2-05-06.5

#### **6-02-05-06. Applicant notification.**

The commission shall notify applicants of the final grant awards following the annual state grant meeting.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-05-06.5

**Law Implemented:** NDCC 2-05-06.5

#### **6-02-05-07. Distribution of grants.**

Each applicant who is awarded a grant must certify to the commission that:

1. Funds must be used for the stated purpose.
2. At the completion of a project, any remaining balance in the allocated state grant must be returned to the commission.
3. The applicant will comply with all applicable laws and regulations.

Grant funds must be disbursed upon the completion of the certification process.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-05-06.5

**Law Implemented:** NDCC 2-05-06.5

#### **6-02-05-08. Supplemental requests.**

Supplemental requests, contingency items of a previous grant, or requests in response to an emergency may be considered throughout the year. The applicant shall provide supportive documentation to justify the request.



**History:** Effective April 1, 2016.

**General Authority:** NDCC 2-05-06.5

**Law Implemented:** NDCC 2-05-06.5



**TITLE 11**

**AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY, BOARD OF EXAMINERS ON**



APRIL 2016

CHAPTER 11-01-01

**11-01-01-01. Organization of board of examiners on audiology and speech-language pathology.**

1. **History and function.** The 1975 legislative assembly passed legislation to license audiologists and speech-language pathologists, codified as North Dakota Century Code chapter 43-37. In 1983 chapter 43-37 was revised. This chapter requires the governor to appoint a state board of examiners on audiology and speech-language pathology. It is the responsibility of the board to license audiologists and speech-language pathologists.
2. **Board membership.** The board consists of ~~seven~~eight members appointed by the governor. Two members are audiologists, ~~two~~four members are speech-language pathologists, ~~one member is a hearing aid dealer,~~ one member is an otolaryngologist, and one is a consumer. Each board member serves a term of three years. No member may serve on the board more than two successive terms.
3. **Officers.** Officers are elected annually. The board may hire an executive secretary as necessary.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

Board of Examiners on Audiology and  
Speech-Language Pathology

~~Beverly Solseng~~

Executive Secretary

~~University of North Dakota~~

P.O. Box ~~7189~~5143

Grand Forks, North Dakota ~~58202-7189~~58206-5143

Phone: ~~701-777-4421~~701-755-7165

Fax: ~~701-777-4365~~701-746-9620

Email: [ndsbe.executivesecretary@gmail.com](mailto:ndsbe.executivesecretary@gmail.com)

Website: [ndsbe.com](http://ndsbe.com)

**History:** Amended effective May 1, 1984; June 1, 1990; March 1, 1993; April 1, 1993; April 1, 1994; April 1, 2016.

**General Authority:** NDCC 28-32-02.1

**Law Implemented:** NDCC 43-37-06

## CHAPTER 11-02-01 INITIAL LICENSURE AND RENEWALS

### Section

11-02-01-01	Licensure Application
11-02-01-02	Licensure Without Examination [Repealed]
11-02-01-03	Licensure With Examination [Repealed]
11-02-01-04	<del>Licensure Renewal</del> <u>Renewal of Licensure and Relicensure</u>
11-02-01-05	Fees
11-02-01-06	Continuing Education
11-02-01-07	Passing Score

### **11-02-01-01. Licensure application.**

An application for a license to practice audiology or speech-language pathology shall be made to the state board of examiners of audiology and speech-language pathology on forms provided by the board upon request. The application shall contain such information as the board may reasonably require.

1. Each application for a license shall be accompanied by:
  - a. A prescribed fee.
  - b. An official transcript verifying completion of graduate degrees.
  - c. An official or authenticated copy of a passing score, as established by the American speech-language-hearing association, on the ~~national teacher examinations~~ (NTE) Praxis II specialty examination in the area of audiology or speech-language pathology, or another examination approved by the board.
2. All applications shall be signed by the applicant and notarized.
3. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary.
4. If the board so directs, an applicant shall personally appear before the board concerning the application.
5. The board may grant licensure to an applicant who holds a current license in good standing to practice as an audiologist or speech-language pathologist in another state or jurisdiction if that other state or jurisdiction imposes at least substantially the same standards that are imposed under this chapter.

**History:** Amended effective May 1, 1984; June 1, 1990; April 1, 2016.

**General Authority:** NDCC 43-37-06

**Law Implemented:** NDCC 43-37-06, 43-37-09

### **11-02-01-04. ~~Licensure renewal~~ Renewal of licensure and relicensure.**

~~—Licenses are renewable by January first of each year. They must be renewed on forms provided by the board. The renewal forms must be accompanied by the renewal fee and proof of meeting the continuing education requirements. If a person is unlicensed for a period of five years, the board may require that such person retake and pass the national teacher examinations specialty examination prior to licensure or relicensure. The board will allow a license to elapse only upon preapproval with a showing of unusual hardship conditions. An individual may be granted a second licensure only once in a five-year period.~~

1. Applications for the renewal of license are due by the first date of each year.
2. At least two months before the first date of each year, the board shall notify the licensee of the requirement for renewal. The notice must be made to the address last provided to the board by the licensee and must encourage applicants to submit applications for renewal upon receiving that notice.
3. A license must be renewed by the board if, on or before the thirty-first day of January of each year, the licensee meets all of the following requirements:
  - a. The licensee filed a complete application for renewal form provided by the board.
  - b. The licensee paid the renewal fee.
  - c. The licensee provided proof of completion of the continuing education required by section 11-02-01-06.
  - d. Grounds for denial of the application under North Dakota Century Code section 43-37-13 do not exist.
4. If the completed application for renewal, renewal fee, and proof of completion of continuing education are not filed before the first day of each year, the licensee shall pay the late fee associated with the license.
5. If the completed application for renewal, renewal fee, proof of completion of continuing education, and late fee is not filed before the last day of January, the license expires and the individual may not practice until the board renews the license or grants relicensure.
6. The board may extend the expiration date and the deadlines for filing the application for renewal, renewal fee, proof of completion of continuing education, and late fee upon proof of medical or other hardship preventing the individual from meeting the deadlines.
7. If an individual is unlicensed for a period less than five calendar years, the individual must be granted relicensure upon the filing of a completed application for license, the licensing fee, a two hundred fifty dollar relicensure fee, and proof of completion of ten clock hours of continuing education for each calendar year for which the individual was unlicensed.
8. If an individual is unlicensed for a period of five or more calendar years, the individual may be required by the board to retake and pass the Praxis II specialty examination or another examination approved by the board, and shall be required to file a completed application for a license, the licensing fee, a two hundred fifty dollar relicensure fee, and proof of completion of ten clock hours of continuing education for each calendar year for which the individual was unlicensed in order to be considered for relicensure.
9. An individual may be granted a relicensure only once in a five-year period.

**History:** Amended effective May 1, 1984; October 1, 1989; June 1, 1990; April 1, 2016.

**General Authority:** NDCC 43-37-06

**Law Implemented:** NDCC 43-37-06

#### **11-02-01-05. Fees.**

The following fees shall be paid in connection with audiologist and speech-language pathologist applications, examinations, renewals, and penalties:

1. Application fee for an audiologist license: one hundred dollars.
2. Application fee for a speech-language pathologist license: one hundred dollars.

3. Renewal fee for an audiologist license: seventy-five dollars.
4. Renewal fee for a speech-language pathologist license: seventy-five dollars.
5. A license expires on January first of the calendar year. If a person fails to ~~renew the person's~~submit all the materials required to renew the license before January first,~~a but does submit those materials on or before January thirty-first of that same year, the applicant shall also submit a two hundred~~ fifty dollar ~~penalty~~late ~~fee will be incurred up to March thirty-first of that same year. After March thirty-first, the person will be considered by the board to be practicing without a license.~~
6. Relicensure fee: two hundred fifty dollars.

**History:** Amended effective May 1, 1984; June 1, 1990; February 1, 2001; April 1, 2016.

**General Authority:** NDCC 43-37-06

**Law Implemented:** NDCC 43-37-06

#### **11-02-01-06. Continuing education.**

~~—To renew a license a person must present proof of having attended at least ten clock hours of continuing education approved by the board.~~

~~—Continuing education for licensure renewal must be completed in the calendar year prior to the year for which licensure is sought. Continuing education is defined as courses or workshops that are (1) designed to increase the competence of the licensee in the area of licensure; (2) open to the public; and (3) preapproved by the board.~~

~~—If any licensee allows the licensee's license to lapse, that licensee must be required to submit proof of attendance of at least ten clock hours of continuing education for each year that the license has lapsed up to a total of forty clock hours of continuing education.~~

1. Continuing education is defined as courses or workshops that contribute to professional development and lead to acquiring and enhancing skills and knowledge required for professional practice that are either approved by the board or certified by the American speech-language-hearing association, the American academy of audiology, or the international hearing association or another organization approved by the board.
2. Licensees are required to complete ten clock hours of continuing education during each calendar year.
3. Continued practice in violation of the continuing education requirements as outlined in this section subjects a licensee to disciplinary action as outlined in North Dakota Century Code section 43-37-13.

**History:** Amended effective May 1, 1984; August 1, 1986; June 1, 1990; April 1, 2016.

**General Authority:** NDCC 43-37-06

**Law Implemented:** NDCC 43-37-06

#### **11-02-01-07. Passing score.**

The successful completion of a ~~national teacher examinations (NTE)~~Praxis II specialty examination in audiology or speech-language pathology or another examination approved by the board means: obtaining a score equal to or greater than the passing score established by the American speech-language-hearing association or another organization approved by the board, and in effect at the time of administration of the test.

**History:** Effective May 1, 1984; amended effective June 1, 1990; April 1, 2016.



**General Authority:** NDCC 43-37-09

**Law Implemented:** NDCC 43-37-06

## CHAPTER 11-02-02

### 11-02-02-02. Code of ethics.

The board subscribes to the [2010](#) code of ethics of the American speech-language-hearing association ~~as revised January 1, 1986~~. This code is incorporated in the rules by reference except that a certificate of clinical competence is not required to practice speech-language pathology and audiology in North Dakota.

**History:** Effective May 1, 1984; amended effective October 1, 1989; [April 1, 2016](#).

**General Authority:** NDCC 43-37-06

**Law Implemented:** NDCC 43-37-06

### 11-02-02-03. Unacceptable professional conduct.

The following constitute unacceptable professional conduct by a licensed audiologist or speech-language pathologist and subject such licensee or potential licensee to sanction:

1. Taking financial advantage of a client, or using one's position within an agency to enhance one's private practice or the private practice of others for personal gain.
2. Entering into any illegal acts with a client.
3. Participating in, condoning, or being an accessory to dishonesty, fraud, deceit, or misrepresentation in the practice of audiology or speech-language pathology.
4. Not providing clients with accurate and complete information regarding the extent and nature of the services available to them.
5. Convicted of a criminal act which affects the practice of the profession. (North Dakota Century Code section 12.1-33-02.1)
6. Violating any federal or state confidentiality client care regulation statutes.
7. Violating any federal or state discrimination statutes or regulations.
8. Exploiting relationships with clients such as participating in or soliciting sexual relationships during the time of services and for twelve months following the termination of services.
9. Refusal to seek adequate and appropriate treatment for any illness or disorder which interferes with professional functioning or ability to perform the basic expected functions, or both, of an audiologist or speech-language pathologist.
10. Using misrepresentation in the procurement of licensing as an audiologist or speech-language pathologist or knowingly assisting another in the procurement of licensing through misrepresentation. Misrepresentation of professional qualifications, certifications, accreditations, affiliation, and employment experiences.
11. Failure to report through the proper channels the incompetent, unethical, or illegal practice of any licensed audiologist or speech-language pathologist who is providing such services.
12. Participating in activities that constitute a conflict of professional interest and adversely affect the licensee's ability to provide audiology or speech-language pathology services.
13. Violating any of the principles of ethics as listed in the [2010](#) code of ethics of the American speech-language-hearing association ~~as revised January 1, 1986~~.

14. Providing any inaccurate, misleading, or false information to the board in regard to a licensure action.

**History:** Effective October 1, 1989; [amended effective April 1, 2016](#).

**General Authority:** NDCC 43-37-06

**Law Implemented:** NDCC 43-37-06, 43-37-13

## CHAPTER 11-02-03

### 11-02-03-02. Complaint procedures.

~~—The board will respond only to complaints submitted in writing.~~

- ~~1. Upon filing of a written and signed complaint alleging a licensee engaged in conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-37-13, the board shall notify the licensee of the complaint and require a written response from the licensee.~~
- ~~2. A licensee who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or client records if reasonably requested by the board and accompanied by the appropriate release.~~
- ~~3. The board may direct an ethics subcommittee or a board member to investigate the complaint. After completing the investigation, the ethics subcommittee or board member will recommend whether the board should take disciplinary action against the licensee.~~
- ~~4. When conducting an investigation, the board may subpoena and examine witnesses and records, including patient and client records, and may copy, photograph, or take samples of the records. The board may require the licensee to give statements under oath, to submit to a physical or psychological examination, or both, by a physician or other qualified evaluation professional selected by the board, if requiring an examination is in the best interest of the public. The patient and client records released to the board are not public records.~~
- ~~5. The board shall determine if there is a reasonable basis to believe the licensee engaged in conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-37-13. If the board determines there is not a reasonable basis, the board will notify the complainant and the licensee. If the board determines there is a reasonable basis, the board may proceed with a disciplinary action in accordance with North Dakota Century Code chapter 28-32.~~
- ~~6. The board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.~~
- ~~7. The board may impose a fee on the licensee for all or part of the costs of an informal resolution or a formal action resulting in discipline, including administrative costs, investigation costs, attorney's fees, witness fees, the cost of the office of administrative hearings services, and court costs.~~

**History:** Effective June 1, 1990; amended effective April 1, 2016.

**General Authority:** NDCC 43-37-06

**Law Implemented:** NDCC 28-32-05

**TITLE 30**  
**GAME AND FISH DEPARTMENT**



## APRIL 2016

### CHAPTER 30-03-06

#### 30-03-06-05. Water prohibited.

1. Refer to the North Dakota game and fish department website for a listing of state waters infested with class I prohibited aquatic nuisance species. Fish transported and held in or on ice are allowed.
2. All water must be drained from all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, livewells, and baitwells, when out of water or upon entering the state. Water used for instate transportation of legal live bait and legal live baitfish in bait buckets no larger than five gallons in volume is allowed to and from waters of the state not designated as infested with class I prohibited aquatic nuisance species. Refer to the current fishing proclamation for legal live bait and legal live baitfish definitions. Potable water and sewage water are excluded from this restriction.
3. Water may not be transported away from waters of the state designated as infested with class I prohibited aquatic nuisance species unless permitted by the state water commission or otherwise authorized.
4. ~~All drain plugs must be removed from all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, when entering the state or leaving any state waters infested with class I prohibitive aquatic nuisance species~~All drain plugs that may hold back water must be removed, and water draining devices must be open, on all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, during any out-of-water transport of same.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2016; April 1, 2016.

**General Authority:** NDCC 20.1-17-01

**Law Implemented:** NDCC 20.1-17-06





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



APRIL 2016

CHAPTER 33-06-16  
NEWBORN SCREENING PROGRAM

Section

33-06-16-01	Definitions
<del>33-06-16-02</del>	<del>Testing of Newborns</del>
<del>33-06-16-03</del>	<del>Physician Responsibility</del>
33-06-16-04	Refusal of Testing
33-06-16-05	Research and Testing Materials

**33-06-16-01. Definitions.**

As used in this chapter:

- ~~1. "Diagnostic test" means a test that is used to establish a definitive diagnosis of some condition in an affected newborn.~~
- ~~2. "Newborn screening system" means the routine testing of newborn infants for congenital conditions by analysis of a dried blood specimen through laboratory procedures that identify infants with an increased risk for specified diseases and conditions, and that justify followup actions and diagnostic tests or procedures.~~
- ~~3. "Program" means the North Dakota newborn screening program in the community health section of the state department of health.~~
- ~~4. "Protected health information" has the meaning set forth in North Dakota Century Code section 23-01.3-01.~~
- ~~5. "Tandem mass spectrometry" is a laboratory technology that uses a machine consisting of two mass spectrometers joined by a fragmentation chamber. Tandem mass spectrometry technology allows the identification of an array of metabolic conditions, such as amino acid, fatty acid, and organic acid disorders, from a single dried blood spot. Tandem mass spectrometry can test for multiple disorders in a single screening run and the number of known disorders which may be screened by this technology is constantly changing.~~
- ~~6. Metabolic disease is a genetically determined disorder in which a specific enzyme defect causes a clinically significant block or alteration in a biochemical pathway or process.~~
1. "Care coordination" means services that promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special health care needs and their families.

2. "Licensed clinician" means a currently licensed physician, physician assistant, or advanced practice registered nurse.
3. "Metabolic disease" and "genetic disease" mean a disease as designated by rule of the state health council for which early identification and timely intervention will lead to a significant reduction in mortality, morbidity, and associated disabilities.
4. "Metabolic disorders clinic team" means medical providers and other professionals that provide comprehensive pediatric evaluations and coordinated care recommendations using a team approach to help effectively manage care for individuals with metabolic disorders.
5. "Newborn screening program" means the North Dakota screening program in the state department of health facilitating access to appropriate testing, followup, diagnosis, intervention, management, evaluation, and education regarding metabolic diseases and genetic diseases identified in newborns.
6. "Protected health information" means any information, including genetic information, demographic information, and fluid or tissue samples collected from an individual, diagnostic and test results, whether oral or recorded in any form or medium, which:
  - a. Is created or received by a health care provider, health researcher, health plan, health oversight authority, public health authority, employer, health or life insurer, school or university; and
  - b. (1) Relates to the past, present, or future, physical or health or condition of an individual, including individual cells and their components; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and
    - (2) (a) Identifies an individual; or
    - (b) With respect to which there is a reasonable basis to believe that the information can be used to identify an individual.
7. "Responsible clinician" means the licensed clinician, midwife, naturopath, or birth attendant attending a newborn.
8. "Screening" means initial testing of a newborn for the possible presence of metabolic disease or genetic disease.
9. "Screening laboratory" means the laboratory the department selects to perform screening.

**History:** Effective December 1, 1996; amended effective March 1, 2003; January 1, 2006; April 1, 2016.

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

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

### **33-06-16-02. Testing of newborns.**

Repealed effective April 1, 2016.

~~—Under the newborn screening system, except as authorized by section 33-06-16-04, each newborn infant born in this state shall be tested for metabolic diseases, cystic fibrosis, hypothyroidism, galactosemia, congenital adrenal hyperplasia, biotinidase deficiency, sickle cell disease and other hemoglobinopathies, and a sample of the newborn's blood shall also be tested by tandem mass spectrometry.~~

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

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

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

### **33-06-16-03. Physician responsibility.**

Repealed effective April 1, 2016.

- ~~1. The physician or other birth attendant shall order that:
  - ~~a. A specimen of blood be collected from a newborn in accordance with directions supplied by the laboratory designated by the state department of health and the program; and~~
  - ~~b. The specimen be sent to that laboratory.~~~~
- ~~2. If a patient, who has a condition for which the program conducts a screening test, but which has been detected by another mechanism or by an out-of-state screening program, the patient's physician shall within thirty days of becoming aware of the patient's condition, notify the program of the patient's name, parent's name if the patient is under eighteen years of age, date of birth, address, and condition.~~

~~History: Effective March 1, 2003.~~

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

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

### **33-06-16-05. Research and testing materials.**

Information and testing materials received or generated by the newborn screening program under North Dakota Century Code chapter 25-17 are strictly confidential information subject to North Dakota Century Code chapter 23-01.3 and section 23-01-15~~strictly confidential information subject to North Dakota Century Code chapter 23-01.3 and section 23-01-15~~except as provided by law or regulation.

1. Access to information or testing materials may be obtained only as follows:
  - a. Information may be disclosed for statistical purposes in a manner such that no individual person can be identified.
  - b. Information may be disclosed to the individual tested, that person's parent or guardian, or that person's physician or licensed clinician, responsible clinician, dietitian, metabolic disorders clinic team, screening laboratory, other employees and contractors of the department will need for the information, or to ~~the~~ children's special health services program of within the state department of human services~~health~~ for purposes of care coordination ~~of services~~ and provision of medical and low-protein modified foods.
  - c. Information and testing materials may be disclosed to a person engaged in a ~~bona fide~~ research project concerning medical, psychological, or sociological issues provided all of the following conditions are met:
    - (1) Written authorization from the parent or guardian must be obtained by the researcher for the information or testing materials requested.
    - (2) The research project must be sponsored by a public or private college or university; a governmental entity; a nonprofit medical, sociological, or psychological association; or the pharmaceutical industry.
    - ~~(2)~~(3) The research project must be reviewed and approved pursuant to policies and procedures pertaining to research utilizing human subjects by the institutional review board or equivalent panel of the institution or entity where the research is being done or which is sponsoring the research.

~~(3)~~(4) Protected health information may not appear in any report, summation, thesis, or other document arising out of the research project.

~~(4)~~(5) Protected health information may not be provided to a person engaged in a ~~bona fide~~ research project until that person has submitted a written proposal explaining and justifying the need to examine such information ~~which is satisfactory to the state health officer. The state health officer may require the research to be approved by the university of North Dakota institutional review board.~~

~~(5)~~ All documents or testing materials received by the researcher and all documents containing protected health information made by or on behalf of the researcher, by whatever means, including hard copies, typewritten or handwritten copies, photocopies, facsimiles, or electronic or electromagnetic recording or imaging, must be returned to the department on or before a date that the state health officer shall set.

~~(6)~~ The researcher shall submit a written plan explaining how all protected health information in the researcher's possession will be kept secure to the satisfaction of the state health officer who shall obtain written assurance that the plan will be implemented.

~~(7)~~ The researcher shall agree to provide the state health officer a copy of any report, summation, thesis, or other document arising out of the research project for departmental review of compliance with this section before providing it to the publisher.

~~(8)~~ The researcher shall consent in writing to the use and reproduction of the document by the department.

~~(9)~~(6) The researcher shall agree in writing to pay all costs of ~~the state health officer or the~~ department incurred in providing access to testing materials or other information, including copy or research services.

~~d.~~ Disclosure may be made as otherwise provided by statute.

2. ~~Retention and destruction~~Storage, maintenance, and disposal of information and testing materials.

a. Information and testing materials must be stored in such a way as to protect the integrity of the materials and the privacy of patients.

~~b.~~ Information and testing materials provided to the ~~university of North Dakota school of medicine and health sciences~~state department of health may be retained indefinitely or destroyed according to this subsection.

~~b.c.~~ Information and testing materials may be destroyed by any available means that preserves individual confidentiality and, for the testing materials, complies with any applicable standards for destruction of human blood samples.

~~e.d.~~ Information and testing materials may be destroyed based upon the following schedule:

(1) Information and testing materials created less than ~~ten~~eighteen years before the present date may be destroyed only with the state health officer's prior written approval.

(2) After ~~ten~~eighteen years, information and testing materials may be destroyed without prior approval.

**History:** Effective March 1, 2003; amended effective April 1, 2016.

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

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

## CHAPTER 33-17-01

### 33-17-01-02. Definitions.

For the purpose of this chapter the following definitions shall apply:

1. "Action level" means the concentration of lead or copper in water specified in title 40, Code of Federal Regulations, part 141, subpart I, section 141.80(c), that determines, in some cases, the treatment requirements set forth under title 40, Code of Federal Regulations, part 141, subpart I, that a water system is required to complete.
2. "Bag filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.
3. "Bank filtration" means a water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a riverbed or riverbanks. Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other wells.
4. "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the department finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, any best available technology must be at least as effective as granular activated carbon.
5. "Cartridge filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed as rigid or semirigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.
6. "Clean compliance history", for the purposes of subpart Y, means a record of no MCL violations as specified in title 40, Code of Federal Regulations, part 141.63; no monitoring violations as specified in title 40, Code of Federal Regulations, part 141.21 or as specified in title 40, Code of Federal Regulations, part 141, subpart Y; and no coliform treatment technique trigger exceedances or treatment technique violations as specified in title 40, Code of Federal Regulations, part 141, subpart Y.
- ~~6-7.~~ "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.
- ~~7-8.~~ "Combined distribution system" means the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.
- ~~8-9.~~ "Community water system" means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.
- ~~9-10.~~ "Compliance cycle" means the nine-year calendar year cycle during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants. Each compliance cycle consists of three 3-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; and the third begins January 1, 2011, and ends December 31, 2019.



- ~~40.11.~~ "Compliance period" means a three-year calendar year period within a compliance cycle during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants. Each compliance cycle has three 3-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; and the third from January 1, 1999, to December 31, 2001.
- ~~44.12.~~ "Composite correction program" or "CCP" means a systematic, comprehensive procedure for identifying, prioritizing, and remedying factors that limit water treatment plant performance as set forth in the United States environmental protection agency handbook entitled Optimizing Water Treatment Plant Performance Using The Composite Correction Program, EPA/625/6-91/027, 1998 edition. A composite correction program consists of two phases, a comprehensive performance evaluation and comprehensive technical assistance.
- ~~42.13.~~ "Comprehensive performance evaluation" or "CPE" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with title 40, Code of Federal Regulations, part 141, subpart P and subpart T, the comprehensive performance evaluation shall consist of at least the following components:
- a. Assessment of plant performance;
  - b. Evaluation of major unit processes;
  - c. Identification and prioritization of performance limiting factors;
  - d. Assessment of the applicability of comprehensive technical assistance; and
  - e. Preparation of a comprehensive performance evaluation report.
- ~~43.14.~~ "Comprehensive technical assistance" or "CTA" means the performance improvement phase of a composite correction program that is implemented if the comprehensive performance evaluation results indicate improved performance potential. During the comprehensive technical assistance phase, identified and prioritized factors that limit water treatment plant performance are systematically addressed and eliminated.
- ~~44.15.~~ "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.
- ~~45.16.~~ "Consecutive system" means a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.
- ~~46.17.~~ "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
- ~~47.18.~~ "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.
- ~~48.19.~~ "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.
- ~~49.20.~~ "Cross connection" means any connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or

questionable safety or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.

- | ~~20.~~21. "CT" or "CT calc" means the product of residual disinfectant concentration (C) in milligrams per liter determined before or at the first customer and the corresponding disinfectant contact time (T) in minutes. If disinfectants are applied, at more than one point prior to the first customer, the CT of each disinfectant sequence must be determined before or at the first customer to determine the total percent inactivation or total inactivation ratio. In determining the total inactivation ratio, the residual disinfectant concentration of each disinfection sequence and the corresponding contact time must be determined before any subsequent disinfection application points. CT ninety-nine point nine is the CT value required for ninety-nine point nine percent (three-logarithm) inactivation of giardia lamblia cysts. CT ninety-nine point nine values for a wide variety of disinfectants and conditions are set forth under title 40, Code of Federal Regulations, part 141, subpart H. CT calculated divided by CT ninety-nine point nine is the inactivation ratio. The total inactivation ratio is determined by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one point zero is assumed to provide a three-logarithm inactivation of giardia lamblia cysts.
  
- | ~~21.~~22. "Department" means the state department of health.
  
- | ~~22.~~23. "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane or septum, and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.
  
- | ~~23.~~24. "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.
  
- | ~~24.~~25. "Disinfectant" means any oxidant, including, but not limited to, chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.
  
- | ~~25.~~26. "Disinfectant contact time" (T in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. Where only one C is measured, T is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where C is measured. Where more than one C is measured, T, for the first measurement of C, is the time in minutes that it takes the water to move from the first or only point of disinfectant application to a point before or at the point where the first C is measured. For subsequent measurements of C, T is the time in minutes that it takes for water to move from the previous C measurement point to the C measurement point for which the particular T is being calculated. Disinfectant contact time in pipelines must be calculated by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. T within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.
  
- | ~~26.~~27. "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.
  
- | ~~27.~~28. "Disinfection profile" means a summary of daily giardia lamblia inactivation through the treatment plant. The disinfection profile shall be developed as set forth under title 40, Code of Federal Regulations, part 141, subpart P (141.172) and subpart T (141.530-141.536).

- 28-29. "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.
- 29-30. "Dual sample set" means a set of two samples collected at the same time and same location, with one sample analyzed for total trihalomethanes (TTHM) and the other sample analyzed for haloacetic acids five (HAA5). Dual sample sets are collected for the purpose of conducting an initial distribution system evaluation (IDSE) under title 40, Code of Federal Regulations, parts 141.600 to 141.605 inclusive, and determining compliance with the TTHM and HAA5 MCLs under title 40, Code of Federal Regulations, parts 141.620 to 141.629 inclusive.
- 30-31. "Effective corrosion inhibitor residual", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a concentration sufficient to form a passivating film on the interior walls of pipe.
- 31-32. "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.
- 32-33. "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.
- 33-34. "Filter profile" means a graphical representation of individual filter performance based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.
- 34-35. "Filtration" means a process for removing particulate matter from water by passage through porous media.
- 35-36. "Finished water" means water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection or addition of corrosion control chemicals).
- 36-37. "First draw sample" means a one-liter sample of tap water, collected in accordance with title 40, Code of Federal Regulations, part 141, section 141.86(b)(2), that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.
- 37-38. "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.
- 38-39. "Flowing stream" means a course of running water flowing in a definite channel.
- 39-40. "Granular activated carbon ten" or "GAC10" means granular activated carbon filter beds with an empty-bed contact time of ten minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with subpart V MCLs under title 40, Code of Federal Regulations, part 141.64(b)(2) shall be one hundred twenty days.
- 40-41. "Granular activated carbon twenty" or "GAC 20" means granular activated carbon filter beds with an empty-bed contact time of twenty minutes based on average daily flow and a carbon reactivation frequency of every two hundred forty days.
- 41-42. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

- ~~42.43.~~ "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as giardia lamblia or cryptosporidium. Ground water under the direct influence of surface water also means significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.
- ~~43.44.~~ "Haloacetic acids five" or "HAA5" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid, rounded to two significant figures after addition.
- ~~44.45.~~ "Halogen" means one of the chemical elements chlorine, bromine, or iodine.
- ~~45.46.~~ "Initial compliance period" means the first full compliance period that begins January 1, 1993, during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants.
- ~~46.47.~~ "Lake/reservoir" means a natural or manmade basin or hollow on the earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.
- ~~47.48.~~ "Large water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves more than fifty thousand persons.
- ~~48.49.~~ "Lead service line" means a service line made of lead that connects the water main to the building inlet and any pigtail, gooseneck, or other fitting that is connected to a lead line.
- ~~49.50.~~ "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called legionnaires disease.
51. "Level 1 assessment" means an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and, when possible, the likely reason that the system triggered the assessment. It is conducted by the system operator or owner. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality, including water storage; source and treatment considerations that bear on distributed water quality, where appropriate, such as whether a ground water system is disinfected; existing sample sites, sampling protocol, and sampling processing. The system must conduct the assessment consistent with any state directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.
52. "Level 2 assessment" means an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and, when possible, the likely reason that the system triggered the assessment. A level 2 assessment provides a more detailed examination of the system, including the system's monitoring and operational practices, than does a level 1 assessment through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. It is conducted by an individual approved by the state, which may include the system operator. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality, including water storage; source and treatment considerations that bear on distributed water quality, where appropriate, such as whether a ground water system is disinfected; existing water quality monitoring data; and inadequacies in sample sites,

sampling protocol, and sample processing. The system must conduct the assessment consistent with any state directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system. The system must comply with any expedited actions or additional actions required by the state in the case of an E. coli MCL violation.

~~50.53.~~ "Locational running annual average" or "LRAA" means the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

~~51.54.~~ "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

~~52.55.~~ "Maximum residual disinfectant level" or "MRDL" means a level of a disinfectant added for water treatment that must not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

~~53.56.~~ "Maximum total trihalomethane potential" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of twenty-five degrees Celsius [77 degrees Fahrenheit] or above.

~~54.57.~~ "Medium-size water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves three thousand three hundred one to fifty thousand persons.

~~55.58.~~ "Membrane filtration" means a pressure-driven or vacuum-driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

~~56.59.~~ "Near the first service connection" means at one of the twenty percent of all service connections in the entire system that are nearest the water supply treatment facility as measured by water transport time within the distribution system.

~~57.60.~~ "Noncommunity water system" means a public water system that is not a community water system that primarily provides service to other than year-round residents. A noncommunity water system is either a "nontransient noncommunity" or "transient noncommunity" water system.

~~58.61.~~ "Nontransient noncommunity water system" means a noncommunity water system that regularly serves at least twenty-five of the same persons over six months per year.

~~59.62.~~ "Optimal corrosion-control treatment", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means the corrosion-control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

~~60.63.~~ "Person" means an individual, corporation, company, association, partnership, municipality, or any other entity.

~~61.64.~~ "Plant intake" means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

~~62.65.~~ "Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.



- ~~63.66.~~ "Point-of-entry treatment device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.
- ~~64.67.~~ "Point-of-use treatment device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.
- ~~65.68.~~ "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the physical, chemical, biological, or radiological quality conforming to applicable maximum permissible contaminant levels.
- ~~66.69.~~ "Presedimentation" means a preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.
- ~~67.70.~~ "Product" means any chemical or substance added to a public water system, any materials used in the manufacture of public water system components or appurtenances, or any pipe, storage tank, valve, fixture, or other materials that come in contact with water intended for use in a public water system.
- ~~68.71.~~ "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals sixty or more days out of the year. A public water system includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities that are not under control of the operator which are used primarily in connection with the system. A public water system does not include systems that provide water through pipes or constructed conveyances other than pipes that qualify for the exclusions set forth under section 1401(4)(B) (i) and (ii) of the Federal Safe Drinking Water Act [42 U.S.C. 300f(4)(B)(i) and (ii)]. A public water system is either a "community" or a "noncommunity" water system.
- ~~69.72.~~ "Repeat compliance period" means any subsequent compliance period after the initial compliance period during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants.
- ~~70.73.~~ "Residual disinfectant concentration" (C in CT calculations) means the concentration of disinfectant measured in milligrams per liter in a representative sample of water.
- ~~74.74.~~ "Sampling schedule" means the frequency required for submitting drinking water samples to a certified laboratory for examination.
75. "Sanitary defect" means a defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a barrier that is already in place.
- ~~72.76.~~ "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.
77. "Seasonal system" means a noncommunity water system that is not operated as a public water system on a year-round basis and starts up and shuts down at the beginning and end of each operating season.
- ~~73.78.~~ "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

- | ~~74~~79. "Service line sample" means a one-liter sample of water, collected in accordance with title 40, Code of Federal Regulations, part 141, section 141.86(b)(3), that has been standing for at least six hours in a service line.
- | ~~75~~80. "Single-family structure", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a building constructed as a single-family residence that is currently used either as a residence or a place of business.
- | ~~76~~81. "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity resulting in substantial particulate removal by physical and biological mechanisms.
- | ~~77~~82. "Small water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves three thousand three hundred or fewer persons.
- | ~~78~~83. "Specific ultraviolet absorption" or "SUVA" means specific ultraviolet absorption at two hundred fifty-four nanometers, an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of two hundred fifty-four nanometers in meters to the minus one by its concentration of dissolved organic carbon, the fraction of the total organic carbon that passes through a zero point four five micrometer pore diameter filter, in milligrams per liter.
- | ~~79~~84. "Subpart H systems" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to the requirements of title 40, Code of Federal Regulations, part 141, subpart H.
- | ~~80~~85. "Supplier of water" means any person who owns or operates a public water system.
- | ~~81~~86. "Surface water" means all water which is open to the atmosphere and subject to surface runoff.
- | ~~82~~87. "System with a single service connection" means a system which supplies drinking water to consumers with a single service line.
- | ~~83~~88. "Too numerous to count" means that the total number of bacterial colonies exceeds two hundred on a forty-seven millimeter membrane filter used for coliform detection.
- | ~~84~~89. "Total organic carbon" means total organic carbon in milligrams per liter measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.
- | ~~85~~90. "Total trihalomethanes" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane, and tribromomethane [bromoform]), rounded to two significant figures.
- | ~~86~~91. "Transient noncommunity water system" means a noncommunity water system that primarily provides service to transients.
- | ~~87~~92. "Trihalomethane" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.
- | ~~88~~93. "Two-stage line softening" means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

- | ~~89.94.~~ "Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and is open to the atmosphere.
- | ~~90.95.~~ "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.
- | ~~91.96.~~ "Water system" means all sources of water and their surroundings and includes all structures, conducts, and appurtenances by means of which the water is collected, treated, stored, or delivered.
- | ~~92.97.~~ "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or state agency.
- | ~~93.98.~~ "Wholesale system" means a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

**History:** Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1991; February 1, 1993; August 1, 1994; August 1, 2000; April 1, 2005; January 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 61-28.1-03

**Law Implemented:** NDCC 61-28.1-02, 61-28.1-03

**33-17-01-03. Coverage.**

This chapter applies to all public water systems except those public water systems which meet all of the following conditions:

1. Consists only of distribution and storage facilities and does not have any collection and treatment facilities;
- | 2. Obtains all of its water from but is not owned or operated by a public water system to which these regulations apply;
3. Does not sell water to any person; and
4. Is not a carrier which conveys passengers in interstate commerce.

**History:** Amended effective July 1, 1988; February 1, 1993; [April 1, 2016](#).

**General Authority:** NDCC 61-28.1-03

**Law Implemented:** NDCC 61-28.1-03

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

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

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL MILLIGRAM(S) PER LITER	ACTION LEVEL MILLIGRAM(S) PER LITER	TREATMENT TECHNIQUES REQUIREMENTS
Antimony	0.006		
Arsenic	0.05 (until January 22, 2006)		



	0.010 (effective January 23, 2006)		
Asbestos	7 million fibers per liter (longer than ten micrometers)		
Barium	2		
Beryllium	0.004		
Cadmium	0.005		
Chromium	0.1		
Copper		The 90th percentile level must be less than or equal to 1.3	Source water and corrosion control treatment
Cyanide (as free cyanide)	0.2		
Fluoride	4.0		
Lead		The 90th percentile level must be less than or equal to 0.015	Source water and corrosion control treatment, public education, and lead service line replacement
Mercury	0.002		
Nickel	0.1		
Nitrate (as N)	10		
Nitrite (as N)	1		
Selenium	0.05		
Thallium	0.002		
Total Nitrate and Nitrite (as N)	10		

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

- a. Such water will not be available to children under six months of age;
- b. There will be continuous posting of the fact that nitrate levels exceed ten milligrams per liter and the potential health effect of exposure;
- c. Local and state public health authorities will be notified annually of nitrate levels that exceed ten milligrams per liter; and
- d. No adverse health effects shall result.

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

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL MILLIGRAM(S) PER LITER	ACTION LEVEL MILLIGRAM(S) PER LITER	TREATMENT TECHNIQUE REQUIREMENTS
Nonvolatile Synthetic Organic Chemicals:			
Acrylamide			The combination (or product) of dose and monomer level may not exceed 0.05 percent dosed at 1 part per million (or equivalent)
Alachlor	0.002		
Atrazine	0.003		

Benzo (a) pyrene	0.0002
Carbofuran	0.04
Chlordane	0.002
Dalapon	0.2
Dibromochloropropane (DBCP)	0.0002
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) phthalate	0.006
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Epichlorohydrin	

The combination (or product) of dose and monomer level may not exceed 0.01 percent dosed at 20 parts per million (or equivalent)

Ethylene dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lindane	0.0002
Methoxychlor	0.04
Oxamyl (Vydate)	0.2
Polychlorinated biphenyls (PCBs)	0.0005
Pentachlorophenol	0.001
Picloram	0.5
Simazine	0.004
Toxaphene	0.003
2,3,7,8-TCDD (Dioxin)	0.00000003
2,4-D	0.07
2,4,5-TP Silvex	0.05

Volatile Synthetic Organic Chemicals:

Benzene	0.005
Carbon tetrachloride	0.005
p-Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
Dichloromethane	0.005
1,2-Dichloropropane	0.005
Ethylbenzene	0.7
Monochlorobenzene	0.1

Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.2
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (total)	10

**3. Filtration and disinfection treatment.**

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

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

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

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

~~a. Monthly maximum contaminant level violations.~~

- ~~(1) No more than one sample per month may be total coliform positive for systems collecting less than forty samples per month.~~
- ~~(2) No more than five point zero percent of the monthly samples may be total coliform positive for systems collecting forty or more samples per month.~~

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

~~b. Acute maximum contaminant level violations.~~

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

~~(2) No repeat sample may be total coliform positive following a fecal coliform or E. coli positive routine sample. The treatment technique triggers, treatment technique violations, E. coli maximum contaminant level violations and monitoring violations are as follows:~~

a. Treatment technique triggers. A system must conduct assessments, in accordance with the requirements under title 40, Code of Federal Regulations, part 141, subpart Y after exceeding the following treatment technique triggers:

(1) Level 1 treatment technique triggers.

(a) A system, which collects less than forty or more samples per month, exceeds five point zero percent total coliform-positive samples per month.

(b) A system, which collects less than forty samples per month, has two or more total coliform-positive samples per month.

(c) A system fails to take all required repeat samples following a total coliform-positive sample.

(2) Level 2 treatment technique triggers.

(a) A system incurs E. coli maximum contaminant level violation, as specified in title 40, Code of Federal Regulations, part 141, subpart Y.

(b) A system has a second level 1 trigger, as specified in title 40, Code of Federal Regulations, part 141, subpart Y, within a rolling twelve-month period unless the department has determined why the samples that caused the first level 1 treatment technique trigger were total coliform positive and has determined that the system has corrected the problem.

b. Treatment technique violations. A system has a treatment technique violation when any of the following conditions occur:

(1) A system exceeds a treatment technique trigger and then fails to conduct the required assessment or corrective actions within the required time frame as specified in title 40, Code of Federal Regulations, part 141, subpart Y.

(2) A seasonal system fails to complete a state-approved start-up procedure before serving water to the public.

c. E. coli maximum contaminant level violations. A system is in violation of the maximum contaminant level for E. coli when any of the following conditions occur:

(1) A system has an E. coli-positive repeat sample following a total coliform-positive routine sample.

(2) A system has a total coliform-positive repeat sample following an E. coli-positive routine sample.

(3) A system fails to take all required repeat samples following an E. coli-positive routine sample.

(4) A system fails to analyze for E. coli bacteria when any repeat sample tests positive for total coliform bacteria.

d. Monitoring violations. A system incurs a monitoring violation if any of the following conditions occur:

(1) A system fails to take every required routine sample in compliance period.

(2) A system fails to analyze for E. coli following a total coliform-positive routine sample.

~~e.e. Compliance must be determined each month that a system is required to monitor.~~ The department hereby identifies the following as the best technology, treatment techniques, or other means generally available for achieving compliance with the ~~maximum contaminant levels for total coliform bacteria~~treatment technique triggers and E. coli maximum contaminant level: protection of wells from contamination by appropriate placement and construction; maintenance of a disinfection residual throughout the distribution system; proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, cross-connection control programs, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of a positive water pressure in all parts of the distribution system; filtration and disinfection or disinfection of surface water and disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, or ozone; and the development and implementation of a department-approved wellhead protection program.

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

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

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

7. **Disinfection byproducts.** The maximum contaminant levels for total trihalomethanes, haloacetic acids five, bromate, and chlorite are as follows:

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

The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and

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

8. **Disinfection byproduct precursors.** The department hereby identifies enhanced coagulation and enhanced softening as treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems. The treatment techniques apply only to subpart H community and nontransient noncommunity water systems that use conventional treatment. Such systems shall be deemed to be in compliance with the treatment techniques if the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart L, are met.
9. **Confirmation sampling.** The department may require confirmation samples and average confirmation sample results with initial sample results to determine compliance. At the discretion of the department, sample results due to obvious monitoring errors may be deleted prior to determining compliance.

**History:** Amended effective December 1, 1982; July 1, 1988; December 1, 1990; February 1, 1993; August 1, 1994; August 1, 2000; December 1, 2003; April 1, 2005; January 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 61-28.1-03

**Law Implemented:** NDCC 61-28.1-03

### 33-17-01-11. Microbiological sampling and monitoring requirements.

#### 1. ~~Routine monitoring~~ Monitoring requirements.

- a. General. ~~Suppliers of water for public water systems shall collect routine samples for total coliform bacteria analysis at sites which are representative of the water throughout the distribution system according to a written sample siting plan. The plan is subject to department review and revision. Until March 31, 2016, the provisions set forth under title 40, Code of Federal Regulations, parts 141.21(a) and 141.21(d) apply.~~

The provisions set forth under title 40, Code of Federal Regulations, parts 141.21(b), (c), (e), (f), and (g) are effective until all required repeat monitoring under title 40, Code of Federal Regulations, part 141.21(b) and fecal or E. coli testing under title 40, Code of Federal Regulations, part 141.21(e) that was initiated by a total coliform-positive sample that was taken before April 1, 2016, is completed as well as analytical method, reporting, recordkeeping, public notification, and consumer confidence report requirements associated with that monitoring and testing.

Until March 31, 2016, the provisions set forth under title 40, Code of Federal Regulations, parts 141.63(a), (a)(1), (a)(2), and (b) apply.

Beginning April 1, 2016, the provisions set forth under title 40, Code of Federal Regulations, part 141, subpart Y, include both the maximum contaminant level and treatment technique requirements for all public water systems.

- b. Sample siting plans. All total coliform samples must be collected according to a written sample siting plan. Systems must develop a written sample siting plan that identifies the sample collection schedule and sampling sites that are representative of the water throughout the distribution system. This plan must be submitted to the department no later than March 31, 2016. The plan is subject to department review and revisions.

Routine, repeat, and any sampling sites necessary to meet the requirements specified under title 40, Code of Federal Regulations, part 141, subparts Y and S must be shown on the plan.

- (1) ~~The routine samples must be collected at regular time intervals throughout the month except that systems using ground water not under the direct influence of surface water, as determined by the department, and serving four thousand nine hundred people or less may collect all of the required samples on a single day if the samples are collected from different sites.~~

~~At the discretion of the department, systems that use surface water or ground water under the direct influence of surface water that do not filter in compliance with title 40, Code of Federal Regulations, part 141, subpart H, shall collect at least one sample for total coliform bacteria analysis each day that the turbidity level of the source water exceeds one nephelometric turbidity unit. The sample must be collected near the first service connection within twenty-four hours of the first exceedance unless the department determines that the system, due to logistical or other problems beyond its control, cannot have the sample analyzed within thirty hours of collection. The sample results must be included in determining compliance with the maximum contaminant levels for total coliform bacteria.~~

- ~~b. Community water systems. Suppliers of water for community water systems shall sample for total coliform bacteria at a frequency established by the department. The number of samples required must be determined by the population served by the system and in no event may the frequency be less than that set forth below. The population range of twenty-five to one thousand includes public water systems which have at least fifteen service connections but that serve less than twenty-five persons.~~

- (2) Systems must take at least the minimum number of required samples even if the system has had an E. coli maximum contaminant level violation or has exceeded the coliform treatment technique triggers as specified in title 40, Code of Federal Regulations, part 141, subpart Y.

- (3) Systems may take more than the minimum number of required routine samples and these results must be used to determine whether coliform treatment technique trigger has been exceeded as specified in title 40, Code of Federal Regulations, part 141, subpart Y. All routine and repeat total coliform samples must be taken in accordance with the existing sample siting plan.

- (4) Repeat monitoring locations must be identified in the sample siting plan. The repeat samples must be collected at the following locations, unless the provisions of paragraphs (b)(5)(a) or (b)(5)(b) are met:

- (a) At least one repeat sample must be collected from the original sampling site that was total coliform-positive.

- (b) At least one repeat sample must be collected from a site within five service connections upstream of the original total coliform-positive sampling site.

- (c) At least one repeat sample must be collected from a site within five service connections downstream of the original total coliform-positive sampling site.

- (5) If the original total coliform-positive sampling site is at or one away from the end of the distribution system the department may waive the requirement to collect at least one repeat sample upstream or downstream of the original total coliform-positive sampling site. The system must still take all required repeat samples. However, the department may allow alternate sampling locations other than the upstream or



downstream sites. Systems required to conduct triggered source water monitoring as set forth under title 40, Code of Federal Regulations, part 141, subpart S, must take ground water source samples in addition to the required repeat sampling.

(a) Systems may elect to identify alternative fixed repeat locations or criteria for selecting repeat sampling sites on a case-by-case basis in a standard operating procedure. These repeat monitoring locations should be indicative of a pathway for contamination of the distribution system. The department shall review the alternative repeat monitoring locations to verify and determine the extent of potential contamination of the distribution system at the specific alternative repeat monitoring location. The department shall review the alternative repeat monitoring locations as needed.

(b) Ground water systems which serve one thousand or fewer persons may propose repeat sampling locations that differentiate potential source water and distribution system contamination, such as by sampling at entry points to the distribution system. A ground water system with a single well required to conduct triggered source water monitoring may, with the approval of the department, take one of its repeat samples at the triggered source water monitoring location as set forth under title 40, Code of Federal Regulations, part 141.402(a), subpart S. The system must demonstrate, to the department's satisfaction, the sample siting plan remains representative of water quality in the distribution system. If approved by the department, the system may use that sample result to meet the monitoring requirements as set forth under title 40, Code of Federal Regulations, part 141.402(a), subpart S and under title 40, Code of Federal Regulations, part 141.853(a)(5)(ii), subpart Y.

[1] If a repeat sample is taken at a triggered source water monitoring location and is positive for E. coli bacteria, the system has violated the E. coli maximum contaminant level and must also comply with title 40, Code of Federal Regulations, part 141.402(a)(3), subpart S. If a system takes more than one repeat sample at the triggered source water monitoring location, the system may reduce the number of additional source water samples required under title 40, Code of Federal Regulations, 141.402(a)(3) subpart S by the number of repeat samples taken at that location that were not positive for E. coli bacteria.

[2] If more than one repeat sample is taken at a triggered source water monitoring location under title 40, Code of Federal Regulations, part 141.402(a), subpart S and more than one repeat sample is positive for E. coli bacteria, the system has violated E. coli maximum contaminant level and must also comply with title 40, Code of Federal Regulations, part 141.403(a)(1), subpart S.

[3] If all repeat samples taken at a triggered source water monitoring location are E. coli-negative and a repeat sample that is taken at a monitoring location other than the triggered source water monitoring location is E. coli-positive, the system has violated the E. coli maximum contaminant level, but is not required to comply with title 40, Code of Federal Regulations, part 141.402(a)(3), subpart S.

(6) Any alternative repeat monitoring locations or triggered source water monitoring locations as specified under title 40, Code of Federal Regulations, part 141, subpart Y and under title 40, Code of Federal Regulations, part 141, subpart S, will be reviewed and approved by the department. When using these sites, the system



must demonstrate that the sample siting plan remains representative of the water quality in the distribution system. It may be determined that monitoring at the entry point to the distribution system, such as for undisinfected ground water systems, is an effective way to differentiate between potential source water and distribution system problems.

c. Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair are sufficient, and samples invalidated by the department or laboratory, must not be used to determine whether the coliform treatment technique trigger has been exceeded as specified under title 40, Code of Federal Regulations, part 141, subpart Y. Repeat samples taken in accordance with title 40, Code of Federal Regulations, part 141, subpart Y are not considered special purpose samples and must be used to determine whether the coliform treatment technique trigger has been exceeded.

d. Invalidation of total coliform samples. Any total coliform-positive samples invalidated under title 40, Code of Federal Regulations, part 141, subpart Y, do not count towards meeting the minimum monitoring requirements.

The department may invalidate a total coliform-positive sample only if one of the following conditions is met:

(1) The laboratory establishes the total coliform-positive result was caused by improper sample analysis.

(2) The department determines, based upon the results of the repeat samples as required under title 40, Code of Federal Regulations, part 141, subpart Y, that the total coliform-positive sample resulted from a domestic or other nondistribution system problem. This provision applies only to systems that have more than one service connection and only if:

(a) All repeat samples collected at the same site as the original total coliform-positive sample are also total coliform-positive; and

(b) All repeat samples collected at a location other than the original total coliform-positive sample site are total coliform-negative.

(3) The department may determine that substantial grounds exist to indicate that the total coliform-positive result was due to a circumstance or condition not reflective of the water quality in the distribution system. The system must still collect all repeat samples and use them to determine whether a coliform treatment technique triggers has been exceeded as specified under title 40, Code of Federal Regulations, part 141, subpart Y. To invalidate a total coliform-positive sample under this provision, the decision and supporting paperwork must be documented in writing and approved and signed by the supervisor of the state official who recommended the decision. The department shall make this document available to the environmental protection agency and to the public. The written documentation must state the specific cause of the total coliform-positive sample and what action the system has or will take to correct the problem. Invalidation may not be based solely on the grounds that all repeat samples are total coliform-negative.

A laboratory must invalidate a total coliform sample, unless total coliforms are detected, only if one of the following conditions is met:

- (1) The sample produces a turbid culture in the absence of gas production using an analytical technique where gas formation is examined, such as the multiple-tube fermentation technique;
- (2) The sample produces a turbid culture in the absence of an acid reaction in the presence-absence coliform test; or
- (3) The sample exhibits confluent growth or produces colonies too numerous to count with an analytical technique using a membrane filter, such as membrane filter technique.

Systems must collect a replacement sample for total coliform bacteria analysis from the same location as the original sample if the original sample is invalidated by the department or laboratory. Replacement samples must be collected within twenty-four hours of notification by the department or laboratory and submitted for total coliform analysis. The system must continue to resample within twenty-four hours and have the sample analyzed for total coliforms until a valid result is obtained. The department may waive the twenty-four hour time limit on a case-by-case basis.

Criteria the department may implement for waiving the twenty-four hour sampling time frame includes, but is not limited to, the following:

- (1) Laboratory closures; or
- (2) Mail delivery issues.

**2. Monitoring frequency.**

- a. General. All public water systems shall sample for total coliform bacteria in each calendar month that the system provides water to the public. The number of samples required must be determined by the population served by the system. The population range of the twenty-five to one thousand includes public water systems which have at least fifteen service connections, but that serve less than twenty-five persons.

POPULATION SERVED	MINIMUM NUMBER OF SAMPLES PER MONTH
25 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25

25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
<u>130,001 to 220,000</u>	<u>120</u>
<u>220,001 to 320,000</u>	<u>150</u>
<u>320,001 to 450,000</u>	<u>180</u>
<u>450,001 to 600,000</u>	<u>210</u>
<u>600,001 to 780,000</u>	<u>240</u>
<u>780,001 to 970,000</u>	<u>270</u>
<u>970,001 to 1,230,000</u>	<u>300</u>
<u>1,230,001 to 1,520,000</u>	<u>330</u>
<u>1,520,001 to 1,850,000</u>	<u>360</u>
<u>1,850,001 to 2,270,000</u>	<u>390</u>
<u>2,270,001 to 3,020,000</u>	<u>420</u>
<u>3,020,001 to 3,960,000</u>	<u>450</u>
<u>3,960,001 or more</u>	<u>480</u>

~~Community water systems using a ground water source serving twenty-five to one thousand persons may, with written permission from the department, reduce this sampling frequency to one sample per quarter provided that:~~

- ~~(1) The system has no history of total coliform contamination in its current configuration; and~~
- ~~(2) A sanitary survey conducted by the department in the past five years shows that the system is supplied solely by a protected ground water source that is free of sanitary defects.~~

~~c. Noncommunity water systems. Suppliers of water for noncommunity water systems using only ground water, and not ground water under the direct influence of surface water, serving one thousand people or less shall sample for total coliform bacteria in each calendar quarter that the system provides water to the public. The department may, in writing, reduce this routine monitoring frequency to no less than once per year based on sanitary survey results, accumulated analytical data, or the existence of additional safeguards such as a protective and enforced well code, disinfection, or an approved wellhead protection program. The frequency must be confirmed or changed based on subsequent sanitary surveys or data. The frequency may not be reduced until:~~

- ~~(1) A sanitary survey conducted by the department shows that the system is free of sanitary defects; and~~

~~(2) The system has performed at least one total coliform bacteria analysis of its drinking water and is in compliance with the microbiological maximum contaminant levels.~~

~~Suppliers of water for noncommunity water systems using only ground water, and not ground water under the direct influence of surface water, serving more than one thousand people during any month, shall sample for total coliform bacteria at the same frequency as like-sized community water systems. With written permission from the department, noncommunity water systems may reduce this monitoring frequency for any quarter that one thousand people or less are served. The reduced frequency must be one total coliform bacteria sample in each calendar quarter that water is provided to the public.~~

~~Suppliers of water for noncommunity water systems using ground water under the direct influence of surface water shall sample for total coliform bacteria at the same frequency as like-sized community water systems. Monitoring must begin within six months after the department determines that the ground water is under the direct influence of surface water.~~

~~Suppliers of water for noncommunity water systems using surface water, in total or in part, shall sample for total coliform bacteria at the same frequency as like-sized community water systems regardless of the number of people served. Following any total coliform-positive sample taken, systems must comply with the repeat monitoring requirements and E. coli analytical requirements as specified in title 40, Code of Federal Regulations, part 141, subpart Y.~~

As set forth under title 40, Code of Federal Regulations, part 141, subpart Y, once all routine and repeat monitoring for a calendar month has been completed, either the system or the department must determine whether any coliform treatment technique triggers have been exceeded. The system must complete any assessments associated to triggers.

b. Seasonal noncommunity water systems. All seasonal noncommunity water systems, including systems that keep the distribution system pressurized year round must complete a state-approved start-up procedure. Start-up procedures may include source and distribution system disinfection and collection and analysis of water samples for total coliform bacteria. The system must certify back to the department, within fourteen days of opening, the start-up procedure was completed.

c. Unfiltered subpart H systems. At the discretion of the department, systems that use surface water or ground water under the direct influence of surface water that do not filter in compliance with title 40, Code of Federal Regulations, part 141, subparts H, P, T, and W must collect at least one sample for total coliform bacteria analysis near the first service connection each day that the turbidity level of the source water exceeds one nephelometric turbidity unit as specified in title 40, Code of Federal Regulations, part 141, subpart H. The sample must be collected within twenty-four hours of the first exceedance unless the department determines that the system, due to logistical or other problems beyond its control, cannot have the sample analyzed within thirty hours of collection. The system must identify an alternative sample collection schedule. The sample result must be included in determining whether the coliform treatment technique trigger has been exceeded as specified under title 40, Code of Federal Regulations, part 141, subpart Y.

### **2-3. Repeat monitoring and E. coli requirements.**

a. ~~General. Suppliers of water for public water systems shall collect a set of repeat samples for total coliform bacteria analysis for each total coliform-positive routine sample.~~

~~Systems which collect more than one routine sample per month shall collect at least three repeat samples for each routine sample that is total coliform-positive. Systems which collect one routine sample per month or less shall collect at least four repeat samples for each routine sample that is total coliform-positive.~~

~~Systems may, with the approval of the department, count routine samples as repeat samples rather than routine samples provided that:~~

- ~~(1) The routine samples are collected within five service connections of the initial total coliform-positive sample; and~~
- ~~(2) The routine samples are collected before the system learns that the initial sample was total coliform-positive.~~

~~b. Repeat monitoring time period. The required set of repeat samples must be collected within twenty-four hours of notification by the department of the total coliform-positive result. The department may specify a longer time limit if it determines that the system cannot collect the repeat samples within twenty-four hours due to logistical or other problems beyond its control.~~

~~The repeat samples must be collected on the same day except that the department may allow systems with a single service connection to:~~

- ~~(1) Collect the required set of repeat samples over a four-day period; or~~
- ~~(2) Collect a larger volume repeat sample in one or more sample containers of any size as long as the total volume collected is at least four hundred milliliters for systems that collect one or less routine sample per month and three hundred milliliters for systems that collect more than one routine sample per month.~~

~~c. Repeat monitoring location. The repeat samples must be collected at the following locations:~~

- ~~(1) At least one repeat sample must be collected from the original sampling tap that was total coliform-positive.~~
- ~~(2) At least one repeat sample must be collected from a tap within five service connections upstream of the original total coliform-positive sampling tap.~~
- ~~(3) At least one repeat sample must be collected from a tap within five service connections downstream of the original total coliform-positive sampling tap.~~
- ~~(4) Systems required to collect four repeat samples shall collect the fourth repeat sample within five service connections upstream or downstream of the original total coliform-positive sampling tap.~~

~~The department may waive the requirement to collect at least one repeat sample upstream and downstream of the original total coliform-positive sampling site and specify alternate sampling locations if the original sampling site is at or one away from the end of the distribution system.~~

~~d. Additional sets of repeat samples. If one or more samples in the set of required repeat samples is total coliform-positive, an additional set of repeat samples must be collected meeting the same time and location requirements as for the original set of repeat samples.~~

~~Additional sets of repeat samples must be collected until no total coliform bacteria are detected in one complete set or the department determines that the maximum contaminant level for total coliform bacteria has been exceeded. The supplier of water shall report to the department and notify the public when a maximum contaminant level is exceeded.~~

~~3. **Next-month samples.** Suppliers of water for public water systems that collect four or fewer routine samples per month that have one or more total coliform-positive routine or repeat samples shall collect at least five routine samples the next month that water is provided to the public. The department may waive this requirement only if one of the following conditions is met:~~

~~a. The department or an agent approved by the department, but not an employee of the system, conducts an onsite visit before the end of the next month that the system serves water to the public and determines that additional monitoring or corrective action is not warranted.~~

~~b. The department, in a written decision made available to the public, determines why total coliform-positive samples occurred and establishes that the system has corrected or will correct the problem before the end of the next month that water is served to the public.~~

~~c. The department invalidates the original total coliform-positive routine sample.~~

~~Routine total coliform bacteria samples normally collected the next month that water is provided to the public may be counted towards the set of five routine samples required the next month.~~

~~4. **Fecal coliform or E. coli analysis.** Suppliers of water for public water systems shall analyze each total coliform-positive routine or repeat sample for either fecal coliform bacteria or E. coli.~~

~~Systems shall notify the department by the end of the business day, or by the end of the next business day if the department offices are closed, once notified of a positive fecal coliform bacteria or E. coli result.~~

~~5. **Invalidation of total coliform samples.**~~

~~a. Invalidation by the department. The department may invalidate a total coliform-positive sample only if one of the following conditions is met:~~

~~(1) The laboratory establishes that the total coliform-positive result was caused by improper sample analysis.~~

~~(2) The department determines, based upon the results of the required repeat samples, that the total coliform-positive sample resulted from a domestic or other nondistribution system problem. This provision applies only to systems that have more than one service connection and only if:~~

~~(a) All repeat samples collected at the same tap as the original total coliform-positive sample are also total coliform-positive; and~~

~~(b) All repeat samples collected within five service connections of the original total coliform-positive sample tap are total coliform-negative.~~

~~(3) The department, in a written decision made available to the public, determines that substantial grounds exist to indicate that the coliform-positive result was due to a circumstance or condition not reflective of the water quality in the distribution system. Invalidation must be based on the absence of total coliform-positive repeat~~



~~samples and other factors as determined by the department. Invalidation may not be based solely on the grounds that all required repeat samples are total coliform-negative.~~

~~Total coliform-positive samples invalidated by the department may not count towards meeting the minimum monitoring requirements. Department invalidation of a total coliform-positive sample nullifies subsequent fecal coliform or E. coli results for the same sample.~~

~~b. Invalidation by the laboratory. All total coliform bacteria samples examined by the department or by any other laboratory certified by the department must be invalidated, unless total coliform bacteria are detected, if:~~

~~(1) The sample produces a turbid culture in the absence of gas production using an analytical technique where gas formation is examined;~~

~~(2) The sample produces a turbid culture in the absence of an acid reaction in the presence-absence coliform test; or~~

~~(3) The sample exhibits confluent growth or produces colonies too numerous to count with an analytical technique using a membrane filter.~~

~~Suppliers of water for public water systems shall collect a replacement sample for total coliform bacteria analysis from the same location as the original sample if the original sample is invalidated by the department or any other laboratory certified by the department. Replacement samples must be collected within twenty-four hours of notification by the department and submitted for analysis until a valid result is obtained. The department may waive the twenty-four hour time limit on a case-by-case basis.~~  
Repeat monitoring. If a routine sample collected under the requirements specified in title 40, Code of Federal Regulations, part 141, subpart Y is total coliform-positive, a system must collect no fewer than a set of three repeat samples for total coliform bacteria analysis for each total coliform-positive routine sample. The system must collect the set of repeat samples within twenty-four hours of being notified by the department or the laboratory of the positive total coliform sample. The department may extend the twenty-four hour time limit on a case-by-case basis if the system has a logistical problem or other problems beyond the system's control. The department may choose criteria for the system to use in lieu of the case-by-case decisions. The department shall specify to the system the time frame for collecting the repeat samples. The department may not waive the requirement to collect repeat samples under these provisions.

All repeat samples must be collected on the same day except that the department may allow systems with a single service connection to:

(1) Collect the required set of repeat samples over a three-day period; or

(2) Collect a larger volume repeat sample in one or more sample containers of any size as long as the total volume collected is at least three hundred milliliters.

If one or more repeat samples in the set of required repeat samples is total coliform-positive, an additional set of repeat samples must be collected, within twenty-four hours unless the department extends the twenty-four hour time frame, meeting the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart Y. Additional sets of repeat samples must be collected until no total coliform bacteria are detected in one complete set or the department determines a coliform treatment technique trigger as specified in title 40, Code of Federal Regulations, part 141, subpart Y, has been exceeded as a result of a repeat sample being total coliform-

positive. If a coliform treatment technique trigger, as identified in this provision, has been exceeded as a result of a routine sample being total coliform-positive, the system only needs to conduct one round of repeat monitoring for each total coliform-positive routine sample. The system shall report to the department and notify the public when an E. coli maximum contaminant level is exceeded.

After a system collects a routine sample and before it learns the results of that sample, if the system collects another routine sample from within five adjacent service connections of the first sample, and the first sample, after analysis, is found to contain total coliform bacteria, the system may count the subsequent sample as a repeat sample instead of a routine sample.

All routine and repeat results taken under title 40, Code of Federal Regulations, part 141, subpart Y and not invalidated by the department or laboratory must be used to determine whether a coliform treatment technique trigger, under the provision stated above, has been exceeded.

- b. E. coli testing. A system must analyze each total coliform-positive routine or repeat sample for E. coli bacteria. The system must notify the department by the end of the business day or by the end of the next business day if the department offices are closed of a positive E. coli bacteria result. The department or laboratory will not forgo E. coli testing on any total coliform-positive bacteria sample.

#### **4. Assessment requirements.**

- a. Level 1 assessment. A level 1 assessment must be performed as soon as possible when a system exceeds a level 1 treatment technique trigger as specified in title 40, Code of Federal Regulations, part 141, subpart Y.

A level 1 assessment must be conducted by the water system operator or by a consultation, such as a phone interview or onsite visit, with the department.

When completing the level 1 assessment, the system must describe sanitary defects found, what corrective actions were completed, the proposed time frame for any remaining corrective actions that need to be addressed, and any other department directives that may be required. The system may note on the assessment form that no sanitary defects were identified.

Within thirty days after learning of a treatment technique trigger exceedance, the system must submit a completed level 1 assessment form to the department. The department may extend the thirty-day time frame on a case-by-case basis.

The department shall review the completed level 1 assessment and determine if the assessment is sufficient. The assessment form must include proposed time frames for any corrective actions not completed. If the department determines the level 1 assessment not to be sufficient, the department shall consult with the system. If the department requires any revisions to the level 1 assessment, the system must submit, to the department, a revised level 1 assessment form on an agreed-upon schedule that will not exceed thirty days from the date of the consultation.

The department shall review the completed assessment form and determine if the cause of the level 1 assessment was found. If the cause of the level 1 assessment was found, the system must describe how the problem was corrected. The department shall determine on a case-by-case basis the schedule for any corrective actions that need to be addressed.



- b. Level 2 assessment. A level 2 assessment must be performed as soon as possible when a system exceeds a level 2 treatment technique trigger as specified in title 40, Code of Federal Regulations, part 141, subpart Y. The system must comply with any expedited actions or additional actions required by the department in the case of an E. coli maximum contaminant level violation. The department shall require a level 2 assessment be completed before a boil water order is lifted. Only the department may perform a level 2 assessment as a result of an E. coli maximum contaminant level violation.

A level 2 assessment will be conducted by the department or department-approved assessors. A system may conduct a level 2 assessment if the system has personnel with the certification or qualifications as specified by the department. A system must have personnel with an operator certification level one level higher than the water system being evaluated.

When completing the level 2 assessment, the system must describe sanitary defects found, what corrective actions were completed, the proposed time frame for any remaining corrective actions that need to be addressed, and any other department directives that may be required. The system may note on the assessment form that no sanitary defects were identified.

Within thirty days after learning of a treatment technique trigger exceedance, the system must submit a completed level 2 assessment form to the department. The department may extend the thirty-day time frame on a case-by-case basis.

The department shall review the completed level 2 assessment and determine if the assessment is sufficient. The assessment form must include proposed time frames for any corrective actions not completed. If the department determines the level 2 assessment not to be sufficient, the department shall consult with the system. If the department requires any revisions to the level 2 assessment, the system must submit, to the department, a revised level 2 assessment form on an agreed-upon schedule that does not exceed thirty days from the date of the consultation.

The department shall review the completed assessment form and determine if the cause of the level 2 assessment was found. If the cause of the level 2 assessment was found, the system must describe how the problem was corrected. The department shall determine on a case-by-case basis the schedule for any corrective actions that need to be addressed.

- c. Corrective actions. A system must correct any sanitary defects identified in either the level 1 or the level 2 assessment as specified under title 40, Code of Federal Regulations, part 141, subpart Y. If any corrective actions cannot be corrected by the time the level 1 or the level 2 assessment form is required to be submitted to the department, the system must complete the corrective action(s) in accordance with an approved time frame decided upon during the consultation between the system and the department. The system must notify the department when each corrective action is completed.

- d. Consultation. The department or the system may at any time during the assessment or corrective action phase request a consultation with the other entity to determine the appropriate actions that need to be taken. The system may consult with the department on all relevant information that may affect its ability to complete the corrective action, a proposed time frame scheduled for a correction action, or any other department directives.

## **6.5. Sanitary surveys.**

a. ~~Coverage and effective dates. Community and noncommunity water systems that collect four or less routine total coliform bacteria samples per month shall undergo an initial sanitary survey by June 29, 1994, and June 29, 1999, respectively.~~

~~b. Repeat frequency. Community and noncommunity water systems shall undergo an additional sanitary survey every five years following the initial sanitary survey, except that noncommunity water systems using only protected and disinfected ground water, as determined by the department, shall undergo subsequent sanitary surveys at least every ten years following the initial sanitary survey.~~ All surface water and ground water under the direct influence of surface water systems shall undergo a sanitary survey no less frequently than once every year. All systems purchasing surface water or ground water under the direct influence of surface water shall undergo a sanitary survey no less frequently than once every three years.

Community ground water systems, including system purchasing ground water, that are not providing at least four-log treatment of viruses and have not been determined by the department to exhibit outstanding performance shall undergo a sanitary survey no less frequently than once every three years. Community ground water systems, including systems purchasing ground water, which are providing at least four-log treatment of viruses or which have been determined by the department to exhibit outstanding performance shall undergo a sanitary survey no less frequently than once every five years.

Noncommunity ground water systems, including systems purchasing ground water, which are not providing at least four-log treatment of viruses shall undergo a sanitary survey no less frequently than once every three years. Noncommunity ground water systems, including systems purchasing ground water, that are providing at least four-log treatment of viruses shall undergo a sanitary survey no less frequent than once every five years.

The department will allow sanitary surveys to be phased. The components of the phased sanitary survey must be completed within the established frequency.

e.b. Responsibilities. Sanitary surveys must be performed by the department or an agent approved by the department. Information collected on sources of contamination within a delineated wellhead protection area during the development and implementation of an approved wellhead protection program, if available, must be considered when conducting sanitary surveys.

The department shall review the sanitary ~~survey results~~ surveys for systems serving one thousand persons or less to determine if ~~increased monitoring for total coliform bacteria or other measures are needed to protect or improve drinking water quality~~ the system is taking the proper number of monthly total coliform bacteria samples.

~~Community and noncommunity~~ Public water systems are responsible for ensuring that the required sanitary surveys are conducted.

**History:** Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1991; April 1, 2016.

**General Authority:** NDCC 61-28.1-03

**Law Implemented:** NDCC 61-28.1-03

### **33-17-01-13. Public notification.**

All public water systems are required to notify the public they serve when they fail to comply with the requirements of the national primary drinking water regulations (NPDWRs), fail to comply with the

requirements of any schedule prescribed pursuant to a variance or exemption, or incur other situations posing a risk to public health. Owners and operators must follow the form, manner, frequency, and content of a public notice as prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141, subpart Q, ~~as amended July 1, 2009~~.

**History:** Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1991; February 1, 1993; August 1, 1994; August 1, 2000; December 1, 2003; July 1, 2011; [April 1, 2016](#).

**General Authority:** NDCC 61-28.1-03

**Law Implemented:** NDCC 61-28.1-03, 61-28.1-05

### **33-17-01-13.1. Consumer confidence reports.**

1. **Coverage and general requirements.** Community water systems shall deliver an annual consumer confidence report to all billing units or service connections provided drinking water by the system. The report shall contain information on the quality of the drinking water delivered by the system and characterize risks from exposure to contaminants detected in the drinking water. For the purpose of the report, detected means at or above the levels set forth under title 40, Code of Federal Regulations, part 141, subpart O, ~~as amended July 1, 2009~~.
2. **Effective dates.** Existing community water systems shall deliver annual reports by July first of each year. Annual reports shall contain information collected by December thirty-first of the previous calendar year.

New community water systems shall deliver the first report by July first of the year after its first full calendar year in operation and subsequent reports by July first of each year. Community water systems that sell water to other community water systems shall provide applicable information to the buyer systems as set forth under title 40, Code of Federal Regulations, part 141, subpart O, ~~as amended July 1, 2009~~.

3. **Content.** Each report shall contain the information set forth under title 40, Code of Federal Regulations, subpart O, ~~as amended July 1, 2009~~.
4. **Report delivery.** Community water systems shall comply with the report delivery requirements set forth under title 40, Code of Federal Regulations, subpart O, ~~as amended July 1, 2009~~.

**History:** Effective August 1, 2000; amended effective July 1, 2011; [April 1, 2016](#).

**General Authority:** NDCC 61-28.1-03

**Law Implemented:** NDCC 61-28.1-03

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

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

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

Community water systems required to comply with title 40, Code of Federal Regulations, part 141, subpart G shall report the results of all analyses to the department within thirty days of the system's receipt of the results. Subpart H systems shall comply with the reporting requirements for filtration and disinfection treatment set forth under title 40, Code of Federal

Regulations, part 141, subparts H, P, T, and W. Community and nontransient noncommunity water systems shall comply with the reporting requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I. Community, nontransient noncommunity, and transient noncommunity water systems using chlorine dioxide shall comply with the applicable reporting requirements for disinfectants, disinfection byproducts, and disinfection byproduct precursors set forth under title 40, Code of Federal Regulations, part 141, subparts L, U, and V. Community, nontransient noncommunity, and transient noncommunity water systems shall comply with the applicable reporting requirements for total coliform bacteria set forth under title 40, Code of Federal Regulations, part 141, subpart Y.

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

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

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

**2. Reporting requirements for the department.** The department shall comply with the applicable reporting requirements set forth under title 40, Code of Federal Regulations, part 142.15.

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

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

- a. Bacteriological and chemical analyses. Records of bacteriological analyses and turbidity analyses shall be kept for not less than five years. Records of chemical analyses shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:
  - (1) The date, place, and time of sampling and the name of the person who collected the sample;
  - (2) Identification of the sample as to whether it was a routine distribution system sample, check sample, or raw or other special purpose sample;

- (3) Date of analysis;
  - (4) Laboratory and person responsible for performing analysis;
  - (5) The analytical technique or method used; and
  - (6) The result of the analysis.
- b. Corrective actions taken. Records of action taken by the system to correct violations shall be kept for a period of not less than three years after the last action taken with respect to the particular violation involved. Assessment forms and documentation showing a corrective action, as a result of an assessment, was completed must be kept for a period of not less than five years after completion of the assessment or corrective action.
  - c. Reports and communications. Copies of any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, state, or federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.
  - d. Variances and exemptions. Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.
  - e. Public notices and certifications. Copies of public notices issued pursuant to title 40, Code of Federal Regulations, part 141, subpart Q and certifications made to the department pursuant to title 40, Code of Federal Regulations, part 141.31 must be kept for three years after issuance.
  - f. Copies of monitoring plans developed pursuant to this part shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under subdivision a, except as specified elsewhere in this part.

4. Recordkeeping requirements for the department. The department shall comply with the applicable recordkeeping requirements set forth under title 40, Code of Federal Regulations, part 142.14.

**History:** Amended effective July 1, 1988; December 1, 1990; February 1, 1993; August 1, 2000; December 1, 2003; April 1, 2005; January 1, 2010; April 1, 2016.

**General Authority:** NDCC 61-28.1-03

**Law Implemented:** NDCC 61-28.1-03, 61-28.1-05

**33-17-01-15. Variances and exemptions.**

1. **General authority and limitations.** ~~The department may grant a variance to a public water system from any maximum contaminant level or treatment technique requirement except the maximum contaminant level for coliform bacteria and the treatment technique requirements for filtration and disinfection set forth under title 40, Code of Federal Regulations, part 141, subpart H. The department may grant an exemption to a public water system from any maximum contaminant level or treatment technique requirement except the maximum contaminant level for coliform bacteria and the disinfection treatment requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H, section 141.72(a)(3) and (b)(2).~~ The department may grant a variance to a public water system from any treatment technique requirement except the treatment technique requirements for filtration and disinfection set forth under title 40, Code of Federal Regulations, part 141, subpart H. The department may grant an exemption to a public water system from any treatment technique requirement except the disinfection treatment requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H.



Until March 31, 2016, the department may grant a variance or an exemption to a public water system from any maximum contaminant level except the maximum contaminant level for coliform bacteria, at which time the total coliform maximum contaminant level is no longer effective.

Beginning April 1, 2016, the department may grant a variance or exemption to a public water system from any maximum contaminant level except the maximum contaminant level for E. coli bacteria.

2. **Variations.** Variations for public water systems serving ten thousand or more persons shall comply with section 1415(a) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-4(a)]. Variations for public water systems serving fewer than ten thousand persons shall comply with one of the following: section 1415(a) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-4(a)]; or section 1415(e) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-4(e)] and title 40, Code of Federal Regulations, part 142, subpart K.

In granting variations pursuant to section 1415(a) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-4(a)], the department identifies as best technology, treatment techniques, or other means generally available for achieving compliance with the maximum contaminant levels and treatment technique requirements those set forth under title 40, Code of Federal Regulations, part 142, subpart G. In granting variations pursuant to section 1415(e) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-4(e)], the department identifies as acceptable technologies those established under section 1412(b)(15) of the Federal Safe Drinking Water Act [42 U.S.C. 300g-1(b)(15)].

3. **Exemptions.** Exemptions for public water systems shall comply with section 1416 of the Federal Safe Drinking Water Act [42 U.S.C. 300g-5] and title 40, Code of Federal Regulations, part 142, subpart G.
4. **Procedures.** Actions to consider a variance or exemption may be initiated by the department or by a public water system through a written request to the department. The department shall act on any written variance or exemption request submitted by a public water system within ninety days receipt of the request. The department shall provide notice and opportunity for a public hearing before granting any variance and before prescribing a compliance schedule for any variance or exemption.

**History:** Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1991; February 1, 1993; August 1, 2000; [April 1, 2016](#).

**General Authority:** NDCC 61-28.1-03

**Law Implemented:** NDCC 61-28.1-03, 61-28.1-05

### **33-17-01-18. Operation and maintenance.**

Public water systems shall be supervised by competent personnel and modified, operated, and maintained in accordance with guidelines that may be developed or amended by the department.

~~Certified operators are required for all water systems serving five hundred or more users under North Dakota Century Code chapter 23-26. Beginning July 1, 1994, North Dakota Century Code chapter 23-26 required certified operators for all public water systems except those that serve other than year-round residents and meet all of the following conditions:~~

1. The water supply is obtained solely from ground water sources that the department has determined are not under the direct influence of surface water.
2. Treatment, if provided, consists strictly of disinfection, fluoridation, sequestration, corrosion control, or other processes that involve simple chemical addition and minor operational control.

3. The water supply system is not required by the federal Safe Drinking Water Act or its implementing regulations to be operated by qualified personnel.

**History:** Amended effective July 1, 1988; February 1, 1993; [April 1, 2016](#).

**General Authority:** NDCC 61-28.1-03

**Law Implemented:** NDCC 61-28.1-03

### **33-17-01-19. Protection of public water systems.**

#### **1. Cross-connection control.**

- a. Cross connections are prohibited except when and where, as approved by the authority having jurisdiction, suitable protective devices are installed, tested, and maintained to ensure proper operation on a continuing basis.
- b. A system shall be designed, installed, and maintained in such a manner as to prevent nonpotable liquids, solids, or gases from being introduced into the water through cross connections or any other piping connections to the system.

#### **2. Interconnections.**

- a. Interconnection between two or more systems shall be permitted only with the written approval of the department.
- b. Interconnection between a nonpublic and public water system shall not be permitted unless specifically approved in writing by the department.

3. **Return of used water prohibited.** Water used for cooling, heating, or other purposes shall not be returned to the system. Such water may be discharged into an approved drainage system through an airgap or may be used for nonpotable purposes.

4. **Products in contact with water.** All products that may come into contact with water intended for use in a public water system must meet American national standards institute/national sanitation foundation international standards 60-~~1988~~ and 61-~~1991~~. Suppliers of water for public water systems may not willfully introduce or permit the introduction of a product into the public water system which has not first been determined to meet these standards. At the discretion of the department, suppliers of water for public water systems shall compile and maintain on file for inspection by the department a list of all products used by the system. Prior to using a product not on the list, suppliers of water for public water systems shall either determine that the product meets appropriate American national standards institute/national sanitation foundation international standards or notify the department of the type, name, and manufacturer of the product. A product will be considered as meeting these standards if so certified by an organization accredited by the American national standards institute to test and certify such products.

5. **Used materials.** Containers, piping, or materials which have been used for any purpose other than conveying potable water shall not be used.

6. **Water storage structures.** Finished water storage structures shall have a watertight cover which excludes the entrance of birds, animals, insects, and excessive dust. Beginning February 16, 1999, public water systems shall not begin construction of uncovered finished water storage facilities.

7. **Turbidity control.** Subpart H systems that provide conventional filtration treatment or direct filtration shall develop individual filter profiles, perform individual filter self-assessments, and arrange for the completion of comprehensive performance evaluations as set forth under title 40, Code of Federal Regulations, subparts P and T. At the direction of the department,

systems that are required to conduct a comprehensive performance evaluation shall arrange for the completion of a full composite correction program and implement followup recommendations that result from the composite correction program. Comprehensive performance evaluations and composite correction programs shall be conducted by a party other than the system which is approved by the department.

**History:** Effective December 1, 1982; amended effective July 1, 1988; August 1, 1994; August 1, 2000; April 1, 2005; [April 1, 2016](#).

**General Authority:** NDCC 61-28.1-03

**Law Implemented:** NDCC 61-28.1-03



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



APRIL 2016

**ARTICLE 37-13**  
**COMMERCIAL DRIVER TRAINING SCHOOL REQUIREMENTS**

Chapter

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<u>37-13-04</u>	<u>Commercial Driver Training Instructor Requirements</u>
<u>37-13-05</u>	<u>Driver Training Instruction Requirements</u>
<u>37-13-06</u>	<u>Refusal, Suspension, or Revocation of License</u>

**CHAPTER 37-13-01**  
**DEFINITIONS**

Section

<u>37-13-01-01</u>	<u>Definitions</u>
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**37-13-01-01. Definitions.**

In this article, unless the context or other subject matter requires:

1. "Certificate of training" means a certification of training completion of a driving course through which the graduate has completed the driving course criteria listed in section 37-13-05-02, but the training did not include thirty hours of classroom required to meet the level of knowledge or skill to attain a certificate of course completion defined in section 37-13-05-02.
2. "Commercial driver training school" or "school" means a business enterprise conducted by a person for the education and training of individuals, either practically or theoretically, or both, to operate or drive a motor vehicle, and for which accepts consideration or charges tuition for the service.
3. "Contract" means a signed agreement between the commercial driver training school and a student, or in the event of a minor student, a parent or legal guardian, for classroom instruction, behind-the-wheel training, internet course, or any combination thereof. The contract must state the type of training being provided, to meet either a certificate of course completion or a certificate of training standard.
4. "Director" means the director of the North Dakota department of transportation, acting directly or through authorized agents.

5. "Internet course" means an electronic course of instruction as authorized in North Dakota Century Code section 39-06-01.1.
6. "Instructor" means an individual, whether acting on that individual's own behalf as an operator of a commercial driver training school or for a school for compensation, who teaches, conducts a class for, gives demonstrations to, or supervises practice of, an individual learning to operate or drive a motor vehicle.
7. "Lesson" means a continuous period of time during which instruction is given for the purpose of operating a motor vehicle whether by classroom instruction, practice driving, or internet course. A one-hour lesson means one hour of actual instruction. Lessons consisting of actual behind-the-wheel driving are not to exceed two continuous hours. A thirty minute break is required following every two continuous hours of training per day for an individual student, but not to exceed a total of four hours per day.
8. "Location" means a designated site at which the business of a commercial driver training school is transacted and its records are kept.
9. "Owner" means a person, including a partnership, a corporation, or other business entity, that has a vested interest in and control over a school.
10. "Safe mechanical condition" means the continual compliance with safety requirements of vehicles that are used to train students and have passed either a state safety inspection or a federal motor carrier safety administration inspection.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-01

**CHAPTER 37-13-02**  
**COMMERCIAL DRIVER TRAINING SCHOOL REQUIREMENTS**

Section

<u>37-13-02-01</u>	<u>Duties of Director - Regulations</u>
<u>37-13-02-02</u>	<u>School - License Required - Contents of Application for License</u>
<u>37-13-02-03</u>	<u>Expiration and Renewal of Licenses - Fees</u>
<u>37-13-02-04</u>	<u>Business Records</u>
<u>37-13-02-05</u>	<u>Advertising</u>
<u>37-13-02-06</u>	<u>Agreements and Contracts</u>
<u>37-13-02-07</u>	<u>Insurance and Safety</u>
<u>37-13-02-08</u>	<u>Bond Required</u>

**37-13-02-01. Duties of director - Regulations.**

1. The director shall administer and enforce this chapter as necessary to protect the public.
2. The director shall inspect the school facilities, equipment of applicants and licensees, and examine applicants for instructor's and examiner's licenses or certifications as needed.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-02

**37-13-02-02. School - License required - Contents of application for license.**

1. A commercial driver training school may not be established nor may any existing school continue to operate unless the school applies for and obtains from the director a license in the manner and form prescribed by the director.
2. The application for license must include a statement of the location of the school, the equipment, the vehicles to be used for training, courses of instruction, instructors, previous records of the school and instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, and any other matter as the director may prescribe for the protection of the public.
3. A commercial driver training school may be licensed to offer instruction through an internet course only.
4. The director shall issue a license indicating the type of license or restriction of instruction provided in the license.
5. The license must be displayed in a conspicuous location in the licensee's principal place of business and each branch office.
6. No license may be issued for conducting a driver training school from a temporary stand, temporary address, or a room or rooms in a hotel or motel, or through the exclusive facilities of a telephone answering service.
7. The location of the school's principal place of business and branch offices must have adequate facilities, equipment, and available space to meet the approval of the director and must also be in compliance with all applicable ordinances.
8. Each commercial driving school license application must be accompanied by a current rental or lease agreement. In case of ownership, a statement verifying ownership of the premises must be attached to the application.

9. Commercial driver training applications must be accompanied by a schedule of fees and charges. The schedule of fees and charges may be amended at any time by the licensee provided such changes in the fee schedule are filed with the director not less than ten days before they become effective. Absent proper notification to the director a fee designated and set forth in a contract must be adhered to for the duration of that contract.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-03, 39-25-08

### **37-13-02-03. Expiration and renewal of licenses - Fees.**

1. A commercial driving school license expires on the last day of the calendar year and may be renewed upon application to the director. Each application for an original or renewal school license must be accompanied by a fee of twenty-five dollars.
2. All instructor licenses expire on the last day of the calendar year and may be renewed upon application to the director. Each application for an original or renewal license must be accompanied by a fee of ten dollars.
3. All fees collected under this chapter must be deposited in the state treasury in the state highway fund.
4. License fees may not be refunded in the event any license is rejected, suspended, or revoked.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-05

### **37-13-02-04. Business records.**

1. A permanent record of every person given lessons or services of any kind relating to classroom, behind-the-wheel, or internet course instruction in the operation of a motor vehicle must list the following information:
  - a. Name of student.
  - b. Address of student.
  - c. Date of birth of student.
  - d. Contract number.
  - e. Date and type of lesson.
  - f. Name of instructor and instructor number.
  - g. Student identification number.
2. The contract must contain the original, subsequent, or renewal contract agreements entered between the school and the person receiving the lesson or other services relating to the operation of a motor vehicle. Each original, subsequent, and renewal contract must be maintained for a period of not less than three years following instruction.
3. The vehicle file must contain a current list of all vehicles used by the school for driver training purposes showing date and location of the most recent inspection and must include a copy of vehicle lease agreements if applicable.

4. All records must be maintained in a businesslike manner and are subject to the inspection of the director at any time during reasonable business hours. The loss, mutilation, or destruction of records that the school is required to maintain must be reported immediately to the director and must state:

a. The date such records were lost, destroyed, or mutilated.

b. The circumstances involving such loss, destruction, or mutilation.

c. The name of the law enforcement office or department officials to whom such loss was reported and the date of such report.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-02

### **37-13-02-05. Advertising.**

1. Commercial driver training schools may not:

a. Publish, advertise, or intimate that a driver's license is guaranteed or assured.

b. Duplicate or reproduce, in whole or in part, for use in advertising or instruction any forms used by the North Dakota department of transportation.

c. Advertise or intimate that a commercial driver's or instructor's license encompasses certification by the North Dakota department of public instruction.

d. Advertise the address of any location other than the authorized principal place of business or licensed branch office.

2. Any advertising conducted for the internet course must include the language: "This course is approved for instruction in North Dakota pursuant to North Dakota Century Code section 39-06-01.1."

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-02

### **37-13-02-06. Agreements and contracts.**

1. All contracts between schools and students must be on a form approved by the director. The contract must include:

a. The name, date of birth, and address of the student.

b. The kind of training provided.

c. Approved vehicles to be used for instruction.

d. The number of hours of instruction and the rate per hour.

e. The signature of the student or other authorized person, or both, except an electronic contract is acceptable for the internet course only.

f. The date of the contract.

2. A contract may not exceed a maximum of ten hours, or for class A, B, or C vehicles a maximum of one hundred twenty hours, of behind-the-wheel training, without execution of a new contract.
3. A contract must state whether it is to provide training to meet the certificate of course completion or certificate of training standard.
4. A person may not be given lessons or any other service relating to instruction of motor vehicle operation unless and until a written contract has been executed between the school and the student. An electronic contract is acceptable for the internet course only.
5. Each school shall file and maintain with the director a list of those persons authorized on behalf of the school to execute contracts or renewal agreements and certificates of enrollment and completion. A complete signature record form must be filed with the director for each person authorized to sign the above-listed documents for the school.
6. No school may represent or agree orally or in writing to give instruction until a driver's license is obtained, to give free lessons, or to offer premiums or provide discounts if a driver's license is not obtained.
7. No owner, operator, instructor, or other employee of a commercial driver training school may:
  - a. Attempt to influence any decision of an examining officer with respect to the licensing of any student of the school or any other person.
  - b. Imply to the student or other person for any purpose their ability to influence in any manner the driver license examiners.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-02

### **37-13-02-07. Insurance and safety.**

1. The licensee shall file with the director evidence of liability insurance obtained from a company authorized to do business in the state of North Dakota. Proof of insurance is required for each vehicle used for driver training in the amount of:
  - a. At least one hundred thousand dollars because of bodily injury to or death of any one person in any one accident.
  - b. At least three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident.
  - c. At least twenty-five thousand dollars because of damage to or destruction of property of others in any one accident.
  - d. At least thirty thousand dollars for medical expenses regardless of liability.
2. The licensee shall furnish evidence of such coverage to the director stipulating that such insurance will not be canceled or terminated except upon ten days' prior written notice to the director.
3. If the insurance is canceled or terminated, the school license certificate terminates automatically. All vehicles used in the operation of the school may not thereafter be used for driver training school purposes until such school obtains adequate insurance coverage and said license is reenacted. School certificates terminated under the provision of this section must be surrendered to the director within a period of ten days.



**History:** Effective April 1, 2016.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 39-25-03

**37-13-02-08. Bond required.**

The commercial driver training school owner or operator shall secure and submit with the application for license a continuous surety company bond in the principal sum of five thousand dollars for motor vehicle driver's license instruction for the protection of the contractual rights of students, undertaken by a company authorized to do business in the state of North Dakota. The concerned surety company may cancel said bond upon giving thirty days' written notice thereof to the director. The surety company must be released of all liability for any breach of any condition of the bond occurring after the effective date of the cancellation.

**History:** Effective April 1, 2016.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 39-25-03

**CHAPTER 37-13-03**  
**DRIVER TRAINING VEHICLE REQUIREMENTS**

Section

37-13-03-01      Vehicle Standards

**37-13-03-01. Vehicle standards.**

1. Vehicles may not be used for driver training purposes which are more than ten model years old.
2. A list of vehicles used for driver training must be maintained and filed with the director.
3. Vehicles, while being used for driving instruction, may have displayed conspicuously thereon signs on front and rear, with background and letters of contrasting colors stating "Student Driver" with lettering at least two inches [50.80 millimeters] but not more than five inches [127 millimeters] in height.
4. All vehicles used for driver training purposes must be in safe mechanical condition. Vehicles must pass a vehicle inspection immediately after installation of dual control devices and periodically thereafter as may be designated by director. The federal department of transportation annual vehicle inspection may be accepted for commercial vehicles. The vehicle inspection must be done by a person authorized by the director. The license of a commercial driver training school or instructor may be suspended at any time if a vehicle used for driver training purposes is not maintained in a safe operating condition.
5. Each vehicle used for driver training instruction must comply with all federal and state motor vehicle safety standards for the model year of the vehicle and must be equipped with:
  - a. Dual control brakes. Not applicable in trucks for truck driving schools.
  - b. Dual control clutch pedal, when applicable.
  - c. External rearview mirrors on left and right sides of the vehicle.
  - d. Safety restraint for each occupant of the vehicle.
  - e. Air bags if originally equipped.
  - f. First aid kit.
  - g. Fire extinguisher.
  - h. Instructor rearview mirror and eye check mirror.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-02

**CHAPTER 37-13-04**  
**COMMERCIAL DRIVER TRAINING INSTRUCTOR REQUIREMENTS**

Section

37-13-04-01      Instructor - License Required - Contents of Application for License

**37-13-04-01. Instructor - License required - Contents of application for license.**

1. An applicant for a commercial driver training instructor license must:
  - a. Be a resident of the state of North Dakota, unless waived by the director for good cause.
  - b. Furnish the director information relating to all previous places of residence located outside of the state of North Dakota.
  - c. Be at least twenty-one years of age.
  - d. Read, write, and speak the English language.
  - e. Have normal peripheral and color vision and visual acuity of at least 20/40 in each eye, with or without corrective lenses.
  - f. Have been a licensed driver for three years for class of vehicle instruction, holding a valid North Dakota driver's license unless waived by the director for good cause, free from requirement to show proof of financial responsibility, and have a satisfactory driving record free from any conviction that would constitute the basis for suspension or revocation of the instructor license.
  - g. Authorize the director to investigate the applicant's background and review the applicant's driving record.
  - h. Submit to a nationwide fingerprint-based criminal history record check with the federal bureau of investigation at no expense to the department of transportation.
    - (1) If the applicant has been convicted of a crime involving moral turpitude, the applicant is ineligible to be an instructor.
    - (2) If the applicant has been convicted of a misdemeanor or felony, the applicant is ineligible to be an instructor unless:
      - (a) The director determines the crime does not directly relate to the position of instructor; or
      - (b) The applicant has shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of an instructor.
  - i. Pass a written and road test for each class of license for which driver training is to be offered. The tests must be administered by the North Dakota department of transportation driver's license division. The director may accept commercial driver's license test results from another state if the applicant currently holds a valid commercial driver's license. The director may periodically require a licensed instructor to submit to a written examination and road test consisting of all or any part of the test specified in this section. The test must include:
    - (1) The operation of a motor vehicle.
    - (2) Traffic laws.

(3) Road signs, laws and regulations, and other material pertaining to and affecting the driver, traffic, and motor vehicle.

j. Be in good physical and mental health, and having no illness or condition that would render the applicant unable to safely perform the duties as an instructor. The applicant shall submit to a physical examination by a licensed physician and a certificate must accompany the application. For commercial driver's license instruction, the instructor shall submit a copy of the federal department of transportation medical card every two years. The director may periodically require a licensed instructor to submit to a physical examination by a licensed physician and a certificate of the examination must be submitted to the director.

k. Instructor preparation:

(1) Hold a valid North Dakota driver education certificate issued by the department of public instruction; or

(2) Have successfully completed an approved preparation course or courses for commercial driver education instructors. Instructor preparation courses must be submitted to and approved by the director. Preparation courses conducted by a licensed commercial driver training school must consist of both classroom training and practical driving situations. At a minimum, instructor development training for class D must consist of thirty hours of classroom and thirty hours of behind-the-wheel practical training. At a minimum, instructor development training for class A, B, or C must consist of forty hours of classroom and eighty hours of behind-the-wheel practical training. The behind-the-wheel practical training must consist of both actual driving and riding along and observing a licensed instructor during a student training session. Driver education instructor development courses offered through a university system may also be considered for approval.

l. Instructor requirements may be waived by the director for good cause when pertaining to a commercial driving school licensed to offer the internet course only.

2. When employment of an instructor is terminated, the school administrator shall return the terminated instructor's commercial instruction license to the director within ten days of the termination date.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-04, 39-25-08

**CHAPTER 37-13-05**  
**DRIVER TRAINING INSTRUCTION REQUIREMENTS**

Section

<u>37-13-05-01</u>	<u>Training Curriculum</u>
<u>37-13-05-02</u>	<u>Certificate in Lieu of Skill Test</u>
<u>37-13-05-03</u>	<u>Behind-The-Wheel Instruction</u>

**37-13-05-01. Training curriculum.**

1. Training curriculum utilized for the internet course, classroom, and behind-the-wheel training must be approved by the director.
2. The requirement for behind-the-wheel time listed in this section is minimum in nature, and may be exceeded, as needed, to meet the specific purpose of providing training necessary to provide a certificate of course completion, as defined in North Dakota Century Code section 39-25-01.
3. The minimum requirements for a class D driving school include thirty hours of classroom and a minimum of six hours of actual behind-the-wheel instruction, not to include observation time.
  - a. Driving schools are not required to meet the thirty hour classroom requirement and may continue to offer only behind-the-wheel instruction.
  - b. Driving schools that do not meet the requirements listed within this section and do not qualify to provide a certificate of course completion are not eligible for the student skill test waiver provided in North Dakota Century Code section 39-25-02.1. These courses must issue a certificate of training, as defined in section 37-13-01-01.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-03, 39-06-13

**37-13-05-02. Certificate in lieu of skill test.**

1. A training program may be certified as valid for road test purposes to waive the class D road skill test. The program, whether provided by a commercial driving school or a public school, must comply with all requirements of North Dakota Century Code chapter 39-25 or the regulations prescribed herein. When a driving school course is so certified by the director, the certificate of course completion may be presented to the driver's license office as evidence of completing the ability test in lieu of an additional ability test performed by examiners for license issuance.
2. "Certificate of course completion" means a certification of completion of thirty hours of classroom training and a driving course through which the graduate has demonstrated the correct behavior of driving safely on the highway while interacting with other traffic. The certification includes successful demonstration of:
  - a. Starting and stopping the vehicle;

- b. Proper driving posture;
- c. Proper use of vehicle controls, including use of clutch or automatic transmission;
- d. General observation skills and attention to the driving task;
- e. Controlling the vehicle;
- f. Speed control;
- g. Proper intersection speed;
- h. Intersection observance;
- i. Traffic lights, stop sign intersections, and railroad crossings;
- j. Adherence to other traffic signs;
- k. Unsigned intersections;
- l. Proper application of the right-of-way;
- m. Proper lane positioning;
- n. Safe lane changes;
- o. Multi-lane and one-way streets;
- p. Proper full stops;
- q. Proper following distance;
- r. Right turns and left turns;
- s. Proper signaling;
- t. Backing, to include parallel parking without park assist technology; and
- u. Driving in residential, business, highway, and rural areas, including gravel road surfaces.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-06-13, 39-25-02.1

**37-13-05-03. Behind-the-wheel instruction.**

1. Instructors must at all times, while giving behind-the-wheel instruction, carry a valid driver's license applicable to the type of vehicle for which instruction is being conducted.
2. Instruction may be provided on machines which simulate driving conditions only when the use of such machines has been specifically approved as a part of the curriculum of behind-the-wheel training by the director. Any type of simulation training shall be in addition to student completion of at least six hours of actual behind-the-wheel driving in a class D motor vehicle and in addition to at least one hundred hours behind-the-wheel in a class A, B, or C motor vehicle.
3. Instructors shall ensure seatbelts are in use at all times while instruction is being given behind the wheel of a motor vehicle.

4. Instructors shall ascertain the student is in possession of a valid driver instruction permit or driver's license prior to giving behind-the-wheel instruction.
5. Instructors shall at all times, while giving behind-the-wheel instruction, ensure students do not violate any traffic law, rule, regulation, sign, or street marking governing the operation of a motor vehicle.
6. When the student has satisfactorily completed behind-the-wheel instruction, the authorized school operator or instructor shall furnish the student a certificate of course completion or a certificate of training, depending on the type of training provided by the school to the student.
7. Instruction may not be given on routes used for the North Dakota state driver license road test.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-02

**CHAPTER 37-13-06**  
**REFUSAL, SUSPENSION, OR REVOCATION OF LICENSE**

Section

37-13-06-01 Refusal, Suspension, or Revocation of License

**37-13-06-01. Refusal, suspension, or revocation of license.**

1. The director may refuse to issue, or may suspend or revoke a license in any case when the director finds the applicant or licensee has violated any of the provisions of North Dakota Century Code chapter 39-25 or the regulations prescribed herein. A suspended or revoked license must be returned to the director by the licensee within ten days of the action.
2. The license of a commercial driver training school or instructor may be revoked, suspended, issuance refused, or a renewal refused under any of the following conditions:
  - a. Whenever the person commits fraud or engages in fraudulent practice with reference to the person's license application.
  - b. Whenever the commercial driver training school or instructor induces or countenances fraud or fraudulent practice on the part of any applicant for a driver license or instruction permit.
  - c. When a commercial driver training school or an instructor advertises or implies that a driver license is guaranteed upon completion of the course of instruction.
  - d. When instruction is given to a person who does not have a valid permit or driver license in their possession.
  - e. When a certificate of enrollment or completion is signed by an authorized school operator or instructor and information on the certificate is false.
  - f. When the person is convicted of a violation of a criminal law or traffic law, or both, including driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs, leaving the scene of an accident, careless driving, or reckless driving.
  - g. When there is evidence that intoxicating beverages were present or consumed on the school premises or in its training vehicles.
  - h. When a student is overcharged or encouraged to continue indefinite instructions beyond the point where the student is capable of passing the driver license examination, or both.
3. Any applicant or licensee who has been refused issuance or renewal of a license or whose license is subject to suspension or revocation is entitled to a hearing before the director as provided in North Dakota Century Code chapter 28-32.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-25-06



**ARTICLE 37-14**  
**LIFETIME COMMERCIAL DRIVER'S LICENSE DISQUALIFICATION REINSTATEMENT**

Chapter	
37-14-01	Authority for Reinstatement
37-14-02	Qualifications for Reinstatement

**CHAPTER 37-14-01**  
**AUTHORITY FOR REINSTATEMENT**

Section	
37-14-01-01	State and Federal Authority

**37-14-01-01. State and federal authority.**

1. The director is authorized to establish guidelines, including conditions, under which a disqualification of commercial driver's license driving privileges for life under subsections 3, 9, 11, and 13 of North Dakota Century Code section 39-06.2-10 may be reduced to a period of not less than ten years. A violation under subsection 14 of North Dakota Century Code section 39-06.2-10 is not eligible for reinstatement of a lifetime disqualification.
2. This authority is adopted from 49 CFR 383.51 (6) - Reinstatement after lifetime disqualification.

**History:** Effective April 1, 2016.

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

**Law Implemented:** NDCC 39-06.2-10(4)

**CHAPTER 37-14-02**  
**QUALIFICATIONS FOR REINSTATEMENT**

Section

37-14-02-01      Application for Reinstatement

37-14-02-02      Decision for Reinstatement

**37-14-02-01. Application for reinstatement.**

1. The driver may apply to the North Dakota department of transportation for reinstatement of lifetime commercial driving privileges. The approval is subject to the discretion of the director and subject to the following requirements:
  - a. The request may not be made prior to ten years from the effective date of the lifetime disqualification.
  - b. The driver must submit the request on a form prescribed by the director.
  - c. The driver must submit a medical report to the director with the request for reinstatement.
  - d. If the driving record contains alcohol- or drug-related convictions, the driver must complete or have completed an alcohol/drug evaluation and complete or have completed any recommended treatment. Evidence of a completed evaluation and treatment must be provided with the application for reinstatement.
  - e. Within the ten years preceding the request, the driver may not have any of the following traffic violations:
    - (1) Drug or alcohol violations;
    - (2) Leaving the scene violations;
    - (3) Felonies involving the use of any motor vehicle; or
    - (4) Any convictions while operating a commercial motor vehicle.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 38-32-02

**Law Implemented:** NDCC 39-06.2-10(4)

**37-14-02-02. Decision for reinstatement.**

1. If the decision is made to reinstate the driving privilege, prior to reinstatement the driver shall complete the following:
  - a. Pay all outstanding reinstatement fees;
  - b. Meet all outstanding reinstatement requirements;
  - c. Pass the required knowledge, vision, and skills tests to obtain the North Dakota commercial driver's license;
  - d. Successfully complete the national safety council DDC attitudinal dynamics of driving;
  - e. Successfully complete the DDC professional truck drivers course; and
  - f. Complete any other courses or requirements required by the director.

2. When the initial lifetime disqualification is based on alcohol or drugs, the driver shall participate in the 24/7 program for three months.

a. The three months period starts on the effective date of the reinstatement.

b. Failure to successfully complete the program will result in the loss of the reinstatement.

c. The driver will not be eligible again for reinstatement of the original commercial driver's license lifetime disqualification.

3. Once reinstated, a driver will be subject to loss of reinstatement of the lifetime ban if involved in one of the following traffic violations, regardless of whether the violation occurs in a commercial or noncommercial vehicle.

a. Violations involving drugs or alcohol;

b. Violations involving leaving the scene;

c. Violations or felonies involving the use of any motor vehicle;

d. Failure to satisfy this requirement will result in the loss of the reinstatement; and

e. The driver will not be eligible again for reinstatement of the original commercial driver's license lifetime disqualification.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 38-32-02

**Law Implemented:** NDCC 39-06.2-10(4)



**TITLE 61**  
**STATE BOARD OF PHARMACY**



APRIL 2016

**ARTICLE 61-02  
PHARMACIES**

Chapter	
61-02-01	Pharmacy Permits
61-02-02	Building Standards for Pharmacies
61-02-03	Security Standards for Pharmacies
61-02-04	Sanitary Standards for Pharmacies
61-02-05	Existing Pharmacies
61-02-06	Computer Pharmacy Regulations
61-02-07	Clerical Personnel [Repealed]
61-02-07.1	Pharmacy Technician
61-02-08	Telepharmacy Pilot Project Rules
<u>61-02-09</u>	<u>Continuous Quality Improvement</u>

**CHAPTER 61-02-09**  
**CONTINUOUS QUALITY IMPROVEMENT**

Section

<u>61-02-09-01</u>	<u>Definitions</u>
<u>61-02-09-01</u>	<u>Continuous Quality Improvement Program</u>

**61-02-09-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Actively reports" means reporting all dispensing errors and analysis of such errors to a patient safety organization as soon as practical or at least within thirty days of identifying the error.
2. "Analysis" means a review of the findings collected and documented on each dispensing error, assessment of the cause and any factors contributing to the dispensing error, and any recommendation for remedial action to improve pharmacy systems and workflow processes to prevent or reduce future errors.
3. "Dispensing error" means one or more of the following discovered after the final verification by the pharmacist:
  - a. Variation from the prescriber's prescription drug order, including:
    - (1) Incorrect drug;

(2) Incorrect drug strength;

(3) Incorrect dosage form;

(4) Incorrect patient; or

(5) Inadequate or incorrect packaging, labeling, or directions.

b. Failure to exercise professional judgments in identifying and managing:

(1) Therapeutic duplication;

(2) Drug-disease contraindications, if known;

(3) Drug-drug interactions, if known;

(4) Incorrect drug dosage or duration of drug treatment, interactions;

(5) A clinically significant, avoidable delay in therapy; or

(6) Any other significant, actual or potential problem with a patient's drug therapy.

c. Deliver of a drug to incorrect patient.

d. Variation in bulk repackaging or filling of automated devices, including:

(1) Incorrect drug;

(2) Incorrect drug strength;

(3) Incorrect dosage form; or

(4) Inadequate or incorrect packaging or labeling.

4. "Incident" means a patient safety event that reached the patient, whether or not the patient is harmed.

5. "Near miss" means a patient safety event that did not or could not have reached the patient.

6. "Patient safety organization" means an organization that has as its primary mission continuous quality improvement under the Patient Safety and Quality Improvement Act of 2005 (P.L. 109-41) and is credentialed by the agency for healthcare research and quality.

7. "Unsafe condition" means any circumstance that increases the probability of a patient safety event.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10, 23-34

**Law Implemented:** NDCC 28-32-03, 43-15-10, 23-34

**61-02-09-02. Continuous quality improvement program.**

1. Each pharmacy permittee shall establish continuous quality improvement program for the purpose of detecting, documenting, assessing, and preventing incidents, near misses, and unsafe conditions.

2. A pharmacy permittee meets the requirements if the permittee meets the following:

a. Maintains and complies with the policies and procedures as noted in subsection 4;



b. The pharmacy reports incidents, near misses, and unsafe events through either:

(1) A contracted patient safety organization that is listed as an agency for health research and quality on [www.ahrq.com](http://www.ahrq.com) whose primary mission is pharmacy continuous quality improvement; or

(2) An internal program to the pharmacy which is acceptable to the board where proper documentation and evaluation can be completed.

3. At a minimum, a continuous quality improvement program must include provisions to:

a. Designate an individual or individuals responsible for implementing, maintaining, and monitoring the continuous quality improvement program, which is managed in accordance with written policies and procedures maintained in the pharmacy in an immediately retrievable form;

b. Initiate documentation of incidents, near misses, and unsafe conditions as soon as possible, but no more than seven days, after determining their occurrence;

4. The policies and procedures must be in compliance with this section must include:

a. Training all pharmacy personnel in relevant phases of the continuous quality improvement program;

b. Identifying and documenting reportable incidents and near misses and unsafe events;

c. Minimizing the impact of incidents and near misses and unsafe events on patients;

d. Analyzing data collected to assess the causes and any contributing factors relating to incidents and near misses and unsafe events;

e. Use the findings to formulate an appropriate response and to develop pharmacy systems and workflow processes designed to prevent and reduce incidents and near misses and unsafe events; and

f. Periodically, but at least quarterly, meet with appropriate pharmacy personnel to review findings and inform personnel of changes that have been made to pharmacy policies, procedures, systems, or processes as a result of continuous quality improvement program findings.

5. Quality self-audit. Each pharmacy shall conduct a quality self-audit at least quarterly to determine whether the occurrence of incidents, near misses, and unsafe conditions has decreased and whether there has been compliance with preventative procedures, and to develop a plan for improved adherence with the continuous quality improvement program in the future. Each pharmacy shall conduct a quality self-audit upon change of pharmacist-in-charge to familiarize that person with the pharmacy's continuous quality improvement program.

6. Protection from discovery:

a. Records that are generated as a component of a pharmacy's ongoing quality assurance program and which are maintained for that program are peer review documents and are not subject to subpoena or discovery in an arbitration or civil proceeding.

b. Records that are generated as a component of a pharmacy's ongoing quality assurance program and which are maintained for that program are confidential and may not be released, distributed, or communicated in any manner, except as provided by these rules or the permittee's policies and procedures. Recognizing the importance of sharing

information with staff, experts, consultants, and others is necessary in reducing medication errors, information used as a part of the permittee's quality program in any manner does not compromise the confidentiality and privilege of such information.

c. This subsection does not prohibit a patient from accessing the patient's prescription records or affect the discoverability of any records that are not generated solely as a component of a pharmacy's ongoing quality assurance program and maintained solely for that program.

7. The board's regulatory oversight activities regarding a pharmacy's continuous quality improvement program are limited to inspection of the pharmacy's continuous quality improvement policies and procedures and enforcing the pharmacy's compliance with those policies and procedures.

8. An analysis or summary of findings, produced within six months of submission, is evidence of compliance with the records and data collection provisions. A permittee may not be required to produce data, charts, error reports, or findings collected and used in compiling an analysis summary.

9. Notwithstanding subsections 6 and 8, if a pharmacy is reporting to a patient safety organization whose primary mission is continuous quality improvement all data and records are privileged and confidential as provided in the Patient Safety and Quality Improvement Act of 2005 and implementing regulations.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10, 23-34

**Law Implemented:** NDCC 28-32-03, 43-15-10, 23-34

**CHAPTER 61-03-01  
LICENSURE OF PHARMACISTS**

Section	
61-03-01-01	Applications
61-03-01-02	Approved Schools
61-03-01-03	Score Required
61-03-01-04	Licensure <del>Without Examination</del> <u>Transfer</u>
61-03-01-05	Cancellation of Certificates [Repealed]
61-03-01-06	Duplicate Certificate
61-03-01-07	Posting of Certificate
61-03-01-08	Foreign Graduates
61-03-01-09	Inactive Status
61-03-01-10	Reinstatement Procedures

**61-03-01-04. Licensure ~~without examination~~transfer.**

An applicant seeking licensure by licensure transfer or reciprocity must secure and file an application blank from the national association of boards of pharmacy. This board will license applicants by reciprocity if they possess the requirements in effect in North Dakota at the time the candidates were licensed by examination in other states. ~~A statement from the secretary under seal of the board of pharmacy from which the applicant is a licentiate, showing date of examination, qualification, detailed ratings, and general average, must be submitted~~The applicant must pass the North Dakota law examination and pay the appropriate fees to obtain licensure.

**History:** Amended effective April 1, 2016.

**General Authority:** NDCC 43-15-22

**Law Implemented:** NDCC 43-15-22

## ARTICLE 61-04 PROFESSIONAL PRACTICE

Chapter	
61-04-01	Return of Drugs and Devices Prohibited
61-04-02	Physician Exemption
61-04-03	Destruction of Controlled Substances
61-04-04	Unprofessional Conduct
61-04-05	Electronic Transmission of Prescriptions
61-04-05.1	Prescription Transfer Requirements
61-04-06	Prescription Label Requirements
61-04-07	Pharmacy Patient's Bill of Rights
61-04-08	Limited Prescriptive Practices
61-04-09	Warning Notice
61-04-10	CLIA Waived Laboratory Tests
61-04-11	Administration of Medications and Immunizations
61-04-12	Limited Prescriptive Authority for Naloxone

### CHAPTER 61-04-08 LIMITED PRESCRIPTIVE PRACTICES

Section	
61-04-08-01	Purpose
61-04-08-02	Definitions
61-04-08-03	Eligibility and Approval
61-04-08-04	Procedures
61-04-08-05	Initiation of Drug Therapy
61-04-08-06	Modification of Drug Therapy
61-04-08-07	Form

#### **61-04-08-02. Definitions.**

For purposes of this chapter:

1. "Collaborative agreement" means the written document signed by a **physicianpractitioner** and a pharmacist which describes the limited prescribing authority granted the pharmacist under North Dakota Century Code section 43-15-31.4.
2. "Immediate notification" means interactive two-way communication between the pharmacist and **physicianpractitioner** within twenty-four hours of the initiation or modification of drug therapy, unless specific reference is made in the collaborative agreement to situations in which a notification time limit of up to seventy-two hours is appropriate.
3. "Initiate drug therapy" means to begin administering for the first time a prescribed drug therapy for treating a patient with an existing diagnosis. A licensed **physicianpractitioner** shall make any diagnosis required.
4. "Medical record" means a written record of clinical care developed and maintained by a patient's **physicianpractitioner** which contains information and data about a patient's condition sufficient to justify the diagnosis and subsequent treatment. The record must contain further appropriate information as described in section 33-07-01.1-20.
5. "Modify drug therapy" means to change, within the same therapeutic class of drugs, a specific drug, the dosage, or route of delivery of a drug currently being administered for an existing diagnosis.

6. ~~"Pharmacist in an institutional setting" means a pharmacist who:~~

- ~~a. Has a written agreement to provide daily or regular pharmaceutical services within a hospital, physician clinic, skilled nursing facility, swing bed facility, or long term care facility; and~~
- ~~b. Is physically present in the facility when exercising prescriptive practices under the terms of a collaborative agreement~~ "Practitioner" means a licensed physician or advanced practice registered nurse.

7. "Supervision" means the active role taken by the ~~physician~~practitioner to oversee the pharmacist throughout the provision of drug therapy to patients under the terms of a collaborative agreement.

**History:** Effective December 1, 1996; amended effective December 1, 2003; April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

**Law Implemented:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

### 61-04-08-03. Eligibility and approval.

1. A ~~physician~~practitioner and a pharmacist who are licensed and practicing their respective professions in this state are eligible, provided the conditions of this section and any applicable statutes are met, to enter into the collaborative agreement allowing the pharmacist to provide prescription drug therapy to patients ~~in an institutional setting on a limited basis.~~
2. ~~A physician may have a collaborative agreement with no more than three eligible pharmacists unless the physician's licensing board specifies otherwise based on individual circumstances. A pharmacist may have a collaborative agreement with one or more physicians, the number of which may be limited by the board based on individual circumstances~~ The practitioner and the pharmacist must have access to the patient's appropriate medical records. The care provided to the patient by the pharmacist must be recorded in the patient's medical records and communicated to the practitioner.
3. ~~The collaborative agreement serves as a formal arrangement between an individual pharmacist and an individual collaborative supervising physician and is operative only within the institutional setting identified on the collaborative agreement form~~ The collaborative agreement may be between a medical director and pharmacist-in-charge. The medical director and pharmacist-in-charge shall report to the respective board of any practitioner and pharmacist covered under the agreement.
4. Each individual collaborative agreement must be reviewed by the board of ~~medical examiners~~medicine or the board of nursing and the board of pharmacy, and will not become effective until ~~both~~the respective boards grant approval and notify the parties. Each agreement must be reviewed at least every ~~two~~four years or when modifications to the scope of the pharmacist's prospective practices are proposed by the parties, and must receive continued approval from both boards in order to remain in effect. Removal or addition of either practitioners or pharmacists involved in the agreement shall be communicated to all respective boards. Unless deemed necessary, a change in personnel does not necessitate board approval of the collaborative agreement.
5. A collaborative agreement may be terminated by ~~either board~~any of the involved boards for good cause, including adverse action taken against either licensee. Noncompliance with the terms of these rules or of a collaborative agreement may be considered evidence of unprofessional conduct by ~~either board~~any of the involved boards.
6. Either party of a collaborative agreement may terminate the agreement at will by notifying either board of their desire to do so.

7. Neither party to a collaborative agreement may seek to gain personal financial benefit by participating in any incentive-based program that influences or encourages therapeutic or product changes.

**History:** Effective December 1, 1996; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

**Law Implemented:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

#### **61-04-08-04. Procedures.**

A physicianpractitioner who has signed an approved collaborative agreement with a pharmacist shall remain responsible for the care of the patient following initial diagnosis ~~and assessment~~, and for the supervision of the pharmacist as prescriptive authority is exercised. The physicianpractitioner shall remain available to receive immediate notification from the pharmacist regarding prescriptive drug therapy being provided. The parties may modify as necessary, within the practice guidelines described in the collaborative agreement, their relationship in the joint provision of care to each patient as the requirements of the patient or drug therapy change.

**History:** Effective December 1, 1996; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

**Law Implemented:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

#### **61-04-08-05. Initiation of drug therapy.**

To initiate drug therapy, a pharmacist must hold a valid North Dakota pharmacist license and have a collaborative agreement with the treating physician. ~~A pharmacist may initiate drug therapy only if the pharmacist has obtained a doctor of science, doctor of philosophy in clinical pharmacy, master of science, or doctor of pharmacy degree, has been certified a fellow by the board of pharmaceutical specialties, or has completed an accredited pharmacy fellowship or residency, and has been authorized to do so within the collaborative agreement. Verification of these credentials must be provided by the pharmacistpractitioner.~~ The pharmacist must provide immediate notification to the physicianpractitioner when the pharmacist initiates drug therapy.

**History:** Effective December 1, 1996; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

**Law Implemented:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

#### **61-04-08-06. Modification of drug therapy.**

1. To modify drug therapy, a pharmacist must hold a valid North Dakota pharmacist license and have a collaborative agreement with the treating physicianpractitioner. A pharmacist may modify drug therapy as warranted to assure an appropriate course of treatment for the patient. The pharmacist must provide immediate notification to the physicianpractitioner when the pharmacist modifies drug therapy.
2. The physicianpractitioner and pharmacist entering into a collaborative agreement must have indicated on the form the scope and authority to be exercised by the pharmacist and the type or class of drugs or drug therapy to be utilized or prohibited under the agreement. Authority to prescribe schedule II drugs may not be delegated to a pharmacist. The parties may also indicate the type of medical diagnoses to be included or excluded within the collaborative relationship.
3. The current medical record of each patient receiving drug therapy must be readily accessible to the pharmacist and ~~physician within the facility setting~~practitioner. The pharmacist, unless ~~physician or facility policy~~the practitioner directs otherwise, shall provide timely documentation and indications for all drug therapies initiated or modified by the pharmacist as part of the medical record.

4. Contingency treatment should be addressed for treating allergic or acute adverse drug reactions.

**History:** Effective December 1, 1996; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

**Law Implemented:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

#### **61-04-08-07. Form.**

1. The collaborative agreement form utilized under this section is attached as an appendix to these rules as approved by the board of ~~medical examiners~~medicine, board of nursing, and board of pharmacy. Upon request, ~~either~~a board shall supply a copy of the rules and form to any interested party.
2. A copy of each collaborative agreement and subsequent amendments approved by the boards shall remain on file with the boards. Each party shall retain the original or a copy of the agreement and amendments, and either party shall provide a copy to ~~the~~a facility within which ~~the~~an agreement is operative.
3. Either board may disseminate a current listing of the individual parties who are practicing under an approved collaborative agreement.
4. More details may be provided. Further stipulations or details shall be supplied on a separate page.

**History:** Effective December 1, 1996; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

**Law Implemented:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

APPENDIX

COLLABORATIVE AGREEMENT FORM

The pharmacists and ~~physicians~~practitioners listed below are parties to this collaborative agreement, through which the pharmacist receives limited prescriptive authority under the supervision of the ~~physician~~practitioner in accordance with North Dakota Century Code section 43-15-31.4 and administrative rules.

~~Institution~~Facility

Facility

Address

Address

Telephone

Telephone

Pharmacist Name License Number

~~Physician~~Practitioner License Number  
Name

Pharmacist Name License Number

~~Physician~~Practitioner License Number  
Name

Pharmacist Name License Number

~~Physician~~Practitioner License Number  
Name

~~Physician~~Practitioner License Number  
Name

[Please review the administrative rules governing collaborative agreements which accompany this form before proceeding.]

1. Describe the scope and authority to be exercised by the pharmacist. (If requesting authority to initiate drug therapy, pharmacist must include credential verification.)
2. Indicate any restrictions placed on the use of certain types or classes of drugs or drug therapies under this agreement. (Note: Schedule II drugs are excluded by these rules.)
3. If appropriate, indicate any diagnoses which are specifically included or excluded under this agreement.
4. Attach any protocols or guidelines to be used in decisionmaking or other activities contemplated under this agreement. This must include a protocol for treating acute allergic or other adverse reactions related to drug therapy.



5. Describe approved situations, if any, in which the notification time limit may be extended beyond twenty-four hours (not to exceed seventy-two hours).

Attach additional sheets if necessary.

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Pharmacist Signature      Date

---

~~Physician~~Practitioner      Date  
Signature

---

Pharmacist Signature      Date

---

~~Physician~~Practitioner      Date  
Signature

---

Pharmacist Signature      Date

---

~~Physician~~Practitioner      Date  
Signature

---

Pharmacist Signature      Date

---

~~Physician~~Practitioner      Date  
Signature

---

State Board of              Approval Date  
Pharmacy

---

State Board of ~~Medical-~~      Approval Date  
~~Examiners~~Medicine

---

State Board of Nursing      Approval Date

## CHAPTER 61-04-10 CLIA WAIVED LABORATORY TESTS

### Section

61-04-10-01	Definitions
61-04-10-02	Education Requirements for Pharmacists to Perform CLIA Waived Laboratory Tests
61-04-10-03	Minimum Quality Standards Required
61-04-10-04	Proper CLIA Registration
61-04-10-05	Notification of the Board of Pharmacy
<u>61-04-10-06</u>	<u>Exempt Tests and Methods</u>

### **61-04-10-01. Definitions.**

For purposes of this chapter:

1. "CLIA" means the federal Clinical Laboratory Improvement Act of 1988, as amended.
2. "OSHA" means the federal occupational safety and health administration.
3. "Portfolio review" means a review by the board of a pharmacist's records of ~~proficiency-testing~~training logs, control testing logs, and records of patient tests performed to determine that a pharmacist is continuously and consistently providing a service in a quality and competent manner.

**History:** Effective December 1, 1999; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3

### **61-04-10-02. Education requirements for pharmacists to perform CLIA waived laboratory tests.**

A pharmacist must meet the following requirements in order to perform CLIA waived laboratory tests authorized by North Dakota Century Code section 43-15-25.3 or added to the list as allowed by ~~that~~ section 61-04-10-06:

1. Successfully complete ~~a board-approved course of study~~training and education that incorporates ~~principles of general laboratory procedures to include~~, at a minimum:
  - a. Infection control;
  - b. OSHA requirements;
  - c. Proper technique to collect laboratory specimens;
  - d. Recognized screening and monitoring values; ~~and~~
  - e. Quality control; and
  - f. The manufacturers' instructions for the waived tests being performed.
2. ~~Recertify~~Obtain and recertify the CLIA waived certificate every ~~three~~two years ~~by portfolio review or reeducation.~~
- ~~3. Successfully complete training for each specific instrument used to perform CLIA waived laboratory tests.~~

**History:** Effective December 1, 1999; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3

**61-04-10-03. Minimum quality standards required.**

Pharmacists performing CLIA waived laboratory tests must meet the following standards:

1. Develop and maintain a ~~procedural~~policy and procedure manual that includes the following areas:
  - a. Quality control;
  - b. Infection control;
  - c. Hazardous waste disposal;
  - d. Recordkeeping; and
  - e. Test result reporting.

~~2. Maintain participation in a nationally recognized proficiency program approved by the board.~~

**History:** Effective December 1, 1999; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3

**61-04-10-04. Proper CLIA registration.**

The pharmacist-in-charge of a licensed pharmacy performing tests or any pharmacist operating in a facility not licensed by the board is responsible for ensuring that the ~~facility where the tests are performed~~pharmacy performing the CLIA waved test has a proper CLIA certificate.

**History:** Effective December 1, 1999; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3

**61-04-10-05. Notification of the board of pharmacy.**

The pharmacist-in-charge of a licensed pharmacy that has obtained a CLIA certificate or any pharmacist operating in a facility not licensed by the board of pharmacy must notify the board prior to the initial performance of any CLIA waived tests. ~~The notification must specify the types of tests which are to be performed.~~

**History:** Effective December 1, 1999; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3

**61-04-10-06. Exempt tests and methods.**

An individual licensed by the board, performing the following food and drug administration-waived tests and using the following methods, is exempt from the provisions of North Dakota Century Code chapter 43-48:

1. Total cholesterol, HDL cholesterol, LDL cholesterol, and triglycerides test by any accepted method.
2. Any of the following tests by nonautomated or automated urinalysis by dipstick:
  - a. Bilirubin.

- \_\_\_\_\_ b. Blood.
- \_\_\_\_\_ c. Glucose.
- \_\_\_\_\_ d. Ketone.
- \_\_\_\_\_ e. Leukocyte.
- \_\_\_\_\_ f. Nitrate.
- \_\_\_\_\_ g. Potential of hydrogen (pH).
- \_\_\_\_\_ h. Protein.
- \_\_\_\_\_ i. Specific gravity.
- \_\_\_\_\_ j. Urobilinogen.
- \_\_\_\_\_ 3. Fecal occult blood by any accepted method.
- \_\_\_\_\_ 4. Ovulation test by visual color comparison.
- \_\_\_\_\_ 5. Qualitative urine pregnancy test by visual color comparison.
- \_\_\_\_\_ 6. Erythrocyte sedimentation rate by any accepted nonautomated method.
- \_\_\_\_\_ 7. Whole blood glucose by any accepted single analyte method.
- \_\_\_\_\_ 8. Spun microhematocrit by any accepted method.
- \_\_\_\_\_ 9. Hemoglobin by single analyte instrument or manual copper sulfate method.
- \_\_\_\_\_ 10. Any of the following tests by immunoassay using a rapid test device that detects antibodies or antigens:
  - \_\_\_\_\_ a. Helicobacter pylori.
  - \_\_\_\_\_ b. Influenza.
  - \_\_\_\_\_ c. Mononucleosis.
  - \_\_\_\_\_ d. Streptococcus group A.
  - \_\_\_\_\_ e. Hepatitis C virus.
  - \_\_\_\_\_ f. Respiratory syncytial virus.
- \_\_\_\_\_ 11. Prothrombin time international normalized ratio by mechanical endpoint.
- \_\_\_\_\_ 12. Antibodies to human immunodeficiency virus types 1 and 2.
- \_\_\_\_\_ 13. Nicotine or cotinine test by urine.
- \_\_\_\_\_ 14. Thyroid stimulating hormone test by blood.
- \_\_\_\_\_ 15. Bone mass and bone mineral density test by any accepted method.
- \_\_\_\_\_ 16. Drug screening tests by urine.

History: Effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 43-15-25.3

**CHAPTER 61-04-12**  
**LIMITED PRESCRIPTIVE AUTHORITY FOR NALOXONE**

Section

61-04-12-01      Definitions

61-04-12-02      Pharmacists Furnishing Naloxone

**61-04-12-01. Definitions.**

For purposes of this chapter:

1. "Opioid-related drug overdose" means a condition including extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death resulting from the consumption or use of an opioid or another substance with which an opioid was combined. This would include an overdose that requires medical assistance or a coroner, clinical suspicion for drug overdose (respiratory depression, unconsciousness, altered mental status), and either a urine toxicology screen positive for opiates or negative urine toxicology screen without other conditions to explain the clinical condition.
2. "Patient" means both an individual who is at risk of opioid overdose and a person who is not at risk of opioid overdose but who may be in a position to assist another individual during an overdose who has received patient information.
3. "Patient information" means the information provided to the patient on drug overdose prevention and recognition, opioid antidote dosage and administration, the importance of calling 911, care for the overdose victim after administration of the overdose antidote, and other issues as necessary.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 23-01-42, 43-15-10(23)

**61-04-12-02. Pharmacists furnishing naloxone.**

1. Protocol.
  - a. Pharmacists are authorized to furnish naloxone drug therapy solely in accordance with the written protocol for naloxone drug therapy approved by the board.
  - b. Any pharmacist exercising prescriptive authority for naloxone drug therapy shall maintain a current copy of the written protocol for naloxone drug therapy approved by the board.
2. Procedure. When a patient requests naloxone, or when a pharmacist in his or her professional judgment decides to advise of the availability and appropriateness of naloxone, the pharmacist shall complete the following steps:
  - a. Screen for the following conditions:
    - (1) Whether the potential recipient currently uses or has a history of using illicit or prescription opioids (if yes, skip to subdivision b and continue with procedure);
    - (2) Whether the potential recipient is in contact with anyone who uses or has a history of using illicit or prescription opioids (if yes, continue with procedure); and
    - (3) Whether the person to whom the naloxone would be administered has a known hypersensitivity to naloxone (if yes, do not furnish).

b. Provide training in opioid overdose prevention, recognition, response, and administration of the antidote naloxone.

c. When naloxone is furnished:

(1) The pharmacist shall provide the patient with appropriate patient information and counseling on the product furnished, including dosing, effectiveness, adverse effects, storage conditions, shelf-life, and safety. A pharmacist furnishing naloxone drug therapy may not permit the patient to whom the drug is furnished to waive the patient information required by the board.

(2) The pharmacist shall provide the patient with any resources and referrals to appropriate resources if the patient indicates interest in addiction treatment, recovery services, or medication disposal resources at this time.

(3) The pharmacist shall answer all questions the recipient may have regarding naloxone.

3. Authorized drugs.

a. Prescriptive authority is limited to naloxone and includes any device approved for the administration of naloxone.

b. Those administering naloxone should choose the route of administration based on the formulation available, how well they can administer it, the setting, and local context.

4. Education and training. Prior to furnishing naloxone, pharmacists who participate in this protocol shall successfully complete a minimum of one hour of an approved continuing education program specific to the use of naloxone, or an equivalent curriculum-based training program completed in a board-recognized school of pharmacy.

5. Records. The prescribing pharmacist must generate a written or electronic prescription for any naloxone dispensed and the pharmacist shall record themselves as the prescriber or the protocol practitioner if appropriate. Documentation shall be made in a medication record for the patient. The prescription shall be kept on file and maintained for five years as required in North Dakota Century Code section 43-15-31.

6. Notification. If the patient is the potential individual to whom the naloxone will be administered, the pharmacist shall notify the patient's primary care provider of any drugs and devices furnished, or enter the appropriate information in a record system shared with the primary care provider.

If the patient does not have a primary care provider, the pharmacist shall provide a written record of the drugs and devices furnished and advise the patient to consult an appropriate health care provider of the patient's choice.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-15-10

**Law Implemented:** NDCC 23-01-42, 43-15-10(23)





**TITLE 63**  
**BOARD OF PODIATRIC MEDICINE**



**APRIL 2016**

**CHAPTER 63-01-05**

**63-01-05-01. Definitions.**

For purposes of this title, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of podiatric medicine.
2. "Clinical residency" means a formal, structured postdoctoral training program sponsored by and conducted in an accredited institution such as a hospital or ambulatory health care facility or conducted by a college of podiatric medicine accredited by the council on podiatric medical education or the American podiatric medical association. The residency must:
  - a. Provide the podiatric medical graduate with a well-rounded exposure in preparation for management of podiatric conditions and diseases as they are related to systemic diseases;
  - b. Develop the podiatric medical graduate in the art of preventing and controlling podiatric conditions and diseases and in the promotion of foot health principally through mechanical and rehabilitative methods;
  - c. Provide the podiatric medical graduate with clinical experience necessary to refine competency in the podiatric medical and surgical care of the foot as defined by the statutory scope of practice; or
  - d. Provide the podiatric medical graduate with clinical experience necessary to become competent in the full scope of advanced podiatric medicine and surgery.
3. "Podiatric medicine" means ~~the profession of the health services concerned with the diagnosis and treatment of conditions affecting the human foot and ankle including local manifestations of systemic conditions by all appropriate systems and means and includes the prescribing or administering of drugs or medications necessary or helpful to that profession.;~~
  - a. The medical and surgical treatment and diagnosis of ailments of the human foot, ankle, and other related soft tissue structures below the tibial tuberosity that govern the functions of the foot and ankle, not including extra articular osseous injuries above the distal metaphyseal scar. Podiatrists may treat and diagnose conditions of the foot and ankle by any medically accepted system or method necessary;
  - b. The amputation of the toes, parts of the foot, or foot in its entirety, indicated as medically necessary;

- c. The use of such preparations, medicines, and drugs as may be necessary for the treatment of such ailments;
  - d. The performance of history and physical examinations upon admitting patients to facilities where they are recognized with requisite credentials and privileges;
  - e. That podiatrists may function as assistant surgeons in nonpediatric procedures; and
  - f. That pediatric medical residents working under a temporary permit may fully participate in rotations and assist and perform treatments and diagnosis beyond the foot and ankle, under appropriate supervision within an approved residency program as part of their medical surgical training.
4. "Podiatrist" means a person who is qualified or authorized to practice podiatric medicine in North Dakota.
5. "Preceptorship" means a formal, structured postdoctoral training program, with written objectives appropriate to all aspects of the program and a written evaluation process, conducted by a podiatrist primarily in an office-based setting and controlled and supervised by a college of podiatric medicine accredited by the council on podiatric medical education or the American podiatric medical association. The preceptorship must provide the recent podiatric medical graduate sufficient experiences to have further patient care exposure, to improve clinical management and communication skills, and to obtain increased self-confidence. Preceptor requirements must include the following:
- a. Provide training in the care of children and adults that offers experience as defined by the statutory scope of practice including drug therapy, radiology, local anesthesia, analgesia, biomechanics, physical medicine, rehabilitation, and the following surgeries:
    - (1) Nail;
    - (2) Digital;
    - (3) Soft tissue;
    - (4) Forefoot;
    - (5) Metatarsal;
    - (6) Midfoot; and
    - (7) Rearfoot or ankle.
  - b. Hold a clinical appointment at a podiatric medical school or be a member of the teaching staff of a hospital sponsoring a residency program.
  - c. Have a hospital staff appointment with podiatric surgical privileges; however, the granting of staff privileges is solely within the discretion of individual institutions; and
  - d. Not have been the subject of disciplinary action concerning professional conduct or practice.
6. "Title" or "this title" means title 63 of the North Dakota Administrative Code.

**History:** Effective December 1, 1991; amended effective January 1, 1998; [April 1, 2016](#).

**General Authority:** NDCC 43-05-08

**Law Implemented:** NDCC 43-05-01, 43-05-11

## CHAPTER 63-02-08

### 63-02-08-01. Fees.

All remittances must be made payable to the North Dakota board of podiatric medicine and must be paid in United States money and are not refundable except as otherwise provided in section 63-02-08-02. The type of fees and amounts are:

1. Application fee	\$300
2. Application fee based on reciprocity	\$300
3. Temporary license fee	\$300
4. Delinquent renewal fee	<del>\$25</del> \$100
5. Relicensure fee	\$300
6. Annual license fee or annual license renewal fee	<del>\$500</del> \$750
7. Temporary permit fee	\$200
8. Reexamination license fee	\$300
9. Duplicate/replacement fee	\$10 for each
10. <u>Certificate of professional license</u>	<u>\$20</u>
11. <u>Written verification of licensure</u>	<u>\$20</u>

**History:** Effective October 1, 1982; amended effective December 1, 1991; October 18, 1996; April 1, 2013; April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-05-08

**Law Implemented:** NDCC 43-05-08, 43-05-10, 43-05-12, 43-05-13, 43-05-14, 43-05-15

## CHAPTER 63-03-02

### 63-03-02-06. Approved courses.

1. In order for a continuing education program to be approved by the board, the program must meet the following criteria:
  - a. The content must be directly related to the practice of podiatric medicine. Subjects such as practice management, risk management, or those not of a scientific nature are not acceptable.
  - b. The speaker must be a licensed podiatrist, other credentialed health care professional, or person especially qualified to address the subject.
  - c. The sponsor must provide the attendee a written statement of attendance that includes the name and dates of the program, the name and address of the sponsor, the number of continuing education clock hours granted by the sponsor and approved by the board if prior approval has been sought, the name of the attendee and a signature of the sponsor or designee, or upon completion of the program, the sponsor must send the board a list of attendees.
2. Either the sponsor of a continuing education program or a licensee may submit the program for approval by the board. The following information about the program is required:
  - a. Name and address of program sponsor;
  - b. Dates and times of the program;
  - c. Subject or content matter of each item on the program together with the amount of time devoted to each subject;
  - d. Name of and identifying information about the speakers or instructors; or
  - e. Assurance that a written statement of attendance will be given to the podiatrist or that a list of attendees will be sent to the board.
3. The board shall approve each continuing education program for a specific number of clock hours of continuing education. One clock hour is sixty minutes. Partial hours ~~will not~~ may be granted. Lunch breaks, rest periods, and other noneducational time will not be included.

**History:** Effective December 1, 1991; amended effective April 1, 2016.

**General Authority:** NDCC 43-05-08

**Law Implemented:** NDCC 43-05-11

## CHAPTER 63-03-03 DELINQUENCY IN RENEWAL

### Section

63-03-03-01	<del>Automatic Revocation</del> <u>Nonrenewal of Licensure</u>
63-03-03-02	Hearing After Revocation
63-03-03-03	Revocation [Repealed]
63-03-03-04	Reinstatement

#### **63-03-03-01. ~~Automatic revocation~~Nonrenewal of licensure.**

If the license renewal is not completed by December 31 of any given year, the license shall be delinquent for nonrenewal until such time as the license renewal has been completed or until the license is deemed expired or revoked. If the delinquent license is not renewed on or before June first of any given year, the license is deemed expired. The board may also revoke the license. The board shall send the written notice to the podiatrist's last known address, as it appears in the records of the board, that the license is expired or revoked as of June first. ~~This issuance of this~~If the license is revoked, the written notice constitutes the commencement of revocation.

**History:** Effective October 1, 1982; amended effective December 1, 1991; April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-05-08

**Law Implemented:** NDCC 43-05-08, 43-05-15, 43-05-16.2

#### **63-03-03-04. Reinstatement.**

Any practitioner whose license has expired or been revoked for delinquency in renewal must reapply for licensure and must submit the regular application for license ~~and~~, the application fee ~~and~~, renewal fee and ~~a~~ delinquency fee ~~of twenty-five dollars~~, and must pay the costs of the revocation hearing, if held.

**History:** Effective October 1, 1982; amended effective December 1, 1991; April 1, 2016.

**General Authority:** NDCC 28-32-02, 43-05-08

**Law Implemented:** NDCC 43-05-08, 43-05-15, 43-05-16.2





**TITLE 66**  
**PSYCHOLOGIST EXAMINERS, BOARD OF**



APRIL 2016

CHAPTER 66-01-01

66-01-01-01. Organization of board of psychologist examiners.

1. **History.** The 1967 legislative assembly passed legislation establishing the state board of psychologist examiners, codified as North Dakota Century Code chapter 43-32. The board licenses psychologists, industrial-organizational psychologists, and applied behavior analysts, and registers applied behavior analysts.
2. **Purpose and mission.** The purpose of the board of psychologist examiners is to regulate the practice of psychology, as defined through the legislative authority of North Dakota Century Code chapter 43-32, in the interest of and to preserve and protect the health, safety, and welfare of the public.
3. **Board membership.** The board consists of ~~five~~seven members appointed by the governor. ~~Each member~~Members of the board serve three-year terms, with at least one but not more than three terms expiring each year.
  - a. One member must be designated a public member who is a resident of this state, is at least twenty-one years of age, and is not affiliated with any group or profession that provides or regulates health care in any form.
  - b. Of the remaining six board members, each must be ~~a licensed psychologist and at~~under this chapter for at least five years.
  - c. At least one member must be currently engaged primarily in providing service in psychology~~and at.~~
  - d. At least one member must be engaged primarily in teaching, training, or research in psychology.~~Members of the board serve three-year terms, with at least one but not more than two terms expiring each year.~~
3. **Board officers.** The board annually elects from its membership a president~~and,~~ vice president,and secretary.
4. **Inquiries.** Inquiries regarding the board may be addressed to the executive secretary:

Executive Secretary  
North Dakota State Board of Psychologist Examiners  
P.O. Box ~~7042~~69  
~~Bismarck, ND 58507-7042~~Tyrone, GA 30290  
www.ndsbpe.org

**History:** Amended effective September 1, 1983; March 1, 1985; April 1, 1988; September 1, 2000; April 1, 2007; October 1, 2011; July 1, 2012; [April 1, 2016](#).

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

**Law Implemented:** NDCC 28-32-02

## CHAPTER 66-02-01 LICENSURE AND EXAMINING APPLICATIONS

### Section

66-02-01-01	Application Form
66-02-01-01.1	Regional Accrediting Association
66-02-01-02	Licensure Without Examination [Repealed]
66-02-01-03	Licensing of Psychologists, Industrial-Organizational Psychologists, and Applied Behavior Analysts, <u>or Registration of Applied Behavior Analysts</u> , From Other Jurisdictions
66-02-01-04	Licensure by Equivalency [Repealed]
66-02-01-05	Licensure of Master's Level Psychologists [Repealed]
66-02-01-06	Licensure of Other Applicants
66-02-01-07	Application of Code of Ethics
66-02-01-07.1	Procedural Exception for Processing Multiple <del>Complaints</del> <u>Allegations</u> From the Same <del>Complainant</del> <u>Individual</u>
66-02-01-08	Fees
66-02-01-09	Number of Examinations
66-02-01-09.1	Written Examination
66-02-01-10	Guidelines for Oral Examinations
66-02-01-11	Additional Documentation for Clinical Work or Counseling or Therapy [Repealed]
66-02-01-11.1	Supervised Professional Experience
66-02-01-12	Identifying Psychology and Industrial-Organizational Psychology Doctoral Programs as Substantially Psychological in Nature [Repealed]
66-02-01-12.1	Approved Industrial-Organizational Psychology Program Accrediting Bodies
66-02-01-13	Psychology Resident and Industrial-Organizational Psychology Resident
66-02-01-14	Nonpayment of Annual License Fee or Failure to Complete Continuing Education
66-02-01-15	Requirements for Licensing and Registering Applied Behavior Analysts
66-02-01-16	Limited Practice Without a License

### **66-02-01-01. Application form.**

All individuals who wish to apply for licensing or registration shall ~~fill-out~~do so using the application initiation form provided by the board. Applicants shall complete that form and any online application process set forth on that form. An application is not considered complete until all required information sought through the application process is received in its entirety by the board office.

**History:** Amended effective April 1, 1988; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-12, 43-32-20, 43-32-34

**66-02-01-03. Licensing of psychologists, industrial-organizational psychologists, and applied behavior analysts, or registration of applied behavior analysts, from other jurisdictions.**

1. Licensing of psychologists, industrial-organizational psychologists, and applied behavior analysts~~of, or registration of applied behavior analysts, who are licensed or registered by other jurisdictions~~ will follow the procedures described in North Dakota Century Code sections 43-32-19.1 and 43-51-06.~~A psychologist, industrial-organizational psychologist, or applied behavior analyst licensed and the following:~~

a. A license or registration may be granted to an individual licensed or registered in good standing in another jurisdiction if that other jurisdiction imposes requirements for licensure or registration which are determined by the board to be substantially equivalent to North Dakota.

b. A license or registration may be granted to an individual who holds a certificate of professional qualification in psychology issued by the association of state and provincial psychology boards or its successor.

c. A license may be granted to an individual who meets the requirements of any interstate compact agreement adopted by the state of North Dakota on the practice of psychologists, industrial organizational psychologists, or applied behavior analysts.

2. An applicant for licensure pursuant to North Dakota Century Code ~~sections 43-32-19.1~~ chapters 43-32 and ~~43-51-06~~43-51 must pass the North Dakota oral examination or the North Dakota professional responsibility examination as determined by the board.

3. Upon the board's receipt of a completed application initiation form from an individual licensed or registered in another jurisdiction or certified by the behavior analyst certification board, the board may grant a provisional license or registration that is valid for six months from date of initial application if the applicant is currently in good standing with no disciplinary actions in the previous five years.

**History:** Amended effective September 1, 2000; April 1, 2007; October 1, 2011; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-19.1, 43-51-06

#### **66-02-01-06. Licensure of other applicants.**

All other applicants for licensing will follow the procedure set forth in North Dakota Century Code sections 43-32-20 and 43-32-34.

1. The American psychological association and the Canadian psychological association are accrediting bodies approved by the board under the requirements of subdivision b of subsection 1 of North Dakota Century Code section 43-32-20.

2. The American psychological association and the Canadian psychological association are accrediting bodies approved by the board under the requirements of subdivision b of subsection 2 of North Dakota Century Code section 43-32-20. Applicants for a license in industrial-organizational psychology may also meet the requirements of subdivision b of subsection 2 of North Dakota Century Code section 43-32-20 by demonstrating completion of a program that substantively adheres to the guidelines for education and training at the doctoral level in industrial-organizational psychology of the society for industrial and organization psychology division of the American psychological association, August 1999 version.

3. Applicants for a license in applied behavior analysis that complete certification from the behavior analyst certification board meet the education requirements set forth in subdivision b of subsection 2 of North Dakota Century Code section 43-32-34.

**History:** Amended effective July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20, 43-32-34

#### **66-02-01-07. Application of code of ethics.**

The American psychological association ethical principles of psychologists and code of conduct, amended 2010, shall apply to ~~psychologists, industrial-organizational psychologists, applied behavior analysts, and registered applied behavior analysts~~any individual licensed or registered by the board or any applicant for licensure or registration by the board. The behavior ~~analysts~~analyst certification board ~~guidelines for responsible conduct, revised 2010~~professional and ethical compliance code for behavior

analysts, revised 2014, shall apply to ~~applied behavior analysts and registered applied behavior analysts~~ any individual licensed or registered by the board and practicing or supervising applied behavior analysis.

**History:** Amended effective September 1, 2000; April 1, 2007; October 1, 2011; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-27, 43-32-34

**66-02-01-07.1. Procedural exception for processing multiple ~~complaints~~ allegations from the same ~~complainant~~ individual.**

If ~~a complainant~~ an individual filed ~~a complaint which~~ an allegation that was previously dismissed ~~by the board~~, the board may dismiss subsequent ~~complaints~~ allegations filed by that ~~complainant~~ individual without requesting written responses from the licensees, registrants, or psychology residents if the board determines such allegations are substantially similar to the previously dismissed allegations.

**History:** Effective October 1, 2011; amended effective April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-27.1

**66-02-01-08. Fees.**

~~The license or registration application fee is four hundred fifty dollars plus the actual cost of the written examination when it is required. An annual license fee of one hundred fifty dollars will be charged all psychologists, industrial-organizational psychologists, applied behavior analysts, and registered applied behavior analysts.~~ A completed application initiation form and paid fee must be on file with the board prior to beginning practice under provisional licensure or registration. Failure to pay the annual licensure renewal fee or annual registration renewal fee by November 15 of each calendar year will delay renewal issuance and require the cessation of practice during any period of time the individual has not been issued a valid license or registration. The following deadlines and fees have been set by the board:

<u>Document or Process</u>	<u>Temporal Requirement or Deadline for Receipt by Board Office</u>	<u>Fee Amount</u>
<u>Supervisor form, submitted by psychology resident supervisor or registered behavior analyst supervisor</u>	<u>Prior to beginning practice in North Dakota</u>	<u>\$0</u>
<u>Application initiation form</u>	<u>Accepted any time prior to completion of online application and prior to beginning practice in North Dakota</u>	<u>\$450</u>
<u>Online application</u>	<u>Completed prior to board review</u>	<u>Fee assessed by and payable to the association of state and provincial psychology boards</u>
<u>Provisional licensure letter or provisional registration letter</u>	<u>Issued by the board upon receipt of the completed application initiation form and fee</u>	<u>\$0</u>
<u>Psychology resident letter</u>	<u>Issued by the board upon receipt of the completed supervisor form and application initiation form and fee</u>	<u>\$0</u>
<u>The national written examination for the professional practice of psychology</u>	<u>Occurs after applicant is approved by the board</u>	<u>A fee is assessed by and payable to test company and a fee is assessed by and payable to the testing site</u>
<u>Oral examination</u>	<u>Occurs after applicant is approved by the board or passes the national written examination</u>	<u>\$0</u>

<u>North Dakota professional responsibility examination</u>	<u>Once developed, and approved by the board as a replacement for the oral examination, the exam is taken after applicant is approved by the board or passes the national written examination</u>	<u>\$50</u>
<u>Temporary limited practice certificate</u>	<u>Complete documentation must be received and approved by the board prior to practice</u>	<u>\$0</u>
<u>License renewal or registration renewal application</u>	<u>November 15, for renewal on January 1 of the next year</u>	<u>\$250</u>
<u>Late renewal application</u>	<u>Received after November 15 and prior to November 15 of the next year</u>	<u>\$100</u>
<u>Late request for an extension of time to submit continuing education documentation</u>	<u>Received after November 15 but prior to January 1 of subsequent year</u>	<u>\$100</u>
<u>Continuing education documentation form</u>	<u>Prior to November 15 of reporting cycle</u>	<u>\$0</u>
<u>Incomplete continuing education requirements</u>	<u>Continuing education completed after November 1 of reporting cycle</u>	<u>\$50</u>
<u>Official licensee or registrant verification, per record</u>	<u>Upon request of verification of licensure or registration by third parties</u>	<u>\$15</u>
<u>Official licensee or registrant verification, per record</u>	<u>Upon request of verification of licensure by regulatory body</u>	<u>\$0</u>
<u>Continuing education program approval application</u>	<u>Accepted any time from continuing education sponsors</u>	<u>\$25</u>
<u>Continuing education program approval application</u>	<u>Accepted from licensees or registrants prior to November 1 of next reporting cycle</u>	<u>\$0</u>
<u>Various service related</u>	<u>Prior to processing</u>	<u>Variable fees as set by third parties approved by the board, related to examinations, online application, and payment processing</u>

**History:** Amended effective March 1, 1985; April 1, 1988; September 1, 2000; April 1, 2007; October 1, 2011; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-12, 43-32-13

#### **66-02-01-09. Number of examinations.**

The national written ~~licensing~~ examination will be administered by computer at designated testing sites throughout the calendar year. The North Dakota oral ~~licensing examination~~ examination will be administered by the board at least twice each year. The North Dakota professional responsibility examination will be administered by the board at least twice each calendar year once it is developed and adopted by the board as a replacement for the oral examination.

**History:** Amended effective September 1, 2000; February 1, 2002; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-22

#### **66-02-01-09.1. Written examination.**

The national written examination for psychologists and industrial-organizational psychologists is the examination for the professional practice of psychology. The passing score is a scaled score of 500.



Prior to April 18, 1994, seventy percent correct is considered a passing score. A passing score is required for applicants for licensure as a psychologist or as an industrial-organizational psychologist.

Once the written North Dakota professional responsibility examination is developed, the board may require applicants to pass it as a replacement of the oral examination. The written North Dakota professional responsibility examination will assess the applicant's knowledge of North Dakota law regulating the practice of psychology, industrial-organizational psychology, or applied behavior analysis as well as the applicant's understanding of ethics, professional law, and standards of practice. The written North Dakota professional responsibility examination will be administered by at least two board members who will proctor and score the examination, and recommend pass or fail to the board. An examinee passes the examination if the majority of the board members present at the meeting vote to confirm passage.

**History:** Effective September 1, 2000; amended effective February 1, 2002; April 1, 2007; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20, 43-32-23

#### **66-02-01-10. Guidelines for oral examinations.**

The oral examination will be scheduled as appropriate but not less than twice a year. The examination must assess the applicant's knowledge of North Dakota law regulating the practice of psychology, industrial-organizational psychology, or applied behavior analysis as well as the applicant's understanding of ethics and standards of practice. Specific questions to be used will be selected at the time of the examination from a pool of questions available for that purpose. The oral examination will be administered by an examination committee made up of at least threetwo board members in addition to and any other licensed psychologist whom the board sees fit to add to the examining committee. However, only the board members present may vote. Oral examinations will be scheduled as appropriate but not less than twice a year. The examination committee will use a structured oral examination, will record the applicants' answers, and will discuss the results, and. The board members serving on the examination committee shall recommend a pass or fail to the board. An examinee passes the examination if the majority of the board members will present at the meeting vote with the majority opinion being necessary for the candidate to pass. The examination shall assess the applicant's knowledge of North Dakota law regulating the practice of psychology, industrial-organizational psychology, or applied behavior analysis as well as the applicant's understanding of ethics and standards of practice. Specific questions to be used will be selected at the time of the examination from a pool of questions available for that purpose to confirm passage.

**History:** Effective March 1, 1985; amended effective April 1, 1988; April 1, 2007; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20, 43-32-22, 43-32-23, 43-32-34

#### **66-02-01-11.1. Supervised professional experience.**

1. Applicants for licensure as a psychologist must complete one thousand five hundred hours of supervised predoctoral internship in the practice of psychology. At least one hundred hours of supervision is required, at least fifty of which must be one to one. Successful completion of an American psychological association or Canadian psychological association accredited internship will be accepted as fulfilling this requirement. Any other supervised predoctoral internship experience must be described in detail by the applicant, including nature of service setting or settings, nature of consumers served, nature and amount of supervision, and specific skills in which the applicant demonstrated proficiency on forms provided by the board. The supervisor or supervisors must corroborate the areas of competence claimed by the applicant. In addition, an applicant for licensure as a psychologist must complete one of the following:

- a. One thousand five hundred hours of supervised postdoctoral experience in the practice of psychology. At least one hundred hours of supervision is required, at least fifty of which must be one to one with a psychologist licensed in good standing. Successful completion of an American psychological association or Canadian psychological association accredited postdoctoral program will be accepted as fulfilling this requirement. Any other supervised postdoctoral experience must be described in detail by the applicant, including nature of service setting or settings, nature of consumers served, nature and amount of supervision, and specific skills in which the applicant demonstrated proficiency on forms provided by the board. The supervisor or supervisors must corroborate the areas of competence claimed by the applicant.
- b. One thousand five hundred hours of additional supervised predoctoral training experience in the practice of psychology. At least one hundred hours of supervision is required, at least fifty of which must be one to one with a psychologist licensed in good standing. In addition, this training experience must meet all of the following requirements:
  - (1) Be part of a doctoral program that meets requirements of subdivision b of subsection 1 of North Dakota Century Code section 43-32-20.
  - (2) Be completed within six years of the award of the terminal doctoral degree.
  - (3) Be completed within ten years of first application for licensure.
  - (4) Be completed following any introductory practicum experience in applied professional psychology or psychotherapy of a minimum duration of six hundred hours.
  - (5) Be part of an individualized written plan for an organized, sequential series of supervised experiences of increasing complexity.
  - (6) Occur outside of the classroom setting and involve the trainee's direct delivery of supervised psychological services in a practice, agency, institution, counseling center, graduate training clinic, or other setting approved by the director of training or designee.
  - (7) Consist of activities defined as the practice of psychology by subsection 6 of North Dakota Century Code section 43-32-01.
  - (8) Occur in placements that are made or approved in advance by the doctoral program director of training or designee.
  - (9) Occur in placements in which a licensed psychologist is directly responsible for the integrity and quality of the training experience and specifies training objectives in terms of the competencies expected of the trainee.
  - (10) Have an identifiable licensed psychologist who serves as the primary supervisor of the trainee, is clearly available to and professionally responsible for the trainee's clients or patients, has been licensed for at least three years, and is licensed in the jurisdiction in which the training occurs.
  - (11) Be part of a sequential training plan that consists of no less than thirty weeks with a weekly onsite presence of no less than fifteen hours.
  - (12) Provide, on average, weekly individual face-to-face supervision, which may include remote face-to-face audio and video interactions, devoted to the trainee's cases at a ratio of no less than one hour per fifteen hours onsite and no less than one hour per week. No less than fifty percent of the supervision required in this paragraph shall

be provided by the primary supervisor. The remaining face-to-face supervision required in this paragraph may be individual or group supervision provided by a licensed psychologist who has been licensed for at least three years. Supplemental individual or group supervision in excess of the minimum ratio required is encouraged, and may be provided by a psychologist, school psychologist, other licensed mental health professional, or a psychology trainee under an umbrella supervision arrangement, but it may not replace the weekly individual face-to-face supervision requirements.

- (13) May include the use of secure remote technologies, such as telephone, internet, or online communications as a supplemental training and consultation aid and for supervision in excess of the minimum ratio required, although it may not replace the minimum weekly face-to-face individual supervision requirement.
  - (14) Must include on average at least one additional hour per week in learning activities, such as additional face-to-face individual supervision, group supervision, case conference or grand rounds, didactic consultations with psychologists or other appropriate licensed mental health professionals, guided professional readings, seminars, or cotherapy with a licensed psychologist or other appropriate professional.
  - (15) Must include regularly scheduled and documented interaction concerning the trainee's progress between the primary supervisor and the director of training at the graduate program or designee, and copies of such documentation will be provided to the board for review upon request.
2. Applicants for licensure as an industrial-organizational psychologist must complete three thousand hours of supervised experience in the practice of industrial-organizational psychology. At least one thousand five hundred hours must be completed after the granting of the doctoral degree. Applicants must submit an individualized supervision plan which that is subject to approval by the board. Supervisors of industrial-organizational psychologist applicants must be licensed in their jurisdiction of practice. The supervised experience of applicants for licensure as an industrial-organizational psychologist must be consistent with the applicant's intended area of practice.

**History:** Effective September 1, 2000; amended effective April 1, 2007; October 1, 2011; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20, 43-32-20.1

### **66-02-01-13. Psychology resident and industrial-organizational psychology resident.**

1. A person intending to perform services as a psychology resident or an industrial-organizational psychology resident ~~shall inform the board on a form prepared by the board prior to performing services. Within six months of registering with the board, the psychology resident or industrial-organizational psychology resident must file with the board a complete application for licensure and be determined by the board to be eligible for licensure.~~ prior to engaging in any practice related to the scope of psychology or applied behavior analysis, shall:
  - a. Initiate an application for licensure with the board on the application initiation form provided by the board;
  - b. Pay the application fee to the board; and
  - c. Ensure a supervisor has filed a completed supervisor form to the board.

2. The applicant shall complete the online application requirements set forth on the application initiation form and shall ensure the completed online application is submitted to the board within three months of the date of initiation of application.

a. A psychology resident or industrial-organizational psychology resident may sit for the required national written examination if the required application and fee have been filed with the board and the board determines the applicant to be eligible for licensure upon completion of examinationexaminations and postdoctoral requirements.

b. A psychology resident or an industrial-organizational psychology resident who has passed the national written examination may sit for the oral examination after completion of six months of residency if the required application and fee have been filed with the board or a replacement examination approved by the board.

c. The psychology resident or an industrial-organizational psychology resident and supervising psychologist or psychologists must complete-update the online application report of all completed supervised postdoctoral experience for approval of the board prior to and ensure that the updated online application is forwarded to the board.

d. The board shall review recommendations related to the applicant's examinations and the applicant's supervised practice hours. An applicant must be licensed if a majority of the board approves the applicant for licensure.

e. A person may have psychology resident or industrial-organizational psychology resident status for up to five~~three~~ years.

2.3. A psychology resident or industrial-organizational psychology resident must specify that person's individual's professional title as such in reports, letters, business cards, and public presentations, and inform service recipients of the supervisor's identity and contact information for the services provided.

3.4. Supervising psychologists of psychology residents must have at least three years of postlicensure experience be licensed in good standing for at least three years. Supervising psychologists of psychology residents must have adequate training, knowledge, and skill to render competently, or have available consultation for, any psychological service which their supervisee undertakes. Supervising psychologists must meet the continuing education requirements in section 66-03-01-04.

4.5. To verify completion of the residency, the supervising psychologist of the psychology resident or the industrial-organizational resident shall submit documentation to the board of the number and nature of supervised hours of experience.

**History:** Effective September 1, 2000; amended effective April 1, 2007; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20, 43-32-20.1, 43-32-30

#### **66-02-01-14. Nonpayment of annual license fee or failure to complete continuing education.**

If a licensee or registrant fails to pay the annual fee or complete the required continuing education report by November fifteen for the year beginning the subsequent January first, the license or registration expires. The licensee or registrant may not practice psychology, industrial-organizational psychology, or applied behavior analysis in the state of North Dakota unless an extension of time is granted or the license is renewed by payment of the annual renewal fee and late fee, and documentation confirming the licensee's completion of the required continuing education is submitted and approved by the board. An individual who does not hold a valid North Dakota license or registration for more than one year because of failure to meet this requirement may reapply for licensure or registration by:

1. Completing an application initiation form and the online application;

2. Paying any required fees; and

3. Passing any written or oral examinations determined appropriate by the board.

The issuance of licensure renewal or registration renewal requires an affirmative vote of the board.

**History:** Effective September 1, 2000; amended effective April 1, 2007; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-08.1, 43-32-08.2, 43-32-13, 43-32-14

**66-02-01-15. Requirements for licensing and registering applied behavior analysts.**

1. The board may grant an applied behavior analyst license to an applicant, ~~not employed on August 1, 2011,~~ in the practice of applied behavior analysis, who meets all of the following requirements:
  - a. The applicant has a degree from a school or college that meets one of the following requirements:
    - (1) A degree meeting the requirements of subdivision b of subsection 1 of North Dakota Century Code section 43-32-20.
    - (2) A doctorate or master's degree from a program accredited by the association for behavior analysis international or approved by the behavior analyst certification board.
  - b. The applicant has passed the board-certified behavior analyst examination offered by the behavior analyst certification board.
  - c. The applicant is certified by the behavior analyst certification board.
  - d. The applicant has passed the North Dakota oral examination.
2. The board may grant an applied behavior analyst registration to an applicant, ~~not employed on August 1, 2011,~~ in the practice of applied behavior analysis, who meets all of the following requirements:
  - a. The applicant has a bachelor's degree from a school or college that meets one of the following requirements:
    - (1) A bachelor's degree in a program accredited by the association for behavior analysis international.
    - (2) A bachelor's degree in a program approved by the behavior analyst certification board.
    - (3) A bachelor's degree with a major in psychology or other human service field that includes all of the following coursework:
      - (a) Three semester credits, or the equivalent quarter credits, in introduction to psychology.
      - (b) Six semester credits, or the equivalent quarter credits, in learning theory and behavior intervention.
      - (c) Three semester credits, or the equivalent quarter credits, in abnormal psychology.

(d) Four semester credits, or the equivalent quarter credits, in developmental psychology and autism spectrum disorder topics.

~~(4) A bachelor's degree with a major in a human service field that includes all of the following coursework:~~

~~(a) Three semester credits, or the equivalent quarter credits, in introduction to psychology.~~

~~(b) Six semester credits, or the equivalent quarter credits, in learning theory and behavior intervention.~~

~~(c) Three semester credits, or the equivalent quarter credits, in abnormal psychology.~~

~~(d) Four semester credits, or the equivalent quarter credits, in developmental psychology and autism spectrum disorder topics.~~

b. The applicant has passed the board-certified assistant behavior analyst examination offered by the behavior analyst certification board, or achieved a score of at least four hundred fifty on the national written examination for the professional practice of psychology.

~~c. The applicant is certified by the behavior analyst certification board or the North Dakota association on behavior analysis.~~

~~d.~~ The applicant has provided a list of licensed psychologists and licensed applied behavior analysts supervising the applicant. If registered, the applicant must promptly notify the board of any changes in the list.

e. The applicant has passed the North Dakota oral examination or a replacement examination approved by the board.

~~3. The board may grant an applied behavior analyst license to an applicant, employed on August 1, 2011, in the practice of applied behavior analysis, who is exempt under subsection 7 of North Dakota Century Code section 43-32-30, and meets all of the following requirements:~~

~~a. The applicant applies before January 1, 2013.~~

~~b. The applicant provides a written statement from the applicant's employer that the applicant's employment remains satisfactory.~~

~~c. The applicant provides a letter of endorsement from the applicant's supervising psychologist.~~

~~4. The board may grant an applied behavior analyst license to an applicant, employed on August 1, 2011, in the practice of applied behavior analysis, who has a master's degree in psychology, and meets all of the following requirements:~~

~~a. The applicant applies before January 1, 2013.~~

~~b. The applicant provides a written statement from the applicant's employer that the applicant's employment remains satisfactory.~~

~~c. The applicant provides written verification from the applicant's employer that the applicant is employed as a behavior analyst.~~



- ~~5. The board may grant an applied behavior analyst registration to an applicant, employed on August 1, 2011, in the practice of applied behavior analysis, who meets all of the following requirements:~~
- ~~a. The applicant applies before January 1, 2013.~~
  - ~~b. The applicant has a bachelor's degree.~~
  - ~~c. The applicant provides a written statement from the applicant's employer that the applicant's employment remains satisfactory.~~
  - ~~d. The applicant provides written verification from the applicant's employer that the applicant is employed as a behavior analyst.~~
  - ~~e. The applicant provides a written plan for supervision by a psychologist or applied behavior analyst. The plan must be approved by the board.~~

**History:** Effective October 1, 2012; amended effective April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-34





8. ~~Number of hours of supervision each week:~~

~~Signature of supervisor:~~

~~Date:                      Address:-~~

~~If any of the above questions required additional space, please use this page or attach pages as needed.~~

~~**History:** Amended effective March 1, 1985; September 1, 2000; July 1, 2012.~~

## CHAPTER 66-03-01

### 66-03-01-01. Continuing education.

Every psychologist, industrial-organizational psychologist, applied behavior analyst, and registered applied behavior analyst shall complete continuing education credits relevant to the practice of psychology, industrial-organizational psychology, or applied behavior analysis. Reporting cycles are two years, commencing with November first of the year in which the licensee or registrant obtained a North Dakota license or registration, except that individuals licensed prior to January 1, 1992, have reporting cycles ~~which~~that began on November 1, 1992.

**History:** Effective February 1, 1995; amended effective April 1, 2007; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-08.1, 43-32-08.2

### 66-03-01-03. Board approval.

Any continuing education program relevant to psychology, industrial-organizational psychology, or applied behavior analysis and to be applied as continuing education credits is subject to board approval, except continuing education programs sponsored or approved by the American psychological association, the Canadian psychological association, the North Dakota psychological association, other state or provincial psychological associations, or any other scientific or professional organization whose continuing education program is clearly relevant to the practice of psychology. Other scientific or professional organizations include association on behavior analysis international, behavior analyst certification board, North Dakota association on behavior analysis, American association on intellectual and developmental disabilities, and northland association for behavior analysis. Continuing education programs may be approved at any time by the board by submission of ~~an~~a continuing education program approval application form by the sponsoring organization or an individual and payment of a twenty-five dollar fee.

**History:** Effective February 1, 1995; amended effective September 1, 2000; April 1, 2007; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-08.1

### 66-03-01-04. Categories of continuing education programs and credits.

A minimum of three continuing education credits per reporting cycle must be in the area of professional ethics, law, or jurisprudence. ~~Effective for the reporting cycle beginning November 1, 2012, and subsequent reporting cycles, a~~A minimum of three continuing education credits per reporting cycle must be in the area of supervision for licensees supervising psychology residents or registered applied behavior analysts. The board recognizes the following categories of continuing education programs or activities and established credit hours:

1. Formal continuing education programs that may consist of courses, workshops, professional psychology conventions or conferences, or institutes. Such programs must include both instructor and attendee real-time interaction on a verbal level whether in person or through interactive video technologies. The number of continuing education credits assigned by an association recognized by the board will be accepted. Otherwise the credits will be one credit per clock-hour.
2. Regularly scheduled postgraduate courses offered by an accredited college or university ~~which~~that are relevant to the practice of psychology, industrial-organizational psychology, or applied behavior analysis. One quarter hour of academic credit constitutes ten continuing education credits. One semester hour of academic credit constitutes fifteen continuing education credits. Documentation by transcript is required.

3. Writing or speaking, including a paper or other presentation at a formal professional meeting, a paper published in a professional journal, or a book or an original chapter in an edited book in the area of psychology or a related field. Credit will be granted for the year of publication or presentation in the case of a paper. Graduate course teachings within a higher education setting will be granted at twenty continuing education credits for the initial year of offering. Continuing education credits will be granted at the rate of five for each paper or presentation, fifteen for each chapter in a book, fifteen for editing a book, and twenty for the publication of a book. Continuing education credits will be granted only once for any given paper or presentation. A maximum of twenty continuing education credits per reporting cycle will be granted for continuing education programs in this category.
4. Correspondence or online courses, ~~tapes~~recordings, or independent readings approved by the board or by one of the associations recognized by the board which include an examination component successfully completed by the licensee or registrant. A maximum of twenty continuing education credits per reporting cycle will be granted for continuing education programs in this category.

**History:** Effective February 1, 1995; amended effective September 1, 2000; April 1, 2007; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-08.1

#### **66-03-01-05. Verification of continuing education credits and programs.**

1. At the end of the two-year reporting cycle, each licensee or registrant ~~shall~~must submit a completed and signed statement on a form provided by the board attesting to satisfaction of the continuing education requirement. The licensee or registrant shall list the activities submitted for continuing education credit and the amount of credit claimed for each ~~one~~.
2. The licensee or registrant may not submit the specific verification of each continuing education experience claimed, but must maintain a file of such verification documentation for two years following the submission of the reporting form.
3. At each reporting period, the board will select a random ~~sample~~sampling of approximately ten percent of the licensees and registrants and require them to provide verification of the continuing education experiences claimed on the reporting form.

**History:** Effective February 1, 1995; amended effective April 1, 2007; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-08.1, 43-32-08.2

#### **66-03-01-06. Failure to comply with the continuing education requirement.**

If a licensee or registrant does not satisfy the number of credits required for a two-year cycle, the board may exercise the following options:

1. Extension of time to complete the requirement. ~~A licensee or registrant may request an extension of time because~~ may be granted if sufficient evidence of illness or serious extenuating circumstances amounting to good cause is presented in writing to the board. Requests for extension are due by November first of the reporting year. If the extension request is received after November first of the reporting year, the applicant shall submit the fee for a late request of an extension of time to submit continuing education documentation along with the request for an extension. The approval of an extension and the amount of time granted to complete the requirements are at the sole discretion of the board. ~~In such cases~~ if a request for an extension is granted the licensee will be required to continue to fulfill the continuing education requirement for the next two-year cycle ~~as well, in addition to any~~

continuing education requirements that may apply to the extension period. A licensee who receives an extension shall undergo a mandatory audit of continued education documentation for the two reporting cycles following the conclusion of the extension period.

2. ~~Refuse to renew a~~Expired license or registration. A license or registration that is ~~not renewed~~expired because of failure to meet the continuing education requirements will be renewed if, within one year from the date of nonrenewal, the licensee or registrant ~~demonstrates to the secretary of the board the continuing education requirements have been satisfied and pays the renewal fee and a late fee of twenty dollars~~reapplies for renewal, documents the completion of the previous reporting period continuing education requirements, pays the renewal fee, and pays the late fee established by the board in the fee section above.

**History:** Effective February 1, 1995; amended effective September 1, 2000; April 1, 2007; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-08.1, 43-32-08.2

**TITLE 69.5**  
**RACING COMMISSION, NORTH DAKOTA**



APRIL 2016

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NORTH DAKOTA RACING COMMISSION RULES**

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**CHAPTER 69.5-01-08  
PARI-MUTUEL WAGERING SYSTEMS**

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#### **69.5-01-08-01. General.**

Each association may permit wagering only on races conducted by each association on the grounds of such association except as otherwise permitted by the commission and state law. [A licensee that is hosting pools may permit wagering only through the systems and methods approved by the commission.](#) All such permitted wagering must be under the pari-mutuel system employing a totalizator system approved by the commission. All other systems of wagering other than pari-mutuel are prohibited.

**History:** Effective July 1, 1989; amended effective January 1, 2008; [April 1, 2016](#).

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

#### **69.5-01-08-02. Totalizator system.**

Each association shall install and operate during its meeting a totalizator system approved by the commission and such system must be tested prior to and during the meeting as required by the commission. [A licensee that is hosting pools shall use only a totalizator system approved by the commission.](#)

**History:** Effective July 1, 1989; [April 1, 2016](#).

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

#### **69.5-01-08-03. Records.**

The pari-mutuel (mutuels) manager shall maintain complete records of all wagering so the commission may review such records for any race including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest, and such other information as the commission may require. Such wagering records must be retained by each association [or licensee](#) and safeguarded for a period of time specified by the commission.

- ~~1. When a patron makes a written complaint regarding the pari-mutuel department to an association, the association shall immediately issue a complaint report, setting out:
  - ~~a. The name of the complainant;~~
  - ~~b. The nature of the complaint;~~
  - ~~c. The name of the persons, if any, against whom the complaint was made;~~
  - ~~d. The date of the complaint;~~
  - ~~e. The action taken or proposed to be taken, if any, by the association.~~~~
- ~~2. The association shall submit every complaint report to the commission within forty-eight hours after the complaint was made.~~

**History:** Effective July 1, 1989; amended effective January 1, 2008; [April 1, 2016](#).

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11



#### 69.5-01-08-04. Calculation and distribution of pools.

1. **General.** The only pari-mutuel wagering pools permitted are ~~for win, place, show, daily double, exacta, quinella, trifecta, pick (n), superfecta, twin trifecta, tri-superfecta, twin superfecta, twin quinella, mad-scramble, those designated in the association of racing commissioners international model rules of racing version 6.0, rules ARCI-004-105 part I, A through X, and pari-mutuel plus, pick 1-2-3, pick 1-2-3-4-5, 123racing Pick-n Wager®, and Tote-X® win.~~ In each pool there must be a separate and independent calculation and distribution. From each pool there must be deducted by each association or licensee the commissions as provided by state law. The remainder of the moneys in the pool ~~constitute the net pool for distribution~~ must be distributed as payoff to ticketholders as set out ~~in subsections 2 through 18~~ therein.

~~2. **Win pool.** The amount wagered on the horse or betting interest which finished first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the horse or betting interest finishing first, such quotient being the profit per dollar wagered to win; payoff includes return of amount wagered and profit thereon.~~

~~a. In the event of a dead heat for first involving horses of two different betting interests, the win pool is distributed as if a place pool; if involving horses of three different betting interests, the win pool is distributed as if a show pool.~~

~~b. In the event no win ticket is sold on the horse which finishes first, the net win pool is distributed to holders of win tickets on the horse finishing second.~~

~~3. **Place pool.** The amounts wagered to place on the first two horses to finish are deducted from the net pool to determine the profit; the profit is divided into two equal amounts; one-half of the profit is divided by the amount wagered to place on the first finisher, such quotient being the profit per dollar wagered to place on the first finisher; and one-half of the profit is divided by the amount wagered to place on the second finisher, such quotient being the profit per dollar wagered to place on such second finisher; payoffs include return of amount wagered and profit thereon as to each of the first two finishers.~~

~~a. In the event of a dead heat for first between horses representing the same betting interests, the place pool is distributed as if a win pool; if between horses representing two different betting interests, the place pools distributed as if one betting interest finished first and the other finished second; if between horses representing three different betting interests, the place pool is distributed as if a show pool.~~

~~b. In the event of a dead heat for second between horses representing the same betting interest, the place pool is distributed as if no dead heat occurred; if between horses representing two or more different betting interests, the profit is divided in half, with one-half allocated for wagers to place on the horse which finished first, and other half divided equally so as to allocate one-fourth of the profit on the net place pool for wagers to place on each of the two horses finishing in a dead heat for second, or one-sixth of the profit for wagers to place on each of three horses finishing in a dead heat for second.~~

~~c. In the event the first and second finishers comprise a single betting interest, the place pool is distributed as if a win pool.~~

~~d. In the event no place ticket is sold on a horse which finishes first or second, then the horse which finished third shall replace the horse in the distribution of wagers in the place pool.~~

~~4. **Show pool.** The amounts wagered to show on the first three horses to finish are deducted from the net pool to determine the profit. The profit is divided into three equal amounts; one-third of the profit is divided by the amount wagered to win on the first finisher, such~~

quotient being the profit per dollar wagered to show on such first finisher; one-third of the profit is divided by the amount wagered to show on the second finisher, such quotient being the profit per dollar wagered to show on such second finisher; and one-third of the profit is divided by the amount wagered to show on the third finisher, such quotient being the profit per dollar wagered to show on such third finisher. Payoffs include return of amount wagered and profits thereon as to each of the first three finishers.

~~a. In the event of a dead heat for first: between two horses involving different betting interests, or three horses involving three different betting interests, the show pool is distributed as if no dead heat occurred; if between two horses involving the same betting interest, two-thirds of the profit is allocated to wagers to show on the coupled betting interest, and one-third allocated to wagers to show on the other horse among the first three finishers; if between three horses involving one betting interest, the show pool is distributed as if a win pool.~~

~~b. In the event of a dead heat for second: between two horses involving two different betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving the same betting interest, two-thirds of the profit is allocated to wagers to show on the coupled betting interest, and one-third allocated to wagers to show on the horse finishing first; if between three horses involving one, two, or three betting interests, one-third of the profit is allocated to wagers to show on the horse finishing first, and the remaining two-thirds of the profit is divided equally by the number of betting interests finishing in a dead heat for second for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for second.~~

~~c. In the event of a dead heat the third: between horses involving the same betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving two or more betting interests, two-thirds of the profit shall be allocated to wagers to show on the first two finishers, and the remaining one-third is divided equally by the number of betting interests finishing in a dead heat for third for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for third.~~

~~d. In the event the first three horses to finish comprise one betting interest, the show pool must be distributed as a win pool. In the event two horses coupled as a single betting interest finish first and second, or first and third, or second and third, two-thirds of the profit must be allocated to wagers to show on the other horse among the first three finishers.~~

~~e. In the event one horse coupled in the betting by reason of being in the mutuel field or part of a mutuel entry finishes first or second and another horse included in the same betting interest finishes in a dead heat for third: one-half of the profit in the show pool must be allocated to wagers on such field or entry, one-third of the profit in the show pool must be allocated to wagers on the horse finishing first or second, and the remaining one-sixth of such profit must be allocated to wagers on the horse finishing in a dead heat for third with such field or entry.~~

~~f. In the event only two horses finish, the show pool, if any, must be distributed as if a place pool; if only one horse finishes, the place and show pools, if any, must be distributed as if a pool; if no horse finishes, all money wagered on such race must be refunded upon presentation and surrender of pari-mutuel tickets sold thereon. In the event no show ticket is sold on a horse which finishes first, or second, or third, then, the horse which finished fourth shall replace that horse in the distribution of wager in the show pool.~~

~~5. **Daily double pool.** The amount wagered on the winning combination, such being the horse or betting interest which finishes first in the first daily double race, is deducted from the net pool~~

~~to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning daily double combination; payoff includes the amount wagered and profit thereon.~~

~~a. In the event of a dead heat for first involving two different betting interests, in one of the two daily double races, the daily double pool is distributed as if a place pool, with half the profit allocated to wagers combining the single winner of one daily double race and of the betting interests involved in the dead heat in the other daily double race, with the other half of the profit allocated to wagers combining the single winner of one daily double race and the other betting interest involved in the dead heat in the other daily double race.~~

~~b. In the event of dead heats for first involving different betting interests in each of the daily double races, resulting in four, or six, or nine, winning combinations for proportionate allocation for each such winning daily double wager.~~

~~c. In the event no daily double ticket is sold combining the horse or betting interest which finishes first in one of the daily double races, the daily double pool is distributed as if a win pool with the profit allocated to the wagering combination which includes the horse or betting interest which finished first in one of the daily double races.~~

~~d. In the event no daily double ticket is sold combining the horses or betting interest which finished first in both the first and second race of the daily double, then the winning combination for distribution of the daily double profit must be that combining the horses or betting interests which finished second in each of the daily double races.~~

~~e. If after daily double wagering has commenced and a horse not coupled with another as a betting interest in the first race of the daily double is excused by the stewards or is prevented from racing because of failure of the starting gate to open properly, then daily double wagers combining such horse must be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.~~

~~f. If, prior, to closing of the daily double wagering, a scheduled starter in the second half on the daily double which is not coupled in the betting with another horse is excused by the stewards, then daily double wagers combining such horse must be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.~~

~~g. If after the first race of the daily double has been run, and a horse not coupled with another as a betting interest in the second race of the daily double is excused by the stewards or prevented from racing because of failure of the starting gate door to open properly, then daily double wagers combining the winner of the first daily double race with such horses prevented from racing in the second daily double race must be allocated consolation payoffs.~~

~~h. Consolation daily double payoffs must be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or betting interest scheduled to start in the second daily double race, such quotient being the consolation payoff per dollar wagered combining the winner of the first daily double with such horse prevented from riding in the second daily double race. Such consolation payoffs must be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.~~

~~i. If for any reason the first daily double race is canceled or declared "no race" by the stewards, then the entire daily double pool must be refunded upon presentation and surrender of daily double tickets thereon. If for any reason the second daily double race is canceled or declared "no race" by the stewards after the first daily double race is~~

~~declared official, then the net daily double pool must be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.~~

~~j. If no daily double ticket is sold requiring distribution, then the entire daily double pool must be refunded upon presentation and surrender of daily double tickets thereon.~~

~~6. **Quinella pool.** The amount wagered on the winning combination, such being the first two finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning quinella combination; payoff includes the amount wagered and profit thereon.~~

~~a. In the event of a dead heat for first: between horses involving two different betting interests, the net quinella pool is distributed as if no dead heat occurred; if between horses involving three different betting interests, the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the three horses finishing in a dead heat for first.~~

~~b. In the event of a dead heat for second: between horse involving two different betting interests, the net quinella pool is distributed as if a place pool and is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second; if between horses involving three different betting interests, the net quinella pool is distributed as if a show pool, and allocated to wagers combining the first horse with each of the three horses finishing in a dead heat for second.~~

~~c. In the event horses representing a single betting interest finish first and second, the net quinella pool must be allocated to wagers combining such single betting interest with the horse or betting interest which finishes third.~~

~~d. In the event no quinella ticket is sold combining:~~

~~(1) The first finisher with one of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second.~~

~~(2) The second finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two horses which finished in the dead heat for second.~~

~~(3) The first finisher with either of the horses finishing in a dead heat for second or combining the two horses which finished in a dead heat for second, then the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the first three finishers with any other horses.~~

~~(4) The first two finishers, then the net quinella pool must be distributed as if a place pool and is allocated to wagers combining the first finisher with any other horses; and wagers combining the second finisher with any other horse.~~

~~(5) Horses or betting interest as would require distribution, then the entire quinella pool must be refunded upon presentation and surrender of quinella tickets thereon.~~

~~7. **Exacta pool.** The exacta pool is a contract by the purchaser of a ticket combining two horses in a single race, selecting the two horses that will subsequently finish first and second in that race. Payment of the ticket may be made only to the purchaser who has selected the same order of finish as officially posted.~~

- ~~a. The exacta is not a parlay and has no connection with or relation to the win, place, and show betting and will be calculated as an entirely separate pool.~~
- ~~b. If no ticket is sold on the winning combination of an exacta pool, the net pool must be distributed equally between holders of tickets selecting the winning horse to finish first or holders of tickets selecting the second-place horse to finish second or both.~~
- ~~c. If no ticket is sold that would require distribution of an exacta pool to winners as above defined, the association shall make a complete and full refund of exacta pool.~~
- ~~d. In case of a dead heat between two horses for first place, the net exacta pool must be calculated and distributed as a place pool to holders of tickets of the winning combinations. In case of a dead heat between two horses for second place, the exacta pool must be figured as a place pool, the holders of tickets combining the winning horse and the two horses finishing second participating in the payoff.~~
- ~~e. In the event of a dead heat for second place, if no ticket is sold on one of the two winning combinations, the entire net pool must be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the exacta pool must be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.~~
- ~~f. In the event of an entry finishing first and second, the net exacta pool must be distributed to holders of tickets selecting the entry to win combined with the horse finishing third.~~
- ~~8. **Trifecta pool.** The trifecta pool is a contract by the purchaser of a ticket combining three horses in a single race that will subsequently finish first, second, and third in that race. Payment of the ticket may be made only to the purchaser who has selected the same order of finish as officially posted.~~
  - ~~a. The trifecta is not a parlay and has no connection with the relation to the win, place, and show betting and will be calculated as an entire separate pool.~~
  - ~~b. If no ticket is sold on the winning combination of the trifecta pool, the net pool must be distributed in that order. If no ticket is sold combining the win and place finish then that pool must be distributed to the holders of tickets selecting the winner. If less than three horses finish the payoff will be made to holders of tickets selecting the finishing horses in order, ignoring the balance of the selection.~~
  - ~~c. If no ticket is sold that would require distribution of the net trifecta pool to a winner as above defined, the association shall make a full refund of the trifecta pool.~~
  - ~~d. In the event of a dead heat or dead heats all trifecta tickets selecting the correct order of finish counting a horse in a dead heat as finishing in either position dead heated must be winning tickets. The payoff will be calculated as a place pool.~~
  - ~~e. In the event of a scratch in the trifecta, no exchanges will be made. All tickets which include the scratched horse are eliminated from further participation of the trifecta pool and will be refunded.~~
- ~~9. **Pick (n) pools.**~~
  - ~~a. The pick (n) requires selection of the first place finisher in each of a designated number of contests. The association must obtain written approval from the commission concerning the scheduling of pick (n) contests, the designation of one of the methods~~



~~prescribed in subdivision b, and the amount of any cap to be set on the carryover. Any changes to the approved pick (n) format require prior approval from the commission.~~

~~b. The pick (n) pool shall be apportioned under one of the following methods:~~

~~(1) Method 1, pick (n) with carryover. The net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; and the remainder shall be added to the carryover.~~

~~(2) Method 2, pick (n) with minor pool and carryover. The major share of the net pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second-greatest number of pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) contests, the minor who selected the first-place finisher in the greatest number of pick (n) contests; and the major share shall be added to the carryover.~~

~~(3) Method 3, pick (n) with no minor pool and no carryover. The net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests, based upon the official order of finish. If there are no winning wagers, the pool is refunded.~~

~~(4) Method 4, pick (n) with minor pool and no carryover. The major share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the greatest number of pick (n) contests, based upon the official order of finish. The minor horse of the pick (n) pool shall be distributed to those who selected the first-place finisher in the second-greatest number of pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second-greatest number of pick (n) contests, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool. If there are no winning wagers, the pool is refunded.~~

~~(5) Method 5, pick (n) with minor pool and no carryover. The major share of net pick (n) pool shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish. The minor place finisher in the second-greatest number of pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all pick (n) contests, the entire net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests. If there are no wagers selecting the first-place finisher in a second-greatest contest, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) contests. If there are no winning wagers, the pool is refunded.~~

~~(6) Method 6, pick (n) with minor pool, jackpot pool, major carryover and jackpot carryover. Predetermined percentages of the net pick (n) pool shall be set aside as a major pool, minor pool, and jackpot pool. The major share of the net pick (n) pool and the major carryover, if any, shall be distributed to those who selected the first-place finisher of each of the pick (n) contests, based on the official order of finish. If there are no tickets selecting the first-place finisher in each of the pick (n) contests, the major net pool shall be added to the major carryover. If there is only~~

~~one single ticket selecting the first place finisher of each of the pick (n) contests, based on the official order of finish, the jackpot share of the net pick (n) pool and the jackpot carryover, if any, shall be distributed to the holder of that single ticket, along with the major net pool and the major carryover, if any. If more than one ticket selects the first place finisher of each of the pick (n) contests the jackpot net pool shall be added to the jackpot carryover. The minor share of the net pick (n) pool shall be distributed to those who selected the first place finisher of the second greatest number of pick (n) contests, based on the official order of finish. If there are no wagers selecting the first place finisher of all pick (n) contests, the minor net pool of the pick (n) pool shall be distributed as a single price pool to those who selected the first place finisher of the greatest number of pick (n) contests.~~

~~(7) Method 7, pick (n) with no minor pool and carryover. The net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first place finisher in each of the pick (n) contests, based on the official order of finish. If there are no such wagers, the net pick (n) pool shall be added to the carryover.~~

~~c. If there is a dead heat for the first in any pick (n) contests involving:~~

~~(1) Contestants representing the same betting interest, the pick (n) pool shall be distributed as if no dead heat occurred.~~

~~(2) Contestants representing two or more betting interests, the pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.~~

~~d. Should a betting interest in any of the pick (n) contests be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the host association for the contest as the close of wagering on that contest, shall be substituted for the scratch betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program combinations with substituted betting interests which became winners as a result to the substitution, in addition to the normal winning combination.~~

~~e. The pick (n) pool shall be canceled and all pick (n) wagers for the individual performance shall be refunded if:~~

~~(1) All three contests included as part of a pick 3 are canceled or declared no contest.~~

~~(2) At least three contests included as part of a pick 4, pick 5, or pick 6 are canceled or declared no contest.~~

~~(3) At least four contests included as part of a pick 7, pick 8, or pick 9 are canceled or declared no contest.~~

~~(4) At least five contests included as part of a pick 10 are canceled or declared no contest.~~

~~f. If at least one contest included as part of a pick (n) is canceled or declared no contest, but not more than the number specified in subdivision e, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous performances.~~

~~g. The pick (n) carryover may be capped as designated level approved by the commission so that if, at the close of any performance, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the pick (n) carryover is frozen, one hundred percent of the net pool, part of which ordinarily would be added to the pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of pick (n) contests for that performance.~~

~~h. A written request for permission to distribute the pick (n) carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.~~

~~i. Should the pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first place finisher in each of the pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests. The pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:~~

~~(1) Upon written approval from the commission as provided in subdivision h.~~

~~(2) Upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick (n) wagering to another or when the pick (n) is discontinued.~~

~~(3) On the closing performance of the meet or split meet.~~

~~j. If for any reason, the pick (n) carryover must be held over to the corresponding pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick (n) carryover plus accrued interest shall then be added to the net pick (n) pool of the following meet on a date and performance so designated by the commission.~~

~~k. With the written approval of the commission, the association may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.~~

~~l. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.~~

~~m. The association may suspend previously approved pick (n) wagering with the prior approval of the commission. Any carryover shall be held until the suspended pick (n) wagering is reinstated. An association may request approval of a pick (n) wager or separate wagering pool for specific performances.~~

#### ~~10. **Twin trifecta pools.**~~

~~a. The twin trifecta requires selection of the first three finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin trifecta contest must be exchanged for a free ticket on the second twin trifecta contest in order to remain eligible for the second-half twin trifecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin trifecta contest. Winning first-half twin trifecta wagers will receive both an exchange and a monetary payout. Both of the designated twin trifecta contests shall be included in only one twin trifecta pool.~~



- ~~b. After wagering closes for the first half of the twin trifecta and commissions have been deducted from the pool, the net pool shall then be divided into separate pools: the first-half twin trifecta pool and the second-half twin trifecta pool.~~
- ~~c. In the first twin trifecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin trifecta contest:
  - ~~(1) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers; then~~
  - ~~(2) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers; then~~
  - ~~(3) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers; then~~
  - ~~(4) The entire twin trifecta pool shall be refunded on twin trifecta wagers for that contest and the second-half shall be canceled.~~~~
- ~~d. If no first half twin trifecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half twin trifecta pool. In such case, the second-half twin trifecta pool shall be retained and added to any existing twin trifecta carryover pool.~~
- ~~e. Winning tickets from the first half of the twin trifecta shall be exchanged for tickets selecting the first three finishers of the second-half of the twin trifecta. The second-half twin trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second twin trifecta contest:
  - ~~(1) As a single price pool, including any existing carryover moneys, to those whose combination finished in correct sequence as the first three betting interests; but if there are no such tickets; then~~
  - ~~(2) The entire second-half twin trifecta pool for the contest shall be added to any existing carryover moneys and retained for the corresponding second-half twin trifecta pool of the next consecutive performance.~~~~
- ~~f. If a winning first-half twin trifecta ticket is not presented for cashing and exchange prior to the second-half twin trifecta contest, the ticket holder may still collect the monetary value associated with the first-half twin trifecta pool but forfeits all rights to any distribution of the second-half twin trifecta pool, except where expressly provided in subdivision m.~~
- ~~g. Coupled entries and mutual fields may be permitted in twin trifecta contests with the prior written approval of the commission.~~
- ~~h. Should a betting interest in the first-half of the twin trifecta be scratched, those twin trifecta wagers including the scratched betting interest shall be refunded.~~
- ~~i. Should a betting interest in the second-half of the twin trifecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.~~
- ~~j. If, due to a late scratch, the number of betting interests in the second-half of the twin trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half twin trifecta pool for that contest as a single price pool, but not the twin trifecta carryover.~~

- ~~k. If there is a dead heat or multiple dead heats in either the first half or second half of the twin trifecta, all twin trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:
  - ~~(1) The first half of the twin trifecta, the payout shall be calculated as a profit split.~~
  - ~~(2) The second half of the twin trifecta, the payout shall be calculated as a single price pool.~~~~
- ~~l. If either of the twin trifecta contests are canceled prior to the first twin trifecta contest or the first twin trifecta contest is declared no contest, the entire twin trifecta pool shall be refunded on twin trifecta wagers for the contest and the second half shall be canceled.~~
- ~~m. If the second half twin trifecta contest is canceled or declared no contest, all exchange tickets and outstanding first half winning twin trifecta tickets shall be entitled to the net twin trifecta pool for that contest as a single price pool, but not twin trifecta carryover. If there are no such tickets, the net twin trifecta pool shall be distributed as described in subdivision c.~~
- ~~n. The twin trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the twin trifecta carryover equals or exceeds the designated cap, the twin trifecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the twin trifecta carryover is frozen, one hundred percent of the net twin trifecta pool for each individual contest shall be distributed to winners of the first half of the twin trifecta pool.~~
- ~~o. A written request for permission to distribute the twin trifecta carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.~~
- ~~p. Should the twin trifecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second half of the twin trifecta after completion of the first half of the twin trifecta:
  - ~~(1) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers; then~~
  - ~~(2) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers; then~~
  - ~~(3) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers; then~~
  - ~~(4) As a single price pool to holders of valid exchange tickets.~~
  - ~~(5) As a single price pool to holders of outstanding first-half winning tickets.~~~~
- ~~q. Contrary to subdivision d, during a performance designated to distribute the twin trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first half of the twin trifecta. If there are no wagers correctly selecting the first-place, second-place, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place and second-place betting interests. If there are no wagers correctly selecting the first-place and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting~~

~~the first place betting interest only in the first half of the twin trifecta, all first place tickets will become winners and will receive one hundred percent of that day's net twin trifecta pool and any existing twin trifecta carryover.~~

~~r. The twin trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:~~

~~(1) Upon written approval from the commission as provided in subdivision o.~~

~~(2) Upon written approval from the commission when there is a change in the carryover cap or when the twin trifecta is discontinued.~~

~~(3) On the closing performance of the meet or split meet.~~

~~s. If, for any reason, the twin trifecta carryover must be held over to the corresponding twin trifecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The twin trifecta carryover plus accrued interest shall then be added to the second half twin trifecta pool of the following meet on a date and performance so designated by the commission.~~

~~t. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.~~

~~u. The association must obtain written approval from the commission concerning the scheduling of twin trifecta contests, the percentages of the net pool added to the first half pool and second half pool, and the amount of any cap to be set on the carryover. Any changes to the approved twin trifecta format require prior approval from the commission.~~

#### ~~11. Tri-superfecta pools.~~

~~a. The tri-superfecta requires selection of the first three finishers, in the exact order, in the first of two designated contests and the first four finishers, in exact order, in the second of the two designated contests. Each winning ticket for the first tri-superfecta contest must be exchanged for a free ticket on the second tri-superfecta contest in order to remain eligible for the second half tri-superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second tri-superfecta contest. Winning first half tri-superfecta tickets will receive both an exchange and a monetary payout. Both of the designated tri-superfecta contests shall be included in only one tri-superfecta pool.~~

~~b. After wagering closes for the first half of the tri-superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools, the first half tri-superfecta pool and the second half tri-superfecta pool.~~

~~c. In the first tri-superfecta contest only, winning tickets shall be determined using the following precedence, based upon the official order of finish for the first tri-superfecta contest:~~

~~(1) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers; then~~

~~(2) As a single price pool to those whose combination included, in correct sequence as the first two betting interests; but if there are no such wagers; then~~

~~(3) As a single price pool to those whose combination correctly selected the first place betting interests, but if there are no such wagers; then~~

- ~~(4) The entire tri-perfecta pool shall be refunded on tri-perfecta wagers for that contest and the second half shall be canceled.~~
- ~~d. If no first half tri-perfecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second half tri-perfecta pool. In such case, the second half tri-perfecta pool shall be retained and added to any existing tri-perfecta carryover pool.~~
- ~~e. Winning tickets from the first half of the tri-perfecta shall be exchanged for tickets selecting the first four finishers of the second half of the tri-perfecta. The second half tri-perfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second tri-perfecta contest:~~
- ~~(1) As a single price pool, including any existing carryover moneys, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets; then~~
- ~~(2) The entire second half tri-perfecta pool for that contest shall be added to any existing carryover moneys and retained for the corresponding second half tri-perfecta pool of the next performance.~~
- ~~f. If a winning first half tri-perfecta ticket is not presented for cashing and exchange prior to the second half tri-perfecta contest, the ticket holder may still collect the monetary value associated with the first half tri-perfecta pool but forfeits all rights to any distribution of the second half tri-perfecta pool, except where expressly provided in subdivision m.~~
- ~~g. Couple entries and mutuel fields may be permitted in tri-perfecta contests with the prior written approval of the commission.~~
- ~~h. Should a betting interest in the first half of the tri-perfecta be scratched, those tri-perfecta tickets, including the scratched betting interest shall be refunded.~~
- ~~i. Should a betting interest in the second half of the tri-perfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.~~
- ~~j. If, due to a late scratch, the number of betting interests in the second half of the tri-perfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first half winning tickets shall be entitled to the second half tri-perfecta pool for that contest as a single price pool, but not the tri-perfecta carryover.~~
- ~~k. If there is a dead heat or multiple dead heats in either the first half or second half of the tri-perfecta, all tri-perfecta tickets selecting the correct order of finish counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner, in the case of a dead heat occurring in:~~
- ~~(1) The first half of the tri-perfecta, the payout shall be calculated as a profit split.~~
- ~~(2) The second half of the tri-perfecta, the payout shall be calculated as a single price pool.~~
- ~~l. If either of the tri-perfecta contests are canceled prior to the first tri-perfecta contest or the first tri-perfecta contest is declared no contest, the entire tri-perfecta pool shall be refunded on tri-perfecta wagers for that contest and the second half shall be canceled.~~

- ~~m. If the second half of the tri-superfecta contest is canceled or declared no contest, all exchange tickets and outstanding first-half winning tri-superfecta tickets shall be entitled to the net tri-superfecta pool for that contest as a single price pool, but not the tri-superfecta carryover. If there are no such tickets, the net tri-superfecta pool shall be distributed as described in subdivision c.~~
- ~~n. The tri-superfecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the tri-superfecta carryover equals or exceeds the designated cap, the tri-superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half tri-superfecta carryover is frozen, one hundred percent of the net tri-superfecta pool for each individual contest shall be distributed to winners for the first-half of the tri-superfecta pool.~~
- ~~o. A written request for permission to distribute the tri-superfecta carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.~~
- ~~p. Should the tri-superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the tri-superfecta after completion of the first-half of the tri-superfecta:
  - ~~(1) As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers; then~~
  - ~~(2) As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers; then~~
  - ~~(3) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers; then~~
  - ~~(4) As a single price pool to those whose combination included, in correct sequence, the first place betting interests only; but if there are no such wagers; then~~
  - ~~(5) As a single price pool to holders of valid exchange tickets.~~
  - ~~(6) As a single price pool to holders of outstanding first-half winning tickets.~~~~
- ~~q. Contrary to subdivision d, during a performance designated to distribute the tri-superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the tri-superfecta. If there are no wagers correctly selecting the first-place, second-place, and third-place finishers, in their exact order, then exchange tickets shall be issued or combinations correctly selecting the first-place and second-place betting interests. If there are no wagers correctly selecting the first-place and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the tri-superfecta, all first-half tickets will become winners and will receive one hundred percent of that day's net tri-superfecta pool and any existing tri-superfecta carryover as a single price pool.~~
- ~~r. The tri-superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:-
  - ~~(1) Upon written approval from the commission as provided in subdivision o.~~~~



~~(2) Upon written approval from the commission when there is a change in the carryover cap or when the tri-superfecta is discontinued.~~

~~(3) On the closing performance of the meet or split meet.~~

~~s. If, for any reason, the tri-superfecta carryover must be held over to the corresponding tri-superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The tri-superfecta carryover plus accrued interest shall then be added to the second-half tri-superfecta pool of the following meet on a date and performance so designated by the commission.~~

~~t. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.~~

~~u. The association must obtain written approval from the commission concerning the scheduling of tri-superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to be approved tri-superfecta format require prior approval from the commission.~~

#### ~~12. Twin superfecta pools.~~

~~a. The twin superfecta requires selection of the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin superfecta contest must be exchanged for a free ticket on the second twin superfecta contest in order to remain eligible for the second-half twin superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin superfecta contest. Winning first-half twin superfecta tickets will receive both an exchange and a monetary payout. Both of the designated twin superfecta contests shall be included in only one twin superfecta pool.~~

~~b. After wagering closes for the first half of the twin superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools: the first-half twin superfecta pool and the second-half twin superfecta pool.~~

#### ~~13. Superfecta pools.~~

~~a. The superfecta requires selection of the first four finishers in their exact order for a single contest.~~

~~b. The net superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:~~

~~(1) As a single price pool to those whose combination finished in correct sequence as the first four betting interests, but if there are no such wagers; then~~

~~(2) As a single price pool to those whose combination included, in correct sequence, the first three betting interests, but if there are no such wagers; then~~

~~(3) As a single price pool to those whose combination included, in correct sequence, the first two betting interests, but if there are no such wagers; then~~

~~(4) As a single price pool to those whose combination correctly selected the first-place betting interest only, but if there are no such wagers; then~~

- ~~c. If less than four betting interests finish and the contest is declared official, payouts will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.~~
- ~~d. If there is a dead heat for first involving:
  - ~~(1) Contestants representing the four or more betting interests, all of the wagering combinations selecting the four betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.~~
  - ~~(2) Contestants representing three betting interests, all of the wagering combinations selecting the three dead-heated betting interests, irrespective of order, along with the fourth-place betting interest shall share in a profit split.~~
  - ~~(3) Contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.~~~~
- ~~e. If there is a dead heat for second involving:
  - ~~(1) Contestants representing three or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three betting interests involved in the dead heat for second share in a profit split.~~
  - ~~(2) Contestants representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place betting interests shall share in a profit split.~~~~
- ~~f. If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence along with any two of the betting interests involved in the dead heat for third shall share in a profit split.~~
- ~~g. If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth shall share in a profit split.~~
- ~~h. Coupled entries and mutual fields shall be prohibited in superfecta contests.~~

~~14. **Twin quinella pools.**~~

- ~~a. The twin quinella requires selection of the first two finishers, irrespective of order, in each of two designated contests. Each winning ticket for the first twin quinella contest must be exchanged for a free ticket on the second twin quinella contest in order to remain eligible for the second-half twin quinella pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin quinella contest. Both of the designated twin quinella contests shall be included in only one twin quinella pool.~~
- ~~b. In the first twin quinella contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin quinella contest:
  - ~~(1) If coupled entry or mutual field finishes as the first two finishers, those who selected the coupled entry or mutual field combined with the next separate betting interest in the official order of finish shall be winners; otherwise-~~~~

- ~~(2) Those whose combination finished as the first two betting interests shall be winners, but if there are no such wagers; then~~
- ~~(3) Those whose combination included either the first-place or second-place finisher shall be winners, but if there are no such wagers on one of those two finishers; then~~
- ~~(4) Those whose combination included the one covered betting interest included within the first two finishers shall be winners, but if there are no such wagers; then~~
- ~~(5) The entire pool shall be refunded on twin quinella wagers for that contest.~~

#### 15.2. Mad-scramble poolPari-mutuel plus.

- a. The ~~mad-scramble~~pari-mutuel plus pool requires selection of the ~~official first six place~~order of any designated number of finishers, in their exact positions, in designated contests. The service provider must obtain written approval from the commission ~~and site operator~~ concerning the scheduling of the ~~mad-scramble~~pari-mutuel plus contests and designate the percentage of the amount of carryover. The ~~mad-scramble~~pari-mutuel plus pool consists of a ~~daily~~ pool and jackpot carryover and must have predetermined percentages set aside for the ~~daily~~ pool designated to winners who selected the ~~first six place~~designated number of finishers. The ~~daily~~ pool will be distributed to the winners who selected the ~~first six place~~ finishers, in their exact positions, and they will then be eligible for the random drawing of the randomly generated numbers assigned to the wager's ticket to be drawn for the awarding of the jackpot pool. To be awarded the jackpot pool, the winner of the ~~daily~~ pool must have the matching randomly generated number on the person's ticket that is drawn randomly from the group of ~~sixty~~designated numbers. Any changes to the approved ~~mad-scramble~~pari-mutuel plus format require prior approval from the commission ~~and the site operator~~.
- b. Unless otherwise stated, the major share of the net ~~mad-scramble~~pari-mutuel plus pool shall be distributed as a single price pool to those who selected ~~all six~~the designated number of finishers, in exact positions, based upon the official order of finish.
- c. The ~~mad-scramble~~pari-mutuel plus pool shall be apportioned with no minor pool and carryover by choosing the ~~first six~~designated number of horses in exact order of finish. The service provider must make a written request to the commission ~~and the site operator~~ for approval to offer consolation and minor pools in the ~~mad-scramble~~pari-mutuel plus pool, and be granted approval before implementation.
  - (1) The net ~~mad-scramble~~pari-mutuel plus pool shall be distributed in accordance with the method for distributing the major share to all winners who selected the ~~first six place~~designated number of finishers, in exact positions.
  - (2) If there are no wagers qualifying for the major share, the net major share shall be added to the carryover.
- d. If there is a dead heat in the ~~mad-scramble~~pari-mutuel plus pool involving:
  - (1) Contestants representing the same betting interest, the ~~daily~~ pool will be distributed as if no dead heat occurred.
  - (2) Contestants representing two or more betting interests, the ~~daily~~ pool will be distributed as a single price pool with each winning wager receiving an equal share of the profit.



- e. The ~~mad-scramble~~pari-mutuel plus pool shall be canceled and all ~~mad-scramble~~pari-mutuel plus wagers for the individual performance shall be refunded under the following conditions:
- (1) If the ~~mad-scramble~~pari-mutuel plus contests are canceled or declared no contest prior to the first ~~mad-scramble~~pari-mutuel plus contest being declared official, the entire ~~mad-scramble~~pari-mutuel plus pool shall be refunded on wagers for those contests.
  - (2) If all remaining ~~mad-scramble~~pari-mutuel plus contests are canceled or declared no contests after the first ~~mad-scramble~~pari-mutuel plus contest is declared official, the entire net ~~mad-scramble~~pari-mutuel plus pool, but not the ~~mad-scramble~~pari-mutuel plus carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the ~~mad-scramble~~pari-mutuel plus contest. However, if there are no wagers selecting the winning combination in the ~~mad-scramble~~pari-mutuel plus contest, the entire pool shall be refunded on wagers for those contests.
- f. Mandatory distribution.
- (1) The service provider must submit a written request to the commission ~~and the site operator~~ for permission to distribute the ~~mad-scramble~~pari-mutuel plus carryover on a specific performance. The request to the commission ~~and site operator~~ shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance of the distribution. The service provider must notify the commission ~~and site operator~~ at least ten days prior to implementation. If the ~~mad-scramble~~pari-mutuel plus pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performance.
  - (2) If the ~~mad-scramble~~pari-mutuel plus carryover is designated for distribution on a specific date and performance, and if there are no wagers qualifying for the major share, which is sixty-five percent of the pool, then the following precedence shall be followed in determining the winning wagers for the ~~mad-scramble~~pari-mutuel plus pool and carryover pool:
    - (a) The major share and the ~~mad-scramble~~pari-mutuel plus carryover shall be distributed as a single price pool to those who selected ~~all six~~the designated number of finishers, in exact positions, based upon the official order of finish, and who have received a matching random number selected through a drawing of one of ~~sixtya~~designated group of numbers, minus the service provider or racetrack take-out.
    - (b) The major share and the ~~mad-scramble~~pari-mutuel plus carryover shall be distributed as a single price pool to those who correctly selected the most finishers, in their exact positions, based upon the official order of finish.
- g. If for any reason, the ~~mad-scramble~~pari-mutuel plus carryover must be held over to the corresponding ~~mad-scramble~~pari-mutuel plus pool of a subsequent ~~meet~~pari-mutuel plus contest, the carryover shall be deposited in an interest-bearing account approved by the commission ~~and the site operator~~. The ~~mad-scramble~~pari-mutuel plus carryover plus accrued interest shall then be added to the ~~mad-scramble~~pari-mutuel plus pool of the following meet on a date and performance so designated by the commission ~~and approved by the site operator~~.
- h. With written approval of the commission ~~and the site operator~~, the service provider may contribute to the ~~mad-scramble~~pari-mutuel plus carryover a sum of money to be

designated by the service provider or the racetrack. Moneys contributed to the pool may be withdrawn when the pool accumulation totals the moneys contributed.

- i. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.
- j. The service provider may suspend previously approved ~~mad-scramble~~ pari-mutuel plus wagering with prior approval from the commission ~~and upon notification to the site operator~~. Any carryover shall be held until the suspended ~~mad-scramble~~ pari-mutuel plus wagering is reinstated. A service provider may request approval of the ~~mad-scramble~~ pari-mutuel plus wager or a separate ~~mad-scramble~~ pari-mutuel plus wagering pool for specific performances.

**46.3. Pick 1-2-3 pool.** The pick 1-2-3 pool requires selection of the first three finishers, irrespective of order, in each of three designated contests. Payment of the ticket may be made only to the purchaser who has selected the qualifying finishers in three designated races.

- a. Pick 1-2-3 requires a selection of a combination of either nine, eight, seven, or six, first, second, and third place finishers, in any order, in three consecutive races that are designated as pick 1-2-3 races to qualify for a payout. There will be no monetary award for the winning combination for winning the first pick 1-2-3 race or any combination of five or less qualifiers in each of the three races.
- b. The service provider must obtain written approval from the commission ~~and site operator~~ concerning the scheduling of the pick 1-2-3 contests, the designation of qualifying races, and the cap to be set on the carryover. Any changes to the pick 1-2-3 wager format requires prior approval from the commission ~~and the site operator~~.
- c. The pick 1-2-3 pool and carryover, if any, shall be distributed as a single price pool to those who selected the winning combination of the top three finishers in three races, or a decreasing scale of qualifiers eight of nine, seven of nine, or six of nine, in the following payout method:
  - (1) Fifty percent of net pool and accumulated jackpot divided between players selecting nine of nine.
  - (2) Thirty percent of net pool divided between players selecting eight of nine.
  - (3) Fifteen percent of net pool divided between players selecting seven of nine.
  - (4) Five percent of net pool divided between players selecting six of nine.
  - (5) If there are no winning wagers for the nine of nine winners, then fifty percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
  - (6) If there are no winning wagers for the eight of nine winners, then thirty percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
  - (7) If there are no winning wagers for the seven of nine winners, then fifteen percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.

- (8) If there are no winning wagers for the six of nine winners, then five percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
- d. Dead heats. In the event of a dead heat in any of the position pick 1-2-3 contests based upon the official order of finish for the purposes of determining whether a wager correctly selected the finishers in exact position, contestants in a dead heat are deemed to jointly occupy both or all positions in the dead heat. For example, if five and six finish in a dead heat for first, then a selection of five for either first or second is correct and a selection of six for either first or second is also correct.
- e. Scratches.
- (1) If, due to a late scratch, the number of betting interests in a contest of the pick 1-2-3 pool is reduced to fewer than six contestants, for the purposes of the pick 1-2-3 pool only, such contests shall be declared no contest and the pick 1-2-3 pool shall be declared a canceled contest.
- (2) Should a betting interest in any contest of the pick 1-2-3 pool be scratched or excused from the contest, no more wagers shall be accepted selecting that scratched contestant.
- (3) Scratch contestant losers:
- (a) The scratch contestant is deemed to be a loser, for the purposes of the pick 1-2-3 pool only.
- (b) Other correctly selected finishers in the pick 1-2-3 shall continue to count toward winning, as usual.
- f. Canceled contests.
- (1) If any of the pick 1-2-3 contests are canceled or declared no contest prior to the first pick 1-2-3 contest being declared official, the daily pick 1-2-3 pool shall be refunded on the pick 1-2-3 wagers for those contests.
- (2) If all remaining pick 1-2-3 contests are canceled or declared no contest after the first pick 1-2-3 contest is declared official, the entire net pick 1-2-3 pool, but not the pick 1-2-3 carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the first pick 1-2-3 contest. However, if there are no wagers selecting the winning combination in the first pick 1-2-3 contest, the daily pick 1-2-3 pool shall be refunded on pick 1-2-3 wagers for those contests.
- g. Mandatory distribution. The service provider must submit a written request for permission to distribute the pick 1-2-3 carryover on a specific performance to the commission ~~and site operator~~. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. The service provider must notify the commission at least ten days prior to implementation. If the pick 1-2-3 pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performance.
- ~~17.4.~~ **Pick 1-2-3-4-5 pool.** Pick 1-2-3-4-5 requires selection of the first five finishers, irrespective of order, in each of three designated contests. Payment of the ticket may be made only to the purchaser who has selected the qualifying finishers in three designated races.

- a. Pick 1-2-3-4-5 requires the selection of a combination of either fifteen, fourteen, thirteen, or twelve first, second, third, fourth, and fifth place finishers, in any order, in three consecutive races that are designed as pick 1-2-3-4-5 races to qualify for a payout. There will be no monetary award for the winning combination for winning the first pick 1-2-3-4-5 race or any combination of eleven or less qualifiers in each of the three races.
- b. The service provider must obtain written approval from the commission ~~and the site operator~~ concerning the scheduling of the pick 1-2-3-4-5 contests, the designation of qualifying races and the cap to be set on the carryover. Any changes to the pick 1-2-3-4-5 wager format require prior approval from the commission ~~and the site operator~~.
- c. The pick 1-2-3-4-5 pool and carryover, if any, shall be distributed as a single price pool to those who selected the first five finishers in three races or a decreasing scale of qualifiers fifteen of fifteen, fourteen of fifteen, thirteen of fifteen, or twelve of fifteen in the following payout method:
  - (1) Fifty percent of net pool and accumulated jackpot divided between players selecting fifteen of fifteen.
  - (2) Thirty percent of net pool divided between players selecting fourteen of fifteen.
  - (3) Fifteen percent of net pool divided between players selecting thirteen of fifteen.
  - (4) Five percent of net pool divided between players selecting twelve of fifteen.
  - (5) If there are no winning wagers for the fifteen of fifteen winners, then fifty percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
  - (6) If there are no winning wagers for the fourteen of fifteen winners, then thirty percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
  - (7) If there are no winning wagers for the thirteen of fifteen winners, then fifteen percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
  - (8) If there are no winning wagers for the twelve of fifteen winners, then five percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
- d. Dead heats. In the event of a dead heat in any of the position pick 1-2-3-4-5 contests based upon the official order of finish for the purposes of determining whether a wager correctly selected the finishers in exact position, contestants in a dead heat are deemed to jointly occupy both or all positions in the dead heat. For example, if five and six finish in a dead heat for first, then a selection of five for either first or second is correct and a selection of six for either first or second is also correct.
- e. Scratches.
  - (1) If, due to a late scratch, the pick 1-2-3-4-5 pool is reduced to fewer than six contestants, for the purposes of the pick 1-2-3-4-5 pool only, such contests shall be declared no contest and the pick 1-2-3-4-5 pool shall be declared a canceled contest.

- (2) Should a betting interest in any contest of the pick 1-2-3-4-5 pool be scratched or excused from the contest, no more wagers shall be accepted selecting that scratched contestant.
- (3) Scratch contestant losers:
  - (a) The scratch contestant is deemed to be a loser, for the purposes of the pick 1-2-3-4-5 pool only.
  - (b) Other correctly selected finishers in the pick 1-2-3-4-5 shall continue to count toward winning, as usual.
- f. Canceled contests.
  - (1) If any of the pick 1-2-3-4-5 contests are canceled or declared no contest prior to the first pick 1-2-3-4-5 contest being declared official, the entire pick 1-2-3-4-5 pool shall be refunded on the pick 1-2-3-4-5 wagers for those contests.
  - (2) If all remaining pick 1-2-3-4-5 contests are canceled or declared no contest after the first pick 1-2-3-4-5 contest is declared official, the entire net pick 1-2-3-4-5 pool, but not the pick 1-2-3-4-5 carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the first pick 1-2-3-4-5 contest. However, if there are no wagers selecting the winning combination in the first pick 1-2-3-4-5 contest, the entire pick 1-2-3-4-5 pool shall be refunded on pick 1-2-3-4-5 wagers for those contests.
- g. Mandatory distribution. The service provider must submit a written request for permission to distribute the pick 1-2-3-4-5 carryover on a specific performance to the commission ~~and site operator~~. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. The service provider must notify the commission at least ten days prior to implementation. If the pick 1-2-3-4-5 pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performances.
- h. Coupled entries and mutuel fields. Coupled entries and mutuel fields are not permitted in pick 1-2-3-4-5 contests.

~~18.5.~~ **123racing Pick-n Wager**©.

- a. The 123racing Pick-n Wager is a separate pari-mutuel pool wager established by the association or licensee on a designated number of races. The gross pool consists of the total amount wagered for the multiple race bet. Winning wagers are determined by the highest points totals earned after all rounds have been completed, based on cumulative mythical two dollar win, place, show wagers (a fantasy two dollar across the board wager), on one betting interest per wagering race. It is not a parlay and has no connection with or relation to other pools conducted by the association or licensee other than the utilization of live race payouts as a means of calculating players' fantasy points.
- b. A valid 123racing Pick-n Wager ticket shall be evidence of a binding contract between the holder of the ticket and the association or licensee, and shall constitute an acceptance of 123racing Pick-n Wager provisions and rules contained in this chapter.
- c. A 123racing bet may not be retracted once it has been purchased.

- d. A 123racing Pick-n Wager may be given a distinctive name by the association conducting the meeting or licensee, subject to commission approval, and existing license, copyrights, and patents.
- e. 123racing Pick-n Wagers shall be conducted as follows:
- (1) Each player wagers ~~two dollars~~ into the gross pool and selects one betting interest per wagering race.
  - (2) The number of races that complete the wager varies depending on the specifics of "tournament", as determined by the host racing association or licensee, but shall include no less than four races.
  - (3) Each round of the "tournament" consists of a mythical ~~two dollar~~ win, place, show wager on one betting interest per race.
  - (4) Official program numbers must be used for all wagers. All players are responsible for ensuring each wager is placed correctly.
  - (5) Live race payouts are used to calculate players' fantasy points totals.
  - (6) As part of the announced tournament rules, and as approved by the commission, the host racing association or licensee may opt to cap the maximum odds on all fantasy payouts.
  - (7) Each player's fantasy points will be reflected in their cumulative fantasy points totals at the end of each race.
  - (8) Following a race being declared "official", the actual pari-mutuel pool payout for a fantasy ~~two dollar~~ across-the-board wager will be translated to points and added to a player's cumulative fantasy points totals, ~~subject to any odds cap imposed under subdivision 7.~~ The host racing association or licensee may specify a maximum number of points that can be accumulated by any one wager per contest race subject to commission approval.
  - (9) Of the bettors, the players with the highest fantasy points totals after the last leg are the "winners".
  - (10) ~~The~~ A portion of the net pari-mutuel pool as determined in advance of the contest by the host racing association or licensee and approved by the commission, designated the "major net pool" is distributed to the bettors scoring the top three highest scores of all players in the tournament in accordance with subdivision i.
  - (11) ~~The net pari-mutuel pool shall be distributed in accordance with the distribution schedule as set forth in the regulation, or as otherwise approved by the commission, at the request of the host racing association.~~ In addition to the major net pool, a host racing association or licensee may designate in advance of the contest and as approved by the commission a portion of the net pari-mutuel pool for carryover as follows:
    - (a) A "perfect pick carryover pool" is carried over to subsequent contests until a bettor successfully selects the winning runners of all designated contests in the current contest, in which case the perfect pick carryover pool will be equally divided between the bettors successfully selecting every winning runner.
    - (b) A "place carryover pool" is carried over to subsequent contests until a bettor successfully selects runners finishing first or second in all designated contests



in the current contest, in which case the place carryover pool will be equally divided between the bettors successfully selecting runners finishing first or second in all designated contests.

(c) A "show carryover pool" is carried over to subsequent contests until a bettor successfully selects runners finishing first, second, or third in all designated contests in the current contest, in which case the show carryover pool will be divided between the bettors successfully selecting runners finishing first, second, or third in all designated contests.

(d) A host racing association or licensee may designate a contest on which a perfect pick carryover pool, place carryover pool, or show carryover pool is terminated and fully distributed to the best performing bettor or bettors in that contest.

- f. A fantasy wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field as determined by the rules of the live corresponding race.
- g. If a selection in any race designates a betting interest that was scratched, excused, or determined by the stewards to be a nonstarter in the race, the fantasy wager will be on the tote favorite in that race.
- h. Points for dead heats will be determined by the payouts of the live corresponding race.
- i. The takeout and its distribution for the 123racing Pick-n Wager shall be set and approved by the host regulatory commission, but shall include the distribution of the negotiated proprietary fee.
- j. All tickets shall be refunded if all races comprising the 123racing Pick-n Wager are canceled or declared as a no contest. The entire pool shall be refunded if less than four races are completed and if four or more races are completed the net pool shall be distributed pursuant to subdivision l.
- k. After wagering closes on the first race comprising the 123racing Pick-n Wager, the tournament shall be deemed closed and no entry ticket shall be sold, exchanged, or canceled. No person shall be determined to hold a winning 123racing Pick-n Wager ticket until the last designated race has been declared official.
- l. In accordance with the following provisions, the host racing association or licensee shall distribute the net pool to the holders of valid tickets that correctly selected the combination of first-place, second-place, and third-place place finishers that generated the top three highest points totals through the designated races or rounds comprising the 123racing Pick-n Wager as follows, unless otherwise approved by the host racing commission:
  - (1) Sixty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holder of the pari-mutuel ticket with the wager which has the highest fantasy points totals after all races have been completed.
  - (2) Thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holder of the pari-mutuel ticket with the wager which has the second-highest points totals after all races have been completed.
  - (3) Ten percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holder of the pari-mutuel ticket with

the wager which has the third-highest points totals after all races have been completed.

- (4) If there are two pari-mutuel wagers that equal the highest points totals after all races have been completed, ninety percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to those ticket holders. Ten percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets with wagers which have the third-highest points totals after all races have been completed.
  - (5) If there are three pari-mutuel wagers that equal the highest points totals after all races have been completed, one hundred percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to those ticket holders.
  - (6) If one pari-mutuel ticket wager scores the highest points totals, and two or more pari-mutuel tickets wagers equal the second-highest points totals after all races have been completed, sixty percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to the highest-scoring ticket holder, and forty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets which have the second-highest points totals after all races have been completed.
  - (7) If one pari-mutuel ticket wager scores the highest points totals, one pari-mutuel ticket wager scores the second-highest points totals, and two or more pari-mutuel ticket wagers score the third-highest points totals after all races have been completed, then sixty percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to the highest-scoring ticket holder, thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the second-highest scoring ticket holder, and ten percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets which have the third-highest points totals.
- m. Should circumstances occur which are not addressed by these rules, questions arising thereby shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of the 123racing Pick-n Wager pool made by the [stewardscommission](#) are final.

#### **49.6. Tote-X win.**

- a. The Tote-X wagering platform uses a conventional pari-mutuel betting system and a separate pari-mutuel pool to allow ticket holders to wager among themselves on the results of individual races. However, at the time the bet is placed on a selected race through the Tote-X platform, the customer is allocated a fixed number of redeemable units ("RUs") based upon the then-current odds of the horse being wagered upon using proprietary algorithms. The algorithms are applied uniformly to all wagers in the pool. These RUs are then held within the Tote-X platform specific to that bettor. When the odds of the horses in that race change after the initial wager is placed, the value of the issued RUs fluctuates in accordance with the change in odds. The customer may then choose to redeem all or part of their RUs for the current cash value of the RUs at any time prior to the close of wagering on the selected race. The Tote-X platform calculates the final pool by combining all bets made into the Tote-X win pool on a given event and then deducting commission, refunds, redemption payouts, and applicable taxes and fees.
- b. For each Tote-X win pool:



- (1) All bets are placed into the Tote-X win pool for a specific race.
- (2) A valid Tote-X ticket or unique electronic identifier shall be evidence of a binding contract between the holder of the ticket and the host [racing association or licensee](#), and shall constitute an acceptance of Tote-X provisions and rules contained in this chapter.
- (3) Official program numbers must be used for all Tote-X wagers. All players are responsible for ensuring each wager is placed correctly.
- (4) The odds calculations for Tote-X are performed on the same basis as for a conventional pari-mutuel pool. In the Tote-X platform, the proprietary mathematical algorithms will then automatically recalculate the RU values for each horse after each transaction or batch of transactions (bet or redemption), reflecting the change in the current Tote-X pool odds.
- (5) The Tote-X proprietary algorithms shall be applied uniformly to all wagers in the pool.
- (6) As approved by the commission, the host racing association [or licensee](#) may opt to cap the maximum odds on all Tote-X payouts.
- (7) A Tote-X wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field as determined by the rules of the live corresponding race.
- (8) The customer may choose to redeem all or part of their RUs for their then-current value at any time prior to the close of the relevant pool if a horse or combination of horses has not been excused by the stewards or declared a nonstarter and the pool operator has not otherwise suspended the capacity for ticket holders to redeem their wagers.
- (9) A Tote-X wager may not be rescinded once it has been purchased other than through proper redemption of RUs in accordance with these rules.
- (10) A redemption requires the customer to surrender all or part of the underlying wager. In the event of a redemption of all RUs issued for a specific wager, the original wager shall be surrendered in its entirety. In the event of a partial redemption of the RUs issued for a specific wager, the original wager will be surrendered in proportion to the percentage of RUs being redeemed;
- (11) Subsequent to the deduction from the pool of each redemption payout, the remainder of the funds in the pool shall constitute the new value of all RUs which are available for subsequent redemptions. Thereafter, those RUs which are not redeemed prior to the closure of the pool constitute the net pool for distribution as payoff to ticket holders of wagers following a race being declared "official".
- (12) Once the Tote-X win pool is closed prior to the race, ticket holders may no longer redeem any of their RUs.
- (13) Each customer holding a successful bet after the race is declared "official" is entitled to collect according to the relevant final odds.
- (14) From each redemption and final pool payout a commission shall be deducted by the host [racing association or licensee](#) in accordance with state law.

- (15) The commission and its distribution for the Tote-X wager shall be approved by the commission.
- c. Notwithstanding any language to the contrary, the funds remaining in the Tote-X win pool following the payment of redemptions prior to the closure of the pool constitute the net pool for the purpose of distribution as payoff to winning ticket holders.
  - d. Any funds remaining after the closing of the Tote-X win pool will be distributed as payoff to the winning ticket holders in the same manner as a win pool pursuant to subsection 2.
  - e. Notwithstanding subsection 20 or any language to the contrary contained in this chapter, if, after wagering has commenced on a race, a horse not coupled with another as a betting interest is excused by the stewards or declared a nonstarter, an amount based on the then-current odds as represented by the current value of the RUs on such horse shall be deducted from the pools and refunded upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager, then there may be no refund unless all of the horses representing such single betting interest as excused by the stewards or declared a nonstarter, or both.
  - f. Notwithstanding subsection 21 or any language to the contrary contained in this chapter, if, after wagering has commenced on a race, the race is thereafter canceled or declared a "no race" by the stewards, and no redemptions have occurred prior to such, then all wagering thereon shall be refunded upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier. However, if one or more redemptions have occurred prior to the stewards canceling or declaring a "no race", then all wagering thereon shall be refunded at the then-current odds, as represented by the current value of the RUs, at the time of cancellation upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier.
  - g. Notwithstanding subsection 22 or any language to the contrary contained in this chapter, in the event of an irreparable breakdown of the totalizator system during the wagering on a race, all Tote-X wagering thereon shall be refunded at the then-current odds, as represented by the current value of the RUs, at the time of irreparable breakdown upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier.
  - h. Notwithstanding section 69.5-01-08-05 or any language to the contrary contained in this chapter, there is no minimum payoff for a Tote-X redemption. However, any distribution made after closing of the Tote-X win pool shall be subject to the minimum payoff provisions of section 69.5-01-08-05.
  - i. Should circumstances occur which are not addressed by these rules, questions arising therefrom shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of the Tote-X pool made by the stewards are final.

**20.7. Refunds.** Unless otherwise provided, after wagering has commenced, if a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate door to open properly, the wagers on such horse must be deducted from the pools, and refunded upon presentation and surrender thereof. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a combination then there may be no refund unless all of the horses representing such single betting interest are excused by the stewards or are prevented from racing because of failure of the starting gate doors to open properly, or both.

~~21-8.~~ **Race canceled.** If for any reason a race is canceled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon must be refunded upon presentation and surrender of pari-mutuel tickets thereon; except as otherwise provided.

~~22-9.~~ **Totalizator breakdown.** In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race must be declared closed and the payoff must be computed on the sums wagered in each pool up to the time of the breakdown.

**History:** Effective July 1, 1989; amended effective January 1, 2008; July 1, 2011; October 1, 2013; July 1, 2014; April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-06, 53-06.2-10, 53-06.2-10.1, 53-06.2-11

**69.5-01-08-10. Pools dependent upon ~~entries~~ betting interests.**

- ~~1. Unless the commission approves a prior written request from the association to alter wagering opportunities for a specific race, each association shall offer win, place, and show wagering on all programmed races involving six or more betting interests.~~
- ~~2. If horses representing five or fewer betting interests qualify to start in a race, then the association may prohibit show wagering on that race; if horses representing four or fewer betting interests qualify to start in a race, then the association may prohibit both place and show wagering on that race.~~
- ~~3. If, by reason of a horse being excused by the stewards after wagering has commenced or a horse is prevented from racing because of failure of a starting gate door to open properly, the number of actual starters representing different betting interests is:
  - ~~a. Reduced to five, then the association may cancel show wagering on that race and the entire show pool must be refunded upon presentation and surrender of show tickets thereon.~~
  - ~~b. Reduced to four or fewer, then the association may cancel both place and show wagering on that race and the entire place and show pools must be refunded upon presentation and surrender of such place and show tickets thereon.~~~~

Unless the commission otherwise provides, at the time the pools are opened for wagering, the association:

- 1. Shall offer win wagering on all contests with three or more betting interests.
- 2. May offer win wagering on all contests with two or more betting interests.
- 3. Shall offer place wagering on all contests with four or more betting interests.
- 4. Shall offer show wagering on all contests with five or more betting interests.
- 5. May offer quinella wagering on all contests with three or more betting interests.
- 6. May offer quinella double wagering on all contests with three or more betting interests.
- 7. May offer exacta wagering on all contest with two or more betting interests.
- 8. May offer trifecta wagering on all contests with three or more betting interests.
- 9. May offer superfecta wagering on all contests with four or more betting interests.

10. May offer twin quinella wagering on all contests with three or more betting interests.

11. May offer show quinella wagering on all contests with three or more betting interests.

12. Shall not offer twin trifecta, tri-superfecta, or twin trifecta wagering on any contests with six or less betting interests.

**History:** Effective July 1, 1989; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

**69.5-01-08-11. Pari-mutuel ticket sales.**

1. No pari-mutuel tickets may be sold except by the association conducting the races on which such wagers are made, ~~and the same~~ or a licensee who is hosting pools. Association tickets must be sold only at regular "seller" windows properly designated by signs showing the type and denomination of tickets to be sold at such windows if there are restrictions of any kind. No pari-mutuel tickets may be sold after the totalizator has been locked and no association is responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.
2. Any claim by a person that the person has been issued a ticket other than that which the person requested must be made before such person leaves the seller window and before the totalizator is locked.
3. After purchasing a ticket and after leaving a ticket window, a person is not entitled to enter for issuance of an incorrect ticket, or claim refund or payment for tickets discarded, lost, destroyed, or mutilated beyond identification.
4. Payment on valid pari-mutuel tickets may be made only upon presentation and surrender thereof to the association where such wager was made within ninety days following the running of the race on which such wager was made. Failure to present any such ticket within ninety days constitutes a waiver of the right to receive payment thereon. The balance of funds not paid out constitutes the outs.
5. Payment of valid pari-mutuel tickets must be made on the basis of the order of finishes purposely posted on the infield results board and declared "official" by the stewards; any subsequent change in such order of finish or award of purse money as may result from a subsequent ruling by the stewards or commission in no way affects the pari-mutuel payoff. Cashiers' windows must remain open a reasonable length of time after the last race.
6. The association is responsible for the correctness of all payoff prices posted as "official" on the infield results board. If an error is made in posting the payoff figures on the public board, and ascertained before any tickets are cashed thereon, then such posting error may be corrected accompanied by a public address announcement, and only the correct amounts may be used in the payoff, irrespective of the initial error on the public board.
7. Prior to posting payoffs, the pari-mutuel manager shall require each of the computer printout sheets of such race to be proven and the winners verified. Such proof must show the amounts for commissions, breakage, and payoffs, which added together must equal the total pool. All pay slips are to be checked with computer printout sheets as to winner and prices before being issued to cashiers, and all board prices are to be rechecked before released to the public.
8. Whenever the recapitulation of the sales registered by each ticket issuing machine subsequently proves that the actual amount in the pool, or pools, is less than the amount used in calculating the payoff, such deficiency must be deposited in the pool or pools by the

association. Should the recapitulation of sales prove that the actual amount in the pool or pools is greater than the amount used in calculating the payoff due to an error of the totalizator, such error resulting in underpayment to the public, then the aggregate of such underpayments must be paid into the corresponding pool of the next race or races in such amounts as may be determined by the state steward and the pari-mutuel manager. If any such error should occur in computing the daily double pool, the underpayment must be added to the daily double pool of the following day. Overpayments and underpayments subsequently discovered upon recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from such final adjustment must be paid to the commission.

**History:** Effective July 1, 1989; amended effective January 1, 2008; [April 1, 2016](#).

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

**69.5-01-08-12. ~~Meeting interests involving more than one horse~~ [Coupled entries and mutuel fields.](#)**

~~—When two or more horses entered for the same race are determined by the stewards to have common ties through ownership or training and are joined by the stewards as a "mutuel entry", such mutuel entry becomes a single betting interest and a wager on one horse in a mutuel entry is a wager on all horses in the same mutuel entry. When the number of horses competing in a race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, is shown in the "mutuel field" as a single betting interest, and a wager on one horse in the mutuel field is a wager on all horses in the same mutuel field.~~

1. Contestants coupled in association wagering as a coupled entry or mutuel field are be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestants in that coupled entry or mutuel field may remain valid betting interests and no refunds will be granted; or the stewards may order a refund for the entire betting interest. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests must be refunded, notwithstanding other provisions of these rules.
2. For the purpose of price calculations only, coupled entries and mutuel fields must be calculated as a single finisher, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. The rule applies to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

**History:** Effective July 1, 1989; amended effective January 1, 2008; [April 1, 2016](#).

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

**69.5-01-08-12.1. The pari-mutuel manager.**

The [association](#) pari-mutuel manager:

1. Shall deliver to the commission at the end of each racing day, a record showing the amount wagered in each pool, the commission and the breakage for each race, and the totals of each for the day.
2. Shall be properly and timely advised by the racing secretary, prior to the beginning of wagering on each race, on the horses that will compete in the race.

3. Is held responsible for the conduct of the mutuel's employees, but is not responsible for their shorts or longs. Each seller or cashier shall be responsible to the pari-mutuel manager for their shorts or longs. Such shorts or longs shall be a guide to the pari-mutuel managers as to the conduct and character of the employees.
4. Shall employ only those licensed by the commission unless by special permission of the commission.
5. Shall allow no one to enter the mutuel department other than those properly licensed and whose employment requires their presence, except with the specific authorization of the pari-mutuel manager or the commission.
6. Shall sign all license applications for employees of the pari-mutuel department.
7. Shall, upon discharging an employee or the resignation of an employee, immediately report same to the commission. If a discharge or resignation is related to possible violations of racing rules or state laws, or problems involving the handling or reconciliations of wagers, notice shall be accompanied by a report to the commission concerning the reasons for the action.
8. Shall be responsible for the odds board and the information it reflects.

**History:** Effective January 1, 2008; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

#### **69.5-01-08-13. Emergency situations.**

In the event any emergency arises in connection with the operation of the pari-mutuel department not provided for by these rules, then the association pari-mutuel manager shall make an immediate decision and render a full report to the commission.

**History:** Effective July 1, 1989; amended effective January 1, 2008; April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

#### **69.5-01-08-15. Breakage and outs.**

1. Each licensee conducting a race meeting shall report to the commission the full amount of all breakage and funds due the state treasurer of North Dakota as prescribed by law and these rules, and shall remit such breakage and funds to the state treasurer commission within thirty days after the race day on which such breakage and funds shall occur or accrue.
2. Each licensee conducting a race meeting shall report to the commission and remit to the state treasurer commission the full amount of all outs (unclaimed winning tickets) within fifteen days after the ninety-day waiting period as described in subsection 4 of section 69.5-01-08-11.

**History:** Effective July 1, 1989; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

#### **69.5-01-08-16. Pari-mutuel cash vouchers.**

1. Pari-mutuel cash vouchers may be offered by an association that issues pari-mutuel tickets. These vouchers shall be dispensed through the totalizator system. The stored value on a voucher may be redeemed in the same manner as a value of a winning pari-mutuel ticket for wagers placed at a pari-mutuel window or a self-service terminal, and may be redeemed for their cash value at any time.



2. An association, with prior approval of the commission, may issue special pari-mutuel cash vouchers as incentives or promotion prizes, and may restrict the use of those vouchers to the purchase of pari-mutuel wagers.
3. The tote system transaction record for all pari-mutuel vouchers must include the voucher identification number in subsequent pari-mutuel transactions. Pari-mutuel wagers made from a voucher must identify the voucher by identification number.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

#### **69.5-01-08-17. Display of betting information by associations.**

1. An association shall post the approximate odds for win pool betting on display devices within view of the wagering public and update at intervals of not more than sixty seconds for the current race of the performance.
2. The probable payout or amounts wagered, in total and on each betting interest, for other pools may be displayed to the wagering public at intervals and in a manner approved by the commission.
3. Official results and payouts must be displayed upon each contest being declared official.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

#### **69.5-01-08-18. Refunds for short fields.**

1. Notwithstanding other provisions of these rules, refunds of the entire association pool must be made on:
  - a. Win pools, exacta pools, and first-half double pools offered in contests in which the number of betting interests has been reduced to fewer than two.
  - b. Place pools, quinella pools, trifecta pools, first-half quinella double pools, first-half twin quinella pools, first-half twin trifecta pools, and first-half tri-superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than three.
  - c. Show pools, superfecta pools, and first-half twin superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than four.
2. Authorized refunds must be paid upon presentation and surrender of the affected pari-mutuel ticket or automatically by a service provider or site operator in the case of account deposit wagering.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

#### **69.5-01-08-19. Prior approval required for betting pools.**

1. An association that desires to offer new forms of wagering shall apply in writing to the commission and receive written approval prior to implementing the new betting pool.
2. The association may suspend previously approved forms of wagering with the prior approval of the commission. Any carryover must be held until the suspended form of wagering is

reinstated. An association may request approval of a form of wagering or separate wagering pool for specific performances.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

**69.5-01-08-20. Claims for payment from pari-mutuel pool.**

1. At a designated location, a written, verified claim for payment from a pari-mutuel pool must be accepted by an association in any case where the association has withheld payment, not placed a wager requested by a customer, or has refused to cash a pari-mutuel wager. The association's full written report on the matter in accordance with requirements of section 69.5-01-08-21 (complaints pertaining to pari-mutuel operations) must be forwarded to the commission within forty-eight hours of the commission's request.
2. In the case of a claim made for payment of a mutilated pari-mutuel ticket, the association shall make a recommendation to accompany the claim forwarded to the commission as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

**69.5-01-08-21. Complaints pertaining to pari-mutuel operations.**

1. When a patron makes a complaint regarding pari-mutuel operations a complaint report must be issued upon commission request, setting out:
  - a. The name of the complainant;
  - b. The nature of the complaint;
  - c. The name of the persons, if any, against whom the complaint was made;
  - d. The date of the complaint; and
  - e. The action taken or proposed to be taken, if any.
2. Every complaint report must be submitted to the commission within forty-eight hours of commission request.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11

**69.5-01-08-22. Licensee duty to report.**

All licensees shall report any known irregularities or wrong doings by any person involving pari-mutuel wagering immediately to the commission and cooperate in subsequent investigations.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-11



**CHAPTER 69.5-01-11**  
**SIMULCASTING AND ACCOUNT DEPOSIT WAGERING**

Section

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**69.5-01-11-01. Definitions.**

For the purposes of this chapter, unless the context otherwise requires:

1. "Account wagering" or "account deposit wagering" means a form of pari-mutuel wagering in which an individual deposits money in an account and uses the account balance to pay for pari-mutuel wagers. It includes advance deposit wagering.
2. "Authorized pari-mutuel wagering entity" means a licensed racetrack, service provider, or site operator.
3. "Combined pari-mutuel pool" means the pari-mutuel wagers received at sites being contributed into one or more pari-mutuel pools as required by the commission.
4. "Eligible organization" means an organization eligible to conduct pari-mutuel wagering pursuant to North Dakota Century Code section 53-06.2-06.
5. "Independent real-time monitoring system" means a system operated and approved by the commission for the purpose of immediate and continuous analysis of wagering and other pari-mutuel systems data in order to detect suspect wagering transactions or other activity indicating a possible problem relating to the integrity of the pari-mutuel system and which transmits transactional level data to a wagering security data base.
6. "Pari-mutuel manager" means the person responsible for managing the pari-mutuel wagering system, including managing all teller and wagering operations, monitoring tote operations, opening and closing tote, communicating with tote hub, issuing wagering system reports, and maintaining wagering system records.
7. "Sending track" means any track from which ~~simuleast~~ signals originate.

8. "Simulcast employee or agent" means any person employed by a simulcast service provider or simulcast site operator, but does not include custodial or maintenance personnel not directly involved in wagering and others exempted by the commission.
9. "Service provider" means a person engaged in providing simulcasting or account wagering services directly to a site operator and establishing, operating, and maintaining the combined pari-mutuel pool, but does not include persons authorized by the federal communications commission to provide telephone service or space segment time on satellite transponders. Sending tracks are also excluded from this definition.
10. "Simulcast services" means services provided to a simulcast site operator including the simulcast signal from a sending track and the operation of the combined North Dakota pari-mutuel pool.
11. "Site" means the physical premises, structure, and equipment utilized by a site operator for the conduct of pari-mutuel wagering on horse racing events being run elsewhere.
12. "Site operator" means an eligible organization licensed by the commission to offer, sell, cash, redeem, or exchange pari-mutuel tickets on races being simulcast from a sending track or to conduct account wagering.
13. "Voucher" means a document or card produced by a pari-mutuel system device on which a stored cash value is represented and the value of which is recorded in and redeemed through the pari-mutuel system.

**History:** Effective March 1, 1990; amended effective August 1, 2007; July 1, 2011; April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-10.1

#### **69.5-01-11-02. General licensing requirements.**

1. Any site operator, service provider, or totalizator company must be licensed by the commission and approved by the attorney general. Totalizator companies contracting for service within the state and their employees whose principal work address is within the state must be licensed by the commission. Other vendors and their employees may be required to be licensed at the discretion of the commission. Application for a license must include the license fee as prescribed by the commission. Applications for licenses must be in such form as may be prescribed by the commission and must contain such information or other material or evidence as the commission may require. All licenses must be for a period of one year commencing January first and ending December thirty-first of each calendar year. The initial license fee for a service provider is seven thousand five hundred dollars, for a site operator is one thousand dollars, and for a totalizator company is two thousand five hundred dollars. A service provider is required to pay an additional license fee in accordance with section 69.5-01-05-02.1 when offering the mad scramble pool.
2. The application for renewal of a license must be made to the commission by such date as may be prescribed by the commission. If the commission has not specifically set application dates for renewal of the class of license, application must be made no later than thirty days prior to the date of expiration of the license. Application for renewal of license must be made in such form as may be prescribed by the commission. Application for license renewal must include the license fee for a service provider, two thousand five hundred dollars; site operator, two hundred fifty dollars; and totalizator company, one thousand five hundred dollars.
3. Approval or disapproval of an application for site operator, service provider, or totalizator company license must include consideration by the commission of the following:
  - a. The applicant's general benefit to the state of North Dakota.

- b. The applicant's general benefit to the state's horse racing industry.
  - c. The applicant's integrity.
    - (1) Individual and corporate conduct and reputation.
    - (2) Criminal history.
    - (3) Betting and gaming industry conduct and reputation.
  - d. The applicant's credibility.
    - (1) ~~Accuracy of feasibility study~~The feasibility of the applicant's business plan.
    - (2) Experience and expertise of the applicant in the industry.
  - e. Financial stability.
4. A service provider cannot operate without an executed contract with a site operator.
  5. The commission may require licensing of any entity or person contracting with or providing services or commodities to any site operator, service provider, or employee licensed by the commission.

**History:** Effective March 1, 1990; amended effective August 1, 2007; July 1, 2011; October 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-05, 53-06.2-06, 53-06.2-07, 53-06.2-08, 53-06.2-10.1, 53-06.2-14

**69.5-01-11-03. Licensing service providers and totalizator companies.**

1. Service providers and totalizator companies must be licensed by the commission and approved by the attorney general.
2. Before the commission may grant such license, it shall review and approve the services to be provided by the applicant. The applicant shall submit such information as required by the commission which must include, but not be limited to:
  - a. The services and equipment to be provided.
  - b. Projected revenue and costs associated with the operations of the applicant.
  - c. A complete financial statement demonstrating adequate capitalization to maintain the intended services.
  - d. A description of the management or management groups responsible for the operation of the service provider or totalizator company, including a list of all officers, directors, partners, and shareholders with a five percent or greater share of ownership or beneficial interest in the service provider or totalizator company.
  - e. A complete description of the transmission, totalizator, and data processing equipment to be used.
  - f. A history of the company demonstrating the experience and technical knowledge necessary to supply the intended services.
  - g. Written agreements between the applicant and all parties assisting in providing services.

- h. A description of the security measures to be used to protect the propriety of the signal and the integrity of the wagering process.
  - i. The system of accounts to be utilized in the collection and distribution of revenues directly or indirectly related to the operation and the combined pari-mutuel pool.
  - j. A detailed statement demonstrating individual and corporate conduct, ability, and reputation of the applicant and supervisory personnel.
  - k. A complete list of licenses held by the applicant, the thoroughbred racing association codes associated with such licenses where applicable and the websites to which the licenses and thoroughbred racing association codes apply.
  - l. A description of the processes and procedures implemented in conjunction with tracks and other industry stakeholders to address possible odds manipulation through placing large bets on small pools, the cancellation of wagers, and other methods.
  - ~~k.m.~~ The commission may require an audit of the applicant at the expense of the applicant.
  - ~~l.n.~~ The commission may require totalizator companies to provide documentation of third-party compliance and testing within two years of application.
  - o. The commission may require a background investigation of the applicant to be conducted by the thoroughbred racing protective bureau or another entity approved by the commission, the scope of which is at the sole discretion of the commission. The applicant is responsible for all costs associated with conducting the background check.
3. The commission may license one or more service providers or totalizator companies concurrently to provide services, as defined by this chapter, to one or more licensed site operators within the state. Fees for such license shall be as prescribed by the commission. Licenses will be for a term of one calendar year. The commission may establish license fees separately for first-time applicants and for renewal of existing licenses in order to recognize additional costs of investigation and analysis required for first-time licenses.
  4. Each applicant for a service provider license shall give a bond or letter of credit payable to this state with good security as approved by the commission. The bond or letter of credit must be in the amount the commission determines will adequately protect the amount normally due and owing to this state in a regular payment period or, in the case of new or altered conditions, based on the projected revenues.

**History:** Effective March 1, 1990; amended effective August 1, 2007; July 1, 2011; April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-05, 53-06.2-08, 53-06.2-10.1, 53-06.2-14

**69.5-01-11-04. Duties of service providers.**

1. Service providers shall comply with all state and federal laws, including section 3001, et seq. of title 15 of the United States Code.
2. A service provider intending to make any change in its structure or operations which would alter any of the responses given in its original license application must obtain prior approval of such changes by the commission and must file with the commission a statement including, but not limited to:
  - a. The changes to be made.

- ~~b. A statement that the service provider is in compliance with section 3001, et seq. of title 15 of the United States Code and any other applicable federal laws.~~
- ~~e.b.~~ The date and time the service provider intends to commence said changes.
3. A service provider may not be licensed as a site operator.
4. A service provider shall maintain records of all wagering at sites where it provides services. Such records shall be available to the commission for review and shall be retained in safekeeping for periods of time as follows:
- ~~a. A copy of daily computer report for one year and until payment is made to the commission for unclaimed tickets.~~
- ~~b.a.~~ Digital storage for three years.
- ~~c. Summary reports for five years.~~
- ~~d.b.~~ Other wagering records as may be required from time to time and are specifically defined by the commission.
5. A service provider shall maintain such security controls over its simulcast, account wagering, and communications system as directed by the commission.
6. A service provider shall provide the commission with a report of its operations as directed by the commission. ~~The operations~~ A summary report detailing handle for each day of wagering, the taxes, and breakage owed to the state of North Dakota, and the amounts owed to one or more site operators shall be provided to the commission on a ~~weekly~~ monthly basis, ~~with race weeks ending on Sunday~~. The report must contain any additional content as directed by the commission.
7. A service provider may only provide simulcast and account wagering services to a site operator licensed by the commission, except that a service provider may provide simulcast services to an Indian tribal entity within the state which may not be licensed pursuant to the provision of an existing racing addendum to a tribal gaming compact.
8. A service provider may require compliance by the site operator with contractual provisions necessary to maintain the integrity and proper operation of wagering.
9. A service provider shall provide access by the commission or its designated representative to its facility, records, and any other information as required by the commission or its representative.
10. Simulcasting and account wagering may be permitted only on races conducted at approved locations at pari-mutuel tracks governed by a racing commission, racing board, or governmental agency.
11. A service provider shall participate in a combined pari-mutuel pool, ensure the integrity of its participation, and establish procedure as approved by the commission for the use of federally insured financial institutions for receipt and disbursement of funds which are part of the combined pari-mutuel pool. Such procedure must include provision for timely reconciliation and settlement of pool accounts ~~with by a service provider on behalf of a site operators serviced by a service provider~~ operator. Times within which settlement of pool accounts are to be settled must be specified in contracts or service agreements between a service provider and site operators.
12. Payment of taxes and other funds:

- a. A service provider shall pay all pari-mutuel taxes, special fund contributions, and other funds due and owing the state of North Dakota as indicated in the certified monthly summary report ~~of its operations~~, required in this chapter, directly to the commission.
  - b. Amounts due to North Dakota for pari-mutuel taxes, promotion fund, breeders' fund, purse fund, and breakage shall be paid to the commission in monthly payments on or before the last day of the next month succeeding the month in which the pari-mutuel tax or other funds due to North Dakota occurred or accrued.
  - c. A service provider shall submit a report and a corresponding payment of funds owing to the commission for the full amount of outs (unclaimed winning tickets) within fifteen days after the end of the calendar quarter following the calendar quarter in which such wager was made. ~~A service provider shall also submit a report and a corresponding payment of funds to the commission for the full amount of all breakage retained by a service provider. Breakage shall be calculated by deducting odd cents over any multiple of five cents of winnings per dollar from the portion of the pari-mutuel pool to be redistributed.~~
  - d. The commission may, when a service provider is delinquent in remittance of taxes or other funds owed to North Dakota, notify the surety providing bond coverage to North Dakota of the delinquent status of such taxes or funds, and may make a claim for payment from the surety.
  - e. If a service provider fails to submit a report of its operations as required, or fails to pay pari-mutuel taxes or other funds due North Dakota within the time required by this section, or if upon audit it is found to owe additional taxes or other funds, a service provider is subject to a late fee of five percent of the amount of tax or other funds due, plus interest of one percent of the tax or other funds due per month or a fraction of a month of delay after the due date for the remittance of the moneys according to this chapter. A service provider with seven of fourteen delinquent payments may be subject to a late fee of ten percent of the moneys due plus interest of one percent of the amounts due per month or a fraction of a month of delinquency. The late fees and interest must be paid to the commission and disposed of in the same manner as other receipts under this chapter.
  - f. The commission may suspend or revoke a license of a service provider for failure to submit a report of its operations as required by law or administrative rule or for failure to pay funds due North Dakota as required by law or administrative rule. The commission may also take such other actions as may be authorized by law.
13. The commission may approve auditors as reasonably necessary for the protection of the public interest. The commission shall be reimbursed on a monthly basis for the salaries, benefit, and travel expenses by the service provider for the auditors assigned to them. Duties of an auditor shall include the following when instructed by the commission:
- a. An independent weekly record and report of each race program presented by a service provider. The report must be based on a review of each race contained in a program.
  - b. Reconciliation of all operating exceptions by the service provider and the sites it services that are not within the definitions of this chapter or are departures from normal operating practice. Such reconciliation shall include identification, investigation, reporting, and recommendation for adjustment or disposition directly to the commission.
  - c. Independent review and reporting directly to the director of racing of all actions taken by the service provider or the totalizator company operating under contract with the service provider.



~~d. The auditor shall have authority as presiding official at any time the auditor is on the premises of a service provider. In the absence of the auditor, the representative of a service provider shall be the designee of the commission as presiding official.~~

14. A service provider and a totalizator company operating under contract with a ~~service provider~~ site operator shall serve as the designees of the commission to supervise simulcast and account wagering operations pertaining to pari-mutuel wagering as is reasonably necessary to ensure the public interest.
15. ~~All reports must be signed by the presiding official and filed with the commission. The presiding official~~ pari-mutuel manager shall take immediate emergency actions as necessary to assure the continued operation and integrity of the simulcast or account wagering system. All such actions shall be reported to the commission. The ~~presiding official~~ pari-mutuel manager shall, when such acts are not, in the ~~official's~~ manager's judgment an emergency, report to the commission prior to acting.
16. A service provider shall adopt and adhere to emergency operating procedures as follows. Totalizator system operations will be maintained by a service provider hub. Wagering data will be transferred from the wagering site to the hub via data transmission lines or electronic transmission. Wagering will be conducted in ontrack pools. The hub will transfer all wagering data from the wagering site to the ontrack totalizator system. The locking procedure for the purpose of locking all teller windows at post time will be initiated by an ontrack official; the lock will be electronically conducted through the totalizator system to lock all tellers windows at the wagering site. Back-up locking procedures will be maintained by the ~~presiding official~~ pari-mutuel manager, the hub pari-mutuel operator and the hub totalizator system operator. In the event of a lock procedure failure, in which one or more windows fail to lock at the designated time, wagers shall be refunded. In the event of a locking procedure failure, a report will be submitted to the commission. Included will be computer reports reflecting all wagering activity.
  - a. In the event of an interruption of the audiovisual satellite signal or the direct wagering and information dissemination connection from the host racetrack, the pari-mutuel manager must:
    - (1) Notify the host track of the loss of signal.
    - (2) Maintain telephone contact with host track pari-mutuel department. The service provider may continue to accept wagering on the balance of the program.
    - (3) In the event the hub totalizator system fails to transfer the data to the ontrack totalizator system, the totalizator hub pari-mutuel operator must notify ontrack totalizator system representative of the problem and request additional time prior to the start of the race to allow for a transmission of the data.
    - (4) A service provider's pari-mutuel manager shall prepare a report indicating that the transfer of data could not be completed electronically. The report shall also include all the following:
      - (a) A copy of the totalizator report prior to the failure of the transfer of data.
      - (b) A copy of the totalizator report.
      - (c) A brief statement as to where the failure occurred, when the ontrack officials were notified.
  - b. The ontrack pari-mutuel manager must be notified of the system failure.

- c. In the event that the ontrack totalizator system experiences a complete failure, the pari-mutuel manager may pay ontrack prices or refund amounts wagered.
- d. In the event any emergency arises in connection with the operation of the pari-mutuel system not provided for by these rules, then the pari-mutuel manager shall make an immediate decision and render a full report to the commission.
- e. The ontrack pari-mutuel manager is responsible during the simulcast racing operating hours for the reporting of any problems or delays to the wagering site. The wagering site is responsible for reporting any problems or delays to the public.

17. A service provider may not commence wagering or utilize a totalizator system that has not been previously disclosed to the commission without notifying the commission of its intent to begin conduction wagering and receiving written commission approval. The foregoing does not prohibit a service provider from engaging in test wagering if such test wagering does not involve the exchange of real currency.

18. A service provider shall provide its players with contact information for no less than one problem gambling program. The problem gambling program utilized by the service provider must be clearly identified on the service provider's application and be subject to approval by the commission. The commission may designate changes to the methods employed in displaying contact information as necessary to support the accessibility of the information.

a. On any website utilized for account wagering a link to problem gambling program contact information must be prominently displayed on the main page of the website.

b. At any simulcast facility problem gambling program contact information must be prominently displayed so as to be clearly visible in each room of the facility.

**History:** Effective March 1, 1990; amended effective August 1, 2007; July 1, 2011; April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10.1, 53-06.2-11, 53-06.2-12, 53-06.2-13, 53-06.2-14

#### 69.5-01-11-04.1. Independent auditing services.

1. The commission may appoint an independent auditor responsible for providing reports of amounts due to the state of North Dakota from all site operators and service providers for pari-mutuel taxes, promotion fund, breeders' fund, purse fund, unclaimed tickets, and breakage.

2. The independent auditor shall obtain wagering data directly from the totalizator company used by the service provider. Each service provider shall cooperate fully to provide the independent auditor with complete access to all wagering data held by the service provider and their totalizator company.

3. In the event of a discrepancy between reports provided by a service provider and the independent auditor, the service provider shall work directly with the independent auditor and take all reasonable steps to identify the error or discrepancy and provide a complete reconciliation to the commission not later than thirty days after the service provider is notified of the discrepancy. The commission may grant an extension of this deadline.

4. If the discrepancy between reports provided by a service provider and the independent auditor is the result of an error in the systems or procedures utilized by the service provider, the service provider shall file a report detailing the cause of the error and a proposed course of action to correct the error. The error must be corrected and a final report filed detailing the correction no later than sixty days after the service provider is notified of the error. The commission may grant an extension of this deadline.



**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10.1, 53-06.2-11, 53-06.2-12, 53-06.2-13, 53-06.2-14

**69.5-01-11-04.2. Thoroughbred racing association codes and account deposit wagering websites.**

1. A service provider may conduct wagering under its North Dakota license only through thoroughbred racing association codes, simulcast sites, and websites specifically identified to the commission in writing. All simulcast sites and websites must be identified in the service provider application by their corresponding thoroughbred racing association code. These requirements may be waived by the commission in the event that thoroughbred racing association codes are not used in wagering into international jurisdictions or thoroughbred racing association codes are no longer used as part of industry standards. If the commission finds that providing a waiver for the use of thoroughbred racing association codes would affect the security or integrity of the wagering to be conducted, the commission may not issue the waiver.
2. A service provider shall notify the commission prior to the use of any new thoroughbred racing association code under its North Dakota license and must specify in each notification the simulcast site or website with which the thoroughbred racing association code is associated.
3. The service provider is responsible for retiring any thoroughbred racing association codes no longer in use and notifying the commission of such retirement in writing. A service provider may not use a thoroughbred racing association code for any purpose other than the purpose described in its service provider application without notifying the commission. The commission may require confirmation from the entity regulating thoroughbred racing association codes of a change in thoroughbred racing association code description if applicable.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10.1, 53-06.2-11, 53-06.2-12, 53-06.2-13, 53-06.2-14

**69.5-01-11-05. Licensing site operators.**

1. Before the commission may grant a license to a site operators, it shall review and approve a plan of operation submitted by an applicant including, but not limited to, the following information:
  - a. A feasibility study denoting the revenue earnings expected from the facility and the costs expected to operate such facility. The feasibility study must include:
    - (1) The number of races to be simulcast.
    - (2) The types of wagering to be offered.
    - (3) The level of attendance expected and the area from which such attendance will be drawn.
    - (4) The level of anticipated wagering activity.
    - (5) The source and amount of revenue expected from other than pari-mutuel wagering.
    - (6) The cost of operating the facility and the identification of costs to be amortized and the method of amortization of such costs.

- b. The security measures to be employed to protect the facility, to control crowds, to safeguard the transmission of the simulcast signal and to control the transmission of wagering data to effectuate common wagering pools.
  - c. The description of the management groups responsible for the operation of the facility.
  - d. The system of accounts to maintain a separate record of revenues collected by the facility, the distribution of such revenues, and the accounting of costs relative to the operation.
  - e. The location of each site and a copy of the lease or site agreement.
  - f. All written agreements or letters of consent between parties to the operation of the system, including a licensed service provider.
  - g. Proof of eligibility under North Dakota Century Code section 53-06.2-06.
  - h. Applicant's financial information demonstrating adequate capitalization to carry on the duties of a site operator.
  - i. Support or nonsupport of the local jurisdictional government.
  - j. Proof of adequate experience and knowledge necessary to conduct simulcasting and pari-mutuel wagering operations.
2. The license fee shall be as prescribed by the commission. Site operators may apply for a license and may operate one or more sites at the fees prescribed by the commission. Licenses will be for a term of one calendar year.
  3. Licenses to site operators may be granted as follows:
    - a. Organizations eligible under North Dakota Century Code section 53-06.2-06.
    - b. Indian tribal entities within the state which may be licensed pursuant to the provision of an existing racing addendum to a tribal gaming compact with the state.
    - c. No service providers may be licensed as site operators.
  4. Each applicant for a license under this chapter shall give a bond or letter of credit payable to this state with good security as approved by the commission. The bond or letter of credit must be in the amount the commission determines will adequately protect the amount normally due and owing to this state in a regular payment period or, in the case of new or altered conditions, based on the projected revenues.
  5. No simulcasting or pari-mutuel wagering may be conducted at a site not approved by the commission.

**History:** Effective March 1, 1990; amended effective August 1, 2007; July 1, 2011; April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-06, 53-06.2-07, 53-06.2-08, 53-06.2-10.1, 53-06.2-14

#### **69.5-01-11-06. Duties of site operators.**

1. A site operator shall conduct the pari-mutuel wagering at a site approved by the commission.

2. A site operator shall provide access to the commission or its designated representative to the site and to all records of the site operator and any other information as required by the commission or its designated representative.
3. A site operator is responsible for cash shortages which occur at a [simulcast](#) site.
4. The provisions of North Dakota Century Code section 53-06.2-11 are applicable to simulcasting and account wagering. A site operator shall establish a system of monitoring and supervising accounts to facilitate and to make record of compliance with this section. Such supervision of accounts must provide for timely payoffs to winning patrons either through immediate cash payments or by vouchers payable upon demand as soon as necessary funds transfer can be made through the clearing process of the banking system by the service provider. Such accounts must also provide for timely transfer of all funds owing to North Dakota. These shall include pari-mutuel taxes, breakage, unclaimed tickets, purse fund contributions, breeders' fund contributions, and promotion fund contributions. The site operator's service agreement with its service provider must include provision for such timely transfer of these funds [and systems of monitoring and supervising accounts](#).
5. A site operator may only take a signal or conduct account wagering from a service provider licensed by the commission.
6. All wagers are made on the official results of the sending track.
7. Only a licensed employee of a site operator may conduct simulcast or pari-mutuel wagering on behalf of a site operator, except a service provider may conduct pari-mutuel wagering on behalf of a site operator through a self-service device, electronically, telephonically, or through the internet only with the prior approval of the commission.

**History:** Effective March 1, 1990; amended effective August 1, 2007; July 1, 2011; [April 1, 2016](#).

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-06, 53-06.2-07, 53-06.2-08, 53-06.2-10.1, 53-06.2-11, 53-06.2-12, 53-06.2-14

#### **[69.5-01-11-06.1. Claims for payment from pari-mutuel pool.](#)**

1. [At a designated location, a written, verified claim for payment from a pari-mutuel pool must be accepted by a site operator or service provider in any case where the site operator or service provider has withheld payment, not placed a wager requested by a customer, or has refused to cash a pari-mutuel wager. The site operator or service provider's full written report on the matter in accordance with the requirements of section 69.5-01-08-21 \(complaints pertaining to pari-mutuel operations\) must be forwarded to the commission within forty-eight hours of the commission's request.](#)
2. [In the case of a claim made for payment of a mutilated pari-mutuel ticket, the site operator or service provider shall make a recommendation to accompany the claim forwarded to the commission as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.](#)

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-06, 53-06.2-10, 53-06.2-10.1, 53-06.2-11, 53-06.2-12, 53-06.2-14

#### **69.5-01-11-07. Licensing of employees.**

1. No person may be a simulcast employee unless that person is the holder of a valid license issued by the North Dakota racing commission. [If the individual is already licensed to engage](#)

in the same type of employment related to pari-mutuel wagering in another jurisdiction that has the same or similar licensing requirements and standards, the commission may waive any administrative background check and fees. This exception does not apply to the principals and supervisory personnel of a service provider as identified by the commission.

2. The employment of an unlicensed person by a site operator or service provider is prohibited. Upon discharge of a licensed simulcast employee, the site operator or service provider shall report that fact to the commission, including the name and occupation of the discharged licensee and the reason for discharge.
3. The commission will not issue a license to a simulcast employee unless the application includes the prior endorsement of the employer.
4. The initial license fee and the renewal fee shall be prescribed by the commission. For each change of employment, name change, or replacement of a lost or destroyed license, a fee may be assessed as prescribed by the commission. The term of licenses shall be one calendar year.
5. Maintenance and administrative representatives of service providers and their vendors or suppliers must have current North Dakota racing commission licenses available for presentation prior to requesting admittance to restricted areas of sites. If such representatives are not licensed by the commission, they must be accompanied by a licensed representative or have the prior identification and endorsement of a licensed representative.
6. Each simulcast employee shall wear a valid license at all times while working in a simulcast site. The license must be worn on the upper one-third of the employee's body. All information on the license or permit must be easily visible. No license may be transferred to any other person.
7. No employee or agent of a service provider may be employed by a site operator. No employee of a site operator may be employed by a service provider.
8. No simulcast employee may wager at a site while on duty. For purposes of this section, a simulcast employee taking a temporary break is still considered on duty.

**History:** Effective March 1, 1990; amended effective August 1, 2007; July 1, 2011; [April 1, 2016](#).

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-05, 53-06.2-08, 53-06.2-10.1, 53-06.2-14

#### **69.5-01-11-08. North Dakota tracks offering extended wagering.**

1. A Subject to commission approval, a North Dakota track may authorize use of its simulcast for interstate wagering by out-of-state betting systems provided the North Dakota track files with the commission a copy of the agreement with the out-of-state betting system which sets forth the payment to the North Dakota track for use of its simulcast, and of any agreements required by chapter 57, including section 3001, et seq. of title 15 of the United States Code.
2. Every North Dakota sending track simulcasting its racing program shall contract with a simulcast service provider for the purpose of providing authorized users with its simulcast.
3. The North Dakota sending track is responsible for the content of its simulcast and shall use all reasonable effort to present a simulcast which offers the viewers an exemplary depiction of its racing program, a periodic display of wagering information, and continuity programming between horse racing events.
4. Unless otherwise permitted by the commission, the sending track simulcast will contain in its video content a digital display of the actual time of day, the name of the racetrack from where

it emanates, the number of the race being displayed, and the sequential fractional time of the race as the race is being run.

**History:** Effective March 1, 1990; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-10.1

**69.5-01-11-10.1. Interstate common pool participation.**

1. A service provider shall participate in common pool wagering by accepting wagers placed in other jurisdictions or by offering wagers on races run in other jurisdictions. The rules for a pari-mutuel pools established in the state of the live event pari-mutuel pool host apply.
2. All contracts submitted to the commission must be fully executed by all parties thereto and must include all attachments, addendums, and other documentation that constitute part of the contract. A service provider may submit only an addendum to a contract which increases the term of that contract if a copy of the original contract of which the addendum is part is currently on file with and has been approved by the commission. A service provider shall resubmit any contract, or any portion thereof, at the request of the commission.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-10, 53-06.2-10.1

**69.5-01-11-11.1. Account wagering.**

The requirements for account wagering are as follows:

1. A site operator may offer a system of account wagering to its players in which wagers are debited and payouts credited to a sum of money, deposited in an account by the player, that may be held by a service provider. The service provider shall notify the player, at the time of opening the account, of any rules the site operator or service provider has made concerning reporting, monitoring, changes of awards, account activity (deposits or withdrawals), user fees, or any other aspect of the operation of the account. The service provider shall notify the player and the site operator whenever the rules governing the account are changed. The notification must occur prior to or at the time when the new rules are applied to the account. Notification shall be posted on the website utilized for account wagering or by mailing to the player at the player's last-known address. The player shall be deemed to have accepted the rules of account operation upon opening or not closing the account. The site operator and service provider shall present the method of account wagering to the commission for review and approval.
2. To establish an account with the service provider, the player must be approved through a process developed by the service provider and shared with the site operator and commission.
3. The information each player submits must be subject to electronic verification. The verification must identify clients and obtain information with respect to name, principal residence address, date of birth, and verification of information through testing criteria established by electronic verification pertinent to doing financial business with them. The service provider must verify that the customer is not on the specially designated nationals list, maintained by the United States department of the treasury, or the designated foreign terrorist organizations list, maintained by the United States department of state. If there is a discrepancy between the application submitted and the information provided by the electronic verification described above, or, if no information on the applicant is available from such electronic verification, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. The information

secured by the service provider must be documented and available to the site operator and commission upon request. If a player wagers more than ten percent of the monthly amount wagered with the service provider, the service provider shall perform additional identity verification, which must be proportionate to the possible risks and the resources available. The service provider may close or refuse to open an account for what it deems good and sufficient reason and shall order an account closed if it is determined that information that was used to open an account was false or that the account has been used in violation of law or rules.

4. The player shall maintain an account balance established by the service provider and identified in the contract with the site operator. In no event shall the service provider allow wagering on an account with a negative balance.
5. The service provider may offer to players:
  - a. Accounts that are operational for any performance offered by the service provider, whereby wagers are placed by the player at a self-service terminal or by any electronic means.
  - b. The service provider may reserve the right at any time to refuse to open an account, to accept a wager, or to accept a deposit.
  - c. The service provider shall provide, for each player, a confidential account number or user name and password or personal identification number to be used by the player to access the player's account or, at the service provider's option, confirm validity of every account transaction.
6. Deposits may be made in the manner provided by the site operator or service provider. Holding periods will be determined by the service provider, and the player will be informed of this period. A receipt for the deposit may be issued electronically to the player by the service provider.
7. The service provider may only debit an account as follows:
  - a. Upon receipt by the service provider of information needed to place a wager. The service provider shall only debit the account in the amount of the wager at the time the wager is placed.
  - b. For fees for service or other transaction-related charges by the service provider.
  - c. Authorized withdrawal from an account when the player sends to the service provider a properly identifiable request for a withdrawal. The service provider will honor the request contingent on funds being available in the account and subject to funds being collected from the host track and approved by the commission. If the funds are not sufficient to cover the withdrawal, the player will be notified, and the funds that are available may be made available for withdrawal. These transactions will be completed in accordance with financial institutions funds availability schedules.
8. Each player shall be deemed to be aware of the status of that account at all times. Wagers will not be accepted which would cause the balance of the account to drop below the minimum account balance set by the service provider.
9. When a player is entitled to a payout or refund, said moneys will be credited to the respective account, thus increasing the balance. It is the responsibility of the player to verify proper credits, and, if in doubt, notify the service provider within the timeframe identified by the service provider.



10. The service provider shall maintain complete records of every deposit, withdrawal, wager, and winning payment for each player account. These records shall be made available to the commission and site operator upon request.
  - a. Any account wagering system shall provide for the player's review and finalization of a wager before it is accepted by the service provider. Neither the player nor the service provider shall change a wager after the player has reviewed and finalized the wager.
  - b. For wagers made telephonically or electronically the service provider shall make a voice or electronic recording of the entire transaction and shall not accept any such wager if the voice or electronic recording system is not operable. The voice and electronic recording of the transaction shall be deemed to be the actual wager regardless of what was recorded by the pari-mutuel system.
11. The service provider may close any account when the player attempts to operate with an insufficient balance or when the account is dormant for a period determined by the commission or the site operator. In either case the service provider shall refund the remaining balance of the account to the player within thirty days.

12. The service provider shall provide upon request of the commission direct access to the databases and computer systems used by the service provider in the monitoring and control of wagering and account activity.

~~12.13.~~ The service provider shall establish with the site operator the minimum amount due to the site operator as negotiated by each entity. This information should be filed with the commission. In the event of any disagreement or inquiry regarding the amounts due to the site operator which are based on a percentage of handle, the commission may review reports of wagering activity to determine the amounts due and render a report to the service provider and site operator.

~~a. The service provider shall provide real-time monitoring of all accounts to the site operator and the commission.~~

~~b. Service providers shall notify site operators of proposed rebate programs thirty days before implementation and receive authorization form site operators before implementation.~~

~~c. Service providers shall provide reports of account wagering activity to the site operator for their review.~~

**History:** Effective July 1, 2011; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-06, 53-06.2-10.1, 53-06.2-14

#### **69.5-01-11-11.2. Totalizator system general provisions.**

1. Pari-mutuel wagering utilizes a totalizator to pool wagers. The totalizator system may be located at a site, or may, subject to compliance with applicable law and rules, reside at another location other than within the state of North Dakota.
2. Wagering, subject to commission approval and compliance with applicable law and rules, may be accepted by separate totalizator systems in this or other jurisdictions and combined via communication between totalizator systems.
3. The commission may, without specific reference in these rules, utilize a designee for the purposes of certification, verification, inspection, testing, and investigation. A commission designee may be another commission or equivalent regulatory authority, a multijurisdictional

group of regulatory authorities, association of regulatory authorities, or auditing, consulting, security, investigation, legal services, or other qualified entities or persons.

4. The commission may enter into multijurisdictional agreements with other regulatory authorities to facilitate certification of compliance with requirements by, and licensing of, service providers and totalizator companies. Such agreements shall, at a minimum, ensure certification and licensing requirements comparable to this jurisdiction.

5. If any daily electronic files or other totalizator data provided to the commission or a third-party auditor designated by the commission for receipt of such information is found to be inaccurate, the totalizator shall provide to the commission or its third-party auditor any data files or other data in whatever form that is requested.

6. A totalizator company shall provide access by the commission or its designated representative to its facility, records, and any other information as required by the commission or its representative.

**History:** Effective July 1, 2011; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.2-05

**Law Implemented:** NDCC 53-06.2-04, 53-06.2-05, 53-06.2-08, 53-06.2-10.1, 53-06.2-14



**TITLE 71**  
**RETIREMENT BOARD**



**APRIL 2016**

**CHAPTER 71-01-01**

**71-01-01-01. Organization of public employees retirement board.**

1. **History.** The 1965 legislative assembly created the public employees retirement system by legislation codified as North Dakota Century Code chapter 54-52. The starting date of the program was July 1, 1966. The board acts as the administrating body to manage the public employees retirement system, the judges retirement system, the highway patrol retirement system, the national guard security officers and firefighters system, the uniform group insurance program, the deferred compensation plan, the prefunded retiree health program, and a pretax benefit program for public employees.
2. **Board membership.** The board consists of ~~seven~~nine members. ~~One~~Two are members of the legislative assembly appointed by the chairman of the legislative management; one member, the chairman, is appointed by the governor; one member is appointed by the attorney general from the attorney general's staff; one member is the state health officer or state health officer's designee; three members are elected by the active membership of the system; and one member is elected by the retired public employees.
3. **Executive director.** The executive director is appointed by the board and is responsible for the administration of the day-to-day activities of the retirement systems, the prefunded retiree health program, the uniform group insurance program, the deferred compensation program, and the pretax benefit program for public employees.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

Executive Director  
Box 1657  
Bismarck, North Dakota 58502

**History:** Amended effective November 1, 1981; November 1, 1985; April 1, 1988; September 1, 1989; January 1, 1992; May 1, 2004; April 1, 2016.

**General Authority:** NDCC 28-32-02.1, 54-52-04

**Law Implemented:** NDCC 28-32-02.1, 54-52-03

## CHAPTER 71-01-03

### 71-01-03-04. Treatment, payment, or operations.

The board of the public employees retirement system has determined that:

1. Information related to enrollment, participation, benefits, or contributions may be shared with participating employers or public employees retirement system contractors for purposes of maintaining a member's participation and benefits in the public employees retirement system programs. Such sharing of information is limited to that information that is necessary to assure that a member's participation and benefits are properly handled. All such information remains confidential whether in the possession of the public employees retirement system, its participating employers, or its contractors.
2. Information relating to eligibility for retirement benefits may be shared with the social security administration and such other organizations to ensure that the member is still alive and continues to be eligible.
3. Information necessary for the administration and operation of the program may be shared with the public employees retirement system attorney and consultants. To the extent such information is shared it remains confidential.
4. Information relating to the death benefits and beneficiary designations of a deceased member may be shared with an ex spouse if listed as a beneficiary on a designation of beneficiary form, or any other person listed as a beneficiary on a designation of beneficiary form, subsequent to the death of the member, but in advance of a final determination regarding the applicable designated beneficiaries, only to the extent necessary to accurately identify the appropriate designated beneficiaries.

All other requests for information under this section must first be submitted to the executive director and then reviewed by the public employees retirement system board.

**History:** Effective May 1, 2004; amended effective April 1, 2016.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-26

## 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 in a way that precludes employer discretion pursuant to Internal Revenue Code section 401(a)(25). Such assumptions and methods adopted by the board, and any table of adjustment factors established in accordance with the assumptions and methods, shall be incorporated herein by reference.
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; [April 1, 2016](#).

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52

## CHAPTER 71-02-02

### 71-02-02-01. Membership - General rule.

~~Each~~When an eligible employee shall ~~become~~becomes a member of the public employees retirement system ~~upon filing a membership form with the office, and the beginning of contributions to the fund. In addition,~~ the following requirements apply:

1. A temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.
2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.
6. Elected officials of participating counties and elected state officials, at their individual option, must enroll or waive participation in writing within six months of taking office or beginning a new term. If no application is made and filed with the office, an irrevocable waiver of participation will occur until the official makes application within six months from the start of a new term.

**History:** Amended effective September 1, 1982; November 1, 1990; September 1, 1992; June 1, 1996; July 1, 1998; May 1, 2004; July 1, 2006; April 1, 2016.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC ~~54-52-01(3)~~54-52-01, 54-52-02.9, 54-52-05



## CHAPTER 71-02-04

### 71-02-04-07. Amount of early retirement benefit.

1. Except for ~~members of the~~ a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, the early retirement benefit for members first enrolled prior to December 31, 2015, shall be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than the age at which the member would be at the member's normal retirement date on the date of the member's early retirement benefit effective date.
2. For ~~members of the~~ a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, the early retirement benefit must be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than age fifty-five on the date of the member's early retirement benefit effective date.

**History:** Amended effective September 1, 1982; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 54-52-04, 54-52-17

**Law Implemented:** NDCC 54-52-17

### 71-02-04-09.1. Dual membership limitations.

The following limitations apply when a member elects an option under subsection 1 of section 71-02-04-09.

1. Eligible service credit may be used for vesting purposes and determining when the dual member may begin drawing normal retirement benefits. A member may begin drawing retirement benefits from one fund and use the same years, and any additional years, for reaching retirement from the alternate fund if the service credit is earned at different times.
2. If a dual member elects to receive retirement benefits as provided in subsection 1 of section 71-02-04-09, the final average salary, service credit, and member's age used to calculate the benefit that is applicable at the time retirement benefits begin may not be adjusted after the benefit effective date.
3. The salary used in calculating the retirement benefit must be ~~certified~~ provided in writing by the alternate retirement system. Months not employed are excluded for the purpose of computing the final average salary. If a dual member works less than thirty-six months at retirement, the final average salary is the average salary for total months of employment.

**History:** Effective June 1, 1996; amended effective May 1, 2004; April 1, 2012; April 1, 2016.

**General Authority:** NDCC 54-52-04, 54-52-17, 54-52-17.2

**Law Implemented:** NDCC 54-52-17, 54-52-17.2

## CHAPTER 71-02-05

### 71-02-05-06. Determination of disability - Procedures.

#### 1. Application.

- a. If the member is unable or unwilling to file a public employees retirement system application for disability retirement, the member's legal representative may file the member's disability application.
- b. For the main system and the national guard and law enforcement system, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience. For the judges' retirement plan, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to mentally or physically fulfill the duties and responsibilities of being a judge. A judge who is determined to be disabled pursuant to subdivision a of subsection 3 of North Dakota Century Code section 27-23-03 shall file an application documenting this determination and the effective date of the disability.
- c. The application must be filed with the public employees retirement system and may not be filed earlier than one hundred twenty days before the expected termination date.

#### 2. Medical consultant.

- a. The board may retain a medical consultant to evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant is responsible to determine eligibility for disability benefits for applicants not approved for social security disability benefits or for judges not approved pursuant to subsection 3 of North Dakota Century Code section 27-23-03 and shall advise the executive director of the decision in writing. Applicants who become eligible for disability benefits under the Social Security Act and who meet the requirements of subdivision e<sup>h</sup> of subsection 3 of North Dakota Century Code section 54-52-17 are eligible for benefits under subdivision e of subsection 4 of North Dakota Century Code section 54-52-17 without submitting further medical information to the medical adviser, but are subject to recertification requirements specified in this chapter. The social security disability award must provide proof that the member's disability was determined during the member's period of eligible employment. In determining eligibility for judges not approved pursuant to the above, the medical director shall work with a review committee composed of one supreme court judge and a district court judge to review the proposed application. In order for the application to be approved, it must have the concurrence of the medical director and at least one judge. The executive director shall appoint two judges to serve on the review committee.

#### 3. Medical examination.

- a. The applicant for disability retirement shall provide the medical examination reports as requested by the medical consultant.
- b. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports,

medical reports, and hospital reports necessary for initial determination of eligibility for benefits.

- c. If determined to be eligible for disability benefits, the member must be reimbursed ~~up to four hundred dollars~~ for the cost of medical examinations specifically requested by the medical adviser and the executive director.

**4. Appeal.**

- a. If the applicant has terminated employment, the public employees retirement system shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the public employees retirement system shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- b. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.
- c. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the public employees retirement system mailed the decision.
- d. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
- e. If the initial board decision is adverse to the applicant after exhausting the administrative procedure under subdivisions a and b, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law, and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.

5. **Payment of annuity.** If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment minus any early retirement benefits that have been paid.

6. **Redetermination and recertification.**

- a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant. The executive director may waive the necessity for a recertification, based on the recommendation of the medical consultant.
- b. The public employees retirement system will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first day of the month benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board.
- c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the executive director.
- d. The medical consultant will make the recertification decision. The executive director may require additional recertifications, if the facts warrant this action. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
- e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The executive director shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

**History:** Effective January 1, 1992; amended effective July 1, 1994; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006; [April 1, 2016](#).

**General Authority:** NDCC [54-52-04](#), 54-52-17

**Law Implemented:** NDCC 54-52-17, 54-52-26

#### **71-02-05-07. Optional benefits.**

For the main system and national guard ~~or~~ law enforcement retirement plans, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death

certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
3. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

**History:** Effective January 1, 1992; amended effective July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008; April 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC [54-52-06.4](#), 54-52-17

## CHAPTER 71-02-06 CONTRIBUTIONS

### Section

71-02-06-01	Conditions for Return
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71-02-06-04	Adjustment for Bonuses, Profit Sharing, and Contributions Paid in a Month Other Than Month Earned
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71-02-06-09	Individual Employee Incentive Payments
71-02-06-10	Transfer of Funds
71-02-06-11	Transfer Date
71-02-06-12	<u>Employee-Paid Contributions - Repayment Options</u>

### **71-02-06-07. Employer contribution - National guard/law enforcement.**

As part of its annual actuarial evaluation, the board shall determine the amount required to support the level of benefits for national guard/law enforcement specified in North Dakota Century Code section 54-52-17. The board shall set the employer's contribution rate on a biennial basis, but may adjust that rate if it is actuarially necessary to maintain appropriate funding levels.

**History:** Effective July 1, 1994; amended effective May 1, 2004; April 1, 2016.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC ~~54-52-06.2~~54-52-06.4

### **71-02-06-12. Employee-paid contributions - Repayment options.**

If the office determines that any required employee-paid contributions have not been made, the cost of any required employee-paid contributions may be paid in a lump sum or in installments in a manner consistent with installment payments permitted under section 71-02-03-02.2.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 39-03.1-09, 54-52-02.9, 54-52-05, 54-52-06.1, 54-52-06.3, 54-52-06.4

## CHAPTER 71-03-03

### 71-03-03-01. Enrollment.

An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility criteria, if the employee submits an application for coverage within the first thirty-one days of employment or eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health, dental, vision, or prescription drug insurance plan.
2. Marriage. An employee who previously waived coverage must enroll for coverage at the time the employee's spouse is enrolled.
3. Addition of a dependent as a result of birth, adoption, placement for adoption, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage must enroll for coverage at the same time that the employee's eligible dependent is enrolled.

**History:** Effective October 1, 1986; amended effective July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2010; April 1, 2012; April 1, 2016.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-02, 54-52.1-03

### 71-03-03-02. Late enrollment.

An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment ~~and may be subject to a six-month waiting period for preexisting conditions~~. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

**History:** Effective October 1, 1986; amended effective June 1, 1996; July 1, 1998; May 1, 2004; April 1, 2016.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-03, 42 U.S.C. 300gg-3

### 71-03-03-05. Special enrollment for certain qualifying events.

An eligible employee, retiree, or surviving spouse who elects to take a periodic distribution from the defined contribution retirement plan or a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America - college retirement equities fund, or retirees who have accepted a retirement allowance from a participating political subdivision's retirement plan and provide verification of distribution are eligible for coverage with the health, dental, vision, or prescription drug insurance program.

1. The employee, retiree, or surviving spouse must submit application for coverage within thirty-one days from one of the following qualifying events:
  - a. The month in which the eligible employee or retiree turns age sixty-five or becomes eligible for medicare.
  - b. The month in which the eligible employee's or retiree's spouse turns age sixty-five or becomes eligible for medicare.
  - c. The month in which the eligible employee terminates employment.



- d. The month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems outlined above.
  - e. The month in which an eligible employee or retiree who is covered through a spouse's plan becomes ineligible for the spouse's plan due to divorce, death, loss of employment, reduction in hours or other events which may cause loss of coverage as determined by the board.
  - f. The month in which the eligible employee or retiree is no longer eligible for employer-sponsored insurance, including coverage provided under the Consolidated Omnibus Budget Reconciliation Act.
2. Coverage will become effective on the first day of the month following the month in which the qualifying event occurred. If an application is not submitted within thirty-one days of a qualifying event, the eligible individual must be considered to have waived coverage and may not be enrolled unless the individual meets the criteria of another qualifying event. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.
  3. Other individuals eligible for the health, dental, vision, or prescription drug insurance plan include a surviving spouse who is not receiving a qualified monthly retirement benefit from one of the eligible retirement systems outlined above, but who was a covered dependent on the eligible retiree's health, dental, vision, or prescription drug insurance plan at the time of the eligible retiree's death, if there is no lapse in coverage.
  4. Individuals not eligible for the health, dental, vision, or prescription drug insurance plan include:
    - a. A former employee who received a refund of the employee's retirement account, including individuals in the defined contribution plan who take a cash withdrawal of the employee's account, roll their account into another qualified plan, or use the moneys in their account to purchase an annuity.
    - b. A nonspouse beneficiary (eligible for Consolidated Omnibus Budget Reconciliation Act).
    - c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for the Consolidated Omnibus Budget Reconciliation Act (if eligible) ends and the month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems.
    - d. A formerly deferred retiree who received a refund of the retiree's retirement account.
    - e. A surviving spouse of a nonvested employee eligible for the Consolidated Omnibus Budget Reconciliation Act.
    - f. A surviving spouse of a former employee who received a refund of the employee's retirement account.
    - g. A former participating member of the defined contribution retirement program who would not qualify for one of the retirement dates set forth in subsection 3 of North Dakota Century Code section 54-52-17 if that employee was a member of the defined benefit retirement plan, unless eligible under the Consolidated Omnibus Budget Reconciliation Act, and then only for the required duration of eligibility under the Act.
    - h. For the purposes of the medical and prescription drug plan, employees who first retire after July 1, 2015, and are not eligible for medicare upon their retirement and completion



of any period of eligibility under the Consolidated Omnibus Budget Reconciliation Act, until such time as they or their spouse become eligible for medicare.

**History:** Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004; April 1, 2012; April 1, 2016.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-02, 54-52.1-03, 54-52.1-03.1; Pub. L. 99-272; 100 Stat. 222; 26 USC 162 et seq.

## CHAPTER 71-03-05

### 71-03-05-07. Erroneous payment of premiums - Overpayments.

1. An "overpayment" means a payment of money to the public employees retirement system for group insurance premiums that exceeds the premiums due for the level of coverage that should have been in effect.
2. If an overpayment occurs, the amount of the overpayment must be paid to the insured in a lump sum within thirty days of the discovery of the error. The payment may be made to any person insured under the policy.

**History:** Effective April 1, 2002; amended effective April 1, 2016.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

### 71-03-05-08. Erroneous payment of premiums - Underpayments.

1. An "underpayment" means a payment of money to the public employees retirement system for group insurance premiums that is less than the premiums due for the level of coverage that should have been in effect. Underpayment of premium is solely an error in the amount of premium billed to the individual.
2. An individual who underpays premiums is liable to pay those premiums upon receiving a request for repayment and an explanation of the amount due from the executive director. All underpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the underpayment is estimated to exceed the amount of the underpayment, the underpayment is considered to be unrecoverable.
3. If an underpayment is discovered in the first month it occurs, the individual must pay the amount due in a lump sum within thirty days of the discovery of the error.
4. If an underpayment is not discovered within the first month it occurs, the following will apply:
  - a. If not the result of any wrongdoing, negligence, misrepresentation, or omission by the individual, then the individual must make arrangements within sixty days of receiving written notification to either pay by lump sum or installments. The installment payment schedule is subject to approval by the executive director with the minimum repayment amount no less than fifty dollars a month. If repayment arrangements are not in place within sixty days of the date of the written request for repayment, the executive director shall authorize payment to be made in three equal installments, using the same payment method the individual has authorized for paying current monthly premiums.
  - b. If underpayment is the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the individual, underpayments must be made in full within sixty days of written notification.
5. If an underpayment occurs and the individual no longer participates in the group insurance, any premium amounts due are immediately payable.
6. If the individual dies prior to paying in full, then the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.
7. If the individual refuses to repay the underpayment, or the underpayment is not paid in full, coverage ~~will~~may be canceled retroactive to the first day of the month following the month for

which full premium payment was received. ~~The public employees retirement system will provide written notice advising the individual that payment in full must be received within thirty days of the written notification to reinstate coverage retroactively to the date that coverage was canceled.~~

**History:** Effective April 1, 2002; amended effective April 1, 2008; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

## CHAPTER 71-04-01

### 71-04-01-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code section 54-52.2-04, except:

1. "Beneficiary" means an individual designated by the participant to receive benefits under the plan in the event the participant dies.
2. "Compensation" means the total annual remuneration for employment or contracted services received by the participant from the employer.
3. "Deferred compensation" means the amount of compensation not yet earned which the participant and the employer shall mutually agree shall be deferred from current monthly salary in accordance with the provisions of the plan.
4. "Eligible state deferred compensation plan" means a plan established and maintained by this state that complies with the Internal Revenue Code (IRC) 457(b).
5. "Employer" means the state of North Dakota or any of its political subdivisions, institutions, departments, or agencies.
6. "Participant" is any employee of a participating employer who executes a participant agreement.
7. "Participant agreement" means ~~a written~~an agreement between the employer and a participant setting forth certain provisions and elections relative to the plan, incorporating the terms of the plan and establishing the participant's deferral and participation in the plan.
8. "Provider" means any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 authorized by the retirement board to provide investment vehicles to employees.
9. "Retirement" means separation from service with the employer on a date coincidental with the normal, postponed, early, or disability retirement dates as described in North Dakota Century Code chapter 54-52-17.3.
10. "Retirement board" or "board" means the seven persons described in North Dakota Century Code chapter 54-52-03.
11. "Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes termination of employment with the employer by reason of death, disability, retirement, resignation, or discharge.
12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.
13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

**History:** Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 28-32-02, 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-03, 54-52.2-03.2, 54-52.2-04

## CHAPTER 71-04-03

### 71-04-03-01. Enrollment.

Public employees may enroll in the deferred compensation plan by completing and submitting a participant agreement ~~and submitting the agreement~~ to the ~~retirement board~~office.

**History:** Effective April 1, 1989; amended effective April 1, 2014; April 1, 2016.

**General Authority:** NDCC 28-32-02, 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-03

### 71-04-03-03. Change in monthly deferral.

A participant may change the amount of deferral at any time, as long as a participant agreement is completed and ~~filed with~~submitted to the ~~retirement board~~office as set forth in section ~~71-04-03-02~~71-04-03-01.

**History:** Effective April 1, 1989; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-03; IRC 457(b)(4)

### 71-04-03-07. Distribution of assets.

Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05 or 71-04-08-01, or as a direct trustee-to-trustee plan transfer to a tax-qualified governmental defined benefit plan (as defined in Internal Revenue Code section 414(d)) for the purchase of permissive service credit (as defined in Internal Revenue Code section 415(n)(3)(A) or a repayment to which Internal Revenue Code section 415 does not apply by reason of section 415(k)(3), regardless of whether or not the participant has had a severance from employment, at a time and in a manner prescribed by the board, as set forth in the 457 deferred compensation plan document, and in a manner consistent with section 457(e)(17) of the Internal Revenue Code.

**History:** Effective May 1, 2004; amended effective April 1, 2016.

**General Authority:** NDCC 28-32-02, 54-52-03.2

**Law Implemented:** NDCC 54-52.2-03, 54-52.2-03.2

## CHAPTER 71-04-04

### 71-04-04-05. Payroll deduction authorization.

The ~~board~~office shall ~~deliver~~make available to the payroll division of each employer ~~a copy of~~direction to begin, modify, or discontinue deductions pursuant to the ~~signed~~completed participant agreement as the payroll division's authorization to begin deductions.

**History:** Effective April 1, 1989; amended effective July 1, 2010; April 1, 2016.

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

**Law Implemented:** NDCC 54-52.2-02, 54-52.2-03

### 71-04-04-07. Separation from service.

The board shall~~may~~ notify the participant, provider company, and provider representative of the employee's separation from service and eligibility for payment of benefits.

**History:** Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 28-32-02, 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-03, 54-52.2-03.2

### 71-04-04-08. Authorization.

The executive director or the executive director's designee is authorized to sign all provider agreements, employer agreements, ~~payroll deduction authorizations~~, or benefit applications that meet the requirements under article 71-04 and under North Dakota Century Code chapter 54-52.2.

**History:** Effective July 1, 1994; amended effective May 1, 2004; April 1, 2016.

**General Authority:** NDCC 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-01, 54-52.2-02, 54-52.2-03, 54-52.2-03.2

## CHAPTER 71-04-05

### 71-04-05-02. Payroll deductions.

The employer shall authorize employee payroll deductions only after receiving notification from the ~~public employees retirement system~~office. The participant agreement must indicate the date the payroll deduction is to start, the provider, and the contribution amount. Payroll deductions must be remitted to the ~~retirement board~~office within ten days after each payroll period. Along with each payment, the employer must provide the ~~retirement board~~office 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; [April 1, 2016](#).

**General Authority:** NDCC 28-32-02, 54-52-03.2

**Law Implemented:** NDCC 54-52.2-02

### 71-04-05-06. Separation from service notice.

The employer shall notify the ~~retirement board~~office within thirty days of an employee's separation from service. The ~~retirement board shall~~office may then notify the former employee's provider of the employee separation from service and eligibility for payment options under the plan.

**History:** Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004; [April 1, 2016](#).

**General Authority:** NDCC 28-32-02, 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-03, 54-52.2-03.2

## CHAPTER 71-05-01

### 71-05-01-01. Definitions.

As used in North Dakota Century Code chapter 39-03.1:

1. "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 in a way that precludes employer discretion pursuant to Internal Revenue Code section 401(a)(25). Such assumptions and methods adopted by the board, and any table of adjustment factors established in accordance with the assumptions and methods, shall be incorporated herein by reference.
2. "Covered employment" means employment with the North Dakota highway patrol.
- ~~2.3.~~ "Medical examination" means an examination conducted by a doctor licensed to practice in North Dakota that includes a diagnosis of the disability, the treatment being provided for the disability, the prognosis and classification of the disability, and a statement indicating how the disability prevents the individual from performing the duties of a highway patrolman.
- ~~3.4.~~ "Normal retirement age" means age fifty-five except as otherwise provided.
- ~~4.5.~~ "Office" means the administrative office of the public employees retirement system.
- ~~5.6.~~ "Permanent and total disability" 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.
- ~~6.7.~~ "Plan administrator" means the executive director of the North Dakota public employees retirement system.
- ~~7.8.~~ "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.

**History:** Effective November 1, 1990; amended effective October 1, 1991; June 1, 1992; July 1, 2006; April 1, 2016.

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** NDCC ~~39-03.1-07~~39-03.1



## CHAPTER 71-06-01

### 71-06-01-02. Calculation of retiree health insurance credit.

Retiree health insurance credit will be calculated on actual years and months of service, identical to retirement benefits under North Dakota Century Code chapter 54-52.

1. Retiree health insurance credit will be subject to reduction factors in the event of early retirement.

For annuitants of the public employees retirement system defined benefit plan and North Dakota public employees retirement system judges, and for members of the defined contribution retirement plan, excluding national guard law enforcement and highway patrol retirees, who take a periodic distribution:

<u>Age at Retirement</u>	<u>Reduction Factor</u>	<u>Age at Retirement</u>	<u>Reduction Factor</u>
64 to 65	3%	59 to 60	33%
63 to 64	9%	58 to 59	39%
62 to 63	15%	57 to 58	45%
61 to 62	21%	56 to 57	51%
60 to 61	27%	55 to 56	57%

For annuitants of the job service retirement program: This includes those who retired under a discontinued service annuity but does not include those who retired at a normal or optional date.

<u>Age at Retirement</u>	<u>Reduction Factor</u>	<u>Age at Retirement</u>	<u>Reduction Factor</u>	<u>Age at Retirement</u>	<u>Reduction Factor</u>
64 to 65	3%	59 to 60	33%	54 to 55	63%
63 to 64	9%	58 to 59	39%	53 to 54	69%
62 to 63	15%	57 to 58	45%	52 to 53	75%
61 to 62	21%	56 to 57	51%	51 to 52	81%
60 to 61	27%	55 to 56	57%	50 to 51	87%

For annuitants of the highway patrol fund and national guard ~~security police and firefighters~~ law enforcement retirees and national guard ~~security police and firefighters~~ law enforcement retirees who transferred to the defined contribution retirement plan:

<u>Age at Retirement</u>	<u>Reduction Factor</u>
54 to 55	3%
53 to 54	9%
52 to 53	15%
51 to 52	21%
50 to 51	27%

2. Disabled annuitants receiving benefits under subdivision g of subsection 3 of North Dakota Century Code section 54-52-17, subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11, North Dakota Century Code section 52-11-01, or section 71-02-05-05 will be eligible for full retiree health insurance credit benefits. No age reduction factor will be applied.
3. A surviving spouse eligible to receive benefits under paragraph 2 of subdivision a and paragraphs 2 and 3 of subdivision b of subsection 6 of North Dakota Century Code section 54-52-17, subdivisions b and c of subsection 6 of North Dakota Century Code section 39-03.1-11, or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit based on the deceased member's years of service without any age reduction applied.
4. A surviving spouse receiving benefits under the provisions of subdivision b or d of subsection 9 of North Dakota Century Code section 54-52-17; subdivisions a, b, and c of subsection 5 of North Dakota Century Code section 27-17-01; subsection 9 of North Dakota Century Code section 39-03.1-11; or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit for the duration benefits are paid, based upon the original annuitant's retirement age.

**History:** Effective April 1, 1992; amended effective June 1, 1996; July 1, 2000; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 54-52.1-03.2(b)

**Law Implemented:** NDCC 54-52.1-03.3

**71-06-01-03. For retirees receiving more than one benefit entitled to retiree health insurance credit.**

1. If a retiree is receiving more than one benefit from the public employees retirement system, or other participating system; one as a surviving spouse, and the other based upon the retiree's own service credit, the retiree health insurance credit for each benefit will be combined with an effective date based on eligibility in accordance with North Dakota Century Code section 54-52.1-03.3.

2. ~~If a retiree is receiving a public employees retirement system retirement benefit as a surviving spouse and is also an active contributor to either the public employees retirement system, the highway patrol retirement system, the judges retirement system, or the job service retirement program, the individual will not be eligible for retiree health insurance credit until one of the following events occurs:~~

~~a. The active contributor terminates employment, at which time the active contributor may receive the retiree health insurance credit as any other surviving spouse.~~

~~b. The active contributor retires and begins receiving a benefit through an eligible retirement system.~~

3. If the retiree was employed by a political subdivision which does not participate in the public employees retirement system health plan, and is drawing a retirement benefit or a surviving spouse benefit, the individual may receive the retiree health insurance credit as any other retiree based upon a retiree premium.

- 4.3. If a husband and wife are both receiving a benefit from a retirement system that provides the retiree health insurance credit, the retiree health insurance credit will be applied as follows:

a. ~~If each retiree takes a single health insurance plan under the uniform group health insurance program, each~~ Each will have their respective retiree health insurance credit ~~applied to~~ reimbursed for their respective premiums.

- b. If only one retiree takes a family health plan under the uniform group health insurance program, they may make application with the public employees retirement system to combine retiree health insurance credits.

Retirees are responsible for making application with the public employees retirement system to combine and discontinue combining retiree health insurance credits.

- 5-4.** Retirees with service credit in more than one of the participating retirement systems will have their respective retiree health insurance credit for each benefit combined with an effective date based on eligibility in accordance with North Dakota Century Code section 54-52.1-03.1.

Surviving spouses receiving multiple benefits from retirement systems that provide the retiree health insurance credit will have their respective retiree health insurance credit for each benefit combined with an effective date based on eligibility in accordance with North Dakota Century Code section 54-52.1-03.3.

**History:** Effective April 1, 1992; amended effective June 1, 1996; July 1, 1998; April 1, 2008; April 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 54-52.1-03.2(b)

**Law Implemented:** NDCC 54-52.1-03.3

#### **71-06-01-07. Optional benefits.**

A married member may elect to receive one of the following optional retiree health credit benefits in lieu of the retiree health insurance credit option provided in [section 71-06-01-04](#) [this chapter](#):

1. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced retiree health insurance credit during the member's lifetime and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Benefits shall terminate in the month in which the death of the beneficiary occurs. If the member's spouse predeceases the member or, in the event of divorce, the member's benefit must be returned to the standard option amount. The standard option amount must commence on the first day of the month following the spouse's death if a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
2. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced retiree health insurance credit during the member's lifetime and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Benefits shall terminate in the month in which the death of the beneficiary occurs. If the member's spouse predeceases the member or, in the event of divorce, the member's benefit must be returned to the standard option amount. The standard option amount shall commence on the first day of the month following the spouse's death providing written notification of the death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

**History:** Effective July 1, 1998; amended effective April 1, 2008; [April 1, 2016](#).

**General Authority:** NDCC 54-52.1-03.2(b)

**Law Implemented:** NDCC 54-52.1-03.3

**CHAPTER 71-08-07  
ADDITIONAL CONTRIBUTIONS**

Section

71-08-07-01 Additional Employer Contributions

71-08-07-02 Eligible Sick Leave

71-08-07-03 Employee-Paid Contributions - Repayment Options

**71-08-07-03. Employee-paid contributions - Repayment options.**

If the office determines that any required employee-paid contributions have not been made, the cost of any required employee-paid contributions may be paid in a lump sum or in installments in a manner consistent with installment payments permitted under section 71-02-03-02.2.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 54-52-04, 54-52.6-04

**Law Implemented:** NDCC 54-52.6-09

**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**



**APRIL 2016**

**CHAPTER 75-02-02**

**75-02-02-03.2. Definitions.**

For purposes of this chapter:

1. "Certification of need" means a regulatory review process that requires specific health care providers to obtain prior authorization for provision of services for medicaid applicants or eligible recipients under twenty-one years of age. Certification of need is a determination of the medical necessity of the proposed services as required for all applicants or recipients under the age of twenty-one prior to admission to a psychiatric hospital, an inpatient psychiatric program in a hospital, or a psychiatric facility, including a psychiatric residential treatment facility. The certification of need evaluates the individual's capacity to benefit from proposed services, the efficacy of proposed services, and consideration of the availability of less restrictive services to meet the individual's needs.
2. "County agency" means the county social service board.
3. "Department" means the North Dakota department of human services.
4. "Drug use review board" means the board established pursuant to North Dakota Century Code chapter 50-24.6.
5. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for participation.
6. "Licensed practitioner" means an individual other than a physician who is licensed or otherwise authorized by the state to provide health care services within the practitioner's scope of practice.
7. "Medical emergency" means a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson acting reasonably and possessing an average knowledge of health and medicine to believe that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily function, serious dysfunction of any bodily organ or part, or would place the person's health, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.
8. "Medically necessary" includes only medical or remedial services or supplies required for treatment of illness, injury, diseased condition, or impairment; consistent with the patient's

diagnosis or symptoms; appropriate according to generally accepted standards of medical practice; not provided only as a convenience to the patient or provider; not investigational, experimental, or unproven; clinically appropriate in terms of scope, duration, intensity, and site; and provided at the most appropriate level of service that is safe and effective.

9. "Provider" means an individual, entity, or facility furnishing medical or remedial services or supplies pursuant to a provider agreement with the department.
10. "Psychiatric residential treatment facility" is as defined in subsection 10 of section 75-03-17-01.
11. "Psychological service" means a psychological evaluation, therapy, or testing service rendered by a physician, licensed independent clinical social worker, psychologist, licensed addiction counselor, licensed associate professional counselor, licensed professional counselor, licensed professional clinical counselor, clinical nurse specialist, physician assistant, nurse practitioner, licensed social worker, or licensed certified social worker.
12. "Recipient" means an individual approved as eligible for medical assistance.
- ~~12.~~13. "Rehabilitative services" means any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
- ~~13.~~14. "Remedial services" includes those services, including rehabilitative services, which produce the maximum reduction in physical or mental disability and restoration of a recipient to the recipient's best possible functional level.
- ~~14.~~15. "Section 1931 group" includes individuals whose eligibility is based on the provisions of section 1931 of the Social Security Act [42 U.S.C. 1396u-1].

**History:** Effective May 1, 2000; amended effective August 29, 2000; November 1, 2001; September 1, 2003; October 1, 2012; April 1, 2016.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

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

1. Within any limitations which may be established by rule, regulation, or statute and within the limits of legislative appropriations, eligible recipients may obtain the medically necessary medical and remedial care and services which are described in the approved medicaid state plan in effect at the time the service is rendered by providers. Services may include:
  - a. (1) Inpatient hospital services. "Inpatient hospital services" means those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.



- (2) Inpatient prospective payment system hospitals that are reimbursed by a diagnostic-related group will follow medicare guidelines for supplies and services included and excluded as outlined in 42 CFR 409.10.
- b. Outpatient hospital services. "Outpatient hospital services" means those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation and emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act.
  - c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction of, a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
  - d. Nursing facility services. "Nursing facility services" does not include services in an institution for mental diseases and means those items and services furnished by a licensed and otherwise eligible nursing facility or swing-bed hospital maintained primarily for the care and treatment which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for individuals who need or needed on a daily basis nursing care, provided directly or requiring the supervision of nursing personnel, or other rehabilitation services which, as a practical matter, may only be provided in a nursing facility on an inpatient basis.
  - e. Intermediate care facility for individuals with intellectual disabilities services. "Intermediate care" means those items and services which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as provided in chapter 75-04-01.
  - f. Early and periodic screening and diagnosis of individuals under twenty-one years of age and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and provide health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.
  - g. Physician's services. "Physician's services" whether furnished in the office, the patient's home, a hospital, nursing facility, or elsewhere means those services provided, within the

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

- h. Medical care and any other type of remedial care other than physician's services recognized under state law and furnished by licensed practitioners within the scope of their practice as defined by state law.
- i. Home health care services. "Home health care services", is in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in this section, means any of the following items and services when they are provided, based on certification of need and a written plan of care by a licensed physician, to a patient in the patient's place of residence, excluding a residence that is a hospital or a skilled nursing facility:
  - (1) Intermittent or part-time skilled nursing services furnished by a home health agency;
  - (2) Intermittent or part-time nursing services of a registered nurse, or a licensed practical nurse, or which are provided under the direction of a physician and under the supervision of a registered nurse, when a home health agency is not available to provide nursing services;
  - (3) Medical supplies, equipment, and appliances ordered or prescribed by the physician as required in the care of the patient and suitable for use in the home; and
  - (4) Services of a home health aide provided to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and in collaboration with the home health agency.
- j. Hospice care. "Hospice care" means the care described in 42 U.S.C. 1395x(dd)(1) furnished by a "hospice program", as that term is defined in 42 U.S.C. 1395x(dd)(2), to a terminally ill individual who has voluntarily elected to have hospice care. Hospice care may be provided to an individual while the individual is a resident of a nursing facility, but only the hospice care payment may be made. An individual's voluntary election must be made in accordance with procedures established by the department which are consistent with procedures established under 42 U.S.C. 1395d(d)(2), for such periods of time as the department may establish, and may be revoked at any time.
- k. Private duty nursing services. "Private duty nursing services" means nursing services provided, based on certification of need and a written plan of care which is provided under the direction of a physician, by a registered nurse or a licensed practical nurse under the supervision of a registered nurse to a patient in the patient's own home.
- l. Dental services. "Dental services" means any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession and not excluded from coverage. Dental services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. Dental services reimbursed under 42 C.F.R. 440.90 may only be reimbursed if provided through a public or private nonprofit entity that provides dental services.
- m. Physical therapy. "Physical therapy" means those services prescribed by a physician or other licensed practitioner of the healing arts within the scope of that person's practice under state law and provided to a patient by or under the supervision of a qualified physical therapist.

- n. Occupational therapy. "Occupational therapy" means those services prescribed by a physician or other licensed practitioner of the healing arts within the scope of that person's practice under state law and provided to a patient and given by or under the supervision of a qualified occupational therapist.
- o. Services for individuals with speech, hearing, and language disorders. "Services for individuals with speech, hearing, and language disorders" means those diagnostic, screening, preventive, or corrective services provided by or under the supervision of a speech pathologist or audiologist in the scope of practice of the speech pathologist's or audiologist's profession for which a patient is referred by a physician or other licensed practitioner of the healing arts within the scope of the practitioner's practice under state law.
- p. Prescribed drugs. "Prescribed drugs" means any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law.
- q. Durable medical equipment and supplies. "Durable medical equipment and supplies" means those medically necessary items suitable for use in the home and used to treat disease, to promote healing, to restore bodily functioning to as near normal as possible, or to prevent further deterioration, debilitation, or injury which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. Durable medical equipment includes prosthetic and orthotic devices, eyeglasses, and hearing aids. For purposes of this subdivision:
  - (1) "Eyeglasses" means lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision;
  - (2) "Hearing aid" means a specialized orthotic device individually prescribed and fitted to correct or ameliorate a hearing disorder; and
  - (3) "Prosthetic and orthotic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
- r. Other diagnostic, screening, preventive, and rehabilitative services.
  - (1) "Diagnostic services", other than those for which provision is made elsewhere in these definitions, includes any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.
  - (2) "Preventive services" means those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability, and other health deviations or their progression, prolong life, and promote physical and mental health and efficiency.

- (3) "Rehabilitative services", in addition to those for which provision is made elsewhere in these definitions, includes any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
- (4) "Screening services" consists of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.
- s. Inpatient psychiatric services for individuals under age twenty-one, as defined in 42 CFR 440.160, provided consistent with the requirements of 42 CFR part 441 and section 75-02-02-10.
- t. Services provided to persons age sixty-five and older in an institution for mental diseases, as defined in 42 U.S.C. 1396d(i).
- u. Personal care services. "Personal care services" means those services that assist an individual with activities of daily living and instrumental activities of daily living in order to maintain independence and self-reliance to the greatest degree possible.
- v. Any other medical care and any other type of remedial care recognized under state law and specified by the secretary of the United States' department of health and human services, including:
  - (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the department to be medically necessary.
  - (2) Family planning services, including drugs, supplies, and devices, when such services are under the medical direction of a physician or licensed practitioner of the healing arts within the scope of their practices as defined by state law. There must be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals may choose in accordance with the dictates of their consciences.
  - (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician or licensed practitioner and when it is not available to the patient from other sources.
- w. An exercise program. "Exercise program" includes exercise regimens to achieve various improvements in physical fitness and health.
- x. A weight loss program. "Weight loss program" includes programs designed for reduction in weight but does not include weight loss surgery.
- 2. The following limitations apply to medical and remedial care and services covered or provided under the medical assistance program:
  - a. Coverage may not be extended and payment may not be made for an exercise program or a weight loss program prescribed for eligible recipients.
  - b. Coverage may not be extended and payment may not be made for alcoholic beverages prescribed for eligible recipients.

- c. Coverage may not be extended and payment may not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
- d. Coverage may not be extended and payment may not be made for any service provided to increase fertility or to evaluate or treat fertility.
- e. Coverage and payment for eye examinations and eyeglasses for eligible recipients are limited to, and payment will only be made for, examinations and eyeglass replacements necessitated because of visual impairment.
- f. Coverage may not be extended to and payment may not be made for any physician-administered drugs in an outpatient setting if the drug does not meet the requirements for a covered outpatient drug as outlined in section 1927 of the Social Security Act [42 U.S.C. 1396r-8].
- g. Coverage and payment for home health care services and private duty nursing services are limited to ~~a monthly amount determined by taking the monthly charge, to the medical assistance program, for the most intensive level of nursing care in the most expensive nursing facility in the state and subtracting therefrom the cost, in that month, of all medical and remedial services furnished to the recipient (except physician services and prescribed drugs). For the purposes of determining this limit, remedial services include home and community based services, service payments to the elderly and disabled, homemaker and home health aide services, and rehabilitative services, regardless of the source of payment for such services~~ no more, on an average monthly basis, to the equivalent of one hundred seventy-five visits. The limit for private duty nursing is in combination with the limit for home health services. Services are limited to the home of the recipient.
  - (1) This limit may be exceeded; ~~in unusual and complex cases, if the provider has submitted~~ where it is determined there is a medical necessity for exceeding the limit and the department has approved a prior treatment authorization request.
  - (2) The prior authorization request must describe the medical necessity of the home health care services or private duty nursing services, and explain why less costly alternative treatment does not afford necessary medical care.
- h. Coverage may not be extended and payment may not be made for transportation services except as provided in sections 75-02-02-13.1 and 75-02-02-13.2.
- i. Coverage may not be extended and payment may not be made for any abortion except when necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.
- j. Coverage for ambulance services must be in response to a medical emergency and may not be extended and payment may not be made for ambulance services that are not medically necessary, as determined by the department.
- k. Coverage for an emergency room must be made in response to a medical emergency and may not be extended and payment may not be made for emergency room services that are not medically necessary, as determined by the department under section 75-02-02-12.
- l. Coverage may not be extended and payment may not be made for medically necessary chiropractic services exceeding twelve treatments for spinal manipulation services and two radiologic examinations per year, per recipient, unless the provider requests and receives prior authorization from the department.

- m. Coverage and payment for personal care services:
  - (1) May not be made unless prior authorization is granted, and the recipient meets the criteria established in subsection 1 of section 75-02-02-09.5; and
  - (2) May be approved for:
    - (a) Up to one hundred twenty hours per month, or at a daily rate;
    - (b) Up to two hundred forty hours per month if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; or
    - (c) Up to three hundred hours per month if the recipient is determined to be impaired in at least five of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; and none of the three hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.
  
- n. Coverage and payment for pharmacy services are limited to:
  - (1) The lower of the estimated acquisition costs plus reasonable dispensing fees established by the department;
  - (2) The provider's usual and customary charges to the general public; or
  - (3) The federal upper limit or maximum allowable cost plus reasonable dispensing fees established by the department. For the department to meet the requirements of 42 CFR 447.331-447.333, pharmacy providers agree when enrolling as a provider to fully comply with any acquisition cost survey and any cost of dispensing survey completed for the department or centers for medicare and medicaid services. Pharmacy providers agree to provide all requested data to the department, centers for medicare and medicaid services, or their agents, to allow for calculation of estimated acquisition costs for drugs as well as estimated costs of dispensing. This data will include wholesaler invoices and pharmacy operational costs. Costs can include salaries, overhead, and primary wholesaler invoices if a wholesaler is partially or wholly owned by the pharmacy or parent company or has any other relationship to the pharmacy provider.
  
- 3. a. Except as provided in subdivision b, remedial services are covered services.
- b. Remedial services provided by residential facilities such as licensed basic care facilities, licensed foster care homes or facilities, and specialized facilities are not covered services, but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility.
  
- 4. a. The department may refuse payment for any covered service or procedure for which a prior treatment authorization request is required but not secured.
- b. The department may consider making payment if the provider demonstrates good cause for the failure to secure the required prior treatment authorization request. Provider requests for good cause consideration must be received within twelve months of the date the services or procedures were furnished.

- c. The department may refuse payment for any covered service or procedure provided to an individual eligible for both medicaid and other insurance if the insurance denies payment because of the failure of the provider or recipient to comply with the requirements of the other insurance.
5. A provider of medical services who provides a covered service except for personal care services, but fails to receive payment due to the requirements of subsection 4, and who attempts to collect from the eligible recipient or the eligible recipient's responsible relatives any amounts which would have been paid by the department but for the requirements of subsection 4, has by so doing breached the agreement referred to in subsection 4 of section 75-02-02-10.

**History:** Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July 1, 1993; January 1, 1994; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; November 8, 2002; September 1, 2003; July 1, 2006; January 1, 2010; July 1, 2012; October 1, 2012; July 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04; 42 USC 1396n(b)(1); 42 CFR 431.53; 42 CFR 431.110; 42 CFR 435.1009; 42 CFR Part 440; 42 CFR Part 441, subparts A, B, D

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

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

- a. The recipient receiving the service:

- (1) ~~Lives~~ in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or ~~the state hospital~~ any medical institution and is required to spend all income except for the recipient's personal needs allowance for the recipient's cost of care;
- (2) Receives swing-bed services in a hospital;
- (3) Has not reached the age of twenty-one years;
- (4) Is pregnant;
- (5) Is an Indian who ~~receives services from~~ is eligible to receive, is currently receiving, or who has ever received an item or service furnished by Indian health service providers or through referral by ~~under~~ contract health services; ~~or~~
- (6) Is terminally ill and is receiving hospice care;
- (7) Is receiving medical assistance because of the state's election to extend coverage to eligible individuals receiving treatment for breast or cervical cancer; and
- (8) Is an inmate, otherwise eligible for medical assistance, and is receiving qualifying inpatient services.

- b. The service is:

- (1) Emergency room services that are not elective or not urgent; or
- (2) Family planning services.

2. Copayments are:

- a. Seventy-five dollars for each inpatient hospital admission, including admissions to distinct part psychiatric and rehabilitation units of hospitals and excluding long-term hospitals;
- b. Three dollars for each nonemergency visit to a hospital emergency room;
- c. Two dollars for each ~~doctor of medicine or osteopathy~~ office visit for care by a physician, nurse practitioner, physician assistant, nurse midwife, clinical nurse specialist, optometrist, or chiropractor;
- d. Three dollars for each office visit to a rural health clinic or federally qualified health center;
- e. One dollar for each chiropractic manipulation of the spine;
- f. Two dollars for each dental visit that includes an oral examination;
- g. Three dollars for each brand name prescription filled;
- h. Two dollars for each optometric visit that includes a vision examination;
- i. Three dollars for each podiatric office visit;
- j. Two dollars for each occupational therapy visit;
- k. Two dollars for each physical therapy visit;
- l. One dollar for each speech therapy visit;
- m. Three dollars for each hearing aid dispensing service;
- n. Two dollars for each audiology testing visit;
- o. Two dollars for each psychological service visit; and
- p. Two dollars for each licensed independent clinical social worker visit.

**History:** Effective January 1, 1997; amended effective November 8, 2002; September 1, 2003; July 1, 2006; July 1, 2012; October 1, 2012; April 1, 2016.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04

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

1. No payment will be made for single crowns on posterior teeth for individuals twenty-one years of age and older except for stainless steel crowns. Payment for other crowns may be allowed by the department for the anterior portion of the mouth for adults if the crown is necessary and has been previously approved by the department.
2. No payment will be made for single crowns on posterior teeth for individuals less than twenty-one years of age except for stainless steel crowns. Payment may be made if a dental condition exists that makes stainless steel crowns impracticable and the provider has secured the prior approval of the department.
3. Payment will be made for partial dentures for upper and lower temporary partial stayplate dentures. Payment may be made for other types of partial dentures designed to replace teeth in the anterior portion of the mouth if the provider secures prior approval from the department. Replacement of dentures is limited to every five years unless a medical condition of a recipient, verified by a dental consultant, ~~renders~~ renders the present dentures unusable. This



limitation does not apply to individuals eligible for the early, periodic screening, diagnosis, and treatment program.

**History:** Effective September 1, 2003; amended effective October 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04

**75-02-02-09.4. General limitations on amount, duration, and scope.**

1. Covered medical or remedial services or supplies are medically necessary when determined so by the medical provider unless the department has:
  - a. Denied a prior treatment authorization request to provide the service;
  - b. Imposed a limit that has been exceeded;
  - c. Imposed a condition that has not been met;
  - d. Upon review under North Dakota Century Code chapter 50-24.1, determined that the service or supplies are not medically necessary.
2. Limitations on payment for occupational therapy, physical therapy, and speech therapy.
  - a. No payment will be made for occupational therapy [evaluation except one per calendar year or for occupational therapy](#) provided to an individual except for twenty visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination ~~to~~[with](#) services delivered by independent occupational therapists and in outpatient hospital settings. This limit does not apply to school-based services for children.
  - b. No payment will be made for physical therapy [evaluation except one per calendar year or for physical therapy](#) provided to an individual except for fifteen visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination ~~to~~[with](#) services delivered by independent physical therapists and in outpatient hospital settings. This limit does not apply to school-based services for children.
  - c. No payment will be made for speech therapy [evaluation except one per calendar year or for speech therapy](#) provided to an individual except for thirty visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination ~~to~~[with](#) services delivered by independent speech therapists and in outpatient hospital settings. This limit does not apply to school-based services for children.
3. Limitation on payment for eye services.
  - a. No payment will be made for eyeglasses for individuals twenty-one years of age and older except for one pair of eyeglasses no more often than once every two years. No payment will be made for the repair or replacement of eyeglasses during the two-year period unless the provider has secured the prior approval of the department and the department has found that the repair or replacement is medically necessary.
  - b. No payment will be made for refractive examinations for individuals twenty-one years of age and older except for one refractive examination no more often than every two years after an initial examination paid by the department unless the provider has secured the prior approval of the department.

4. Limitation on chiropractic services.
  - a. No payment will be made for spinal manipulation treatment services except for twelve spinal manipulation treatment services per individual per calendar year unless the provider requests and receives the prior approval of the department.
  - b. No payment will be made for radiologic examinations performed by a chiropractor except for two radiologic examinations per individual per year unless the provider requests and receives the prior approval of the department.
5. No payment will be made for psychological visits except for forty visits per individual per calendar year; or for psychological evaluations except for one per calendar year; or for psychological testing except for four units per calendar year for services rendered by licensed independent clinical social workers, psychologists, licensed addiction counselors, licensed associate professional counselors, licensed professional counselors, licensed professional clinical counselors, licensed social workers, and licensed certified social workers unless the provider requests and receives the prior approval of the department. Limits in this subsection do not apply to services provided by staff employed by schools, residential child care facilities, treatment foster care providers, or human service centers.

**History:** Effective September 1, 2003; amended effective July 1, 2006; July 1, 2009; October 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04

#### **75-02-02-09.5. Limitations on personal care services.**

1. No payment for personal care services may be made unless an assessment of the recipient is made by the department or the department's designee and the recipient is determined to be impaired in at least one of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring or in at least three of the instrumental activities of daily living of medication assistance, laundry, housekeeping, and meal preparation.
2. No payment may be made for personal care services unless prior authorization has been granted by the department.
3. Payment for personal care services may only be made to an enrolled qualified service provider who meets the standards described in chapter 75-03-23 or to a basic care assistance provider that qualifies for a rate under chapter 75-02-07.1.
4. No payment may be made for personal care services provided in excess of the services, hours, or timeframe authorized by the department in the recipient's approved service plan.
5. Personal care services may not include skilled health care services performed by persons with professional training.
6. An inpatient or resident of a hospital, a nursing facility, an intermediate care facility for individuals with intellectual disabilities, a psychiatric residential treatment facility, or an institution for mental diseases may not receive personal care services.
7. Personal care services may not include home-delivered meals, services performed primarily as housekeeping tasks, transportation, social activities, or services or tasks not directly related to the needs of the recipient such as doing laundry for family members, cleaning of areas not occupied by the recipient, shopping for items not used by the recipient, or for tasks when they are completed for the benefit of both the client and the provider.

8. Payment for the tasks of laundry, shopping, housekeeping, meal preparation, money management, and communication cannot be made to a provider who lives with the client and is a relative listed under the definition of family home care under subsection 4 of North Dakota Century Code section 50-06.2-02 or is a former spouse.
9. Meal preparation is limited to the maximum units set by the department. Laundry, shopping, and housekeeping tasks when provided as personal care services must be incidental to the provision of other personal care tasks and cannot exceed thirty percent of the total time authorized for the provision of all personal care tasks. Personal care service tasks of laundry, shopping, and housekeeping are limited to the maximum units set by the department, and the cap cannot be exceeded under other home and community-based services funding sources.
10. No payment may be made for personal care services provided to a recipient by the recipient's spouse, parent of a minor child, or legal guardian.
11. No payment may be made for care needs of a recipient which are outside the scope of personal care services.
12. Authorized personal care services may only be approved for:
  - a. Up to one hundred twenty hours per month, or at a daily rate;
  - b. Up to two hundred forty hours per month, or at a daily rate, if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; or
  - c. Up to three hundred hours per month if the recipient is determined to be impaired in at least five of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; and none of the three hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.
13. Personal care services may only be provided when the needs of the recipient exceed the abilities of the recipient's spouse or parent of a minor child to provide those services. Personal care services may not be substituted when a spouse or parent of a minor child refuses or chooses not to perform the service for a recipient. Personal care services may be provided during periods when a spouse or parent of a minor child is gainfully employed if the services cannot be delayed until the spouse or parent is able to perform them.
14. Personal care services may not be provided for tasks that are otherwise age appropriate or generally needed by an individual within the normal stages of development.
15. The authorization for personal care services may be terminated if the services are not used within sixty days, or if services lapse for at least sixty days, after the issuance of the authorization to provide personal care services.
16. The department may deny or terminate personal care services when service to the client presents an immediate threat to the health or safety of the client, the provider of services, or others, or when services that are available are not adequate to prevent a threat to the health or safety of the client, the provider of services, or others.
17. Decisions regarding personal care services for an incapacitated client are health care decisions that may be made pursuant to North Dakota Century Code section 23-12-13.

18. The applicant or guardian of the applicant shall provide information sufficient to establish eligibility for benefits, including a social security number, proof of age, identity, residence, blindness, disability, functional limitation, financial eligibility, and such other information as may be required by this chapter for each month for which benefits are sought.
19. Payment for personal care services may not be made unless the client has been determined eligible to receive medicaid benefits.

**History:** Effective July 1, 2006; amended effective January 1, 2010; July 1, 2012; October 1, 2012; April 1, 2016.

**General Authority:** NDCC 50-24.1-18

**Law Implemented:** NDCC 50-24.1-18; 42 CFR Part 440.167

#### **75-02-02-11. Coordinated services.**

1. For purposes of this section:
  - a. "Coordinated services" means the process used to limit a recipient's medical care and treatment to a single physician or other provider to prevent the continued misutilization of services.
  - b. "Coordinated services provider" means a physician, nurse practitioner, physician assistant, or Indian health service provider selected by the coordinated services recipient to provide care and treatment to the recipient. The selected coordinated services provider is subject to approval by the department.
  - c. "Misutilization" means the incorrect, improper, or excessive utilization of medical services which may increase the possibility of adverse effects to a recipient's health or may result in a decrease in the overall quality of care.
2. Coordinated services may be required by the department of a recipient who has misutilized services, including:
  - a. Securing excessive services from more than one provider when there is little or no evidence of a medical need for those services;
  - b. Drug acquisition in excess of medical need resulting from securing prescriptions or drugs from more than one provider; or
  - c. Excessive utilization of emergency services when no medical emergency is present.
3. The determination to require coordinated services of a recipient is made by the department upon recommendation of medical professionals who have reviewed and identified the services the recipient appears to be misutilizing.
4. The following factors must be considered in determining if coordinated services is to be required:
  - a. The seriousness of the misutilization;
  - b. The historical utilization of the recipient; and
  - c. The availability of a coordinated services physician or provider.
5. If a coordinated services recipient does not select a coordinated services provider within thirty days after qualifying for the program, the department will ~~assign a coordinated services provider on the recipient's behalf. If the department assignment for the coordinated services program is necessary, the most utilized providers that the recipient has visited during the~~

~~preceding six months will be designated as the recipient's coordinated services provider~~limit the recipient to only medically necessary medical and pharmacy services. If a coordinated services recipient selects a coordinated services provider after the initial thirty days, the selection will be reviewed by the department to determine if the selected provider is appropriate and to ensure the provider accepts the assignment. A coordinated services recipient may have a coordinated services provider in more than one medical specialty.

6. Upon a determination to require coordinated services:
  - a. The department shall provide the recipient with written notice of:
    - (1) The decision to require coordinated services;
    - (2) The recipient's right to choose a coordinated services provider, subject to approval by the department and acceptance by the provider;
    - (3) The recipient's responsibility to pay for medical care or services rendered by any provider other than the coordinated services provider; and
    - (4) The recipient's right to appeal the requirement of enrollment into the coordinated services program.
  - b. The appropriate county agency shall:
    - (1) Obtain the recipient's selection of a coordinated services provider; and
    - (2) Document that selection in the case record.
7. Coordinated services may be required of an individual recipient and may not be imposed on an entire medical assistance case. If more than one recipient within a case is misutilizing medical care, each individual recipient must be treated separately.
8. Coordinated services may be required without regard to breaks in eligibility until the department determines coordinated services is discontinued.
9. No medical assistance payment may be made for misutilized medical care or services furnished to the coordinated services recipient by any provider other than the recipient's coordinated services physician or provider, except for:
  - a. Medical care rendered in a medical emergency; or
  - b. Medical care rendered by a provider upon referral by the coordinated services physician or provider and approved by the department.
10. A recipient may appeal the decision to require coordinated services in the manner provided by chapter 75-01-03.

**History:** Effective May 1, 1981; amended effective May 1, 2000; July 1, 2006; October 1, 2012; April 1, 2016.

**General Authority:** NDCC 50-24.1-02

**Law Implemented:** NDCC 50-24.1-01; 42 CFR Part 455

#### **75-02-02-12. Limitations on emergency room services.**

1. For purposes of this section, "screening" means the initial evaluation of an individual, intended to determine suitability for a particular medical treatment modality.

2. Except in life-threatening situations, the nonphysician provider of emergency services shall assure:
  - a. The collection of pertinent data from the patient;
  - b. Screening or examination of the patient as necessary to determine the patient's medical condition;
  - c. Rendering of indicated care, under the direction of a physician or licensed practitioner of the healing arts, within their scope of practice, if a medical emergency exists;
  - d. An attempt is made to contact the recipient's personal primary care provider to approve services before they are given;
  - e. Referral to the recipient's primary care provider's office in cases when emergency room services are not indicated; and
  - f. That professional staff persons use their individual judgment in determining the need for emergency services.
3. Physician providers shall:
  - a. Determine when a medical emergency exists; and
  - b. Assure that a recipient is referred to the appropriate health delivery setting when emergency room services are not judged to be appropriate.
4. Payment for emergency room services.
  - a. Claims for payment, and documentation in support of those claims, must be submitted on forms prescribed by the department. The claim must contain sufficient documentation to indicate that a medical emergency required emergency room diagnostic services and treatment.
  - b. Except as provided in subsection 5, providers must be paid for any medically necessary services authorized by a physician or nurse practitioner, which fact is properly noted on the request for payment.
  - c. Except as provided in subsection 5, providers must be paid for screening or examination services rendered.
  - d. Providers must be paid for services rendered to patients who reside outside of the provider's regular service area and who do not normally utilize the provider's services.
5. If the emergency room service claim does not demonstrate the existence of a medical emergency, payment must be denied (except for screening services) unless the services are shown to be medically necessary by a redetermination. The provider, upon receipt of notice of denial, may, in writing, make a redetermination request to the department. A redetermination must include a statement refuting the stated basis for the payment denial and affirmatively demonstrating a medical emergency.

**History:** Effective February 1, 1982; amended effective May 1, 2000; October 1, 2012; April 1, 2016.

**General Authority:** NDCC 50-24.1-02

**Law Implemented:** NDCC 50-24.1-01; 42 CFR Part 455

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

1. For purposes of this section:

- a. "Family member" means spouse, sibling, parent, stepparent, child, stepchild, grandparent, stepgrandparent, grandchild, stepgrandchild, aunt, uncle, niece, or nephew, whether by half or whole blood, and whether by birth, marriage, or adoption; and
  - b. "Travel expenses" means fares, mileage, meals, lodging, and driver and attendant care.
2. General requirements.
- a. A transportation service provider shall be enrolled as a provider in the medical assistance program and may be an individual, a taxi, a bus, a food service provider, a lodging provider, an airline service provider, a travel agency, or another commercial form of transportation.
  - b. The county agency may determine the most efficient, economical, and appropriate means of travel to meet the medical needs of the recipient. Upon approval, the county agency may approve travel and issue the necessary billing forms.
  - c. The cost of travel provided by a parent, spouse, or any other member of the recipient's medical assistance unit may be allowed as an expense of necessary medical or remedial care for recipient liability purposes. No parent, spouse, friend, household member, or family member of the recipient may be paid as an enrolled provider for transportation for that recipient. An individual who provides foster care, kinship, or guardianship may enroll as a transportation provider and is eligible for reimbursement to transport a medicaid-eligible child to and from medicaid-covered medical appointments.
  - d. Travel services may be provided by the county agency as an administrative activity.
  - e. Emergency transport by ambulance is a covered service when provided in response to a medical emergency.
  - f. Nonemergency transportation by ambulance is a covered service only when medically necessary and ordered by the attending licensed provider.
  - g. A recipient may choose to obtain medical services outside the recipient's community. If similar medical services are available within the community and the recipient chooses to seek medical services elsewhere, travel expenses are not covered services and are the responsibility of the recipient.
  - h. If a ~~primary care~~ provider refers a recipient to a facility or provider that is not located at the closest medical center, travel expenses are not covered services and are the responsibility of the recipient, unless special circumstances apply and prior authorization is secured.
3. Out-of-state travel expenses. Travel expenses for nonemergency out-of-state medical services, including ~~followup~~ follow-up visits, may be authorized if the out-of-state medical services are first approved by the department under section 75-02-02-13 or if prior approval is not required under that section.
4. Limitations.
- a. Private or noncommercial vehicle mileage compensation is limited to an amount set by the department based on the department's fee schedule. This limit applies even if more than one recipient is transported at the same time. Mileage is determined by map miles from the residence or community of the recipient to the medical facility. When necessary to ensure volunteer drivers continue to provide transportation services to a recipient, the county agency may request authorization from the department to make payment for additional mileage. Transportation services may be billed to medical assistance only



upon completion of the service. Transportation services may be allowed if the recipient or a household member does not have a vehicle that is in operable condition or if the health of the recipient or household member does not permit safe operation of the vehicle. If free or low-cost transportation services are available, including transportation that could be provided by a friend, family member, or household member, the department will not pay transportation mileage costs.

- b. Meals compensation is allowed only when medical services or travel arrangements require a recipient to stay overnight. Compensation is limited to an amount set by the department based on the department's fee schedule. The entity providing meals must be an enrolled medicaid provider and must submit the proper forms for payment.
- c. Lodging expense is allowed only when medical services or travel arrangements require a recipient to stay overnight. Lodging compensation is limited to an amount set by the department, based on the appropriate fee schedule. Lodging providers must be enrolled in medicaid and shall submit the proper forms for payment.
- d. Travel expenses may not be authorized for both a driver and an attendant unless the referring licensed practitioner determines that one individual cannot function both as driver and attendant. Travel expenses may not be allowed for a noncommercial driver or an attendant while the recipient is a patient in a medical facility unless it is more economical for the driver or attendant to remain in the service area, as determined by the department.
- e. Travel expenses may be authorized for one parent to travel with a child who is under eighteen years of age. No additional travel expenses may be authorized for another driver, attendant, or parent unless the referring licensed practitioner determines that person's presence is necessary for the physical, psychological, or medical needs of the child.
- f. Compensation for attendant services, provided by an attendant who is not a family member, may be allowed at a rate determined by the department if the department determines attendant services are medically necessary. Attendant services must be approved by the county agency.

**History:** Effective July 1, 1996; amended effective May 1, 2000; September 1, 2003; October 1, 2012; July 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04

#### **75-02-02-13.2. Travel expenses for medical purposes - Institutionalized individuals - Limitations.**

1. For purposes of this section:
  - a. "Long-term care facility" means a nursing facility, intermediate care facility for individuals with intellectual disabilities, or swing-bed facility; and
  - b. "Medical center city" means Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston, and includes any city that shares a common boundary with any of those cities.
2. A long-term care facility may not charge a resident for the cost of travel provided by the facility. Except as provided in subsection 4, a long-term care facility shall provide transportation to and from any provider of necessary medical services located within, or at no greater distance than the distance to, the nearest medical center city. Distance must be calculated by road miles.



3. If the resident has to travel farther than the nearest medical center ~~city-with a medical center~~, the costs of travel may be reimbursed by medicaid according to the appropriate fee schedule. Distance must be calculated by map miles.
4. A long-term care facility is not required to pay for transportation by ambulance for emergency or nonemergency situations for residents.
5. A service provider that is paid a rate, determined by the department on a cost basis that includes transportation service expenses, however denominated, may not be compensated as a transportation service provider for transportation services provided to an individual residing in the provider's facility. The following service providers may not be so compensated:
  - a. Basic care facilities;
  - b. Congregate care facilities serving individuals with developmental disabilities;
  - c. Group homes serving children in foster care;
  - d. Intermediate care facilities for individuals with intellectual disabilities;
  - e. Minimally supervised living arrangement facilities serving individuals with developmental disabilities;
  - f. Nursing facilities;
  - g. Psychiatric residential treatment facilities;
  - h. Residential child care facilities;
  - i. Swing-bed facilities; and
  - j. Transitional community living facilities serving individuals with developmental disabilities.
6. If, under the circumstances, a long-term care facility is not required to transport a resident, and the facility does not actually transport the resident, the availability of transportation services and payment of travel expenses is governed by section 75-02-02-13.1.

**History:** Effective July 1, 1996; amended effective July 1, 2012; October 1, 2012; April 1, 2016.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04

#### **75-02-02-29. Primary care provider.**

1. Payment may not be made, except as provided in this subsection, for otherwise covered services provided to otherwise eligible recipients:
  - a. Who are required by this subsection to select, but who have not selected, or have not had selected on their behalf, a primary care provider; or
  - b. By a provider who is not the primary care provider selected by or on behalf of the recipient or to whom the recipient has not been referred from the primary care provider.
2. A primary care provider must be selected by or on behalf of the members ~~of a~~ in the following medical assistance ~~unit which includes~~ units:
  - a. ~~A person who is a member of the section 1931 group.~~
  - ~~b. A family who was in the section 1931 group in at least three of the six months immediately preceding the month in which the family became ineligible as a result, in~~

~~whole or in part, of the collection or increased collection of child or spousal support, and who continues to be eligible for medicaid for four calendar months following the last month of section 1931 group eligibility.~~

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

~~d. A child born to an eligible pregnant woman who has applied for and been found eligible for medicaid on or before the day of the child's birth, for sixty days after the day of the child's birth, and for the remaining days of the month in which the sixtieth day falls.~~

~~e. An eligible caretaker relative and an individual under the age of twenty-one but not including children in foster care, who qualify for and require medical services on the basis of insufficient income and assets, but who do not qualify as categorically needy.~~

~~f. A pregnant woman, whose pregnancy has been medically verified and who:~~

~~(1) Would be eligible as categorically needy except for income and assets;~~

~~(2) Qualify on the basis of financial eligibility; or~~

~~(3) Meet the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level.~~

~~g. An eligible woman, who applied for medicaid during pregnancy, for sixty days after the day the pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.~~

~~h. A child under the age of six who meets the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level.~~

~~i. A child, age six through eighteen, who meets the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred percent of the poverty level. The parents or caretaker relatives and their spouses of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, up to fifty-four percent of the federal poverty level.~~

b. For up to twelve months, the parents or caretaker relatives, along with their spouses and dependent children, of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, who were eligible under the parents and caretaker relatives and their spouses category in at least three of the six months immediately preceding the month in which the parents or caretakers lose coverage under the parents and caretaker relatives and their spouses category due to increased earned income or hours of employment.

c. For up to four months, the parents or caretaker relatives, along with their spouses and dependent children, of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, who were eligible under the parents and caretaker relative and their spouses category in at least three of the six months immediately preceding the month in which the parents or caretaker relatives lose coverage under the parents and caretaker relatives and their spouses category due to increased alimony or spousal support.

- ~~d.~~ A pregnant woman up to one hundred forty-seven percent of the federal poverty level.
  - ~~e.~~ An eligible woman who applied for and was eligible for medicaid during pregnancy continues to be eligible for sixty days, beginning on the last day of pregnancy, and for the remaining days of the month in which the sixtieth day falls.
  - ~~f.~~ A child born to an eligible pregnant woman who applied for and was found eligible for medicaid on or before the day of the child's birth, for twelve months, beginning on the day of the child's birth and for the remaining days of the month in which the twelfth month falls.
  - ~~g.~~ A child, not including a child in foster care, from birth through five years of age up to one hundred forty-seven percent of the federal poverty level.
  - ~~h.~~ A child, not including a child in foster care, from six through eighteen years of age, up to one hundred thirty-three percent of the federal poverty level.
  - ~~i.~~ A child, not including a child in foster care, from six through eighteen years of age who becomes medicaid eligible due to an increase in the medicaid income levels used to determine eligibility.
  - ~~j.~~ An individual who is not otherwise eligible for medicaid and who was in title IV-E funded, state-funded, or tribal foster care in this state under in the month the individual reaches eighteen years of age, through the month in which the individual reaches twenty-six years of age.
  - ~~k.~~ A pregnant woman who requires medical services and qualifies for medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1-41.1 and whose income is above one hundred forty-seven percent of the federal poverty level.
  - ~~l.~~ A child less than nineteen years of age who requires medical services and qualifies for medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1- 41.1 and whose income is above one hundred seventy percent of the federal poverty level.
  - ~~m.~~ The parents and caretaker relatives and their spouses of a deprived child who require medical services and qualify for medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1-41.1 and whose income is above one hundred thirty-three percent of the federal poverty level.
3. A physician-~~or~~, nurse practitioner, or physician assistant practicing in the following specialties, practices, or settings may be selected as a primary care provider:
- a. Family practice;
  - b. Internal medicine;
  - c. Obstetrics;
  - d. Pediatrics;
  - e. ~~Osteopathy~~;
  - ~~f.~~ General practice;
  - ~~g-f.~~ A rural health clinic;
  - ~~h-g.~~ A federally qualified health center; or

- i.h. An Indian health ~~services~~services clinic.
4. A recipient identified in subsection 2 need not select, or have selected on the recipient's behalf, a primary care provider if:
- a. The recipient is aged, blind, or disabled;
  - b. The period for which benefits are sought is prior to the date of application;
  - c. The recipient is receiving foster care or subsidized adoption benefits;~~or~~
  - d. The recipient is receiving home and community-based services;or
  - e. The recipient has been determined medically frail under section 75-02-02.1-14.1.
5. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care provider:
- a. Early and periodic screening, diagnosis, and treatment of recipients under age twenty-one;
  - b. Family planning services;
  - c. Certified nurse midwife services;
  - d. Optometric services;
  - e. Chiropractic services;
  - f. Dental services;
  - g. Orthodontic services provided as the result of a referral through the early and periodic screening, diagnosis, and treatment program;
  - h. Services provided by an intermediate care facility for the intellectually disabled;
  - i. Emergency services;
  - j. Transportation services;
  - k. Targeted case management services;
  - l. Home and community-based services;
  - m. Nursing facility services;
  - n. Prescribed drugs except as otherwise specified in section 75-02-02-27;
  - o. Psychiatric services;
  - p. Ophthalmic services;
  - q. Obstetrical services;
  - r. Psychological services;
  - s. Ambulance services;
  - t. Immunizations;

- u. Independent laboratory and radiology services;
  - v. Public health unit services; and
  - w. Personal care services.
6. Except as provided in subsection 4, or unless the department exempts the recipient, a primary care provider must be selected for each recipient.
7. A primary care provider may be changed during the ninety days after the recipient's initial enrollment with the primary care provider or the date the state sends the recipient notice of the enrollment, at redetermination of eligibility, once every ~~six~~[twelve](#) months during the open enrollment period, or with good cause. Good cause for changing a primary care provider less than ~~six~~[twelve](#) months after the previous selection of a primary care provider exists if:
- a. The recipient relocates;
  - b. Significant changes in the recipient's health require the selection of a primary care provider with a different specialty;
  - c. The primary care provider relocates or is reassigned;
  - d. The selected provider refuses to act as a primary care provider or refuses to continue to act as a primary care provider; or
  - e. The department, or its agents, determines that a change of primary care provider is necessary.

**History:** Effective October 1, 2012; amended effective July 1, 2014; [April 1, 2016](#).

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-32; 42 USC 1396u-2

## CHAPTER 75-02-02.1

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

1. For purposes of this section:
  - a. "Community spouse" means the spouse of an institutionalized spouse or the spouse of a home and community-based services spouse.
  - b. "Family member" means only minor or dependent children, dependent parents, or dependent siblings of the institutionalized spouse, home and community-based services spouse, or community spouse who are residing with the community spouse. For purposes of applying this definition, a family member is dependent only if that family member is, and may properly be, claimed as a dependent on the federal income tax return filed by the institutionalized spouse or home and community-based services spouse, or the community spouse, or filed jointly by both.
  - c. "Home and community-based services spouse" means an individual who:
    - (1) Requires care of the type provided in a nursing facility, but chooses to receive home and community-based services in the community; and
    - (2) Is married to a spouse who resides in the community at least one day of each month.
  - d. "Institutionalized spouse" means an individual who:
    - (1) Requires care in a medical institution, a nursing facility, a swing bed, or the state hospital and, at the beginning of the individual's institutionalization, was likely to be in the facility for at least thirty consecutive days even though the individual does not actually remain in the facility for thirty consecutive days; and
    - (2) Is married to a spouse who resides in the community at least one day of each month.
  - e. "Monthly maintenance needs allowance" means for a community spouse, the greater of ~~two thousand two hundred sixty seven dollars~~ the amount authorized by the legislative assembly per month or the minimum amount permitted under section 1924(d)(3) of the Act [42 U.S.C. 1396r-5(d)(3)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
2.
  - a. At the request of an institutionalized spouse, a home and community-based services spouse, or a community spouse, at the beginning of the first continuous period of institutionalization of the institutionalized spouse, or the beginning of the first continuous period of receipt of home and community-based services by a home and community-based services spouse, and upon receipt of relevant documentation of assets, the total value described in subdivision b shall be assessed and documented.
  - b. There shall be computed, as of the beginning of the first continuous period of institutionalization of the institutionalized spouse, or as of the beginning of the first continuous period of receipt of home and community-based services by a home and community-based services spouse:
    - (1) The total value of the countable assets to the extent either the institutionalized spouse or the community spouse, or the home and community-based services spouse and the community spouse, has an ownership interest; and

- (2) A spousal share, which is equal to one-half of all countable assets, but not less than the minimum amount permitted under section 1924(f)(2)(A)(i) of the Act [42 U.S.C. 1396r-5(f)(2)(A)(i)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)], and not more than the maximum amount permitted under section 1924(f)(2)(A)(ii)(II) of the Act [42 U.S.C. 1396r-5(f)(2)(A)(ii)(II)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
- c. In determining the assets of the institutionalized spouse at the time of application, all countable assets held by the institutionalized spouse, the community spouse, or both, must be considered available to the institutionalized spouse to the extent they exceed the community spouse countable asset allowance.
- d. In determining the assets of the home and community-based services spouse at the time of application, all countable assets held by the home and community-based services spouse, the community spouse, or both, must be considered available to the home and community-based services spouse to the extent they exceed the community spouse asset allowance.
- e. During the continuous period in which the spouse is in an institution or receiving home and community-based services, and after the month in which an institutionalized spouse or a home and community-based services spouse is determined to be eligible for benefits under this chapter, no countable assets of the community spouse may be deemed available to the institutionalized spouse or home and community-based services spouse. Assets owned by the community spouse are not considered available to the institutionalized spouse or home and community-based services spouse during this continuous period of eligibility. A transfer of assets or income by the community spouse for less than fair market value is governed by section 75-02-02.1-33.1 and shall be considered in determining continuing eligibility of the institutionalized spouse or home and community-based services spouse.
- f. The institutionalized spouse or home and community-based services spouse is not ineligible by reason of assets determined under subdivision c or d to be available for the cost of care if:
- (1) The institutionalized spouse or the home and community-based services spouse has assigned to the state any rights to support from the community spouse; or
  - (2) It is determined that a denial of eligibility would work an undue hardship because the presumption described in subsection 3 of section 75-02-02.1-25 has been rebutted.
- g. An institutionalized spouse or home and community-based services spouse is allowed the medically needy asset limit of three thousand dollars.
- h. An institutionalized spouse or a home and community-based services spouse is asset eligible if the total value of all countable assets owned by both spouses is less than the total of the community spouse countable asset allowance and the institutionalized spouse asset limit or home and community-based services asset limit, as applicable. The assets may be owned by either spouse provided that the requirements of subdivision i are complied with.
- i. An institutionalized spouse or a home and community-based services spouse may transfer an amount equal to the community spouse countable asset allowance, but only to the extent the assets of the institutionalized spouse or home and community-based services spouse are transferred to, or for the sole benefit of, the community spouse. Such transfers, when made by an individual who has otherwise qualified for medicaid

benefits, must be completed before the next regularly scheduled redetermination of eligibility. During this period, such assets are not counted as available to the institutionalized spouse even though the assets are not yet transferred.

- (1) When an eligible institutionalized spouse or home and community-based services spouse exceeds the asset limits due to an increase in the value of assets or the receipt of assets not previously owned, the institutionalized spouse or home and community-based services spouse may transfer additional assets to the community spouse equal to no more than the current community spouse countable asset allowance less the total value of assets owned by the community spouse, previously transferred to, or for the sole benefit of, the community spouse under this subdivision.
  - (2) If a transfer made under this subdivision causes the total value of all assets owned by the community spouse immediately prior to the transfer, plus the value of all assets transferred at any time under this subdivision, to equal or exceed the current community spouse asset allowance, no further transfer may be made under paragraph 1.
  - (3) If a court has entered an order against an institutionalized spouse for the support of a community spouse, assets required by such order to be transferred, by the institutionalized spouse to the community spouse, may not be counted as available to the institutionalized spouse even though the assets are not yet transferred.
3. A community spouse may retain or receive assets, which do not exceed the community spouse countable asset allowance, for purposes of determining the medicaid eligibility of the institutionalized spouse. The community spouse countable asset allowance means the spousal share determined under paragraph 2 of subdivision b of subsection 2, as adjusted pursuant to section 1924(g) of the Act [Pub. L. 105-33; 111 Stat. 549; 42 U.S.C. 1396r-5(g)] plus:
- a. Any additional amount transferred under a court order in the manner and for the purpose described in paragraph 4 of subdivision i of subsection 2; or
  - b. Any additional amount established through a fair hearing conducted under subsection 6.
4. Countable assets include all assets that are not specifically excluded. The provisions of section 75-02-02.1-28.1 governing asset exclusions apply to this section.
5. Income calculations must consider income in the manner provided for in section 75-02-02.1-34, income considerations, section 75-02-02.1-37, unearned income, section 75-02-02.1-38, earned income, section 75-02-02.1-38.1, posteligibility treatment of income, section 75-02-02.1-38.2, disregarded income, section 75-02-02.1-39, income deductions, and section 75-02-02.1-40, income levels, except:
- a. No income of the community spouse may be deemed available to an institutionalized spouse during any month in which an institutionalized spouse is in the institution, or to a home and community-based services spouse during any month in which that spouse receives home and community-based services; and
  - b. No institutionalized spouse may be income eligible for medicaid in any month in which that spouse's income, after all income disregards and deductions other than the deduction of amounts provided to a spouse or family member, exceed an amount equal to that individual's current monthly medical expenses, not covered by a third party, plus the medically needy income level for one.



6. The provisions of this section describing the treatment of income and assets for the community spouse do not describe that treatment for the purposes of determining medicaid eligibility for the community spouse or for children of the community spouse.
7.
  - a. Notice must be provided of the amount of the community spouse income allowance, of the amount of any family allowances, of the method of computing the amount of the community spouse countable asset allowance, and of the right to a fair hearing respecting ownership or availability of income and assets, and the determination of the community spouse monthly income or countable asset allowance. The notice must be provided, upon a determination of medicaid eligibility of an institutionalized spouse, to both spouses, and upon a subsequent request by either spouse or a representative acting on behalf of either spouse, to the spouse making the request.
  - b. A community spouse, or an institutionalized spouse or a home and community-based services spouse, is entitled to a fair hearing under chapter 75-01-03 if application for medicaid has been made on behalf of the institutionalized spouse or home and community-based services spouse and either spouse is dissatisfied with a determination of:
    - (1) The community spouse monthly income allowance;
    - (2) The amount of monthly income otherwise available to the community spouse as determined in calculating the community spouse monthly income allowance;
    - (3) The computation of the spousal share of countable assets;
    - (4) The attribution of countable assets; or
    - (5) The determination of the community spouse countable asset allowance.
  - c. Any hearing respecting the determination of the community spouse countable asset allowance must be held within thirty days of the request for the hearing.
  - d. If either spouse establishes that the community spouse needs income, above the level provided by the monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, the monthly maintenance needs allowance for that spouse must be increased to an amount adequate to provide necessary additional income.
  - e.
    - (1) If either spouse establishes that the assets included within the community spouse countable asset allowance generate an amount of income inadequate to raise the community spouse's income to the monthly maintenance needs allowance, to the extent that total assets permit, the community spouse countable asset allowance for that spouse must be increased to an amount adequate to provide such a monthly maintenance needs allowance. For purposes of calculations made under this subdivision, all income of the institutionalized spouse that could be made available to a community spouse, in accordance with the calculation of the community spouse monthly income allowance under this subsection, must be treated as having been made available before an additional amount of assets may be allocated to the community spouse under this subdivision.
    - (2) To establish a need for an increased asset allowance under this subdivision, the applicant, recipient, or the community spouse must provide verification of all income and assets of the community spouse.
    - (3) The amount of assets adequate to provide a monthly maintenance needs allowance for the community spouse must be based on the cost of a single premium lifetime

annuity selected by the department that provides monthly payments equal to the difference between the monthly maintenance needs allowance and other income of both spouses not generated by either spouse's countable assets.

- (4) The monthly maintenance needs allowance amount upon which calculations under this subdivision are made must be the amount in effect upon filing of the appeal.
  - (5) The estimate of the cost of an annuity described in paragraph 3 must be substituted for the amount of assets attributed to the community spouse if the amount of assets previously determined is less than the estimate. If the amount of assets attributed to the community spouse prior to the hearing is greater than the estimate of the cost of an annuity described in paragraph 3, the attribution of assets to the community spouse made prior to the hearing must be affirmed.
  - (6) No applicant, recipient, or community spouse is required to purchase an annuity as a condition of the applicant or recipient's eligibility for medicaid benefits.
8. Any transfer of an asset or income is a disqualifying transfer under section 75-02-02.1-33.1 or 75-02-02.1-33.2, whether made by a community spouse, a home and community-based services spouse, or an institutionalized spouse, unless specifically authorized by this section. The income that may be received by or deemed provided to an ineligible community spouse, and the asset amounts that an ineligible community spouse may retain, are intended to allow that community spouse to avoid impoverishment. They are not intended to allow the community spouse to make transfers of assets or income, for less than adequate consideration, which would disqualify the institutionalized spouse or home and community-based services spouse, if made by the institutionalized spouse or home and community-based services spouse.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003; June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2011; [April 1, 2016](#).

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396r-5

## 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, including one hour of training annually on sudden infant death prevention if the in-home provider provides care to infants.
  - 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 or a similar finding in another jurisdiction which requires proof of substantially similar elements 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~~ or a similar finding in another jurisdiction which requires proof of substantially similar elements 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; April 1, 2016.

**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 ~~chapters~~chapter 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~~section 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; 12.1-21-01, arson; 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 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.
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~~An in-home provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. 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~~nationwide~~ name-based 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. Review of fingerprint-based criminal history record check results.
    - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written

request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

**History:** Effective January 1, 2011; amended effective April 1, 2014; [April 1, 2016](#).

**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 SELF-DECLARATION PROVIDERS EARLY CHILDHOOD SERVICES

### Section

75-03-07.1-00.1	Definitions
75-03-07.1-01	Fees [Repealed]
75-03-07.1-02	Self-Declaration Standards - Application
75-03-07.1-03	Smoke-Free Environment [Repealed]
75-03-07.1-04	One Per Residence - Nontransferability of Self-Declaration and Emergency Designee
75-03-07.1-05	Appeals
75-03-07.1-06	Denial or Revocation of Self-Declaration Document
75-03-07.1-07	Minimum Sanitation Requirements
75-03-07.1-08	Infant Care
75-03-07.1-09	Minimum Requirements for the Care of Children With Special Needs
75-03-07.1-10	Correction of Violations
75-03-07.1-11	Fiscal Sanctions
<u>75-03-07.1-12</u>	<u>Restricted Self-Declaration</u>

### **75-03-07.1-00.1. 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:

1. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
2. "Attendance" means the total number of children present at any one time.
- ~~2.3.~~ "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.
- ~~3.4.~~ "Emergency designee" means an individual designated by a ~~holder of a self-declaration~~ provider to be a backup staff member for emergency assistance or to provide substitute care.
- ~~4.5.~~ "Infant" means a child who is less than twelve months of age.
- ~~5.6.~~ "Provider" means the holder of a self-declaration document.
- ~~6.7.~~ "Supervision" means a provider or ~~staff member~~ emergency designee responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the provider or ~~staff member~~ emergency designee is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider or ~~staff member~~ emergency designee responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

**History:** Effective January 1, 2011; amended effective April 1, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02, 50-11.1-08, 50-11.1-17

### **75-03-07.1-02. Self-declaration standards - Application.**

1. An applicant for a self-declaration document shall submit the application to the authorized agent in the county in which the applicant proposes to provide early childhood services. An application, including a department-approved authorization for background check for household members age twelve and older, an emergency designee, and an applicant, and an application for a fingerprint-based criminal history record check for the applicant and



emergency designee, must be made in the form and manner prescribed by the department.  
~~The application must include the following sworn statement:~~

~~I am not required by North Dakota state law (Chapter 50-11.1) to be licensed to provide early childhood services.~~

2. A provisional self-declaration document may be issued:
  - a. The director of a regional human service center, or the director's designee, in consultation with the department, may issue a provisional self-declaration document although the applicant or ~~self-declaration holder~~provider fails to, or is unable to, comply with all applicable standards and rules of the department.
  - b. A provisional self-declaration document must:
    - (1) State that the ~~self-declaration holder~~provider has failed to comply with all applicable standards and rules of the department;
    - (2) State the items of noncompliance;
    - (3) Expire at a set date, not to exceed six months from the date of issuance; and
    - (4) Be exchanged for an unrestricted self-declaration document, which bears an expiration date of one year from the date of issuance of the provisional self-declaration document, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
  - c. The department may issue a provisional self-declaration document only to an applicant or provider who has waived, in writing:
    - (1) The right to a written statement of charges as to the reasons for the denial of an unrestricted self-declaration document; and
    - (2) The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted self-declaration document, either at the time of application or during the period of operation under a provisional self-declaration document.
  - d. Any provisional self-declaration document 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.
  - e. Subject to the exceptions contained in this section, a provisional self-declaration document entitles the ~~holder~~provider to all rights and privileges afforded the ~~holder~~provider of an unrestricted self-declaration document.
  - f. The provider shall display prominently the provisional self-declaration document and agreement.
  - g. The provider shall provide parents written notice that the provider is operating on a provisional self-declaration document and the basis for the provisional self-declaration document.
3. ~~An applicant for a self-declaration document~~The provider shall be directly responsible for the care, supervision, and guidance of the ~~child or children; shall comply with the following standards; and shall certify: .~~
  - a. ~~That the applicant~~The provider:



- (1) ~~Is~~Must be at least eighteen years of age;
- (2) Shall provide an environment that is physically and socially adequate for the children; and that the ~~applicant~~provider is ~~an adult~~ of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
- (3) Shall devote adequate time and attention to the children in the ~~applicant's~~provider's care;
- (4) 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~~provider's care;
- (5) Shall provide proper care and protection for children in the ~~applicant's~~provider's care;
- (6) May not use or be under the influence of, and will not allow any household member or ~~staff member~~emergency designee to use or be under the influence of any illegal drugs or alcoholic beverages while caring for children;
- (7) May not leave children without supervision;
- (8) Shall verify that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-age child;
- (9) Shall report immediately, as a mandated reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
- (10) Shall provide a variety of games, toys, books, crafts, and other activities and materials to enhance the child's intellectual and social development and to broaden the child's life experience. Each provider shall have enough play materials and equipment so that at any one time each child in attendance may be involved individually or as a group;
- (11) Shall ensure a current health assessment or a health assessment statement completed by the parent is obtained at the time of initial enrollment of the child, which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually;
- (12) Shall ensure a child information form completed by the parent is obtained at the time of initial enrollment of the child and annually thereafter; ~~and~~
- (13) ~~Has completed~~Shall complete a department-approved basic child care course ~~within three months of being approved as a provider;~~
- (14) Shall complete a minimum of three hours of department-approved training annually, including one hour on sudden infant death prevention if the provider provides care to infants. The same training courses may be counted toward self-declaration annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training;

(15) Shall ensure that the emergency designee completes one hour of department-approved training annually on sudden infant death prevention if the provider provides care to infants; and

(16) Shall release a child only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

- b. ~~That~~The provider shall ensure that discipline will be 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 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 a self-declaration document.
- (1) A child may not be kicked, punched, spanked, shaken, pinched, bitten, roughly handled, struck, mechanically restrained, or physically maltreated by the provider, ~~staff member~~emergency designee, household member, or any other adult in the residence.
  - (2) Authority to discipline may not be delegated to or be administered by children.
  - (3) Separation, when used as discipline, must be appropriate to the child's development and circumstances, and the child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult. A child may not be isolated in a locked room or closet.
  - (4) A child may not be punished for lapses in toilet training.
  - (5) A provider may not use verbal abuse or make derogatory remarks about the child, or the child's family, race, or religion when addressing a child or in the presence of a child.
  - (6) A provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
  - (7) A provider may not force-feed a child or coerce a child to eat unless medically prescribed and administered under a medical provider's care.
  - (8) A provider may not use deprivation of snacks or meals as a form of discipline or punishment.
  - (9) A 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) A provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
- c. ~~That~~The provider shall ensure that a working smoke detector is properly installed and in good working order on each floor used by children.
- d. ~~That~~The provider shall ensure that a fire extinguisher that is inspected annually is properly installed, is in good working order, and is located in the area used for child care.

- e. ~~That~~The provider shall ensure that a working telephone is located in the location used for child care. Emergency numbers for parents and first responders must be posted.
- f. When transportation is provided by a provider, children must be protected by adequate supervision and safety precautions.
  - (1) Drivers must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint laws.
  - (2) A child must not be left unattended in a vehicle.

g. Aquatic activities:

- (1) The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of the children participating in aquatic activities, and additional safety precautions to be taken.
  - (2) The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
- 4. Potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, poisonous plants, and open stairways must not be accessible to children. Guns and ammunition must be kept in separate locked storage, or trigger locks must be used. Other weapons and dangerous sporting equipment, such as bows and arrows, must not be accessible to children.
  - 5. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require that the individual present evidence of capability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
  - 6. A self-declaration document is only effective for one year.

**History:** Effective June 1, 1995; amended effective January 1, 2011; January 1, 2013; April 1, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-07, 50-11.1-08, 50-11.1-16, 50-11.1-17

**75-03-07.1-05. Appeals.**

An applicant for, ~~or a holder of,~~ a self-declaration document or a provider has the right to appeal a decision to deny or revoke a self-declaration document. A written appeal must be postmarked or received by the department within ten calendar days of the applicant's or ~~holder's~~provider's receipt of written notice of the decision to deny or revoke the document. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner prescribed by chapter 75-01-03.

**History:** Effective June 1, 1995; amended effective January 1, 2011; April 1, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-10

**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 ~~chapters~~chapter 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~~section 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; 12.1-21-01, arson; 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, or emergency designee's, ~~or staff member's~~ ability to serve the public in a capacity as a provider; or emergency designee; ~~or staff member~~.
  - c. 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.
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~~A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The provider shall ensure that each emergency designee submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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~~a nationwide name-based 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. Review of fingerprint-based criminal history record check results.

- a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
- b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

6. 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 or a similar finding in another jurisdiction which requires proof of substantially similar elements 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~~ or a similar finding in another jurisdiction which requires proof of substantially similar elements 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~~ emergency designee'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, and 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; April 1, 2016.

**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

#### **75-03-07.1-08. Infant care.**

##### **1. Environment and interactions.**

- a. A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- b. The provider shall ensure that each infant receives positive stimulation and verbal interaction such as being held, rocked, talked with, or sung to.

- c. The provider shall respond to comfort an infant's or toddler's physical and emotional distress:
  - (1) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
  - (2) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
- d. The provider 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, and uncluttered area.
- e. The provider shall take children outdoors or to other areas within the child care for a part of each day to provide some change of physical surroundings and to interact with other children.
- f. The provider shall ensure that infants are not shaken or jostled.
- g. The provider 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.
- h. The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

## 2. **Feeding.**

- a. The provider 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 by the infant's parent or medical provider.
- b. The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. The provider shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.
- c. The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
- d. The provider 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.
- e. The provider shall ensure that an infant is not fed by propping a bottle.
- f. The provider 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.
- g. The provider shall be within sight and hearing range of an infant during the infant's feeding or eating process.

## 3. **Diapering.**

- a. The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the child care if children requiring diapering are in care.



- b. The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.
- c. Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- d. The provider 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.

**4. Sleeping.**

- a. The provider 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.
- b. The provider 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.
- c. The provider shall ensure that if an infant falls asleep while not in a crib 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.
- d. Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- e. The provider 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.
- f. The provider shall ensure that mattresses and sheets are properly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- g. The provider shall check on sleeping infants regularly ~~or~~ and have a monitor in the room with sleeping infants, unless the provider or an emergency designee is in the room with the infants while the infants are sleeping.

**History:** Effective January 1, 2011; amended effective January 1, 2013; [April 1, 2016](#).

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

**75-03-07.1-09. Minimum requirements for the care of children with special needs.**

A provider shall make appropriate provisions, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The provider shall receive documentation of the child's special needs by the parent upon the child's enrollment.

- 1. When a child with special needs is admitted, the provider shall consult with the child's parents, and with the parent's permission, the child's source of professional health care or, when appropriate, other health and professional consultants, to gain an understanding of the child's individual needs. The provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description,

definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.

2. The provider shall ensure that ~~staff members~~emergency designees responsible for caring for or teaching children ~~and the emergency designee~~ receive proper instructions as to the nature of the child's disability and potential for growth and development.

**History:** Effective January 1, 2011; amended effective April 1, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-08, 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 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, or section 75-03-07.1-08, 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~~emergency designee 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; April 1, 2016.

**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



**75-03-07.1-12. Restricted self-declaration.**

The department may issue a restricted self-declaration:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform the parents that the provider is restricted to operating in certain rooms or floors of the residence or from using specified outdoor space of the residence.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04

## CHAPTER 75-03-08

### 75-03-08-03. 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. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
2. "Attendance" means the total number of children present at any one time at the family child care.
- ~~2.3.~~ "Child with special needs" means a child determined by a medical provider to have or to be at risk for chronic physical, developmental, behavioral, or emotional conditions.
- ~~3.4.~~ "Emergency designee" means an individual designated by the provider to be a backup staff member for emergency assistance or to provide substitute care.
- ~~4.5.~~ "Infant" means a child who is younger than twelve months of age.
- ~~5.6.~~ "Medication" is defined as any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~6.7.~~ "Provider" means owner or operator of a family child care.
- ~~7.8.~~ "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~8.9.~~ "Volunteer" means an individual who visits or provides an unpaid service, 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, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

#### 75-03-08-08.1. Duties of the provider.

1. A provider shall maintain, whenever services are provided, at least one staff member who:
  - a. Is certified in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and
  - b. Is certified or trained in a department-approved program to provide first aid.
- ~~2. Substitute staff are exempt from the requirements of subsection 1. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children.~~
- ~~3.~~ The provider shall have an adult staff member responsible for caring for or teaching children present in the family child care at all times to supervise staff members under the age of eighteen and children in care.

~~4.3.~~ A staff member may not at any time place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.

~~5.4.~~ The provider shall report to the authorized agent within twenty-four hours:

- a. A death or serious accident or illness requiring hospitalization of a child while in the care of the family child care or attributable to care received in the family child care;
- b. An injury to any child which occurs while the child is in the care of the family child care and which requires medical treatment;
- c. Poisonings or errors in the administration of medication;
- d. Closures or relocations of child care programs due to emergencies; and
- e. Fire that occurs or explosions that occur in or on the premises of the family child care.

~~6.5.~~ The provider shall be present in the family child care no less than sixty percent of the time when children are in care.

~~7.6.~~ The provider, as a mandatory reporter, shall report any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03.

~~8.7.~~ The provider shall select an emergency designee.

~~9.8.~~ The provider shall maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the family child care.

~~10.9.~~ The provider must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.

~~11.10.~~ The provider shall ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so the child's health and safety is protected.

11. The provider shall ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

**History:** Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2016.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-08-10. Minimum qualifications of providers.**

A provider shall:

1. Be at least eighteen years of age;
2. Complete a department-approved basic child care course during the first three months of licensure; ~~and~~
3. Certify completion of a minimum of nine hours of department-approved training related to child care every licensing year. The same training courses may be counted toward licensing annual

requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training; and

4. Certify annual completion of one hour of department-approved sudden infant death prevention training if the provider provides care to infants.

**History:** Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-08-12. Minimum qualifications for all staff members responsible for caring for or teaching children.**

Each staff member who provides care shall:

1. Be at least fourteen years of age, provided that each staff member under age sixteen provides written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the provider may provide care if the family member is at least twelve years of age;
2. Be an individual of good physical, cognitive, social, and emotional health and use mature judgment when making decisions impacting the quality of child care;
3. Complete a department-approved basic child care course during the first three months of employment, with the exception of substitute staff and emergency designees; and
4. Certify annual completion of one hour of department-approved sudden infant death prevention training if the staff member provides care to infants; and
5. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and child care activities during the first week of employment.

**History:** Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**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 a fire and safety inspections inspection 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~~ and annually thereafter. Any inspection fees are the provider's responsibility. The provider shall ~~ensure that any problems found are corrected~~ have any code

violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the authorized agent. If the fire, safety, health, or sanitation environment appears questionable, the department or authorized agent may require the provider to obtain additional inspections at the cost of the provider. The provider shall provide:

a. The fire inspector's written statement of compliance with the local fire code, if there is one; or

b. The fire inspector's written statement that the family child care has been inspected and that the inspector is satisfied that the family child care meets minimum fire and safety standards.

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; April 1, 2016.

**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

#### **75-03-08-21.1. Minimum sanitation and safety requirements.**

1. Children shall have received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs.
2. 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.
3. The provider shall have a statement on file, signed by the child's parents, authorizing emergency medical care for each child.
4. The provider shall ensure at least one department-approved first-aid kit is maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times.
5. The provider shall have plans to respond to illness and emergencies, including evacuation in case of fire, serious injury, and ingestion of poison.
6. If children in care require medication, the provider shall secure written permission and follow proper instructions as to the administration of medication.
  - a. The provider shall store medications in an area inaccessible to children.
  - b. Medications stored in a refrigerator must be stored collectively in a spill proof container.
  - c. The provider shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.

7. The provider shall establish practices in accordance with guidance obtained through consultation with local or state health department authorities regarding the exclusion and return of children with infectious or communicable conditions. The provider may obtain this guidance directly or through current published materials regarding exclusion and return to the family child care.
8. The provider may release a child only to the child's parent or individual who has been authorized by the child's parent.
9. The provider shall ensure that children playing outdoors are clothed appropriately for weather conditions.
10. The provider shall ensure that a staff member responsible for caring for or teaching children is supervising directly any child who is bathing or using a pool.
11. The provider shall ensure that children receive proper supervision when playing outdoors.
12. Children's personal items, including combs, brushes, pacifiers, and toothbrushes, must be individually identified and stored in a sanitary manner.
13. Pets and animals.
  - a. The provider shall ensure that only small pets that are contained in an aquarium or other approved 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 family 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.
14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the family child care and shall empty, clean, and sanitize wading pools daily.

15. All swimming pools used by the children must be approved annually by the local health unit.

16. Aquatic activities:

a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.

b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

17. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in covered containers. Open burning is not permitted. The provider shall keep indoor garbage in containers with lids. The provider may allow paper waste to be kept in open waste containers.

**History:** Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016.

**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

**75-03-08-24. Specialized types of care and minimum requirements.**

**1. Infant care.**

a. Environment and interactions.

- (1) A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- (2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children, such as being held, rocked, talked with, or sung to.
- (3) The staff members responsible for caring for or teaching children or emergency designee shall respond promptly 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 provider 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, and uncluttered area.
- (5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the family child care for a part of each day to provide some change of physical surroundings and to interact with other children.
- (6) The provider shall ensure that infants are not shaken or jostled.
- (7) The provider 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.



- (8) The provider 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 provider 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 by the infant's parent or medical provider.
  - (2) The provider 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 provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
  - (4) The provider 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 provider shall ensure that an infant is not fed by propping a bottle.
  - (6) The provider 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 provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant during the infant's feeding or eating process.
- c. Diapering.
- (1) The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the family child care, if children requiring diapering are in care.
  - (2) The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.
  - (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
  - (4) The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the family child care.
- d. Sleeping.
- (1) The provider 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 provider 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 provider shall ensure that if an infant falls asleep while not in a crib 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 provider 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 provider shall ensure that mattresses and sheets are properly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- (7) ~~The provider~~A staff member shall check on sleeping infants regularly ~~or~~and have a monitor in the room with the sleeping infant, unless a staff member is in the room with the infants while the infants are sleeping.

## 2. Night care.

- a. Any family child care offering night care shall provide program modifications for the needs of children and their parents during the night.
- b. In consultation with parents, special 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 provider shall encourage parents to leave their children in care or 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 parents' work schedule.
- d. The provider shall ensure that children under the age of six are supervised directly when bathing.
- e. The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available and the provider shall ensure:
  - (1) Pillows and mattresses have clean coverings.
  - (2) Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
  - (3) If beds are used by different children, sheets and pillowcases are laundered before use by other children.
  - (4) Each bed or cot has sufficient blankets available.
- f. The provider shall require each child in night care to have night clothing and a toothbrush marked for identification.

**History:** Effective January 1, 2011; amended effective January 1, 2013; April 1, 2016.

**General Authority:** NDCC 50-11.1-04, 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 ~~chapters~~chapter 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~~section 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; 12.1-21-01, arson; 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 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.
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~~A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The provider shall ensure that each staff member

submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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~~ a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

6. Review of fingerprint-based criminal history record check results.

a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

**History:** Effective January 1, 1999; amended effective January 1, 2011; April 1, 2014; April 1, 2016.

**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 or a similar finding in another jurisdiction which requires proof of substantially similar elements 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~~ or a similar finding in another jurisdiction which requires proof of substantially similar elements 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; [April 1, 2016](#).

**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

## CHAPTER 75-03-09

### 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. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
2. "Attendance" means the total number of children present at any one time at the group child care.
- ~~2.3.~~ "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.
- ~~3.4.~~ "Emergency designee" means an individual designated by the operator to be a backup caregiver for emergency assistance or to provide substitute care.
- ~~4.5.~~ "Group child care supervisor" means an individual responsible for overseeing the day-to-day operation of a group child care.
- ~~5.6.~~ "Infant" means a child who is less than twelve months of age.
- ~~6.7.~~ "Medications" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~7.8.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a group child care.
- ~~8.9.~~ "Provider" means the group child care owner or operator.
- ~~9.10.~~ "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~10.11.~~ "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; April 1, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

### 75-03-09-08. Duties of group child care provider.

1. The provider of a group child care is responsible for compliance with requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. The provider shall:
  - a. Establish the child care program;
  - b. Apply for a license for the group child care;
  - c. Possess knowledge or experience in management and interpersonal relationships;
  - d. Formulate written policies and procedures for the operation of the group child care. Policies must include:
    - (1) An explanation of how accidents and illnesses will be handled;

- (2) The methods of developmentally appropriate discipline and guidance techniques that are to be used;
  - (3) The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
  - (4) Hiring practices and personnel policies for staff members;
  - (5) Informing parents that they may request daily reports for their child, including details regarding eating, napping, and diapering;
  - (6) Procedure for accountability when a child fails to arrive as expected at the child care; and
  - (7) Transportation procedures, if the provider provides transportation;
- e. Notify the authorized agent of any major changes in the operation or in the ownership of the group child care, including staff member changes;
  - f. Maintain records of enrollment, attendance, health, and other required records;
  - g. Select an emergency designee;
  - h. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the group child care;
  - i. Ensure 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 any one time;
  - j. Ensure preadmission visits for children and their parents are offered so the facility's program, fees, operating policies, and procedures can be viewed and discussed;
  - k. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
  - l. Provide parents, upon request, with progress reports on their children, and provide unlimited opportunities for parents to observe their children while in care. Providing unlimited access does not prohibit a group child care from locking its doors while children are in care;
  - m. Provide parents with the name of the group child care provider, the group child care supervisor, staff members, and the emergency designee;
  - n. Report, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
  - o. Ensure, whenever services are provided, that at least one staff member, on duty meets current certification requirements in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other cardiopulmonary resuscitation training programs approved by the department, and is certified or trained in a department-approved program to provide first aid. ~~Substitute staff are exempt from this requirement. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children; and~~

- p. Ensure that children do not depart from the child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care premises; and

q. Ensure that each child is released only to the child's parent, legal custodian, guardian, or individual who has been authorized by the child's parent, legal custodian, or guardian.

- 2. If the provider is also the group child care supervisor, the provider shall also meet the qualifications of the supervisor in section 75-03-09-10.
- 3. The provider shall report to the authorized agent within twenty-four hours:
  - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the group child care or attributable to care received in the group child care;
  - b. An injury to any child which occurs while the child is in the care of the group child care and which requires medical treatment;
  - c. Poisonings or errors in the administering of medication;
  - d. Closures or relocations of child care programs due to emergencies; and
  - e. Fire that occurs and explosions that occur in or on the premises of the group child care.

**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, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-09-10. Minimum qualifications of group child care supervisor.**

- 1. A group child care supervisor must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
- 2. The group child care supervisor shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
  - a. A bachelor's degree in the field of early childhood education or child development;
  - b. An associate's degree with at least one of the following:
    - (1) Eight semester hours or twelve quarter hours in early childhood education or child development;
    - (2) One hundred twenty hours of department-approved early childhood training; or
    - (3) A director's credential approved by the department;
  - c. Current certification as a child development associate or successful completion of a department-approved diploma program with emphasis in early childhood or child care;
  - d. Certification from a Montessori teacher training program;



- e. At least one year of exclusive experience as a self-declaration holder or licensed child care provider with positive references from at least two parents whose children were in the provider's care;
  - f. A high school degree or equivalency with certification of completion in a secondary occupational child care program and at least one year of exclusive experience working with young children, with references from at least two individuals who either had their children in the group child care supervisor's care or instructed the group child care supervisor in child care programming; or
  - g. A minimum of one year of exclusive experience providing care to three or more children, with positive references from at least two parents whose children were in the group child care supervisor's care or a center director or teacher who observed the group child care supervisor's care of children first hand.
3. The group child care supervisor shall:
    - a. Have current certification in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and
    - b. Be certified or trained in a department-approved program to provide first aid.
  4. The group child care supervisor shall certify completion of a minimum of ten hours of department-approved training related to child care annually, including one hour on sudden infant death prevention if the provider provides care to infants. The ten hours of training in the first year following initial licensure must include a department-approved basic child care course taken during the first three months of employment. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training.
  5. The group child care supervisor must be present in the group child care no less than sixty percent of the time when children are in care.

**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, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-12. Minimum qualifications for all staff members responsible for caring for or teaching children.**

Staff members shall:

1. Be at least fourteen years of age, provided that each staff member under age sixteen provides written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the provider may provide care if the family member is at least twelve years of age;
2. Be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
3. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and group child care activities during the first week of work;

4. Ensure that at no time a child is placed in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health;
5. Certify completion of a department-approved basic child care course within their first three months of employment with the exception of substitute staff and emergency designees;
6. ~~Shall certify~~Certify the staff member's own completion of department-approved training related to child care annually as set forth below:
  - a. A staff member working thirty or more hours per week shall certify a minimum of eight hours of department-approved training annually;
  - b. A staff member working fewer than thirty and at least twenty hours per week shall certify a minimum of six hours of department-approved training annually;
  - c. A staff member working fewer than twenty and at least ten hours per week shall certify a minimum of four hours of department-approved training annually;
  - d. A staff member working fewer than ten hours per week shall certify a minimum of two hours of department-approved training annually; ~~and~~
  - e. An emergency designee is exempt from department-approved annual training. with the exception of training required by subsection 7; and
  - f. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training; and
7. Certify annual completion of one hour of department-approved sudden infant death prevention training if the staff member provides care to infants; and
8. Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.

**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, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 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.
- 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; [April 1, 2016](#).

**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

**75-03-09-17. Fire inspections.**

- 1. The provider shall ensure that [initial and](#) annual fire inspections are completed by local or state fire authorities for all group child cares in which care is provided ~~to eight or more children and upon any group child care providing care for any number of children in homes which are~~

~~manufactured or mobile homes, in apartment buildings, homes in which care is provided to children in basements, and in homes that have alternative heating devices, such as wood burning stoves, propane heaters, or fireplaces.~~ The group child care is responsible for any inspection fee. The provider shall have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the authorized agent. If the fire, safety, health, or sanitation environment appears questionable, the department or authorized agent may require the provider to obtain additional inspections at the cost of the provider.

2. The provider shall provide:
  - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
  - b. The fire inspector's written statement that the group child care has been inspected and that the inspector is satisfied that the facility meets minimum fire and safety standards.
3. The provider shall ensure that the group child care is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.

**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, 2016.

**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 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 chipped 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.

22. Aquatic activities:

- a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
- b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

**History:** Effective December 1, 1981; amended effective January 1, 1999; January 1, 2011; April 1, 2014; [April 1, 2016](#).

**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

## **75-03-09-24. Specialized types of care and minimum requirements.**

### **1. Infant care.**

#### **a. Environment and interactions.**

- (1) A group child care serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- (2) The provider 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 being held, rocked, talked with, or sung to.
- (3) The staff members responsible for caring for or teaching children, or emergency designee, shall respond promptly 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 provider 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, and uncluttered area.
- (5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the group child care for a part of each day to provide some change of physical surroundings and to interact with other children.
- (6) The provider shall ensure that infants are not shaken or jostled.
- (7) The provider 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.
- (8) The provider 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 provider 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 by the infant's parent or medical provider.
- (2) The provider 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 provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.

- (4) The provider 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 provider shall ensure that an infant is not fed by propping a bottle.
- (6) The provider 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 provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

- (1) The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the group child care if children requiring diapering are in care.
- (2) The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.
- (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- (4) The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the group child care.

d. Sleeping.

- (1) The provider 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 provider 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 provider shall ensure that if an infant falls asleep while not in a crib 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 provider 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 an infant is sleeping or preparing to sleep.



- (6) The provider shall ensure that mattresses and sheets are properly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- (7) ~~The provider~~ A staff member shall check on sleeping infants regularly ~~or~~ and have a monitor in the room with the sleeping ~~infant~~ infants, unless a staff member is in the room with the infants while the infants are sleeping.

2. Night care.

- a. Any group child care offering night care shall provide program modifications for the needs of children and their parents during the night.
- b. In consultation with parents, special 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 provider shall encourage parents to leave their children in care or 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 parents' work schedule.
- d. The provider shall ensure that children under the age of six are supervised directly when bathing.
- e. The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available and the provider shall ensure:
  - (1) Pillows and mattresses have clean coverings.
  - (2) Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
  - (3) If beds are used by different children, sheets and pillowcases are laundered before use by other children.
  - (4) Each bed or cot has sufficient blankets available.
- f. The provider shall require each child in night care to have night clothing and a toothbrush marked for identification.
- g. For a group child care not operating out of an occupied private residence, staff members responsible for caring for or teaching children must be awake and within hearing range during sleeping hours to provide for the needs of children and to respond to an emergency.

3. Drop-in group child care.

- a. If a group child care serves drop-in children, schoolchildren, or before-school and afterschool children, the group child care 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 provider shall ensure that the program reflects the individual needs of the children who are provided drop-in care.

- c. The provider shall ensure that records secured comply with all enrollment requirements contained in section 75-03-09-22, except the immunization verification record requirement.
  - d. The provider shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the group child care, its equipment, and the staff members.
  - e. A group child care may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the group child care to exceed the total number of children for which the group child care is licensed.
4. A provider shall ensure that a group child care serving only drop-in care children complies with this chapter but is exempt from the following provisions:
- a. Subsections 4 and 5 of section 75-03-09-20, subsections 6 and 7 of section 75-03-09-21, subdivision f of subsections 2 and 3 of section 75-03-09-22, and subsection 1 of section 75-03-09-25.
  - b. A group child care serving only drop-in care children is exempt from the outdoor space requirements.

**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, 2016](#).

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 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 ~~chapters~~[chapter](#) 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~~[section](#) 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; [12.1-21-01, arson](#); 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 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.
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~~A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The provider shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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~~a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

6. Review of fingerprint-based criminal history record check results.

- a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
- b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

**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; April 1, 2016.

**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 or a similar finding in another jurisdiction which requires proof of substantially similar elements 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~~ or a similar finding in another jurisdiction which requires proof of substantially similar elements 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; April 1, 2016.

**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

## CHAPTER 75-03-10

### 75-03-10-03. 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. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
2. "Attendance" means the total number of children present at any one time at the facility.
- ~~2.3.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
- ~~3.4.~~ "Director" means the individual responsible for overseeing the general operation and implementing the policies and procedures of the child care center.
- ~~4.5.~~ "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
- ~~5.6.~~ "Infant" means a child who is less than twelve months of age.
- ~~6.7.~~ "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~7.8.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a child care center.
- ~~8.9.~~ "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~9.10.~~ "Supervisor" means any individual with the responsibility for organizing and supervising daily child care center activities.
- ~~10.11.~~ "Volunteer" means an individual who visits or provides an unpaid service, 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, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

### 75-03-10-09. Duties of child care center operator.

The operator is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:

1. Designate a qualified director and shall delegate appropriate duties to the director:
  - a. The operator shall ensure that the director or a designated acting director is present at the center at least sixty percent of the time when the center is open;
  - b. The operator shall ensure that the individual designated as an acting director meets the qualifications of a supervisor and for an ongoing period of more than thirty days meets the qualifications of a director; and

- c. The operator shall ensure that when the director and acting director are not present at the center, a person who meets the qualifications of a supervisor is on duty;
2. Apply for a license for the child care center;
3. Provide an environment that is physically and socially adequate for children;
4. Notify the authorized agent of any major changes in the operation, ownership, or governing body of the child care center, including staff member changes;
5. Ensure that liability insurance is carried to insure against bodily injury and property damage for the child care center;
6. Formulate written policies and procedures for the operation of the child care center. Policies must include:
  - a. Hiring practices and personnel policies for staff members;
  - b. Methods for obtaining references and employment histories of staff members;
  - c. Methods of conducting staff member performance evaluations;
  - d. Children's activities, care, and enrollment;
  - e. The responsibilities and rights of staff members and parents;
  - f. An explanation of how accidents and illnesses will be handled;
  - g. The methods of developmentally appropriate discipline and guidance techniques that are to be used;
  - h. The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
  - i. The care and safeguarding of personal belongings brought to the child care center by a child or by another on a child's behalf;
  - j. Procedures for accountability when a child fails to arrive as expected at the child care; and
  - k. Transportation procedures, if the operator provides transportation;
7. Maintain records of enrollment, attendance, health, and other required records;
8. Select an emergency designee;
9. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the child care center;
10. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies, procedures, and content of the child care center's program;
11. Ensure that parents of enrolled children:
  - a. Are advised of the center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;
  - b. Receive written notice of the effective date, duration, scope, and impact of any significant changes in the center's services; and

- c. Receive notice that they may request written daily reports for their child, including details regarding eating, napping, and diapering;
12. 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 any one time;
  13. Ensure that the child care center has sufficient qualified staff members available to substitute for regularly assigned staff who are sick, on leave, or otherwise unable to be on duty;
  14. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
  15. Provide parents with unlimited access and opportunities for parents to observe their children while in care, and provide parents with regular opportunities to meet with staff members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a child care center from locking its doors while children are in care;
  16. Provide parents, upon request, with progress reports on their children;
  17. Report immediately, as a mandatory reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
  18. Ensure, whenever services are provided, that at least one staff member, emergency designee, or substitute staff is on duty who meets the current certification requirements in cardiopulmonary resuscitation by the American heart association, American red cross, or other department-approved cardiopulmonary resuscitation training programs approved by the department, and is certified or trained in a department-approved program to provide first aid;
  19. Ensure that staff members responsible for caring for or teaching children under the age of eighteen are supervised by an adult staff member;
  20. Meet the qualifications of the director set forth in section 75-03-10-10, if the operator is also the director;
  21. Report to the authorized agent within twenty-four hours:
    - a. A death or a serious accident or illness requiring hospitalization of a child while in the care of the child care center or attributable to care received in the child care center;
    - b. An injury to any child which occurs while the child is in the care of the child care center and which requires medical treatment;
    - c. Poisonings or errors in the administering of medication;
    - d. Closures or relocations of child care programs due to emergencies; and
    - e. Fire that occurs or explosions that occur in or on the premises of the child care center; **and**
  22. Ensure that children do not depart from the child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care premises: and



23. Ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

**History:** Effective December 1, 1981; amended effective July 1, 1984; 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; January 1, 2013; April 1, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-10. Minimum qualifications of child care center director.**

A director shall:

1. Be an adult of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care;
2. Possess knowledge or experience in management and interpersonal relationships;
3. Hold at least one of the following qualifications, in addition to those set out in subsection 1:
  - a. A bachelor's degree in the field of early childhood education or child development;
  - b. A bachelor's degree with at least six months of experience in a child care center or similar setting and one of the following:
    - (1) Eight semester hours or twelve quarter hours in early childhood education or child development;
    - (2) One hundred twenty hours of department-approved early childhood training; or
    - (3) A director's credential approved by the department;
  - c. An associate's degree in the field of early childhood education or child development with at least six months of experience in a child care center or similar setting;
  - d. An associate's degree with at least one year of experience in a child care center or similar setting and one of the following:
    - (1) Eight semester hours or twelve quarter hours in early childhood education or child development;
    - (2) One hundred twenty hours of department-approved early childhood training; or
    - (3) A director's credential approved by the department;
  - e. A teaching certificate in elementary education with at least six months of experience in a child care center or similar setting;
  - f. A current certification as a child development associate or successful completion of a department-approved diploma program with emphasis in early childhood or child care, with at least one year of experience in a child care center or similar setting; or
  - g. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, child care center, or similar setting and at least one of the following:
    - (1) Eight semester hours or twelve quarter hours in child development or early childhood education;



- (2) One hundred twenty hours of department-approved early childhood training; or
- (3) A director's credential approved by the department; and
4. Certify annual completion of a minimum of thirteen hours of department-approved training related to child care, including one hour on sudden infant death prevention if the director provides care to infants. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training.

**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; January 1, 2013; April 1, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-10-11.1. Minimum qualifications of child care center supervisor.**

A supervisor shall:

1. Be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
2. Have a demonstrated ability in working with children;
3. Hold at least one of the following qualifications:
  - a. An associate degree in the field of early childhood development;
  - b. Current certification as a child development associate or successful completion of a department-approved diploma program with an emphasis in early childhood or child care;
  - 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 or similar setting;
4. Possess knowledge and experience in building and maintaining interpersonal relationships;
5. Successfully complete a department-approved basic child care course within the first three months of employment; and
6. Successfully complete a minimum of thirteen hours of department-approved training related to child care, including one hour on sudden infant death prevention if the supervisor provides care to infants. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training.

**History:** Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-10-12. Minimum qualifications for all staff members responsible for caring for or teaching children.**

1. Staff members:

- a. Shall be at least fourteen years of age, provided that each staff member under age sixteen has written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07;
  - b. Shall be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
  - c. Shall certify completion of a department-approved basic child care course within the first three months of employment, with the exception of substitute staff members and emergency designees;
  - d. Shall certify the staff member's own annual successful completion of the department-approved training related to child care as set forth below:
    - (1) If working thirty or more hours per week, certify thirteen hours of department-approved training annually;
    - (2) If working fewer than thirty hours and more than twenty hours per week, certify eleven hours of department-approved training annually;
    - (3) If working fewer than twenty hours and at least ten hours per week, certify nine hours of department-approved training annually; ~~and~~
    - (4) If working fewer than ten hours per week, certify seven hours of department-approved training annually;
    - (5) Completion of one hour on sudden infant death prevention if the staff member provides care to infants;
    - (6) The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training; and
    - (7) Substitute staff and emergency designees are exempt from the annual training requirement with the exception of paragraph 5; and
  - e. Shall not place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health;
2. Receive a two-day, onsite orientation to the child care program during the first week of employment. The director shall document orientation of each staff member responsible for caring for or teaching children on an orientation certification form. The orientation must address the following:
    - a. Emergency health, fire, and safety procedures for the center;
    - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
    - c. Any special health or nutrition problems of the children assigned to the staff member;
    - d. Any special needs of the children assigned to the staff member;
    - e. The planned program of activities at the child care center;
    - f. Rules and policies of the child care center; and
    - g. Child abuse and neglect reporting laws; and

3. Ensure safe care for children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

**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, 2016](#).

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-10-18. Minimum sanitation and safety requirements.**

1. The operator shall ensure that the state department of health conducts an annual inspection. The operator 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 operator shall ensure that the child care center bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
3. Cots and mats must be designated individually, and cleaned and sanitized at least weekly. If different children use the same cots or mats, they must be cleaned thoroughly and sanitized between each use. The operator shall ensure that aisles between cots, cribs, and portable cribs are a minimum space of two feet [58.42 centimeters] and are kept free of all obstructions while cots, cribs, and portable cribs are occupied. The operator shall provide separate storage for personal blankets or coverings.
4. The operator shall ensure that the child care center's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.
5. 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, single-use cloth towels, or paper towels must be available at each sink.
6. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
7. The operator shall ensure that the child care center ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
8. The operator shall ensure that the garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
9. The operator 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.

10. The operator 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 operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
11. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
12. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
13. The operator shall take steps to keep the child care center 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 child care center. Insect repellent may be applied outdoors on children with written parental permission.
14. The operator shall ensure that exit doorways and pathways are not blocked.
15. If the center is providing care to children in wheelchairs, the operator shall ensure doors have sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the child care center.
16. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
17. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
18. The operator 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 the local fire authorities. During the heating season when the child care center is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
19. The operator shall ensure that all child care center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped 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 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.
20. The operator shall ensure that personal items including combs, pacifiers, and toothbrushes are individually identified and stored in a sanitary manner.
21. Pets and animals.
  - a. The operator 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 operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
  - c. The operator shall ensure parents are aware of the presence of pets and animals in the child care center.
  - d. The operator 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 remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
  - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
  - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
  - h. The operator shall ensure that the child care center is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
22. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the child care center and shall empty, clean, and sanitize wading pools daily.
23. All swimming pools used by children must be approved annually by the local health unit.

24. Aquatic activities:

- a. The operator shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
- b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

25. Water supply:

- a. The operator shall ensure that the child care center has a drinking supply from an approved community water system or from a source tested and approved annually by the state department of health.
- b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups.

- c. The child care center must have hot and cold running water. The water in the faucets used by children may not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

| ~~25.26.~~ Toilet and sink facilities:

- a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members.
- b. Toilets must be located in rooms separated 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.
- c. The operator shall ensure that separate restrooms are provided for boys and girls six years of age and over, and partitions are installed to separate toilets in these restrooms.
- d. The operator 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.
- e. The operator shall provide at least one handwashing sink per toilet room facility or diapering area.
- f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.

| ~~26.27.~~ The operator of a child care center not on a municipal or public water supply or wastewater disposal system shall ensure the child care center's sewage and wastewater system has been approved by the state department of health.

| ~~27.28.~~ Laundry:

- a. If the child care center provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation.
- b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation.
- c. The operator shall ensure that in all new or extensively remodeled child care centers, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas.
- d. The operator shall ensure that in an existing child care center where physical separation of laundry and kitchen areas is impractical, procedures are developed that prohibit the washing or transportation of laundry while meals are being prepared or served.
- e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas.
- f. If the child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the operator shall ensure that water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius].
- g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry

process during the rinse cycle or the center shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].

**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, 2016](#).

**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, 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~~and that a monitor is in the room with the infants, unless a staff member is in the room with the infants while the infants are sleeping.

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.

g. 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; [April 1, 2016](#).

**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 ~~chapters~~[chapter](#) 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~~[section](#) 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; [12.1-21-01, arson](#); 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 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.
  - 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~~An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The operator shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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~~a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

6. Review of fingerprint-based criminal history record check results.

- a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
- b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

**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; [April 1, 2016](#).

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### **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 [or a similar finding in another jurisdiction which requires proof of substantially similar elements](#) 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~~ [or a similar finding in another jurisdiction which requires proof of substantially similar elements](#) 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; [April 1, 2016](#).

**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

## CHAPTER 75-03-11

### 75-03-11-03. 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. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
2. "Assistant" means any individual who works directly with children in a preschool under the supervision of a teacher or a director.
- ~~2.3.~~ "Attendance" means the total number of children present at any one time at the facility.
- ~~3.4.~~ "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.
- ~~4.5.~~ "Director" means an individual responsible for supervising and organizing program activities in a preschool.
- ~~5.6.~~ "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
- ~~6.7.~~ "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~7.8.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a preschool.
- ~~8.9.~~ "Preschool" means a program licensed to provide early childhood services which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
- ~~9.10.~~ "Substitute staff" means staff who work less than thirty-two hours per month, and are not regularly scheduled for work.
- ~~10.11.~~ "Teacher" means an individual with the responsibility of implementing program activities, either as the director or under the supervision of the director.
- ~~11.12.~~ "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, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

### 75-03-11-08. Duties of preschool operator.

The operator of a preschool is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:

1. Designate a qualified director, delegate appropriate duties to the director, and shall:

- a. Ensure that the preschool director or designated acting director is present at the preschool at least sixty percent of the time that the preschool is open;
  - b. Ensure that the individual designated as an acting director for an ongoing period of more than thirty days meets the qualifications of a preschool director; and
  - c. Ensure that the individual designated as a teacher for more than thirty-two hours per month meets the qualifications of a preschool teacher;
2. Apply for a license for the preschool;
  3. Possess knowledge or experience in management and interpersonal relations;
  4. Notify the authorized agent of any major changes in the operation or in the ownership or governing body of the preschool, including staff member changes;
  5. Ensure that liability insurance against bodily injury and property damage for the preschool is carried;
  6. Formulate written policies and procedures for the operations of the preschool. Policies must include:
    - a. Hiring practices and personnel policies for staff members;
    - b. Methods for obtaining references and employment histories of staff members;
    - c. Methods of conducting staff member performance evaluations;
    - d. Children's activities, care, and enrollment;
    - e. The responsibilities and rights of staff members and parents;
    - f. An explanation of how accidents and illnesses will be handled;
    - g. The methods of developmentally appropriate discipline and guidance techniques that are to be used;
    - h. The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
    - i. The care and safeguarding of personal belongings brought to the child care center by a child or by another on a child's behalf;
    - j. Procedure for accountability when a child fails to arrive as expected at the preschool; and
    - k. Transportation procedures, if the operator provides transportation;
  7. Maintain records of enrollment, attendance, health, financial, and other required records;
  8. Be responsible for all preschool staff members, teachers, preschool assistants, substitute staff members, emergency designees, volunteers, or others who provide services in the preschool;
  9. Report immediately, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
  10. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the preschool;

11. Ensure preadmission visits for children and their parents are offered so the preschool's program, fees, operating policies, and procedures can be viewed and discussed;
12. Ensure that there are signed written agreements with the parents of each child which specify the fees to be paid, methods of payments, and policies regarding delinquency of fees;
13. Ensure the preschool is sufficiently staffed at all times to meet the child and staff member ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
14. Provide parents, upon request, with progress reports on their children and provide unlimited opportunities for parents to observe their children while in care;
15. Provide parents with the name of the preschool operator, the director, teachers, preschool assistants, staff members, substitute staff members, and the emergency designee;
16. Ensure, whenever services are provided, that at least one staff member, substitute staff member, or emergency designee, is on duty who meets current certification requirements in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other cardiopulmonary resuscitation training programs approved by the department and is certified or trained in a department-approved program to provide first aid;
17. Meet the qualifications of the director set forth in section 75-03-11-08.1 if the operator is also the director;
18. Report to the authorized agent within twenty-four hours:
  - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the preschool or attributable to care received in the preschool;
  - b. An injury to any child which occurs while the child is in the care of the preschool which requires medical treatment;
  - c. Poisonings or errors in the administering of medication;
  - d. Closures or relocations due to emergencies; and
  - e. Fire that occurs or explosions that occur in or on the premises of the preschool;~~and~~
19. Ensure that children do not depart from the child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care premises:~~and~~
20. Ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

**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, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08



**75-03-11-13. Minimum health and training requirements for applicants, operators, and staff members.**

1. If the physical, cognitive, social, or emotional health capabilities of an applicant, operator, or staff member appears 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 the costs of any required evaluation.
2. A staff member may not use or be under the influence of any alcoholic beverages or illegal drugs while children are in care.
3. A staff member may not place a child in an environment that is harmful or dangerous to the child's physical, cognitive, social, or emotional health.
4. All staff members responsible for caring for or teaching children shall certify completion of department-approved training related to child care annually.
  - a. A staff member working thirty or more hours per week shall certify a minimum of thirteen hours of department-approved training annually.
  - b. A staff member working fewer than thirty hours and at least twenty hours per week shall certify a minimum of eleven hours of department-approved training annually.
  - c. A staff member working fewer than twenty hours and at least ten hours a week shall certify a minimum of nine hours of department-approved training annually.
  - d. A staff member working fewer than ten hours per week shall certify a minimum of seven hours of department-approved training annually.
  - e. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course.
5. All staff members responsible for caring for or teaching children shall successfully complete a department-approved basic child care course within the first three months of employment, with the exception of substitute staff and emergency designees.

**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, 2016](#).

**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

**75-03-11-18. Minimum sanitation and safety requirements.**

1. The operator shall ensure that the preschool's bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
2. The operator shall ensure that the preschool's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and staff members.
3. The operator shall ensure that in preschools where meals are prepared, 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 operator shall correct



any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.

4. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in a 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.
5. The operator 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 the local fire authorities. When the preschool is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
6. The operator 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.
7. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
8. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
9. The operator shall ensure that elevated areas including stairs and porches have railings and safety gates where necessary to prevent falls.
10. The operator shall take steps to keep the preschool 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 preschool. Insect repellent may be applied outdoors on children with written parental permission.
11. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
12. The operator shall ensure that exit doorways and pathways are not blocked.
13. An operator shall ensure that all preschool buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped 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.
14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the preschool and shall empty, clean, and sanitize wading pools daily.
15. All swimming pools used by children must be approved annually by the local health unit.

16. Aquatic activities:

- a. An operator shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
- b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

17. Pets and animals.

- a. The operator 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 operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The operator shall ensure parents are aware of the presence of pets and animals in the preschool.
- d. The operator 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 closely supervise all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
- h. The operator shall ensure that the preschool is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

~~47.18.~~ 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.

**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, 2016.

**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

### 75-03-11-27. 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 ~~chapters~~chapter 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~~section 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; 12.1-21-01, arson; 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 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.
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~~An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The operator shall ensure that each staff member

submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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~~ a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

6. Review of fingerprint-based criminal history record check results.

a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

**History:** Effective January 1, 1999; amended effective January 2, 2011; April 1, 2014; April 1, 2016.

**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 or a similar finding in another jurisdiction which requires proof of substantially similar elements 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~~ or a similar finding in another jurisdiction which requires proof of substantially similar elements 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; [April 1, 2016](#).

**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

## CHAPTER 75-03-11.1

### 75-03-11.1-03. 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. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
2. "Attendance" means the total number of children present at any one time at the facility.
- ~~2.3.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
- ~~3.4.~~ "Director" means an individual responsible for overseeing the general operation of, and implementing the policies and procedures of, the school-age child care program.
- ~~4.5.~~ "Emergency designee" means an individual designated by the school-age child care program to be a backup staff member for emergency assistance or to provide substitute care.
- ~~5.6.~~ "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~6.7.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operations of a school-age child care program.
- ~~7.8.~~ "School-age child care program satellite" means a location used by a licensed school-age child care program other than the building or location listed as the main location on the license.
- ~~8.9.~~ "School-age child care program" or "program" means a program licensed to provide early childhood services exclusively to school-age children before and after school, during school holidays, and during summer vacation.
- ~~9.10.~~ "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~10.11.~~ "Supervisor" means any person with the responsibility for organizing and supervising daily program activities.
- ~~11.12.~~ "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 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, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

### 75-03-11.1-08. Duties of school-age child care program operator.

The operator of a school-age child care program is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator:

1. Shall designate a qualified director, shall delegate appropriate duties to the director, and shall:

- a. Ensure that the director is present at the school-age child care program at least sixty percent of the time that the program is open. If the operation has satellite sites, the director shall be present a combined total of sixty percent of the school-age program's hours of operation.
  - b. Ensure that when the director and designated acting director are not present at the program, a person who meets the qualifications of a supervisor is on duty.
  - c. Ensure that the individual designated as an acting director for longer than thirty consecutive days meets the qualifications of a school-age child care program director.
  - d. Ensure that if the operator of the school-age child care program is also the director, that the operator meets the qualifications of a director set forth in section 75-03-11.1-08.1;
2. Shall apply for a license for the school-age child care program;
  3. Shall provide an environment that is physically and socially adequate for children;
  4. Shall notify the authorized agent of any major changes in the operation of, or in the ownership or governing body of the school-age child care program, including staff member changes;
  5. Shall ensure that the school-age child care program carries liability insurance against bodily injury and property damage;
  6. Shall formulate written policies and procedures for the operation of the school-age child care program relating to:
    - a. Hiring practices and personnel policies for all staff members;
    - b. Methods for obtaining references and employment histories of staff members;
    - c. Methods of conducting staff member performance evaluations;
    - d. Children's activities, care, and enrollment;
    - e. The responsibilities and rights of staff members and parents;
    - f. An explanation of how accidents and illnesses may be handled;
    - g. The methods of developmentally appropriate discipline and guidance techniques that are to be used;
    - h. The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
    - i. The care and safeguarding of personal belongings brought to the child care center by a child or by another on a child's behalf;
    - j. Procedure for accountability when a child fails to arrive as expected at the school-age child care program; and
    - k. Transportation procedures, if the operator provides transportation;
  7. Shall maintain enrollment, attendance, health, and other required records;
  8. Shall select an emergency designee;
  9. Shall maintain necessary information to verify staff member qualifications and to ensure safe care for the children in the school-age child care program;

10. Shall inform parents of enrolled children and other interested parties about the school-age child care program's goals, policies, procedures, and content of the program;
11. Shall advise parents of enrolled children of the school-age child care program's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;
12. Shall provide parents of enrolled children information regarding the effective date, duration, scope, and impact of any significant changes in the school-age child care program's services;
13. Shall ensure that the school-age child care program 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 any one time;
14. Shall ensure that the school-age child care program has sufficient qualified staff members available to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty;
15. Shall ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
16. Shall provide parents with unlimited access and opportunities for parents to observe their children while in care and provide parents with regular opportunities to meet with staff members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a school-age child care program from locking its doors when children are in care;
17. Shall provide parents, upon request, with progress reports on their children;
18. Shall ensure that provisions are made for safe arrival and departure of all children, and a system is developed to ensure that children are released only as authorized by the parent;
19. Shall develop a system to ensure the safety of children whose parents have agreed to allow them to leave the program without supervision, which must include, at a minimum:
  - a. Written permission from the parents allowing a child to leave the program without supervision; and
  - b. Consistent sign-out procedures for released children;
20. Shall report immediately, as a mandated reporter, any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1;
21. Shall ensure that a staff member is on duty at all sites who meets current certification requirements in cardiopulmonary resuscitation by the American heart association, American red cross, or other department-approved cardiopulmonary resuscitation training program and in a department-approved first-aid program;
22. Shall meet the qualifications of the director set forth in section 75-03-11.1-08.1 if the operator of the school-age child care program is also the director;
23. Shall ensure that staff members responsible for caring for or teaching children under the age of eighteen are directly supervised by an adult staff member; and
24. Shall report to the authorized agent within twenty-four hours:
  - a. The death or serious accident or illness requiring hospitalization of a child while in the care of the program or attributable to care received in the program;



- b. An injury to any child which occurs while the child is in the care of the program and which requires medical treatment;
- c. Poisonings or errors in the administration of medication;
- d. Closures or relocations of child care programs due to emergencies; and
- e. Fire that occurs or explosions that occur in or on the premises of the school-age child care program.

25. Shall ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

**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, 2016.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-08.4. Minimum qualifications for all school-age child care program staff members responsible for caring for or teaching children.**

- 1. Each staff member shall be at least sixteen years of age, shall be an individual of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care.
- 2. a. Each staff member shall certify the staff member's own annual completion of department-approved training related to child care as set forth below:
  - ~~a.~~ (1) Staff members working more than thirty hours per week shall certify a minimum of thirteen hours of department-approved training annually;
  - ~~b.~~ (2) Staff members working fewer than thirty hours and at least twenty hours per week shall certify a minimum of eleven hours of department-approved training annually;
  - ~~c.~~ (3) Staff members working fewer than twenty hours and at least ten hours per week shall certify a minimum of nine hours of department-approved training annually; and
  - ~~d.~~ (4) Staff members working fewer than ten hours per week shall certify a minimum of seven hours of department-approved training annually.

b. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course.

- 3. All staff members responsible for caring for or teaching children shall successfully complete a department-approved basic child care course within their first three months of employment, with the exception of substitute staff and emergency designees.

- 4. The director shall provide newly hired staff members with responsibilities for caring for or teaching children a two-day onsite orientation to the child care program during the first week of employment. The director shall document orientation of each staff member on an orientation certification form. The orientation must address:
  - a. Emergency health, fire, and safety procedures for the school-age child care program;
  - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;

- c. Any special health or nutrition problems of the children assigned to the staff member;
- d. Any special needs of the children assigned to the staff member;
- e. The planned program of activities at the school-age child care program;
- f. Rules and policies of the school-age child care program; and
- g. Child abuse and neglect reporting laws.

**4-5.** Staff members shall ensure safe care for children under supervision. For the school-age child, supervision means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.

**5-6.** A staff member may not place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.

**History:** Effective January 1, 1999; amended effective January 1, 2011; [April 1, 2016](#).

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-18. Minimum sanitation and safety requirements.**

1. In school-age child care programs where meals are prepared, the operator shall ensure that the state department of health conducts an annual inspection. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent. If only snacks or occasional cooking projects are prepared, a health inspection is not required.
2. The operator shall ensure that the school-age child care program's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.
3. The operator shall ensure that the school-age child care program ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
4. The operator 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.
5. The operator 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 operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
6. The operator shall ensure that wading pools used by the school-age child care program are strictly supervised and are emptied, cleaned, and sanitized daily.
7. The operator shall ensure that all swimming pools are approved annually by the local health unit.

**8. [Aquatic activities:](#)**

- [a. The operator shall have policies which ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program](#)**

may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.

b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

9. The operator shall ensure that all school-age child care program buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped 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.

~~9.~~10. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys are kept clean and in a 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.

~~10.~~11. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.

~~11.~~12. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.

~~12.~~13. If the school-age child care program is providing care to children in wheelchairs, the operator shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care.

~~13.~~14. The operator shall ensure that exit doorways and pathways are not blocked.

~~14.~~15. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.

~~15.~~16. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.

~~16.~~17. The operator 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 school-age child care program 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.~~18. The operator shall ensure that school-age child care program bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats must be individually designated and cleaned and sanitized at least weekly. If different children use the same cots or mats, the cots or mats must be cleaned thoroughly and sanitized between each use. The operator shall provide separate storage for personal blankets or coverings.

~~18.~~19. The operator shall ensure that personal items including combs and toothbrushes are individually identified and stored in a sanitary manner.

- | ~~19~~.20. 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 using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and paper towels, sanitary hand-drying equipment, or single-use cloth towels must be available at each sink.
- | ~~20~~.21. The operator shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
- | ~~21~~.22. Water supply standards:
- a. The operator shall ensure that the school-age child care program has a drinking supply from an approved community water system or from a source tested and approved annually by the state department of health;
  - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups; and
  - c. The school-age child care program must have hot and cold running water.
- | ~~22~~.23. Toilet and sink facilities:
- a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members;
  - b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping;
  - c. A minimum of one flush toilet must be provided for each fifteen children;
  - d. The operator shall provide separate restrooms for boys and girls and shall ensure that partitions are installed to separate toilets in these restrooms;
  - e. The operator shall provide at least one handwashing sink per toilet room facility; and
  - f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.
- | ~~23~~.24. The operator of a school-age child care program not on a municipal or public water supply or wastewater disposal system shall ensure the school-age child care program's sewage and wastewater system has been approved by the state department of health.
- | ~~24~~.25. Laundry:
- a. If the school-age child care program provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation;
  - b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation;
  - c. The operator shall ensure that in all new or extensively remodeled school-age child care programs, the handling, sorting, or washing of soiled linens or blankets takes place in a

designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas;

- d. The operator shall ensure that in an existing school-age child care program where physical separation of laundry and kitchen areas is impractical, procedures are developed to prohibit the washing or transportation of laundry while meals are being prepared or served;
- e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas;
- f. If the school-age child care program provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius]; and
- g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the program shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].

| 25.26. The operator shall take steps to keep the school-age child care program 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 school-age child care program. Insect repellent may be applied outdoors on children with written parental permission.

| 26.27. Pets and animals:

- a. The operator 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 operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The operator shall ensure parents are aware of the presence of pets and animals in the school-age child care program.
- d. The operator 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 remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.

- h. The operator shall ensure that the school-age child care program is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

**History:** Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; January 1, 2013; [April 1, 2016](#).

**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

#### **75-03-11.1-22. Records.**

1. The operator shall keep a copy of this chapter on the premises of the school-age child care program and all satellite sites and shall make it available to staff members at all times.
2. The operator shall maintain the following records and shall keep copies at the school age program premises and satellite sites where the child is enrolled:
  - a. The child's full name, birth date, and current home address;
  - b. Legal names of the child's parents, and the business and personal telephone numbers where they can be reached;
  - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child cannot be reached immediately in an emergency;
  - d. A written statement from the parents authorizing emergency medical care;
  - e. Names and telephone numbers of individuals authorized to take the child from the school-age child care program; and
  - f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents, and to the following, unless protected by law:
  - a. The authorized agent and department representatives;
  - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
  - c. Individuals who possess written authorization from the child's parent. The school-age child care program shall have a release of information form available and shall have the form signed prior to the release of information.

**History:** Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; [April 1, 2016](#).

**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 ~~chapters~~chapter 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~~section 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; 12.1-21-01, arson; 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 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.
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~~An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and

every five years after initial approval. The operator shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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~~ a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

6. Review of fingerprint-based criminal history record check results.

- a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
- b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

**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; April 1, 2016.

**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 or a similar finding in another jurisdiction which requires proof of substantially similar elements 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~~ or a similar finding in another jurisdiction which requires proof of substantially similar elements 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; [April 1, 2016](#).

**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

## CHAPTER 75-03-14

### 75-03-14-01. Definitions.

Those definitions set forth in North Dakota Century Code section 50-11-00.1 are applicable to this chapter. Additionally, in this chapter, unless the context or subject matter requires otherwise:

1. "Adult" means a person twenty-one years of age or older.
2. "Background check" means a child protection services check in each state that the individual has resided in the previous five years and a criminal history record investigation.
3. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.
4. "Regional center" means the regional human service center.
- 4.5. "Supervising agency" means the agency or person having care, custody, and control of the foster child as ordered by a court of competent jurisdiction or the designee of that agency or person.

**History:** Effective December 1, 1984; amended effective January 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-00.1, 50-11-06.8

### 75-03-14-03. Minimum physical standards for the family foster home for children.

1. The family foster home for children must be a dwelling, mobile home, housing unit, or apartment occupied by an individual or a single family.
2. The family foster home for children must have an operational telecommunications device, and must have available to it some means to make immediate contact with authorities in emergencies.
3.
  - a. The family foster home for children must have sleeping rooms adequate for the foster care family and the foster children.
  - b. All sleeping rooms must be outside rooms and have ample window space for light and ventilation.
  - c. Basement sleeping rooms must be equipped with the appropriate fire alarms and smoke detectors as recommended by the local fire department or state fire marshal. A basement which will be used for the care of foster children must be equipped with more than one exit. One exit may be an accessible window. Children in basement sleeping rooms must be able to demonstrate their ability to depart from all exits.
4. Exterior doors must be maintained to permit easy exit. Interior doors must prevent children from being trapped.
5. Every closet door must be one that can be opened from the inside. Bathroom doors must be installed so the door, when locked, may be opened from the outside in an emergency.
6. The house and premises must be clean, neat, and free from hazards that jeopardize health and safety. Firearms must be kept in locked storage or trigger locks must be used, and ammunition must be kept separate from firearms.

7. The family foster home for children must be equipped with adequate light, heat, ventilation, and plumbing for safe and comfortable occupancy. The house and grounds must be in compliance with any applicable state and local zoning requirements.
8. Any source other than an approved municipal water supply must be tested annually for compliance for approved drinking water standards. The sample must be ~~tested and approved by the North Dakota state department of health and the report sent to the North Dakota department of health or a United States environmental protection agency approved laboratory for testing and approval.~~ The results must be submitted to the department.
9. The milk supply must be obtained from a department-approved source.
10. If required by the department, the family foster home for children must satisfactorily complete a fire inspection by the local fire inspector or, in the absence of a local fire inspector, the state fire marshal. The adult in charge of the family foster home shall ensure all deficiencies noted during the inspection are remedied.
11. The family foster home for children must be equipped with the approved Underwriters' Laboratories fire extinguishers, smoke detectors, and smoke alarms as recommended by the local fire inspector or state fire marshal. The fire extinguishers, smoke detectors, and smoke alarms must be in working condition at all times. In an apartment building, the fire extinguisher, smoke detectors, and smoke alarms must be inside the apartment.

**History:** Effective December 1, 1984; amended effective July 1, 1993; April 1, 2004; January 1, 2014; [April 1, 2016](#).

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-14-04. Qualifications of persons residing in the family foster home for children.**

1. A person residing in the family foster home for children, except a foster child or ward of the court, may not have a present condition of substance abuse or emotional instability.
2. No person may smoke in the family foster home for children, in circumstances which present a hazard to the health of the foster child, or in an enclosed area when the foster child is present. All foster parents must be aware of the potential hazards of smoking in the presence of children, particularly infants and children with respiratory or allergic sensitivity.
3. If a condition of substance abuse or emotional instability occurs in a family foster home for children at a time when a foster child is in placement, every effort should be made to keep the placement intact if the resident of the family foster home for children who is suffering from substance abuse or emotional instability is seeking treatment for the condition. The supervising agency may make no further placements in that family foster home until the resident suffering from the condition successfully completes treatment for the condition. A resident of a family foster home for children, who has a past condition of substance abuse or emotional instability, may have had no incidents of substance abuse or emotional instability for a period of at least twelve months prior to an applicant obtaining licensure.
4. A resident of the family foster home for children, except a foster child, may not have been the subject of a child abuse or neglect assessment where a services-required decision was made unless the director or foster care supervisor of the regional center, after making appropriate consultation with persons qualified to evaluate the capabilities of the resident, documenting criteria used in making the decision, and imposing any restrictions deemed necessary, approves the issuance of a license; and
  - a. The resident can demonstrate the successful completion of an appropriate therapy; or

- b. The resident can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.
5. All foster parents, prior to licensing and annually thereafter, shall submit a declaration of good health, including all residents of the family foster home for children, except any foster child, in a manner and form required by the department. The department may require a physical examination or psychological testing of any resident of the family foster home for children as the department determines necessary. The cost of any physical examinations required pursuant to this subsection is the responsibility of the authorized agent. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.
6. Physical disabilities or age of foster parents do not affect licensing of the family foster home for children provided that the applicant can show that these factors do not significantly inhibit the ability of the foster parents to efficiently carry on the duties required of them.
7. All foster parents or potential parents must demonstrate a working knowledge and comply with the department's approved family foster home for children preservice training competencies.
8. All foster parents or potential parents must demonstrate a working knowledge of the reasonable and prudent parent standard by allowing foster children the opportunity to participate in developmentally and age appropriate activities. All foster parents must engage in the reasonable and prudent parent standard.
9. Initial and annual fire safety training hours will not be counted toward the minimum number of training hours required for initial or annual licensing.

**History:** Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03, 50-11-03.4

**Law Implemented:** NDCC 50-11-02

#### **75-03-14-04.1. Criminal conviction - Effect on licensure.**

1. A family foster home for children applicant, family foster home for children provider, or members of the family foster home for children must not be 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 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; ~~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 section 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 section~~ 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or ~~an~~ 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 ~~enumerated North Dakota statutes~~ offenses identified in subdivision a; or
  - ~~b.c.~~ 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.

- (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 a 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 charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in ~~subdivision~~subdivisions a and b of subsection 1 have a direct bearing on an individual's ability to provide foster care for children.
  3. If the offense is 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 an 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. The department may not be compelled to make such determination.
  4. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
  5. 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
    - ~~b-c.~~ Discovered by the authorized agent or department as a result of a background check.

**History:** Effective April 1, 2004; amended effective January 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-14-08. Fingerprints excused.**

The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been ~~accepted~~submitted and rejected. If a person is excused from providing fingerprints, the department ~~shall~~may conduct a nationwide name-based 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 April 1, 2004; amended effective January 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**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. "Custodian" means a person, other than a parent or guardian, who stands in loco parentis to a child in placement or a person to whom legal custody of the child has been given by order.
2. "Department" means the North Dakota department of human services.
3. "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.
4. "Facility" means a residential child care facility providing foster care to thirteen or more unrelated children or group home providing foster care regularly to at least four and no more than twelve unrelated children.
5. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern.



6. "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.
7. "Overnight hours" means from eleven p.m. until seven a.m.
8. "Participant" means a child participating in an out-based program.
9. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.
10. "Solo activity" means an experience in which an individual cares for himself or herself in a solitary setting away from others, but under employee supervision.
- ~~40:11.~~ "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; July 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-03

#### **75-03-16-05. Employee and nonemployee files.**

1. The facility shall maintain an individual file on each employee. The file must include:
  - a. The application for employment including a record of previous employment and the applicant's statement in answer to the question, "Have you been convicted of a crime?";
  - b. Annual performance evaluations;
  - c. Annual professional development and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation;
  - d. The following required training certificates:
    - (1) First-aid training;
    - (2) Cardiopulmonary resuscitation and automated external defibrillator; and
    - (3) ~~Behavior management, crisis management, and nonviolent~~ Nonviolent crisis intervention;



- e. Evidence of the employee having read the law requiring the reporting of suspected child abuse and 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 procedures;
  - f. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
  - g. Any other evaluation or background check deemed necessary by the administrator of the facility; and
  - h. Documentation of the status of any required license or qualification for the position or tasks assigned to the employee.
2. The facility shall maintain an individual file on each nonemployee. The file must include:
    - a. Personal identification information; ~~and~~
    - b. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
    - c. Description of duties;
    - d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation; and
    - e. Evidence of the nonemployee having read the law requiring the reporting of suspected child abuse and 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 procedures.
  3. The facility shall adopt a policy regarding the retention of employee and nonemployee files.

**History:** Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; [April 1, 2016](#).

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-06. Facility administrator.**

The governing body of the facility shall designate an administrator for the facility.

1. The governing body of the facility shall clearly define, in writing, the responsibilities of the facility administrator. If the facility is licensed for ten or more children, it shall employ a full-time administrator onsite or in close proximity. A facility may not employ an administrator less than half time.
2. The administrator must have a bachelor's degree in business administration, social work, or a related behavior field, from an accredited college or university.
3. The administrator shall assure that adequate supervision is provided to all employees and nonemployees working in the facility.
4. The administrator shall designate at least one employee, with respect to any child in placement, who is authorized to apply the reasonable and prudent parent standard to decisions involving the participation of the child in age or developmentally appropriate activities. The designated employee must receive department-approved training on how to use and apply the reasonable and prudent parent standard.

**History:** Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; [April 1, 2016](#).

**General Authority:** NDCC 50-11-03

Law Implemented: NDCC 50-11-02

**75-03-16-10.1. Nursing services.**

1. A residential child care facility shall provide for a licensed nurse to accommodate the medical needs of children in placement onsite.
2. The residential child care facility shall clearly define, in writing, the duties and responsibilities of the licensed nurse which must be within the scope of nursing practice.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**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 ~~chapters~~chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; ~~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~~section 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 section 12.1-29-01,~~ promoting prostitution; 12.1-29-02, facilitating prostitution; ~~or~~ 12.1-31-05, child procurement; ~~or an~~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 ~~enumerated North Dakota statutes~~offenses identified in subdivision a; or
  - ~~b-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.
    - (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~~subdivisions a and b 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 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. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

~~5.~~ 5. 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~~Discovered by the facility, authorized agent, or department as ~~the~~ result of an employee background check.

~~5.6.~~ 5.6. 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.

7. A facility shall establish written policies specific to how the facility will proceed if a current employee or nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

8. 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 nationwide name-based 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 March 1, 1999; amended effective April 1, 2004; April 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-13. Minimum 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 positions are expressed in full-time equivalents.
3. Each facility shall adopt a policy declaring employee coverage for overnight hours in the facility.
4. Each facility shall comply with the following minimum employee-to-child ratio requirements for social service employees, program director, nurse, and administrator:
  - a. One social service employee and a half-time administrator for a facility providing services for one to nine children; ~~and~~

- b. No less than one social service employee for each ~~sixteen~~twelve children, one program director, and one administrator for a facility providing services for ten or more children;
  - ~~c. A residential child care facility shall provide onsite nursing services to accommodate the medical needs of children in placement; and~~
  - ~~d. A facility shall notify the department, in writing, if the minimum employee-to-child ratios are not met based on position vacancies. An interim plan to cover the position duties must be approved by the department.~~
5. During awake hours each facility shall have:
- ~~a. One no less than one~~ direct care employee on duty ~~during times when one to nine for each six~~ children ~~are~~ present in the facility; ~~and~~
  - ~~b. No less than one direct care employee on duty for each eight children during times when ten or more children are present in the facility.~~
6. During overnight hours each facility shall have:
- a. Awake direct care employees;
  - b. No less than one direct care employee on duty for each ~~sixteen~~twelve children ~~who are~~ present in the facility; and
  - c. A policy ~~describing how often employees~~that includes a requirement that an employee will check on children in placement during overnight hours at a minimum of every thirty minutes.
7. During overnight hours each facility structure in which children reside must meet 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, the required number of social service employees, and to determine the appropriate employee-to-child ratios.
9. Educational program employees may not be counted as direct care employees, social service employees, an administrator, or a program director during any time educational services are provided.

**History:** Effective July 1, 1987; amended effective March 1, 1999; April 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-14. Employee professional development.**

1. Each facility shall ensure that all employees in contact with children in placement receive at least twenty hours of annual training to assist in the overall quality of care provided to children in placement.
2. Required training to prepare employees to meet the needs of the children served includes:
  - a. ~~First~~Certified first aid;
  - b. ~~Child abuse and neglect mandated reporting training;~~

- ~~c. Cardiopulmonary~~ Certified cardiopulmonary resuscitation and automated external defibrillator training;
- ~~d.c. Behavior management, crisis management, and~~ Certified nonviolent crisis intervention training;
- ~~e.d. Child abuse and neglect mandated report training;~~
- e. Training addressing children's emotional needs; and
- f. Suicide prevention training.

3. A certified instructor shall provide classroom, hands-on training for nonviolent crisis intervention, first aid, cardiopulmonary resuscitation, and automated external defibrillator. ~~The facility shall place training completion certificates~~ A certificate must be provided to each employee or nonemployee demonstrating their competencies in the specific training area. A copy of the certificate must be placed in the employee or nonemployee file.

**History:** Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-15. Child abuse and neglect.**

1. All facility employees and nonemployees shall certify having read the law requiring the reporting of suspected child abuse and 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 procedures.
2. Each facility shall adopt written policies and procedures requiring employees and nonemployees to report cases of suspected child abuse or neglect. The procedures must include the following statement:

All facility employees and nonemployees will comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this facility that if any employee or nonemployee who knows or reasonably suspects that a child in placement whose health or welfare has been, or appears to have been, harmed as a result of abuse, neglect, or sexual molestation, that employee or nonemployee shall immediately report this information to the department.

Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment and referral of the employee or nonemployee to the office of the state's attorney for investigation of possible criminal violation.

3. The facility's policies and procedures must describe:
  - 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; and
  - e. ~~The status of an employee or nonemployee who is an alleged perpetrator subject of a report pending assessment, administrative proceeding, or criminal proceeding;~~

~~f. The discipline of an employee or nonemployee 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 or nonemployee who fails to report suspected child abuse or neglect.~~

4. The facility shall cooperate fully with the department throughout the course of any investigation of any allegation of child abuse or neglect made concerning care furnished to a child in placement. 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 permit confidential interviews with employees, nonemployees, and children in placement. Internal facility interviews and investigations are not permitted to occur concurrent with a department or law enforcement investigation.

5. The facility shall notify the department licensing administrator, in writing, of the corrective action the facility has taken or plans to take to comply with the recommendations based on an "indicated" finding. The facility must respond within thirty days of receiving written notification of the finding.

6. A facility shall establish written policies specific to how the facility will proceed when a current employee or nonemployee is known to be:

a. Involved in any capacity in a reported incident of institutional child abuse or neglect; or

b. The subject of a services-required decision in a child abuse or neglect report that occurred outside of the facility.

**History:** Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02, 50-25.1-03

**75-03-16-16. IntakePreadmission, admission, and discharge.**

1. A facility shall adopt written intakepreadmission, admission, and discharge policies including age, sex, and characteristics of children eligible for admission.

2. A facility must have an intakeadmission committee and a discharge committee. The committees may have the same members.

a. The intakeadmission and discharge committees may include the program director, a social service employee, a direct care employee, and such additional members as the facility determines appropriate.

b. The program director or a social service employee shall chair each committee.

3. No child may be denied admission on the basis of race, color, creed, religion, or national origin.

4. IntakePreadmission procedures.

a. The intakeadmission committee shall screen applications and decide which children are admitted to the facility for care. The intakeadmission committee shall make admissions decisions within thirty days of the receipt of sufficient information or a completed application.

b. To determine if it is appropriate to admit a child, the facility shall develop a policy requiring:



- (1) The child's social and family history;
- (2) The child's educational records including a copy of the school district notification, previous and current individual education plans, if any, and the name of the responsible school district;
- (3) A psychiatric or psychological history, if indicated;
- (4) A medical history, physical, and examination records;
- (5) The terms and methods of payment for the child's maintenance, clothing, personal allowance, medical care, and other expenses;
- (6) The name, address, and telephone number of the custodian, parent, or guardian, if any, and copies of the documents which establish the authority of the legal custodian or guardianship; and
- (7) The written authorization from the custodian, parent, or guardian to obtain necessary medical treatment.

c. A facility may admit a child without first securing all required information if:

- (1) The facility has secured substantially all required information, has documented diligent efforts to secure all required information, and the ~~facility's intake committee~~ facility has determined that admission is appropriate; or
- (2) The child's circumstances require immediate placement and the ~~facility's intake committee~~ facility has preliminarily determined that admission is appropriate.

d. A child admitted under paragraph 2 of subdivision c may be admitted only on condition that the referring agency provides, or arranges for provision of, substantially all required information within thirty days of the child's admission.

e. ~~The facility shall request documentation of the services the family of a child in placement will receive in the home community while the child is receiving services in the facility.~~

~~f. The facility shall request quarterly child and family team meeting progress reports from the referring agency.~~

~~g.~~ If a private placement is made by a parent or guardian, rather than a court-appointed custodian, the parent or guardian making the placement is the referring agency.

~~h.~~ f. If a child is not admitted, the facility shall indicate to the referring agency the reason the child was not admitted.

5. Admission procedures. The facility shall:

a. Develop an intake screening process to determine the treatment needs for the child in placement;

b. Request documentation of the services the family of a child in placement will receive in the home community while the child is receiving services in the facility; and

c. Request quarterly child and family team meeting progress reports from the referring agency.

~~5.6.~~ Discharge procedures

- a. Prior to discharging a child in placement, the facility and the referring agency shall plan for the needs of the child, including preparation of a discharge report. The discharge report must include:
- ~~a.~~(1) A facility progress report of the child, including an outline of appropriate steps the child and family, if appropriate, can engage in to maintain placement out of facility care;
  - ~~b.~~(2) The reason for discharge;
  - ~~c.~~(3) The immediate and future services recommended for the child and the child's family, if appropriate, to remain successful;
  - ~~d.~~(4) A statement regarding the potential need for the child to return to the facility, if needed in the future; ~~and~~
  - ~~e.~~(5) The facility's reason for not involving the family in discharge planning, if the family has not been included under subdivisions a and c.; and
- ~~6.~~b. The facility shall adopt a policy addressing the circumstances under which a child in placement may be discharged on an emergency basis. If a child in placement is discharged on an emergency basis, the facility shall immediately inform the custodian, parent, or guardian of a child in placement.

**History:** Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-31. 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. Facilities must respond to the identified data outcomes needing improvement by developing and implementing one or more facility improvement plans.

**History:** Effective April 1, 2014; amended effective April 1, 2016.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-16-32. ~~Reserved~~Normalcy activities.**

Each facility shall document the child's normalcy activities and share the information with the child's custodian, parent, or guardian. Each facility shall create a written policy detailing:

1. The employee job description related to carrying out the duties of the reasonable and prudent parent standard;
2. The variety of normalcy activities offered to children in placement; and
3. Procedures identifying supervision, transportation, and offsite activity emergency responses.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 50-11-03.4

**Law Implemented:** NDCC 50-11-02



**CHAPTER 75-03-17**  
**PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN**

Section

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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 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. "Employee" means an individual compensated by the facility to work and does not include contracted service providers who conduct onsite training, treatment groups, individual therapy, or other program services.
8. "Family-driven" means the family has a primary decisionmaking role in the care of its own children.
- ~~8-9.~~ 9. "Individual person-centered treatment plan" means a youth-guided and family-driven written plan of intervention, treatment, and services that is developed under ~~the~~ clinical supervision ~~of a mental health professional~~ on the basis of a diagnostic assessment.

~~9.10.~~ "Initial license" means a license for a new facility that is in effect for one year.

~~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.

11. "Nonemployee" means an individual, including a volunteer or student intern, who is not compensated by the facility.

~~41.12.~~ "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. "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~~ also be an individual who has a mental illness. Chemical dependency substance use disorder does not per se constitute mental illness, although ~~an individual suffering from that condition may be suffering from~~ an individual who has a substance use disorder may also be an individual who has a mental illness.

~~42.13.~~ "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.

~~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.~~

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 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, has been exposed to inappropriate sexual contact, or has been the subject of seclusion or restraint.
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. "Timeout" means the ~~restriction~~voluntary option of a resident ~~for a period of time~~ to move 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; [April 1, 2016](#).

**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. The department shall determine the suitability of the applicant for licensure under this chapter. The application must contain any materials 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;
    - (4) The treatment modalities offered, including milieu therapy, family therapy, psychopharmacology, and psychotherapy;
    - (5) Prohibited treatment modalities; and
    - (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.
  - 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~~ [licensed professionals](#) employed or to be employed by [or contracting with](#) the facility.
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.
3. **Initial license and license renewal.**

- 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 licensuror 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.
4. **Provisional license.** The department may issue a provisional license, effective for up to ninety days, to a facility that has failed to comply with any of the standards of this chapter or with any other state law or regulation, compliance with which is required for licensure. The facility will have 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.
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.

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; [April 1, 2016](#).

**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 employees, family members](#), 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 a part of the facility's records. The report must contain the accountant's opinion about the facility's present and predicted financial solvency. The facility shall submit the report with an application for license renewal.

5. **Quality assuranceimprovement.** The applicant and facility shall implement a quality assuranceimprovement program ~~approved by the department for assessing and improving the quality of services and care provided to residents. The applicant and facility shall submit the quality improvement program and evaluations of the program to the department for review at a minimum of every six months.~~ The applicant shall create policies and procedures and have them in place to implement its facility's quality assuranceimprovement program. The program must monitor and evaluate the quality and appropriateness of care of children, and ~~provide a method for problem identification, corrective action, and outcome monitoring~~identify performance indicators that will be monitored to assess the program's effectiveness. The quality assuranceimprovement program must include:

- a. A plan for child and staffemployee safety and protection;
- b. A method to evaluate personnel performance and the utilization of personnel;
- c. A plan to ensure the facility accesses and maintains copies of the current license of all employees, contract workers, and consultants when relevant for that person's role or function;
- d. A system of credentialing, granting, and withholding staffemployee privileges;
- d.e. A method to review and update policies and procedures assuring the usefulness and appropriateness of policies and procedures;



- e-f. A method to review the appropriateness of admissions, care provided, and staffemployee utilization;
- f-g. A plan for the review of individual treatment plans that ensures compliance with paragraph 4 of subdivision b of subsection 3 of section 75-03-17-05;
- g-h. A plan for program evaluations that includes measurements of progress toward the facility's stated goals and objectives; and
- h-i. A method to evaluate and monitor standards of resident care.

6. Outcomes and data collection. The department shall 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 quality improvement process that measures and monitors the safety, wellbeing, 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. The policy must also include how a facility will respond to identified data outcomes by utilizing one or more facility improvement plans every six months.

7. **Children's case records.** The facility shall 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 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;
- h. 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) Medications administered, with the quantity, directions, physician's name, date of issue, and name of the pharmacy indicated; and
  - (3) Significant illnesses or accidents;
- i. Records of the annual medical examination required under section 75-03-17-07; and



- 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~~employee;
  - (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; April 1, 2016.

**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 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. ~~A~~The facility shall also base all admission decisions ~~upon~~on:
  - (1) A social history which includes presenting problems, family background, developmental history, educational history, and employment;
  - (2) A psychosocial history which includes current status, any relevant findings of previous physical or psychiatric evaluations, and a list of the child's current medications and allergies;

- (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 from the referral source before 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.
5. No child may be denied admission to a facility on the basis of race, color, creed, religion, or national origin.

**History:** Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.

**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;
  - b. Keep the child in contact with the child's family and relatives 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;
  - c. Involve the families and the person who may lawfully act on behalf of the child in the person-centered treatment plan;
  - d. Provide ongoing and consistent family therapy 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;
  - 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;
  - f. Provide a progress report to the referring agency, and the person who lawfully may act on the child's behalf every ~~three~~two months;
  - g. Complete for each child admitted for care within five business days 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 rating scale completed by the custodian, facility, and child;
- (6) A brain injury screening;
- (7) A ~~behavioral appraisal~~ family and child substance use history to include substance use during pregnancy; and
- (8) A fetal alcohol spectrum disorder screening; 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 and it must be developed by an interdisciplinary team. 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~~ a licensed physician who is a psychiatrist, a licensed clinical psychologist, a licensed independent clinical social worker, or a nurse who holds advanced licensure in psychiatric nursing. Clinical supervision must be documented by the ~~qualified mental health professionals~~ clinical supervisor cosigning individual person-centered treatment plans and by entries in the child's record regarding supervisory activity. The child, and the person who 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 ~~Statistical Manual~~ diagnostic and Statistical ~~Manual~~ manual of ~~Mental Disorders~~ 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 anthe interdisciplinary team ~~including one qualified mental health professional~~.
  - c. The person-centered treatment plan must identify:
    - (1) Treatment goals that address the 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) Therapeutic intervention or techniques or both for achieving the child's treatment goals;
    - (6) The projected length of stay and discharge plan; and
    - (7) 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 the child is expected to perform as the child's share in the process of living together, specific work assignments available to the child as a means of earning money, and jobs performed in or out of the facility to gain vocational training; and
    - (3) Give the child some choice in 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 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; April 1, 2016.

**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 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 staffemployees, or as substitute for therapeutic programming. Upon admission, the facility shall inform the child and the person who may lawfully act on behalf of the child of the facility policy on restraint and seclusion procedures during an emergency safety situation. The facility shall provide education to the children, providing each child the opportunity to express the child's opinion and educating the child on alternative behavior choices to avoid the use of special treatment procedures. 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. StaffEmployees shall supervise the use of timeout procedures at all times, and 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. StaffEmployees shall supervise the use of physical escort procedures at all times and shall document the use of physical escort in the child's file.
3. Physical restraints.
  - a. Physical restraints must be ordered by a physician ~~and~~ or in the absence of a physician by a licensed physician who is a psychiatrist, a licensed clinical psychologist, a licensed independent clinical social worker, or a nurse who holds advanced licensure in psychiatric nursing. Staff authorized to order physical restraint must be trained in the use of emergency interventions and a physician must review and sign the order within forty-eight hours after the ordered physical restraint. Physical restraints may be imposed only in emergency circumstances and must be used with extreme caution to ensure the immediate physical safety of the child, ~~a staff member~~ an employee, or others after all other less intrusive alternatives have failed or have been deemed inappropriate;
  - b. All physical restraints must be applied by staffemployees who are certified in the use of restraints 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, staffemployee involved, reasons for the use of, and the extent to which physical restraints were used, and which identify less restrictive measures attempted;
    - (2) Notification within twenty-four hours of the individual who lawfully may act on behalf of the child; and
    - (3) Face-to-face assessment of children in physical restraint 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 be completed as soon as possible, and no later than one hour after the initiation of physical restraint or seclusion.

4. Seclusion. Seclusion must be ordered by the attending physician ~~and~~ or in the absence of a physician by a licensed physician who is a psychiatrist, a licensed clinical psychologist, a licensed independent clinical social worker, or a nurse who holds advanced licensure in psychiatric nursing. Staff authorized to order seclusion must be trained in the use of emergency interventions and a physician must review and sign the order within forty-eight hours after the ordered seclusion. Seclusion 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~~ an employee, or others. 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~~ employee allows for visual and auditory contact with the child at all times;
  - b. ~~Staff~~ Employees 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, or is equipped with a lock that only operates with ~~staff~~ an employee present such as a push-button lock that only remains locked while it is being pushed;
  - d. All nontherapeutic objects are removed from the area in which the seclusion occurs;
  - e. All fixtures within the room are tamperproof, with switches located outside the room;
  - f. Smoke-monitoring or fire-monitoring devices are an inherent part of the seclusion room;
  - g. Security mattresses used are made of fire-resistant material;
  - h. The room is properly ventilated;
  - i. Notification of the individual who 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;
  - j. A child under special treatment procedures is provided ~~the same~~ a similar diet that other children in the facility are receiving;
  - k. No child remains in seclusion:
    - (1) For more than four hours in a twenty-four-hour period; and
    - (2) Without physician approval;
  - 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
  - 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 occur no later than one hour after the initiation of ~~restraint or~~ seclusion.
5. Within twenty-four hours of each use of seclusion or physical restraint, the facility shall conduct a ~~debriefing~~ face-to-face discussion which includes ~~appropriate personnel and~~ the child and all employees involved in the emergency intervention, except when the involvement of a particular employee may jeopardize the wellbeing of 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 the incident and identifies needed changes to policy and procedures, ~~staff~~employee training, ~~or both~~and strategies that could have been used by an employee, by the child, or by others which could prevent the future use of seclusion or physical restraint.
6. Within twenty-four hours after the use of physical restraint or seclusion, all employees involved in the emergency safety intervention, and appropriate supervisory and administrative employees, shall conduct a debriefing session that includes, at a minimum a review and discussion of:
- a. Precipitating factors to the emergency situation;
  - b. Alternative techniques that might have prevented the use of physical restraint or seclusion;
  - c. The procedures, if any, that employees are to implement to prevent any recurrence of the use of physical restraint or seclusion; and
  - d. The outcomes of the intervention, including any injuries that may have resulted from the use of the physical restraint or seclusion.
7. Employees shall document in the child's record both the face-to-face discussion and debriefing sessions identified in subsections 5 and 6 and the names of employees involved, employees excused, and any changes to the child's treatment plan as a result of the face-to-face discussion and debriefing. The facility also shall document that the person who may lawfully act on behalf of the child was notified.
8. Special treatment procedure training. Each facility must have policies and procedures regarding annual training in the use of all special treatment procedures listed in this section, which comply with the standards set forth by the facility's accrediting body.
- ~~7.9.~~ Reporting requirement for serious occurrences that include a death, serious injury, ~~or~~ suicide attempt, inappropriate sexual contact, restraint, or seclusion.
- a. Each facility shall notify the medical services ~~division~~and the behavioral health divisions of the department of each serious occurrence that occurs at 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~~identified in subsection 6 of this section on any serious occurrence involving seclusion or restraint or any other serious occurrence involving a death, serious injury, suicide attempt, or inappropriate sexual contact if seclusion or restraint preceded the occurrence.
  - b. Each facility shall notify its accrediting body of any serious occurrence.

- c. 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. 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; [April 1, 2016](#).

**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 must have a medical examination within thirty days prior to admission or within seventy-two hours of admission.
2. **Immunizations.** Each child 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 each child.
4. **Annual medical examination.** Each child shall have a medical examination at least annually.
5. **StaffEmployee instruction.** The facility shall train ~~staff members~~[employees](#) what medical care, including first aid, may be given by ~~staff~~[employees](#) without specific orders from a physician. The facility shall instruct ~~staff~~[employees](#) how to obtain further medical care and how to handle emergency cases.
6. **Hospital admission.** 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. **Hospitalization or death reports.** A facility shall report all hospitalizations immediately to an individual who lawfully may act on behalf of the involved child. The facility shall report any death immediately to the department, an individual who 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.
8. **Prescription labels.** The facility shall obtain prescribed medications on an individual prescription basis and labeled according to state and federal rules.
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~~[employee](#) 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~~[employee](#) assigned to administer the medications. The medication cabinet must be equipped with separate cubicles, plainly labeled with each child's name.



- b. The facility shall return medications belonging to a child to the person who lawfully may act on behalf of the child upon discharge, or 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 administered under the supervision of medication-certified ~~staff~~employee.
- 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; [April 1, 2016](#).

**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. **StaffEmployee training.** The facility shall provide quarterly training to **staffemployees** which is relevant to address the changing needs of the milieu and according to the requirements of the facility's accrediting body.
  - a. All ~~staff members~~**employees** 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, training on institutional child abuse and neglect to include reporting requirements and prohibition of employer retaliation for reporting, 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~~A certificate must be provided to each employee demonstrating their competencies in cardiopulmonary resuscitation on an annual basis and therapeutic crisis intervention on a semi-annual basis. An **employee** 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~~**an employee** 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 **staffemployees** who are in orientation status are always under the supervision of experienced **staffemployees** and are not left alone with the children until all required training has been completed.
  - b. Each ~~staff member~~**employee** 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.** 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~~**employees** of the facility may prescribe, administer, or supervise the discipline of children. Authority to discipline may not be delegated to children, ~~volunteers,~~ or ~~interns~~**nonemployees**.
  - b. A child may not be slapped, punched, spanked, shaken, pinched, roughly handled, struck with an object, or 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.
  - e. The facility shall develop and implement a youth-guided, family-driven plan of discipline as part of the child's person-centered treatment planning, ~~to include~~emphasizing the use of positive behavior supports and 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; April 1, 2016.

**General Authority:** NDCC 25-03.2-10

**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

## 75-03-17-12. Discharge.

1. 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. Seven days prior to discharge a team meeting involving the child, the person who lawfully may act on behalf of the child, the facility treatment team, and related community services providers must take place to ensure the continuity of services consistent with the child's treatment needs after discharge. 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.
4. The facility shall assist the child and the person who lawfully may act on behalf of the child in preparing for the transition from residential treatment to return the child home, to a foster family, adoptive family, an institution, or to the home of relatives.

5. The facility treatment team shall develop a discharge plan that ensures appropriate appointments are scheduled, based on the child's needs and input from the person who lawfully may act on behalf of the child, as part of the post discharge plan. Appointments must support continuity of care addressing needs for individual therapy, psychiatric services and educational services, and other services or supports that may be appropriate. The facility treatment team shall provide a copy of the plan to the person who lawfully may act on behalf of the child and a copy must remain in the chart.

6. 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.

**History:** Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.

**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~~employees, including ~~volunteers and interns~~nonemployees, must be in good health and physically and mentally capable of performing assigned tasks.
2. All ~~personnel~~employees must have a health screening 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~~employees.
3. Unless effective measures are taken to prevent transmission, an employee or nonemployee suffering from a serious communicable disease shall be isolated from other employees, nonemployees, 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~~nonemployees that addresses tuberculin testing.

**History:** Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.

**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~~employee to children must meet the standards of the facility's accredited body and be included in the facility's policies and procedures. The facility shall follow the ~~staff-to-child~~employee-to-child ratio set by its accrediting body, or the ratios set forth in this subsection, if the ratios set forth in this subsection require a greater number of ~~staff~~employee to children than the ratios set by the accrediting body. The ~~staff-to-child~~employee-to-child ratio on the premises during waking hours Monday through Friday is dependent on the needs of the children and the requirements of the individual person-centered treatment plans, but may not be less than:
  - a. Two ~~staff~~employees present who are qualified to provide direct care for one to six residents.

- b. Three staffemployees present who are qualified to provide direct care for seven to nine residents.
  - c. Four staffemployees present who are qualified to provide direct care for ten to twelve residents.
  - d. Five staffemployees present who are qualified to provide direct care for thirteen to sixteen residents.
2. On evenings, nights, weekends, and holidays, during non-programming hours, the ratio of staffemployees to children is dependent on the needs of the children and the requirements of the individual person-centered treatment plans. Additionally, the ratio of ~~staff to children~~ employee-to-children must meet the minimum standards of the accrediting body but may not be less than two staffemployees on premises qualified to provide direct care. The facility shall implement a policy that if there is an emergency, and additional staffemployees are not available to respond to the facility within fifteen minutes, the facility will call for law enforcement or emergency medical assistance.
  3. All night staffemployees must be awake and within hearing distance of children. StaffEmployees shall perform bedroom checks at a minimum of every fifteen minutes to assure that each sleeping child is in that child's assigned room and is safe.

**History:** Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; July 1, 2014; [April 1, 2016](#).

**General Authority:** NDCC 25-03.2-10

**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

#### **75-03-17-16. Personnel policies and employee and nonemployee files.**

1. The facility shall have clearly written personnel policies. The policies must be made available to each employee and nonemployee and must include:
  - a. ~~A staff~~ An employee training and development plan;
  - b. Procedures for reporting suspected child abuse and neglect for employees and nonemployees;
  - c. Procedures for staffemployee evaluation, disciplinary actions, and termination;
  - d. A prohibition of sexual contact between staffemployees and nonemployees 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 and nonemployee responsibility for preserving confidentiality;
  - g. Evaluation procedures that include a written evaluation following the probationary period for new staffemployees and at least annually thereafter; and
  - h. A plan for review of the personnel policies and practices with staffemployee and, as appropriate, nonemployee, participation at least once every three years, or more often if necessary.
2. ~~AThe 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~~ shall maintain an individual file on each employee. The file must include:

- 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 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; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child~~The application for employment including a record of previous employment and the applicant's statement in answer to the question, "Have you been convicted of a crime?";
  - 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~~Annual performance evaluations; or
  - 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.~~Annual professional development and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation;
  - d. The following required training certificates:
    - (1) First-aid training;
    - (2) Cardiopulmonary resuscitation and automated external defibrillator; and
    - (3) Nonviolent crisis intervention;
  - e. Evidence of the employee having read the law requiring the reporting of suspected child abuse and 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 procedures;
  - f. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
  - g. Any other evaluation or background check deemed necessary by the administrator of the facility; and
  - h. Documentation of the status of any required license or qualification for the position or tasks assigned to the employee.
3. ~~A~~The facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement subsection 2.maintain an individual file on each nonemployee. The file must include:
    - a. Personal identification information;
    - b. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
    - c. Description of duties;



d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation; and

e. Evidence of the nonemployee having read the law requiring the reporting of suspected child abuse and 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 procedures.

~~4. For purposes of subdivision 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 subdivisions a and b of subsection 2 have a direct bearing on 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.~~

~~7. Interns, volunteers, and student placement workers are subject to this section.~~

~~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.~~

~~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 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 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. A facility shall maintain an individual personnel file on each volunteer, student, and intern 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~~ employee and nonemployee files.~~

**History:** Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.

**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~~ and nonemployees 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~~employees and children.
5. The facility shall notify the licensor 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; [April 1, 2016](#).

**General Authority:** NDCC 25-03.2-10

**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

#### 75-03-17-16.2. 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, contracted service providers, or nonemployee 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 12.1- 16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code section 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; 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.

(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. A facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement subsection 1.

3. The department has determined the offenses enumerated in subdivisions a and b 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.

4. 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 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.

5. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

6. 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. Discovered by the facility, authorized agent, or department as result of a background check.

7. The facility shall ensure that a prospective employee and nonemployee shall consent to and have completed background checks in criminal conviction records and child abuse or neglect records prior to direct care or contact with children residing in the facility.

8. A facility shall establish written policies specific to how the facility will proceed if a current employee or nonemployee is known to have been found guilty of, plead guilty to, or pled no contest to an offense.

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 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. 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 nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.
12. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 25-03.2-10

**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-17. Facility ~~staff~~employees.**

1. The facility's ~~staff~~employees shall include:
  - a. An executive director who has a bachelor's degree in a behavioral science, or a bachelor's degree in any field and two years of experience in administration;
  - b. A program director who has a master's degree in social work, psychology, or in a related field with two years of professional experience in the treatment of children suffering from mental illnesses or emotional disturbances;
  - c. Facility care ~~staff~~employees who are at least twenty-one years of age and have sufficient training and demonstrated skills experience to perform assigned duties;
  - d. The clinical services of a psychologist, psychiatrist, alcohol and drug addiction counselor, nurse, and physician, which may be obtained on a consultation basis; and
  - e. Educators, where onsite education is provided.
2. ~~Volunteer services~~Nonemployees may be used to augment and assist other ~~staff~~employees in carrying out program or treatment plans. ~~Volunteers~~Nonemployees shall receive orientation training regarding the program, ~~staff~~employees, and children of the facility, and the functions to be performed.

**History:** Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2016.

**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. The facility shall provide adequate heating, lighting, and ventilation.
- f. ~~Staff~~Employee 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~~employees.

**History:** Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; [April 1, 2016](#).

**General Authority:** NDCC 25-03.2-10

**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

## CHAPTER 75-03-23

### 75-03-23-02. Eligibility criteria.

1. An applicant must be entered in the SPED program pool before service payments may be authorized. The department shall allow entry into the SPED program pool to occur:
  - a. When the department's designee submits a form in the manner prescribed by the department; or
  - b. When the applicant meets the special circumstances provided in subsection 4, 5, or 6 of section 75-03-23-03.
2. An applicant's resources may not exceed fifty thousand dollars for the applicant to be eligible for services under the SPED program. For purposes of this section, resources are cash or similar assets that can be readily converted to cash and include residences owned by the applicant other than the applicant's primary residence.
3. An applicant eighteen years of age or older is eligible for the SPED program pool if:
  - a. The applicant has a functional impairment as specified by the department in policies and procedures to indicate applicant eligibility;
  - b. The applicant's functional impairment has lasted, or can be expected to last, three months or longer;
  - c. The applicant's functional impairment is not the result of a mental illness or a condition of mental retardation, or a closely related condition;
  - d. The applicant is living in North Dakota in a housing arrangement commonly considered a private family dwelling and not in an institution;
  - e. The applicant is not eligible for services under the medicaid waiver program or the medicaid state plan option of personal care services unless the applicant's estimated monthly benefits under this chapter, excluding the cost of case management, are between the current medically needy income level for a household of one plus the disregard established in North Dakota Century Code section 50-24.1-02.3, and the lowest level of the fee schedule for services under North Dakota Century Code chapter 50-06.2, or unless the individual is receiving a service that is not available under medicaid or the medicaid waiver;
  - f. The applicant would receive one or more of the covered services under department policies and procedures for the specific service;
  - g. The applicant agrees to the plan of care developed for the provision of home and community-based services;
  - h. The applicant is not responsible for one hundred percent of the cost of the covered service provided, under the SPED program sliding fee scales based on family size and income; and
  - i. The applicant has not made a disqualifying transfer of assets.
4. An applicant under eighteen years of age is eligible for the SPED program pool if the applicant is determined to need nursing facility level of care as provided for in section 75-02-02-09 and the applicant's care need is not the result of a mental illness or the condition of mental retardation, or a closely related condition.

5. An applicant under eighteen years of age:
  - a. Must meet the eligibility requirements of subsections 3 and 4.
  - b. Is not eligible to receive personal care services under this chapter.
  - c. Is not eligible for service payments unless:
    - (1) Care provided to the applicant by the applicant's parent or the applicant's spouse is provided under family home care.
    - (2) The applicant is unable to regularly attend school or is severely limited in the amount of time the applicant is able to attend school.
6. An applicant must be capable of directing self-care or must have a legally responsible party to act on the applicant's behalf.
7. An applicant is not eligible for service payments if the care provided is court-ordered.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; [April 1, 2016](#).

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-01(3), 50-06.2-03(5), 50-06.2-04(3)

#### **75-03-23-05. Services covered under the SPED program - Programmatic criteria.**

Room and board costs may not be paid in the SPED service payment. The following categories of services are covered under the SPED program and may be provided to a client:

1. The department may provide adult day care services to a client:
  - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
  - b. Who is able to participate in group activities; and
  - c. Who, if the client does not live alone, has a primary caregiver who will benefit from the temporary relief of care giving.
2. The department may provide adult ~~family~~ foster care using a licensed adult ~~family~~ foster care provider to a client eighteen years of age or older:
  - a. Who resides in a licensed adult ~~family~~ foster care home;
  - b. Who requires care or supervision;
  - c. Who would benefit from a family environment; and
  - d. Whose required care does not exceed the capability of the foster care provider.
3. The department may provide chore services to a client for one-time, intermittent, or occasional activities which would enable the client to remain in the home. Activities such as heavy housework and periodic cleaning, professional extermination, snow removal, and emergency response systems may be provided. Clients receiving emergency response services must be cognitively and physically capable of activating the emergency response system. The activity must be the responsibility of the client and not the responsibility of the landlord.
4. The department may provide environmental modification to a client:
  - a. Who owns the home to be modified;

- b. When the modification will enable the client to complete the client's own personal care or to receive care and allow the client to safely stay in the home;
  - c. When no alternative community resource is available; and
  - d. Limited to labor and materials for installing safety rails.
5. a. The department may provide extended personal care services to a client who:
- (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and
  - (2) Has a cognitive or physical impairment that prevents the client from completing the required activity.
- b. Extended personal care services do not include assistance with activities of daily living or instrumental activities of daily living.
6. The department may provide family home care services to a client who:
- a. Lives in the same residence as the care provider on a twenty-four-hour basis;
  - b. Agrees to the provision of services by the care provider; and
  - c. Is the spouse of the care provider or the current or former spouse of one of the following relatives of the client: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew.
7. The department may provide home and community-based services case management services to a client who needs a functional assessment and the coordination of cost-effective delivery issues. The case management services must be provided by a social worker licensed under North Dakota Century Code section 43-41-04.
8. The department may provide home-delivered meals to a client who lives alone and is unable to prepare an adequate meal for himself or herself, or who lives with an individual who is unable or not available to prepare an adequate meal for the client.
9. The department may provide homemaker services to a client who needs assistance with environmental maintenance activities including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis and who lives alone or with an adult who is unable or is not obligated to perform homemaking activities. The department may not pay a provider for laundry, shopping, housekeeping, meal preparation, money management, or communication, if the provider lives with the client and is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02, or is a former spouse of the client; except the department may provide essential homemaking activities such as meal preparation if the adult not receiving care who resides in the home is unavailable due to employment. The department may provide shopping assistance only if at least one other activity is performed and no other shopping assistance is available through informal networks or other community providers. The homemaker services funding cap applies to a household and may not be exceeded regardless of the number of clients residing in that household.
10. Nonmedical transportation services may be provided to clients who are unable to provide their own transportation and need transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.



11. The department may provide personal care services to a client who needs help or supervision with personal care activities if:
  - a. The client is at least eighteen years of age;
  - b. The client lives alone or is alone due to the employment of the primary caregiver or the incapacity of other adult household members; and
  - c. The services are provided in the client's home or in a provider's home if the provider meets the definition of a relative as defined in subdivision c of subsection 5 of section 75-03-23-05.
12. a. The department may provide respite care services to a client in the client's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:
  - (1) The client has a full-time primary caregiver;
  - (2) The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
  - (3) The primary caregiver's need for the relief is intermittent or occasional; and
  - (4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.
- b. A client who is a resident of an adult ~~family~~-foster care may choose a respite provider and is not required to use a relative of the adult ~~family~~-foster care provider as the client's respite provider.
13. The department may provide other services as the department determines appropriate.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; [April 1, 2016](#).

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-01(3), 50-06.2-03(5)

**75-03-23-06. Services covered under the medicaid waiver program - Programmatic criteria.**

Room and board costs may not be included in the medicaid waiver service payment. The following services are covered under the medicaid waiver program and may be provided to a client:

1. The department may provide adult day care services to a client:
  - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
  - b. Who is able to participate in group activities; and
  - c. If the client does not live alone, the client's primary caregiver will benefit from the temporary relief of care giving.
2. The department may provide adult ~~family~~-foster care, using a licensed adult ~~family~~-foster care provider, to a client who resides in a licensed adult ~~family~~-foster care home who:
  - a. Is eighteen years of age or older;
  - b. Requires care or supervision;
  - c. Would benefit from a family environment; and

- d. Requires care that does not exceed the capability of the foster care provider.
3. The department may provide residential care to a client who:
    - a. Has chronic moderate to severe memory loss; or
    - b. Has a significant emotional, behavioral, or cognitive impairment.
  4. The department may provide attendant care to a client who:
    - a. Is ventilator-dependent a minimum of twenty hours per day;
    - b. Is medically stable as documented at least annually by the client's primary care physician;
    - c. Has identified an informal caregiver support system for contingency planning; and
    - d. Is competent to participate in the development and monitoring of the care plan as documented at least annually by the client's primary care physician.
  5. The department may provide chore services to a client for one-time, intermittent, or occasional activities that would enable the client to remain in the home, such as heavy housework and periodic cleaning, professional extermination, and snow removal. The activity must be the responsibility of the client and not the responsibility of the landlord.
  6. The department may provide an emergency response system to a client who lives alone or with an incapacitated adult, or who lives with an individual whose routine absences from the home present a safety risk for the client, and the client is cognitively and physically capable of activating the emergency response system.
  7. When no alternative community resource is available, the department may provide environmental modification to a client, if the client owns the home to be modified and when the modification will enable the client to complete the client's own personal care or to receive care and will allow the client to safely stay in the home for a period of time that is long enough to offset the cost of the modification.
  8.
    - a. The department may provide family personal care to a client who:
      - (1) Lives in the same residence as the care provider on a twenty-four-hour basis;
      - (2) Agrees to the provision of services by the care provider; and
      - (3) Is the legal spouse of the care provider.
    - b. Family personal care payments may not be made for assistance with the activities of communication, community integration, housework, laundry, meal preparation, money management, shopping, social appropriateness, or transportation.
  9. The department may provide home and community-based services case management services to a client who needs a comprehensive assessment and the coordination of cost-effective delivery of services. Case management services provided under this subsection must be provided by a social worker licensed under North Dakota Century Code section 43-41-04.
  10. The department may provide home-delivered meals to a client who lives alone and is unable to prepare an adequate meal for himself or herself or who lives with an individual who is unable or not available to prepare an adequate meal.

11. The department may provide homemaker services to a client who needs assistance with environmental maintenance activities, including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis when the client lives alone or with an adult who is unable or is not obligated to complete homemaking activities. The department may not pay a provider for laundry, shopping, housekeeping, meal preparation, money management, or communication, if the provider lives with the client and is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02, or is a former spouse of the client; except the department may provide essential homemaking activities such as meal preparation if the responsible adult not receiving care who resides in the home is unavailable due to employment. Shopping assistance may be provided only if at least one other activity is performed and no other shopping assistance is available through informal networks or other community providers. The homemaker service funding cap applies to a household and may not be exceeded regardless of the number of clients residing in that household.
12.
  - a. The department may provide extended personal care services to a client who:
    - (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and
    - (2) Has a cognitive or physical impairment that prevents the client from completing the required activity.
  - b. Extended personal care services do not include assistance with activities of daily living and instrumental activities of daily living.
13. The department may provide nonmedical transportation services to a client who is unable to provide his or her own transportation and who needs transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.
14. The department may provide up to twenty-four hours per day of supervision to a client who has a cognitive or physical impairment that results in the client needing monitoring to assure the client's continued health and safety, if the client lives alone or with an individual who is not a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02.
15.
  - a. The department may provide respite care services to a client in the client's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:
    - (1) The client has a full-time primary caregiver;
    - (2) The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
    - (3) The primary caregiver's need for the relief is intermittent or occasional; and
    - (4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.
  - b. A client who is a resident of an adult ~~family~~-foster care home may choose a respite provider and is not required to use a relative of the adult ~~family~~-foster care provider as the client's respite provider.
16. The department may provide specialized equipment and supplies to a client, if:

- a. The client's need for the items is based on an adaptive assessment;
  - b. The items directly benefit the client's ability to perform personal care or household activities;
  - c. The items will reduce the intensity or frequency of human assistance required to meet the client care needs;
  - d. The items are necessary to prevent the client's institutionalization;
  - e. The items are not available under the medicaid state plan; and
  - f. The client is motivated to use the item.
17. The department may provide supported employment to a client who is unlikely to obtain competitive employment at or above the minimum wage; who, because of the client's disabilities, needs intensive ongoing support to perform in a work setting; and who has successfully completed the supported employment program available through the North Dakota vocational rehabilitation program.
18. The department may provide transitional living services to a client who needs supervision, training, or assistance with self-care, communication skills, socialization, sensory and motor development, reduction or elimination of maladaptive behavior, community living, and mobility. The department may provide these services until the client's independent living skills development has been met or until an interdisciplinary team determines the service is no longer appropriate for the client.
19. The department may provide other services as permitted by an approved waiver.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; [April 1, 2016](#).

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-01(3), 50-06.2-03(5)

**75-03-23-07. Qualified service provider standards and agreements.**

- 1. An individual or agency seeking designation as a qualified service provider shall complete and return the applicable forms supplied by the department in the form and manner prescribed. The qualified service provider, including any employees of an agency designated as a qualified service provider, shall meet all licensure, certification, or competency requirements applicable under state or federal law and departmental standards necessary to provide care to clients whose care is paid by public funds. An application is not complete until the individual or agency submits all required information and required provider verifications to the department.
- 2. A provider or an individual seeking designation as a qualified service provider:
  - a. Must have the basic ability to read, write, and verbally communicate;
  - b. Must not be an individual who has been found guilty of, pled guilty to, or pled no contest to:
    - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; North Dakota Century Code section 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; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 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; 12.1-31-05, child procurement; 12.1-31-07, endangering a vulnerable adult; 12.1-31-07.1, exploitation of a vulnerable adult; ~~subsection 1 of section 19-03.1-23, manufacture, deliver, or possess with intent to deliver a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet; or~~ subsection 1 of section 26.1-02.1-02.1, fraudulent insurance acts; 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; except that a person found guilty of 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 may be considered rehabilitated if the requirements of subparagraph a or b of paragraph 2 of subdivision b of subsection 2 are met; or

(2) An offense, other than a direct-bearing offense identified in paragraph 1 of subdivision b of subsection 2, if the department determines that the individual has not been sufficiently rehabilitated.

(a) The department may 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, or sufficient evidence is provided of completion of any relevant rehabilitation program.

(b) An individual's completion of a period of three 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;

c. Must not have an infectious or contagious disease, according to the centers for disease control and prevention's personnel health guidelines, and shall demonstrate any related infection control skills;

d. Shall maintain confidentiality;

e. Shall submit a request to be a qualified service provider every twenty-four months using applicable forms and shall provide documentation as required by the department;

f. Must be physically capable of performing the service for which they were hired; ~~and~~

g. Must be at least eighteen years of age; and

h. Must not have been the subject of a child abuse or neglect assessment for which a services required decision was made unless the program administrator, after appropriate consultation with persons qualified to evaluate the capabilities of the provider, documenting criteria used in making the decision, and imposing any restrictions necessary, approves the request, provided the provider can demonstrate:

(1) The successful completion of an appropriate therapy; or

(2) The elimination of an underlying basis precipitating the neglect or abuse.

3. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require the applicant or provide to present

evidence of the applicant's or provider's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.

~~3.4.~~ The offenses enumerated in paragraph 1 of subdivision b of subsection 2 have a direct bearing on an individual's ability to be enrolled as a qualified service provider.

- a. An individual enrolled as a qualified service provider prior to January 1, 2009, who has been found guilty of, pled guilty to, or pled no contest to, an offense considered to have a direct bearing on the individual's ability to provide care may be considered rehabilitated and may continue to provide services if the individual has had no other offenses and provides sufficient evidence of rehabilitation to the department.
- b. The department may not approve, deny, or renew an application for an individual or employee of an agency who is applying to enroll or re-enroll as a qualified service provider and who has been charged with an offense considered to have a direct bearing on the individual's ability to provide care or an offense in which the alleged victim was under the applicant's care, until final disposition of the criminal case against the individual.

~~4.5.~~ Evidence of competency for adult ~~family~~-foster care providers serving clients eligible for the developmental disability waiver must be provided in accordance with subdivision b of subsection 2 of section 75-03-21-08.

~~5.6.~~ A provider of services for adult day care, adult ~~family~~-foster care, attendant care, extended personal care, family personal care, personal care, residential care, respite care, and transitional living care shall provide evidence of competency in generally accepted procedures for:

- a. Infection control and proper handwashing methods;
- b. Handling and disposing of body fluids;
- c. Tub, shower, and bed bathing techniques;
- d. Hair care techniques, sink shampoo, and shaving;
- e. Oral hygiene techniques of brushing teeth and cleaning dentures;
- f. Caring for an incontinent client;
- g. Feeding or assisting a client with eating;
- h. Basic meal planning and preparation;
- i. Assisting a client with the self-administration of medications;
- j. Maintaining a kitchen, bathroom, and other rooms used by a client in a clean and safe condition, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks;
- k. Laundry techniques, including mending, washing, drying, folding, putting away, ironing, and related work;
- l. Assisting a client with bill paying and balancing a check book;
- m. Dressing and undressing a client;
- n. Assisting with toileting;

- o. Routine eye care;
- p. Proper care of fingernails;
- q. Caring for skin, including giving a back rub;
- r. Turning and positioning a client in bed;
- s. Transfer using a belt, standard sit, or bed to wheelchair;
- t. Assisting a client with ambulation; and
- u. Making wrinkle-free beds.

~~6.7.~~ An applicant for qualified service provider status for attendant care, adult ~~family~~-foster care, extended personal care, family personal care, personal care, residential care, transitional living care, respite care, or adult day care must secure written verification that the applicant is competent to perform procedures specified in subsection 5 from a physician, chiropractor, registered nurse, licensed practical nurse, occupational therapist, physical therapist, or an individual with a professional degree in specialized areas of health care. Written verification of competency is not required if the individual holds one of the following licenses or certifications in good standing: physician, chiropractor, registered nurse, licensed practical nurse, registered physical therapist, registered occupational therapist, or certified nurse assistant. A certificate or another form of acknowledgment of completion of a program with a curriculum that includes the competencies in subsection 5 may be considered evidence of competence.

~~7.8.~~ The department may approve global and client-specific endorsements to provide particular procedures for a provider based on written verification of competence to perform the procedure from a physician, chiropractor, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in a specialized area of health care or approved within the scope of the individual's health care license or certification.

~~8.9.~~ Competence may be demonstrated in the following ways:

- a. A demonstration of the procedure being performed;
- b. A detailed verbal explanation of the procedure; or
- c. A detailed written explanation of the procedure.

~~9.10.~~ The department shall notify the individual or the agency of its decision on designation as a qualified service provider.

~~10.11.~~ The department shall maintain a list of qualified service providers. Once the client's need for services has been determined, the client selects a provider from the list and the department's designee issues an authorization to provide services to the selected qualified service provider.

~~11.12.~~ A service payment may be issued only to a qualified service provider who bills the department after the delivery of authorized services.

**History:** Effective June 1, 1995; amended effective March 1, 1997; January 1, 2009; October 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-03(5)



**75-03-23-08. Termination of qualified service provider status and denial of application to become a qualified service provider.**

1. The department may terminate a qualified service provider if:
  - a. The qualified service provider voluntarily withdraws from participation as a qualified service provider;
  - b. The qualified service provider is not in compliance with applicable state laws, state regulations, or program issuances governing providers;
  - c. The qualified service provider is not in compliance with the terms set forth in the application or provider agreement;
  - d. The qualified service provider is not in compliance with the provider certification terms on the claims submitted for payment;
  - e. The qualified service provider has assigned or otherwise transferred the right to payment of a program claim, except as provided in 42 U.S.C. 1396a(a)(32);
  - f. The qualified service provider has demonstrated a pattern of submitting inaccurate billings or cost reports;
  - g. The qualified service provider has demonstrated a pattern of submitting billings for services not covered under department programs;
  - h. The qualified service provider has been debarred or the provider's license or certificate to practice in the provider's profession or to conduct business has been suspended or terminated;
  - i. The qualified service provider has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals;
  - j. The qualified service provider has been convicted of an offense determined by the department to have a direct bearing upon the provider's ability to be enrolled as a qualified service provider, or the department determines, following conviction of any other offense, the provider is not sufficiently rehabilitated;
  - k. The qualified service provider is currently excluded from participation in medicare, medicaid, or any other federal health care program; ~~or~~
  - l. The qualified service provider has not provided sufficient evidence to the department, after obtaining a formal evaluation under subsection 3 of section 75-03-23-07 that the provider is physically, cognitively, socially, or emotionally capable of providing the care;
  - m. The qualified service provider has been the subject of a child abuse or neglect assessment for which a services required decision was made and the department has determined the provider does not meet the standards to enroll;
  - n. There has been no billing activity within the twelve months since the provider's enrollment or most recent reenrollment date; or
  - o. For other good cause.
2. The department may deny an application to become a qualified service provider if:
  - a. The applicant voluntarily withdraws the application;



- b. The applicant is not in compliance with applicable state laws, state regulations, or program issuances governing providers;
- c. The applicant, if previously enrolled as a qualified service provider, was not in compliance with the terms set forth in the application or provider agreement;
- d. The applicant, if previously enrolled as a qualified service provider, was not in compliance with the provider certification terms on the claims submitted for payment;
- e. The applicant, if previously enrolled as a qualified service provider, had assigned or otherwise transferred the right to payment of a program claim, except as provided in 42 U.S.C. 1396a(a)(32);
- f. The applicant, if previously enrolled as a qualified service provider, had demonstrated a pattern of submitting inaccurate billings or cost reports;
- g. The applicant, if previously enrolled as a qualified service provider, had demonstrated a pattern of submitting billings for services not covered under department programs;
- h. The applicant has been debarred or the applicant's license or certificate to practice in the applicant's profession or to conduct business has been suspended or terminated;
- i. The applicant has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals;
- j. The applicant has been convicted of an offense determined by the department to have a direct bearing upon the applicant's ability to be enrolled as a qualified service provider, or the department determines, following conviction of any other offense, the applicant is not sufficiently rehabilitated;
- k. The applicant, if previously enrolled as a qualified service provider, owes the department money for payments incorrectly made to the provider;
- l. The qualified service provider is currently excluded from participation in medicare, medicaid, or any other federal health care program; ~~or~~
- m. The applicant has not provided sufficient evidence to the department, after obtaining a formal evaluation under subsection 3 of section 75-03-23-07, that the applicant is physically, cognitively, socially, or emotionally capable of providing the care;
- n. The applicant has been the subject of a child abuse or neglect assessment for which a services required decision was made and the department has determined the applicant does not meet the standards to enroll;
- o. The applicant previously has been terminated for inactivity and does not have a prospective public pay client;
- p. The applicant previously has been terminated for inactivity and has not provided valid reason for the inactivity; or
- q. For other good cause.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-03(5)

## CHAPTER 75-03-25 OMBUDSMAN PROGRAM

### Section

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### 75-03-25-01. Definitions.

As used in this chapter:

1. "Administrative action" means an act, decision, or a failure to act or to make a decision by an owner, employee, or agent of a long-term care facility or by a public agency that affects the provision of services to a resident.
2. "Basic care facility" means any residence, not licensed under North Dakota Century Code chapter 23-16 by the state department of health, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services.
3. ~~"Community ombudsman" means an individual appointed by the department as an ombudsman on the community level as opposed to the regional or state level.~~
4. "Complaint" means a written or verbal statement of alleged violation of a statute, rule, regulation, or policy, or other alleged wrongful ~~acts~~act or ~~omissions~~omission related to health, safety, welfare, personal, or civil rights of a long-term care resident.
- 5.4. "Department" means the department of human services.
6. ~~"Designated representative" means a legal representative or any individual chosen by the long-term care resident to represent the long-term care resident.~~
- 7.5. "Immediate family" means ~~an individual whose relationship by blood, marriage, or adoption to an individual is within the second degree of kinship~~a member of the household or a relative with whom there is a close personal or significant financial relationship.
- 8.6. "Legal representative" means the long-term care resident's legal counsel, an individual who possesses the resident's unlimited power of attorney or power of attorney that specifically includes the authority to release confidential information, a guardian with unlimited power, or a guardian or conservator whose grant of authority specifically includes the authority to release confidential information.

~~9.7.~~ "Long-term care facility" means a facility defined in North Dakota Century Code chapter 50-10.1, as any skilled nursing facility, intermediate care facility, basic care facility, nursing home as defined in subsection 3 of North Dakota Century Code section 43-34-01, boardinghouse, or swing bed hospital approved to furnish long-term care services; provided, that a facility, as defined by subsection 2 of North Dakota Century Code section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.

~~40.8.~~ "Medical record" means a record maintained by a long-term care facility relating to the medical and physical condition, care, and treatment of a particular long-term care resident. The medical record includes social and other information as required by the facility and the resident.

~~41.9.~~ "Reasonable access" means the ombudsman's right to access a long-term care facility, a long-term care resident, or a long-term care resident's records, based on the ombudsman's need to know information in the provision of services.

~~42.10.~~ "Resident" means an individual residing in and receiving personal care from a long-term care facility.

~~13.~~ "~~Second degree of kinship~~" means ~~an individual whose relationship to another individual by blood, marriage, or adoption is as spouse, sister, brother, mother, father, or aunt, or uncle.~~

11. "Volunteer ombudsman" means an individual appointed by the department as an ombudsman on the community level as opposed to the local or state level.

**History:** Effective March 1, 1997; amended effective April 1, 2016.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8)

#### **75-03-25-02. Appointment of the state long-term care ombudsman.**

Repealed effective April 1, 2016.

~~—The executive director of the department shall appoint an individual as the state long-term care ombudsman. The state long-term care ombudsman shall serve as a full-time, classified service employee of the division of aging services and must exhibit expertise and experience in long-term care and advocacy.~~

~~**History:** Effective March 1, 1997.~~

~~**General Authority:** NDCC 50-10.1-02, 50-10.1-03(8); 42 U.S.C. 3011, et seq.~~

~~**Law Implemented:** NDCC 50-10.1-03(8)~~

#### **75-03-25-03. Duties of the state long-term care ombudsman.**

The state long-term care ombudsman shall:

1. Identify, investigate, and resolve complaints made by, or on behalf of, long-term care residents;
2. Investigate and resolve complaints involving long-term care service providers, representatives of providers, public agencies, or health and social service agencies or complaints that pertain to administrative action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of a long-term care resident, including the appointment and functions of guardians and representative payees;
3. Provide assistance to a long-term care resident in protecting the resident's health, safety, welfare, or rights;

4. Provide a long-term care resident with information and procedures to protect the long-term care resident's rights and to obtain health, safety, welfare, or rights services from long-term care service providers, public agencies, or health and social service agencies;
5. Develop and monitor the effectiveness of complaint registration and complaint resolution mechanisms that provide a long-term care resident regular and timely access to ombudsman services;
6. Represent the interests of a long-term care resident before governmental agencies;
7. Seek administrative and legal remedies to protect the health, safety, welfare, or rights of a long-term care resident;
8. Research, evaluate, comment on, and monitor the development and implementation of federal, state, and local laws, administrative rules, regulations, and other federal, state, and local policies and actions, pertaining to the health, safety, welfare, and rights of a long-term care resident;
9. Recommend changes and facilitate public comments on laws, rules, regulations, policies, actions, and decisions pertaining to the health, safety, welfare, and rights of a long-term care resident;
10. Provide training for the ~~regional~~local and ~~community~~volunteer ombudsman and ~~train-volunteers~~ and encourage the development of citizen organizations to take part in the ombudsman ~~proram~~program;
11. Provide technical assistance for the development of a long-term care resident ~~council~~councils and ~~a resident's~~ family ~~council~~councils for the protection of ~~a~~each long-term care resident's well-being and rights; and
12. Perform other operations and projects required by federal and state aging services.

**History:** Effective March 1, 1997; amended effective April 1, 2016.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8)

#### **75-03-25-04. Appointment of the regional long-term care ombudsman.**

Repealed effective April 1, 2016.

~~—The executive director of the department, through the director of aging services, shall designate an individual in each region to serve as the regional long-term care ombudsman. The individual designated as the regional long-term care ombudsman shall have demonstrated capability to carry out the responsibilities of the office, be free of conflicts of interest, and meet such additional requirements as the director of aging services may specify.~~

~~**History:** Effective March 1, 1997.~~

~~**General Authority:** NDCC 50-10.1-02, 50-10.1-03(8); 42 U.S.C. 3011, et seq.~~

~~**Law Implemented:** NDCC 50-10.1-03(8)~~

#### **75-03-25-05. Duties of the ~~regional~~local ombudsman.**

The ~~regional~~local ombudsman shall:

1. Investigate and resolve complaints involving long-term care service providers, or representatives of providers, public agencies, or health and social service agencies and pertaining to administrative action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of a long-term care resident;

2. Ensure that a long-term care resident in the ~~regional~~local ombudsman's service area has regular, reliable, and timely access to the ~~regional~~local and ~~community~~volunteer ombudsman;
3. Ensure that complaints and requests for assistance receive timely responses;
4. Represent the interests of a long-term care resident before governmental agencies and pursue administrative and legal remedies, to protect the health, safety, welfare, and rights of a long-term care resident;
5. Review and make necessary comments on existing and proposed statutes, rules, regulations, and other governmental policies and administrative actions pertaining to the health, safety, welfare, and rights of a long-term care resident;
6. Facilitate the opportunity for the public to comment on federal and state statutes, rules, regulations, policies, and administrative actions pertaining to the health, safety, welfare, and rights of a long-term care resident.
7. Advocate for and support the development of ~~a~~ long-term care resident councils and ~~a~~ long-term care ~~resident's~~ family ~~council~~councils;
8. Recruit and ~~select~~train the ~~community~~volunteer ombudsman, maintain documentation ~~of training~~, and investigate any complaints about the ~~community~~volunteer ombudsman, in the form and manner required by the department;
9. Conduct an annual evaluation of each ~~community~~volunteer ombudsman in the form and manner required by the department; and
10. Perform other operations and projects required by the state long-term care ombudsman.

**History:** Effective March 1, 1997; amended effective April 1, 2016.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8)

**75-03-25-06. ~~Appointment~~Certification of the ~~community~~volunteer ombudsman - Qualifications.**

~~With the approval of the director of aging services, the regional~~The state long-term care ombudsman may ~~designate~~certify a ~~community~~volunteer ombudsman. ~~If the community~~A volunteer ombudsman ~~is an individual, the individual~~ must be at least ~~age~~ eighteen years of age. ~~If the community ombudsman is an organization, the organization must be a public or nonprofit private organization.~~ The ~~community~~volunteer ombudsman is not paid and is not an employee of the department. Each ~~designated community~~certified volunteer ombudsman ~~shall~~must:

1. Have references and experiences that demonstrate the capability to fulfill comparable duties as those listed in section 75-03-25-07;
2. Be free of conflicts of interest;
3. Possess any other qualifications that the state ~~and regional~~ long-term care ombudsman ~~regard~~determines necessary to fulfill the duties of the position;
4. Have completed initial and ongoing training;
5. Have agreed to abide by the confidentiality statement, the conflict of interest statement, and the ~~job~~position description;
6. Be able to communicate with long-term care residents and facility staff;

7. Be able to communicate with residents who may be physically or mentally impaired; and
8. Understand and have the ability to advocate on behalf of residents.

**History:** Effective March 1, 1997; amended effective April 1, 2016.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8)

**75-03-25-07. Duties of the communityvolunteer ombudsman.**

The communityvolunteer ombudsman shall:

1. Provide ombudsman services to protect the health, safety, welfare, and rights of a long-term care resident;
2. Be present at the ombudsman's assigned facility on a regular basis;
3. Maintain confidentiality in all ombudsman activities;
4. Receive and report concerns, issues, and complaints to the regionallocal ombudsman; and
5. Assist the regionallocal ombudsman with assessment, complaint resolution, and follow-up activities.

**History:** Effective March 1, 1997; amended effective April 1, 2016.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8)

**75-03-25-08. Restrictions on services offered by communityvolunteer ombudsman.**

While in the role of the communityvolunteer ombudsman in an assigned long-term care facility, the communitylocal ombudsman ~~shall~~may not:

1. Provide direct personal care to a long-term care resident;
2. Provide transportation for a long-term care resident; or
3. Conduct personal business for a long-term care resident.

**History:** Effective March 1, 1997; amended effective April 1, 2016.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8)

**75-03-25-09. Reasonable access to long-term care facility, residents, and records.**

The division of aging services of the department shall ensure that the state, regionallocal, and communityvolunteer ombudsmen have reasonable access to:

1. A long-term care facility and a long-term care resident;
2. Review a long-term care resident's social and medical records, as ~~necessary to resolve a complaint, if the resident or the resident's legal representative gives written permission~~provided under subsection 2 of North Dakota Century Code section 50-10.1-04;
3. Review a long-term care resident's medical record if a court orders disclosure;
4. Open administrative records, policies, and documents of a long-term care facility; and
5. State licensure and certification records regarding long-term care facilities.



**History:** Effective March 1, 1997; amended effective April 1, 2016.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8)

#### **75-03-25-10. Conflict of interest.**

1. ~~In the ombudsman's official capacity and in the performance of the ombudsman's official duties, an~~ An ombudsman may not serve as guardian or conservator or in any protective custody other decisionmaking capacity for a long-term care resident, ~~unless the long-term care resident who~~ is ~~not~~ in a facility served by the ombudsman.
2. ~~a. — Any~~ An ombudsman or any member of the ombudsman's immediate family may not be a board member, have an ownership, operational, or investment interest in an existing or proposed long-term care facility, or be employed ~~in the by, or participate in the management of,~~ a long-term care facility in which the community ombudsman is assigned.
- ~~b. — If a public or nonprofit organization provides ombudsman services, an officer of the entity or any member of the officer's immediate family may not be a board member, have an ownership interest, or be employed in the long-term care facility in which the entity serves as the community ombudsman.~~
3. An ombudsman may not have ~~the responsibility for~~ direct involvement in the licensure or certification of any long-term care facility.
4. An ombudsman may not receive or have the right to receive, directly or indirectly, any remuneration, in cash or in kind, under a compensation arrangement with an owner or operator of a long-term care facility.
5. An ombudsman may not accept gifts or gratuities of significant value from a long-term care facility or its management, a resident of or a legal representative of a resident of a long-term care facility to which the ombudsman is assigned.
6. The state long-term care ombudsman and any local ombudsman may not accept any money or other consideration from anyone other than the department for the performance of an act in the regular course the ombudsman's duties; a volunteer ombudsman, as an unpaid position, may not accept money or other consideration from anyone for the performance of an act in the regular course of the volunteer's work as an ombudsman.
7. An ombudsman should not serve residents of a facility in which an immediate family member resides.

**History:** Effective March 1, 1997; amended effective April 1, 2016.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8)

#### **75-03-25-11. Dismissal of an ombudsman.**

Any ombudsman may be dismissed if the ombudsman:

1. Fails to perform ombudsman services in a manner consistent with the program's policies and procedures;
2. Fails to maintain confidentiality;
3. Fails to report abuse, neglect, or exploitation of a long-term care resident ~~with or without the victim's name in accordance with the victim's preference~~ if a report is requested by the resident or legal representative, or is required by law; or:

4. Communicates a known false statement.

**History:** Effective March 1, 1997; amended effective April 1, 2016.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8)

#### **75-03-25-12. Legal counsel.**

Legal counsel shall be provided to any ombudsman against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official ombudsman duties.

**History:** Effective March 1, 1997.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8)

#### **75-03-25-14. Resident's right to notice.**

The long-term care facility shall post, in a conspicuous place in each long-term care facility, ~~a copy of North Dakota Century Code chapter 50-10.1, a statement of the right~~ information about the ombudsman program, how to file a complaint concerning administrative actions which affect any long-term care resident, and the address where a complaint may be filed. The long-term care facility shall provide copies of the posted information to each long-term care resident, the long-term care resident's spouse, and any ~~designated~~ legal representative of a long-term care resident at the time the long-term care resident is admitted to the long-term care facility.

**History:** Effective March 1, 1997; amended effective April 1, 2016.

**General Authority:** NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

**Law Implemented:** NDCC 50-10.1-03(8), 50-10.1-05



## CHAPTER 75-03-36

### 75-03-36-01. Definitions - Application.

1. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-12. In addition, as used in this chapter:
  - a. "Adoption disruption" means an interruption of an adoption prior to finalization in which the child is returned to foster care or placed with another family.
  - b. "Adoption services" is a coordinated program of services for the child, the child's birth parents, and the adoptive applicants and adoptive parents.
  - c. "Authorized agent" means the county social service board, unless another entity is designated by the department.
  - d. "Department" means the North Dakota department of human services.
  - e. "Family foster home" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee of the home to no more than four children, unless all the children in foster care are related to each other by blood or marriage or unless the department approves otherwise for the placement of siblings, in which case the limitation in this subsection does not apply. For the purposes of this subsection, foster care for children applies to those agencies placing children that are in the custody of a county, a tribe, or the state in family foster homes.
  - d.f. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family.
  - e.g. "Legal risk adoptive placement" means placement of a child with a prospective adoptive family when the child is not legally free for adoption.
  - f.h. "Life book" means a tool used with children in out-of-home care and children who have been adopted to record memories and life events as they move to different placements.
  - g.i. "Permanent adoption record" means all paper, records, and identifying and nonidentifying information related to an adopted individual, birth siblings, birth parents, or adoptive parents which pertains to an adoption.
  - h.j. "Regional supervisor" means the regional supervisor of county social services located in each of the eight regional human service centers.
  - i.k. "Resident child-placing agency" means a child-placing agency that maintains an office within this state.
2. In these rules, the requirements for licensure for a child-placing agency apply to a new application for licensure as well as to an application for relicensure unless the context otherwise specifically implies.

**History:** Effective April 1, 2010; amended effective April 1, 2016.

**General Authority:** NDCC 50-12-05

**Law Implemented:** NDCC 50-12

### 75-03-36-12. Employee background checks.

1. Criminal history record investigations and child abuse and neglect index investigations must be completed for all child-placing agency employees who have direct contact with clients. The investigations must be completed prior to an employee's unsupervised contact with clients.
2. Criminal history record investigations must be a fingerprint-based check completed against a national database.
3. Child abuse and neglect index investigations must be obtained from each state where the applicant has resided in the past five years. After the initial investigation, a child abuse and neglect index investigation must be repeated annually in this state and in the employee's state of residence for continued employment.
4. A subsequent criminal history record investigation is not required for an employee who maintains continuous employment at the child-placing agency unless the child-placing agency or the department determines that a need exists to conduct a subsequent investigation.
5. If an employee changes employment from one licensed child-placing agency to another licensed child-placing agency within a year of the completion of a criminal history record investigation and provides documentation of the individual's background check clearance, a new criminal history record investigation will not be required.

~~6. 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 April 1, 2010; amended effective April 1, 2016.

**General Authority:** NDCC 50-12-05

**Law Implemented:** NDCC 50-12

### 75-03-36-13. Criminal conviction - Effect on licensure.

1. A prospective adoptive parent or any adult living in the prospective adoptive parent home may not be approved for the adoption of a child, or a child-placing agency owner ~~or employee,~~ must not have been may not be known to have and a child-placing agency may not employ 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 12.1-16, homicide; 12.1-17, assaults; - threats, - coercion, - and - 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 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 ~~North Dakota statutes~~ 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.

(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 a 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 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 individual's ability to serve the public in a capacity as an adoptive home placement and as an owner or employee of a child-placing agency.

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 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. The department may deny a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

5. 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 nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

6. 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. Discovered by the child-placing agency, authorized agent, or department as a result of a background check.

7. A child-placing agency shall establish written policies and engage in practices that conform to those policies to effectively implement this section, and North Dakota Century Code sections 50-11.3-02 and 50-12-03.2.

8. A child-placing agency shall establish written policies specific to how the child-placing agency will proceed if a current employee or volunteer is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

**History:** Effective April 1, 2010; amended effective April 1, 2016.

**General Authority:** NDCC 50-12-05

**Law Implemented:** NDCC 50-12, 50-11.3

#### **75-03-36-14. Volunteers.**

1. A child-placing agency which utilizes volunteers who work directly with children and families on a regular basis shall:

- a. Develop a description of duties and specify responsibilities for volunteer positions;
  - b. Require personal references;
  - c. Designate a staff member to supervise and evaluate volunteers;
  - d. Develop a plan for orientation which includes education on the legal requirements for confidentiality, training in the philosophy of the agency, and the needs of children and families served by the child-placing agency;
  - e. Require that a volunteer sign a statement of confidentiality; and
  - f. Require each volunteer to successfully complete a criminal history record investigation and a child abuse and neglect index investigation, ~~the results of which do not disqualify the volunteer,~~ prior to allowing the volunteer to have unsupervised contact with children.
2. Volunteers may not be used in the place of full-time paid staff.

**History:** Effective April 1, 2010; amended effective April 1, 2016.

**General Authority:** NDCC 50-12-05

**Law Implemented:** NDCC 50-12

**75-03-36-26. Selection of interim care for child pending adoptive placement.**

1. The child-placing agency designated by the child's custodian or by the court shall select the most appropriate form of care for the child consistent with the child's needs.
2. The child-placing agency shall select care that has the capacity to assist in the achievement of the goal of permanency and shall make efforts as appropriate to involve the birth parents in the selection of care.
3. The child-placing agency may make a legal risk adoptive placement, prior to the termination of parental rights, into the home of a prospective adoptive parent of that child, provided that:
  - a. The prospective family home has been fully studied and recommended for adoption placement; and
  - b. ~~The legal risk adoptive placement is anticipated to be for less than thirty days; and~~
  - ~~c.~~ The prospective adoptive parents sign a document acknowledging that they understand the risk of the birth parent reclaiming the child and that the prospective adoptive parents will return the child to the child-placing agency upon the child-placing agency's request.

**History:** Effective April 1, 2010; amended effective April 1, 2016.

**General Authority:** NDCC 50-12-05

**Law Implemented:** NDCC 50-12

**TITLE 82**  
**BOARD OF TRUSTEES OF THE TEACHERS' FUND FOR RETIREMENT**



**APRIL 2016**

**CHAPTER 82-02-01**

**82-02-01-01. Definitions.**

Unless made inappropriate by context, all words used in this title have the meanings given to them under North Dakota Century Code chapter 15-39.1. The following definitions are not established by statute and apply for the purpose of this title:

1. "Acceptance of benefit" means the benefit payment date that is the first calendar day of each month for benefits paid by paper check or electronic funds transfer to a financial institution.
2. "Account balance" or "value of account" means the member's accumulated contributions or assessments, plus the sum of any member purchase or repurchase payments, plus interest at an annual rate of six percent compounded monthly.
3. "Administrative" means to manage, direct, or superintend a program, service, or school district or other participating employer.
4. "Benefit payment date" means the date the member is paid a benefit which is the first day of the month. Benefits may be paid retroactive to a member's retirement date.
5. "Benefit service credit" means employment service used to determine benefits payable under the fund.
- 5-6. "Bonus" means an amount paid to a member in addition to regular contract salary which does not increase the member's base rate of pay, is not expected to recur or continue in future fiscal years, or is not expected to be a permanent salary increase. A bonus is not considered eligible retirement salary and is not subject to payment of member and employer contributions.

Bonuses include the following:

- a. Recruitment or contract signing payments defined in North Dakota Century Code section 15.1-09-33.1.
- b. Retention, experience, or service-related payments.
- c. Early retirement incentive payments, severance payments, or other payments conditioned on or made in anticipation of a member's retirement or termination.
- d. Payments made to recognize or reward a member's accomplishments or service.
- e. Other special or irregular payments which the board determines to be bonuses using criteria and documentation described in section 82-04-02-01.

- ~~6-7.~~ "Cessation of employment" means severance or termination of employment.
- ~~7-8.~~ "Contributions" means the assessments or payments made to the fund.
- ~~8-9.~~ "Covered employment" means employment as a teacher in a North Dakota state agency, state institution, school district, special education unit, regional education association, or other governing body of a school district.
- ~~9-10.~~ "Covered payroll" means all amounts included in payroll, salary, or compensation paid to active members on which contributions to and benefits from the pension plan are based according to the definition of salary in subsection 10 of North Dakota Century Code section 15-39.1-04. Covered payroll may also be referred to as pensionable or eligible payroll, salary, compensation, or earnings.
- ~~11.~~ "Eligibility service credit" means employment service used to determine vesting and benefit eligibility for dual members and qualified veterans under the Uniformed Services Employment and Reemployment Rights Act of 1994. Eligibility service credit is not used for benefit calculation purposes.
- ~~10-12.~~ "Extracurricular services" means outside of the regular curriculum of a school district or other participating employer which includes advising, directing, monitoring, or coaching athletics, music, drama, journalism, and other supplemental programs.
- ~~11-13.~~ "Member" is a teacher as defined in North Dakota Century Code section 15-39.1-04 who is a participant in the fund.
- ~~12-14.~~ "Participating employer" means the employer of a teacher, including a North Dakota state agency, state institution, school district, special education unit, area career and technology center, regional education association, or other governing body of a school district who contributes to the teachers' fund for retirement.
- ~~13-15.~~ "Performance or merit pay" means an amount paid to a member pursuant to a written compensation plan or policy that links a member's compensation to attainment of specific performance goals and duties. The specific goals, duties, and performance measures under which performance pay is expected to be made must be determined in advance of the performance period and documented in writing. Performance or merit pay may be in addition to regular salary or may replace regular salary increases. Performance or merit pay is considered eligible retirement salary and subject to payment of member and employer contributions, unless the teachers' fund for retirement board determines the payments are ineligible salary using criteria and documentation described in section 82-04-02-01.
- ~~14-16.~~ "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent year.
- ~~15-17.~~ "Referee" means all sporting and nonsporting event judges and officials, including referees, umpires, line judges, scorekeepers, timekeepers, ticket takers, ushers, and other judges or officials.
- ~~16-18.~~ "Retirement date" means the date selected by the member to begin retirement benefits. The benefit is calculated as of the retirement date and can be no earlier than the first or fifteenth day of the month following eligibility for retirement benefits or the first day of the month following eligibility for disability or death benefits. Notwithstanding the foregoing a member's retirement will not be effective until the member accepts the first benefit payment.
- ~~19.~~ "Salary reduction or salary deferral amounts under 26 U.S.C. section 125, 132(f), 401(k), 403(b), or 457" means amounts deducted from a member's salary, at the member's option, to these plans. These reductions or deferrals are part of salary when calculating retirement



contributions. Employer contributions to plans specified in 26 U.S.C. section 125, 132(f), 401(k), 403(b), or 457 which are made for the benefit of the member will not be counted as retirement salary when calculating retirement contributions. Member contributions paid by the employer under IRC section 414(h) pursuant to a salary reduction agreement do not reduce salary when calculating retirement contributions.

- 17.20. "Special teachers" include licensed special education teachers, guidance and school counselors, speech ~~therapists~~ and language pathologists, social workers, school psychologists, librarians, ~~audio—visual—or—media~~ coordinators ~~specialists~~, technology coordinators, program coordinators, and other staff members licensed by the education standards and practices board provided they are under contract with a school district or other participating employer to provide teaching, supervisory, administrative, or extracurricular services.
- 18.21. "Supervisory" means to have general oversight or authority over students or teachers, or both, of a school district or other participating employer.
- 19.22. "Teaching" means to impart knowledge or skills to students or teachers, or both, by means of oral or written lessons, instructions, and information.
- 20.23. "Vested" means the status attained by a teacher when the teacher has earned three years of service credit for a tier one member or five years of service credit for a tier two member for covered employment in this state.
- 21.24. "Written agreement" means a teaching contract, school board minutes, or other official document evidencing a contractual relationship between a teacher and participating employer.

**History:** Effective September 1, 1990; amended effective May 1, 1992; May 1, 1998; May 1, 2000; May 1, 2004; July 1, 2008; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1, ~~15-39.1-04~~, ~~15-39.1-07~~

## CHAPTER 82-03-01

### 82-03-01-06. Veterans' rights.

A member may be entitled to eligibility service credit for military service under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301 et seq.] provided that the member received an honorable discharge and had the member's North Dakota teaching service interrupted by military duty after December 31, 1994. Interruption of service requires the member to enter military service within ninety days of leaving covered teaching employment and reenter covered employment within ninety days of the member's honorable discharge. Notwithstanding the preceding sentence, ~~a member who dies or becomes disabled (under the terms of the plan) while performing USERRA qualified military service~~effective for deaths occurring on or after January 1, 2007, ~~shall be treated as if the~~ member ~~has~~dies while performing qualified military service (as defined in the Internal Revenue Code section 414(u)(5)), the fund shall provide all applicable benefits required in accordance with Internal Revenue Code section 401(a)(37), as if the member had resumed covered employment in accordance with USERRA on the day preceding death ~~or disability~~ and terminated employment ~~on~~as of the actual date of death ~~or disability~~. For benefit calculation purposes, the fund will treat a member who dies or becomes disabled (as defined under the terms of the fund) while performing qualified military service as if the member resumed employment in accordance with the member's reemployment rights under USERRA on the day preceding death or disability and terminated employment on the actual date of death or disability. A member eligible to receive military credit under USERRA will have the service credit recognized for vesting and benefit eligibility purposes.

In addition to having the service credit recognized for vesting and benefit eligibility purposes, at the member's option, a member eligible to receive military credit under USERRA may pay an amount calculated by the fund to allow the credit to be used for benefit calculation purposes. A member may purchase up to five years of military credit and must apply for and complete the purchase prior to retirement. The member must provide a copy of the member's military discharge papers (DD214) as proof of eligibility. The timeframe to purchase military service under USERRA begins with reemployment and is equal to three times the length of the military service but may not exceed five years.

The cost to purchase USERRA military credit for benefit calculation purposes is the member and employer contributions required under North Dakota Century Code section 15-39.1-09 had the member's employment not been interrupted by military service. The member contributions must be applied to the member's annual salary at the time of the military leave. The member contributions must be paid by the member if the employer is withholding contributions under a salary reduction plan. If the employer is paying all of the member contributions ~~in lieu of~~as a salary increase supplement, the employer is responsible for payment of any member contributions owed. If the employer is paying a portion of the member contributions ~~in lieu of~~as a salary increase supplement, both the member and employer are responsible for payment of the member contributions. The employer is required to pay the employer contributions. No interest is charged if the credit is purchased within the timeframe allowed under USERRA.

Effective January 1, 2009, ~~any employee receiving a differential wage payment on account of military service shall be treated as an employee of the employer making the payment and the payment shall be treated as~~ compensation shall include military differential wage payments, as defined in Internal Revenue Code section 3401(h), for purposes of calculation of contributions and benefits.

If the credit is not purchased within the USERRA timeframe, the cost becomes the responsibility of the member and six percent interest is charged beginning with the date the USERRA timeframe elapsed.

**History:** Effective May 1, 1992; amended effective May 1, 1998; May 1, 2000; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-24, 15-39.2-01.2; 26 USC 401(a)(37), 26 USC 414(u)(12)(A)

**82-03-01-08. Dual membership - Receipt of retirement benefits while contributing to the public employees retirement system or the highway patrolmen's retirement system.**

1. Dual members may select one of the following options at retirement eligibility:
  - a. Begin receiving retirement benefits from one plan prior to ceasing employment covered by the alternate plan, unless the continued employment is with the same employer.
  - b. Begin receiving retirement benefits from one plan and begin work in a job covered by the alternate plan if for a different employer.
  - c. Continue participating as a dual member and begin receiving retirement benefits from both plans after ceasing employment.
2. The following limitations apply when a member elects an option under subsection 1:
  - a. Eligible service credit may be used for vesting purposes and determining when the dual member may begin drawing normal retirement benefits. A member may begin drawing retirement benefits from one fund and use the same years, and any additional years, for reaching retirement from the alternate fund so long as service credit does not exceed one year in any fiscal year.
  - b. If a dual member elects to receive retirement benefits as provided in subdivision a or b of subsection 1, the final average salary, service credit, and member's age used to calculate the benefit that is applicable at the time retirement benefits begin may not be adjusted after the benefit effective date.
  - c. The salary used in calculating the retirement benefit must be ~~certified~~provided in writing by the alternate retirement system.

**History:** Effective May 1, 2004; amended effective April 1, 2016.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-10.3

**CHAPTER 82-05-03  
PAYMENT OF BENEFITS**

Section

- 82-05-03-01      When Benefit Payments Begin - Direct Deposit
- 82-05-03-02      Death Benefits - Proof of Death
- 82-05-03-03      Overpayment of Retirement Benefits - Write-Offs

**82-05-03-03. Overpayment of retirement benefits - Write-offs.**

If the cost of recovering the amount of the overpayment of retirement benefits is estimated to exceed the overpayment, the teachers' fund for retirement board may consider the repayment to be unrecoverable and written off.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-29, 15-39.1-31

## CHAPTER 82-05-04

### 82-05-04-01. Actuarial factors - Early retirement.

In determining early retirement benefits under North Dakota Century Code section 15-39.1-12, the benefits to which a member is entitled shall be reduced 0.5 percent for each month that the early retirement date precedes the first day of the month coincident with or next following the earlier of the member's sixty-fifth birthday or the date at which current service plus the member's age will equal eighty-five for a tier one ~~grandfathered~~ member ~~or current service plus member's age will equal ninety~~ ~~for a~~. Effective July 1, 2013, for members who are either tier one nongrandfathered or tier two, in determining the early retirement benefit under North Dakota Century Code section 15-39.1-12, the benefits to which a member is entitled shall be reduced 0.6667 percent for each month that the early retirement date precedes the first day of the month coincident with or next following the earlier of the member's sixty-fifth birthday or the date at which current service plus the member's age will equal ninety, with a minimum age of sixty.

**History:** Effective September 1, 1990; amended effective May 1, 2000; July 1, 2008; April 1, 2016.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16, 15-39.1-24

### 82-05-04-02. Actuarial factors - Optional payment forms.

Under North Dakota Century Code section 15-39.1-16, the actuarial factors used to determine benefit amounts under the optional joint and survivor, term certain and life, partial lump sum and level income forms of annuity payment shall be based on the following actuarial assumptions:

1. Interest rate - ~~8.00~~7.75 percent per year, compounded annually.
2. Member's mortality (used for nondisabled members) - ~~a~~A mortality table constructed by blending ~~forty~~thirty-three percent of the mortality rates under the 1983 group annuity mortality table RP-2014 male "combined" table, employee and healthy annuitant tables for males, ~~without margins, setback four years adjusted and projected to 2017 using projection scale MP-2014, set back one year,~~ with ~~sixty~~sixty-seven percent of the mortality rates under the ~~1983 group annuity mortality table~~RP-2014 female "combined" table, employee and healthy annuitant tables for females, ~~without margins, setback three years adjusted and projected to 2017 using projection scale MP-2014, set back one year.~~
3. Beneficiary's mortality - ~~a~~A mortality table constructed by blending ~~sixty~~sixty-seven percent of the mortality rates under the ~~1983 group annuity mortality table~~RP-2014 male "combined" table, employee and healthy annuitant tables for males, ~~without margins, setback four years adjusted and projected to 2017 using projection scale MP-2014, set back one year,~~ with ~~forty~~thirty-three percent of the mortality rates under the ~~1983 group annuity mortality table~~RP-2014 female "combined" table, employee and healthy annuitant tables for females, ~~without margins, setback three years adjusted and projected to 2017 using projection scale MP-2014, set back one year.~~
4. Disabled member's mortality - ~~a~~A mortality table constructed by blending ~~forty~~thirty-three percent of the mortality rates under ~~pension benefit guaranty corporation table~~ Va ~~the~~ RP-2014 disabled mortality table for ~~disabled~~ males, set forward four years, with ~~sixty~~sixty-seven percent of the mortality rates under ~~pension benefit guaranty corporation table~~ Va ~~the~~ RP-2014 disabled mortality table for ~~disabled~~ females, set forward four years.

In addition, the above actuarial assumptions shall be used to determine actuarial equivalence for other purposes not covered by sections 82-05-04-01, 82-05-04-03, and 82-05-04-04, such as the determination of the reduction to a member's benefit because of the existence of a qualified domestic relations order.

**History:** Effective May 1, 2000; amended effective May 1, 2004; July 1, 2008; [April 1, 2016](#).

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16, 15-39.1-24

**82-05-04-04. Actuarial factors - Purchase of service.**

Whenever the North Dakota Century Code permits a member to purchase service on an actuarially equivalent basis, the following actuarial assumptions shall be used:

1. Interest rate - ~~8.00%~~7.75% percent per year, compounded annually.
2. Mortality rates - the same table specified in section 82-05-04-02 for nondisabled members.
3. Retirement - the member will be assumed to retire at the age at which the member is first eligible for an unreduced retirement benefit. Such unreduced retirement date will be determined taking into account any purchased service and assuming the member continues in full-time covered service.
4. Salary increase rate - Increases are assumed to occur once each year. The following table shows the increase rates indexed by the member's service (excluding any service being purchased):

Nearest Service at the Beginning of the Year	Percentage Increase at End of Year
0	<del>14.00%</del> <u>14.50%</u>
1	<del>8.00%</del> <u>7.75%</u>
2	<del>7.75%</del> <u>7.50%</u>
3	<del>7.50%</del> <u>7.25%</u>
4	<del>7.25%</del> <u>7.00%</u>
5	<del>7.00%</del> <u>6.75%</u>
6	<del>6.75%</del> <u>6.50%</u>
7	<del>6.50%</del> <u>6.25%</u>
<u>8-9</u>	<del>6.25%</del> <u>6.00%</u>
<del>9</del> <u>10-11</u>	<del>6.00%</del> <u>5.75%</u>
<del>10</del> <u>12-13</u>	<del>5.75%</del> <u>5.50%</u>
<del>11</del> <u>14-15</u>	<del>5.50%</del> <u>5.25%</u>
<del>12</del> <u>16-18</u>	<del>5.50%</del> <u>5.00%</u>
<del>13</del> <u>19-22</u>	<del>5.50%</del> <u>4.75%</u>
<del>14</del> <u>23-24</u>	<del>5.25%</del> <u>4.50%</u>
<del>15</del> <u>25 or more</u>	<del>4.50%</del> <u>4.25%</u>

**History:** Effective May 1, 2000; amended effective July 1, 2008; [April 1, 2016](#).

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16, 15-39.1-24

**TITLE 92**  
**WORKFORCE SAFETY AND INSURANCE**





APRIL 2016

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 ~~forty~~fifty dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at ~~seventy~~seventy-five dollars per hour.
2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to ~~eighty-five~~ninety dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at ~~forty~~forty-five 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. Three thousand ~~five~~six hundred ~~seventy~~seventy-five 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 ~~five~~seven hundred ~~seventy~~seventy-five 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. Six thousand ~~one~~four hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Eight thousand ~~two~~six hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.
  - e. ~~Nine~~Ten thousand ~~nine~~three hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. ~~Ten~~Eleven thousand ~~eight~~three hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.
  - f. One thousand ~~six~~seven 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; [April 1, 2016](#).

**General Authority:** NDCC 65-02-08, 65-02-15

**Law Implemented:** NDCC 65-02-08, 65-02-15, 65-10-03

**92-01-02-14. Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.**

1. The organization shall bill each employer annually for premiums as provided by North Dakota Century Code chapter 65-04. If an employer has an open account with the organization, the organization may send to the employer annually a form on which the employer shall report payroll expenditures from the preceding payroll year. An electronic report of payroll information in a format approved by the organization is acceptable. The employer shall complete the report and send it to the organization either by regular mail or electronic transmission. The report must be received by the organization by the last day of the month following the expiration date of the employer's payroll period. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report.
2. The organization shall send the first billing statement to the employer by regular mail to the employer's last-known address or by electronic transmission. The first billing statement must identify the amount due from the employer ~~and the payment due date~~. The statement must explain the installment payment option. The payment due date for an employer's account is thirty days from the date of billing ~~indicted~~[indicated](#) on the premium billing statement. If a previous delinquency exists on the employer account, the billing statement indicates a past-due status.
3. If the organization does not receive full payment or the minimum installment payment indicated on the premium billing statement, on or before the payment due date, the organization shall send a second billing statement.
4. If the minimum installment payment remains unpaid thirty days after the organization sends the second billing statement to the employer, the organization shall notify the employer by regular mail to the employer's last-known address or by electronic transmission that:

- a. The employer is in default and may be assessed a penalty of two hundred fifty dollars plus two percent of the amount of premium, penalties, and interest in default;
  - b. The employer's account has been referred to the collections unit of the policyholder services department; and
  - c. Workforce safety and insurance may cancel the employer's account.
5. The organization may extend coverage by written binder if the organization and the employer have agreed in writing to a payment schedule on a delinquent account. If the employer is in default of the agreed payment schedule, however, that employer is not insured.
  6. If the employer's payroll report is not timely received by the organization, the organization shall notify the employer, by electronic transmission or regular mail addressed to the last-known address of the employer of the delinquency. The notification must indicate that the organization may assess a penalty of up to two thousand dollars against the employer's account.
  7. If the payroll report is not received within forty-five days following the expiration of the employer's payroll year, the organization shall assess a penalty of fifty dollars. The organization shall notify the employer by electronic transmission or regular mail addressed to the employer's last-known address that the employer is uninsured.
  8. At any time after sixty days following the expiration of the employer's payroll year, when the employer has failed to submit a payroll report, the organization may bill the employer at the wage cap per employee using the number of employees reported per rate classification from a previous year of actual or estimated payroll reported to the organization. The organization may also bill an employer account using data obtained from job service North Dakota to bill an employer who has failed to submit a payroll report. An employer whose premium has been calculated under this subsection may submit actual wages on an employer payroll report for the period billed and the organization shall adjust the employer's account. The organization may also cancel the employer's account.
  9. If the organization receives an employer payroll report more than sixty days after the expiration of the employer's payroll period, the employer's premium billing statement may have a past-due premium billing due date. Any employer account billed without benefit of the employer payroll report may have a past-due premium billing due date.
  10. If the employer does not have an open account with the organization, the organization shall send the employer an application for coverage by regular mail or by electronic transmission. The organization shall notify the employer of the penalties provided by North Dakota Century Code chapter 65-04 and this section.
  11. Upon receipt of an incomplete or unsigned payroll report, the employer shall submit the completed payroll report within fifteen days of the organization's request. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report. If the payroll report is not timely received by the organization, the organization may assess a penalty of up to two thousand dollars and shall notify the employer that the employer is uninsured.

**History:** Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002; March 1, 2003; July 1, 2006; April 1, 2009; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 65-02-08, 65-04-33

**Law Implemented:** NDCC 65-04-33

## 92-01-02-18. Experience rating system.

The following system is established for the experience rating of risks of employers contributing to the fund:

1. Definitions. In this section, unless the context otherwise requires:
  - a. "Three-year losses" means the total sum of ratable losses accrued on claims occurring during the first three of the four years immediately preceding the premium year being rated.
  - b. "Three-year payroll" means the total sum of limited payroll reported for the first three of the four years immediately preceding the premium year being rated.
  - c. "Three-year premium" means the total sum of earned premium for the first three of the four years immediately preceding the premium year being rated.
  - d. "Manual premium" means the actual premium, prior to any experience rating, for the premium year immediately preceding the premium year being rated for claims experience.
2. An employer's account is not eligible for an experience rating until the account has completed three consecutive payroll periods and has developed aggregate manual premiums of at least fifteen thousand dollars for the rating period used in developing the experience modification factor.
3. For accounts with ratable manual premium of fifteen thousand dollars or more:
  - a. The experience rating must be applied prior to the inception of each premium year for all eligible accounts. A claim is deemed to occur in the premium year in which the injury date occurs.
  - b. The experience modification factor (EMF) to be applied to the current estimated portion of an employer's payroll report is computed as follows:
    - (1) Calculate the actual primary losses ( $A_p$ ), which consist of the sum of those three-year losses, comprising the first ~~ten~~fifteen thousand dollars of each individual claim.
    - (2) Calculate the actual excess losses ( $A_e$ ), which consist of the sum of those three-year losses in excess of the first ~~ten~~fifteen thousand dollars of losses of each individual claim, limited to the maximum loss amount contained in the most recent edition of North Dakota workforce safety and insurance rating plan values which is hereby adopted by reference and incorporated within this subsection as though set out in full.
    - (3) Calculate the total expected losses ( $E_t$ ), which are determined by adding the products of the actual payroll for each year of the three-year payroll times the class expected loss rate for each year. The class expected loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.
    - (4) Calculate the expected excess losses ( $E_e$ ), which are determined by adding the products of the actual payroll for each year of the three-year payroll times the class expected excess loss rates. The class expected excess loss rates, taking into

consideration the hazards and risks of various occupations, must be those contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

- (5) Calculate the "credibility factor" (Z) based on the formula that is contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.
- (6) The experience modification factor is then calculated as follows:
  - (a) Calculate the "ballast amount" (B) which is contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.
  - (b) Add the actual primary losses to the product of the actual excess losses times the credibility factor.
  - (c) To this sum add the product of the expected excess losses times the difference between one dollar and the credibility factor.
  - (d) To this sum add the ballast amount (B).
  - (e) Divide this total sum by the sum of the total expected losses plus the ballast amount (B).

The resulting quotient is the experience modification factor to be applied in calculating the estimated premium for the current payroll year.

- (7) The formula for the above-mentioned calculation is as follows:

$$EMF = \frac{A_p + (Z \times A_e) + [(1.00 - Z) \times E_e] + B}{E_t + B}$$

4. Small account credit or debit program. Accounts that fall below the eligibility standard for experience rating outlined in subsection 2 are subject to the small account credit or debit program. The rating period and ratable losses used to determine eligibility for the small account credit or debit program are the same as those used for the experience rating program outlined above. The amount of the credit or debit will be determined annually in conjunction with the development of rating plan values for the prospective coverage period.
5. The organization shall include any modification to the North Dakota workforce safety and insurance rating plan values in its ratemaking process pursuant to North Dakota Century Code section 65-04-01.

**History:** Effective June 1, 1990; amended effective July 1, 1993; July 1, 1994; April 1, 1997; July 1, 2001; July 1, 2006; July 1, 2009; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 65-02-08, 65-04-17

**Law Implemented:** NDCC 65-04-01

#### **92-01-02-24. Rehabilitation services.**

1. When an employment opportunity suited to an employee's education, experience, and marketable skills is identified within thirty-five miles [56.33 kilometers] from the employee's



home, the appropriate priority option must be identified as return to related occupation in the local job pool under subdivision e of subsection 4 of North Dakota Century Code section 65-05.1-01, and relocation expense under subsection 3 of North Dakota Century Code section 65-05.1-06.1 may not be paid.

2. The organization may award services to move an employee's household where the employee has actually located work under subdivision e of subsection 2 of North Dakota Century Code section 65-05.1-06.1 only when the employee identifies the job the employee will perform, the employee's employer, and the employee's destination. A relocation award must be the actual cost of moving the household to the location where work has been obtained. A minimum of two bids detailing the costs of relocation must be submitted to the organization for approval prior to incurring the cost. The organization shall pay per diem expenses, as set forth under subsection 2 of North Dakota Century Code section 65-05-28, for the employee only. Reimbursement for mileage expenses may not be paid for more than one motor vehicle.
3. When the rehabilitation award is for retraining, the organization shall pay the actual cost of books, tuition, and school supplies required by the school. The school must provide documentation of the costs necessary for completion of the program in which the employee is enrolled. Reimbursable school costs may not exceed those charged to other students participating in the same program. The award for school supplies may not exceed twenty-five dollars per quarter or thirty dollars per semester unless the employee obtains prior approval of the organization by showing that the expenses are reasonable and necessary. A rehabilitation award for retraining may include tutoring assistance to employees who require tutoring to maintain a passing grade. Payment of tutoring services will be authorized when these services are not available as part of the training program. The award for tutoring services may not exceed the usual and customary rate established by the school. Expenses such as association dues or subscriptions may be reimbursed only if that expense is a course requirement.
4. An award for retraining which includes an additional rehabilitation allowance as provided in subdivision b of subsection 2 of North Dakota Century Code section 65-05.1-06.1 may continue only while the employee is actually enrolled or participating in the training program.
5. An award of a specified number of weeks of training means training must be completed during the specified period of weeks, and rehabilitation benefits may be paid only for the specified number of weeks of training.
6. The organization may reimburse an employee's travel and personal expenses for attendance at an adult learning center or skill enhancement program at the request of the employee and upon the approval of the organization. All claims for reimbursement must be supported by the original vendor receipt, when appropriate, and must be submitted within one year of the date the expense was incurred. The organization shall reimburse these expenses at the rates in effect on the date of travel or the date the expense was incurred at which state employees are paid per diem and mileage, or reimburse the actual cost of meals and lodging plus mileage, whichever is less. The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. The number of miles actually traveled is rebuttably presumed to be the least number of miles listed by MapQuest at [www.mapquest.com](http://www.mapquest.com) between the start and end points of travel. The organization may not reimburse mileage or travel expenses when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage in a calendar month equals or exceeds two hundred miles [321.87 kilometers].
7. The organization may pay for retraining equipment required by an institution of higher education or an institution of technical education on behalf of a student attending that institution. The organization will award retraining candidates one thousand two hundred

dollars for the purchase of computer, warranty, software, maintenance, and internet access. Securing and maintaining these items are the injured employee's responsibility. Failure to maintain or secure these items does not constitute good cause for noncompliance with vocational rehabilitation. Improper maintenance of the equipment does not constitute good cause for noncompliance with vocational rehabilitation.

**History:** Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; February 1, 1998; May 1, 2002; July 1, 2006; July 1, 2010; April 1, 2012; April 1, 2016.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05.1

### **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 guidelines, coverage, concurrent billing 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. "Debilitating side effects" means an adverse effect to a treatment or medication which in and of itself precludes return to employment or participation in vocational rehabilitation services.



7. "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.
- ~~7-8.~~ "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.
- ~~8-9.~~ "Fee schedule" means the publication entitled "Workforce Safety and Insurance Medical and Hospital Fees".
- ~~9-10.~~ "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.
11. "Improved pain control" means the effectiveness of a treatment or medication which results in at least thirty percent reduction in pain scores.
12. "Increase in function" means the effectiveness of a treatment or medication which results in either a resumption of activities of daily living, a return to employment, or participation in vocational rehabilitation services.
- ~~10-13.~~ "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.
- ~~11-14.~~ "Managed care vendor" means an organization that is retained by the organization to provide managed care services.
- ~~12-15.~~ "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.
- ~~13-16.~~ "Medical service provider" means a ~~doctor,~~ health care provider, hospital, medical clinic, or vendor of medical services.
- ~~14-17.~~ "Medically stationary" means the "date of maximum medical improvement" as defined in North Dakota Century Code section 65-01-02 has been reached.
- ~~15-18.~~ "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.
- ~~16-19.~~ "Palliative care" means a medical service rendered to alleviate symptoms without curing the underlying condition.
- ~~17-20.~~ "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.

- | ~~18.21.~~ "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.
- | ~~19.22.~~ "Remittance advice" means the form used by the organization to inform payees of the reasons for payment, reduction, or denial of medical services.
- | ~~20.23.~~ "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.
- | ~~21.24.~~ "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.
- | ~~22.25.~~ "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.
- | ~~23.26.~~ "Utilization review department" means the organization's utilization review department.
- | ~~24.27.~~ "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; [April 1, 2016](#).

**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 and dispensed and processed according to the current pharmacy transaction standard. 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, hot 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.
- j. Spine strengthening program (MedX).

- ~~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; April 1, 2016.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

#### **92-01-02-29.4. 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.
10. Modifications will only be considered upon receipt of documentation establishing injured employee's ownership of the residence to be permanently modified.
11. Modifications within new construction will be considered upon receipt of the original floor plan/specifications and cost estimate, as well as the modified floor plan and cost estimate.

**History:** Effective April 1, 2012; amended effective April 1, 2014; April 1, 2016.

**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.
  - 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.
- u. Massage therapy. No more than eighteen treatments of thirty-minute duration may be paid for the life of the claim. 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 workers and providers.
- v. Acupuncture therapy. No more than twelve treatments may be paid for the life of the claim. 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 workers and providers.



w. Speech therapy if more than thirty visits per year are required.

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. The organization may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting.
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.
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.

10. The organization must notify provider associations of the review requirements of this section prior to the effective date of these rules.
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; [April 1, 2016](#).

**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 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. 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 national provider identifier (NPI); physician assistant's North Dakota state license or certification number; physical therapist's North Dakota state license number; or advanced practice registered nurse's NPI or North Dakota state license number;
  - i. Referring or ordering physician's NPI;
  - 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, provider's national provider identifier (NPI); 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; [April 1, 2016](#).

**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

#### **92-01-02-48. Elements of filing.**

1. For purposes of this section, unless the context otherwise requires:
  - a. "Appropriate record" means a legible medical record or report from a provider, or any other relevant and material information, substantiating the type, nature, extent, and work-relatedness of an injury, which is adequate to verify the level, type, and extent of services provided.
  - b. "Bill" means a provider's statement of charges and services rendered for treatment of a work-related injury.
  - c. "Bill review" means the review or audit of medical bills and any associated medical records by workforce safety and insurance and may include review for duplications,

omissions, actual delivery of billed services and items, accuracy of charges and associated coding, and improper concurrent bills for services involving evaluation or treatment of work-related and non-work-related problems.

- d. "Wage verification" means federal and state income tax returns; W-2 forms; daily, weekly, biweekly, semimonthly, or monthly employer payroll statements; and income statements prepared in accordance with generally accepted accounting practices.
2. The elements of filing for an application for workers' compensation benefits are satisfied when the organization has received:
    - a. The first report of injury form completed and signed by the employee or the employer, or if the employer's report is deemed admitted pursuant to North Dakota Century Code section 65-01-16 ~~and signed by the provider~~;
    - b. Wage verification as requested by the organization, if disability benefits are claimed; and
    - c. Appropriate records from the provider necessary to determine the type, nature, extent, and potential work-relatedness of the injury or disability.
  3. The elements of filing for a reapplication are satisfied when the organization is in receipt of:
    - a. The C4 form or other correspondence requesting benefits signed by the employee;
    - b. Wage verification as requested by the organization, if disability benefits are claimed; and
    - c. Appropriate records from the provider.
  4. The elements of filing for payment of a medical bill are satisfied when a bill review is completed and after the organization has received:
    - a. A bill from the provider or employee; and
    - b. Appropriate records from the provider or employee.
  5. If the organization requests additional information from the employee needed to process a reapplication and the employee does not provide the information, elements of filing are not satisfied until the employee provides the requested information.
  6. The organization may waive elements of filing in conjunction with programs established for the expedited processing of selected claims.

**History:** Effective January 1, 1994; amended effective January 1, 1996; April 1, 1997; February 1, 1998; January 1, 2000; July 1, 2006; [April 1, 2016](#).

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-08

#### **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 forty dollars per hour.~~ Reimbursement will be considered only 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. Attorney fees and costs will be paid as set forth in section 92-01-02-11.1. If the other state has an appeal process that differs from the organization, in its sole discretion, will pay fees consistent with, but may not exceed the fees and caps set forth in section 92-01-02-11.1.

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; [April 1, 2016](#).

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-08.1-02, 65-08.1-05

**92-01-02-53. Workforce safety and insurance scholarship fund - Application criteria - Refund.**

An applicant for a workers' compensation scholarship offered under [North Dakota Century Code](#) section 65-05-20.1 must complete the application form required by the organization. [The form, at a minimum, must require the applicant provide:](#)

- [1. Name, address, date of birth, sex, social security number;](#)
- [2. Educational history, including transcripts if requested;](#)
- [3. SAT/ACT scores or other institutionally accepted testing program;](#)
- [4. Proof of association to the organizational claim leading the application;](#)
- [5. Access to receive information regarding other financial aid or assistance; and](#)
- [6. Any other information the organization requires to administer this program.](#)

The scholarship committee will use the information on the application form to determine which applicants receive the scholarship and may require an applicant to submit additional supporting information. The minimum required grade point average is a two point zero on a four point zero scale, or its equivalent. The organization may award individual scholarships in any amount up to the maximum amounts provided in North Dakota Century Code section 65-05-20.1. Applicants who are awarded the scholarship one year must reapply to receive the scholarship in a subsequent year. If the amount awarded to the applicant is greater than the amount owed the institution over the course of the school year, the excess award must be refunded to the organization. If the applicant who is awarded a scholarship withdraws from the institution and there are scholarship funds to be refunded, the institution shall refund those funds to the organization according to the refund priorities of the institution.

**History:** Effective August 1, 1997; amended effective May 1, 2000; July 1, 2006; [April 1, 2016](#).

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05-20.1



## CHAPTER 92-01-04

### 92-01-04-02. Applicability of statutes and other regulations - Risk management program requirements.

Unless otherwise provided by statute or rule, if the department has elected to provide modified workers' compensation coverage to inmates working in a prison industries work program, North Dakota Century Code title 65 and North Dakota Administrative Code articles 92-01, 92-02, and 92-05 apply. The department shall disclose to the organization the name of any business or entity with whom the department contracts to establish a prison industries work program for purposes of allowing the organization and the risk management fund the opportunity to assess the loss prevention practices of that business or entity to ensure minimal risk to inmates working in a prison industries work program. ~~The department shall annually provide to the organization documentation of excess coverage or reinsurance.~~

**History:** Effective May 1, 1998; [amended effective April 1, 2016](#).

**General Authority:** NDCC 65-02-08, 65-06.2-06

**Law Implemented:** NDCC 65-06.2-04, 65-06.2-05, 65-06.2-06

### 92-01-04-03. Classification of inmates - Costs of administration.

Inmates working in a prison industries work program are in a single classification under ~~roughrider industries~~ [the workforce safety and insurance account for state entities under North Dakota Century Code section 65-04-03.1](#). The account for this classification will be billed an annual amount equal to the organization's minimum premium charge established under section 92-01-02-20 to cover the expense of issuing coverage. The department shall annually reimburse to the organization all allocated loss adjustment expenses, including all claim benefit costs, and all administrative expenses, incurred in the classification during the preceding year [to the extent not covered by any program of excess coverage or reinsurance](#). The organization will calculate and charge to roughrider industries a cost of claims administration so that the ratio of the administrative charge to allocated loss adjustment expenses in the classification is equal to the ratio of the organization's overall administrative expenses to total allocated loss adjustment expenses.

**History:** Effective May 1, 1998; [amended effective April 1, 2016](#).

**General Authority:** NDCC 65-02-08, 65-06.2-06

**Law Implemented:** NDCC 65-06.2-04, 65-06.2-06



**TITLE 99**  
**STATE GAMING COMMISSION**



APRIL 2016

ARTICLE 99-01.3  
GAMES OF CHANCE

Chapter

99-01.3-01	Organization Licenses and Local Permits
99-01.3-02	General Rules
99-01.3-03	Accounting Rules
99-01.3-04	Bingo
99-01.3-04.1	<del>Electronic Quick Shot Bingo Card Marking Devices</del>
99-01.3-05	Raffles
<u>99-01.3-05.1</u>	<u>Fifty-Fifty Raffle Systems</u>
99-01.3-06	Pull Tabs, Club Special, Tip Board, Seal Board, Prize Board, and Punchboard
99-01.3-07	Sports Pools
99-01.3-08	Twenty-One
99-01.3-09	Poker
99-01.3-10	Calcuttas
99-01.3-11	Paddlewheels
99-01.3-12	Pull Tab Dispensing Devices
99-01.3-12.1	Prize Board Dispensing Devices
99-01.3-13	Bingo Card Dispensing Devices [Repealed]
99-01.3-14	Eligible Uses
99-01.3-15	Distributors
99-01.3-16	<del>Manufacturers of Pull Tabs, Paper Bingo Cards, Pull Tab Dispensing Devices, Bingo Card Marking Devices, Card Shuffling Devices, and Quick Shot Bingo Card Marking Devices</del>

CHAPTER 99-01.3-01

**99-01.3-01-01. Ineligible organizations.**

An organization or a closely related organization may be ineligible for a license or permit if either organization has failed to resolve an imbalance involving its gaming or trust account according to section 99-01.3-03-05, has deals or games with state gaming stamps that are not accounted for, is delinquent in paying any tax, interest, penalty, or monetary fine due, has failed to comply with the terms and conditions of an administrative order, or was convicted of violating this article or North Dakota Century Code chapter 12.1-28 or 53-06.1. An auxiliary that is not a closely related organization is eligible for a permit. An organization that is licensed ~~or issued a permit must~~shall either have its principal executive office in North Dakota or be a foreign corporation authorized to conduct a raffle under chapter 20.1-04 or 20.1-08. A county, city, state, political subdivision, or federal entity is not eligible for a license or permit. A nonprofit social, hobby, trade, business, professional, similar club or

association, or organization whose primary purpose mainly provides a direct benefit to its officers or members, is not a public-spirited organization eligible for a license.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01, 53-06.1-01.1

### **99-01.3-01-03. License.**

1. An organization may not conduct games at a site unless the attorney general first approves a site authorization and license for that city or county. A separate license is required for each city or county. For an initial application for a license for an organization that desires to be recognized as an eligible organization, the attorney general shall determine whether the organization qualifies by examining a copy of an organization's articles of incorporation, charter, bylaws, board of directors' minutes for the previous two years, or any other documents or records considered necessary to determine its primary purpose and date of origin. If the attorney general determines that an organization's actual primary purpose does not qualify it as an eligible organization, the attorney general shall deny the application.
2. A license is effective for one year beginning July first and ending June thirtieth and may be issued at any time during the fiscal year. However, the annual license fee is not prorated. If an organization plans to conduct a raffle on or after July first, a license ~~cannot~~may be issued ~~before January first~~up to twelve months prior to the beginning of the licensing period. If an organization received a charity local permit during the fiscal year, it may not receive a state license.
3. When an organization first applies for a license to conduct games of chance, the license may not be issued to the organization until after its gaming manager satisfactorily demonstrates to the attorney general that the organization is capable of properly managing and controlling the games that it intends to conduct.
4. If an organization only conducts a raffle or calcutta in two or more cities or counties, the organization may apply for a consolidated license prescribed by the attorney general and remit a one hundred fifty dollar license fee for each city or county in which a site is located.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-03

### **99-01.3-01-05. Permits.**

1. A permit is issued by a city or county governing body and may be for a site located on public or private property. It may be restricted, including types of games, days of the week, and designation of an area at a site where games will be conducted. A governing body may revoke or suspend a permit based on good cause.
2. A permit is required for each site at which games have been authorized. The primary prize under a permit may not exceed six thousand dollars and total prizes of all games may not exceed twelve thousand dollars per year. ~~However, the total cash prizes for raffles may not exceed four thousand dollars per day and no single cash prize can exceed four thousand dollars.~~ A donated merchandise prize is valued at its retail price.
3. When a governing body issues a permit, it shall assign a permit number, specify the day or period for which it is effective, identify the game types authorized, and send a copy to the

attorney general within fourteen days from when it was issued. An organization that has a license may not at the same time have a permit.

4. An organization may receive one or more local permits to conduct a raffle, bingo, or sports pool from a city or county governing body during a year and may be issued two or more local permits at the same time. For a calendar raffle, a local permit may be issued for a calendar year. If an organization plans to conduct a raffle, a permit may not be issued more than ~~six~~twelve months prior to the first raffle drawing date unless authorized by the attorney general.
5. An organization may receive one charity local permit to conduct a raffle, bingo, sports pool, paddewheels, twenty-one, or poker from a city or county governing board during a year. If the organization has received a local permit or license during the fiscal year, it may not receive a charity local permit. If the organization received a charity local permit during the fiscal year, it may not receive a local permit. For a charity local permit an organization shall within thirty days of the event file a report on a prescribed form with the attorney general and governing body.
6. For bingo, an organization shall comply with sections 99-01.3-04-01 and 99-01.3-04-02 and the applicable subsections of section 99-01.3-04-03. For a raffle, an organization shall comply with sections 99-01.3-05-01 through 99-01.3-05-05. For a sports pool, an organization shall comply with section 99-01.3-07-01. For twenty-one, an organization shall comply with sections 99-01.3-08-01, 99-01.3-08-02, 99-01.3-08-08, 99-01.3-08-09, 99-01.3-08-10, 99-01.3-08-11, and 99-01.3-08-12. For poker, an organization shall comply with ~~section~~sections 99-01.3-09-01 through 99-01.3-09-04. For paddewheels, an organization shall comply with subsection 1 of section 99-01.3-11-01 and the applicable subsections of section 99-01.3-11-02 if conducted with tickets, or subsection 2 of section 99-01.3-11-01 and the applicable subsections of sections 99-01.3-11-03 and 99-01.3-11-04, and section 99-01.3-11-05 if conducted as a table game.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-03, 53-06.1-06

## CHAPTER 99-01.3-02 GENERAL RULES

### Section

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99-01.3-02-12	Audit and Inspection of Facilities and Records [Repealed]
99-01.3-02-13	Denial, Suspension, or Revocation of a License

### 99-01.3-02-01. Definitions.

As used in this article:

1. "Attorney general" includes an agent of the attorney general.
2. "Bar" means retail alcoholic beverage establishment.
3. "Bar employee" is a person, employed by a bar that is not operated by an organization, who redeems winning pull tabs or prize boards, or both, involving a dispensing device or who sells raffle tickets or sports pool chances on a board for an organization.
4. "Bingo session" means a program of predetermined number of bingo games that are successively played. Intermissions may be included in the program. A session may not extend beyond a business day. However, any session in progress which continues past midnight must be considered played on the day the session began.
5. "Cash on hand" means coin, currency, and checks, plus an IOU due from another source of cash or nongaming funds, less an IOU owed to another source of cash or nongaming funds.
- ~~5.6.~~ "Cash prize" means coin, currency, marketable security, and a similar item that can be readily redeemed or converted into legal tender. Cash prize does not include precious metal bullion, a coin of precious metal or antique coin that has a market value greater than its face value, or a merchandise gift certificate. The value of a marketable security is its cost.
- ~~6.7.~~ "Cash profit" means:
  - a. For bingo and electronic quick shot bingo ~~card marking devices~~, total ending cash on hand, ~~which includes unredeemed credits for quick shot bingo card marking devices~~, less starting cash on hand and prizes paid by check, for a bingo session.
  - b. For a raffle, total receipts less prizes paid by cash and check.
  - c. For a commingled game of pull tabs, total ending cash on hand, less starting cash on hand and cash prizes paid by check, for a day's activity.
  - d. For a commingled game of pull tabs involving a dispensing device, total currency withdrawn from a dispensing device, less credit paid on a credit redemption register, cash long or short from an employee bank, and prizes paid, for an interim period.



- e. For a club special, tip board, seal board, and punchboard, the total daily difference between ending cash on hand and starting cash on hand and less prizes paid by check, for the game.
- f. For a prize board, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check and cost of coins, for the game.
- g. For a prize board involving a dispensing device, total currency withdrawn from a dispensing device, less total cash prizes paid, prizes paid by check, cost of coins, credit paid on a credit redemption register, and cash long or short from an employee bank, for the game.
- h. For a sports pool, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check.
- i. For twenty-one, and paddlewheels described by subsection 2 of section 99-01.3-11-01, total ending cash on hand, plus drop box cash, less total starting cash on hand, for a day's activity.
- j. For poker, total ending cash on hand, less starting cash on hand, less prizes paid by check, for a day's activity.
- k. For calcuttas, total ending cash on hand, less starting cash on hand, prizes paid by check, and refunds to players, for the event.
- l. For paddlewheels described by subsection 1 of section 99-01.3-11-01, total ending cash on hand, less starting cash on hand and prizes paid by check, for a paddlewheel ticket card.

7-8. "Conduct of games" means the direct operation of a game on a site, including placing pull tabs ~~in or~~ withdrawing currency from, and buying back redeemed winning pull tabs dispensed from a dispensing device. This term excludes a bar employee who redeems a winning pull tab or removes the seal on a prize board involving a dispensing device or who sells a raffle ticket or a sports pool chance on a board.

8-9. "Deal" in pull tabs means each individual game or series of pull tab packages which makes up a game with a specific form number and a unique serial number.

9-10. "Employee" includes a person employed by an organization, an employee of a temporary employment agency who provides gaming-related services to an organization, and a volunteer of an organization.

10-11. "Flare" refers to a flare or master flare as follows:

- a. Flare. A flare is a display with the state gaming stamp affixed which describes a punchboard, sports-pool board, calcutta board, deal of pull tabs, club special, tip board, prize board, ~~and~~ seal board, and raffle board. The flare for a punchboard is its face sheet. A flare for a sports-pool board, calcutta board, prize board, club special, tip board, ~~and~~ seal board, and raffle board is the game board.
- b. Master flare. A master flare for a game of pull tabs is the same as a "flare" but it does not have a state gaming stamp affixed. A master flare for paddlewheels is described by subsection 1 of section 99-01.3-11-02.

11-12. "Gaming equipment" means a game piece or device specifically designed for use in conducting games, including integral components of a dispensing device such as a currency validator, processing board, EPROM microchip or other data storage device, attached bar

code credit devices, and card shuffling devices. The term excludes fill and credit slips, promotional paper bingo cards, bingo daubers, video surveillance equipment, jar bars, jar containers, poker tables, raffle drums, double admission tickets, table covers, dealing shoes, discard holders, plungers, shoe and card covers, chip spacers, and weight scales.

~~42.13.~~ "Inside information" is any information about the status of a game when that game is conducted that may give a person an advantage over another person who does not have that information, regardless if the person uses or does not use the information, when providing that information is prohibited by the gaming law or rules. It includes information provided through written, verbal, or nonverbal communications that implies or expresses the number of unsold chances; relationship of a game's cash on hand to its ideal adjusted gross proceeds; number of unredeemed top tier or minor winning game pieces that is not posted, value of a hole card in twenty-one, number under the tape of a sports-pool board, or number under a seal.

~~43.14.~~ "Organization" in reference to a local permit includes a "group of people" working together for a public-spirited cause.

15. "Player" is an individual who purchases a game piece or places a wager in a game of chance. An organization may not be a player in any games of chance the organization is conducting.

~~44.16.~~ "Primary game" is the principal game conducted on a site. Determining factors include frequency of conduct, square footage used, duration of time conducted, and volume of activity.

~~45.17.~~ "Retail price" means the purchase price paid by an organization, excluding sales tax.

~~46.18.~~ "Volunteer" means a person who conducts games for no compensation. A volunteer may receive a gift not exceeding a total retail ~~value~~price of thirty dollars for a consecutive twenty-four-hour period, cash tips, and reimbursement for documented business expenses. No gift may be cash or convertible into cash. See definition of employee.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

### **99-01.3-02-02. Record check.**

1. An organization or distributor may not employ a person as a temporary or permanent "employee" until the organization or distributor has initiated a record check on the person, the person has independently requested a record check from the bureau of criminal investigation within one year before employment, or a person is not required to have a record check according to subsection 4. However, an organization or distributor may temporarily employ a person pending the results of a record check.
2. An organization or distributor shall initiate a record check of a person by submitting a "request for record check" form to the attorney general within ~~ten~~twenty-one calendar days of the first day of employment. If special circumstances exist, including an applicant residing out of state, the organization ~~must~~shall follow procedures prescribed by the attorney general. An organization or distributor may only request a record check of a person who has a written promise of employment or who is temporarily employed pending the result of the record check. A person shall attest to the accuracy of the information on the form and authorize the attorney general to release information on any criminal record found, including a copy of the bureau of criminal investigation's criminal history record information, to an organization or distributor which requested the record check.
3. For the purpose of this section, the definition of an "employee" is:

- a. A person who directly operates games on a site;
  - b. A person who is a shift or gaming manager;
  - c. A person who is employed by a bar that is not operated by an organization, and who is authorized by an organization under subsection 4 of section 99-01.3-12-02 to withdraw currency or a drop box from a pull tab dispensing device;
  - d. A person who places a deal of pull tabs in a dispensing device, removes currency from the device, or reimburses a bar for redeemed pull tabs;
  - e. A person who is a member of a drop box cash count team; or
  - f. A person who directly sells or distributes gaming equipment for a distributor.
4. These employees of an organization are not required to have a record check:
- a. A volunteer, except a gaming manager or person who is a member of a drop box cash count team;
  - b. An employee who is sixteen or seventeen years of age;
  - c. An employee who has an expired work permit and who continues to be employed by the same organization or distributor that the person was employed by when the work permit expired;
  - d. An employee who has had a record check done and, within one year of the record check, has become reemployed by the same organization or employed by a different organization, distributor, or bar than the person was employed by when the record check was done, and who provides the notification copy of a "request for record check" form and, if applicable, a copy of the bureau of criminal investigation's criminal history record information, to the new employing organization, distributor, or bar; or
  - e. An employee, other than a gaming manager, who only conducts a calcutta, raffle, poker, or sports pool or is employed by an organization that conducts games on no more than fourteen days during a calendar year.
5. The attorney general may require fingerprints of a person. A local law enforcement agency may charge a fee for taking fingerprint impressions.
6. The fee for a record check is fifteen dollars and is not refundable. However, if a federal agency or local law enforcement agency has done a record check, the attorney general may waive the fee. The fee must be remitted by an organization, distributor, or person with the request form.
7. The attorney general shall do the record check and provide a copy of the "request for record check" form to an organization or distributor which requested the record check and the person on whom the record check was done unless a federal or local law enforcement agency conducts a record check. This copy must indicate whether a criminal record was found or not found. If a criminal record is found, the attorney general shall also provide an organization or distributor and person with a copy of the bureau of criminal investigation's criminal history record information. An organization or distributor shall review this report to determine whether a person is eligible for employment as an employee according to subdivision a or b of subsection 5 of North Dakota Century Code section 53-06.1-06.
8. If a person is not eligible for employment but has been temporarily employed pending the results of a record check, an organization or distributor, within five days of receiving the copy

of the record check, shall terminate the person's employment. This period cannot be extended.

9. An organization or distributor shall retain the copy of a "request for record check" form and criminal history record information from the federal or local law enforcement licensing document for the time period prescribed by federal law.
10. If a person, while employed by an organization or distributor, pleads guilty to or has been found guilty of a felony or misdemeanor offense referenced by subdivisions a and b of subsection 5 of North Dakota Century Code section 53-06.1-06, the person ~~must~~shall immediately notify the organization or distributor. Upon notification, an organization or distributor, within five days, shall terminate the person's employment unless the person received a deferred imposition of sentence or deferred prosecution and has fully complied with the terms of the deferral.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-02-03. Restrictions and requirements.**

1. An employee shall wear an identification tag while working in the gaming area of a site. The tag must display a person's name, which may be the employee's middle name or a shortened form of a proper name, and first initial of the last name or the person's identification number, and organization's name. The tag must be worn on the upper one-third of a person's body. An organization shall provide an identification tag to a gaming employee and is responsible for ensuring that the tag is properly displayed.
2. An organization shall have the gaming law; chapter 99-01.3-02, general rules; chapter 99-01.3-03, accounting rules; and the rules chapter of each game type conducted at a site available in the gaming area for review by any person.
3. An organization shall have a policy manual on its conduct and play of games in the gaming area at a site available for review by any person. The manual must include policies for resolving a question, dispute, or violation of the gaming law or rules. The manual cannot include internal controls.
4. An organization's top official shall provide to the governing board and membership in writing, or by electronic publication method, each quarter information on an organization's adjusted gross proceeds; cash profit; cash long or short; net proceeds; excess expenses; reimbursement of excess expenses; and, for a fraternal, veterans, or civic and service organization, a list of eligible uses. If an administrative complaint is issued to an organization, the top official shall disclose the allegation, in writing, to the board within seven days from the date the complaint was received. If an allegation is substantiated, the top official shall disclose to the board, in writing, the allegation and sanction imposed within ninety days of the final disposition of the complaint. The organization shall disclose to the membership how they may obtain information on the quarterly gaming activity and any information regarding the final disposition of a complaint. This information and how it was provided to the governing board and membership must be included in an organization's records.
5. A person may not modify a state gaming stamp or flare, including a last sale prize. An organization may not, independent of a distributor, add or delete a last sale prize.
6. A person under the age of twenty-one may not conduct or play games, except bingo and raffles, and, at an alcoholic beverage establishment, may not be a member of a drop box cash

count team. An employee under the age of eighteen may not count drop box cash. A person under the age of sixteen may not conduct bingo. A person under the age of eighteen may not play electronic quick shot bingo or use a bingo card marking device that allows a player to purchase bingo cards with credits posted on the device to play bingo.

7. An organization may not pay any compensation, expense, or fee to an entity or person based on the number of participants for an event, or on a participatory or graduated rate of gross proceeds or adjusted gross proceeds for any game type conducted.

~~7.8.~~ An employee or a bar employee may not use inside information or provide inside information to any person.

~~8.9.~~ The attorney general may waive a rule when it is for the best interest of the gaming industry and public.

~~9.10.~~ If an organization does not plan to reapply for a license for the next licensing period or relinquishes a license, it shall return its unplayed games, with state gaming stamps, to the attorney general or distributor. An organization may not destroy an unplayed or unreported game without permission of the attorney general.

~~10.11.~~ When an organization disposes played deals of pull tabs, club specials, prize boards, tip boards, seal boards, ~~and~~ punchboards, and casino chips, the disposal method must assure complete destruction. When disposing of a dispensing device, the organization shall ensure that the device is rendered completely inoperable, which includes removing all electronics from the device.

~~11.12.~~ If an organization is forced to dispose of accounting records or game pieces damaged in a natural or extraordinary disaster, it shall document each item disposed and provide a copy of the documentation to the attorney general within fourteen days before the disposal.

13. Any incidence interrupting the operation or affecting the security or integrity of a fifty-fifty raffle system, site system with bingo card marking devices, or electronic quick shot bingo site operating system with card marking devices must be reported to the attorney general by the next business day from the date of occurrence.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-02-04. Equipment acquisitions and use.**

1. An organization shall procure gaming equipment only from a licensed distributor. However, an organization may:
  - a. Buy raffle tickets with a detachable stub from a printer ~~or~~, buy double roll tickets from any vendor, or construct a raffle board;
  - b. Buy, lease, or sell a used pull tab dispensing device from or to a distributor or another organization provided that a distributor records the transaction on a sales invoice;
  - c. Buy, sell, rent, lend, exchange, or give its own used playing cards, jar bar, jar container, twenty-one or poker table, video surveillance equipment, raffle drum, bingo hard cards, bingo daubers, bingo machine, flashboard, table cover, dealing shoe, discard holder, plunger, shoe and card cover, poker chips, chip tray, chip spacers, paddlewheel, ~~or~~ paddlewheel table, or weight scales from or to any organization. An organization may not sell or otherwise provide any of these particular items or any other item of gaming

equipment, except playing cards, to any other person unless approval is obtained from the attorney general; or

- d. Buy a twenty-one ~~or~~, paddlewheel, or poker table, and jar bar which has been designed and constructed by a carpenter provided that the table playing surface, ~~chip tray for twenty-one and paddlewheel tables~~, drop box, and any related gaming equipment is purchased from a distributor.
2. An organization may not use or knowingly permit its gaming equipment to be used for an illegal purpose.
3. An organization or an employee may not conduct or possess a deal of pull tabs, club special, tip board, seal board, raffle board, prize board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards unless its flare has a gaming stamp.
4. If an organization or distributor suspects that a deal of pull tabs, club special, tip board, prize board, or punchboard may be defective, the organization or distributor shall comply with guidelines prescribed by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-14

#### **99-01.3-02-05. Lessor and organization - Restrictions.**

1. A lessor's employee who is not the lessor's spouse, lessor's common household member, management, management's spouse, or lessor's employee or agent who approved the lease may conduct games at that site, including accessing a dispensing device, as an organization employee:
  - a. On a day when the employee is not working for the bar; or
  - b. On a day when the employee is working for the bar but is working in an area of the bar where alcoholic beverages are not dispensed or consumed.
2. No game may be directly operated as part of a lessor's business. However, a lessor may donate a gift certificate or cash or merchandise prize to an organization.
3. A lessor, lessor's spouse, lessor's common household member, management, management's spouse, officer, board of directors member, or lessor's employee or agent who approved the lease, may not:
  - a. Loan money or provide gaming equipment to an organization;
  - b. Interfere with or attempt to influence an organization's selection of games, determination of prizes, including a bingo jackpot prize, ~~or~~ disbursement of net proceeds, or influence the selection of a distributor to purchase gaming equipment from. However, a lessor may recommend an eligible use. If the lessor violates this rule, the attorney general may suspend any or all games at the site for up to six months;
  - c. Conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play any game at the lessor's site;



- d. Require an organization's employee to assist, for or without compensation, in a lessor's business at the site. However, an organization's employee may voluntarily order drinks for customers; or
  - e. Count drop box cash.
4. A lessor who is an officer or board member of an organization may not participate in the organization's decisionmaking that is a conflict of interest with gaming.
  5. Only an organization or its employee that has received approval from the attorney general or follows guidelines prescribed by the attorney general may buy a gift certificate or merchandise as a gaming prize from a lessor, or buy merchandise, food, or alcoholic or nonalcoholic drinks from the lessor for the lessor's employees or patrons. An organization's employee may patronize a lessor in the normal course of a lessor's business.
  6. An organization, employee, or bar may not give a free or discounted game piece, chip, or play of a game except for discounts allowed for bingo and raffle activity, or free or discounted alcoholic drink to a person to play a game. A lessor may at its own expense advertise gaming on promotional drink tickets.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-02-06. Rental agreement.**

1. A rental agreement must be signed and dated by a lessor and organization.
2. An agreement must contain:
  - a. Term of the agreement which must be on a fiscal year basis from July first to June thirtieth or, if a site authorization is for a shorter period, the term is for the shorter period. Except for a site where bingo is the primary game, an agreement may not exceed ~~three~~[five](#) years;
  - b. Monetary consideration;
  - c. The inclusion of this statement with proper selections made:
 

"The lessor agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab, pay a prize board cash prize, and award a prize board merchandise prize involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization";
  - d. If an organization provides a lessor with a temporary loan of funds for redeeming winning pull tabs or for paying prize board cash prizes involving a dispensing device, a statement that the lessor agrees to repay the entire loan immediately when the organization discontinues using a device at the site; and
  - e. Statements that:
    - (1) Bingo is or is not the primary game conducted;

- (2) Twenty-one or paddlewheels, or both (involving a playing table), is or is not conducted and the number of tables on which the rent is based, including the number of tables on which a wager over five dollars is accepted;
  - (3) Pull tabs is or is not conducted and with or without a dispensing device;
  - (4) The rental agreement is automatically terminated, at a lessor's option, if an organization's license is suspended for more than fourteen days or revoked; and
  - (5) An oncall, temporary or permanent employee, except a bar employee defined by subsection 3 of section 99-01.3-02-01 will not, directly or indirectly, conduct games at the site as an organization employee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.
3. Rent must be a fixed dollar amount per month.
- a. A participatory or graduated rate arrangement based on gross proceeds or adjusted gross proceeds is prohibited.
  - b. If bingo is the primary game or if a site is leased by an organization that has the alcoholic beverage license for that site, the monthly rent must be reasonable. Factors include time usage, floor space, local prevailing rates, and available sites and services. An organization may pay seasonal expenses, such as snow removal, air-conditioning, and heating, to a vendor.
  - c. If bingo is not the primary game, the maximum monthly rent must be according to subsection 5 of North Dakota Century Code section 53-06.1-11. Special considerations are:
    - (1) If two or more organizations conduct twenty-one or paddlewheels, or both, involving a table and pull tabs for less than a month at a temporary site which is a public or private premise, or if two or more organizations are issued site authorizations to conduct games at a site on different days of the week, the maximum monthly rent, in the aggregate, may not exceed the limit set by subsection 5 of North Dakota Century Code section 53-06.1-11; and
    - (2) If a raffle, calcutta, sports pool, or poker is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.
  - d. Except for applying subsection 3 or 4 of section 99-01.3-03-04, and additional rent paid to a lessor for simulcast racing, an organization or employee may not pay any additional rent or expense, from any source, or for any other purpose, including office or storage space, snow removal, maintenance or cleaning fees, equipment, furnishings, entertainment, or utilities. Except for a leased site at which bingo is the primary game conducted, an organization may not pay for any capital or leasehold improvements or remodeling.
4. If there is a change in the monthly rent or any other material change to a rental agreement, the agreement must be amended and a copy received by the attorney general before its effective date.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-07.4



### **99-01.3-02-07. Gaming manager, shift manager, and reporting violations.**

1. An organization shall designate one person as the gaming manager. A gaming manager may not be an employee of a temporary employment agency. A gaming manager is the person who is responsible and held accountable for managing and controlling the overall gaming operation. A person may be a gaming manager for not more than two ~~or more~~ organizations. When the gaming manager changes, an organization shall notify the attorney general on a prescribed form within fourteen days of the change.
2. An organization shall designate an employee at a site as a shift manager for each shift of each day. A shift manager shall be on the site during that shift and may not be an employee of a temporary employment agency. A shift manager is a person who is responsible and held accountable for regularly managing games at a site and ensuring compliance with the gaming law and rules by an employee, lessor, and player.
3. An organization, distributor, or gaming or shift manager shall immediately report any material violation of the gaming law or rules and any gaming-related criminal activity to the gaming division of the office of attorney general and a local law enforcement agency.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-02-09. Persons restricted from playing games.**

1. An employee who is a shift or gaming manager may not play any game at any of the organization's sites. An employee who services a pull tab or prize board dispensing device may not play the device at that site.
2. An employee may not play any game while on duty, except a volunteer may participate in a raffle. For the game of bingo, if an organization's total gross proceeds for the previous fiscal year, for which tax returns were filed, was twenty-five thousand dollars or less, a volunteer who is not a bingo caller, shift manager, or gaming manager, may also play bingo while on duty.
3. An employee may not play pull tabs or prize boards, including through a dispensing device, tip board, club special, ~~prize board~~, or punchboard until after three hours of active play have occurred since the employee went off duty at that site. "Active" play means that a game has been available for play. A player may not provide and an employee may not accept an unopened pull tab as a tip.
4. An employee ~~who is not a volunteer~~ may play twenty-one while off duty at that site organization sites only on ~~a table~~ tables that ~~has a~~ have the activity recorded by video surveillance ~~system~~.
5. A bar employee may not play bingo or pull tabs or prize boards, which involve a dispensing device, while on duty. A bar employee may play pull tabs or prize boards involving a device while off duty after three hours of active play have occurred since the bar employee went off duty at that site, unless otherwise prohibited by subdivision d of subsection 3 of section 99-01.3-02-05.
6. An employee or bar employee taking a temporary break is still considered on duty.
7. If an organization allows an employee to play games at its site, it shall ~~disclose~~ post or make available to players the policy at that site.
8. A shift manager may not permit and an employee may not allow an employee's common household member, spouse, child, parent, brother, or sister, at a site, to:

- a. Play pull tabs of a game while the employee is on duty as a jar operator for that game, regardless if the employee takes a temporary break or rotates to conduct another game. This rule ~~does not apply~~also applies to an employee who ~~only places pull tabs in or withdraws currency from a~~conducts pull tab or prize board dispensing device activity; or
- b. Play twenty-one or paddlewheels at a table when the employee is dealing or is a wheel operator at that table.

9. An organization may prohibit a person from playing games at a site.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-02-10. ~~Training and acknowledgment~~Acknowledgment of the gaming law and rules.**

~~1.—A gaming manager and an employee who is principally responsible for auditing closed games, daily activity, or does bookkeeping and has no previous gaming-related experience in those capacities shall request training from the attorney general within thirty days of employment. The training must include the gaming law and rules, recordkeeping, internal control, and tax return.~~

—2.—An employee shall read and acknowledge in writing, within ~~thirty~~sixty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions that relate to the person's job duties. The ~~attorney general~~organization shall designate the provisions to be read. An acknowledgment must be dated, reference the provisions, and be part of the person's personnel file.

~~3.—This section does not apply to an organization that only conducts a raffle, calcutta, poker, paddlewheels described by subsection 1 of section 99-01.3-11-01, sports pool, or to an independent contractor.~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-02-11. Independent contractor services restricted.**

Only an organization member, employee, including an employee of a temporary employment agency, or member of an auxiliary to an organization may manage, control, ~~or~~ conduct games, or have sole direct access to gaming assets. An organization may have an independent contractor, including another organization, provide specific gaming-related services. The organization shall ensure that the independent contractor complies with the gaming law and rules and may allow assistance with the following:

1. Perform audit services, including auditing closed games and daily activity, do interim audits of games, verify bank deposits, and reconcile inventory of gaming equipment and cash banks;
2. Perform accounting and bookkeeping services, including recording receipts and disbursements, processing payroll and payroll reports, reconcile bank statements, write checks, and prepare budgets, financial statements, and tax returns. However, an independent contractor may not have signatory authority of a bank account;
3. Train personnel how to conduct games and operate a dispensing device;

4. Repair and store a dispensing device;
5. Access, store, and review recorded video;
6. Store records and played games;
7. Take a locked bank bag or locked drop box to a financial institution provided the independent contractor has no access key; and
8. An independent contractor that is a security company, security agency, accounting firm, or financial institution may count drop box cash; ~~and~~
- ~~9. Provide consulting services to an organization for a poker occasion provided that the independent contractor does not manage, control, or conduct the game.~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2004; October 1, 2006; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

## CHAPTER 99-01.3-03

### 99-01.3-03-02. Gaming account.

1. An organization shall maintain all gaming accounts at financial institutions located in North Dakota. These accounts must be used for depositing gaming funds and transferring net proceeds to a trust account, except as provided by subsection 3. Transfers must be made by the last day of the quarter following the quarter in which the net proceeds were earned. The amount transferred must be for an amount equal to or greater than the adjusted gross proceeds, less gaming taxes, and less the greater of actual or allowable gaming expenses for the quarter. The gaming account may be used for payment of expenses. An organization may transfer funds to its general account for payment of expenses. If an organization is not required to maintain a trust account, a disbursement of net proceeds to an eligible use must be payable to the ultimate use or recipient. A payment may be made by electronic transfer.
2. Interest earned is other income. A service fee is an expense.
3. Organizations shall reimburse the gaming account as required by section 99-01.3-03-05 and may deposit raffle nongaming funds, bingo dauber receipts, fees from players who use bingo card marking devices, and prizes paid by an insurance company to an organization for payment to a player. Any additional deposit of nongaming funds into a gaming account ~~should~~must be communicated to the attorney general within five business days of the deposit.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-11

### 99-01.3-03-03. Trust account.

1. An organization shall maintain all trust accounts at financial institutions located in North Dakota. If an organization only conducts a calcutta, raffle, sports pool, paddlewheel described by subsection 1 of section 99-01.3-11-01, or poker or a combination of these games, or is involved in conducting no more than two events during a fiscal year and each event lasts no more than fourteen calendar days, an organization is not required to maintain a separate trust account and may use the gaming account for the disbursement of eligible uses. Trust accounts are used only to disburse net proceeds to eligible uses and must receive only funds from a gaming account, except to reimburse the account as required by section 99-01.3-03-05 and as provided by ~~subsection~~subsections 5 and 13 of section 99-01.3-14-01. A transfer of net proceeds to another trust account or to a closely related organization is not a disbursement of net proceeds. Net proceeds cannot be pledged as collateral for any loan.
2. An organization shall disburse net proceeds within a reasonable time period.
3. An organization may not transfer funds from a trust account to any other bank account, except for transferring funds to another trust account or to reimburse its general account for compensation that qualifies as an eligible use. A reimbursement must be documented by a supporting schedule. If a disbursement of net proceeds is for an expense item that includes both nongaming (an eligible use) and gaming functions, only the nongaming eligible use portion can be paid with trust account money. The organization shall maintain complete, accurate, and current documentation detailing the proration of the expense between nongaming and gaming. A disbursement must be payable directly to the ultimate use or recipient. However, an organization may make a payment directly to a credit card company for charges on a credit card provided that an organization can identify purchases that qualify as an eligible use from other purchases. A payment may be made by electronic transfer.

4. If an organization invests net proceeds in a certificate of deposit, bond, stock, mutual fund, or other marketable securities, all income earned, including interest, dividends, and capital gains, must be reported each quarter as an adjustment on a tax return and be disbursed to an eligible use. An if the net effect of the investment in marketable securities results in an actual loss on an investment may not be deducted, the organization may not deduct the loss on a tax return. A service fee is an adjustment to the account's balance. The organization shall submit a copy of the marketable securities statements for each quarter with its tax return.
5. If an organization invests net proceeds in marketable securities with the intent to maintain the investment for a period of three years or greater and no change is made to the original investment amount, either additions to or withdrawals from, the organization may choose to account for and report any earned income, including capital gains, on a tax return after each three-year period instead of each quarter. If additions are made to or withdrawals are made from the original investment amount before a three-year period ends, the organization shall account for and report any earned income, including capital gains, on the tax return for the quarter in which the change was made to the original investment amount. If the net effect of the investment results in an actual loss, the organization may not deduct the loss on the tax return. Service fees incurred during the reporting period are an adjustment to the account's balance. The organization shall submit a copy of the marketable securities statements for each quarter with its tax return.
6. For reporting purposes, an organization may elect to report the gain in market value of the accounts outlined in subsection 4 and 5. Adjustments can be made for decreases in market value; however, such decreases cannot reduce the account's value below its adjusted basis. Electing to report securities at market value must be consistently applied each quarter.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-03-04. Restrictions and requirements.**

1. An organization is allowed an expense limit according to subsection 2 of North Dakota Century Code section 53-06.1-11. The allowable expense amount may be used for any purpose that does not violate the gaming law or rules.
2. An organization may not base an employee's compensation on a participatory percentage of gross proceeds, adjusted gross proceeds, or net proceeds. An organization may pay a fixed bonus through an incentive program.
3. An organization may not pay or reimburse, nor may a lessor accept a payment or reimbursement from an organization, for any media advertising done by the lessor or any other person that is related to games at a site unless the organization's share of this expense is prorated to the benefit the organization receives and the media advertising is voluntary by the organization.
4. An organization may not pay or reimburse a lessor or share in the cost, nor may a lessor accept a payment, reimbursement, or sharing of the cost from an organization, of any sign advertising related to games at a site unless the sign is not owned by the lessor. If a lessor rents an advertising sign from a vendor, the organization's share of this expense must be prorated to the benefit the organization receives and the sign advertising is voluntary to the organization.
5. A player's uncollectible check is an expense. If an organization establishes a policy to reduce a player's cash prize by the amount of the player's uncollectible check and award the player

- the difference, if any, the organization shall ~~disclose~~post or make available to players that policy.
6. If a door prize is awarded as a promotion of games, the cost of the door prize is an expense.
  7. A net cash short is an expense and a net cash long is other income for a quarter.
  8. Only an unopened pull tab, unopened set of stapled jar tickets, or set of banded jar tickets that has the band intact may be accounted for as unsold or defective when a game is reported on a tax return. An organization shall account for any single unsold or defective jar ticket at a proportional selling price of a stapled set of jar tickets.
  9. If foreign currency is exchanged into United States currency, any loss is an expense.
  10. The attorney general shall determine whether a theft of an organization's gaming funds can be deducted ~~toward~~from gross proceeds and adjusted gross proceeds on its tax return and notify the organization. The attorney general shall consider whether the organization:
    - a. Immediately reported the theft to a local law enforcement agency and the attorney general;
    - b. Has documentation that substantiates the theft amount;
    - c. Had physical security of the funds;
    - d. Has an adequate system of internal control; and
    - e. Incurred an identifiable theft.
  11. If an organization rents out gaming equipment, the income is nongaming income.
  12. All accounting records must be completed and initialed or signed with permanent ink. The use of correction fluid or correction tape to make changes to accounting records is prohibited. Changes ~~shall~~must be made with a single strikethrough of the original amount, writing the correct amount, and initialed by the ~~person~~individual making the change. An organization shall maintain a register of ~~each employee's~~all individuals who initial or sign a record or report, including independent contractors who provide auditing, accounting, and bookkeeping services. Any financial institution employee who provides drop box cash count services is not required to be included on the register; however, the financial institution employee shall legibly sign their full name on the daily report when providing drop box cash count services. The register must include each individual's name and the ~~employee's~~ initials or signature as the ~~employee~~individual normally writes them on a record or report. The initials or signature of a ~~person~~an individual on a record or report attests that to the person's individual's best knowledge the information is true and correct.
  13. ~~A fee~~The fees charged ~~a player to~~players to enter a twenty-one tournament, ~~less the cost of a prize and the prizes awarded~~, must be reported as other income on a tax return.
  14. For computing prizes on a tax return, a merchandise prize and a gift certificate are valued at an organization's actual cost, including sales tax, and a donated prize is valued at zero.
  15. An organization shall own and possess, have a contract to acquire, or be able to obtain a prize being offered for a game. A winning player may not be required to first pay for or buy something to receive a prize. However, an organization does not need to register or title an automobile or similar item.



16. If a prize winner is ineligible to receive a merchandise prize, the organization may convert the prize to a cash prize or other fair alternative, provided that the conversion of a raffle prize does not exceed the limits outlined in North Dakota Century Code section 53-06.1-10.1.
- ~~16-17.~~ If a ~~raffle, sports pool, or calcutta~~gaming prize is not claimed by the winning player and has previously been reported on a tax return, an organization shall ~~report the prize as other income~~amend the applicable tax returns to account for the unredeemed prize.
- ~~17-18.~~ When a deal of pull tabs, club special, tip board, seal board, raffle board, prize board, sports-pool board, calcutta board, or a series of paddlewheel ticket cards is placed in play, an employee shall compare the game serial number on the pull tab, board, or card to the serial number on the state gaming stamp. If the two serial numbers are different, an employee shall immediately notify the distributor.
- ~~18-19.~~ If an organization pays a fee to an insurance company to insure a contingency cash or merchandise prize for bingo or a raffle, the fee is an expense. If the insurance company pays or provides a prize to a winning player, it is not reported as a prize on a tax return.
- ~~19-20.~~ If an organization conducts twenty-one, it may pay monthly rent for more than one table provided that each additional table is used at least thirteen times a quarter. This level of activity is based on a site's historical experience, or seasonal activity, for each of the previous four quarters, regardless of which organization conducted twenty-one at the site. For a new site or a site that has been completely remodeled in appearance and function, the level of activity must be reviewed and or reestablished after the first full quarter. If an additional table is used at least thirteen times in at least one but not all of the previous four quarters, the allowable monthly rent for that table must be prorated over all the active months of the licensing year. For example, if a second table was used at least thirteen times in only two of the previous four quarters, the additional monthly rent for the second table would be a maximum of two hundred dollars per month (or three hundred dollars per month if a wager greater than five dollars is accepted on the table) multiplied by six months (totaling one thousand two hundred dollars) and prorated to one hundred dollars per month for the licensing year.
- ~~20-21.~~ If an organization temporarily releases its site authorization to allow another organization to conduct gaming at a site, the primary site holder shall provide the temporary organization with a signed statement of site release, include the duration which it is valid, and provide a copy to the attorney general's office at least fourteen days prior to the site release.
22. If an organization does not intend to reapply for a license for the next fiscal year, its license is revoked or suspended for a period of more than six months, or its license application is denied, and it has net proceeds that are not disbursed, the organization shall file an action plan with the attorney general. The plan must be filed within thirty days of the expiration of the license or when the license is relinquished, revoked, suspended, or the license application is denied, and include a planned timetable for disbursing all the net proceeds and anticipated uses.

If the action plan is not timely filed, net proceeds must be disbursed within ninety days of the expiration of the license or when the license is relinquished, revoked, suspended, or the license application is denied. The disbursement must be reported to the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-11

### **99-01.3-03-06. Gross proceeds, IOUs, documenting cash and chip banks.**

1. Gross proceeds for a game must be separately maintained while the game is conducted. An organization shall use a separate cash bank for each game. However, the cash banks for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined and the cash banks for pull tab games at a site may be combined, if approved by the attorney general. If an employee needs to establish or replenish a cash bank by withdrawing funds from the gaming account, the employee shall execute a withdrawal by check or other withdrawal method and reference the specific game's name, other game type, or the combined cash bank. If a cash bank needs replenishment and another specific game or other game type's cash bank, cash reserve bank, or other funds from nongaming sources are used, an IOU form must be used to record the loan and payback. An IOU form must include:
  - a. The source and destination of the funds;
  - b. For a club special, prize board, tip board, seal board, raffle board, sports-pool board, series of paddlewheel ticket cards, and punchboard, the game's gaming stamp number;
  - c. Amount and date of loan and repayment; and
  - d. Initials of a cash bank cashier or an employee for each transaction.
2. An organization shall document each bingo session's and each game's daily starting and ending cash on hand, including a cash reserve bank. Unless there is only one employee on duty when a site opens or closes, two persons shall participate in the cash count in the presence of each other. After completing and documenting the cash count, both persons shall initial the record.
3. An organization shall document the daily starting and ending chip banks for casino and betting chips, including, on the date of a poker ~~event, an organization's occasion and the~~ no-value poker chips. The chip banks for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. Unless there is only one employee on duty when a site opens or closes, two persons shall participate in the count of the chips in the presence of each other and record the count by denomination of chip or total quantity of no-value chips. After completing and documenting the chip count, both persons shall initial the record.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-03-07. Prize register.**

For a bingo session, raffle drawing, sports-pool board, calcutta board, paddlewheel excluding the use of a table, and twenty-one or poker tournament, an employee shall legibly print this information on a prize register or similar document when a prize is issued to a player:

1. Name of the site;
2. Game type:
  - a. Bingo - Date of the session and game number.
  - b. Raffles - Date of the drawing, winning ticket number, gaming stamp number (if applicable), and initials of two employees who conducted the drawing unless the initials are on another document.



- c. Sports pools - Date of the sports event, winning score, and gaming stamp number.
  - d. Twenty-one or poker tournament - Date of the tournament.
  - e. Calcutta - Date of the sports event and gaming stamp number.
  - f. Paddlewheel excluding the use of a table - Date of the event, card number, winning ticket number, and gaming stamp number;
- 3. Amount of a cash prize or a description ~~and~~ cost, and retail price of a merchandise prize;
  - 4. Name of player;
  - 5. Total amount of cash and cost of merchandise prizes awarded; and
  - 6. Initials of preparer.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-03-08. Record of win.**

- 1. An employee shall prepare a record of win if a player wins a last sale prize, a seal prize, a cash prize greater than two hundred dollars, a merchandise prize that has a retail price exceeding two hundred dollars, or a donated merchandise prize with a fair market value exceeding two hundred dollars, or wins a cash prize but receives a partial payout of the prize in cash and the remainder by check. If a pull tab has two or more winning prize patterns, the requirement is based on the value of each prize pattern. A record of win must be completed for the total prize even if a player splits the prize with another person. The record may be a check drawn from the gaming account, a numbered receipt, or the flare of a sports-pool board, calcutta board, club special, tip board, prize board, punchboard, ~~or~~ seal board, raffle board, or winning bingo card. A bar employee shall print this information on a receipt or an employee shall print this information on a check, receipt, ~~or~~ flare, or card unless it is already provided:
  - a. Name of the site;
  - b. Game type and, by game type:
    - (1) Bingo - Date of the session, game number, cash prize amount or description of a merchandise prize and retail price, and date of prize payout if different from the date of the session.
    - (2) Raffles - Date of the drawing, winning ticket number, gaming stamp number (if applicable), cash prize amount or description of a merchandise prize and retail price, and date of prize payout if different from the date of the drawing.
    - (3) Pull tabs and prize boards, including a dispensing device, punchboards, club special, tip board, and seal board - Name of the game, cash prize amount or description of a merchandise prize and retail price, date of activity, and gamegaming stamp number. For a game with a last sale prize or a seal prize, the gamegaming stamp number should correspond with the respective deal's flare.
    - (4) Sports pools - Date of the event, cash prize amount, date of prize payout, and gaming stamp number.

- (5) Twenty-one or poker tournament - Date of the tournament, cash prize amount, or description of a merchandise prize and retail price.
  - (6) Calcuttas - Date of the event, cash prize amount, date of prize payout, and gaming stamp number;
- c. A player's full name and address:
- (1) If the player is present but not personally known by a bar employee or an employee, this information must be recorded from a pictured driver's license or tribal, government, or military identification;
  - (2) If the player is present but does not have one of these pictured identifications, a bar employee or an employee shall record the player's full name from another form of identification or mail the prize to the player; or
  - (3) If the player is not present, verification of this information is not required and the prize must be mailed; and
- d. Initial of a bar employee or an employee.
- 2. After a record of win is completed at a site, a player shall sign and date it. However, this rule does not apply to a prize mailed to a player.
  - 3. Unless a prize is for a last sale prize feature, a bar employee or an employee shall print, in ink, the check or receipt number on a pull tab or punchboard punch.
  - 4. A player who has actually won a prize shall claim the prize. A bar employee or employee may not falsify or permit a player to falsify a record of win or enable a player to conspire with another person to have the other person claim a prize. If a bar employee or employee determines that a player has falsified or attempted to falsify a record of win before the prize payout, the bar employee or employee shall deny the player the prize and notify the attorney general and local law enforcement agency.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-11

**99-01.3-03-09. Inventory records of games, paper bingo cards, tickets, cash banks, and chips and reconciliation.**

- 1. An organization shall maintain master and site inventory records of all deals and games that have a state gaming stamp affixed to their flares. The master records must include the sales invoice number, date received, name of game, dates of issuance to and received from a site, site name, date deal was placed, date game (that the deal was played as part of) was closed, and quarter the deal was reported on the tax return ~~on which reported~~, by gaming stamp number. The site records must include the gaming stamp number, date received, date placed, and date game (that the deal was played as part of) was closed, by site and name of game. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. Annually an organization shall reconcile its inventory records of all deals and games that have a state gaming stamp affixed to their flares that are recorded as being in play and in inventory as unplayed to the items that are actually in play and in inventory. A person shall count these items that are actually in play and in inventory, compare this count to the inventory records, and resolve any difference.

2. An organization shall maintain master and site inventory records of paper bingo cards. The master records must include for each primary color and type of card, the sales invoice number, date received, number of cards bought, serial number (optional), dates of issuance to a site, site name, and quantity of cards issued to the site, or include information prescribed by a method approved by the attorney general. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. The site records for each series must include site name, primary color and type of card, serial number (optional), quantity received, date received, and quantity issued and returned for each session, or include information prescribed by a method approved by the attorney general. Annually an organization shall reconcile its inventory records of paper bingo cards that are recorded as being in inventory to the cards that are actually in inventory. A person shall count these items that are actually in inventory, compare this count to the inventory records, and resolve any difference.
3. An organization shall maintain master and site inventory records of rolls of tickets. The master records must include for each ticket roll the color of the roll, date received, beginning ticket number, ending ticket number, number of tickets bought, date of issuance to a site, and site name, or include information prescribed by a method approved by the attorney general. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. The site records must include site name, color of roll, beginning ticket number, ending ticket number, quantity received, date received, and quantity issued and returned for each session or event, or include information prescribed by a method approved by the attorney general. Annually an organization shall reconcile its inventory of ~~rolls of~~ tickets. This reconciliation must include verification of the starting ticket number and total number of remaining tickets that are recorded as being at the home office and site to the ~~rolls of~~ tickets that are actually on hand. A person shall count the ~~rolls of~~ tickets at the home office and site, compare this count to the inventory records, and resolve any difference.
4. An organization shall maintain a master record of ideal cash bank amounts and account for permanent increases or decreases. For each cash bank, the record must include the site, game type, game identifier, and amount. When a cash bank is started or when the ideal amount is permanently increased or decreased, the date, check number, amount, source or destination of the funds, and updated ideal cash bank amount must be recorded. Annually an organization shall reconcile its master cash bank records to the actual cash banks. A person shall count the cash banks, compare the count to the current ideal cash bank amount recorded on the record, and resolve any difference.
5. An organization shall maintain casino and betting chip master and site inventory records. The records must include the dates chips are acquired, transferred to, and received from a site and running totals, by value of chip. Annually an organization shall reconcile its inventory of chips that are recorded as being at the home office and site to the chips that are actually in inventory. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. A person shall count the chips in inventory at the home office and site, compare this count to the inventory records, and resolve any difference.
6. The count and reconciliation must be done by a person who does not have sole access to deals, games, paper bingo cards, rolls of tickets, cash banks (and who does not have sole signatory authority of the gaming account), or chips. It must be documented, including the name and title of the person who does the count and reconciliation, date and procedure performed, result, corrective action taken, and initials of that person.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### 99-01.3-03-10. Bank deposit and audit.

1. The cash profit, less a documented increase or plus the decrease in the starting cash on hand for the next gaming activity, plus cash and merchandise prizes paid by check and cost of coins for a prize board, must be deposited in the gaming account by the third banking day following the day of a bingo session or electronic quick shot bingo ~~card-marking device~~ session; club special, prize board, tip board, seal board, or punchboard is removed from play; sports-pool game; calcutta event; raffle board event, poker occasion; day's or interim period's pull tab and prize board, and twenty-one or paddlewheel activity. However, the receipts for a raffle, calendar or master sports-pool board, or paddlewheel described by subsection 1 of section 99-01.3-11-01 must be deposited in the gaming account by the third banking day following receipt of the cash by the person responsible for the activity.
2. For a day's pull tab activity, bingo session, electronic quick shot bingo ~~card-marking device~~ session, raffle drawing, poker occasion, twenty-one and paddlewheel activity, and interim period's pull tab or prize boards activity involving a dispensing device, a deposit slip ~~or receipt~~ must reference a site, name of the game, game type, date of activity, and deposit amount. The deposit amount for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. For a club special, prize board, tip board, seal board, punchboard, and series of paddlewheel ticket cards, a deposit slip ~~or receipt~~ must reference a site, name of the game, game type, date removed from play or date of activity, deposit amount, and gaming stamp number. For a sports-pool board, raffle board, or calcutta board, a deposit slip ~~or receipt~~ must reference a site, date of the event or auction, deposit amount, and gaming stamp number. For all game types, an employee who prepares a deposit shall initial the bank deposit slip. If another employee makes the bank deposit and has access to the cash, the employee shall also initial the bank deposit slip.
3. If ~~an organization prepares~~ a deposit slip is prepared for more than one ~~type of game or game type, it shall record on~~ the deposit slip or ~~a supporting schedule by each game type, must include~~ the information required by subsection 2 for each game or game type. A supporting schedule must reconcile to a validated bank deposit ~~slip or receipt. A validated bank deposit slip or receipt and any supporting schedule must be included with the accounting records. If a bank does not return a validated bank deposit slip that contains information required by subsection 2, an organization shall prepare a duplicate deposit slip, make a copy of it, or prepare a supporting schedule that reconciles to the bank deposit amount.~~
4. For a bank deposit, a person shall record the amount to be deposited on the game's accounting record and retain ~~the~~ a copy of ~~a two-part~~ the bank deposit slip and any supporting schedule. This person shall forward the accounting record, copy of the bank deposit slip, and any supporting schedule to a bookkeeper. A second person shall take custody of the bank deposit funds and the original of the bank deposit slip and take them to a financial institution or arrange for the funds to be deposited. If, before the bank deposit is made, the custody of bank deposit funds is transferred from a person to another person, face-to-face, and the cash is accessible to be counted, both persons shall participate in a count of the cash in the presence of each other and resolve any difference. After completing and documenting the cash count, both persons shall initial and date the ~~record~~ original of the bank deposit slip. The person who makes the bank deposit shall forward ~~at~~ the validated bank deposit ~~slip or receipt~~ to a bookkeeper. A validated bank deposit receipt, copy of the bank deposit slip, and any supporting schedule must be included with the accounting records. An organization shall comply with this rule unless it uses another bank deposit procedure which has proper accounting control.
5. If an employee prepares or has custody of a bank deposit which is not scheduled to be immediately deposited, the employee shall safeguard the funds.

6. An employee who did not have access to the cash to be deposited shall, within a reasonable time, verify that the amount recorded on a daily or interim accounting record to be deposited was actually deposited according to a bank statement. The employee shall document the verification by initialing the accounting record and dating it. If more than one deposit amount is recorded on an accounting record, the employee shall initial the record for each verified deposit amount and date the record.
7. A closed game or daily activity must be audited, within a reasonable time, by a person who did not conduct the game and who did not have sole access to the total receipts or cash profit for the game's or day's activity. This person may not have sole signatory authority of the gaming account. A person who audits a closed game or daily activity shall verify the number and value of unsold chances, gross proceeds, number and value of prizes, adjusted gross proceeds, and cash profit. If the audit reveals an irregularity, the person shall notify the appropriate organization representative.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-04 BINGO

### Section

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### 99-01.3-04-01. Bingo.

"Bingo" is when a player buys a card or uses a bingo card marking device and marks squares, or a radio frequency signal or Wi-Fi transmission marks squares on a marking device, as a caller announces a letter and number or only a number for speedball bingo. Speedball bingo is a game in which a bingo caller announces the drawn numbers in a fast manner. A winning player of a game is the player who first covers a predetermined pattern of squares by matching letters and numbers on a bingo card with balls drawn and called for that or another game and timely calls out the word "bingo". Except for quick shot bingo and bonus games, there must be a winning player for each bingo game. Quick shot bingo is a bingo game in which all of the numbers are predrawn and that may or may not have a winning player and if there is a winning player, the player is not required to timely call out the word "bingo". Bonanza bingo is a game in which a bingo caller predraws a certain quantity of balls before a session begins for a predetermined pattern and unless a player has already won, the caller will draw additional balls until a player wins the game. In both quick shot and bonanza bingo games, players may buy and play the cards throughout the session.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; July 1, 2010; July 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### 99-01.3-04-03. Conduct and play.

1. ~~These~~The following rules ~~and~~, information, and policies must be ~~disclosed~~posted or made available to players. If made available to players, the rules, information, and policies must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
  - a. A person may not separate a paper card when there are two or more faces on a sheet;
  - b. A person under eighteen years of age may not play bingo unless an individual, eighteen years of age or older, accompanies a minor when buying a bingo card or package and throughout the session. The adult may not be an employee on duty. This rule does not apply if a person under twenty-one years of age is not allowed on the site or an organization has a permit or prize structure that does not exceed the limit of a permit;
  - c. If an organization does not restrict duplicate paper cards from being in play for a game, it shall ~~disclose~~post or make available that information to all players before their purchase of cards or packages;
  - d. The actual letter and number on a ball drawn or freely awarded is official;



- e. If a person knowingly uses a fraudulent scheme or technique to cheat or skim involving bingo, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
- f. A bingo card is void if it is taken outside the gaming area; ~~and~~
- g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.;

~~2. These policies must be disclosed or made available to players:-~~

- a.h. A policy of when an organization may cancel a bingo session;
- b.i. A policy that if a player has more than one bingo on one card or on two or more cards for a game, whether it is considered as one bingo or more than one bingo for splitting a prize with another winning player;
- e.j. A policy that a bingo is timely called by a player when, on the last number called, the player calls the word "bingo" or other required word before the bingo caller announces the whole letter and number of the next ball to be called, or other policy;
- d.k. A policy on sharing a prize by two or more winning players on identically or differently priced cards. A policy must include the following except that an organization may award a minimum prize:
  - (1) If a prize is cash and all winning players bingo on identically priced cards, the cash prize must be divided equally. An organization may round fractional dollars.
  - (2) If a prize is cash and the winning players bingo on differently priced cards, an organization shall award each winning player:
    - (a) The designated prize;
    - (b) An equal share of the designated prize; or
    - (c) A proportional part of the designated prize for that card or any other fair method. The proportional part is the ratio that each winning player is in relation to the total number of winning players. To illustrate, if three players bingo on differently priced cards, each player is to be awarded one-third of the designated prize for that player's card.
  - (3) If a prize is merchandise and it cannot be divided, an organization shall do one of these options which must be disclosed in the bingo program or promotional material or announced before the bingo session:
    - (a) Award each winning player a substitute merchandise prize which must be of at least equal value and total the retail price of the original prize. A merchandise prize may be redeemable or convertible into cash at an organization's option;
    - (b) Award a certain cash split amount that totals the retail price of the original prize; or
    - (c) Conduct a continuous or separate playoff game between the winning players;
- e.l. A policy that a player may or may not use a bingo card marking device and play additional paper bingo cards at the same time; and
- f.m. A policy that a player may or may not share the player's bingo package with another player.

~~3.2.~~ An organization shall make these announcements:

- a. Before each session, the policies on:
  - (1) When a bingo is timely called by a player;
  - (2) Whether the bingo caller, floorworker, or both must hear and acknowledge a player who calls the word "bingo" or other required word; and
  - (3) That a player is responsible for ensuring that the bingo caller, floorworker, or both hear and acknowledge the player; and
- b. Before each game, the game's winning bingo pattern.

~~4.3.~~ An employee may only assist a disabled player in playing a bingo card or assist a player in how to use a bingo card marking device. A legally blind or disabled player may use the player's personal braille or special card when an organization does not provide such a card. An organization may inspect and reject the card.

~~5.4.~~ An employee may not sell or award a gift certificate as a prize unless:

- a. A certificate is accounted for when it is sold or awarded. An employee shall issue a certificate to the purchaser or player and retain a copy or stub of the certificate with the daily records and record the certificate on a register to document the sale. An organization shall recognize a sale of a certificate as gross proceeds on the tax return for the quarter in which it was sold. A certificate awarded as a prize has no cash value. A certificate must be used to buy only a bingo card or package;
- b. A register is maintained which accounts for all certificates sold or awarded at a site. A register must include, for each certificate, a consecutive control number, selling price (if applicable), dates issued and redeemed, sites at which it is issued and redeemed, and initials of the employees who issue and redeem the certificate; and
- c. A redeemed certificate is signed by a player and retained by an organization with the daily accounting records. A player is issued a bingo card or package at the site when the certificate is redeemed.

~~6.5.~~ If an organization changes a publicly announced bingo program for a session in which a potential prize or the number of games is reduced, an employee shall notify a player of the change before the player buys a card.

~~7.6.~~ If an organization sells two or more differently priced cards or packages for a game, it shall use a different type, color, serial number, or a distinctive identifiable feature for each differently priced card or package. An organization may not use the same serial numbered paper bingo cards for more than one game or group of games during a bingo session, unless the face of a card is a different color or a paper card ~~audit~~-tracking number is used.

~~8.7.~~ If an organization accepts a discount coupon, the redeemed coupon must contain the dollar value or percentage discount and be signed by a player. An employee shall write the value of the bingo card or package purchased on the face of the coupon unless the value is already stated, record the date on the coupon or on a group of coupons for a session, and retain the coupon with the daily records. The value of a player's one or more coupons must be less than the value of the card or package bought.

~~9.8.~~ If an organization accepts a donated item in exchange for a discount, an employee shall account for the discount on a register as part of the daily records. A discount must be less than the value of the card or package bought. A register must contain:



- a. Bingo session and date of the session;
- b. Amount of the discount;
- c. Value of the bingo card or package bought;
- d. Signature of the player;
- e. Total amount of bingo card or package discounts for the session; and
- f. Date and initials of the cashier.

~~40.9.~~ A card or package must be bought on a site immediately before the start of a game or during a session. However, an organization may presell a card or package for a special session that involves a bingo prize or prizes that equal or exceed ten thousand dollars for the session provided the organization:

- a. Uses a consecutively numbered two-part receipt to register a player who prepays. One part is issued to a player who shall redeem the receipt to receive the card or package. The second part is retained by the organization to account for the gross proceeds;
- b. Separately accounts for the gross proceeds and reports it on a tax return for the quarter in which the game is conducted; and
- c. Provides a card or package to the player before the start of the session that day.

10. No card may be sold for a game which is in progress or ended except for a bonanza bingo or a game that has all of its numbers predrawn. If a paper bingo card is included in a package for a game in progress or ended, the card must be withdrawn and ~~voided or~~ destroyed. An employee may exchange a purchased package for another package if the employee accounts for all the cards of the first package and a session has not started.

11. An organization may allow a player to use a bingo card marking device provided by the organization that marks an electronic card image of a purchased card as follows:

- a. A device cannot be reserved for a player unless a player is disabled. An organization shall provide each player an equal opportunity to use the available devices on a first-come, first-served basis. A device cannot be issued through a floorworker;
- b. A device must be used only to play bingo cards at a site where the site system is located and the session is being conducted;
- c. A device must be rented for a fixed amount, regardless of the price for a card or package or number of cards played through the device, or provided free to a player for the player's temporary use during the session. Rental fees charged to players for the use of devices is nongaming income;
- d. No player can use more than one device at a time during a session;
- e. No player can play more than seventy-two single-faced cards per game on a device and cannot choose or reject ~~downloaded~~ cards;
- f. An organization shall use paper bingo cards in the session that are of a series different than the cards downloaded in or played on the devices;
- g. If a card or package may be used in a device and in paper form, it must be sold for the same price. An organization may sell a special card or package to a player for use only in

a device. The organization may require a player to buy a minimum-priced card or package to use a device;

- h. If a player rents a device while a game for that session is in progress, the player may not play that game and a cashier shall record on the player's receipt that the specific game number is void;
  - i. An organization may print a facsimile of a winning card and post it for players to inspect;
  - j. A player may use an input function key on a device or an organization may use a radio frequency signal or Wi-Fi transmission to mark each number as it is called. When a player inputs a number or an organization sends a radio frequency signal or Wi-Fi transmission, a device may automatically mark all the player's cards that contain that number;
  - k. If a player has a winning card, the player shall:
    - (1) Timely call bingo according to subdivision c of subsection 2 and it must be by a method other than through a device; and
    - (2) Provide the device with the winning card displayed to a floorworker to verify according to subsection 18;
  - l. If a player's call of a bingo is disputed or if the attorney general makes a request, an organization shall print the winning card stored on the ~~device~~site system;
  - m. An organization shall have at least one spare device available should a device in use malfunction. If a player's device malfunctions, the player may ~~exchange~~replace the device ~~for~~with a spare device. An organization shall restore the player's same cards from the site system;
  - n. For site systems in which electronic bingo card images are downloaded to a bingo card marking device, if a player exchanges a device for another device, the original transaction of the first device must be voided and the transaction involving the second device must be recorded as a sale;
  - ~~o.~~ An organization may perform routine maintenance on a ~~site system and bingo card marking~~ device; and
  - ~~e.p.~~ An organization shall back up all of a site system's accounting information for a session on a ~~report or~~ separate electronic media ~~immediately after that session~~file prior to the start of the next business day and retain the backup file for three years from the end of the quarter in which the activity was reported on a tax return. The accounting information must comply with subsection 1 of section 99-01.3-16-09.1.
12. After the start of a session, an organization may not refund the purchase price of a card or package unless a site incurs an electrical power loss, there is inclement weather, an organization experiences an extraordinary incident, a session is canceled, or a player has an emergency.
13. If an organization sells hard cards before each game, during the game an employee shall count the number of hard cards played by all the players to the number recorded as sold. If the comparison reveals an irregularity, the gaming manager shall take corrective action.
14. An organization may not sell a bingo package that contains a variable number of cards based on each player's ability to play. Each separately priced package must contain a standard number of cards.

15. If a game has an actual or potential prize valued at five hundred dollars or greater or is a bonus game, an employee shall use an electronic bingo card verifier; record in writing the called numbers and the sequence in which they were drawn; or audio recording of the bingo caller calling the balls. When a player bingos, an employee shall retain the bingo card verifier record, the written record, or audio record, which includes the following and retain these records for ~~three~~six months:
  - a. Game number, winning pattern, type of card (number of faces on a sheet), type of package (regular, premium, super), winning series (card) number, and last number called; and
  - b. Cash register receipt number, if applicable.
16. A caller shall ~~manually~~ display the letter and number on the ball to players except for speedball bingo or when a ~~monitor or~~ random number generator is used. An employee shall announce the letters and numbers on the balls or displayed by a random number generator in their exact sequence; however, numbers freely awarded do not need to be announced. The caller is also not required to announce all letters and numbers for a game in which the pattern does not require the use of the selected letters or numbers. If a player calls bingo and the bingo is invalid, the next ball called must be in sequence of the balls drawn.
17. A player may bingo more than one time on the same card when an organization conducts continuation games of more than one pattern on the same card. An organization may also conduct bonus games where multiple winning patterns may be played on the same card and where one or all of the prize patterns has a winner.
18. A winning card must be verified by an employee and one neutral player or person unless an electronic bingo card verifier is used and the display of an electronic bingo card verifier is shown to all players on a monitor. A floorworker may not access a verifier. For a winning card on a bingo card marking device, an employee shall compare the serial number of the device to the receipt for the cards played on that device.
19. An organization may offer a variety of prizes to a winning player who may choose a prize by random selection or chance. A player may win an additional prize by choosing the prize by random selection, by an organization drawing from previous winning players, or playing a game of skill if the player is not required to give anything of value. An organization shall disclose the potential prizes in the bingo program and notify a player of these prizes before the player chooses a prize, has the opportunity to win a prize, or plays a game of skill.
20. An organization may award, as a prize, cash, merchandise, merchandise gift certificate, or gift certificate that can be redeemed for a bingo card or package.
21. An organization may conduct a qualifying game whereby a player wins an opportunity to play in a special game.
22. An organization may award a bonus that is based on a factor incidental to a bingo program if it is disclosed in a program, calendar, or flyer, and announced before a session, and is recorded on a prize register. Factors may include a player binging on a certain color of card, combination of colored cards, last number called, particular face of a multifaced card, or winning a game on the player's birthday.
23. If a player bingos and an employee determines that the player is playing more bingo cards than were bought, the player's bingo is void.
24. Bonanza bingo and a game that has all of its numbers predrawn must be conducted as follows:

- a. A caller shall initially call a certain quantity of balls. While a caller initially calls the bingo balls or before the caller calls the next continuous number, a player shall verify that the letter and number on the balls drawn are correctly displayed. A posted display must be used for the games, have restricted access, and reference that game;
  - b. A card must be sealed and unpeekable when it is sold;
  - c. An organization may sell or exchange cards throughout a session until sales are closed. If an organization exchanges cards, an employee shall, before the next continuous number is called, fully account for the floorworkers' sales of cards according to section 99-01.3-04-07. A floorworker may not turn in any exchanged card after the accounting is begun;
  - d. If a player bingos before the next continuous number is called, the player wins. Otherwise, an additional bingo ball is drawn until a player bingos. This rule does not apply to a game that has all of its numbers predrawn;
  - e. A game may not extend beyond a session;
  - f. If an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, an employee shall:
    - (1) Validate the date of the session on the card with a mechanical device or rubber stamp. A card validated for a session, but not sold, must be voided. The organization shall use a different color of card for each game conducted at a site during a day;
    - (2) Retain the exchanged cards as part of the daily records for six months;
    - (3) Record the validation date and card color used by session; and
    - (4) Reconcile the cards, accounting for:
      - (a) Number of cards taken from inventory which must be independently counted and verified by two employees who shall initial and date the verification;
      - (b) Number of cards sold;
      - (c) Number of cards exchanged, which must be separately maintained for each floorworker. The cards must be recounted by an employee who is not the floorworker. The employee who controls the floorworker sales report shall band each floorworker's exchanged cards separately, identify the banded group with the floorworker's name, session, and initial and date. A floorworker shall also initial the floorworker's banded group;
      - (d) Number of cards returned to inventory and voided which must be independently counted and verified by two employees. Each person shall initial and date the verification; and
      - (e) Document any discrepancy and corrective action taken; and
  - g. A voided card must be retained for six months.
25. If an employee determines, during or immediately after the play of a game and before a card is verified as a winning bingo, that a ball is missing, the employee shall void the game and offer the players a fair alternative.

26. ~~An employee shall record a prize and bonus prize on a register according to section 99-01.3-03-07, except for a game that has all of its numbers predrawn and for which an organization has recorded the information required by section 99-01.3-03-07 on the winning card and retains the card.~~

~~27.~~ An organization shall receipt gross proceeds, including an additional amount paid by a player for a chance to win an extra prize in a special game, by a cash register, tickets, paper card count, paper card tracking number, or floorworker sales report, unless written approval is obtained from the attorney general for use of another receipting method. The receipting method must reference the primary color and type of cards, serial number (optional), number of ~~the~~ cards or packages sold, discounts applied to each type of card or package sold, or reference other information approved by the attorney general.

27. If packages are sold which consist of a multiple of cards, records must be maintained that document the number of and primary color and type of cards that are included as part of each package.

28. For a progressive game that increases the number of bingo balls to be called or the prize amount, the organization shall maintain a written record that includes date of session, game number, number of bingo balls, prize amount increase, and accumulated prize amount.

~~28-29.~~ For a site where bingo is the primary game or a site that is leased by a licensed organization, the organization or any person may not pay bingo prizes in which the total bingo prizes exceed total bingo gross proceeds for two entire consecutive quarters. However, if bingo is the primary game at the site, a bingo prize that equals or exceeds ten thousand dollars is excluded from the calculation of total bingo prizes.

~~29-30.~~ An organization shall have a written bingo program for each session. However, if the program does not change each day or session, an organization may retain one program and record the dates on which it applied. A program must contain:

a. Name of a site and organization;

b. Date or dates of the sessions;

c. ~~Description of Game description, color and type of card, and prize for each game and the game's prize; and;~~

d. Selling prices of the cards or packages; and

e. Rental fee charged for a bingo card marking device, if applicable.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.1

#### **99-01.3-04-04. Cash register.**

This receipting method may be used to record gross proceeds of packages, hard cards, and paper cards, excluding floorworker sales, by issuing consecutively numbered receipts.

1. A receipt must contain:

a. Name of a site ~~or~~and organization;

b. Date of the session; ~~and~~

c. Receipt number;

d. Selling price of each card or package and receipt number; and

e. Receipt total.

2. A cash register must:

- a. Have at least a consecutive four-digit receipt number which does not return to zero at the end of any use and retain its transaction count between uses if it is off or without electricity; and
- b. Separately record each type of regular and discounted priced card or package sold, including a sale of a card or package related to a redeemed gift certificate, and provide a total for each type of sale. For a discounted card or package, the regular price may be recorded provided that the discount is recorded and accounted for ~~on a supporting schedule~~. When a gift certificate is sold, the selling price must be recorded on a cash register or daily receipting record.

3. ~~A cash register receipt for a void, refund, or similar item must be initialed and retained with the daily records.~~

~~4.~~ A cash register cashier may not issue a refund or void a sale that has been recorded as a transaction, but may do a no sale transaction to access a cash drawer. For a refund, a cashier's supervisor shall execute a refund and initial the refund transaction on the internal tape or session report. For a voided sale, a cashier's supervisor shall execute a void and initial the void transaction on the internal tape or session report. A cash register receipt for a refund, void, or similar item must be initialed by the cashier's supervisor and retained with the daily records. If a supervisor is not available or if the cashier is the supervisor, another employee who did not conduct the transaction shall comply with this rule.

~~5.4.~~ All transactions and ~~control~~-totals, including the number of and total value for each type of card or package sold, discounts applied to each type of card or package sold, and total gross receipts must be recorded on an internal tape or session report that must be retained with the daily records. If a cash register is also used for a purpose other than bingo, the internal tape or session report from the other use must also be retained.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-04-06. Paper card count.**

The paper card count receipting method may be used to record gross proceeds of paper bingo cards, including floorworker sales. The daily records must include the total number of cards ~~or~~, collated sets, or packages taken from inventory and returned to inventory. A count of the cards ~~or~~, sets, or packages taken from or returned to inventory must be done by two persons, unless there is only one employee on duty at the time. Both persons shall participate in a count of the cards ~~or~~, sets, or packages in the presence of each other and resolve any difference. After completing and documenting the count, both persons shall initial the record. The record must include the selling price of the card ~~or~~, set, or package and number of cards ~~or~~, sets, or packages issued, returned, voided, and sold for each primary color and type of card for the session. A discount coupon and gift certificate must be recorded in the daily records.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; July 1, 2012; April 1, 2016.



**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### 99-01.3-04-06.1. Paper card tracking number.

The paper card tracking number receipting method may be used to record gross proceeds of paper bingo cards, including floorworker sales if the series of paper bingo cards used includes consecutive card tracking numbers and are used and sold in consecutive order. The daily records must include the beginning card tracking number taken from inventory and the ending card tracking number returned to inventory for each series of paper bingo cards used. A verification of the card tracking numbers of the cards taken from or returned to inventory must be done by two persons, unless there is only one employee on duty at the time. Both persons shall participate in the verification of the card tracking numbers of the cards in the presence of each other and resolve any difference. After completing and documenting the verification, both persons shall initial the record. The record must include the selling price of the card, beginning and ending card tracking numbers of cards issued and returned, number of cards voided, and number of cards sold for each primary color and type of card for the session. A discount coupon and gift certificate must be recorded in the daily records.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-04-07. Floorworker sales report.**

The floorworker sales report receipting method may be used to record gross proceeds of paper bingo cards sold by floorworkers. A report must be completed, for each floorworker, by an employee who is not a floorworker. ~~For a bonanza bingo game in which an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, a report must contain all the information required by subsections 1 through 10. For all other games, a~~ floorworker's report must contain all the information required by subsections 1 through 6, by game, and must contain the information required by subsections 7 through 10, by session.

1. Game number or game name.
2. Floorworkers' names or assigned numbers.
3. Selling price of each single (one card) and packet.
4. Number of singles and packets issued to each floorworker, by game. The employee issuing the cards and the floorworker shall initial the report. If an organization sells singles at a discount, the number of discounted sets must be predetermined and separately accounted for when issued to a floorworker.
5. Number of singles and packets returned by floorworker, by game, as unsold, including the number of exchanged bonanza bingo cards. The floorworker and an employee who is not a floorworker shall count the cards and initial the report in the presence of each other.
6. Number and value of singles and packets sold by each floorworker, by game.
7. Amount of cash turned in to a cashier by floorworker. The floorworker and the cashier shall count the cash and initial the report in the presence of each other.
8. Amount of cash long or short by floorworker.
9. Total value of singles and packets sold, total cash turned in, and total cash long or short.

10. A void, refund, or similar item must be approved by a supervisor or another employee who did not conduct the transaction if a supervisor is not available and retained with the floorworker sales report.

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004; October 1, 2006; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-04-08. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each session:
  - a. The gross proceeds for each type of sale or game. If a site system involving bingo card marking devices is used, records must include the summary report for the session according to subdivision c of subsection 1 of section 99-01.3-16-09.1;
  - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
  - c. Cash profit as defined in subdivision a of subsection 7 of section 99-01.3-02-01;
  - ~~d.~~ A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sessions for a quarter must reconcile to the tax return;
  - ~~d.e.~~ Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
  - f. Record of called bingo numbers according to subsection 15 of section 99-01.3-04-03;
  - ~~e.g.~~ Inventory records according to subsections 2 and 3 of section 99-01.3-03-09;
  - ~~f.h.~~ If bingo is the primary game at a site, the number of players ~~and time of the count~~;
  - ~~g.i.~~ A copy of or reference to a bingo program according to subsection 29 of section 99-01.3-04-03;
  - j. For progressive games, a record according to subsection 28 of section 99-01.3-04-03;
  - ~~h.k.~~ All voided paper bingo cards, other voided sealed and unpeekable bingo cards, and exchanged bonanza bingo cards, which must be retained for six months;
  - ~~i.l.~~ ~~The gift~~Gift certificate register according to subdivision b of subsection 4 of section 99-01.3-04-03;
  - ~~j.m.~~ Redeemed gift certificates and discount coupons; and
  - ~~k.n.~~ Purchase invoice or receipt documenting the cost and description of a merchandise prize.
2. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
3. ~~The cash profit defined in subdivision a of subsection 6 of section 99-01.3-02-01,~~ verificationVerification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.



4. The count and reconciliation of paper bingo cards, rolls of tickets, and cash banks according to ~~subsection~~ subsections 2, 3, 4, and 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-04.1 QUICK SHOT BINGO CARD MARKING DEVICES

### Section

- 99-01.3-04.1-01 ~~Electronic Quick Shot Bingo Card Marking Devices~~
- 99-01.3-04.1-02 Equipment
- 99-01.3-04.1-03 Conduct and Play
- 99-01.3-04.1-04 Recordkeeping

#### **99-01.3-04.1-01. ~~Quick~~Electronic quick shot bingo ~~card marking devices~~.**

~~"QuickElectronic quick shot bingo-card-marking devices"~~ means a ~~device used to play a quick shot bingo game where letters and numbers are predrawn and players purchase sealed bingo cards on the device which are matched against the predrawn letters and numbers~~ bingo game played on portable hand-held bingo devices utilizing electronic bingo card images. The bingo game is played using twenty-four predrawn letters and numbers and may use up to six bonus numbers to achieve predetermined patterns. If a predetermined pattern is achieved, then the player wins a prize based on a specific prize table. Because the game has all of its letters and numbers predrawn, there may or may not be a winning player for each game played. A player is not required to say the word "bingo" before a bingo is awarded. Before a session begins, an employee shall draw or a random number generator shall draw twenty-four balls or numbers comprised of the first five balls or numbers from each of the "B", "I", "G", and "O" rows, and the first four balls or numbers from the "N" row. Up to six additional balls or numbers may be drawn as bonus numbers. Once twenty-four balls or numbers and any bonus balls or numbers, if applicable, are selected, an employee or the related equipment shall enter the numbers into the electronic quick shot bingo site operating system and post the selected balls or numbers prior to starting the session. ~~A~~An electronic quick shot bingo site operating system with card marking ~~device~~devices and related equipment may only be sold or provided to an organization with a state gaming license.

**History:** Effective July 1, 2012; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-04.1-02. Equipment.**

An organization shall use this equipment:

1. A device from which bingo balls are drawn or a random number generator. The device or random number generator must draw from a set of seventy-five balls or numbers used to determine the original twenty-four balls or numbers for play of the game and any bonus numbers, if applicable. If actual bingo balls are used, rather than a random number generator, an organization employee shall ensure that all seventy-five numbers are available prior to the draw.
2. ~~A~~An electronic quick shot bingo ~~card marking device~~ site operating system, including a portable point-of-sale device, which allows an employee to deposit credits received from a player by cash, check, or debit card. All deposits must be received prior to play and no credit play is allowed. The electronic quick shot bingo ~~card marking device~~ site operating system must store all accounting information for a session.
3. ~~A~~An electronic quick shot bingo card ~~marking device~~ that allows a player to play between one and sixteen bingo cards for an individual game. Cost per card may not exceed five dollars. When a player initiates play of the selected cards, the device ~~may~~ automatically mark marks all of the player's cards with the predrawn numbers. The device may randomly mark the predrawn numbers in any order for each game played. No auto-daub feature which initiates play of a new game without a player's interaction is allowed. The phrase "malfunction voids all

pays and plays" must be displayed on the game selection screen, game screen, or on a decal affixed to the front of the device.

**History:** Effective July 1, 2012; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-04.1-03. Conduct and play.**

1. Only one set of numbers may be drawn for a session. The predrawn numbers for the current session must be posted at the site. The use of a flashboard is optional. Unless there is only one employee on duty, two persons shall verify and attest to the numbers drawn or selected, numbers posted, and numbers entered into the electronic quick shot bingo ~~card-marking device~~-site operating system for the current session. When the bingo numbers have been drawn or selected, the numbers may not be changed. Players are not allowed to pick any numbers to match for ~~a~~ an electronic quick shot bingo game or bonus feature. No electronic quick shot bingo session may extend beyond the end of a business day. After a session has been closed, the called bingo numbers must be cleared before the start of the next session.
2. Players are responsible for safeguarding their receipt with the designated ~~control~~ account number to track all deposits on ~~a~~ an electronic quick shot bingo ~~card-marking~~ card-marking device. A player's receipt must be presented when redeeming prizes or cashing out credits.
3. If a player has a winning prize pattern, all prize winnings must be awarded to players in a separate winnings account on ~~a~~ an electronic quick shot bingo ~~card-marking~~ card-marking device. Automatic transfer by the player of any winnings balance to the credit (deposit) balance on the device is prohibited. All payouts of winnings must be transacted by an organization employee.
4. A player ~~must~~ shall not be required to forfeit any winnings or make an additional wager in order to receive a bonus game or feature.
5. ~~These~~ The following rules ~~and~~ information, and policies must be ~~disclosed~~ posted or made available to players. If made available to players, the rules, information, and policies must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
  - a. ~~If applicable, a~~ A person under eighteen years of age may not play electronic quick shot bingo ~~unless an individual, eighteen years of age or older, accompanies a minor when buying bingo cards on a quick shot bingo card-marking device;~~
  - b. The actual letters and numbers predrawn by the organization are official;
  - c. If a person knowingly uses a fraudulent scheme or technique to cheat or skim involving electronic quick shot bingo, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
  - d. ~~A~~ An electronic quick shot bingo ~~card-marking~~ card-marking device may not be taken outside of the gaming area;
  - e. An employee may only assist a player in how to use ~~a~~ an electronic quick shot bingo card ~~-~~ -marking device;
  - f. No player can use more than one electronic quick shot bingo ~~card-marking~~ card-marking device at a time during a session;
  - g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited;

- h. ~~That a~~A player may not sell the remaining credits on a device to another player; and
- i. A player ~~must~~shall present the player's receipt when redeeming prizes or cashing out credits.;

~~6. These policies and information must be disclosed to players:~~

- ~~a.~~j. A policy that if a player has more than one winning bingo pattern on a card, whether the highest prize pattern will be awarded or all winning prize patterns will be awarded;
- ~~b.~~k. A policy in the event that a player has lost the player's receipt;
- ~~e.~~l. A policy when an organization may cancel a session due to power outage, electronic quick shot bingo ~~card marking device~~ site operating system being down, or any transmission problems; and
- ~~d.~~m. If applicable, a policy regarding use of aan electronic quick shot bingo ~~card marking~~card-marking device and additional paper bingo cards at the same time.

~~7.6.~~ An employee or floorworker ~~must~~shall use a point-of-sale device when adding additional credits (deposits) and redeeming winnings for additional credits (deposits) involving aan electronic quick shot bingo ~~card marking~~card-marking device provided that all transactions are accounted for according to the manufacturing specifications in section 99-01.3-16-09.4.

~~8.7.~~ ~~A~~An electronic quick shot bingo ~~card marking~~card-marking device cannot be reserved for a player. An organization shall provide each player an equal opportunity to use the available devices on a first-come, first-served basis.

~~9.8.~~ An organization may pay a fixed rate per electronic quick shot bingo ~~card marking~~card-marking device or a fixed fee per bingo card sold. No payment for use of a device may be based on a percentage of the gross proceeds or net income earned.

~~10.9.~~ A receipt must comply with ~~paragraph 1 of~~ subdivision i of subsection ~~13~~12 of section 99-01.3-16-09.4.

10. A receipt for a void, refund, or similar item must be initialed by a supervisor or another employee who did not conduct the transaction if a supervisor is not available and retained with the daily records.

11. All prizes awarded must be cash.

12. No electronic quick shot bingo games may be played with a progressive prize unless authorized by the attorney general.

13. A separate cash bank must be used with electronic quick shot bingo ~~card marking devices~~ at a site. All deposits must be separately identified from other game types, including other bingo games conducted at a site.

14. Unredeemed credits on aan electronic quick shot bingo ~~card marking~~card-marking device are ~~not~~ considered to be gross proceeds ~~but rather is cash profit~~. Unclaimed prizes on the device are subtracted from total prizes won in calculating the adjusted gross proceeds.

15. An organization shall deactivate an employee password within forty-eight hours of that employee leaving employment. Passwords for employees of a site must be changed every six months.

16. No discount, gift certificates, or promotions are allowed unless authorized by the attorney general.

17. An organization shall back up all of an electronic quick shot bingo site operating system's accounting information for a session on a separate electronic media file prior to the start of the next business day and retain the backup file for three years from the end of the quarter in which the activity was reported on a tax return. The accounting information must comply with subsection 12 of section 99-01.3-16-09.4.

**History:** Effective July 1, 2012; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-04.1-04. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each session:
  - a. The electronic quick shot bingo site operating system involving a bingo ~~card-marking~~card-marking device must include the summary report for the session according to ~~paragraph 2 of~~ subdivision ij of subsection ~~131~~ of section 99-01.3-16-09.4.;
  - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
  - c. Cash profit as defined in subdivision a of subsection 7 of section 99-01.3-02-01;
  - d. A summary of the ~~gross proceeds~~total dollar value of credits sold, total dollar value of unplayed credit cashed out, ~~unredeemed credits~~gross proceeds, prizes won, unclaimed prizes, prizes paid, adjusted gross proceeds, cash profit, cash long and short, and bank deposit. The summaries of all sessions for a quarter must reconcile to the tax return;
  - e. Prize report according to subdivision l of subsection 12 of section 99-01.3-16-09.4;
  - ~~d.f.~~ Record of win according to section 99-01.3-03-08; and
  - ~~e.g.~~ Record of the balls or numbers predrawn, including bonus numbers and a record of numbers actually entered into the electronic quick shot bingo ~~card-marking device~~ site operating system according to subdivision m of subsection 12 of section 99-01.3-16-09.4.
2. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
3. ~~The cash profit defined in subdivision a of subsection 6 of section 99-01.3-02-01, verification~~Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
4. The count and reconciliation of cash banks according to subsections 4 and 6 of section 99-01.3-03-09.

**History:** Effective July 1, 2012; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-05

### 99-01.3-05-01. Raffle.

A raffle is a game in which a prize is won by a player who bought a raffle ticket or square on a raffle board. A winning player is determined by drawing a ticket stub or number of a square on a raffle board from a receptacle or by an alternate fair method approved by the attorney general. A calendar raffle is a raffle in which a player's ticket stub is entered in two or more drawings held on predetermined days over an extended period of time for predetermined prizes. For a raffle board, the numbered squares on the board must be sold for the same price at a site on the day of the drawing. An organization shall complete on the board the cost per square, prizes, and date of the raffle and ensure a raffle board includes a state gaming stamp affixed by a distributor. For each square sold, an employee shall legibly write the player's full name in the square purchased by the player. Duplicate numbers corresponding to the numbered squares on a board must be placed into a receptacle for drawing. The conduct of a raffle is the drawing or alternate fair method of selection approved by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### 99-01.3-05-02. Tickets - Limitations and requirements.

1. Each raffle ticket is a separate and equal chance to win with all other tickets sold. A person may not be required to buy more than one ticket, or to pay for anything other than the ticket, to enter a raffle. An organization may sell several tickets or sell tickets in advance of a special event to a person at a discount. A discounted ticket must be specifically designated as a discounted ticket on the ticket and its stub. The number of discounted tickets must be predetermined and separately issued and accounted for when issued to a ticket seller.
2. An organization may not allow a raffle ticket seller to retain a ticket for free or retain any portion of the price of a ticket as compensation, and may not compensate the seller a certain amount or provide a gift for selling a winning ticket. An organization may provide a raffle ticket seller a fixed amount for selling the most or a certain number of tickets. No raffle ticket can be resold.
3. A raffle ticket must have a detachable stub that is consecutively numbered. A raffle ticket stub must have a duplicate number corresponding to the number on the ticket and contain the ~~purchaser's~~player's name, address, and telephone number, or email address, except when double roll tickets are used. A ticket must be issued, as a receipt, to a player. For a raffle conducted by a licensed organization, the ticket numbers must be mechanically or electronically imprinted. For a raffle conducted by an organization that has a permit, the ticket may be manually imprinted.
4. An employee may not sell a ticket on a site where another organization is licensed or has a permit unless the employee is granted permission by the lessor and other organization. An employee of a lessor may sell raffle tickets at the site for the organization authorized to conduct games at that site.
5. A ticket seller shall return the stubs of all tickets sold. The stubs must be intermixed in a receptacle.
6. An organization shall return the price of a ticket to a player if the stub of the player's ticket was not placed in the receptacle for the drawing.



7. For a calendar raffle, the stub of each ticket sold must be entered in all the drawings conducted since the ticket was sold. A licensed organization may not conduct a calendar raffle for other than a fiscal year beginning July first and ending June thirtieth.
8. An organization may not conduct a drawing unless two employees are present. A drawing must occur at an authorized public or private site.
9. In conducting a drawing, an employee shall draw a stub for the highest valued prize first. If there is more than one prize, an employee shall continue drawing for the prizes in the order of descending value. A prize is valued at its cash value or retail price. An organization may defer announcing the names of the winning players and respective prizes until after all the drawings have occurred and may make the announcement in any sequence. This rule does not apply when an organization adopts a written policy to place a winning player's stub immediately back into a receptacle to potentially be drawn for another prize or multiple drawings with a winner's choice of prizes.
10. An organization may not print any work or phrase on promotional material or advertising which implies or expresses that a purchase of the ticket is a charitable donation.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-05-03. Prize restrictions and requirements.**

1. No prize may be real estate, ticket for entry into another raffle, or live animal except for beef or dairy cattle, horse, bison, sheep, or pig. A prize must be an item that may be legally owned and possessed and has a value or a right to a free service. A winning player may not be required to first pay for or buy something to receive a prize. Cash or merchandise prizes may be awarded. A cash prize may be based on a percentage of gross proceeds. However, a single cash prize cannot exceed ~~four~~twenty-five thousand dollars and the total cash prizes cannot exceed ~~four~~twenty-five thousand dollars during a day. The maximum cash prize limits of this section do not apply to a public-spirited organization that supports amateur collegiate athletics. The public-spirited organization's primary purpose must include support of collegiate athletics.
2. ~~On not more than two occasions per year a~~A licensed organization may, at the request of a winning player, exchange a merchandise prize valued at not more than twenty-five thousand dollars for a cash prize. Merchandise prizes with a value in excess of twenty-five thousand dollars may not be exchanged for cash. ~~If an~~An organization ~~conducts no more than two raffles per year, it~~ may advertise, ~~except on the raffle ticket,~~ that cash may be requested as an alternative to the merchandise prize being offered.
3. An organization shall own, have a contract to acquire, or be able to obtain a merchandise prize before offering a merchandise prize in a drawing. However, an organization does not need to register or title an automobile or similar item.
4. Besides a primary prize that is awarded, an organization may offer an additional unguaranteed cash prize limited to one thousand dollars or merchandise prize provided:
  - a. A ticket must describe the prize;
  - b. The prize is predetermined and may be limited to a winning player of one of the other prizes;

- c. A player is not required to pay an additional amount, forfeit a prize, or be present to participate;
  - d. Unless an organization owns a prize, an award of the prize must be insured; and
  - e. Unless the prize is limited to a winning player of one of the other prizes, a drawing must be conducted from all tickets sold.
5. If an organization has not been able to recover the cost of the prize, it may cancel a raffle with approval from the attorney general and refund the gross proceeds.
  6. A prize winner ~~must~~shall be drawn or determined on the date and at the location indicated on a ticket unless a different date or location is requested in writing and approved by the attorney general before the date of the drawing. If a different drawing date or location is approved, an organization shall notify the purchasers of the tickets of the change by contacting each purchaser or by making a public announcement. The attorney general may, for good cause, change the date or location for a drawing.
  7. Within seven days of a raffle, an organization shall notify the winning player verbally or, if the value of the prize exceeds two hundred dollars, in writing, of the prize and arrange the pickup or delivery of the prize. If a prize remains unclaimed by a winning player for thirty days following the date of the written notification and an organization has made a good-faith effort to contact the winner to redeem the prize, the organization may retain the prize, have a second prize drawing, or award it in another raffle or game.
  8. An organization may award a bonus prize based on a separate drawing of previously drawn winning tickets.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 36-21.1-09, 53-06.1-01.1, 53-06.1-10.1

#### **99-01.3-05-04. Information on a ticket.**

Each raffle ticket must contain this preprinted information, except for double roll tickets:

1. Name of organization;
2. Ticket number;
3. Price of the ticket, including any discounted price;
4. Prize, description of an optional prize selectable by a winning player, and or option to convert a merchandise prize to a cash prize that is limited to the lesser of the value of the merchandise prize or ~~four~~twenty-five thousand dollars for a licensed organization or six thousand dollars for an organization with a permit. However, if there is insufficient space on a ticket to list each minor prize that has a retail price not exceeding twenty-five dollars, an organization may state the total number of minor prizes and their total retail price;
5. For a licensed organization, print "office of attorney general" and license number. For an organization that has a permit, print the authorizing city or county and permit number;
6. A statement that a person is or is not required to be present at a drawing to win;
7. Date and time of the drawing or drawings and, if the winning player is to be announced later, date and time of that announcement. For a calendar raffle, if the drawings are on the same day of the week or month, print the day and time of the drawing;



8. Location and street address of the drawing;
9. If a merchandise prize requires a title transfer involving the department of transportation, a statement that a winning player is or is not liable for sales or use tax;
10. If a purchase of a ticket or winning a prize is restricted to a person of a minimum age, a statement that a person must be at least " \_\_\_\_\_ " years of age to buy a ticket or win a prize;
11. A statement that a purchase of the ticket is not a charitable donation;
12. If a secondary prize is an unguaranteed cash or merchandise prize, a statement that the prize is not guaranteed to be won and odds of winning the prize based on numbers of chances; and
13. If a prize is live beef or dairy cattle, horse, bison, sheep, or pig, a statement that the winning player may convert the prize to a cash prize that is limited to the lesser of the market value of the animal or fourtwenty-five thousand dollars for a licensed organization or six thousand dollars for an organization with a permit.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-05-05. Double roll tickets.**

An organization may use double roll tickets provided:

1. Two single tickets must be printed side by side on a roll with a consecutive number. Both tickets must have the same number;
2. A list of the prizes must be disclosed or made available to players or the prize must be present at the site. If there is more than one prize, an organization may use a different receptacle for each prize to enable an employee or player to place one of the tickets in the receptacle related to a certain prize, or one receptacle in which the winning player can select from a variety of prizes. All tickets must be sold consecutively or in consecutive sets if the tickets are tracked by each ticket seller at an authorized site on the day of the raffle. All the tickets of each separately colored roll must be sold for the same price on that day. An organization may use a separate colored roll to sell several tickets to a person at a discount. The organization and player each retains one ticket, unless the player is allowed to temporarily retain the entire ticket until the player places one ticket into a receptacle;
3. A winning player need not be present when a drawing is held but shall claim the prize within a reasonable redemption period set by the organization on the same day of the raffle drawing. Otherwise, an organization shall conduct one or more additional prize drawings until the prize is claimed. A statement of the time of the drawing and redemption period must be on all promotional material and be posted at a site. If the prize is not claimed due to time limitations, the organization shall contact the attorney general the next business day; and
4. The organization's daily records must contain the ticket color, ticket selling price, ~~and lowest- and highest-~~ and total tickets sold numbered tickets sold. A verification of the tickets used must be done by two persons, unless there is only one employee on duty at the time. Both persons shall participate in the verification in the presence of each other and resolve any differences. After completing and documenting the verification, both shall initial the record. Any tickets left on a roll which will not be sold in any other raffle must be retained as part of the daily records. This subsection does not apply to a local permit.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-05-06. Reporting gross proceeds and prizes.**

1. When the sales price of a raffle ticket relates partly to admission for a meal or other nongaming activity, an organization shall deposit the ~~gross proceeds~~total receipts into its gaming account and allocate the amount between gaming and nongaming activity in this order:
  - a. An amount is allocated to raffle gross proceeds equal to the cost of the prize.
  - b. An amount is allocated to nongaming activity to recover its cost. This amount must be documented and is not reported on a tax return.
  - c. The remaining amount is allocated to raffle gross proceeds.
2. If an organization conducts a raffle in which the prize drawing is in one quarter, the gaming activity must be reported in the quarter in which the prize drawing is held. If an organization conducts a calendar raffle in which prizes are awarded in more than one quarter, the gross proceeds and prizes must be reported in the quarter in which the final prize is awarded. Actual drawings for a calendar raffle may be conducted at one time with the awarding of prizes at a later date.

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004; October 1, 2006; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-05-07. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each raffle that uses tickets with detachable stubs:
  - a. Purchase invoice documenting the purchase of tickets and range of ticket numbers printed;
  - b. Ticket distribution log containing a ticket seller's name, quantity issued, range of single and discounted ticket numbers issued to the seller, and quantity sold;
  - c. Reconciliation of the cash received from each ticket seller based on the number of tickets sold, including discounted tickets, date cash is received, and a schedule of bank deposits;
  - d. ~~For double roll tickets, the daily starting and ending cash on hand, IOU records according to section 99-01.3-03-06, and daily records according to subsection 4 of section 99-01.3-05-05;~~
  - ~~e.~~ A sample of a ticket;
  - f.e. The stubs of all sold raffle tickets and all unsold raffle tickets which must be retained for one year from the end of the quarter in which the activity was reported on a tax return; and

- ~~f. Documentation of the cost of nongaming activity according to subdivision b of subsection 1 of section 99-01.3-05-06.~~
  - ~~g. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;~~
  - ~~h. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all raffles for a quarter must reconcile to the tax return; and~~
  - ~~i. Purchase invoice or receipt documenting the cost of a merchandise prize and documentation of the cost of nongaming activity according to subdivision b of subsection 1 of section 99-01.3-05-06.~~
2. For each raffle that uses double roll tickets, ~~inventory records according to subsection 3 of section 99-01.3-03-09.;~~
- a. The daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
  - b. Daily records according to subsection 4 of section 99-01.3-05-05;
  - c. Inventory records according to subsection 3 of section 99-01.3-03-09; and
  - d. The count and reconciliation of rolls of tickets and cash banks according to subsections 3, 4, and 6 of section 99-01.3-03-09.
3. For each raffle board:
- a. The sold raffle board with the state gaming stamp affixed which must indicate the winning number and player;
  - b. The daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
  - c. Inventory records according to subsection 1 of section 99-01.3-03-09; and
  - d. The count and reconciliation of raffle boards and cash banks according to subsections 1, 4, and 6 of section 99-01.3-03-09.
4. For all raffles:
- a. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
  - b. Cash profit as defined in subdivision b of subsection 7 of section 99-01.3-02-01;
  - c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all raffles for a quarter must reconcile to the tax return; and
  - d. Purchase invoice or receipt documenting the cost and description of a merchandise prize.
- ~~3.5.~~ Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
- ~~4.6.~~ ~~The cash profit defined in subdivision b of subsection 6 of section 99-01.3-02-01,~~ verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.

~~5. The count and reconciliation of rolls of tickets and cash banks according to subsection 6 of section 99-01.3-03-09.~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## **CHAPTER 99-01.3-05.1 FIFTY-FIFTY RAFFLE SYSTEMS**

### Section

99-01.3-05.1-01 Fifty-Fifty Raffle System

99-01.3-05.1-02 Tickets - Limitations and Requirements

99-01.3-05.1-03 Prize Restrictions and Requirements

99-01.3-05.1-04 Information on a Bearer Ticket

99-01.3-05.1-05 Recordkeeping

### **99-01.3-05.1-01. Fifty-fifty raffle system.**

A fifty-fifty raffle system means computer hardware, software, and related equipment used to sell fifty-fifty raffle tickets and account for sales. A fifty-fifty raffle system server must be located in a secure location at the site of the raffle event. A fifty-fifty raffle system must be operated by the organization conducting the raffle. A winning player is determined by drawing a draw number from a receptacle. A draw number is a number that is provided to the player on a bearer ticket which may be selected as the winning number for the raffle. A bearer ticket is a paper ticket that contains one or more draw numbers purchased. The conduct of a raffle is the drawing. Fifty-fifty raffle systems may only be used for single event raffles. Single event raffles are raffles conducted on the same day at the same event.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-05.1-02. Tickets - Limitations and requirements.**

1. Each draw number is a separate and equal chance to win with all other draw numbers sold. A person may not be required to buy more than one draw number or to pay for anything other than the draw number to enter a fifty-fifty raffle.
2. Tickets must be purchased from attendant-operated fifty-fifty raffle sales units. Player-operated fifty-fifty raffle sales units are not permitted. A raffle sales unit is a portable wireless device or standalone cashier station that is used as a point of sale for bearer tickets that include the draw numbers purchased by the player. A discounted ticket is a bearer ticket that contains a specific number of draw numbers at a discounted price.
3. Tickets must only be printed when sold to a player. Preprinting of tickets is prohibited.
4. An organization may not allow a fifty-fifty raffle ticket seller to retain a draw number for free or retain any portion of the price of a ticket as compensation and may not compensate the seller a certain amount or provide a gift for selling a winning draw number. An organization may provide a raffle ticket seller a fixed amount for selling the most or a certain number of tickets. No ticket can be resold.
5. An organization may not conduct a drawing unless two employees are present. A drawing must occur at an authorized public or private site. All draw numbers in the receptacle must be intermixed before drawing a winning draw number.
6. An organization may not print any word or phrase on promotional material or advertising which implies or expresses that a purchase of the ticket is a charitable donation.
7. Draw numbers purchased from a raffle sales unit must be issued and numbered consecutively. Upon completion of a sale, the player shall receive a bearer ticket with the draw numbers printed on it for a chance to win a raffle drawing.

8. No sales of fifty-fifty raffle tickets may occur after the raffle purchase period has been closed. A raffle drawing must only be conducted after all raffle sales units have completed their final sync to the system sever to ensure all sold draw numbers have been printed into the receptacle.
9. The winning draw number must be verified with the system as a sold and valid draw number prior to payout. The player shall present the bearer ticket to the organization for validation with the winning draw number. Voided tickets and their draw numbers must not be qualified toward any prize.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-05.1-03. Prize restrictions and requirements.**

1. Prizes must only be cash and must be fifty percent or more of gross proceeds for each single event raffle. However, a single cash prize may not exceed twenty-five thousand dollars and the total cash prizes may not exceed twenty-five thousand dollars during a day. Prize payouts must be based on ticket sales and not on cash retained by sellers. The maximum cash prize limits of this section do not apply to a public-spirited organization that supports amateur collegiate athletics. The public-spirited organization's primary purpose must include support of collegiate athletics.
2. A prize winner must be drawn on the date and at the location indicated on a bearer ticket.
3. The winning draw number must be selected from all sold draw numbers from the current single event raffle drawing.
4. The organization shall post or publish by a public means, the winning draw number and where the prize may be claimed. A winning player need not be present when a drawing is held but shall claim the prize by the next business day. A statement of the time of the drawing and redemption period must be on all promotional material and be posted at a site. If a prize is not claimed due to time limitations, the organization shall contact the attorney general.
5. If there is a power failure or technical problem with the system and the system can no longer be used, the raffle drawing must not occur until the power or system has been restored and all purchased draw numbers have been printed into the receptacle. The attorney general is to be notified immediately if a raffle drawing occurs and the organization later determines that not all eligible draw numbers were placed into the draw container. The organization shall specify the total number and draw numbers of the affected tickets and provide an explanation for how the problem occurred.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-05.1-04. Information on a bearer ticket.**

1. Name of organization and phone number.
2. License number.
3. The purchase price of each bearer ticket.
4. Draw numbers.

5. Location, date, and time of the drawing.

6. The time limit for the ticket buyer to claim a prize.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-05.1-05. Recordkeeping.**

For each fifty-fifty single event raffle, records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. The single event raffle accounting and operating records according to subsection 2 of section 99-01.3-16-09.5.

2. The daily starting and ending cash on hand records according to section 99-01.3-03-06.

3. A record identifying the allocation of draw numbers to each raffle sales unit and the seller's names assigned to each unit.

4. A reconciliation of cash received to the dollar value of draw numbers sold for each raffle sales unit and its sellers and in total for the single event raffle.

5. A reconciliation of all sold, voided, and unsold draw numbers to the total number of draw numbers that were available for sale for each single event raffle.

6. The actual winning draw number, bearer ticket showing purchase of the winning draw number, and all sold and voided draw numbers, which must be retained for one year from the end of the quarter in which the activity was reported on a tax return.

7. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.

8. Cash profit as defined in subdivision b of section 6 of section 99-01.3-02-01.

9. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all raffles for a quarter must reconcile to the tax return.

10. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.

11. Verification of the amount deposited according to a bank statement and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.

12. The count and reconciliation of cash banks according to subsections 4 and 6 of section 99-01.3-03-09.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1



## CHAPTER 99-01.3-06

### 99-01.3-06-01. Games - Definitions.

This chapter applies to a licensed organization that conducts pull tabs, club specials, tip boards, seal boards, prize boards, and punchboards, but not pull tabs or prize boards involving a dispensing device. The maximum price per chance is two dollars. A prize board, club special, punchboard, seal board, and tip board are conducted as a single game which may have a cash or merchandise prize and one or more seal prizes. The value of a seal prize or a last sale prize may exceed the value of the top tier prize. For pull tabs described by subsection 3, only a cash prize can be awarded, not a merchandise or seal prize.

1. "Club special" means a placard used with pull tabs and it contains numbered lines and a seal covering the winning number of the top tier prize. A player may win a minor prize or, if the player has a pull tab with a number matching a predesignated number on the placard, would sign the player's full name on the line. Only one player's name may be signed on a specific line. When all the lines are signed, a seal is removed to reveal a winning line number. A player whose signature is on that line wins the seal prize. An organization is responsible for ensuring that a complete description and retail price of a merchandise seal prize, description of minor merchandise prizes, or cash prize to be awarded and cost per play is on a flare. The maximum number of pull tabs in a deal is five hundred. The maximum cash prize, last sale prize, or seal prize, including the retail price of a merchandise prize, is one hundred fifty dollars.
2. "Prize board" means a board used with pull tabs to award cash or merchandise prizes. Coins of various values may be affixed to the board and, under each coin, a cash prize value is preprinted on the board. A board ~~may~~must contain numbered lines and a seal covering a winning number. A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. Only one player's name may be signed on a specific line. However, if a number or symbol matches a winning number or symbol assigned to a specific coin or minor prize, the player wins that coin or prize, and a cash prize value stated under the coin. A last sale prize may be awarded. When the board is closed, a seal is removed to reveal the winning line number. A player whose signature is on that line wins the seal prize. No board may be closed unless all the top tier winning pull tabs have been redeemed, all the pull tabs are sold, all the seals have been opened, or the board has been conducted for ninety calendar days. An organization is responsible for ensuring that a complete description and retail price of a merchandise seal prize, description of minor merchandise prizes, or cash prize to be awarded and cost per play is on a board. A seal prize and a last sale prize are not considered top tier prizes. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face value, of the coins that were awarded to the total face value of all the coins. An organization may use an unawarded prize in another game, sell the prize, or deposit the coin in the gaming account. The maximum number of pull tabs in a deal is two thousand. The maximum cash prize, last sale prize, or seal prize, including the retail price of a merchandise prize, is five hundred dollars.
3. "Pull tab" means a folded or banded ticket (jar ticket), a card with break-open tabs (pull tab), or a ticket with a latex covering. The terms "pull tab" and "jar ticket" are used interchangeably unless otherwise stated. A winning pull tab contains certain symbols or numbers and may contain multiple winning symbols or numbers. A pull tab game must be played with two or more deals commingled at any time. The maximum cash prize for a winning symbol or number on a pull tab or last sale prize is five hundred dollars.
4. "Punchboard" means a board comprised of holes that contain numbered slips of paper (punches). A punchboard may include a seal prize, and more than one last sale prize if the



punchboard is split into more than one section. An employee or player extracts a punch from the punchboard. If the number on the punch matches a number on a flare, the player wins a prize. No punchboard may be closed unless all the top tier winning punches have been redeemed, all the punches are sold, or the punchboard has been conducted for ninety calendar days. A seal prize and a last sale prize are not considered top tier prizes. An organization is responsible for ensuring that a complete description and retail price of a merchandise seal prize, description of minor merchandise prizes, or cash prize to be awarded and cost per play is on a board. The maximum cash prize, seal prize, or last sale prize, including the retail price of a merchandise prize, is five hundred dollars.

5. "Seal board" means a placard containing consecutively numbered lines. A seal covers the winning number. A player buys a blank "line" and signs the player's full name on it. Only one player's name may be signed on a specific line. After all the lines are signed, the seal is removed to reveal the winning line number. An organization is responsible for ensuring that a complete description and retail price of a merchandise seal prize or cash prize to be awarded and cost per play is on a board. The maximum seal cash prize or retail price of a merchandise prize is five hundred dollars.
6. "Tip board" means a placard to which jar tickets or pull tabs are attached. A seal covers the winning number of the top tier prize. A player may win a minor prize or, if the number of a player's jar ticket matches a number on the placard, the player signs the player's full name on the line. Only one player's name may be signed on a specific line. After all the lines are signed or all the pull tabs have been sold, the seal is removed to reveal the winning number. An organization is responsible for ensuring that a complete description and retail price of a merchandise seal prize, description of minor merchandise prizes, or cash prize to be awarded and cost per play is on a board. The maximum number of jar tickets or pull tabs in a deal is five hundred. The maximum cash prize, seal prize, or last sale prize, including the retail price of a merchandise prize, is one hundred fifty dollars.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-08

### **99-01.3-06-02. Conduct and play.**

1. Deals of pull tabs must be commingled for a game as follows:
  - a. Two or more deals must be placed in a receptacle and be thoroughly intermixed. When an organization's predetermined number or range of numbers of winning pull tabs remain in a game as unredeemed, an additional deal is added. An employee shall add a deal to a game when there are about two hundred fifty pull tabs remaining and the game cannot be or is not being closed. The new pull tabs must be intermixed with the pull tabs in the receptacle before any pull tab is sold;
  - b. The deals must be identical except for the game serial number, and a minor difference in printing that is approved by the attorney general. Each deal must have at least two top tier winning pull tabs. If deals of a game involve folded or banded jar tickets, the color of the tickets' band must be the same; however, multiple-colored bands on a single ticket may be used. When a deal is added to a game, an employee shall compare the color of a deal's pull tabs to the color of the game's pull tabs. If the two colors are not the same, the deal cannot be used;
  - c. A master flare or flare for at least one deal of a game must be displayed with the game and be visible to and not easily removed by a player. An organization shall retain all original flares at a site while a game is in play. If a deal has a last sale prize feature, the

deal's flare must also be displayed. Only the flare of one deal of a game may have a last sale prize feature;

- d. If an indicator for adding a deal to a game has been reached and an organization does not have a deal to add, the organization shall temporarily suspend the game until it procures a deal. However, if the organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;
- e. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter, a game may be closed anytime if all top tier winning pull tabs have been redeemed;
- f. Except as provided by subdivision g, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and:

~~(1) Fifty deals have been added to a game;~~

~~(2) A game's actual gross proceeds are twenty-five thousand dollars; or~~

~~(3) A game has been in play for twenty-five consecutive calendar days~~ a game has been in play for twenty-five consecutive calendar days; and

- g. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period.

- 2. An employee may not place a deal of pull tabs, club special, or prize board in play which has a manufacturer's or distributor's seal broken on the game's container when the game was received from a distributor. A person may not take off a deal's manufacturer's cellophane shrink wrap or break the manufacturer's or distributor's security seal on the deal's container until the deal is to be placed in a receptacle. If a distributor's or manufacturer's security seal is broken before the deal is used, an organization shall return the deal to the distributor. If a deal is packaged in two or more containers, the full deal must be placed in play at the same time.

- 3. ~~These~~ The following rules, information, and policies must be ~~disclosed~~ posted or made available to players. If made available to players, the rules, information, and policies must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:

- a. Restricting the play of a game to one player or a group of players is prohibited;
- b. A winning pull tab must be redeemed within a fifteen-minute time limit;
- c. If a person knowingly solicits, provides, receives, or knowingly uses any inside information, from or to any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
- d. A pull tab cannot be redeemed if it has been taken from the gaming area;

- e. To the best of the organization's knowledge, a prize remaining on a board relates to a winning pull tab that has not been ~~bought~~redeemed. This rule is not required to be ~~disclosed~~posted or made available to players if an organization does not conduct a prize board;
- f. A deal may be added to a game at any time; and
- g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited. This rule is not required to be ~~disclosed~~posted or made available to players if an organization does not pay a prize that requires a record of win.

~~4. These policies and information must be disclosed to players:~~

- ~~a.~~h. For any last sale prize, the method of determining which player is entitled to buy the last pull tab or punch for a last sale prize when two or more players desire to buy the last pull tab or punch;
- ~~b.~~i. The information, if any, authorized by subdivision a or b, or both, of subsection ~~6~~5;
- ~~e.~~j. Any limit on the number of pull tabs or punches that a player may buy at a time; ~~and~~
- ~~d.~~k. When a game is being closed, an employee shall:
  - (1) Post a notice that the game is being sold out; and
  - (2) Any limit on the number of pull tabs or punches that two or more players may buy at a time.

~~5.4.~~ A player may not redeem and an employee may not knowingly pay a prize for a pull tab after fifteen minutes have elapsed since the pull tab was bought. If a player attempts to redeem a pull tab after the time limit, an employee shall, if possible, retain and void the pull tab.

~~6.5.~~ A person may post the information referenced by subdivision a or b, or both, for a commingled game provided that the posting contains a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be as described in subdivision a or b, or both:

- a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.
- b. The number of unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.

~~7.6.~~ An organization may limit the number of pull tabs a player may buy regardless if the player is redeeming a winning pull tab.

- ~~8~~.7. An employee may not selectively pick a pull tab from a receptacle based on its game serial number or other factor. An employee shall take a handful of pull tabs from a receptacle and count off the number bought. An employee may not permit a player to physically handpick a pull tab or honor a player's request to select a specific pull tab. However, an employee may honor a player's suggestion to select a pull tab from a general area of a receptacle. In applying subsection 2 of North Dakota Century Code section 53-06.1-16, the phrase "fraudulent scheme or technique" includes an employee selecting, by any method, only certain pull tabs in a game or an employee not thoroughly intermixing pull tabs of the initial or added deals.
- 9.8. An employee may only assist a disabled player in opening a pull tab.
- ~~10~~.9. An employee shall deface a winning number or symbol of a pull tab, including pull tabs used with a prize board, and punchboard punch when it is redeemed. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced. An employee may not knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, has a game serial number different from the serial numbers of the deals in the game, or is defective.
- ~~11~~.10. If a player buys a set of ~~stapled~~banded jar tickets and, before ~~or after~~opening or breaking the band of any jar ticket, determines that the set contains less than the standard number of tickets, an employee may issue the player only the number of tickets actually missing. ~~If a player buys a set of banded jar tickets and, before breaking the band, determines that the set contains less than the standard number of tickets, an employee or~~ may issue the player a new set in exchange for the defective set. ~~An employee may staple together the proper number of loose jar tickets of a game to sell. An employee may, at any time, sell a loose unopened jar ticket or partial set of banded jar tickets at a proportional selling price of a full set.~~
- ~~12~~.11. When a game is being closed, an organization may continue to conduct the game although all of its top tier and minor winning pull tabs have been redeemed. An employee may not permit a player to buy out a game except when a game is being closed. If an organization closes a game that has pull tabs unsold, it may not open or place the pull tabs back into play.
- ~~13~~.12. Unless an organization conducts a commingled game according to subdivision e of subsection 1 or closes a commingled game at least monthly, an employee who did not conduct the game shall do a monthly interim audit of the game. If the percent-of-accuracy of all the games of a site for the previous quarter was less than ninety-eight and one-half percent, and a cash shortage of more than one hundred dollars, an employee who did not conduct the game shall do a weekly interim audit of the games for that site for up to twelve continuous weeks or until the organization determines, resolves, and documents the cause. One of the weekly interim audits may be the audit required by subsection 7 of section 99-01.3-03-10. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general. Percent-of-accuracy is computed as cash profit divided by adjusted gross proceeds.
- ~~14~~.13. An employee shall award the last sale cash or merchandise prize to the player who actually buys the last pull tab or punch.
- ~~15~~.14. An organization may transfer a commingled game, club special, tip board, seal board, prize board, and punchboard from a site to another site, or rotate games among sites. If an organization discontinues gaming at a site, it may close a game. If a game is in the process of being conducted through a jar bar, the game cannot be transferred to a dispensing device. A game must be reported for the site at which it was closed and on a tax return for the quarter in which it was closed.

- ~~46-15.~~ An employee may not pay, from any source of funds, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site. This rule does not apply to a last sale prize.
- ~~47-16.~~ Before leaving a jar bar unattended, an employee shall safeguard the games, cash, and records.
- ~~48-17.~~ An organization may not publicly display a redeemed pull tab.
- ~~49-18.~~ An organization or employee may not reimburse, from any source of funds, an amount to a player for play of a game that has a manufacturing defect or has an incorrect posting of information described by subsection 6, unless the attorney general approves.
- ~~20-19.~~ If an organization suspects or determines that a game may be defective, the organization shall temporarily suspend the game, notify the attorney general, and follow the attorney general's instructions.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; July 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-08

### **99-01.3-06-03. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. All redeemed and unsold pull tabs or punches for a game must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return~~;~~<sub>2</sub>.
2. For a commingled game, an accounting of each deal's, shift's, or day's redeemed pull tabs, including the number by prize value, total prizes, and number of redeemed top tier pull tabs by game serial number. This accounting must be consistent and be done each time a deal is added to a game, a shift ends, or at the end of each day. If the accounting is done each time a deal is added to a game, the redeemed winning pull tabs for the period must be grouped separately and retained with all other groups of pull tabs of that game. If the accounting is done at the end of each shift or day, the redeemed winning pull tabs for each shift or day must be banded and each banded group must be dated with the date of activity and be retained in a storage container with all other banded groups of that game. For each game, there must be a daily accounting of deals added to a game, by gaming stamp and game serial numbers, and of the cash profit and bank deposit~~;~~<sub>2</sub>.
3. For a club special, tip board, seal board, prize board, and punchboard, an accounting of prizes, by state gaming stamp number~~;~~<sub>2</sub>.
4. A daily accounting of starting and ending cash on hand and IOU records according to section 99-01.3-03-06~~;~~<sub>2</sub>.
5. For a deal of pull tabs or prize board, the game information sheet and flare, and for a club special, tip board, punchboard, and seal board, the flare, with the state gaming stamp affixed~~;~~<sub>2</sub>.
6. A summary of ideal gross proceeds, value of unsold pull tabs or punches, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries for a quarter must reconcile to the activity reported on the tax return~~;~~<sub>2</sub>.
7. Record of win according to section 99-01.3-03-08~~;~~<sub>2</sub>.

8. Inventory records according to subsection 1 of section 99-01.3-03-09;~~;~~<sub>2</sub>
9. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09;~~;~~<sub>2</sub>
10. An organization approved by the attorney general to use a combined cash bank for pull tab games at a site shall document the allocation of cash profit to each game based on the ratio of a game's adjusted gross proceeds to the total adjusted gross proceeds of all the games;~~;~~<sub>2</sub>
11. For a commingled game, club special, tip board, seal board, prize board, and punchboard the cash profit as defined in subdivisions c, e, and f of subsection ~~6~~7 of section 99-01.3-02-01, ~~verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10;~~<sub>2</sub>
12. Interim audit records according to subsection ~~13~~12 of section 99-01.3-06-02;~~;~~<sub>2</sub>
13. Verification of the amount deposited according to a bank statement and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
- ~~14.~~ 14. Purchase invoice or receipt documenting the cost and description of a merchandise prize; ~~and;~~<sub>2</sub>
- ~~14.15.~~ 14.15. The count and reconciliation of deals, games, and cash banks according to ~~subsection~~subsections 1, 4, and 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1



## CHAPTER 99-01.3-07

### 99-01.3-07-01. Sports pool.

A "sports pool" is comprised of wagers paid by players for a line or square that will determine which player wins. The maximum cost per line or square is ~~five~~twenty-five dollars. The conduct of a sports pool is the selling of chances on the board and ~~award~~awarding of a prize. Only cash prizes can be awarded. No sports-pool board with the state gaming stamp affixed may be conducted off of a site. However, an organization with a local permit may conduct a calendar sports pool off of a site.

1. A sports-pool board must be a multiple line or multiple square board based on the professional sporting event, provide for an equal chance for each player to win, and be acquired from a distributor.
2. An organization shall complete the cost per play, date of sports event, ideal prizes, and method of prize payout on a board. An employee of a lessor may sell chances on a board, but not award prizes, at the site for the organization authorized to conduct games at the site. The method of prize payout may be at periodic intervals or the end of an event. The total payout cannot exceed ninety percent of the gross proceeds.
3. An organization shall designate one opponent along the vertical columns of numbers and the other opponent along the horizontal rows of numbers. However, if the opponents are unknown when the board is being sold, an organization shall designate identifiable conferences, divisions, or events. A player who buys a square or line or an employee shall write the player's full name in that square or on that line. Only one player may buy a specific square or line. Except for a calendar sports pool, no tapes may be removed until all the squares or lines are sold and the opponents are designated. All the squares or lines must be sold before the sports event begins. If all the squares or lines are not sold, an organization may advance the board to another event or refund the players' money. If opponents were designated but the board is advanced to another event, an organization may keep the same opponents or designate new opponents. When an unsold board is advanced to another event, an organization shall post a notice on a site disclosing its policy of advancing the board. Gross proceeds must be separately maintained for each board.
4. An organization may conduct a calendar or master sports pool for two or more events of the same sport. An organization shall use one board for each event and buy the necessary number of boards before selling any square. For example, if a sports pool involves sixteen events, an organization shall buy sixteen boards. A player buys the same square on each board for all the events. Each board is reported separately on a tax return for the quarter in which the event was held.
5. A calendar sports pool must be conducted as follows:
  - a. The tapes covering the numbers assigned the horizontal rows and vertical columns of the boards must be removed to reveal the numbers. One opponent must be designated along the vertical columns of numbers and the other opponent designated along the horizontal rows of numbers. The board must state the event and its date;
  - b. Each square of each board must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right;
  - c. Each board must be printed and may be reduced in size. The quantity printed is based on the type of board. For example, for a one hundred square board, each board must be printed one hundred times. A printed board for each event and a receipt comprise a book;
  - d. A receipt must contain:

- (1) A consecutive receipt number starting with one. A statement that the receipt number is the player's assigned square for all the boards in the book;
  - (2) Name and address of organization and name of site;
  - (3) For a licensed organization, print "office of the attorney general" and site license number. For an organization that has a permit, print the name of the city or county and permit number;
  - (4) Price of the book, method of prize payout and prize; and
  - (5) A detachable section containing a player's full name, address, telephone number, and matching receipt number which is retained by an organization;
- e. An employee may not sell a book on a site where another organization is licensed or has a permit unless the employee is granted permission by the lessor and other organization;
- f. A player may not choose a particular book to buy. When a book is sold, a receipt's detachable section is completed. After a player buys a book, the player may see the numbers assigned that player's square on the boards;
- g. AFor a licensed organization, a board must be posted at the site on the day that the related event is held; and
- h. If all the books of a calendar sports pool are not sold before the first event, an organization shall refund the players' money and void all the boards. The voided boards must be reported on the tax return as "no activity".
6. A master sports pool must be conducted as follows:
- a. An organization shall post a multiple square master board at a site. Each square must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right. A master board must include:
    - (1) Name of organization;
    - (2) The events;
    - (3) Price of participating, number of events, method of prize payout and prize; and
    - (4) A statement that the scores assigned to the players' squares for each event will be posted at the site five days before the event.
  - b. A player shall buy a square and write the player's full name and telephone number in it.
  - c. A sports-pool board with the state gaming stamp affixed must be posted at a site five days before the event related to that board is held.
  - d. If all the squares of a master sports pool are not sold before the first event, an organization shall refund the players' money and void all the boards. The voided boards must be reported on the tax return as "no activity".
7. The winner of a board is determined, at periodic intervals or at the end of the event:
- a. For a multiple line board, by determining the line that is assigned the winning number (one's position) or the combined score of both opponents.



- b. For a multiple square board, by determining the square at the juncture of the horizontal row and vertical column which relate to the numbers (one's position) of each opponent's score.
- 8. An organization shall make a good-faith effort to contact a winning player to award a prize. If a prize is unclaimed for thirty days following the notification or a player attempts to falsify or falsifies a record of win, the prize is forfeited.
- 9. An employee shall record a prize on a board or a register according to section 99-01.3-03-07. If a prize is recorded on a board, the board must contain the information required by section 99-01.3-03-07. This subsection does not apply to a permit.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-09

### **99-01.3-07-02. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported:

- 1. For each sports-pool board:
  - a. The sold board with the state gaming stamp affixed which must indicate the winning square or line;
  - b. The daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
  - c. [Cash profit as defined in subdivision h of subsection 7 of section 9-01.3-02-01;](#)
  - ~~d.~~ [The type of professional sport and amount of each prize;](#)
  - ~~d.e.~~ A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sports-pool boards conducted during a quarter must reconcile to the activity reported on a tax return; and
  - ~~e.f.~~ Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08; [and](#)
  - ~~g.~~ [Inventory records according to subsection 1 of section 99-01.3-03-09.](#)
- ~~2. Inventory records according to subsection 1 of section 99-01.3-03-09.~~
- ~~3.~~ Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
- ~~4.~~ ~~The cash profit defined in subdivision h of subsection 6 of section 99-01.3-02-01, verification~~
- ~~3.~~ [Verification](#) of the amount deposited according to a bank statement; and an audit of the event's activity according to [subsections 6 and 7 of section 99-01.3-03-10.](#)
- ~~5.4.~~ The count and reconciliation of sports-pool boards and cash banks according to ~~subsections~~[subsections 1, 4, and 6](#) of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-08

### 99-01.3-08-01. Twenty-one.

1. "Twenty-one" is a card game in which a player tries to obtain a higher total card count than a dealer without exceeding twenty-one. An ace counts either one or eleven. A king, queen, and jack have a count of ten. Cards two through ten are counted at their face value.
2. A maximum of seven players may play at a table. A player may play up to two betting spaces if an adjacent betting space is available. An outsider may not wager on a player's hand and a player may not wager on another player's hand.
3. For a site at which total twenty-one prizes exceeded total twenty-one gross proceeds for a quarter, an organization shall contact the attorney general within thirty days of the quarter ending to discuss the situation. In addition, twenty-one percent-of-hold records must be maintained for each dealer at that site for twelve continuous weeks. Percent-of-hold is computed as adjusted gross proceeds divided by gross proceeds.

**History:** Effective May 1, 1998; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

### 99-01.3-08-03. Casino chips.

1. A wager and tip must be made with chips. If an organization accepts a twenty-five dollar wager, it shall provide twenty-five dollar chips to players for their optional use. Chips may be issued in values of fifty cents, one dollar, two dollars, five dollars, ~~and twenty-five dollars, and~~ one hundred dollars. An organization may use a fifty cent metal coin or fifty cent United States coin as a substitute for a fifty cent chip provided the coin produces sufficient clarity on video surveillance. ~~An organization may not use a different chip of the same value at a site, except for a commemorative chip.~~
2. Each chip must be ~~one and nine sixteenths inches [39.62 millimeters] in diameter and be~~ permanently impressed, engraved, or imprinted on one side with an organization's name and on the other side with the value of the chip. The name may be represented by a unique identification that differentiates an organization's chips from all other organizations' chips. If a site had twenty-one gross proceeds averaging ten thousand dollars or more for two consecutive quarters and this level of activity is expected to continue or an organization installs a video surveillance system at a site, regardless of the value of wagers accepted at the site, the chips must meet the specifications of subsection 3.
3. Each value of chip must have the following prescribed primary color. A chip must have one or two contrasting secondary colors as edge spots, except for a fifty cent chip or metal coin. Edge spots must be visible and equally spaced on the perimeter of both sides of a chip and on the chip's circumference. An organization may not use a secondary color on any value of chip that is identical to the primary color used by the organization on another value of chip that results in a reversed combination of primary and secondary colors between the two values of chips. The primary colors and edge spots must be:
  - a. Fifty cent mustard yellow chip - a fifty cent chip has no edge spots. A fifty cent metal coin or fifty cent United States coin may be used as a substitute for the fifty cent chip.
  - b. One dollar white chip - a one dollar chip must have four solid edge spots ~~and each edge spot must be one half of one inch [12.7 millimeters] in width.~~
  - c. Two dollar pink chip - a two dollar chip must have four split edge spots ~~and each edge spot must be three eighths of one inch [9.40 millimeters] in width. Each of the two split~~

~~portions of an edge spot and the space between the two split portions must be one-eighth of one inch [3.05 millimeters] in width.~~ The two split portions of an edge spot must be the secondary color and the middle space may either be the primary color or a third color.

- d. Five dollar red chip - a five dollar chip must have six solid edge spots ~~and each edge spot must be one-quarter of one inch [6.35 millimeters] in width.~~
  - e. Twenty-five dollar green chip - a twenty-five dollar chip must have eight white solid edge spots ~~and each edge spot must be five thirty-seconds of one inch [4.06 millimeters] in width or, if the center of the chip is embossed in gold or inlaid with a coin, the chip must have~~ or three white solid edge spots ~~and each edge spot must be fifteen thirty-seconds of one inch [12.18 millimeters] in width.~~
  - f. One hundred dollar black chip - a one hundred dollar chip must have four white triple split edge spots ~~and each edge spot must be one-half of one inch [12.7 millimeters] in width. Each of the three split portions of an edge spot and the two spaces between the three split portions must be about three thirty-seconds of one inch [1.52 millimeters] in width. This chip is used in the game of paddlewheels.~~
4. An employee shall safeguard chips in a safe place or on a table with a locking cover. If a table has been opened and no employee is stationed at it, an employee shall remove or secure the chip tray with a locking cover.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

#### **99-01.3-08-04. Video surveillance system.**

If a site had twenty-one gross proceeds averaging ten thousand dollars or more per quarter for two entire consecutive quarters, this level of activity is expected to continue, and wagers exceed two dollars, an organization shall have a video surveillance system operational at the site within forty-five days from the end of the second quarter. However, for a site with seasonal activity, this level of activity is based on the average gross proceeds of the active quarters within the fiscal year July first through June thirtieth. A level of activity is based on a site's recent historical experience, but not earlier than the previous fiscal year, regardless of which organization conducted twenty-one at the site. If an organization conducts twenty-one at a newly acquired site that has a level of activity requiring a video surveillance system, it shall have the system for a table operational within forty-five days of conducting twenty-one or limit wagers to two dollars until the system is operational. A system must be operational for each twenty-one table that is regularly located on a site, regardless of how infrequent a table is used or the value of wagers accepted at the table. A temporary table that is brought onto a site for fourteen or fewer consecutive days for a special event according to subsection 4 of section 99-01.3-01-02, but for not more than two events per quarter, does not need a system. An organization shall:

- 1. Install a system that meets these ~~specifications~~ requirements:
  - a. A recording unit must ~~be a super VHS (S-VHS) system utilizing super VHS (S-VHS) videotapes, central processing unit (CPU), or a digital video recorder (DVR) system and~~ must record in real time. A video system must be approved by the attorney general and no time lapse or multiplex video recorders may be used as the primary mode of operation. A recording unit must be secured in a locked vented cabinet or area, plugged into an outlet that cannot be switched off, and be programmable with a minimum seven-day memory backup. A recording unit must have a built-in or separate time and date generator that displays the time and date on the recorded video without significantly

obstructing a recorded picture. A playback unit used to review a recorded video must have forward and reverse frame-by-frame and high-speed scanning capability;

- b. ~~A super VHS, digital, or high resolution color camera that has four hundred or more active lines of horizontal resolution must be used. A camera must have a signal to noise ratio, with the automatic gain circuitry off, of forty-five decibels or better. A high-resolution color camera must be positioned above the center of a table and record gaming activity from the dealer's perspective. A camera must be plugged into a surge protector and use an outlet that cannot be switched off. A camera must be protected by a slotted or clear dome. An automatic iris is optional;~~
- c. A camera lens must have ~~an f-stop rating of f 1.2 or better, be color corrected and have a format size equal to or greater than the format size of a camera. A lens may be fixed or variable focus. A lens must have~~ a field of view to record the face of a dealing shoe, all betting spaces, discard holder, chip tray, currency plunger, and table number;
- d. A color video monitor ~~with a connection that produces lines of horizontal resolution that equal or exceed the number of active lines of horizontal resolution that a video camera is outputting. A monitor's screen must measure at least thirteen inches [330.2 millimeters] diagonally;~~
- e. ~~For a super VHS color camera, super VHS YC or coaxial video cable must be used. For a high resolution color camera, coaxial video cable must be used. The cable must meet these specifications:~~
  - ~~(1) If the length of a cable is one hundred linear feet [30.48 linear meters] or less and the cable will not be flexed, exposed outside a building, or constantly moved, the center conductor must be stranded or solid pure copper material. Otherwise, the center conductor must be stranded pure copper material.~~
  - ~~(2) The shield must be braided pure copper material. The dielectric must be foam material. A cable must be rated for seventy five ohms of impedance. If a cable is to be placed in a return air system, the jacket must be teflon or other accepted fire-rated material onsite; and~~
- f.e. A ~~digital video recorder (DVR)~~ system must be capable of allowing organizations to download, burn, or copy files onto a storage device.

- 2. If an organization conducts twenty-one or paddlewheels at more than one site, a table must have a site identification. A site identification and any table number must be visible on a recorded video.
- 3. A playing surface must be ~~the standard green, and may not contain imprinted graphics, excluding the tip betting spaces,~~ unless authorized by the attorney general. Red or maroon and black jumbo-faced playing cards may be used.
- 4. Maintain a clean dome and a proper field of view on the playing surface.
- 5. Authorize only a gaming or shift manager or an independent person to:
  - a. Access a recording unit, camera, and stored recorded video;
  - b. Start and stop a recording unit for a table when chips are first made available for use on the table and continue recording until the table is permanently closed for the day; and
  - c. Change a recorded video in a recording unit for a table at the beginning, during, or at the end of a day's activity, regardless if the authorized person is a dealer or wheel operator at

the site. An organization may use two real time recorders in sequence to record a table's activity that exceeds the recording capability of one tape. If two recorders are used for one table, their separate recordings for a day's activity must overlap by ten minutes.

6. Retain a recorded video in a safe storage place for thirty days.
7. On a daily basis an employee shall review and document that a surveillance camera at each twenty-one and paddlewheel table at a site is recording an unobstructed view and clear picture of the table activity. If a recording unit or camera for a table is not properly operating or not producing an unobstructed view and clear picture of the cards, currency, or chips and is not repaired or remedied within forty-eight hours of activity on the table or four calendar days, the organization shall close the table or limit wagers to two dollars on the table until the equipment is repaired.
8. The attorney general's current recordkeeping system must be used unless approval is obtained from the attorney general for use of another recordkeeping system. An organization shall track a dealer's and wheel operator's percent-of-hold performance. ~~Percent of hold is computed as adjusted gross proceeds divided by gross proceeds.~~
9. ~~Limit its~~ For a site that requires video surveillance, if percent-of-hold at that site is less than ten percent for a quarter, a minimum of one hour per week of video surveillance for each table at that site must be reviewed and documented. The review must be completed by an individual who did not conduct twenty-one at the site on the day selected for review. The review of video surveillance must be continued until the organization has determined and documented the reason the percent-of-hold is less than ten percent at that site.
10. An organization may purchase or lease ~~of~~ a camera, lens, cable, camera dome, digital recording device, time and date generator, and installation services, including moving a camera to another site, ~~to~~ from a vendor approved by the attorney general, or any other business entity. ~~An~~ If purchasing or leasing the equipment from an approved vendor, an organization shall defer remitting at least fifty percent of the cost or lease price of this equipment to the vendor until the attorney general approves the clarity of the recorded video for a table. ~~A vendor~~
11. An organization shall provide the attorney general with a sample recording to evaluate. If an organization acquires video surveillance equipment at a new site from another organization, moves a camera or table to another location at the site, or ~~converts to a digital video recorder (DVR)~~ changes video surveillance equipment at a site, the organization shall, within fourteen days, provide the attorney general with a sample recorded video to evaluate. If the quality of the sample recording is not satisfactory, an organization and vendor shall resolve the deficiency and resubmit a sample recording for approval. An organization may buy or lease a qualifying item from another organization ~~provided the equipment meets the specification of subsection 4.~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10, 53-06.1-11

#### **99-01.3-08-05. Distributing and removing chips.**

1. A fill slip must be used to distribute casino and betting chips from a chip bank to a table and a credit slip to return chips from the table to the chip bank. An organization may not transfer or exchange chips directly between two tables. An organization shall use a fill and credit slip to temporarily transfer a chip tray to or from a table and jar bar. Access to a fill and credit slip



must be restricted to an authorized person. The same fill and credit slip format may be used for both twenty-one and paddlewheels.

2. A fill slip and credit slip must be separate forms. Fill and credit slips must be mechanically or electronically consecutively ~~prenumbered~~numbered two-part carbonless forms, be used in sequential order, and be all accounted for. Originals and copies of voided fill and credit slips must be marked "VOID" and be initialed by the preparer.
3. A fill slip must be prepared by a chip bank cashier, pit boss, or shift manager. A credit slip must be prepared by a dealer, wheel operator, pit boss, or shift manager. The original and copy of a fill and credit slip must contain:
  - a. Reference to twenty-one (21) or paddlewheels (PW), site, date and time (including a.m. or p.m.), and a table number;
  - b. Quantity and total value of chips, by value, and grand total value of chips; and
  - c. For a fill slip, the initials of a chip bank cashier. However, if a dealer is the only employee on duty, this person shall initial the fill slip. For a credit slip, the initials of a dealer or wheel operator.
4. After preparation of a fill slip, a chip bank cashier shall retain the original. However, if a dealer is the only employee on duty, this person shall retain the original. After preparation of a credit slip, a dealer or wheel operator shall deposit the original in a drop box.
5. If an organization has a shift manager or authorized employee on duty who is not presently dealing or operating a paddlewheel, this person shall verify the quantity and value of the chips, initial the original part of the fill or credit slip, and transfer the copy of the fill slip with the chips to a table, or transfer the copy of the credit slip with the chips to a cashier.
6. A dealer or wheel operator shall verify the information on the copy of a fill slip and, if correct, initial and deposit it in a drop box. A cashier shall verify the information on the copy of a credit slip and, if correct, initial and retain it. However, if a dealer is the only employee on duty, the dealer shall retain the copy of a credit slip.
7. As an option, an organization may have:
  - a. A dealer or wheel operator initial the original part of a fill slip before it is retained by a chip bank cashier; and
  - b. A chip bank cashier initial the original part of a credit slip before it is retained by a dealer or wheel operator.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-08-09. Betting.**

1. An original wager must be an even dollar amount and may range from one dollar to twenty-five dollars. ~~A wager of one dollar must be accepted unless an organization has more than one active table then a minimum wager may be set on no more than one-half of the tables.~~ The organization may establish a minimum wager at not more than three dollars on one active table. If there is more than one active table at a site, the organization may set a higher minimum wager on additional tables. An active table under this subsection means a table in which a dealer and chips are present and available for play or has one or more players

participating in the game. An organization may establish a maximum wager for each table, not to exceed twenty-five dollars. If all the tables at a site do not have the same betting limit, a plaque must be placed on top of a table indicating the minimum and maximum wager for the table. ~~If a table that has a minimum wager becomes the only active table at a site or more than one-half of the active tables have a minimum wager, then the organization must notify players that the minimum wager amount will be lowered to a wager of one dollar at the end of the current dealing shoe.~~ Wagers in increments of one dollar must be accepted between the posted minimum and the posted maximum limit. A wager that exceeds the maximum wager is valued at a table's maximum wager and the excess must be returned to a player. An organization shall post and announce a change in the minimum and maximum wager at a table with adequate notice to a player.

2. An original wager is the amount bet per hand before the first card is dealt and excludes tip betting. After the first card has been dealt, no original wager or tip bet may be changed. A separate wager may be a tip bet, insurance bet, splitting pairs, and doubling-down. After the first two cards have been dealt to each betting space, with the exception of the tip bet which is placed prior to any cards being dealt, the following additional wagers may be bet:
  - a. Tip bet. An organization may permit tip betting. A tip bet is made when the original wager is made by placing a chip outside a betting space, but with the chip touching the lower left edge of the betting space, from a dealer's perspective. A betting space is limited to one tip bet. A tip bet does not have to equal an original wager and may range from fifty cents up to a table's maximum wager, but may be limited to less than the table's maximum wager at an organization's option. If a player's hand wins, a tip bet is paid off at an equal amount and the tip bet and payoff are placed in a dealer's tip receptacle. If the dealer's hand wins, a tip bet is placed in the chip tray. If a player's and dealer's hands tie, a tip bet is a tie (push).
  - b. Insurance bet. If a dealer's faceup card is an ace, the dealer shall ask the players if they desire to make an insurance bet. A player shall make an insurance bet by placing a chip on the insurance line of the playing surface. An organization may permit insurance betting except on a tip bet. An insurance bet must be one-half the original wager. The payoff on a winning insurance bet is two to one. A dealer shall reposition the chip below the lower right-hand corner of the first card dealt and to the immediate right of the second card dealt, from the dealer's perspective. A dealer shall then announce "insurance bets are closed". However, if a player who has been dealt a natural twenty-one (blackjack) desires to make an insurance bet and does not desire to double-down, a dealer may, at an organization's option, do an even money payoff rather than having the player place an "insurance" bet. To exercise this option, a dealer shall state "even money" and immediately do a chip payoff to a player equal to the player's original wager. A dealer shall then place the player's cards in a discard holder. For this option, a tip bet is a tie (push). This rule does not apply if an insurance bet is not permitted.
  - c. Splitting pairs. A dealer shall, beginning from the dealer's left and for each player's hand, prompt a player to indicate whether the player desires to split. Splitting is permitted on any pair or any two 10-count value cards. A player is allowed a maximum of four hands per betting space. For splitting a hand, a player shall place an additional wager, equal to an original wager, horizontal to the original wager. A player's right-hand card in a split must be played to completion before the adjacent split hand is dealt a second card. A player shall take at least one card on a split hand. A wager on each hand must equal the original wager. Split aces draw only one card each; however, if an additional ace is drawn it may be split again up to a maximum of four hands. A two-card twenty-one after a split is not a natural twenty-one.



- d. Doubling-down. Doubling-down is permitted on the first two cards dealt to a betting space or the first two cards of a split hand, except on split aces. An organization may permit doubling-down on tips bets. An organization may require a double-down wager to equal the original wager or tip bet or a double-down wager to be equal to or less than the original wager or tip bet. Only one additional card is dealt. A dealer shall, beginning from the dealer's left and for each player's hand, prompt a player to indicate whether the player desires to double-down. For doubling-down on an original wager or tip bet, a player shall place a chip vertical to the wager. A player may not double-down on a tip bet unless the player also doubles-down on the original wager. If a dealer is unsure of a player's intent, the dealer shall ask the player and properly reposition a chip.
3. If a player's wager consists of two or more values of chips, a player shall neatly stack the lowest value chip on top of the highest value chip. If the chips are improperly stacked, a dealer shall tell the player and either the dealer or player shall properly stack the chips.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

### 99-01.3-08-10. Dealing.

1. After a shuffle, a dealer shall remove the first card face downwards and without showing its value, place it in a discard holder (burning a card) located at the dealer's right. Each new dealer at a table shall burn one card before dealing. If a table is open but there is no player, a dealer shall reshuffle the cards or burn one card when a player comes to the table. Only one of ~~two~~three dealing methods may be used at a site:
  - a. Hole-card-no-peek method. A dealer may not look at the face of a hole card until after all cards requested by players are dealt. The cards must be dealt in this order:
    - (1) One card face upwards to each betting space with a wager.
    - (2) One card face upwards or face downwards (hole card) to a dealer.
    - (3) A second card face upwards to each betting space with a wager.
    - (4) A second card face upwards to a dealer if the first card was dealt face downwards; or, a second card face downwards to a dealer if the first card was dealt face upwards. ~~The dealer may use a mechanical or electronic hole card reader and special cards to determine if the dealer's hand is a natural twenty-one.~~
  - b. No-hole-card method. A dealer may not deal a second card (hole card) to the dealer until after all cards requested by players are dealt. The cards must be dealt in this order:
    - (1) One card face upwards to each betting space with a wager.
    - (2) One card face upwards to a dealer.
    - (3) A second card face upwards to each betting space with a wager.
  - c. Hole-card-with-card-reading-device method. The dealer may use a mechanical or electronic hole card reader and special cards to determine if the dealer's hand is a natural twenty-one after dealing the first two cards to players and the dealer. The cards must be dealt in this order:
    - (1) One card face upwards to each betting space with a wager.

(2) One card face upwards or face downwards (hole card) to a dealer.

(3) A second card face upwards to each betting space with a wager.

(4) A second card face upwards to a dealer if the first card was dealt face downwards or, a second card face downwards to a dealer if the first card was dealt face upwards.

(5) In case of a card-reading device malfunction on a table, the organization shall use the hole-card-no-peek method or the no-hole-card method of dealing on that table.

2. A dealer shall, starting on the dealer's left, deal the cards by removing them from a dealing shoe with the left hand, turning them face upwards and with the right hand place them on the proper area of a playing surface; however, a dealer may deal cards to the first two betting spaces with the left hand. A player's second card and any hit card must be placed on top of the preceding card covering no more than the lower left-hand quarter of the preceding card, from the dealer's perspective. This rule does not apply to a disabled dealer.
3.
  - a. If the dealer is using the ~~hole-card-no-peek~~hole-card-with-card-reading-device method of dealing, the dealer's faceup card is an ace or a ten-count card, and players have placed their insurance wagers, if the dealer's faceup card is an ace, the dealer ~~is using a mechanical or electronic hole card reader and special cards, and~~shall insert the corners of both cards into the reading device to determine if the dealer's hand is a natural twenty-one. If the dealer's hand is a natural twenty-one, the dealer shall play the dealer's hand by immediately:
    - a- (1) Collecting all player's original wagers and original tip bets, unless a player's original hand is also a natural twenty-one which results in a tie; and
    - b- (2) Paying any insurance bet at the rate of two to one.
  - b. If the dealer's hand is not a natural twenty-one, the dealer shall collect all insurance bets according to subdivision a of subsection 10 of section 99-01.3-08-11 and continue the play of each player's hand, starting with the player on the dealer's left.

**History:** Effective May 1, 1998; amended effective July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-08-11. Playing.**

1. A dealer may announce the dealer's faceup card one time to all the players at a table. As a prompt for optional wagers (splitting pairs or doubling-down), a dealer may announce the point total of each player's hand.
2. A dealer may not allow a player to touch any cards and may not switch or remove a player's card or chip, pay on a tie, or do anything to alter a fair and legal outcome of a betting hand.
3. If a player has split or doubled-down, or both, a dealer shall play each hand as follows:
  - a. When a player places a wager for a split, a dealer shall split the cards side by side. If a player has also placed a tip bet, a dealer shall assign and reposition the tip bet to the split hand located at the foremost left of a betting space, from the dealer's perspective. Each split hand must be played separately. If aces are split, one additional card must be dealt face upwards to each of the hands and placed at a right angle to the first card dealt, except if an additional ace is drawn it may be split again up to a maximum of four hands.

- b. A doubled-down hand must be dealt one additional card face upwards and placed at a right angle to the first two cards dealt. However, if a table does not have a video surveillance system, the card may be placed beneath a player's original wager.
4. A dealer may not take a hit card from a dealing shoe nor may a dealer bypass a player unless the player has first indicated the player's request for a hit card or to stand by a distinct hand signal.
5. As a player indicates to stand or draw a hit card, other than on a hand that has split aces or a double-down, a dealer shall deal face upwards an additional card or cards as the player requests. A player is responsible for correctly computing the total card count of the player's hand.
6. If a player did not split, double-down, or place an insurance bet, and busts (a player's total card count exceeds twenty-one), the player loses an original wager and any tip bet. A dealer shall immediately collect and place a player's chips, including any tip bet, in a chip tray and the cards in a discard holder.
7. If a dealer's faceup card is not an ace or a ten-count card and a player split or doubled-down and busts, the player loses the wager for that split or double-down hand and any tip bet assigned to it. A dealer shall immediately collect and place a player's chips in a chip tray and the cards in a discard holder.
8. If an organization uses the hole-card-no-peek or no-hole-card method of dealing, a dealer's faceup card is an ace or a ten-count card and a player split, doubled-down, or placed an insurance bet and busts, the dealer shall gather the cards of that hand and place them outside the betting space. Then, a dealer shall reposition the player's split and or doubled-down wagered chips, in the same betting position, on top of the player's cards of that hand. A tip bet for such a split or double-down hand that busts is lost. A dealer shall immediately place the tip bet chips in a chip tray.
9. If a dealer's faceup card is not an ace or a ten-count card and all players bust, a dealer shall end the round. If a dealer's faceup card is an ace or a ten-count card and all players bust, and no player split, doubled-down, or placed an insurance wager, a dealer shall end the round.
10. If the decisions of all players have been carried out, a dealer shall turn up the dealer's facedown card (hole-card-no-peek method) or deal a second card face upwards to the dealer (no-hole-card method). However, for the no-hole-card method, a dealer shall remove the dealer's second card from a dealing shoe and, without looking at the value of the card, place it beside the dealer's first card. Then, a dealer shall announce the total card count of the two cards. A dealer shall play the dealer's hand as follows:
  - a. If a dealer's faceup card is an ace and the dealer's hand is not a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect all the players' insurance bet chips, with the dealer's right or left hand, in a sweeping motion, and place them in a chip tray. A dealer may not use the right and left hand at the same time. Then, for all the players' busted hands that have been split, doubled-down, or both, a dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands, and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's insurance bet chips and busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural

twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.

- b. If a dealer's faceup card is a ten-count card and a dealer's hand is not a natural twenty-one, for all the players' busted hands that have been split, doubled-down, or both, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.
- c. If a dealer's faceup card is an ace, the dealer's hand is a natural twenty-one, and a player has placed an insurance bet, the player wins the insurance wager at the rate of two to one. A dealer shall do the payoff procedure according to subsection 15 or 16. However, if a player's original hand also is a natural twenty-one, subdivision d also applies.
- d. If a dealer's faceup card is an ace or a ten-count card and the dealer's hand is a natural twenty-one, the organization wins all original wagers and original tip bets, unless a player's original hand also is a natural twenty-one which results in a tie (push). All other players lose.
- e. If a player has doubled-down or split against a dealer's faceup card of an ace or a ten-count card and the dealer's hand is a natural twenty-one, only the player's original wager is lost unless the player's original hand also is a natural twenty-one which results in a tie. All separate splitting and doubling-down wagers are voided. A dealer shall return the chips of the separate wagers to the players.
- f. If the count of a dealer's hand is sixteen or under, the dealer shall draw a hit card until the count exceeds sixteen. An additional card must be dealt face upwards to the immediate right of a dealer's first two cards dealt, from the dealer's perspective, and the dealer shall announce the total card count.
- g. If the count of a dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer shall stay (not draw a hit card). At its option, an organization may permit a site to allow a dealer to take a hit card when the dealer has a soft seventeen (ace card and a six). If the organization allows this option, it must be posted at the site. If a dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, twenty, or twenty-one can be obtained by counting the ace as an eleven, a dealer shall value the dealer's hand as such and stay. A dealer shall announce the final total card count of the dealer's hand.
- h. If a dealer's hand busts, the remaining players with active hands win.

11. If a player's original hand is a natural twenty-one and a dealer's faceup card is not an ace or a ten-count card, the player's hand wins and is paid off at a rate of three to two, unless the player chooses to double-down. A dealer's chip payoff on a player's wager may occur immediately or when the dealer, in the order of hands, comes to that player's hand.
12. A wager is won or lost by comparing the total card count of each player's hand to the dealer's hand. A dealer or player with the highest total card count wins. Wagers, including tip bets, are paid off at an equal amount according to subsection 15 or 16. All ties are a push - no payoff is made, including on a tip bet.
13. If a player's hand loses against a dealer's hand, an organization wins any tip bet. A dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of adjacent losing hands with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. A dealer may, at an organization's option that is consistently applied at a site, collect the chips of losing hands with only the dealer's right hand, on a hand-by-hand basis. When a tie hand is reached, the dealer shall recognize that hand with a tap on the tabletop and announce that it is a push. When a winning hand is reached, a dealer shall place any previously collected chips in a chip tray and do the payoff procedure for adjacent winning hands according to subsection 15 or 16. When a losing hand is again reached, the dealer shall repeat the collection and payoff procedure until all losing wagers have been collected and all winning hands have been paid. The dealer shall then collect all the remaining cards according to subsection 17.
14. If a player's hand wins against a dealer's hand and the player placed a tip bet, the dealer wins the tip bet and the one-to-one payoff from a chip tray according to subsection 15 or 16.
15. If a player's hand wins against a dealer's hand and a table does not have a video surveillance system, the payoff procedure is:
  - a. Normal hand. A payoff chip must be placed beside the original wagered chip in a betting space.
  - b. Split hand. The payoff chip must be placed beside the wagered chips in a betting space.
  - c. Double-down hand. The payoff chips must be placed beside the two wagered chips in a betting space.
  - d. Insurance bet. A payoff chip must be first placed beside the insurance bet chip, fanned, then placed on top of the insurance bet chip and the chips pushed to a player.
  - e. Natural twenty-one. The payoff chips must be pyramided with the higher value chip placed beside the original wagered chip in a betting space and the smaller value chip placed on top over the center of the other two chips.
  - f. Tip bet. A payoff chip must be placed beside the tip bet chip and any double-down chip in the inner table area. Then, a dealer shall place the chips directly in a tip receptacle.
16. If a player's hand wins against a dealer's hand and a table has a video surveillance system, the payoff of each winning hand must be done on a hand-by-hand basis. The payoff procedure is:
  - a. A dealer shall fan all of a player's wagered chips toward the dealer or side with only the dealer's left hand. A dealer may, at an organization's option that is consistently applied at a site, fan all of a player's wagered chips toward the dealer or side with only the dealer's right hand. However, for a site that has a pit boss on duty and the organization requires a double-down wager to equal the original wager, a dealer may, for a player who has placed a split bet or double-down bet, or both, fan only one of the player's stacks of

wagered chips. A dealer shall reposition a player's tip bet chips in the inner table area with the dealer's left hand and fan the chips. A dealer may, at an organization's option that is consistently applied at a site, fan all the players' tip bets after the payoff procedure has been done on all winning players' hands. However, if a player's bet exceeds five dollars, the dealer shall separate the player's chips, by value, fan them in sets of five chips, and then fan any remaining chips. A dealer shall, with the dealer's right hand, take chips from the chip tray, equal in value to the player's wagered chips (not tip bet chips), place the payoff chips beside the wagered fanned chips, and fan the payoff chips toward the side or toward the dealer, and move the dealer's hands away from the chips. However, if the prize payoff exceeds twenty casino chips of the same value, the dealer may use a rack to account for one or more sets of twenty chips and fan the remaining chips. A dealer shall repeat this procedure for each separate winning hand.

- b. After the payoff procedure has been done on all winning players' hands and the tip bet chips have been fanned, a dealer shall, with the dealer's right hand, take chips from the chip tray equal in value as the tip bet chips, place the payoff chips beside the fanned wagered tip bet chips, and fan the payoff chips. A dealer shall repeat this procedure for each separate winning tip bet. Then, a dealer shall move the dealer's hands away from the chips. After a dealer has picked up the cards according to subsection 17, the dealer shall place the chips directly in a tip receptacle.
17. At the end of a round of play, a dealer shall pick up all the cards remaining on the playing surface so that they can be played back to recreate each hand, starting with the player to the dealer's right and moving to the left around the table. After the cards have been collected in a sweep or hand by hand, a dealer shall pick up the dealer's cards against the top of the players' cards and place them in a discard holder.
  18. If a table has a video surveillance system, a dealer's shift ends, and the dealer:
    - a. Does not desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view. A dealer shall then take the tip receptacle and leave the table.
    - b. Does desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall take all the chips out of the tip receptacle. A dealer shall place the chips in the inner table area at the dealer's left; sort, stack, and fan only the chips to be exchanged; take chips from a chip tray equal in value to the fanned chips; place the replacement chips at the dealer's right; sort, stack, and fan the chips, momentarily move the dealer's hands away from the chips so the chips are within a camera's view; place the exchanged chips in a chip tray; then place the replacement chips and unexchanged chips in a tip receptacle. A dealer shall then momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view, take the tip receptacle, and leave the table. As an option, a dealer for the next shift may exchange the present dealer's tips.
  19. An organization may adopt a policy to allow a dealer, when a player leaves a table, to exchange two or more of the player's casino chips for higher value chips provided that the dealer first asks the player's permission, the player agrees, and the dealer announces the value of chips being exchanged.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

**99-01.3-08-13. Disclosure.**

TheseThe following rules and notice must be disclosedposted or made available to players. If made available to players, the rules and notice must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:

HOUSE RULES

BettingMinimum and maximum betting limit

Use Hole-Card-No-Peek method of dealing

- or -

Use Hole-Card with Card Reading Device method of dealing

- or -

Use No-Hole-Card method of dealing (Choose one)

PLAYER RULES

Must compute the card count of the player's hand

Must be twenty-one years of age or older

Hand signals must be used

No touching of cards

Two betting spaces maximum

No side bets

No payoff on tie counts

Splitting on any pair and two 10-count

value cards and limited

to a maximum of 4 hands per betting space

Doubling-down on the first 2 cards dealt

or the first 2 cards of any split hand, except on split aces

Double-down bet must equal the original wager

- or -

Double-down bet may be equal to or less than the original wager (Choose one)

Insurance not permitted

- or -

Insurance permitted - pays 2 to 1 (Choose one)

Tip betting permitted

- or -

Tip betting not permitted (Choose one)

Doubling-down on tip bets permitted - must equal the original tip bet

- or -

Doubling-down on tip bets permitted - may be equal to or less than the original tip bet

- or -

Doubling-down on tip bets not permitted (Choose one)

NOTICE

If a person knowingly uses a fraudulent scheme or technique to cheat or skim involving twenty-one, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

**99-01.3-08-14. Drop box cash count.**

1. A drop box that has been used must be removed from a table by the end of the day's activity. If a drop box is removed from a table and the cash is not counted immediately, the drop box



must be transported by the shift manager and, if there is more than one employee on duty, escorted by an employee to a safe storage place. The cash must be removed from the drop box before the drop box can be used for another day's activity. An empty drop box may be stored on a table or in a safe storage place.

2. A drop box must be opened by a two-person count team. The persons ~~must~~shall be independent of each other. A count team may be an independent person and a gaming employee; two representatives of a financial institution, accounting firm, security agency, or security company; two nongaming employees; or two gaming employees provided ~~they~~that one of the gaming employees did not conduct games at the same site on the day of the gaming activity and day of the count. ~~One of these two gaming employees may have conducted games at the site associated with the drop box cash.~~ A count team may not be two persons who have a direct supervisor and subordinate relationship and may not be a common household member, spouse, child, parent, brother, or sister of the other count team member, except when using an independent contractor.
3. The key to the lock securing the contents of a drop box must be controlled by one count team member who may not access the drop box unless both count team members are present. If there are two separate locks that secure the contents of a drop box, the key to the second lock must be controlled by the other count team member.
4. Each person shall independently count the drop box cash in the presence of the other person and resolve any difference between the two counts. Documentation of the count must be initialed and dated by both count team members.
- ~~5. An organization shall comply with this rule unless it uses another drop box cash count procedure that has been approved by the attorney general.~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-08-16. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each day's activity:
  - a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;
  - b. Drop box cash and values of fill and credit slips of each table;
  - c. Cash profit as defined in subdivision i of subsection 7 of section 99-01.3-02-01;
  - d. Daily surveillance review log;
  - e. For tournament play, the fees; rebuys; add-ons collected; name of each player, signature or initials, and date of the employee who collected the fee
  - ~~e.f.~~ For ~~a~~-tournament play, prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;

- ~~e.g.~~ A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all twenty-one activity for a quarter must reconcile to the tax return; and
- ~~f.h.~~ For a video surveillance system, dealer percent-of-hold information must be retained for one year from the end of the quarter of the activity.
2. Inventory records according to subsection 5 of section 99-01.3-03-09.
  3. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
  4. An organization using a combined cash bank for twenty-one and paddlewheel at a site shall ~~document the allocation of cash profit on a monthly basis to each game type based on the ratio of the game type's adjusted gross proceeds to the total adjusted gross proceeds of both game types~~allocate the cash long or short of the combined cash bank to twenty-one.
  5. ~~The cash profit defined in subdivision i of subsection 6 of section 99-01.3-02-01, verification~~Verification of the amount deposited according to a bank statement; and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
  6. The count and reconciliation of cash banks and casino and betting chips according to ~~subsection~~subsections 4, 5, and 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-09 POKER

### Section

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99-01.3-09-03	<u>Disclosure</u> <u>Limitations and Fees</u>
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### 99-01.3-09-01. DefinitionsPoker.

As used in this article:Poker may only be conducted by an organization on two occasions per fiscal year. Poker is a card game dealt by one dealer. For a tournament, an organization shall charge each player an entry fee. The total fees for a tournament may not exceed three hundred dollars per player and include the buyin fee, plus any rebuy or add-on fees collected and are considered gross proceeds. Satellite tournaments may be conducted in conjunction with a tournament and a separate fee not to exceed three hundred dollars per player may be collected and are also considered part of gross proceeds for the tournament. Total prizes awarded for a tournament, including any satellite tournaments, may not exceed ninety percent of the gross proceeds. For nontournament activity, an organization shall charge each player a fee not to exceed two dollars per one-half hour of playing time, collected in advance. The maximum single bet is one dollar and not more than three raises, of not more than one dollar each, may be made among all the players in a betting round. An organization employee shall be present to manage and control all poker activity.

After players receive their starting (hole) cards and after each round of new cards, there is a betting round. A player bets on the cards (hand) the player holds. All wagers are placed in the center of the table and referred to as the pot. Each betting round, a player decides whether to continue by calling or raising the bet. After all the dealing of cards and betting has occurred and there are two or more players still in contention for the pot, there is a showdown to determine which player has the best hand. The object is for the player to win the pot by making a bet no other player is willing to match or for the player to have the most valuable hand. A winner is determined by the ranks and combinations of players' cards.

- ~~1. "Add on" is the last opportunity a player has to buy additional chips in an attempt to better the player's chances to win in a tournament that allows the additional purchase of chips. The amount and time restriction is found in the tournament rules.~~
- ~~2. "Bounty" is a feature in some poker tournaments that rewards a player for eliminating another player.~~
- ~~3. "Buy-in" is the minimum amount of money required to enter a tournament.~~
- ~~4. "Poker" is a card game dealt by one dealer. A player bets on the cards (hand) the player holds. All bets are collected together in the center of the table which is the pot. There may be an initial ante round and a blind bet by players. Then, after players receive their starting cards and after each round of new cards, there is a betting round. Each round, a player decides whether to continue contending for the pot by calling or raising the bet. After all the dealing of cards and betting has occurred and there are two or more players still in contention, there is a showdown to determine which player has the best hand. The object is for a player to win the pot by making a bet no other player is willing to match or for the player to have the most valuable hand after all the betting is over. Cards and hands are ranked according to the normal rules of poker.~~

- ~~5. "Poker run" is an event in which each participant in the event follows a charted course, stopping at five to seven checkpoints along the route to pick up a single playing card. Upon all participants' arrival at the final checkpoint, a showdown of the poker hands is conducted and prizes are awarded.~~
- ~~6. "Rebuy" is when a player qualifies to purchase another buy-in during a tournament that allows a player to continue competing in the tournament. The number and time restriction are found in the tournament rules.~~
- ~~7. "Satellite" is a qualifying tournament in which the prize is a buy-in to a larger tournament.~~
- ~~8. "Side game" is a poker game running concurrently with a tournament made up of players who have either been eliminated or opted not to play in the tournament.~~

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2010; July 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-09-02. Limitations and fees** Definitions.

1. ~~An organization may only conduct poker on two occasions per year. An occasion may include more than one authorized site. A nontournament occasion and a side game are restricted to a twenty-four-hour period of play. Tournament activity, including any satellite activity, is an occasion of not more than three consecutive calendar days of play. Both tournament and nontournament play can occur as part of the same occasion provided that the nontournament play and a side game do not exceed a twenty-four-hour period of play.~~
- ~~2. For nontournament play and a side game, if an organization does not provide a dealer, players shall use cash. If an organization provides a dealer, players shall use chips. An organization shall charge a player a fee not to exceed two dollars per one-half hour of playing time and collect the fee in advance. An employee shall record the fee when it is collected. The fee schedule must be disclosed or made available to players.~~
- ~~3. For a tournament, an organization may provide a dealer who cannot play in the game or allow the players to alternate as dealers and:
 
  - ~~a. An organization may award a buy-in to a larger tournament to multiple winning players of each satellite tournament. If a satellite buy-in prize is transferable to another player, an organization must issue a receipt for the buy-in prize.~~
  - ~~b. Satellite tournaments may be conducted with a separate fee not to exceed three hundred dollars per player and are considered part of gross proceeds for the tournament.~~
  - ~~c. Advance players with the most number of chips from each round to the next round or championship round. A player with the most number of chips, based on a championship round, wins. Any remaining players in the tournament may agree to split the prize rather than finish the tournament.~~
  - ~~d. Use no-value chips. The buy-in fee, plus any rebuy or add-on fees collected, for a tournament cannot exceed three hundred dollars per player and are considered gross proceeds for a tournament.~~
  - ~~e. Bounty buy-in fees and payouts, if applicable, must be included as part of the gross proceeds and prizes of a tournament.~~~~

~~f. Only a cash prize may be awarded and the total prizes may not exceed ninety percent of entry fees.~~

~~4. An organization shall establish and post tournament rules for each poker occasion and indicate the buy-in fee for satellite tournaments and the main tournament. Any restrictions regarding rebuys and add-ons, if allowed, shall be provided in the tournament rules.~~

~~5. An organization that conducts poker through a poker run involving more than one site shall comply with guidelines prescribed by the attorney general. "Action" is a binding verbal statement or physical gesture of intention.~~

2. "Add-on" is the last opportunity a player has to buy additional chips in an attempt to better the player's chances to win in a tournament that allows the additional purchase of chips. The amount and time restriction is found in the tournament rules.

3. "Ante" is a player's forced bet of a predetermined amount into the pot before the first card of the hand is dealt.

4. "Bet" is the act of making a wager on a betting round.

5. "Betting round" is a complete cycle in a hand of poker after all players have called or folded.

6. "Blind bet" is a forced bet made before the first card of the hand is dealt. A small blind, which is usually one-half of a minimum bet, is made by the first player to the left of the dealer button and a big blind, which is usually the minimum bet amount, is made by player to the left of the first player.

7. "Button" is a token that is rotated clockwise among the players to indicate the dealer position at the table for determining the order of betting.

8. "Bounty" is a feature in some poker tournaments that rewards a player for eliminating another player.

9. "Buyin" is the minimum amount of money required to enter a tournament in exchange for a set amount of chips.

10. "Call" is to match a bet or match a raise.

11. "Check" is to waive the right to initiate the betting in a round, but to retain the right to call.

12. "Chip dumping" is a strategy whereby one player deliberately loses chips to another player.

13. "Community cards" are cards dealt face upward which can be used by all players to make their best hand.

14. "Deal" is the distribution of playing cards among the players.

15. "Flop" is the first three community cards dealt face up at one time.

16. "Fold" is a player discarding a hand during a betting round by refusing to match a bet.

17. "Hand" is a game in a series beginning with a shuffle and ending with the awarding of a pot. It is also used to describe the cards held by a player, or the best five cards of a player's holding.

18. "Misdeal" is a hand in which a dealing mistake was made and requires the hand to be dealt again.

19. "Open", "openers", "to open", is the first bet in any betting round.

20. "Poker run" is an event in which each participant in the event follows a charted course, stopping at five to seven checkpoints along the route to pick up a single playing card. Upon all participants' arrival at the final checkpoint, a showdown of the poker hands is conducted and prizes are awarded.
21. "Pot" is a collection of the total amount wagered by all players at a poker table for a hand and awarded to the winning players.
22. "Raise" is a bet in an amount greater than the immediately preceding bet in that betting round.
23. "Rebuy" is when a player qualifies to purchase another buyin during a tournament that allows a player to continue competing in the tournament. The number and time restriction are found in the tournament rules.
24. "Satellite" is a qualifying tournament in which the prizes awarded must include a buyin to a larger tournament.
25. "Showdown" is the revealing of each player's hand by the player after the last bet to determine the winners of the pot.
26. "Side game" is a poker game running concurrently with a tournament and made up of players who have either been eliminated or opted not to play in the tournament.
27. "Soft play" is failing to bet or raise in a situation that would normally merit it; to intentionally go easy on a player.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.2

**99-01.3-09-03. ~~Disclosure~~ Limitations and fees.**

~~—These rules must be disclosed or made available to players:~~

HOUSE RULES

- ~~Must use one deck of cards  
which is dealt out of the hand~~
- ~~Must use a cut card to conceal the bottom card of the deck~~
- ~~May allow a blind bet and set a minimum table limit~~
- ~~May allow a minimum ante~~
- ~~May allow a maximum of three raises per round~~
- ~~Must limit each raise to an amount equal to  
or greater than the original bet; however, each  
raise must be equal to or greater than the original  
bet of that betting round~~

PLAYER RULES

- ~~Must be twenty-one years of age or older~~
- ~~No side bets or credit play is allowed~~

1. An organization may only conduct poker on two occasions per fiscal year. An occasion may include more than one authorized site. A nontournament occasion and a side game are restricted to a twenty-four-hour period of play. Tournament activity, including any satellite activity, is an occasion of not more than three consecutive calendar days of play. Both tournament and nontournament play may occur as part of the same occasion provided that the nontournament play and a side game does not exceed a twenty-four-hour period of play.

2. Only a licensed distributor can provide consulting services to an organization for a poker occasion provided the licensed distributor does not manage, control, or conduct the game. Employees of the licensed distributor may not participate in the poker occasion.
3. For nontournament play and a side game, if an organization does not provide a dealer, players shall use cash. If an organization provides a dealer, players shall use chips. An organization shall charge a player a fee not to exceed two dollars per one-half hour of playing time and collect the fee in advance. An employee shall record the fee when it is collected. The fee schedule must be posted or made available to players.
4. For a tournament, an organization may provide a dealer who cannot play in the game or allow the players to alternate as dealers and:
  - a. Types of poker authorized is limited to Texas hold'em and Omaha.
  - b. Use no-value chips.
  - c. Advance players with the most number of chips from each round to the next round or championship round. A player with the most number of chips, based on a championship round, wins. Any remaining players in the tournament may agree to split the prize rather than finish the tournament.
  - d. An organization may award a buyin to a larger tournament to multiple winning players of each satellite tournament. It is accounted for as a prize and valued at the cost of the buyin. If a satellite buyin prize is transferable to another player, an organization shall issue a receipt for the buyin prize. When a buyin prize is redeemed, it is accounted for as gross proceeds. If a buyin prize is not redeemed, it is valued at zero and is not accounted for as a prize for the satellite tournament nor as gross proceeds for the larger tournament.
  - e. Bounty buyin fees and payouts, if applicable, must be included as part of the gross proceeds and prizes of a tournament.
  - f. Only a cash prize or buyin to a larger tournament may be awarded and the total prizes awarded may not exceed ninety percent of all fees collected.
  - g. After the start of the tournament, an organization may not refund a buyin or other fee collected.
  - h. A director of a tournament and the organization employee managing, conducting, or controlling the poker activity may not participate in the tournament.
5. An organization shall establish and post tournament rules for each poker occasion and indicate the buyin fee for satellite tournaments and the main tournament. Any restrictions regarding rebuys and add-ons, if allowed, must be provided in the tournament rules.
6. An organization that conducts poker through a poker run involving more than one site shall comply with guidelines prescribed by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2002; October 1, 2006, July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.2



**99-01.3-09-04. Recordkeeping**Conduct and play.

~~— Records must include and be retained for three years from the end of the quarter in which the activity was reported:~~

~~— 1. For each poker occasion:~~

- ~~— a. The starting and ending cash on hand and chips according to section 99-01.3-03-06;~~
- ~~— b. For nontournament play and a side game, the fees collected for each one-half hour interval on each table, number of players, time each fee is collected and the name, signature, and time worked of the employee who collected the fee;~~
- ~~— c. For tournament play, including satellite games, the fees, rebuys, and add-ons collected, name of each player, and signature or initials and date of the employee who collected the fee;~~
- ~~— d. For tournament play, including satellite games, prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;~~
- ~~— e. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all poker activity for a quarter must reconcile to the tax return; and~~
- ~~— f. A copy of the tournament rules for each poker occasion.~~

~~— 2. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.~~

~~— 3. The cash profit defined in subdivision j of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10.~~

~~— 4. The count and reconciliation of cash banks according to subsection 6 of section 99-01.3-03-09.~~

1. The cards are ranked ace, king, queen, jack, ten, nine, eight, seven, six, five, four, three, and two. A poker hand in a showdown consists of five cards, usually the best five selected from a greater number, ranked according to the following from highest to lowest:

- a. Royal flush--the best hand of the same suit in sequence of ace, king, queen, jack, ten;
- b. Straight flush--five cards of the same suit in sequence;
- c. Four of a kind--four cards of the same rank;
- d. Full house--three cards of the same rank and two cards of the same rank;
- e. Flush--five cards of the same suit;
- f. Straight--five cards in sequence; an ace may be low in a five-high-card straight;
- g. Three of a kind--three cards of the same rank;
- h. Two pair--two cards of the same rank and two cards of one other rank;
- i. One pair--two cards of the same rank; and
- j. High card--the highest ranking card in the hand.

2. The cards in the game of poker must be one complete standard deck of fifty-two cards. The design on the back of each card in the deck must be identical, and no card may contain any marking, symbol, or design that enables a player to know the identity of any element printed on the face of the card. The backs of the cards may contain a logo. The backs of the cards in the deck must be designed to eliminate the ability of any person to place concealed markings on them.
3. The organization shall have additional decks of cards available at the site. The color of the backs of the cards of the replacement decks must be of a different predominant color.
4. When cards are brought to the poker table, an organization employee first shall approve the deck of cards. The deck must be sorted into sequence, by suit and the back of each card inspected to assure all cards are present and none are taped, cut, shaved, marked, defaced, bent, crimped, or deformed.
5. Before the play, the dealer, in front of the players, shall spread the cards face upwards on the table, according to suit and in sequence within the suit for review by the first player. After a player's review, the cards must be shuffled so the cards are randomly intermixed. If a replacement deck is used, this step must be repeated.
6. Before starting play, and after each hand, the dealer thoroughly shall shuffle the cards. Then the dealer shall cut the cards by placing a portion of the deck on top of a cutting card. The dealer then shall restack the cards with the former bottom part of the deck on top.
7. Cards must be dealt out of the hand by the dealer. Dealing must start with the first player to the left of the dealer or button. A card dealt must be the top card of the deck. After the first card of the hand has been dealt to a player, the deal continues in a clockwise direction. The order of cards in the deck may not be disturbed during the deal of a round.
8. The first holder of the button shall be determined at random by dealing for the high card. If two or more players have the same ranked card, card suit will determine high card. From best to worst, suits rank spades, hearts, diamonds, and clubs. After each hand, a button must be moved around the table clockwise, player to player, so that the player who has the button receives the advantage of playing and betting last.
9. An ante may be used in the game at the discretion of the organization. The player shall ante for each hand by placing wagers equaling the ante in front of the player on the table before the first card of the hand is dealt. The dealer shall sweep the antes and place them in the pot. Once the first card is dealt to any player, the ante may not be altered.
10. If an organization allows blind bets, the first betting round is started by the player to the left of the big blind by opening or folding and each following player shall call, raise, or fold; otherwise the player to the left of the button shall check, open, raise, or fold and each following player shall check, call, raise, or fold. A player shall match or raise the previous bet amount to remain in the hand. Subsequent betting rounds are started by the first active player to the left of the button. A betting round ends when all players have had a chance to act and all players who haven't folded have wagered the same amount for the round.
11. If a table only has two players remaining (heads-up), the small blind is posted by the player that has the button. When play becomes heads-up, the player who had the big blind the most recently, is given the button and the other player is given the big blind. The player with the button shall be the first player to act on the first betting round and last to act on the subsequent betting rounds.
12. A card that is meant to be dealt face downward but is dealt face upward or flashed as it is dealt so that a player might know its identity or is dealt off the table is considered an exposed

card. A card exposed by a player is not an exposed card. An exposed card must be replaced except in the game of stud poker in which the correction may be made by dealing the next card down. The replacement of an exposed card must be done after all players have received their cards in that round.

13. A misdeal occurs when during the initial deal a player receives an incorrect number of cards, an active player is dealt out or cards are dealt to an inactive empty seat at the table, or cards are dealt out of sequence. A misdeal causes all of the cards to be returned to the dealer for a redeal. A misdeal may not be called once substantial action has occurred. "Substantial action" is defined as either three players acting by betting or folding or two players acting, if one of them has raised the pot.

14. An organization shall adopt a burn card procedure in which one card will be burned either after each round of betting or before dealing any additional cards.

15. If a player bets but announces a fold, the player has a dead hand and the bet remains in the pot.

16. A statement by a player of "call" or "raise" or of a specific bet is binding. A player who states a certain amount but puts a different amount into the pot shall correct the bet to the stated amount. If the player placed an amount greater than the stated amount into the pot, the dealer shall correct the bet.

17. A player who makes a bet, decides incorrectly that the player has no live hand against the play, and concedes the hand by throwing it into the discard pile loses the pot.

18. A player who unintentionally bets less than the amount required to call, shall complete the call or withdraw the partial bet in full. A player who shows that the player is unaware of the raise by calling only the amount of the bet before the raise may withdraw the bet and fold. An improper bet must stand once three players have called, a player has raised, or all players in the pot have acted; otherwise, the action must back up to the player making the improper bet and any other action is nullified. A player makes a bet if the bet is pushed forward or placed into the pot at a sufficient distance from the player to make it obvious that the player intends to bet. If the situation is unclear and a player allows the dealer to pull the player's bet into the pot without making an immediate objection, it is a bet.

19. If a player calls but places a wager into the pot that is larger than the bet, it must be regarded as a call unless the player announces a raise. The player may clarify the apparent call as a raise only if no other player behind the player has placed a bet into the pot or announced a call or raise. The dealer shall provide the player with change of chips, if necessary, at the time the bet is placed.

20. A fouled hand is a hand that either has an improper number of cards, unless the player is short a card and due to get the top card of the deck, or has a card that has come into contact with discards. If a player has a fouled hand by having too many cards, that hand is dead and cannot win any part of the pot. Except for games of low draw and high-low split draw, a player may play with too few cards as long as the player can make a hand.

21. If a player discovers that the hand is fouled, the player cannot recover any wagers placed into the pot unless a misdeal can be called. If a player with a fouled hand makes a bet or raise and the next player has not yet acted, the next player may call attention to the fact that the hand is fouled. The dealer shall return the player's bet to the player with the fouled hand and betting may resume.

22. No player may deliberately foul a hand to recover a bet or make an attempt to win the pot by betting or raising after the player has discovered that the player's hand is fouled. If the dealer

determines that a player has intentionally bet a fouled hand, the dealer shall rule that all of the player's wagers remain in the pot and the player's hand is dead.

23. When an active player exposes the player's hand to another active player, all other players at the table have the right to see the exposed hand. If the player who exposed the hand or the player who saw the exposed hand refuses, both hands must be declared dead.

24. If a card is improperly faced in the deck, it must be treated as a dead card and replaced by the next card below it in the deck.

25. At the conclusion of the betting round, a player shall place the player's hand face upward on the table at the showdown as follows:

- a. If there has been a bet on the final round, the player who made the bet shall show first;
- b. If there have been one or more raises on the final round, the player who last raised shall show first;
- c. If the final round has been checked by all the players, the player who acted first shall show first;
- d. The subsequent order of showing hands is clockwise around the table from the player who shall show first; and
- e. If there is a side pot, players involved in the side pot shall show their hands before any player who is "all-in" for only the main pot.

26. If two or more players remain in the pot after all of the cards have been dealt and the betting is over for that hand, the remaining players show their cards to determine which player has the best hand and wins the pot. A player may discard a hand without showing it. A player shall show the hand at the showdown if requested to do so by the dealer or management. If the player refuses to show the hand upon such a request, the player shall leave the game. The player with the winning hand shall show all cards before the pot is awarded. The following provisions govern showdown:

- a. A hand with too many cards for that game is dead;
- b. A hand is ranked according to the actual cards it contains. The cards speak for themselves;
- c. A hand that is prematurely discarded by a player and touches the discarded cards is dead;
- d. A verbal concession is not binding;
- e. A player who leaves the table conceding the pot shall discard the hand;
- f. A hand discarded face upward is a live hand if it has not become irretrievably mixed with the discards;
- g. A hand discarded face downward may be retrieved if the following conditions are met:
  - (1) The player retrieves it or requests the dealer to turn it face up;
  - (2) The hand has not touched any discards;
  - (3) Another player has not been induced to discard the other player's hand;

- h. A hand discarded face downward that is not retrievable is dead even if it had been shown before being discarded;
- i. A player is responsible for holding onto their cards until a winner is declared;
- j. If the dealer discards the winning hand without the player's approval, the player is entitled to the pot if it is claimed before being taken in by another player; and
- k. A player who remains silent has not given approval for the dealer to discard the player's hand. The player shall positively approve the dealer's action.

27. At a showdown if two or more hands are tied, the hand with the highest ranked card or cards for high poker games and the lowest ranked card or cards for low poker games wins; otherwise, the tie must be broken by the rank of the unmatched cards in the hand. All suits are of equal value for determining hand rankings. In high-low split poker games, the highest hand and the lowest hand split the pot. A player who wins in one direction (high or low) and ties a player for the other direction, receives three-quarters of the pot. A player who wins in both directions without a tie receives all of the pot. Aces may be used for either high or low.

28. Pots must be awarded by the dealer. When the dealer has awarded a pot and it has been taken in by a player without a claim against it, the award stands. No player may make an agreement with any other player regarding the pot. A game must be played to conclusion and the pot awarded to the winning player.

29. If using chips, and a pot that is split by having tied hands at the showdown has an odd chip, the chip is awarded to the player with the highest ranking card. This section does not apply to splits between the high and low hands in high-low poker. If the lowest denomination chips in the pot are unable to be used to split the pot evenly, the dealer shall exchange the chips in order to divide split pots as evenly as possible.

30. If a defective deck is used, all wagers in the pot must be returned to the players in the amount each contributed. A player who knows the deck was defective and attempts to win the pot by a bet is not entitled to the player's wagers in the pot. Such wagers must remain in the pot as a forfeited amount for the next game. A player who won a pot is entitled to keep it, even though the deck is subsequently found to be defective.

**History:** Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### 99-01.3-09-05. Tournaments.

Except as provided by this section, an organization shall conduct a poker tournament according to this chapter.

1. An organization shall post a written schedule for each tournament. A schedule must contain:

- a. Name of the site and organization;
- b. Date or dates of the poker tournament;
- c. Structure of the tournament prize payouts, once determined; and
- d. Buyin, fees, add-ons, rebuy, and bounty options.

2. Each table will set a maximum of eleven players. Players will be distributed as evenly as possible between all tables.

3. A seat assignment is determined at the time of the buyin by the player randomly drawing a card from a specially marked deck or custom cards.
4. Tournament chips will be distributed directly to the player.
5. Texas hold'em must be played according to the following rules:
  - a. The dealer shall deal two (hole) cards to each player, face downward, and one at a time. The first player to receive a card is the player to the left of the player who has the button. The last player to receive cards is the player assigned the button. After each player has received two cards, there is a betting round and the players may bet an amount not more than the posted table limit;
  - b. The dealer shall discard the top card of the deck and place it in the discard card pile (burn a card) and deal three community cards from the deck face upward, in the center of the table. After the flop, another betting round occurs; and
  - c. The dealer burns another card and then deals a fourth community card face upward in the center of the table. Another betting round takes place. The dealer burns another card before dealing the fifth community card face upward in the center of the table for the final betting round. A player shall make the best five card hand using any combination of hole and community cards. If there are two or more players remaining in the game after all bets are made, there is a showdown. The highest hand wins the pot.
6. Omaha poker must be played according to the following rules:
  - a. The dealer shall deal four (hole) cards to each player, face downward, and one at a time. The first player to receive a card is the player to the left of the player who has the button. The last player to receive a card is the player assigned the button. After each player has received four cards, there is a betting round;
  - b. The dealer shall discard the top card of the deck and place it in the discard card pile (burn a card) and deal three community cards from the deck face upward, in the center of the table. After the flop, another betting round occurs;
  - c. The dealer burns another card and then deals a fourth community card face upward in the center of the table. Another betting round takes place. The dealer burns another card before dealing the fifth community card face upward in the center of the table for the final betting round. A player shall use two hole cards and three of the community cards to make their best hand. If there are two or more players remaining in the game after all bets are made, there is a showdown. In Omaha high, the highest hand wins the pot. In Omaha high-low split, the highest hand and the lowest hand split the pot. A player who wins in one direction (high or low) and ties a player for the other direction, receives three-quarters of the pot. A player who wins in both directions without a tie receives all of the pot. Aces may be used for either high or low.
7. A player confronted by a bet larger than the player's stack of chips may call "all in" and place the chips into the pot as a call. The excess part of the bet is either returned to the bettor or used to form a side pot with another player or players by matching the amount called. There is no limit on the number of side pots. Play must continue and the player who is "all in" shall receive cards as other active players. The remaining players shall place their bets into the side pot or pots. At the showdown, if the player who is "all in" has the high hand, the player wins the pot. The player with the second highest hand wins the side pot. If the player who is "all in" does not have the highest hand, the player with the highest hand wins both pots. In a high-low game, a similar procedure must be used to award the pots to the highest and lowest hand. A player who is "all in" and loses must leave the table or rebuy, if applicable.



8. A player may call "all in" at any time during a betting round provided that the bet does not exceed the tournament limit.
9. Chips may not be transferred or purchased from another player.
10. All chips must remain visible on the table throughout the event.
11. If a player is absent from the seat at the start of the initial deal of the hand, any ante or blind bet will be posted by the dealer on the player's behalf. A player shall be at the table by the time all other player's receive their hole cards in order to have a live hand for that deal.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-09-06. Disclosure.**

The following rules must be posted or made available to players. If made available to players, the rules must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:

#### HOUSE RULES

Must use one deck of cards which is dealt out of the hand

Must use a cut card to conceal the bottom card of the deck

May allow a blind bet and set a minimum table limit

May allow a minimum ante

May allow a maximum of three raises per betting round

Must limit each raise to an amount equal to

or greater than the original bet; however, each

raise must be equal to or greater than the original

bet of that betting round

#### PLAYER RULES

Must be twenty-one years of age or older

No side bets or credit play is allowed

Chips must remain visible on the table throughout the event

The use of any electronic device for communication at the table is prohibited

The placement of any electronic device on the table is prohibited

Ethical play: Any player who soft plays a hand shall be penalized. The penalty may include either chip forfeiture or disqualification or both. Any player involved in chip dumping and other forms of collusion shall be disqualified.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.2

### **99-01.3-09-07. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported:

1. For each poker occasion:

a. The starting and ending cash on hand and chips according to section 99-01.3-03-06;

b. For nontournament play and a side game, the fees collected for each one-half hour interval on each table; number of players; time each fee is collected; and the name, signature, and time worked of the employee who collected the fee;



- c. For tournament play, including satellite games; the fees; rebuys; bounties; and add-ons collected, name of each player; signature or initials; and date of the employee who collected the fee;
  - d. For tournament play, including satellite games, prize register according to section 99-01.3-03-07, and record of win according to section 99-01.3-03-08;
  - e. Cash profit as defined in subdivision j of subsection 7 of section 99-01.3-02-01;
  - f. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all poker activity for a quarter must reconcile to the tax return;
  - g. A copy of the tournament rules for each poker occasion;
  - h. Receipts for transferred satellite buyin prize; and
  - i. A copy of the tournament schedule according to subsection 1 of section 99-01.3-09-05.
2. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
  3. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
  4. The count and reconciliation of cash banks according to subsections 4 and 6 of section 99-01.3-03-09.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-10

### 99-01.3-10-01. Calcutta.

A "calcutta" is a sporting event in which players wager at an auction on the competitors. A sporting event is a competitive sport involving physical skill or endurance and scores a person's physical ability. The conduct of a calcutta is the auction process. An auction pool is comprised of the wagers paid by players who offered the highest bids on the competitors. The auction pool is distributed to the player who wagered on the winning competitor. The winning competitor may be one competitor, a team of competitors, or ranked competitors. The payout of the cash prize to a winning player is based on a predetermined percentage of the auction pool, which may not exceed ninety percent. Only cash prizes may be awarded.

1. A calcutta may only be conducted for a professional or amateur sporting event held in North Dakota, but not for an elementary, secondary, or postsecondary education sporting event. An organization may conduct more than one calcutta on the same sporting event. More than one organization may independently conduct a calcutta on the same event.
2. An organization shall acquire a calcutta board from a distributor and complete on it the sporting event, date of the sports event, and manner of distributing the auction pool as a prize. The requirements of the players must be ~~disclosed~~posted or made available to the players on the site.
3. Each competitor in a sporting event ~~must~~shall be identified before the auction begins. A competitor may also be a player who may wager on oneself. A competitor may wager on another competitor.
4. Each competitor ~~must~~shall be eighteen years of age or older to be eligible to be listed on a calcutta board. Each eligible competitor ~~must~~shall be offered through an auction to prospective players. An organization may require that all eligible competitors be bid on and may set a minimum bid. A player who offers the highest bid for a competitor by a verbal, sealed, or open bid wagers on that competitor. A player may wager any amount and buy more than one competitor. A competitor may be auctioned off only to one player.
5. An open bid enables a potential player, during a certain time, to write the player's name and bid for a competitor on a register assigned that competitor. Each successive potential player interested in that competitor shall write the player's name and bid, of an amount higher than the previous bid, on the register. When the time period ends, the last player listed on the register wagers the amount bid on that competitor.
6. An organization shall conduct an auction at its site that may be where the sporting event is held. A player ~~must~~shall be present to bid.
7. Before an auction, an employee shall:
  - a. Verbally announce the predetermined percentages of the auction pool that will be paid to a winning player and retained by an organization. The amount a player may win depends on the total amount of the auction pool and not on any odds; and
  - b. Complete for each line on a board a sequential number starting with the number one and a name of a competitor.
8. The sequence of a verbal bid auction must be determined by a random drawing of the numbers assigned each line.
9. If a competitor is not bid on by a player, an organization may sell the competitor by:

- a. If there is more than one competitor not bid on, placing the competitors in one or more groups and auction a group as one competitor; or
  - b. Allowing a competitor to purchase oneself for a predetermined minimum wager.
10. After an auction, an employee shall complete this information for each line on a board and total the amounts wagered:
- a. Full name and address of the player who bought the competitor; and
  - b. Amount wagered by the player.
11. If a competitor was bought by a player and does not compete in the event, an organization shall refund the wagered amount to the player and adjust the prize payout.
12. After a sporting event, an employee shall complete on the board, for each winning player, the amount of the auction pool won. A winning player is the player who wagered on the competitor who won the event. An organization may award the prize to a winning player where the event is held. If an eligible competitor was not bought by a player and wins or places in the event, the organization shall retain the prize that would have been awarded on the competitor. If an ineligible competitor wins or places in the event, the organization shall award the prize that would have been awarded on the competitor to the next highest ranked eligible competitor.
13. An organization shall make a good-faith effort to contact a winning player to award a prize. If a prize is unclaimed for thirty days following the notification or a player attempts to falsify or falsifies a record of win, the prize is forfeited.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.3

**99-01.3-10-02. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported:

- 1. For each calcutta:
  - a. A calcutta board with the state gaming stamp affixed indicating the winning competitor and player;
  - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
  - c. [Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;](#)
  - ~~d. Cash profit as defined in subdivision k of subsection 7 of section 99-01.3-02-01; and~~
  - ~~e. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all calcuttas conducted for a quarter must reconcile to the tax return; and~~
  - ~~d. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.~~
- 2. Inventory records according to subsection 1 of section 99-01.3-03-09.

3. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
4. ~~The cash profit defined in subdivision k of subsection 6 of section 99-01.3-02-01, verification~~Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
5. The count and reconciliation of calcutta boards and cash banks according to ~~subsection~~subsections 1, 4, and 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-11

### 99-01.3-11-02. Paddlewheels - Excluding the use of a table.

This section applies to the method of paddlewheels described by subsection 1 of section 99-01.3-11-01.

1. All paddlewheel tickets of a card must be preprinted and contain one or more numbers or symbols corresponding to a paddlewheel. A number or symbol cannot be repeated on any of the tickets of a card number. A ticket must have a game serial number corresponding to the number printed on the ticket card's stub. A master flare for a series of paddlewheel ticket cards must state the type of paddlewheel tickets, cost per ticket, range of card numbers, have a state gaming stamp affixed to it bearing the card number of the lowest-numbered ticket card, and be posted.
2. The maximum price per ticket is two dollars. All the tickets of a series of paddlewheel ticket cards must be sold for the same price and the tickets cannot be discounted. A person may not be required to buy more than one ticket. All tickets must be sold on a site the day the game is conducted. All the tickets of a card must be sold before a spin. Otherwise, an employee shall refund the gross proceeds in exchange for the players' unplayed tickets.
3. A winner must be determined by spinning a paddlewheel. An organization may spin a paddlewheel multiple times to award multiple prizes for one paddlewheel ticket card. A paddlewheel must make at least four revolutions. Otherwise, the spin is void and the paddlewheel must be spun again.
4. No cash prize may be a variable multiple of the price of a ticket. No cash prize or the retail price of a merchandise prize for one winning ticket may exceed one hundred dollars. After a prize payoff, an employee shall record the date, card number, and cash prize amount or cost and description of a merchandise prize and retain the winning ticket.
5. All paddlewheel ticket cards of a series related to the same master flare must be reported on the tax return in the quarter in which the series was first played. An organization may not carry over a partial series of paddlewheel ticket cards to another quarter. Any cards of a series which remain unsold during a quarter when other cards of that series were sold must be retained as part of the accounting records and cannot be used or disposed.
6. ~~These~~The following rules and policy must be ~~disclosed~~posted or made available to players. If made available to players, the rules and policy must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
  - a. A player may not bet tickets that exceed a value of twenty dollars for one spin;
  - b. A paddlewheel must make at least four revolutions;
  - c. Whether a player is or is not required to be present when the paddlewheel is spun to win;  
~~and~~
  - d. ~~The~~If a player is not required to be present, the time limit for the winning player to claim the prize; however, the limit cannot exceed one hour from the time of the ~~drawings~~spin;  
~~and~~
  - e. If a prize is not claimed, an organization shall conduct one or more additional spins until the prize is claimed.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.4

**99-01.3-11-03. Paddlewheel, table, chips, and video surveillance system.**

1. A paddlewheel is a round mechanical vertical wheel, at least thirty inches ~~[76.2 centimeters]~~ in diameter, and may be divided into a maximum of five concentric circles. The outer circle must contain at least forty numbers or symbols. A paddlewheel may have house numbers or symbols for an optional odd or even bet. Each inner circle may contain up to one-half of the number of numbers or symbols as that circle's adjacent outer circle. The numbers and symbols may repeat on a circle. Each circle must be divided into equally spaced sections, be a different primary color, and correspond to the colored numbers or symbols of a table playing surface. The colored numbers or symbols of all concentric circles must be at least five-eighths of one inch ~~[15.88 millimeters]~~ in height.
2. A peg must protrude, on the circumference of a paddlewheel, between each section of the outside circle. A pointer must be positioned above a paddlewheel. It is used to stop a spin of a paddlewheel and determine the winning colored number or symbol.
3. A table must have:
  - a. A chip tray and a rail for holding a player's chips;
  - b. A playing surface which must be permanently imprinted with colored numbers or symbols of at least one and one-half inches ~~[3.81 centimeters]~~ in height relating to each circle of a paddlewheel. A table may have spaces for various wagers, including sets of numbers, colored numbers, symbols, and "ODD" and "EVEN" bets;
  - c. Either a mirror to reflect or a color video camera and monitor to display the winning colored number or symbol on the paddlewheel; and
  - d. A table must have a "drop box" that meets the specification of subsection 5 of section 99-01.3-15-02. A "drop box" must have a money plunger which must remain in the slot unless the plunger is used.
4. An organization shall issue solid color-coded sets of chips for betting purposes. No betting chip can be the primary color of mustard yellow. The number of different sets and number of chips within each set is based on an organization's discretion. Each chip must be ~~one and nine sixteenths inches [39.62 millimeters] in diameter and be~~ permanently impressed, engraved, or imprinted on one side with an organization's name and the other side may have a stated value of one dollar. The name may be represented by a unique identification that differentiates an organization's chips from other organizations' chips. Each chip is valued at one dollar. An organization ~~shall~~ may issue casino chips in values of one dollar, two dollars, five dollars, twenty-five dollars, and one hundred dollars for paying a winning bet or exchanging a betting chip. A casino chip must meet the specification of subsection 3 of section 99-01.3-08-03.
5. An organization shall have a picture-in-picture or simultaneous recording video surveillance system on a table and paddlewheel. The system must meet the ~~specifications and~~ requirements prescribed by subsections 1, 2, 4, 5, 6, 7, 8, and 9 of section 99-01.3-08-04.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.4

**99-01.3-11-04. Opening and closing a table, number of employees, chip bank services, procedure for accepting currency and chips, and drop box.**

1. To open a paddlewheel table, an employee shall inspect each peg and the pointer of a paddlewheel for uneven wear, immediately replace any worn peg or pointer, and evaluate the balance of a paddlewheel. ~~To close a paddlewheel table, an employee shall make it inoperable.~~
2. An organization may not conduct paddlewheels unless two employees are on duty at the site.
3. A fill and credit slip must be prepared and used according to section 99-01.3-08-05. An organization shall perform chip bank services according to section 99-01.3-08-06. An organization may account for the games of paddlewheels and twenty-one separately and, if the activity is separately recorded, shall use casino chips prescribed by the attorney general.
4. A wheel operator, upon receiving currency from a player at a table, shall spread each bill of currency facedown and flat, in sequence of denomination, in the inner table area, perpendicular to a chip tray, and momentarily move the wheel operator's hands away from the currency so it is within a camera's view. A wheel operator, upon receiving a casino chip from a player at a table to be exchanged for a betting chip, shall place the chip in the inner table area at the dealer's left and sort, stack, and fan the chips. However, a wheel operator may use a rack to account for one or more sets of twenty chips of the same value. A wheel operator shall then take betting chips from the chip tray, equal in value to the currency or casino chip, fan the betting chips, and momentarily move the wheel operator's hands away from the betting chips so they are within a camera's view. A wheel operator shall then restack the betting chips, push the betting chips to the player, and place the currency in a drop box or place the casino chip in the chip tray, or both.
5. After a day's activity, an employee shall transport a drop box from a table, store it, and count drop box cash according to section 99-01.3-08-14.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-11-05. Conduct and play.**

1. An organization may limit the number of players and may require a minimum number of players to open a table.
2. A player shall buy a betting chip with currency or may exchange a casino chip for a betting chip. Only a betting chip can be used to place a bet.
3. The maximum betting limit of a player for each spin is twenty dollars. Each chip is a separate chance to win. Unless an organization has a restrictive policy, a player may bet more than one chip on the same colored number or symbol for a spin. To bet, a player shall place a chip on the betting layout of a table. If a player's total bet exceeds a value of twenty dollars or exceeds an organization's maximum wager on a spin, the bet is void and the organization shall ~~adopt a policy that a~~ [return the](#) player's chips ~~of the voided bet are returned~~ to the player. A player may not place a tip bet for a wheel operator.
4. After all the players have bought a betting chip and before a paddlewheel is spun, a wheel operator shall announce that the players' bets for the next spin must now be placed. A wheel operator may place a chip for a player if the wheel operator first states, in a voice loud enough to be heard by all the players at a table, that the player is being assisted. When a wheel operator has determined that no other person desires to bet, the wheel operator shall



announce bets closed. Thereafter, a player may not bet or touch any placed betting chip or obstruct the view of the playing surface until after a wheel operator pays off all winning wagers. A wheel operator shall double spin a paddlewheel by pulling it in a downward or upward direction and releasing it. While the paddlewheel is in motion, a wheel operator shall again pull it in a consistent downward or upward direction. A paddlewheel must rotate at least four full unrestricted revolutions. Otherwise, the spin is void and a paddlewheel must be spun again.

5. When a paddlewheel stops, a wheel operator shall announce the winning colored number or symbol in a tone of voice loud enough to be heard by all the players at a table. The announcement must be in sequence of the outermost circle first to the innermost circle last. A wheel operator shall first remove all losing betting chips from the table and place them in the chip tray. Then, a wheel operator shall pay off the winning betting chips in the sequence of the bets that are most accessible to the players first and to the bets that are least accessible to the players last.
6. To pay off a winning bet, a wheel operator shall fan all of a player's betting chips toward the wheel operator or side. A wheel operator shall take ~~a betting chip or~~ chips of the same color as the winning chip or casino ~~chip~~ chips, equal to the prize amount of the winning bet, from the chip tray, place the betting or casino chips in a stacked manner beside the wagered fanned betting chips, fan the payoff chips toward the wheel operator or side, and momentarily move the wheel operator's hands away from the chips so they are within a camera's view. However, if the prize payout equals or exceeds twenty betting or casino chips of the same value, the wheel operator may use a rack to account for one or more sets of twenty chips and fan the remaining payoff chips.
7. A tip for a wheel operator must be made with a betting or casino chip. If a tip is made with a betting chip, a wheel operator shall immediately exchange the betting chip for a casino chip in the inner table area, momentarily move the wheel operator's hands away from the chip so it is within a camera's view, place the betting chip in the chip tray and casino chip in the tip receptacle. When the wheel operator's shift ends, the wheel operator shall take the tip receptacle and leave the table.
8. If a player desires to redeem a betting chip, an organization shall exchange the betting chip for a casino chip at the paddlewheel table. A player may redeem a casino chip with the cash bank cashier or use it in the game of twenty-one.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.4

#### **99-01.3-11-06. Disclosure.**

1. ~~These~~The following rules and notice must be ~~disclosed~~posted or made available to players. If made available to players, the rules and notice must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
  - a. A player may not bet chips that exceed a value of twenty dollars for one spin.
  - b. A player ~~must~~shall bet by placing a betting chip properly on the betting layout.
  - c. A player may not touch a betting chip after the wheel operator announces "bets closed" or obstruct the view of the playing surface until after a wheel operator pays off all winning wagers.
  - d. A paddlewheel must make at least four revolutions.

- e. If a pointer stops on top of a peg, the number preceding the peg is the winning number.
  - f. A winning odd or even bet is determined by a winning number of only the designated colored circle. However, a player loses all odd and even bets if the pointer stops on a designated house number. This must be ~~disclosed~~posted or made available to players if an odd or even bet is accepted.
  - g. ~~A player may not take a betting chip away from the table and must be at the table to win. Otherwise, the player's bet is void.~~
  - ~~h.~~ If a player stops playing and has an unused betting chip, the player ~~must~~shall exchange the betting chip for a casino chip through the wheel operator before the player leaves the table.
2. Prize information must be ~~disclosed~~posted, made available to players, or stated on a table playing surface. The information must reference each differently colored number or symbol, including an optional odd or even bet, and state each prize payoff. The payoff is the relationship of the prize to a winning betting chip. The payoff must be stated as "\_\_\_\_\_ to \_\_\_\_\_" or "\_\_\_\_\_ for \_\_\_\_\_". For example, for a red-colored number or symbol which pays forty dollars for a winning betting chip, the information must reference the red-colored number or symbol and state the payoff as "EXACT NUMBER RED 40 to 1".
  3. A notice that if a person knowingly uses a fraudulent scheme or technique to cheat or skim involving paddlewheels, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.4, 53-06.1-16

### **99-01.3-11-07. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For paddlewheel activity described by subsection 1 of section 99-01.3-11-01:
  - a. For each day's activity, the starting and ending cash banks and IOU records according to section 99-01.3-03-06;
  - b. For each ticket card of each series of paddlewheel ticket cards:
    - (1) Date conducted, card number, cash prize amount or cost and description of a merchandise prize;
    - (2) All winning tickets and unsold ticket cards which must be retained for one year from the end of the quarter in which the activity was reported on a tax return; and
    - (3) The flare with the state gaming stamp affixed;
  - c. Inventory records according to subsection 1 of section 99-01.3-03-09;
  - d. The count and reconciliation of each series of paddlewheel ticket cards according to ~~subsection~~subsections 1 and 6 of section 99-01.3-03-09;
  - e. Prize register according to section 99-01.3-03-07; and

- f. Purchase invoice or receipt documenting the cost and description of a merchandise prize.
2. For paddlewheel activity described by subsection 2 of section 99-01.3-11-01:
- a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;
  - b. Drop box cash and values of fill and credit slips;
  - c. Daily surveillance review log;
  - d. Wheel operator percent-of-hold information log must be retained for one year from the end of the quarter of the activity;
  - e. Inventory records according to subsection 5 of section 99-01.3-03-09;
  - f. An organization using a combined cash bank for twenty-one and paddlewheel at a site, shall ~~document the allocation of cash profit on a monthly basis to each game type based on the ratio of the game type's adjusted gross proceeds to the total adjusted gross proceeds of both game types~~ allocate the cash long or short or the combined cash bank to twenty-one; and
  - g. The count and reconciliation of casino and betting chips according to ~~subsection~~ subsections 5 and 6 of section 99-01.3-03-09.
3. For all paddlewheel activity:
- a. Cash profit as defined in subdivisions i and l of subsection 7 of section 99-01.3-02-01; and
  - b. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. For paddlewheel activity described by subsection 1 of section 99-01.3-11-01, a summary must be completed for each series of paddlewheel ticket cards. The summaries of all paddlewheel activity for a quarter must reconcile to the tax return; ~~;~~
  - ~~b.~~ ~~The cash profit defined in subdivisions i and l of subsection 6 of section 99-01.3-02-01; verification~~
4. Verification of the amount deposited according to a bank statement; and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10; ~~;~~
- ~~e.~~ 5. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09; ~~and.~~
  - ~~d.~~ 6. The count and reconciliation of cash banks according to ~~subsections~~ subsections 4 and 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-12

### 99-01.3-12-02. Use and requirements of an organization.

1. A licensed organization may operate a pull tab dispensing device when the organization's employee is on duty and may have a bar employee redeem a winning pull tab when the organization's employee is or is not on duty.
2. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.
3. ~~An organization shall disclose~~The following rules must be posted or ~~make these rules~~made available to players. If made available to players, the rules must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
  - a. Restricting access to or delaying using credits on a device is prohibited;
  - b. A winning pull tab must be redeemed within fifteen minutes;
  - c. A pull tab cannot be redeemed if it has been taken from the gaming area;
  - d. If a person knowingly solicits, provides, or receives any inside information, by any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both; and
  - e. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.
4. An organization shall maintain custody of all keys to a device. However, an organization may provide an authorized employee of a bar with a key to the cash compartment to withdraw currency or a drop box if:
  - a. A device's cash compartment is separate from its pull tab and accounting meter compartments. However, if access to a device's accounting meters is controlled by a security code, the cash and accounting meters may be in the same compartment;
  - b. The organization authorizes a specific employee of a bar to withdraw cash and complies with section 99-01.3-02-02 regarding a record check on the employee; and
  - c. If a drop box is not used, an authorized employee of a bar shall count the cash, record the amount, sign and date the record, and secure the cash and record in a keyless locking bank bag. If a drop box is used, an organization may not provide the authorized employee of a bar the key to access the contents of the drop box.
5. An organization shall withdraw currency from a device within a seven-calendar-day interim period.
6. An organization shall use the current recordkeeping system unless approval is obtained from the attorney general for use of another system.
7. An organization shall have a rental agreement conforming to section 99-01.3-02-06.
8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend which affects the accounting meters or a test validation of currency, the person shall record the value of pull tabs and currency validated. An organization shall retain the log in a device during the quarter of activity.

9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem a winning pull tab. A loan and any increase in the loan must be made by check payable to the bar and be interest free. An organization may not access, count, or take custody of the loaned money. The duration of the loan must be until an organization discontinues conducting pull tabs at a site through a device. When the bar repays the loan, the organization shall deposit the funds in its gaming account and the deposit slip ~~or receipt~~ must reference the site, source of funds, and amount. The amount reimbursed to a bar must equal the value of redeemed winning pull tabs which the bar provides an organization. An organization employee may not use a bar's cash on hand for redeeming a winning pull tab.
10. An organization may not provide an independent service technician a key to access a device regardless if the device is leased.
11. If a theft of currency occurs, an organization shall record the currency and pull tab accounting meters or print a cash withdrawal report and audit the game. The organization shall provide a copy of all of this information to a local law enforcement agency and the attorney general.
12. When a game is closed:
  - a. The game must be reported on a tax return for the site at which it was closed;
  - b. An employee shall buy back all remaining redeemed winning pull tabs from a bar; and
  - c. If the game has unsold pull tabs, these cannot be put back into play.
13. An organization or employee may not:
  - a. Modify the assembly or operational functions of a device;
  - b. Use or continue to conduct a deal of pull tabs after being notified by a distributor of a ban or recall of the deal;
  - c. Designate a pull tab to entitle a player who buys it with a prize provided by a bar or distributor; or
  - d. Intentionally test vend currency or pull tabs to synchronize nonresettable accounting meters.
14. A game must be conducted and played through a device as follows:
  - a. The deals must be identical, except for a game serial number and color of the pull tabs;
  - b. An employee shall securely attach a master flare to the interior or exterior of a device, or on an adjacent wall, so the flare's information is visible to players. When a deal is added, the deal's flare may be retained in a device or at an organization's office;
  - c. An employee shall place at least one complete and one-third to one-half of a second deal in a device at the same time at the start of a game. The remaining pull tabs of any partial deal must be stored onsite and added to the game before any additional deals may be added. If during the quarter a deal is added to a game and the complete deal's tickets will not fit in a device, any remaining pull tabs of the partial deal must be stored onsite and added to the game before any additional deals may be added;
  - d. At the start of a game the pull tabs must be randomly placed in all the stacking columns. To add pull tabs to a game, an employee shall first add any remaining pull tabs of a deal previously partially placed in the device or pull tabs of a new deal by randomly mixing these pull tabs with the pull tabs in the device;

- e. If a deal is to be added to a game and an organization does not have a deal to add, the organization shall temporarily suspend the game until it procures a deal. However, if the organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;
  - f. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter or if a site has not previously had gaming, a game may be closed anytime if all top tier winning pull tabs have been redeemed;
  - g. Except as provided by subdivision h, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and:
    - ~~(1) Fifty deals have been added to a game;~~
    - ~~(2) A game's actual gross proceeds are twenty-five thousand dollars; or~~
    - ~~(3) A game has been in play for twenty-five consecutive calendar days;~~
  - h. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed or low-level switches in all but two columns of a device have been triggered, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period. When a game is being closed, an employee shall post a sign stating that the game is being sold out;
  - i. If the percent-of-accuracy of all the games involving a device for a site for the previous quarter was less than ninety-eight and one-half percent, and a cash shortage of more than one hundred dollars, an employee who did not conduct the game shall do a weekly interim audit of the games at the site for up to twelve continuous weeks or until the organization determines, resolves, and documents the cause. One of the weekly interim audits may be the audit required by subsection 7 of section 99-01.3-03-10. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general. However, if games involving a device are conducted without a bar employee redeeming a winning pull tab, pull tab games not involving a device are also conducted, and the combined percent-of-accuracy of all pull tab games at the site for the previous quarter was ninety-eight and one-half percent or greater, no weekly interim audit is required. Percent-of-accuracy is computed as cash profit divided by adjusted gross proceeds; and
  - j. An organization may transfer a device from a site to another site or rotate a device among sites. If an organization discontinues gaming at a site, it may close a game or transfer the game to a device at another site. If a game is in the process of being conducted through a device, an organization may not transfer the game to a jar bar.
15. Two or more organizations may use devices at the same site on different days of the week provided the organizations use different names of games in the devices and the bar uses separate cash banks.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06



#### 99-01.3-12-04. Requirements of a bar and an organization.

1. A bar employee or an employee shall deface a winning number or symbol of a pull tab when it is redeemed. If a winning pull tab ticket can be redeemed for credit through a dispensing device, the bar code on the ticket must also be defaced. Tickets redeemed for credit must be defaced by an employee of the organization at the time of the interim period site visit. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced.
2. A bar employee or an employee may not:
  - a. Assist a player in opening a pull tab except to assist a disabled player;
  - b. Knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial numbers of the deals in the game;
  - c. Knowingly pay a prize to a player who is redeeming a pull tab when the player with the pull tab has left the gaming area of a site;
  - d. Publicly display a redeemed pull tab;
  - e. Knowingly pay a prize for a pull tab after fifteen minutes has elapsed since it was bought. If a player attempts to redeem a pull tab after the allowed time limit, a bar employee or an employee shall, if possible, retain and void the pull tab;
  - f. Pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site; or
  - g. Reimburse, from any source of funds, an amount to a player for play of a game that has a manufacturing defect or has an incorrect posting of information described by subsection 7, unless the attorney general approves.
3. A prize must be cash. There may be no last sale prize.
4. If a device malfunctions, is inoperable, and a player has a credit, a bar employee or an employee shall pay the player for the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement. If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.
5. A bar employee and an employee shall document and attest to the number and value of redeemed winning pull tabs, by value and in total, that are exchanged for cash or check. These pull tabs must be grouped, banded, dated, and retained separate from other pull tabs that an organization employee may have redeemed, and separate from those redeemed through a credit redemption device, by interim period.
6. An organization shall provide a bar employee and a bar shall maintain a current copy of subsection 78 of section 99-01.3-02-03 and sections 99-01.3-02-05, 99-01.3-02-09, 99-01.3-03-08, 99-01.3-12-03, and 99-01.3-12-04 regarding the bar employee's and bar's duties and restrictions.
7. A bar employee or an employee may post the information referenced by subdivision a or b, or both, provided that an organization does not have a partial deal that is to be added to a



device. An organization shall post a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be the information described in subdivision a or b, or both:

- a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.
- b. The number or unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-12-05. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. All redeemed and unsold pull tabs for a game and be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return<sub>;</sub>
2. The deal's game information sheet and flare with the state gaming stamp affixed<sub>;</sub>
3. A record of game serial numbers for each game<sub>;</sub>
4. Record of win according to section 99-01.3-03-08<sub>;</sub>
5. Credit redemption register, including the date, amount, if credits were still on the device, player's name and signature, signature or initials of person who paid the player, bar reimbursement information if applicable, and date paid<sub>;</sub>
6. If an employee redeems winning pull tabs at a site, a daily employee report documenting the starting and ending cash on hand, IOU records according to section 99-01.3-03-06, and prizes redeemed by prize value, total prizes, credits paid, and cash long or short, and number of redeemed top tier pull tabs by game serial number<sub>;</sub>
7. [Cash profit as defined in subdivision d of subsection 7 of section 99-01.3-02-01.](#)
8. Interim period site summary, including meter readings, test vends (if it affects the meter readings), gaming stamp number and game serial number of a deal added to a device, currency withdrawn, redeemed prizes by denomination obtained from a bar, total prizes, total prizes credited through the device if applicable, information on top tier winners redeemed by game serial number, credit redemption register refunds, cash profit or loss, and bank deposit<sub>;</sub>

~~8.9.~~ A summary that includes the following:

- a. Number of redeemed top tier pull tabs by gamegaming stamp and game serial number, cumulative cash profit (loss), bank deposits, and prizes;
- b. Reconciliation of nonresettable meters for currency and the number of pull tabs dispensed to the currency in the device and to the value of the pull tabs dispensed; and
- c. Ideal gross proceeds, value of unsold pull tabs, gross proceeds, prizes, adjusted gross proceeds, cash profit, and cash long (short). The summaries of all games for a quarter must reconcile to the tax return;.

~~9. Inventory records according to subsection 1 of section 99-01.3-03-09;~~

10. ~~Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09;~~

~~11. Access log, including the date, time, nonresettable currency meter reading, reason for entry, and initials of the employee;.~~

11. Inventory records according to subsection 1 of section 99-01.3-03-09.

12. Interim audit records according to subdivision i of subsection 14 of section 99-01.3-12-02;.

13. ~~The cash profit defined in subdivision d of subsection 6 of section 99-01.3-02-01, verification~~Inventory records according to subsection 1 of section 99-01.3-03-09.

14. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10;~~and.~~

~~14.15.~~ The count and reconciliation of deals and cash banks according to ~~subsection~~subsections 1, 4, and 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-12.1

### 99-01.3-12.1-01. Definition.

This chapter applies to a licensed organization that conducts prize boards involving a dispensing device. The maximum price per chance is two dollars. The value of a seal prize or a column sold out indicator may exceed the value of the top tier prize.

For purposes of this chapter, "prize board dispensing device" means a board used with pull tabs dispensed from a device to award cash or merchandise prizes. Coins of various values may be affixed to the board and, under each coin, a cash prize value preprinted on the board. A board ~~may~~must contain numbered lines and a seal covering a winning number. A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. However, if a number or symbol matches a winning number or symbol assigned to a specific coin or minor prize, the player wins that coin or prize, and a cash prize value stated under the coin. A column sold out indicator may be awarded. The column sold out indicator is an additional prize, which must be described on the flare, and is used to assist organizations in selling out pull tabs. Pull tabs with a column sold out indicator need to be distinctly marked as the last pull tab in each column and must contain the initials and date of the organization employee putting the column sold out indicator on the pull tab and upon redemption must include the signature of the winning player and date that the pull tab was redeemed. When the board is closed, a seal is removed to reveal the winning line number. A player whose signature is on that line wins the seal prize. No board may be closed unless all the top tier winning pull tabs have been redeemed, all the pull tabs are sold, all the seals have been opened, or the board has been conducted for ninety calendar days. An organization is responsible for ensuring that a description and retail price of a merchandise prize or cash prize to be awarded and cost per play are on a flare. A seal prize is not considered the top tier prize. The maximum number of pull tabs in a deal is two thousand. The maximum cash prize, total of all column sold out indicators, or seal prize, including the retail price of a merchandise prize, is five hundred dollars.

**History:** Effective July 1, 2010; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

### 99-01.3-12.1-02. Use and requirements of an organization.

1. An organization may operate a prize board dispensing device when the organization's employee is on duty and may have an authorized bar employee redeem a winning pull tab and pay a cash or merchandise prize when the organization's employee is or is not on duty.
2. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.
3. ~~An organization shall disclose~~The following rules must be posted or ~~make these rules~~made available to players. If made available to players, the rules must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
  - a. Restricting access to or delaying using credits on a device is prohibited;
  - b. A winning pull tab must be redeemed within fifteen minutes;
  - c. A pull tab cannot be redeemed if it has been taken from the gaming area;
  - d. If a person knowingly solicits, provides, or receives any inside information, by any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;

- e. To the best of the organization's knowledge, a prize remaining on a board relates to a winning pull tab that has not been ~~bought~~redeemed; and
  - f. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.
4. An organization shall maintain custody of all keys to a device. However, an organization may provide an authorized employee of a bar with a key to the cash compartment to withdraw currency or a drop box if:
    - a. A device's cash compartment is separate from its pull tab and accounting meter compartments. However, if access to a device's accounting meters is controlled by a security code, the cash and accounting meters may be in the same compartment;
    - b. The organization authorizes a specific employee of a bar to withdraw cash and complies with section 99-01.3-02-02 regarding a criminal history record check on the employee; and
    - c. If a drop box is not used, an authorized employee of a bar shall count the cash, record the amount, sign and date the record, and secure the cash and record in a keyless locking bank bag. If a drop box is used, an organization may not provide the authorized employee of a bar the key to access the contents of the drop box.
  5. An organization shall withdraw currency from a device within a seven-calendar-day interim period.
  6. An organization shall use the current recordkeeping system unless approval is obtained from the attorney general for use of another system.
  7. An organization shall have a rental agreement conforming to section 99-01.3-02-06.
  8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend which affects the accounting meters or a test validation of currency, the person shall record the value of pull tabs and currency validated. An organization shall retain the log in a device during the quarter of activity.
  9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem winning pull tabs and pay prize board cash prizes. The loan and any increase must be made by check payable to the bar and be interest-free. An organization may not access, count, or take custody of the loaned money. The duration of the loan must be until an organization discontinues conducting prize boards at a site through a device. ~~An~~As an option an organization may ~~also~~ supply the bar with a ~~separate temporary~~cash loan amount equal to the total amount of cash prizes on a prize board. If ~~a separate temporary loan~~this option is used, all remaining cash from unredeemed winning pull tabs and the redeemed winning pull tabs must be returned to the organization following final distribution of the seal prize. When the bar repays ~~any~~the loan, the organization shall deposit the funds in its gaming account and the deposit slip ~~or receipt~~ must reference the site, source of funds, and amount. The amount reimbursed to a bar must equal the value of redeemed winning pull tabs which the bar provides an organization. An organization employee may not use a bar's cash on hand for redeeming a winning pull tab.
  10. An organization may not provide an independent service technician a key to access a device regardless if the device is leased.
  11. If a theft of currency occurs, an organization shall record the currency and pull tab accounting meters or print a cash withdrawal report and audit the game. The organization shall provide a copy of all of this information to a local law enforcement agency and the attorney general.

12. When a prize board is closed:
  - a. The prize board must be reported on a tax return for the site at which it was closed;
  - b. An employee shall buy back all remaining redeemed winning pull tabs from a bar;
  - c. If the game has unsold pull tabs, these cannot be put back into play; or
  - d. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face value, of the coins that were awarded to the total face value of all the coins. An organization may use an unawarded prize in another game, sell the prize, or deposit the coin in the gaming account.
  
13. An organization or employee may not:
  - a. Modify the assembly or operational functions of a device;
  - b. Use or continue to conduct a deal of pull tabs after being notified by a distributor of a ban or recall of the deal;
  - c. Designate a pull tab to entitle a player who buys it with a prize provided by a bar or distributor; or
  - d. Intentionally test vend currency or pull tabs to synchronize nonresettable accounting meters.
  
14. A prize board dispensing device must be conducted and played as follows:
  - a. An employee shall place all pull tabs from a deal evenly among the columns used.
  - b. If used, column sold out indicators must be designated on the last pull tab of each column when the deal is placed into the device. Each column sold out indicator for a deal must be of equal value.
  - c. An organization may transfer a device from a site to another site or rotate a device among sites. If an organization discontinues gaming at a site, it may close a prize board or transfer the prize board to a device at another site. If a prize board is in the process of being conducted through a device, an organization may not transfer the prize board to a jar bar.

**History:** Effective July 1, 2010; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-12.1-04. Requirements of a bar and an organization.**

1. A bar or organization employee may pay a winning player a cash or merchandise prize won on a prize board.
2. A bar employee or an employee shall deface a winning number or symbol of a pull tab when it is redeemed.
3. A bar or organization employee ~~must~~shall display the prize board while the board is in play.
4. A bar employee or an employee may not:
  - a. Assist a player in opening a pull tab except to assist a disabled player;

- b. Knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial number of the deal in play;
  - c. Knowingly pay a prize to a player who is redeeming a pull tab when the player with the pull tab has left the gaming area of a site;
  - d. Publicly display a redeemed pull tab;
  - e. Knowingly pay a prize for a pull tab after fifteen minutes has elapsed since it was bought. If a player attempts to redeem a pull tab after the allowed time limit, a bar employee or an employee shall, if possible, retain and void the pull tab;
  - f. Pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site; or
  - g. Reimburse, from any source of funds, an amount to a player for play of a game that has a manufacturing defect, unless the attorney general approves.
5. If a device malfunctions, is inoperable, and a player has a credit, a bar employee or an employee shall pay the player for the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement. If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.
  6. A bar employee and an employee shall document and attest to the total cash prizes of redeemed winning pull tabs that are exchanged for cash or check. These pull tabs must be grouped, banded, and retained separate from other pull tabs that an organization employee may have redeemed and separately from any other dispensing device pull tabs redeemed at the site.
  7. An organization shall provide a bar employee, and a bar shall maintain, a current copy of subsection 78 of section 99-01.3-02-03, sections 99-01.3-02-05, 99-01.3-02-09, 99-01.3-03-08, and 99-01.3-12.1-03, and this section regarding the bar employee's and bar's duties and restrictions.
  8. ~~When applicable, a bar employee or an employee shall provide a prize board or a numbered line sheet to a player to sign on a winning number line.~~ A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. Only one player's name may be signed on a specific line. When all tickets from a prize board have been sold, a bar employee or an employee may remove the seal revealing the winning prize number, obtain the winner's information for a record of win form, and award the prize to the winning player. If the bar employee cannot locate the winning player, the employee shall contact the organization.

**History:** Effective July 1, 2010; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-12.1-05. Recordkeeping.**

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:



1. All redeemed and unsold pull tabs for a game, including column sold out indicators, ~~and these~~ must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return~~;~~.
2. The deal's game information sheet, flare with the state gaming stamp affixed, and supplemental signup sheet if applicable~~;~~.
3. Purchase invoice or receipt documenting the cost and description of merchandise prizes~~;~~.
4. Record of win according to section 99-01.3-03-08~~;~~.
5. Credit redemption register, including the date, amount, if credits were still on the device, player's name and signature, signature or initials of person who paid the player, bar reimbursement information if applicable, and date paid~~;~~.
6. If an employee redeems winning pull tabs at a site, a daily employee report documenting the starting and ending cash on hand, IOU records according to section 99-01.3-03-06, change in cash bank, total cash prizes, credits paid, and cash long or short~~;~~.
7. Cash profit as defined in subdivision g of subsection 7 of section 99-01.3-02-01.

8. Interim period site summary, including gaming stamp number and game serial number, date placed and date removed, meter readings, test vends, currency withdrawn, total cash prizes redeemed by bar and organization employees, credit redemption register refunds, cash ~~profit~~ profit or loss receipts, and bank deposit~~;~~.

~~8-9.~~ A summary that includes the following:

- a. Cumulative cash ~~profit~~ profit receipts, bank deposits, and prizes;
- b. Reconciliation of nonresettable meters for currency and the number of pull tabs dispensed to the currency in the device and to the value of the pull tabs dispensed; and
- c. Ideal gross proceeds, value of unsold pull tabs, gross proceeds, total cash prizes, total prizes paid by check, cost of coins, total prizes, adjusted gross proceeds, cash profit, and cash long or short. The summaries of all prize boards for a quarter must reconcile to the tax return~~;~~.

~~9-10.~~ Access log, including the date, time, nonresettable currency meter reading, reason for entry, and initials of the employee.

11. Inventory records according to subsection 1 of section 99-01.3-03-09~~;~~.

~~10-12.~~ Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09~~;~~.

~~11.~~ ~~Access log, including the date, time, nonresettable currency meter reading, reason for entry, and initials of the employee;~~

~~12.~~ ~~The cash profit defined in subdivision g of subsection 6 of section 99-01.3-02-01, verification~~

13. Verification of the amount deposited according to a bank statement; and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10; ~~and.~~

~~13-14.~~ The count and reconciliation of deals and cash banks according to ~~subsection~~ subsections 1, 4, and 6 of section 99-01.3-03-09.

**History:** Effective July 1, 2010; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1



**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

## CHAPTER 99-01.3-14

### 99-01.3-14-01. Restrictions and requirements.

1. An organization may not accept, and a recipient or potential recipient of net proceeds may not give or offer to give, a payment, gift, service, loan, personal or real property, or other thing of material value, for disbursing or receiving net proceeds. However, a recipient or potential recipient of net proceeds that is an organization or group of people may initiate and transact a formal agreement with a donor organization to voluntarily provide a gaming or nongaming related service to the donor organization in exchange for receiving net proceeds; provided, the agreement is first approved by the attorney general or complies with guidelines prescribed by the attorney general. If the attorney general approves the service, the donor organization shall document the service by recording the location, names of volunteers, description of service, number of hours volunteered, and value of the service based on a reasonable hourly rate. The donor organization shall offset the value of these services against the amount of net proceeds disbursed to the recipient during a quarter by reporting the value of these services as an adjustment on a tax return.
2. A disbursement of net proceeds must be specific as to recipient and use. After an organization disburses net proceeds, it may not interfere with a recipient's control of the funds or attempt to own or influence the use or sale of personal or real property bought by or for a recipient of the funds.
3. Use of net proceeds for economic development or tourism programs may not directly benefit a member, employee, or board of directors' member of a donor or donee organization nor may this person have a financial interest in a funded economic development or tourism program.
4. No private athletic, social, hobby, trade, business, professional, or similar clubs or associations may receive net proceeds, unless the use of the funds complies with subsection 2 of North Dakota Century Code section 53-06.1-11.1 or section 99-01.3-14-02. An expense related directly or indirectly with gaming is not an eligible use.
5. Restrictions on fundraising activities are:
  - a. An organization or recipient may not use net proceeds for a fundraising activity that relates directly to the conduct of gaming, including purchase of equipment or consumable goods for a cafe for a site or for direct or indirect expenses and capital costs for a ~~retail~~ business involving material unrelated business income;
  - b. An organization may only use net proceeds for expenses related to fundraising activities ~~for which~~ if the gross receipts from the fundraising activity are deposited into the trust account and the net income of the fundraising activity ~~will be~~ used for a specific recipient or purpose that qualifies as an eligible use of net proceeds;
  - c. If an organization conducts a qualifying fundraising event and deposits the event's gross receipts in or pays the expenses from other than its trust account, it may not disburse net proceeds to the recipient unless it transfers the net income from the event to its trust account and makes a proper adjustment on a tax return; and
  - d. If a civic and service, fraternal, or veterans' organization uses net proceeds to conduct a fundraising activity and the amount spent on expenses exceed the net income generated by the activity, it shall reimburse the trust account for the difference between the expense amount and the net income amount with nongaming funds and make a proper adjustment on the tax return.

6. The attorney general may require a recipient of net proceeds to document the use of the funds and reimburse a donor organization if the funds were used for an ineligible use.
7. Unless an organization has first received approval from the attorney general, it may not sell a gift certificate or other thing of value to a recipient of its net proceeds.
8. If a check for a disbursement of net proceeds is not cashed by a recipient within six months of the date of the check, an organization shall contact the recipient to cancel or cash the check. If a check is voided, an organization shall make a proper adjustment on a tax return. If a recipient of net proceeds cashes a check related to a disbursement of net proceeds but has not applied the amount toward the intended eligible use within six months of the date of the check, the organization may request the recipient to return the net proceeds.
9. An organization may only disburse net proceeds to a recipient provided the recipient first requests a donation in writing and provides a description of the intended use and amount requested and the request is signed and dated. Also, if the recipient is a charitable organization, professional fundraiser, or professional solicitor, the recipient shall provide the organization with evidence that it has or is exempt from a charitable solicitations license required by North Dakota Century Code chapter 50-22. This rule does not apply to an unsolicited donation of net proceeds or a disbursement of net proceeds by an organization to a program or service that qualifies as an eligible use and which is supported directly by the organization.
10. If an organization conducts or enables a nonprofit corporation, community or school club, or other similar entity to conduct a fundraising event at the organization's facility, the organization may not exchange the gross or net receipts of the fundraising event for net proceeds.
11. An organization may not disburse net proceeds to a recipient on the condition that the recipient hold a meal or banquet at the donor's facility.
12. No disbursement of net proceeds can be used partly for services or fees that do not qualify as an eligible use. No disbursement of net proceeds to a recipient can be designed to circumvent the allowable expense limits.
13. If an organization is involved in any of the following types of transactions, it shall deposit the net proceeds ~~of~~ income, or receipts directly into its trust account or, if it is exempt from having a trust account, deposit the net proceeds ~~of~~ income, or receipts in its gaming account, and make a proper adjustment on a tax return:
  - a. The organization receives net proceeds from another organization and the net proceeds have been designated for a specific eligible use which the recipient has paid for or will pay for with net proceeds, or the net proceeds have not been designated for a specific eligible use;
  - b. The gross receipts derived from fundraising activity according to subdivision b of subsection 5 of section 99-01.3-14-01;
  - c. The organization loans net proceeds and receives interest or repayment of principal, or both;
  - ~~e.~~d. A recipient returns net proceeds to or reimburses the organization; or
  - ~~d.~~e. The organization disburses net proceeds, which qualify as an eligible use, and receives back funds that are directly associated with the disbursements or receives back income that is directly derived from the disbursement of the net proceeds.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-11

**99-01.3-14-02. Eligible uses.**

1. A use of net proceeds for erecting, acquiring, improving, maintaining, or repairing real or personal qualifying property owned by an organization is an eligible use provided the organization agrees that, upon abandoning the exclusive use of the property for an eligible use, it will transfer the property to a governmental unit or to an organization that will use it for an eligible use. However, if an organization sells the property, the portion of net receipts from the sale related to the original net proceeds must be deposited in the trust account and disbursed to an eligible use, or reinvested in property used for a similar purpose.
2. In applying subdivision a of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds must be disbursed to or by a recognized nonprofit city or county job development authority or certified or noncertified local development corporation.
3. In applying subdivision b of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds must be used to attract in-state and out-of-state visitors by publicizing attractions, promoting, planning, conducting, and sponsoring market research, trade shows, meetings, conventions, seminars, sporting events, and festivals, and by developing and promoting the state's attractions, recreational opportunities, shopping malls, and other tourism-related activities. Uses may not directly benefit a for-profit business.
4. In applying subdivision c of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:
  - a. A scholarship for a student. A scholarship may be based on criteria, including community service, patriotism, leadership, education, talent, athletic ability, course of study, or special disability. No scholarship award may be decided by a donor organization, unless the organization administers an education program for special students or students inflicted with disease. Net proceeds may be disbursed to a scholarship board or to an educational institution. A majority of the members of a scholarship board may not be members of a donor organization. A disbursement must be payable to an educational institution and a recipient, scholarship board and a recipient, or to an educational institution or scholarship board. A student receiving a scholarship may apply it at a nonprofit public, or for-profit or nonprofit private, educational institution, including a trade or business school, registered with or accredited by any state board. A scholarship may be for housing, books, tuition, and meals that relate to a student's educational need. A scholarship may be awarded through a pageant, contest, or tournament; however, associated administrative and operating expenses do not qualify. No scholarship may be based on criteria that includes a person's physical appearance;
  - b. Supplemental assistance to a primary, secondary, or postsecondary nonprofit educational institution, including affiliated alumni associations, booster clubs, parent-teacher councils, and college sororities and fraternities. Net proceeds may be used for youth activities, educational equipment, musical instruments, playground equipment, extracurricular activities, sporting events, field trips, cultural exchanges, maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, and supplies;
  - c. Assistance to a library for maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, supplies, program services, special events, promotions, educational material, books, computer systems, information services, exhibits, story hours, film showings, and discussion groups. A disbursement to a museum

may be for maintaining buildings, remodeling, fixed assets, administrative and operating expenses, and assembly of exhibits for preservation, collection, education, and interpretation;

- d. Assistance to a nonprofit performing arts and humanities organization for studio and auditorium rental, speaker fees, equipment, travel, administrative and operating expenses, and uniforms. Functions may include children's theater, summer camps, and developing art parks;
  - e. Preservation of cultural heritage, including restoring, reconstructing, improving, or preserving public buildings in North Dakota which are listed in the state historic sites registry or the national registry of historic places. Net proceeds may be used for programs of nonprofit organizations that provide historical information or tell a story about a local region, North Dakota, or the nation and which primarily educate and inspire the public, elderly, disabled, schoolchildren, teachers, and foreign visitors. Qualifying programs include the lifestyles and human experiences of homesteaders, immigrants, Indian culture, frontier army, and fur trade. Net proceeds may be used for interpretive programming, including exhibits, publications, simulations of life, classroom outreach services, audiovisual presentations, special events, and tours. Special events such as chautauquas and community celebrations of Norskfest, threshing bees, and Octoberfest qualify for expenses of parades, displays, equipment, educational materials, and awards. School reunion expenses do not qualify;
  - f. Youth community and athletic activities open to all youth, less than eighteen years of age. An organization shall disburse, to the extent possible, equal amounts to activities for each gender. Net proceeds may be used for uniforms, equipment, tournament fees, private and public ground transportation, coaches' salaries and mileage, judges, field trips, speaker fees, father-son and mother-daughter banquets provided that the meals for these banquets are provided free, meals, and lodging. Meals and mileage may not exceed the state per diem rate and lodging expenses must be documented with a receipt;
  - g. Adult amateur athletic activities within North Dakota. Net proceeds may be used for sponsorship and league fees for entire teams, uniforms, umpire fees, construction, use and maintenance of a sports complex, and team equipment. Uniforms and equipment must be owned by the team or league association. Tournament fees, individual player fees, food and drink, lodging, trophies, prizes, yearbook, advertising, and private or public transportation expenses do not qualify, except transportation expenses for a disabled player. A race car, horse racing, and similar activity do not qualify;
  - h. Maintenance of religious buildings, remodeling, fixed assets, administrative and operating expenses, gospel outreach programs, youth church activities, uniforms for a choir, furnishings, and supplies for church groups and services; and
  - i. Scientific research for a cure to relieve human beings of disease and suffering.
5. In applying subdivision d of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:
- a. Food, temporary housing, clothing, utilities, medical services, and fuel for private and public transportation for an individual or family suffering from poverty or homelessness, or financial distress due to a natural disaster or medical problem;
  - b. Purchase and maintenance of a ground transportation vehicle for the elderly;
  - c. Services for abused persons, including to:

- (1) Provide emotional support, guidance, and counseling to victims of crimes of rape and sexual assault and encourage prosecution of perpetrators;
  - (2) Establish educational programs about rape, sexual assault and incest, the dramatic effects it has on victims and their families, and the cost to society;
  - (3) Establish and direct services for abused spouses and their children in the community, including advocacy, emergency shelter and food, information services, referrals, and peer support; and
  - (4) Develop and coordinate programs to encourage and assist development of a strong volunteer advocate network;
- d. Support for youth centers and halfway houses;
  - e. Recognize an individual or group of people who volunteer their time to community services, nursing homes, or hospitals if a gift, prize, or other gratuity does not exceed one hundred dollars per person per calendar year;
  - f. Net proceeds may be used for public or private nonprofit nursing homes, day care centers, and medical facilities for maintaining buildings, remodeling, fixed assets, administrative and operating services, supplies, reading programs, and craft activities for patients;
  - g. Complying with the Americans with Disabilities Act of 1990 by remodeling a publicly owned facility; and
  - h. To remodel or improve a fraternal or veterans' organization's owned facility or a nonprofit community facility to make it accessible or usable to youth, senior citizens, people with disabilities, and nonmembers of the organization, for community programs, services, or functions. The community **mustshall** use a building for free or a reasonable fee. To make a building accessible, net proceeds may be used to widen doorways and hallways, remodel bathroom fixtures and facilities, install chair lifts, wheelchair ramps, elevators, handrails, and automatic door openers. To make a building usable, net proceeds may be used to repair a building to meet a building code or make it structurally fit for use, to enlarge a facility, replace a furnace, water heater, and air-conditioner, and to make it safe. The cost must be prorated to the benefit the community receives in relation to the total usage of the facility as determined by the attorney general.
6. In applying subdivision e of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include burial expenses and flowers provided an organization does not discriminate between members and nonmembers.
  7. In applying subdivision f of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include promotion and celebration of civil rights, nondiscrimination, patriotism, and freedom. State and national convention expenses; recognition nights that may include a banquet, program, and dance for past commanders or past members; ceremonial and ritual activities; and purchase of a transportation vehicle do not qualify.
  8. In applying subdivision g of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include maintaining parks and perpetual trust funds for public cemeteries.
  9. In applying subdivision j of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds may be used for subsistence for a family member traveling with an ill family member to an out-of-town medical facility.

10. In applying subdivision l of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:
  - a. Adult and city bands, choirs, drum and bugle corps, color and honor guards, parade floats, director fees, rent of storage, postage, insurance, laundry, utilities, uniforms, gun safe, firearm, sheet music, audio system, instruments, transportation vehicle, in-state lodging, and private and public ground transportation for performances at community concerts, homecomings, open houses, parades, festivals, funerals, nursing homes, hospitals, and special events. For only a color or honor guard, net proceeds may be used to pay a member a maximum per diem not to exceed the daily funeral service rate paid to members of the armed forces ready reserve. An audio system and instruments must be owned by a band, choir, or organization. A vehicle must be owned by an organization;
  - b. Community celebrations that recognize or honor the military service of individuals in the armed services;
  - c. Educational agricultural trade shows and conventions held in North Dakota. Meals and entertainment do not qualify;
  - d. Nonprofit organizations that protect animals. Uses include:
    - (1) Hatcheries and wildlife preserves, wetlands, and sanctuaries;
    - (2) Teaching and promoting ecology, game and wildlife management, and outdoor interests involving animals, fish, and birds; and
    - (3) Spay and neuter programs, pet placement, lost and found pet services, educational programs, investigations of animal abuse, and information services;
  - e. Preserving and cleaning up the environment, including air quality, water quality, waste and recycling programs, and conservation of natural resources; and
  - f. Outreach public medical care.
11. In applying subdivision m of subsection 2 of North Dakota Century Code section 53-06.1-11.1, a special trust fund:
  - a. Must be managed and controlled by trustees, who may be board members, appointed by an organization. However, if an organization dissolves, it must establish a nonprofit corporation limited to the primary purpose stated in its declaration of trust. A trust may be revocable or irrevocable; and
  - b. Must be comprised only of net proceeds which can be disbursed to the trust periodically or in a lump sum. Net proceeds must be invested only in marketable securities. A trust's principal, interest, dividends, and gains on sales of investments must be applied toward the trust's primary purpose. No trust's principal can be disbursed until a donor organization has permanently discontinued conducting games or dissolved.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01, 53-06.1-01.1



## CHAPTER 99-01.3-15

### 99-01.3-15-02. Restrictions and requirements.

1. A licensed organization, organization that has a permit, or licensed manufacturer may not be a distributor. A person who is an officer, manager, gaming manager, or member of a governing board of a licensed organization or organization that has a permit may not be an officer, director, shareholder, proprietor, independent contractor, consultant, or employee of a distributor, nor have a financial interest in that distributor. A person having a financial interest in a distributor may not be a lessor of a site to an organization that is an active customer of that distributor. A change in ownership of a distributor must be immediately reported to the attorney general.
2. A distributor shall have an office in North Dakota where records must be kept.
3. An officer, director, shareholder, agent, or employee of a distributor may not:
  - a. Play a game of pull tabs, club special, tip board, prize board, seal board, sports-pool board, punchboard, ~~or electronic quick shot bingo card marking device~~ at any site, or ~~provide bookkeeping services, including summarizing or auditing games, to an organization~~ play in a poker tournament in which the distributor provided the poker chips or consulting services;
  - b. Conduct games of prize boards, pull tab and prize board dispensing devices, club specials, seal boards, raffle boards, tip boards, sports-pool boards, or punchboards at an organization's site ~~unless the organization discloses to players that distributor employees are allowed to conduct at that site; or~~
  - c. Interfere with or attempt to influence a lessor's relationship with an organization involving a lease agreement, interfere with or attempt to influence an organization's management, employment practices, policy, gaming operation, disbursement of net proceeds, or procure a site for an organization. A distributor may notify an organization of an available site; or
  - d. Provide bookkeeping services, including summarizing or auditing games to an organization.
4. A distributor may not have an expressed or implied agreement with another distributor to restrict the sales of either of them to a specific geographic area or organization.
5. A distributor may not sell or provide a drop box unless it is a double-locking removable metal container and has:
  - a. One lock that secures a drop box to the underside of a table, and one or two separate locks that secure the contents placed into the drop box. The key to each of the locks must be different; and
  - b. A slot opening through which currency and forms can be inserted into a drop box. The slot of a drop box may not exceed three and one-half inches ~~{88.90 millimeters}~~ in length and one-half inch ~~{38.10 millimeters}~~ in width. Inside a drop box there must be a spring-loaded mechanism that automatically closes and locks the slot opening when the drop box is removed from a table.
6. For a twenty-one table, a distributor may only sell or provide a playing surface that meets the requirements of subsection 1 of section 99-01.3-08-02 and subsection 3 of section 99-01.3-08-04.

7. A distributor may not sell or provide twenty-one and paddlewheel (betting and casino) chips to an organization if those chips are identical in physical characteristic to chips previously sold or provided by that distributor to a different organization.
- ~~7-8.~~ A distributor may not give a gift, trip, prize, or other gratuity valued singly or in the aggregate in excess of one hundred dollars per employee per calendar year related to a licensed organization or organization that has a permit. A distributor may not loan money (excluding credit) to a licensed organization or organization that has a permit, or to an employee of such an organization.
- ~~8.~~ ~~An employee of a distributor who is an owner or salesperson shall, within thirty days of starting business or employment, request training from the attorney general. The training must include the gaming law, rules, and recordkeeping.~~
9. An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions of the gaming law and rules which relate to the person's job duties. The ~~attorney general~~distributor shall designate the provisions to be read. The acknowledgment must be dated, reference the provisions, and be part of the person's personnel file.
- ~~9-10.~~ A distributor may not share an office or warehouse facility with an organization.
- ~~10-11.~~ A distributor shall file a copy of each sales invoice ~~related to a licensed organization~~ and record of voided gaming stamps with the attorney general by the fifth business day following the month of the transaction.
- ~~11-12.~~ A distributor may not buy or be provided gaming equipment from an affiliated company unless the company is a wholly owned subsidiary of the distributor. An affiliated company ~~must~~shall have originally bought the equipment directly from a licensed manufacturer.
- ~~12-13.~~ A distributor may not buy or be provided gaming equipment from an out-of-state distributor unless the out-of-state distributor has the manufacturer ship the equipment directly to the licensed distributor and the manufacturer is licensed.
- ~~13-14.~~ A distributor may not knowingly possess, display, sell, or provide an organization a deal of pull tabs, club special, tip board, prize board, or punchboard that:
- a. Does not conform to the quality standards of sections 99-01.3-16-04 and 99-01.3-16-05;
  - b. Has a manufacturer's or distributor's seal broken on the manufacturer's container or has been prohibited by the attorney general from sale or play within North Dakota; or
  - c. Contains pull tabs or punches that have winner protection features although they are not winning pull tabs or punches.
- ~~14-15.~~ A distributor may not temporarily store any game that has a state gaming stamp affixed to its flare which has been sold. A sale occurs when a distributor issues a sales invoice. If a distributor sells or provides gaming equipment to another distributor, the distributor shall ship the equipment directly to the other distributor's address.
- ~~15-16.~~ A distributor shall direct a manufacturer to ship gaming equipment directly to the distributor and the distributor shall have it unloaded at its warehouse. However, if a distributor buys equipment from a manufacturer for sale to another distributor or buys a flashboard, blower, jar bar, paddlewheel, or twenty-one, poker, or paddlewheel table for sale to an organization, the distributor may direct the manufacturer to ship the equipment directly to the other distributor or organization, including the organization's site.

~~16.17.~~ A distributor may not separate a paper bingo card when there are two or more faces on a sheet.

~~17.18.~~ A distributor may not:

- a. Sell or provide a dispensing device, ~~fifty-fifty raffle system, site system with bingo card-marking device~~card-marking devices, or electronic quick shot bingo card-marking devices~~site operating system with card-marking devices,~~ and related equipment to an organization unless a model of the device or system has first been approved by the attorney general;
- b. Modify an approved dispensing device model ~~or,~~ electronic currency validator, fifty-fifty raffle system, site system with bingo card-marking devices, or an electronic quick shot bingo site operating system with card-marking devices unless authorized by the attorney general; or
- c. Rent a dispensing device to an organization unless the rent is for a fixed dollar rate per month or other duration. For a bingo ~~card-marking device~~site system with card-marking devices, a distributor may rent a ~~device~~site system with devices to an organization for a fixed dollar rate per month or other duration, or for a percentage or fixed dollar amount of rental income derived from ~~a player~~players who ~~uses~~use the ~~device~~devices. For ~~an electronic quick shot bingo card-marking device~~site operating system with card-marking devices, a distributor may rent a ~~device~~site operating system with devices to an organization for a fixed dollar rate per month or other duration, or a fixed rate per bingo card sold. For a fifty-fifty raffle system, a distributor may rent a system to an organization for a fixed dollar rate per month or other duration, or a fixed rate per ticket sold. Rent may not be based on gross proceeds or net revenue earned from bingo or a raffle. If a distributor rents a site system with bingo card-marking device or card-marking devices, or electronic quick shot bingo card-marking device site operating system with card-marking devices, or fifty-fifty raffle system to an organization, the distributor may have a manufacturer, on behalf of the distributor, issue an invoice to an organization; however, the organization shall remit all rent payments directly to the distributor.
- ~~d. Modify a quick shot bingo card-marking device and related equipment unless notification of approval by the attorney general has been received.~~

~~18.19~~ A distributor may arrange for an organization to acquire a dispensing device through a financing lease purchase agreement with a finance or lease company. Although an organization is deemed to own a device, a finance or lease company may have a security interest or ownership right in the device until the organization satisfies the lease.

~~19.20.~~ If a distributor is an agent for another distributor in marketing a dispensing device, the agent is not required to complete a sales invoice. A distributor is an agent if it receives a commission and does not finance or take temporary possession or title to the device.

~~20.21.~~ A distributor that sells or provides a new or used dispensing device to an organization or distributor, other than as an agent, or merely transacts a transfer of a device, for or without a fee, between two organizations, shall do the following unless that distributor contracts with another distributor to comply with this rule on its behalf:

- a. Maintain an adequate inventory of electronic and mechanical parts in North Dakota, provide maintenance service, and provide technical assistance and training in the service and repair of a device;
- b. Make available, upon request, electrical and mechanical parts to all other licensed distributors at the usual price for such parts; and

c. Notify the attorney general of any recurring electronic or mechanical malfunction of a device model.

~~21-22.~~ A distributor that resells, transacts a transfer, rents, or provides a used dispensing device to an organization shall change or arrange to have changed all the keyed locks on the device.

~~22-23.~~ A distributor that sells or provides a dispensing device to an organization shall record this information on a sales invoice:

a. Name, address, and license number of an organization and name and location, if known, of the site where the device will be placed; and

b. Name of device and its serial number.

~~23-24.~~ A distributor shall initially set up a dispensing device ~~or, fifty-fifty raffle system, site system with bingo card-marking devices, electronic~~ quick shot bingo ~~card-marking device~~ site operating system with card-marking devices, and related equipment at a site and conduct and document one training session on the operation and service of ~~either device and related equipment~~ each for an employee of an organization that acquires a device or system for the first time. A distributor shall provide an operations manual to an organization operating a dispensing device, fifty-fifty raffle system, site system with bingo card-marking devices, electronic quick shot bingo ~~card-marking device~~ site operating system with card-marking devices, and related equipment.

~~24-25.~~ A service technician may not access a dispensing device unless accompanied by an organization employee.

~~25-26.~~ A distributor may not possess, in inventory, a processing chip encoded with proprietary software that was duplicated by the distributor for a dispensing device usable in North Dakota.

~~26-27.~~ A distributor may not sell or provide new video surveillance equipment or install video surveillance equipment for an organization unless the distributor is an approved vendor of the equipment or is approved by the attorney general.

~~27-28.~~ If a distributor receives an administrative or criminal complaint or a citation from another state, it shall notify the attorney general in writing within thirty days of the date of the complaint or citation.

~~28-29.~~ ~~A~~ An electronic quick shot bingo ~~card-marking device and~~ site operating system with card-marking devices, fifty-fifty raffle system, and related equipment may only be sold or provided to an organization with a state gaming license.

30. A distributor shall report a malfunction of a fifty-fifty raffle system, site system with bingo card-marking devices, or electronic quick shot bingo site operating system with card-marking devices which affects the security or integrity of the system or the outcome of a game to the attorney general within the next business day of the date of occurrence.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-14

### **99-01.3-15-06. Distribution of gaming equipment.**

1. A manufacturer's game serial number must be on a paddlewheel ticket described by subsection 1 of section 99-01.3-11-01, all pull tabs, including pull tabs used with prize boards, club ~~special~~ specials, ~~seal board, and~~ tip ~~board, sports-pool board, and calcutta~~

~~board~~ boards and punches in a punchboard. No game serial number may be special ordered. A game serial number must be preprinted on a paddlewheel ticket card. If a game serial number is not preprinted on a seal board, raffle board, prize board, sports-pool board, or calcutta board, a distributor shall assign and electronically or mechanically imprint it on the board. No serial number may be repeated within three years.

2. For a deal of pull tabs and jar ticket game, a distributor may open a manufacturer's cellophane shrink wrap to access a flare. A distributor shall affix a state gaming stamp on the front of the original flare, or a legible copy of the flare, of a deal of pull tabs, club special, tip board, series of paddlewheel ticket cards, and on a punchboard, sports-pool board, seal board, raffle board, prize board, and calcutta board that is sold or provided to a customer. A gaming stamp must be affixed in North Dakota. A distributor shall legibly write a manufacturer's game serial number in ink on the stamp. If the written number is incorrect, the number cannot be changed or erased and the stamp must be voided. For a series of paddlewheel ticket cards, the game serial number written must be the lowest numbered paddlewheel ticket card. Then, a distributor shall replace, if applicable, a flare inside the cellophane shrink wrap and seal the opening. This rule does not apply to gaming equipment provided directly to an Indian tribe, United States military, out-of-state purchaser, or another licensed distributor.
3. If a manufacturer's security seal on a container is inadvertently broken but the integrity of a deal remains intact, a distributor may reseal the deal with an adhesive security seal identifying the distributor. The seal must be applied to all accessible sides of a container and ensure that a deal is secure. A distributor shall indicate on a sales invoice that the deal was resealed by the distributor and the reason.
4. A distributor shall provide a flare with a deal of pull tabs or jar tickets and series of paddlewheel ticket cards. The master flare for a game involving deals of jar tickets that contain winning tickets of the same prize value printed in differently colored numbers or symbols must have the flare's numbers and symbols printed in matching colors. A flare, including a master flare, must indicate the name of the game, manufacturer's form number, cost per play, and value and number of winning prizes. The front of a flare for a deal of jar tickets must indicate the number of jar tickets in the deal. The number of prizes may be designated by a number or by a quantity of symbols that represent the number of winning prizes and winning number or symbol. A symbol must be pictured on a flare, not described. A flare, including a master flare, may not display combinations of winning pull tabs, unless the phrase "prizes above are combinations of single prizes listed below" or a similar phrase is used and additional statements such as ~~"multiple winners may not appear exactly as shown"~~ or "may contain multiple winners", may be used in conjunction with this phrase. A last sale prize must be printed on a flare or be indicated by a permanently affixed sticker. The flare or sticker must contain the last sale feature, prize value, and distributor's name or license number. A distributor may not alter a flare except to add a last sale feature to a manufacturer's flare for a deal of pull tabs. A distributor may make a flare for a deal of jar tickets. This information must be mechanically or electronically printed on a flare.
5. A distributor may not sell or provide a multiple line or multiple square sports-pool board to a customer unless a special opaque tape covers the numbers on the board. If a tape is disturbed, any recovering of the numbers must be detectable. A tape must prevent the concealed numbers from being viewed from the outside when using a high-intensity lamp.
6. For a deal of jar tickets, club special, tip board, and prize board, a distributor shall provide a game information sheet containing gaming stamp number, cost per play, ideal gross proceeds, ideal prizes, including any last sale prize, if known, ideal adjusted gross proceeds, and the quantity, face value, and total face value of coins on a prize board or, in place of a separate sheet, the information may be printed on the front or back of the deal's flare.



7. A distributor shall print these phrases on a sports-pool board:
  - a. Professional sports pool;
  - b. Cost per play \$\_\_\_\_\_ (maximum cost per play is ~~\$5.00~~\$25.00);
  - c. Date of sports event \_\_\_\_\_;
  - d. Ideal prizes \$\_\_\_\_\_; and
  - e. Method of prize payout \_\_\_\_\_.
8. A distributor shall ~~indicate~~include this information on the flare of a series of paddlewheel ticket cards:
  - a. Game serial numbers of the lowest and highest numbered paddlewheel ticket cards;
  - b. Quantity of cards; ~~and~~
  - c. Type of paddlewheel ticket (for example, 40 x3x 120), if applicable; and
  - d. The printed phrase "cost per ticket \$ \_\_\_\_\_".
9. A distributor shall print the phrases "merchandise prize \_\_\_\_\_" and "retail price \$ \_\_\_\_\_" on a flare and for each seal for a game that has a merchandise prize.
10. A distributor shall sell a calcutta board ~~that is cardboard or similar material~~ on which is printed a matrix of horizontal lines and vertical columns sufficient to accommodate the information required by subsections 7, 10, and 12 of section 99-01.3-10-01. A distributor shall print "calcutta" at the top of a board and print the phrases "sporting event \_\_\_\_\_", "method of prize payout \_\_\_\_\_", and "date of sports event \_\_\_\_\_" on the board.
11. A distributor shall print the phrases "cost per play \$ \_\_\_\_\_", "merchandise prize \_\_\_\_\_" (if applicable), and "retail price \$ \_\_\_\_\_" on a seal board.
12. A distributor shall print the phrases "cost per square \$ \_\_\_\_\_", "date of raffle \_\_\_\_\_", and "prize \_\_\_\_\_" on a raffle board.
13. A distributor shall print "cost per play \$ \_\_\_\_\_", and for each merchandise seal prize the phrases "merchandise prize \_\_\_\_\_" ~~(if applicable)~~; and "retail price \$ \_\_\_\_\_" on a prize board.
- ~~13.14.~~ If a distributor is notified by an organization that the game serial number of a deal of pull tabs, club special, tip board, seal board, raffle board, punchboard, series of paddlewheel ticket cards, calcutta board, prize board, or sports-pool board is different from the number written on a state gaming stamp, the distributor shall follow procedures prescribed by the attorney general.
- ~~14.15.~~ If a distributor is notified by a manufacturer or attorney general of a ban or recall of defective pull tabs or punchboards, the distributor shall comply with subsection 2 of section 99-01.3-16-07.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1.-01.1, 53-06.1-14

### 99-01.3-15-10. Recordkeeping.

A distributor shall maintain complete, accurate, and legible accounting records in North Dakota. The records must be retained for three years and include, by month:

1. Purchase invoices for gaming equipment.
2. Sales of gaming and nongaming equipment, supplies, and services sold or provided on a distributor's invoice. A sales invoice must be prepared on a form approved by the attorney general and include:
  - a. License number of the distributor;
  - b. Business name and address of the buyer and business name and address where the gaming equipment or supplies were shipped to or where the service was performed;
  - c. License or permit number of the buyer, if applicable;
  - d. Invoice number and date;
  - e. Date shipped or date of service;
  - f. Indication for a credit memo;
  - g. Quantity, price, and description of each item of gaming equipment, supplies, and services. This includes the name of game and indication of the item as a deal of pull tabs, club special, prize board, tip board, seal board, raffle board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards. For a deal of pull tabs (excluding jar tickets), it must include a manufacturer's form number. For a series of paddlewheel ticket cards, it must include the number of paddlewheel ticket cards and number of tickets on each card. For a prize board, it must include separate costs, including sales tax, for a merchandise prize (if any), coins, and board and pull tabs. For paper bingo cards, it must include the primary color of single cards or primary color of the top card of collated booklets, type (number of faces on a sheet) of collated booklets or single cards, number of cards in a collated booklet, and serial number and size of series. For a site system with bingo card-marking device~~card-marking devices~~ and electronic quick shot bingo ~~card-marking devices~~site operating system with card-marking devices, it must include the quantity of devices and name, model number, and version of the system and devices. For service work performed, it must include the nature of the work and identify the system or device the work was performed on;
  - h. Gaming stamp number;
  - i. Ideal gross proceeds, ideal adjusted gross proceeds, price of a merchandise prize, and value of a last sale prize; and
  - j. An indication that a deal was resealed and the reason, if applicable.
3. A sales invoice must be:
  - a. Prenumbered consecutively with a preprinted number of at least four characters;
  - b. Prepared in three parts and issued as follows:
    - (1) One part to the customer;
    - (2) One part retained in an invoice file by customer name; and



(3) One part to the attorney general ~~according to subsection 10 of section 99-01.3-15-02.~~ Every invoice, including voids, must be numerically accounted for;  
and

- c. A credit memo for a returned item must be prepared and issued like a sales invoice. A credit memo must represent only a returned item.
- 4. A sales journal must include the invoice date, number, total amount, and name of customer.
- 5. A cash receipts journal must include cash sales, cash received from all sources, name of customer, date a payment is received, and amount.
- 6. A cash payments journal must include checks issued, cash payments, date of check or payment, check number, name of payee, and type of expense.
- 7. Record of voided gaming stamps on a form prescribed by the attorney general.
- 8. Inventory records and reconciliation of inventories.
- 9. A repair report for each service call on a dispensing device.
- 10. Documentation of a training session conducted according to subsection 23 of section 99-01.3-15-02.
- 11. A manufacturer's invoice that references a rental fee charged an organization for a site system with bingo card-marking device and a card-marking devices, an electronic quick shot bingo card-marking device site operating system with card-marking devices, and a fifty-fifty raffle system.
- 12. Perpetual inventory ~~record~~records of bingo ~~card-marking~~card-marking devices used with site systems and of card-marking devices used with electronic quick shot bingo ~~card-marking devices~~site operating systems, which must include the organization name, site, model of device, serial number of device, and dates issued to and returned from a site.
- 13. Perpetual inventory records of fifty-fifty raffle systems which must include the organization name, site, control programs installed, and number of sales units.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-16

### ~~MANUFACTURERS OF PULL TABS, PAPER BINGO CARDS, PULL TAB DISPENSING DEVICES, BINGO CARD MARKING DEVICES, CARD SHUFFLING DEVICES, AND QUICK SHOT BINGO CARD MARKING DEVICES~~

#### Section

- 99-01.3-16-01 License
- 99-01.3-16-02 Background Investigation and Notification of Complaint in Another State
- 99-01.3-16-03 Restrictions and Requirements
- 99-01.3-16-04 Quality Standards for Pull Tabs
- 99-01.3-16-05 Quality Standards for Punchboards
- 99-01.3-16-06 Quality Standards for Bingo Cards Used in a Dispensing Device [Repealed]
- 99-01.3-16-07 Ban or Recall of Defective Pull Tabs or Punchboards
- 99-01.3-16-08 Manufacturing Specifications - Dispensing Device
- 99-01.3-16-09 Standards for a Currency Validator - Dispensing Device
- 99-01.3-16-09.1 Manufacturing Specifications - Site Operating Systems with Bingo Card-Marking ~~Card-Marking~~ Devices
- 99-01.3-16-09.2 Manufacturing Specifications - Bar Code Credit Device
- 99-01.3-16-09.3 Manufacturing Specifications - Card Shuffling Devices
- 99-01.3-16-09.4 Manufacturing Specifications - Electronic Quick Shot Bingo Card-Marking ~~Site Operating Systems with Card-Marking~~ Devices
- 99-01.3-16-09.5 Manufacturing Specifications - Fifty-Fifty Raffle Systems
- 99-01.3-16-10 Testing, Approval, and Recall
- 99-01.3-16-11 Sales Invoice

#### **99-01.3-16-01. License.**

A manufacturer of deals of pull tabs, paper bingo cards, site systems with bingo card-marking device, or a card-marking devices, electronic quick shot bingo site operating systems with card-marking devices, pull tab dispensing ~~device~~ devices, or fifty-fifty raffle systems, or any other person may not sell, lease, solicit business, or provide these items to a distributor without a license. If two or more manufacturers are affiliated, each manufacturer shall apply for a license. A license is not transferable. The annual licensing period is April first through March thirty-first. An application must include information prescribed by the attorney general. The license fee for a manufacturer of pull tabs, bingo cards, ~~or site systems with bingo card-marking~~ card-marking devices, or electronic quick shot bingo site operating systems with card-marking devices is four thousand dollars. The license fee for a manufacturer of only pull tab dispensing devices is one thousand dollars. The license fee for a manufacturer of a fifty-fifty raffle system is five hundred dollars. If a person manufactures pull tabs and paper bingo cards, or, pull tab dispensing devices and either pull tabs or paper bingo cards, or both, only one license fee is required.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-14

#### **99-01.3-16-03. Restrictions and requirements.**

1. A manufacturer that sells, or provides, paper bingo cards to a distributor shall print its name or distinctive logo and the assigned serial number and series number (card number) on each card. A manufacturer shall have available for sale or provide to a distributor a master checkbook covering all card serial numbers. A manufacturer may not ship paper bingo cards directly to a licensed organization or organization that has a permit.

2. A manufacturer may only sell or provide gaming equipment to a licensed distributor. A manufacturer shall maintain accounting records of all sales of gaming equipment and retain them for three years. The records may be in electronic form.
3. A manufacturer may not modify the assembly or operational functions of an approved pull tab dispensing device model unless requested by the attorney general or a written request is approved by the attorney general. The attorney general may apply section 99-01.3-16-10 for approving a modification to a device model.
4. A manufacturer may not modify paytables, bonus features, games, or current methods of operation of an approved ~~site system with bingo card-marking device~~card-marking devices, and ~~electronic quick shot bingo card-marking device~~site operating system with card-marking devices and related equipment unless requested or authorized by the attorney general. The attorney general may apply section 99-01.3-16-10 for approving a modification to a device.
5. A manufacturer may not modify operating software or methods of operation of an approved fifty-fifty raffle system and related equipment unless requested or authorized by the attorney general. The attorney general may apply section 99-01.3-16-10 for approving a modification to a system.
6. A manufacturer may service a ~~fifty-fifty raffle system, site system with bingo card-marking device~~card-marking devices or ~~electronic quick shot bingo card marking device~~site operating system with card-marking devices and related equipment used by an organization.
7. A manufacturer of a dispensing device, fifty-fifty raffle system, site system with bingo card-marking devices, or electronic quick shot bingo site operating system with card-marking devices and related equipment shall provide an operations manual to a distributor.
8. A manufacturer shall report a malfunction of a fifty-fifty raffle system, site system with bingo card-marking devices, or electronic quick shot bingo site operating system with card-marking devices which affects the security or integrity of the system or the outcome of a game to the attorney general by the next business day of the date of occurrence.
- 6-9. A manufacturer shall provide on the front of a master flare for a deal of jar tickets or pull tabs that contain:
  - a. Name of game;
  - b. Manufacturer's form number;
  - c. Cost per play;
  - d. Value and number of winning prizes; ~~and~~
  - e. Number of pull tabs or jar tickets; and
  - f. The phrase, "prizes above are combinations of single prizes below" or a similar phrase when combinations of winning pull tabs are displayed on the flare.

The number of prizes may be designated by a number or by a quantity of symbols that represent the number of winning prizes and the winning number or symbol. A symbol must be pictured on a flare, not described. A master flare for a game involving deals of jar tickets that contain winning tickets of the same prize value printed in differently colored numbers or symbols must have the flare's number and symbols printed in matching colors.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-16-04. Quality standards for pull tabs.**

A manufacturer shall manufacture pull tabs according to these standards:

1. Construction.
  - a. A deal must be designed, constructed, glued, and assembled to prevent the determination of a winning pull tab or numbers or symbols without first removing the tabs or other covering.
  - b. All the pull tabs of a deal must have the same game serial number which cannot be repeated on the same form number for three years.
  - c. When a tab or other covering is removed, the numbers or symbols must be fully visible in the window. The numbers or symbols can be displaced to the left or right in a window for increased security.
  - d. The window slits on a pull tab must be perforated on three sides. A pull tab must be glued on all four edges and between each window. The glue must be of sufficient strength and type to prevent any separation.
2. Opacity. Concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of a pull tab using a high-intensity lamp.
3. Color. It must not be possible to detect or pick out winning from losing pull tabs through a variation in printing graphics or colors.
4. Printed information. The minimum information printed on a pull tab must be as follows, except that subdivisions b, c, and d are not required for a folded or banded jar ticket or to a two-ply or three-ply card with only one perforated break-open tab which measures one and one-quarter inches ~~[31.7 millimeters]~~ by two and one-quarter inches ~~[57.1 millimeters]~~ or less in size, subdivisions a, c, d, and e are not required for pull tabs used with a tip board, and subdivisions b, c, and e are not required for a pull tab used with a prize board:
  - a. Name of manufacturer or its logo;
  - b. Name of game;
  - c. Cost per pull tab;
  - d. Manufacturer's form number;
  - e. Number of winning pull tabs and winning numbers or symbols, and prize amounts, or a flare must be included with the game providing that information; and
  - f. Unique minimum five-character game serial number, printed on the game information side of the pull tab.
5. Winner protection. A unique symbol or printed security device, such as a specific number keyed to a particular winning pull tab, or the name of the symbol or some of the symbol colors changed for a winning pull tab, or other similar protection must be placed in the winning windows of winning pull tabs. Also, a winning pull tab that has a prize greater than twenty dollars must have a secondary form of winner verification.

6. Randomization. The winning pull tabs must be intermixed among all other pull tabs in a deal to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning pull tab may be determined. A deal must be assembled so that no placement of winning or losing pull tabs exists that allows prize manipulation or pick out. Banded jar tickets packaged in a bag must be randomized.
7. Guillotine cutting. It must not be possible to isolate winning or potential winning pull tabs of a deal by variations in size or the appearance of a cut edge of the pull tabs.
8. Packaging.
  - a. A deal must contain a seal warning the purchaser that the deal may have been tampered with if the container was received with the seal broken. A seal must ensure that a deal's pull tabs are not accessible from outside the container when sealed. A manufacturer shall seal or tape every entry point into the container. The seal or tape must be tamper-resistant and be designed so that should a container be opened or tampered with, it would be easily noticed. For jar tickets packaged in a bag, the glue used to seal the flap of the bag must be permanent adhesive glue. The required seal cannot be a manufacturer's cellophane shrink wrap.
  - b. A manufacturer shall print, in bold letters, "Pull tabs must be removed from this packaging container and thoroughly mixed before sale to the public" or similar language on the outside of a container.
  - c. A deal's game serial number must be legibly placed on or be able to be viewed from the outside of the deal's container.
  - d. For a deal shipped to North Dakota, a flare for a pull tab or jar ticket deal must be located on the outside of the deal's sealed container so that the manufacturer's security seal will not be broken to access the flare.
9. Number of top tier winners. A deal must have at least two top tier winning pull tabs, except for a deal for a prize board and a last sale prize feature.
10. A manufacturer may not duplicate (print) a winning number, symbol, or set of symbols of any nonpromotional jar ticket or pull tab on any promotional jar ticket or pull tab.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-16-05. Quality standards for punchboards.**

A manufacturer of punchboards shall print a game serial number on [all punches](#) and manufacture, assemble, and package a punchboard so that winning punches, or approximate location of winning punches, cannot be determined in advance of punching the punchboard, including any patterns in manufacture, assembly, packaging, or markings. Winning punches must be randomly mixed among all other punches in a punchboard and between all other punchboards.

**History:** Effective May 1, 1998; [amended effective April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-16-08. Manufacturing specifications - Dispensing device.**

A pull tab dispensing device must meet these specifications:

1. If a device is designed to accommodate two or more different games of pull tabs, each compartment must independently meet the specifications of this section;
2. Electrical and mechanical components and design principles may not subject a person to any physical hazard or cause electrical interference. The power cord must be ten feet ~~[3.05 meters]~~ in length and have a three-prong ground. A surge protector or in-line power filter must be installed in-line on the main powerline to a device. A device must safely and operatively withstand a static test of twenty thousand volts of electricity and maintain proper voltage during a low electrical current (brownout);
3. A pull tab device must have at least four columns for stacking pull tabs and have capacity for two thousand four hundred pull tabs. A dispensing device for prize board tickets may have less than four columns for stacking pull tabs;
4. A stacking column must be adjustable for varying lengths of pull tabs. However, as an option, a device may use replaceable stacking columns that accommodate varying lengths of pull tabs. The device must accommodate a minimum pull tab size of one and seven-eighths inches ~~[47.6 millimeters]~~ in width by two and five-eighths inches ~~[64.77 millimeters]~~ in length, a maximum pull tab size of one and seven-eighths inches ~~[47.6 millimeters]~~ in width by four and one-fourth inches ~~[107.95 millimeters]~~ in length, or both sizes;
5. A device must be adjustable for varying thicknesses of pull tabs;
6. Glass must be placed in the front of the device enabling an employee to see whether a device is low on pull tabs;
7. A device must have a dispensing outlet or tray to catch a dispensed pull tab;
8. A device must have one currency validator. A coin acceptor is not allowed;
9. A pull tab device must accommodate pricing of twenty-five cents, fifty cents, one dollar, and two dollars per pull tab and dispense the correct number of pull tabs based on the amount of credit played. The standard price per pull tab must apply to all columns;
10. An exterior door must have at least one keyed lock. The key must be different from all other keys used on other devices manufactured by the manufacturer;
11. A pull tab device may have an optional "all" player button that activates the device to dispense pull tabs equal to the value of the unplayed credits and randomly selected by a random number generator or player button sequencing concept. Devices that dispense pull tabs involving a prize board are not required to select tickets by use of a random number generator;
12. A device must have an interior mode switch, interior dipswitch, or an exterior mode switch activated by a key which enables a person to:
  - a. Set the price per pull tab; and
  - b. Unless a device prints reports prescribed by subsection 15, access the accounting information required by subsection 13 and, if the device has nonresettable electronic accounting meters, subsection 14;
13. Unless a device prints reports prescribed by subsection 15, there must be at least two independent resettable electronic or mechanical accounting meters. The meters must maintain accounting information of at least four digits in length and be capable of maintaining the accounting information for six months after electrical power to a device is disconnected or the electrical current used to operate a device is switched off. The meters must record the:

- a. Total value of currency validated; and
  - b. Total number of pull tabs dispensed;
14. Unless a device prints reports prescribed by subsection 15, there must be at least two independent nonresettable electronic or mechanical accounting meters. The meters must maintain accounting information of at least six digits in length and be capable of maintaining the accounting information for six months after electrical power to a device is disconnected or the electrical current used to operate a device is switched off. The meters must record the:
- a. Cumulative value of currency validated; and
  - b. Cumulative number of pull tabs dispensed;
15. Unless a device has resettable and nonresettable accounting meters prescribed by subsections 13 and 14, the device must print a cash pickup and a lifetime activity report.
- a. A cash pickup and a lifetime activity report must:
    - (1) Be printed and accessible only from the interior of a device;
    - (2) State the time and date of the present report and of the preceding report. The time must be expressed in numeric hours and minutes. The hour must be expressed as a.m. or p.m.;
    - (3) State the unique device number; and
    - (4) State a sequential report number, which must be at least three digits in length, starting with number one.
  - b. A cash pickup report, based on resettable electronic accounting meters, must include this information for activity since the preceding report:
    - (1) For a pull tab device, number and value of pull tabs dispensed from all columns; and
    - (2) Value of currency validated.
  - c. A lifetime activity report, based on nonresettable electronic accounting meters, must include this information for activity since a device was manufactured:
    - (1) For a pull tab device, cumulative number and value of pull tabs dispensed from all columns; and
    - (2) Cumulative value of currency validated;
16. To ensure a commingling of pull tabs, a random number generator or player button sequencing concept must be used to select a particular column from which a pull tab will be dispensed. A selection process is random if it does not produce a significant statistic of recurring patterns. A player button sequencing concept must field each button at least one hundred times a second. This subsection does not apply to a dispensing device used in the conduct of a prize board;
17. Instructions for player operation must be permanently affixed or placed under glass or other transparent material on the front of a device;
18. A pull tab device must have one or more player buttons located on the front to activate the dispensing of a pull tab. However, excluding an "all" player button, the number of player



buttons may not exceed the number of columns. Regardless of which player button is pressed, the selection of a particular column from which a pull tab is dispensed must be done by a random number generator or player button sequencing concept. This subsection does not apply to a dispensing device used in the conduct of a prize board;

19. A device must have an LED or LCD display screen of at least four digits in length. However, if a device uses two independent nonresettable electronic accounting meters, the device must have an LED or LCD display screen of at least six digits in length. The digits must be one-quarter of one inch ~~[6.35 millimeters]~~ in height. The value of currency validated must be displayed on the LED or LCD screen as a monetary credit which is reduced as a device vends a pull tab, ~~bingo card, or dauber~~. Unless a device prints reports prescribed by subsection 15, the LED or LCD display screen must also display the accounting information required by subsection 13 and pricing information required by subdivision a of subsection 12;
20. A device must record every vend, including a test vend, of a pull tab when the door of the dispensing device is closed and every currency validation on the accounting meters required by subsections 13 and 14 or subsection 15;
21. If a device malfunction occurs or electrical power is interrupted, the value of credits previously displayed on an LED or LCD display screen must be correctly redisplayed immediately after the malfunction is cleared or electrical power is restored. However, this rule does not apply if a device is totally inoperable;
22. In a pull tab device a column of pull tabs must automatically discontinue operation, triggered by a micro, optical, or software controlled switch, when the column has fewer than fifty pull tabs remaining. However, this rule does not apply when an organization is closing a game at which time a micro, optical, or software controlled switch may be circumvented;
23. A device must automatically stop operating when there is only one column of pull tabs functioning. However, if this occurs and there are unplayed credits on the device, the device may dispense pull tabs equal to the value of the unplayed credits from the remaining column before the device automatically stops operating. This subsection does not apply to a dispensing device used in the conduct of a prize board;
24. An identification plate must be affixed to an exterior side panel and contain the device's:
  - a. Manufacturer;
  - b. Serial and model numbers; and
  - c. Date of manufacture which may be part of the model or serial number;
25. No device may have an auxiliary remote control unit for posting credits;
26. A device must automatically stop operating when a nonresettable meter is disconnected; and
27. A device must have a maintenance and operations manual.

**History:** Effective May 1, 1998; amended effective July 1, 2002; October 1, 2006; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-16-09. Standards for a currency validator - Dispensing device.**

A currency validator must:

1. Validate only United States currency ~~and only values~~ up to fifty values of one hundred dollars;

2. Have an antipullback mechanism and other anticheat devices that prevent cheating of the bill acceptor by mechanical means;
3. Reject invalid and all known manipulations of United States currency;
4. Have a currency stacker box or drop box; and
5. If a malfunction occurs, automatically discontinue accepting or validating currency.

**History:** Effective May 1, 1998; amended effective July 1, 2002; [April 1, 2016](#).

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-16-09.1. Manufacturing specifications - ~~Bingo~~[Site system with bingo](#) card marking devices.**

A site system, ~~and with~~ bingo card marking ~~device~~[devices](#) which ~~displays~~[display](#) a facsimile of a bingo card and allows a player to electronically mark the card in the conduct of bingo according to chapter 99-01.3-04, must meet these specifications:

1. A site system is computer hardware and software used at a site by an organization which [establishes server-based player accounts containing electronic card images or credits accessed by a player with a bingo card-marking device or](#) generates and downloads electronic bingo card images to [bingo card-marking](#) devices, accounts for gross proceeds, and provides accounting information on all activity for three years from the end of the quarter in which the activity occurred. ~~#~~[Server-based accounts must be assigned a minimum five digit randomly selected account number, which cannot be reused during a business day. Transaction numbers for server-based accounts must be a minimum six digit nonresettable consecutive number, which do not reset at the end of each session. An account or bingo card-marking device can only be used for the purchase and play of bingo cards. A site system must:](#)
  - a. Record a nonresettable electronic consecutive six-digit receipt number for each transaction;
  - b. Issue a receipt for each transaction containing:
    - (1) Name of a site ~~or~~[and](#) organization;
    - (2) Date and time of the transaction;
    - (3) ~~Number of electronic bingo card images downloaded~~[Receipt number](#);
    - (4) ~~Selling price of a card or package, rental fee, gross proceeds, and receipt number; and~~
    - ~~(5) Serial number of device issued to a player;~~[Selling price of each card or package, credits purchased, and rental fee of a device, if applicable;](#)
    - [\(5\) Unplayed credits cashed out;](#)
    - [\(6\) Receipt total;](#)
    - [\(7\) For server-based accounts, account number; and](#)
    - [\(8\) For downloaded devices, serial number of the device issued to a player.](#)

c. Print a summary report for each session containing the date and time of the report, name of site, date of the session, ~~sequential~~consecutive session number, total number of accounts established, total number of transactions, total number and dollar value of voided transactions, ~~number of electronic bingo card images downloaded~~, ~~number of devices used~~, the number of and total value for each type of card or package sold, discounts applied to each type of card or package sold, total dollar value of credits sold, total dollar value of unused credits cashed out, total gross proceeds, and, for each transaction, list:

(1) ~~Sequential transaction number starting with one, for each device~~For server-based accounts, transaction and account number;

(2) ~~Device serial number~~For downloaded devices, nonresettable consecutive transaction number starting with one for each device and device serial number;

(3) Type of transaction (sale or void);

(4) Time of transaction;

(5) ~~Number of electronic bingo card images downloaded;~~

~~(6) Selling price of a card or package; and~~

~~(7) Receipt number;~~

(6) For voided transactions, dollar value of the void; and

(7) Selling price of each card or package, discounts applied to each card or package sold, dollar value of credits sold, dollar value of unused credits cashed out, and gross proceeds.

d. The site system must be capable of producing and exporting through electronic means (e.g. comma delimited, excel, etc.) all required reports.

e. Must be remote-accessible by the manufacturer of the ~~device~~site system and devices and attorney general for monitoring the system operation and accounting information in real time; and

e.f. Must be capable of printing an electronic card image of any ~~downloaded~~ card;.

2. A bingo card-marking device must be a portable hand-held unit and cannot be wired directly to a site system;.

3. A bingo card-marking device must be programmed for use at only the site where the site system is located; and only used to purchase and play bingo cards or play electronic quick shot bingo.

4. ~~A device must have a unique serial number permanently encoded in the software;~~

~~5.~~ No bingo card-marking device can allow more than seventy-two single-faced cards per game;.  
A player may not choose or reject cards.

~~6.5.~~ A bingo card-marking device may require a player to manually enter each bingo number by using an input function key or may use a radio frequency or Wi-Fi transmission to automatically daub the bingo numbers called;.

~~7.6.~~ A bingo card-marking device can display a player's best card or a winning card and alert the player through an audio or video method, or both, that the player has a winning card;.

7. All server-based accounts must be closed at the end of each bingo session. An account cannot be carried forward to another session.
8. ~~A device must automatically erase all stored cards at the end of the last game of a session or when the device is turned off; and~~
- ~~9. A device must be downloaded with new cards at the time of the sales transaction. All downloaded devices, must:~~
  - a. Have a unique serial number permanently encoded in the system;
  - b. Be downloaded with new cards at the time of the sales transaction;
  - c. Be deactivated and all stored cards erased when a device is exchanged or returned; and
  - d. Automatically erase all stored cards at the end of the last game of a bingo session or when the device is deactivated or turned off.

**History:** Effective July 1, 2000; amended effective July 1, 2002; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-16-09.4. Manufacturing specifications - ~~Quick~~Electronic quick shot bingo ~~card-~~marking ~~site operating systems with card-marking devices.~~**

~~An electronic~~ quick shot bingo ~~card-marking device site operating system with card-marking devices~~ and related equipment used in the conduct of electronic quick shot bingo according to chapter 99-01.3-04.1 must meet these specifications:

1. The card-marking device ~~shall~~must not display any other graphic representations other than the game of bingo, except for advertising. The card-marking device ~~shall~~must not accept cash, currency, or tokens for play. The card-marking device ~~shall~~must be rendered unplayable if communications from the electronic quick shot bingo site operating system are lost.
2. The ~~quick shot bingo card-marking~~card-marking device ~~shall~~must display:
  - a. The player's credit balance;
  - b. The player's wins balance;
  - c. The current bet amount;
  - d. The denomination being played;
  - e. All possible winning patterns, or be made available as a menu item;
  - f. The amount won for the last completed game until the next game starts; ~~and~~
  - g. The player options selected, including amount and number of cards purchased, for the last completed game until the next game starts or a new selection is made; and
  - h. The phrase "malfunction voids all pays and plays" on the game selection screen, game screen, or on a decal affixed to the front of the device.
3. A card-marking device must be a portable hand-held unit and cannot be wired directly to a site operating system.

4. A card-marking device can only be used at the site where the electronic quick shot bingo site operating system is located and only used to play electronic quick shot bingo or to purchase and play bingo cards.
5. ~~A device must have a unique identification number permanently encoded in the software.~~
- ~~6.~~ No card-marking device can allow more than sixteen single-faced cards per game. The cost per play cannot exceed five dollars per card.
6. Each card must have a unique series (card) number which will have an unduplicated face.
7. Electronic cards must contain a five-by-five grid of space and must contain one square labeled "free" space. A bingo number cannot be repeated in more than one square on the same card. The same series (card) number may not appear more than once on each game.
- ~~7.8.~~ A card-marking device can display a player's best card or a winning card and alert the player through an audio or video method, or both, that the player has a winning card.
- ~~8.~~ ~~Electronic cards must contain a five-by-five grid of space and will contain a unique number which any not appear twice on the same card. The card must contain one square labeled "free" space.~~
9. When a number is covered, the covering must be indicated on the electronic card by a change in the color of the space or some other readily apparent visual means.
10. ~~Each card will be assigned a series number which will have an unduplicated face.~~
- ~~11.~~ A card-marking device must use a radio frequency or Wi-Fi transmission to automatically daub the bingo numbers called.
- ~~12.11.~~ "QuickElectronic quick shot bingo site operating system" means computer hardware, software, and peripheral equipment, that is located at the bingo premise, is operated by the organization conducting bingo, and interfaces with, connects with, controls, or defines the operational parameters of the quick-shot bingo card marking card-marking devices. QuickElectronic quick shot bingo site operating systems must include the following: central database service, portable hand-held card-marking devices, point of sale, required printers, remote access capability, proprietary executable software, report generation software, and an accounting system and database. Player accounts are established on the site operating system's central database server and are accessed by a player with a hand-held card-marking device. Server-based accounts must be assigned a minimum five digit randomly selected account number, which cannot be reused during a business day. Transaction numbers must be a minimum six digit nonresettable consecutive number, which do not reset at the end of each session. An account or card-marking device can only be used for the purchase and play of bingo cards.
- ~~13.12.~~ An electronic quick shot bingo site operating system must account for and provide accounting information on all activity for three years from the end of the quarter in which the activity occurred. It must:
  - a. For each session, archive all electronic transactions of sales, voids, redemptions, balls called, winning bingo patterns, prizes awarded, and the winning cards for prizes greater than two hundred dollars;
  - b. Include a printer with a paper-sensing device that upon sensing a "paper low" condition will allow the system to finish printing the receipt and then prevent further receipt writing. Each system ~~shall~~must recognize a printer power loss occurrence and cease transactions until power has been restored to the printer and the system is capable of producing a valid receipt;

- c. Be remote-accessible by the manufacturer of the system and attorney general for monitoring the system operation and accounting information in real time;
- d. Not allow date, time, credit balance, or other source information to be changed;
- e. Not allow automatic transfer, by a player or employee, of any winnings balance to the credit (deposit) balance on a ~~quick shot bingo card marking~~card-marking device;
- f. Account for each session with a nonresettable electronic consecutive session number;
- g. Account for each transaction on the system with a nonresettable electronic consecutive receipt number at least six digits in length;
- h. Be capable of printing an electronic card image of any card; and
- i. ~~The system must have the ability to:~~

~~(1)~~ Issue a receipt for each cashier transaction containing:

~~(a)~~(1) Name of a site and organization;

~~(b)~~(2) Receipt number;

~~(c)~~(3) Date and time of the transaction;

~~(d)~~ ~~Session number~~;

~~(e)~~(4) Account number ~~or control number~~; and

~~(f)~~ ~~Credit or deposit balance~~;

(5) Dollar value of credits purchased;

(6) Dollar value of credits cashed out;

(7) Dollar value of winnings cashed out; and

(8) Dollar value of credit balanced.

~~(2)~~j. Print a summary report for each session containing:

~~(a)~~(1) Name of site and organization;

~~(b)~~(2) Date of the session;

~~(c)~~(3) Session number;

~~(d)~~(4) Date and time of the report;

~~(e)~~(5) Total ~~gross proceeds~~number of accounts established;

~~(f)~~ ~~Total unplayed credits cashed out~~;

~~(g)~~(6) Total number of transactions;

(7) Range of transaction numbers;

(8) Total ~~unredeemed credits~~number and dollar value of voided transactions;

~~(h)~~(9) Total ~~prizes~~dollar value of credits sold;

~~(i)~~(10) Total ~~unclaimed prizes; and~~ dollar value of unplayed credits cashed out;

~~(j)~~(11) Adjusted Total gross proceeds;

(12) Total prizes won;

(13) Total unclaimed prizes;

(14) Total prizes paid; and

(15) Adjusted gross proceeds

~~(3) Print~~

k. Have the ability to print a transaction report for each session ~~containing~~ which includes for each transaction:

(1) Transaction number;

(2) Time of transaction;

(3) Type of transaction (sale, redemption, or void);

(4) Account number;

~~(a)~~(5) Receipt ~~number~~ number(s);

~~(b) Time of transaction;~~

~~(c) Type of transaction (sale or redemption);~~

~~(d) Unique device identification number;~~

~~(e) Consecutive transaction number starting with one, for each device;~~

~~(f) Account (control) number;~~

~~(g) Credit amount;~~

(6) For voided transactions, dollar value of the void;

(7) Dollar value of credit amount;

(8) Wagered amount;

~~(h)~~(9) Wins amount;

(10) Redemption amount;

~~(i)~~(11) Bonus accrual amount, if applicable; and

~~(j)~~(12) User ID of employee conducting transaction.

l. Print a report of single prizes exceeding two hundred dollars, including:

(1) Date of the session;

(2) Session number;

(3) Account number;



- (4) Winning series (card) number; and
  - (5) Prize amount.
  - m. Print a report of the bingo balls entered or numbers generated for each session, including bonus balls or numbers, which includes:
    - (1) Date of the session;
    - (2) Session number;
    - (3) Time entered or generated; and
    - (4) User ID of employee conducting transaction.
  - n. The electronic quick shot bingo site operating system must be capable of producing and exporting through electronic means (e.g. comma delimited, excel, etc.) all required reports.
13. All server-based accounts must be closed at the end of each bingo session. An account cannot be carried forward to another session or reused after a player has turned in a card-marking device.
  14. All communications between the devicecard-marking devices and the site operating system ~~shall~~must be encrypted for security reasons. The wireless deployment ~~shall-employee~~must employ a secure gateway to isolate the wireless environment from any other environment. The secure gateway ~~shall~~must be configured in a manner that prevents any wireless network component from gaining access to the internal network without first being scrutinized.
  15. Electrical and mechanical components and design principles of the system may not subject a person to any physical hazard or cause electrical interference.
  16. A surge protector that feeds all power to the equipment ~~shall~~must be installed to ensure the equipment ~~shall~~must not be adversely affected by surges or dips of plus or minus twenty percent of the supply voltage.
  17. A battery backup ~~shall~~must be installed on the electronic quick shot bingo site operating system and must be capable of maintaining the accuracy of all information required by this section for ninety days after power is discontinued from the system.
  18. The operation of the electronic quick shot bingo site operating system ~~shall~~must be impervious to influences from the outside of the system, including electromagnetic interference, electrostatic interference, and radio frequency interference.
  19. The electronic quick shot bingo site operating system ~~shall~~must not have any switches, jumpers, wire posts, or other means of manipulation that could affect the operation or outcome of a game.
  20. Logical access to the electronic quick shot bingo site operating system ~~shall~~must be restricted by user identifications and passwords.
  21. A manufacturer of ~~a~~an electronic quick shot bingo site operating system shall employ sufficient security safeguards in designing and manufacturing the system such that it may be verified that all proprietary software components are authentic copies of the approved software components and all functioning components of the system are operating with identical copies of approved software programs. The devicecard-marking devices must also have sufficient security safeguards so that any approved proprietary software are protected from alteration by unauthorized personnel. Security measures that may be employed to comply with these

provisions are the use of dongles, digital signature comparison hardware and software, secure boot loaders, encryption, and password systems.

22. ~~No~~An electronic quick shot bingo site operating system ~~shall~~may not have a mechanism whereby an error will cause the game data to automatically clear. Game data ~~shall~~must be maintained at all times regardless of whether the system is being supplied with power. Game data ~~shall~~must be stored in such a way as to prevent loss of the data when replacing parts or modules during normal maintenance.
23. The electronic quick shot bingo site operating system must have a backup and archive utility to allow the operator to save critical data should a system failure occur. This backup ~~shall~~must automatically run after the end of each session or may be a manual process to be run at the operator's command after the end of each session.
24. The use of a random number generator may be used in the selection of bingo balls. The selection ~~shall~~must be statistically independent, pass recognized statistical tests, and be unpredictable.
25. A card-marking device must automatically stop operating when a winning bingo pattern exceeding two hundred dollars is won by the player and must display a notification to the player to contact an employee. However, this rule does not apply when an electronic quick shot bingo site operating system displays the prize amounts greater than two hundred dollars when a player redeems the prize winnings from the player's account.

**History:** Effective July 1, 2012; amended effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### 99-01.3-16-09.5. Manufacturing specifications - Fifty-fifty raffle system.

A fifty-fifty raffle system and related equipment used in the conduct of raffles according to chapter 99-01.3-05.1 must meet the specifications of the most current version of gaming laboratories international, LLC's standard for electronic raffle systems, GLI-31. In addition, the following specifications must be met:

1. In the use of handheld raffle sales units outside of a wireless network area, the units must have the ability to transfer the sold draw numbers and corresponding validation numbers to the fifty-fifty raffle system should a raffle sales unit become inoperable.
2. For each single event raffle, a fifty-fifty raffle system must account for and provide accounting information on all activity for three years from the end of the quarter in which the activity occurred. It must:
  - a. Record all raffle sales transactions electronically as they occur;
  - b. Account for each single event raffle with a nonresettable electronic consecutive event number;
  - c. Account for each draw number sale in continuous consecutive order by raffle sales unit;
  - d. Generate a summary report for each single event raffle which includes:
    - (1) Name of organization and license number;
    - (2) Name of site;
    - (3) Date;

(4) Event number;

(5) Range of draw numbers and total number of draw numbers available for sale;

(6) Selling prices of each differently priced bearer ticket, including the number of draw numbers on each differently priced ticket;

(7) Number of tickets sold for each differently priced bearer ticket and total receipts for each;

(8) Total number of sold draw numbers;

(9) Total number of voided bearer tickets and draw numbers;

(10) Total number of unsold draw numbers;

(11) Total gross proceeds;

e. Generate a raffle sales unit report for each single event raffle which includes:

(1) Name of organization and license number;

(2) Name of site;

(3) Date;

(4) Event number;

(5) For each raffle sales unit, unit ID, the number of sold bearer tickets for each differently priced ticket and total receipts for each;

(6) Total receipts for each sales unit;

(7) For each raffle sales unit, total number of sold draw numbers, total number of voided bearer tickets and draw numbers, and total number of unsold draw numbers;

(8) Total gross proceeds;

f. Have the ability to generate general accounting and operating reports, containing the date and time reports are printed, for each raffle drawing to include:

(1) System exception report, including changes to system parameters, corrections, overrides, and voids;

(2) Bearer ticket report that includes a list of all bearer tickets sold, including all associated draw numbers, selling price, and raffle sales unit ID;

(3) Voided draw number report that includes a list of all voided draw numbers;

(4) Unsold draw number report that includes a list of all unsold draw numbers;

(5) Raffle sales unit corruption report that lists all raffle sales units that were unable to be reconciled to the system, including the raffle sales unit ID, seller, and money collected.

g. The fifty-fifty raffle system must be capable of producing and exporting through electronic means (e.g. comma delimited, excel, etc.) all required reports.

3. The wireless deployment of communications between the raffle sales units and the system must employ a secure gateway to isolate the wireless environment from any other environment. The secure gateway must be configured in a manner that prevents any wireless network component from gaining access to the internal network without first being scrutinized.
4. A surge protector that feeds all power to the equipment must be installed to ensure the equipment must not be adversely affected by surges or dips of plus or minus twenty percent of the supply voltage.
5. A fifty-fifty raffle system must be capable of maintaining the accuracy of all information required by this section for ninety days after power is discontinued from the system.
6. The fifty-fifty raffle system must be impervious to influences from the outside of the system, including electromagnetic interference, electrostatic interference, and radio frequency interference.
7. The fifty-fifty raffle system must not have any switches, jumpers, wire posts, or other means of manipulation that could affect the operation or outcome of a game.
8. A manufacturer of a fifty-fifty raffle system and related equipment shall employ sufficient security safeguards in designing and manufacturing the system such that it may be verified that all proprietary software components are authentic copies of the approved software components and all functioning components of the system are operating with identical copies of approved software programs. The system must also have sufficient security safeguards so that any approved proprietary software is protected from alteration by unauthorized personnel. Security measures to comply with these provisions may consist of the use of dongles, digital signature comparison hardware and software, secure boot loaders, encryption, and password systems.
9. The backup and archive utility that allows the operator to save critical data if a system failure occurs should automatically run after the end of each raffle or may be a manual process to be run at the operator's command after the end of each raffle.

**History:** Effective April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-16-10. Testing, approval, and recall.**

1. A manufacturer of a pull tab dispensing device, fifty-fifty raffle system, site system with bingo card-marking device~~card-marking devices~~, or electronic quick shot bingo card-marking devices~~site operating system with card-marking devices~~ and related equipment shall not sell or provide a device or system to a distributor unless a model of the device or system has been approved by the attorney general.
2. A manufacturer of a dispensing device shall provide a device model, a copy of its construction blueprint, wiring schematics, circuit analysis, technical and operation manuals, random number generator or player button sequencing concept source and object code computer programs, proprietary operating software source and object code computer programs, and other information requested by the attorney general. A manufacturer of a fifty-fifty raffle system, site system with bingo card-marking device~~or card-marking devices~~, electronic quick shot bingo card-marking device~~site operating system with card-marking devices~~ and related equipment shall provide a ~~device model site system,~~fifty-fifty raffle system and sales unit, site system with devices, electronic quick shot bingo site operating system and marking device~~with card-marking devices~~, technical and operations manual, proprietary operating software source and object code computer programs, random number generator, and other information

requested by the attorney general. A manufacturer of a currency validator or credit redemption device for pull tab dispensing devices shall provide a copy of the source and object code computer programs and other information requested by the attorney general. A manufacturer shall provide a copy of letters of approval and test reports of the dispensing device, fifty-fifty raffle system, site system with bingo card-marking device~~card-marking devices~~, electronic quick shot bingo card-marking device~~site operating system with card-marking devices~~ and related equipment, or currency validator from other states, federal jurisdictions, or independent testing laboratories.

3. The attorney general may require a manufacturer of a dispensing device, fifty-fifty raffle system, site system with bingo card-marking device~~card-marking devices~~, electronic quick shot bingo card-marking device~~site operating system with card-marking devices~~ and related equipment, or currency validator to transport a working model, and the information required by subsection 2 to the attorney general or designee for analysis, testing, and evaluation. A manufacturer shall pay all the costs and provide special equipment for the testing. The attorney general may require a manufacturer to pay the estimated costs, in advance. After the analysis, testing, and evaluation is done, the designee shall provide the results to the attorney general. An overpayment of costs must be refunded to a manufacturer or the manufacturer shall pay any underpayment of costs. The attorney general shall provide the manufacturer with the results. Before approving a device's model, ~~or site system with bingo card-marking devices, electronic quick shot bingo card-marking device~~site operating system with card-marking devices and related equipment, the attorney general may require a trial period.
4. If a manufacturer of a dispensing device, fifty-fifty raffle system, site system with bingo card-marking devices, or electronic quick shot bingo card-marking device~~site operating system with card-marking devices~~ and related equipment, knows or determines that a model of a device or system is defective or can be manipulated, the manufacturer shall immediately notify the attorney general and cease selling the device or system. The attorney general may require the manufacturer to recall or modify the device or system. Upon notification, a manufacturer shall initiate compliance with a recall or modification at the manufacturer's expense.
5. A fifty-fifty raffle system and electronic quick shot bingo card-marking device~~site operating system with card-marking devices~~ and related equipment ~~shall~~must have the ability to allow for an independent integrity check of the device's software from an outside source and is required for all control programs that may affect the integrity of the game.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-16-11. Sales invoice.**

1. A manufacturer may not sell or provide to or accept from a distributor deals of pull tabs, paper bingo cards, fifty-fifty raffle system, site system with bingo card-marking~~card-marking~~ devices, quick shot bingo ~~card-marking~~card-marking devices and related equipment, or pull tab dispensing devices without recording the transaction on a sales or credit invoice. The invoice must include:
  - a. License number, business name, and address of the distributor;
  - b. Business name and address to which the gaming equipment is shipped;
  - c. Invoice number and date;
  - d. Date shipped;

- e. Indication for a credit invoice;
  - f. Quantity of deals of pull tabs and paper bingo cards;
  - g. Description of each deal of pull tabs and bingo cards and paper bingo cards sold, including the name of the game and game serial number which may be listed on an addendum to a sales invoice. For a deal of pull tabs involving two-ply or three-ply cards with perforated break-open tabs, the description must include the manufacturer's form number;
  - h. For paper bingo cards, quantity, primary color, type of collated booklet, serial number, size of series, and number of faces on a card;
  - i. Name, model, and serial number of a pull tab dispensing device;
  - ~~j.~~ Name, model, and serial number of a site system for bingo ~~card-marking device or pull tab dispensing device~~card-marking devices and number of bingo card-marking devices provided;
  - ~~j-k.~~ Name, model, serial number, and control programs of ~~a~~an electronic quick shot bingo site operating system and number of card-marking devices provided;
  - ~~k.~~ ~~Number of quick shot bingo card-marking devices provided; and~~
  - l. For electronic bingo cards, quantity of bingo cards played; and
  - ~~m.~~ Name, model, and control programs of a fifty-fifty raffle system.
2. A manufacturer shall file a copy of each sales invoice issued to an organization on behalf of a distributor for rent of a bingo ~~card-marking~~card-marking device, by the fifth business day following the month of the transaction.

**History:** Effective May 1, 1998; amended effective July 1, 2000; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1