

# **NORTH DAKOTA ADMINISTRATIVE CODE**

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

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**TITLE 3**  
**ACCOUNTANCY, BOARD OF**



## JANUARY 2020

### CHAPTER 3-02-01

#### 3-02-01-02. Examinations - Passing conditions.

An applicant may take the examination sections individually and in any order. An applicant shall retain conditional credit for any section passed for eighteen months after the test date. An applicant must pass all sections of the examination within a rolling eighteen-month period which begins on the testing date of the first section passed. ~~An applicant may not retake any section of the examination within the same calendar quarter.~~ In the event all sections of the examination are not passed within the rolling eighteen-month period, credit will expire for any section passed outside the eighteen-month period. The board may lengthen the eighteen-month period referenced above, in the event of extraordinary circumstances or substantial scoring delays.

**History:** Effective July 1, 1999; amended effective December 1, 2003; April 1, 2018; [January 1, 2020](#).

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-04

## CHAPTER 3-02-02

### 3-02-02-04. Certificate and license annual renewal fees.

The annual renewal fee for every CPA and LPA shall be set by the board but not to exceed two hundred dollars. A CPA or LPA who registers and pays the annual renewal fee July first through July thirty-first will be considered licensed during that same period. A CPA or LPA who fails to register or pay the renewal fee by July thirty-first shall pay a late filing fee not to exceed one hundred dollars in addition to the regular annual fee. If not paid by August thirty-first, the certificate is deemed involuntarily relinquished and not renewed, and subject to return as specified in section ~~3-01-02-07~~3-02-02-07, and subject to the reinstatement requirements of section 3-02-02-08. Individuals registered under the substantial equivalency provisions shall be required to file an annual renewal form and pay the annual renewal fee, plus the late filing fee if applicable.

**History:** Amended effective August 1, 1981; October 1, 1982; July 1, 1987; June 1, 1988; July 1, 1991; March 1, 1995; September 1, 1997; October 1, 1999; December 1, 2000; December 1, 2003; July 1, 2008; April 1, 2018; January 1, 2020.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-04, 43-02.2-07

## CHAPTER 3-03-01

### 3-03-01-01. Credit-hours or days required.

Continuing education reports are due from all CPAs and LPAs, except those on retired status, ~~by June thirtieth~~before August first of each year and any credit-hours submitted must be for the previous ~~twelve months~~, July first through June thirtieth.

At the end of each continuing education reporting year, each CPA and LPA performing accounting, auditing, management or financial advisory, consulting, bookkeeping, or tax services for a client or an employer's client while holding out to the public as a licensee in this state must have completed one hundred twenty credit-hours of acceptable continuing education in the immediate preceding three reporting periods, including six credit-hours of professional ethics content as of June 30, 2022, and a minimum of twenty credit-hours each period.

All other accountants who in any way hold out as a CPA or LPA in this state, except those on retired status and those who include the term "inactive" whenever using the CPA or LPA title or abbreviation, must have completed sixty credit-hours of acceptable continuing education (one hundred twenty credit-hours as of June 30, 2022, including six credit-hours of professional ethics content) in the immediately preceding three reporting periods and a minimum of sixteen credit-hours each period, twenty credit-hours each period, starting July 1, 2021.

At the end of the first full continuing education reporting year following receipt of an initial original certificate, an accountant must meet the applicable per year minimum, and must meet the applicable three-year minimum, including ethics content, two years thereafter.

**History:** Amended effective August 1, 1984; October 1, 1984; July 1, 1991; March 1, 1995; October 1, 1999; December 1, 2000; December 1, 2003; April 1, 2018; January 1, 2020.

**General Authority:** NDCC 43-02.2-03

**Law Implemented:** NDCC 43-02.2-03, 43-02.2-04





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



**JANUARY 2020**

**ARTICLE 33-33  
RULES INITIATED BY THE INSPECTION DIVISION**

Chapter	
33-33-01	Mobile Home Park Rules
33-33-02	Trailer Park and Campground Rules
33-33-03	Food Vending Rules
33-33-04	Food Code [Repealed]
33-33-04.1	Food Code
33-33-05	Smoke Detector Rules
33-33-06	Bed and Breakfast Facilities
33-33-07	Beverage License Fees
33-33-08	Food Establishment License Fees
33-33-09	Assisted Living Facilities
<u>33-33-10</u>	<u>Preparation of Cottage Food Products for Sale</u>

**CHAPTER 33-33-10**  
**PREPARATION OF COTTAGE FOOD PRODUCTS FOR SALE**

<u>Section</u>	
<u>33-33-10-01</u>	<u>Definitions</u>
<u>33-33-10-02</u>	<u>Cottage Food Products</u>
<u>33-33-10-03</u>	<u>Safe Handling Instructions and Product Disclosure Statement</u>
<u>33-33-10-04</u>	<u>Illness or Environment Health Complaint Investigation</u>
<u>33-33-10-05</u>	<u>Infectious Disease</u>

**33-33-10-01. Definitions.**

For purposes of this chapter:

1. "Adulterated" has the same definition as under North Dakota Century Code section 19-02.1-09.
2. "Baked goods" means a food usually produced from dough or batter which is baked before consuming, including bread, quick bread, lefse, fruit pies, custard pies, cakes, cheesecakes, cookies, biscuits, crackers, doughnuts, rolls, pastries with or without fillings, candies, or chocolates, or similar products, regardless of whether the food requires time and temperature control for safety.

3. "Commercial consumption" includes use of food in a food establishment, food processing plant, retail food store, or any other food operation requiring licensure under North Dakota Century Code section 23-09-16.
4. "Cottage food production area" means the portion of a private home or home kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.
5. "Department" means the state department of health.
6. "Environmental health hazard" means a chemical agent, physical object, biological hazard, or any source of filth, cause of illness or injury, or condition that is a hazard to the public or to the environment.
7. "Food establishment" has the same definition as under North Dakota Century Code section 23-09-01.
8. "Food requiring time and temperature control for safety" means perishable food that is not modified in a way to limit the growth of undesirable micro-organisms or toxin formation unless maintained at a safe holding temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below.
9. "Fresh cut fruit or vegetable" means a fruit or vegetable in its raw or natural state, altered from its whole state by cutting, slicing, chopping, shredding, or tearing. The harvest cut of the stem or stalk is not included in this definition.
10. "Frozen" means a food is maintained at a temperature no greater than zero degrees Fahrenheit [-17.8 degrees Celsius] or in a solid state.
11. "High acid foods" or "acidified foods" means foods naturally high in acid or foods that have been acidified by adding acid or by the action of a culture to reduce the equilibrium pH to four and six-tenths or below.
12. "Investigation" means entering, evaluating, photographing, and securing any samples, photographs, or other evidence from any cottage food operator, cottage food production area, point of sale, venue, or component thereof.
13. "Home-canned products" means high acid or acidified fruit or vegetables where the end product does not require time and temperature control for safety.
14. "Home-consumption" has the same definition as under North Dakota Century Code chapter 23-09.5. Home-consumption does not include the sale of cottage food products for commercial consumption.
15. "Home-processed products" means additional handling of food for dehydrating, freeze drying, or blanching and freezing fresh cut fruits and vegetables.
16. "Misbranded" means any false or misleading labeling of a food product; food offered for sale under the name of another food; or a food container made, formed, or filled as to be misleading.
17. "Point of sale" means the venue where the completion of a transaction involving the sale of cottage food products occurs directly between a cottage food operator and an informed end consumer. The exchange of buying and selling within the definition of transaction in North Dakota Century Code section 23-09.5-02 does not include advertising or marketing which can be conducted over the internet.

18. "Private home" means a single-family residence or an area within a rental unit where a single person or family resides. Private home does not include any group or communal residential setting within any type of structure or outbuilding, shed, barn, or other similar structure.
19. "Safe moisture level" means a level of moisture low enough to prevent the growth of undesirable micro-organisms in the finished food product. The measurement of moisture level or water activity at eighty-five hundredths or less is low enough to inhibit the growth of undesirable micro-organisms.
20. "Undesirable micro-organisms" means yeasts, molds, bacteria, viruses, protozoa, and parasites, and includes disease-causing pathogens having public health significance which subject food to decomposition, indicate food is contaminated with filth, or otherwise may cause food to be adulterated.
21. "Venue" means a farm, ranch, farmer's market, roadside produce stand, or group of booths where transactions involving cottage food products occur. Venue does not include establishments otherwise prohibited by law such as an establishment requiring licensure under North Dakota Century Code chapter 23-09.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 23-01-03(3)

**Law Implemented:** NDCC 23-09.5

### **33-33-10-02. Cottage food products.**

The following food products are not within the definition of cottage food products as used in subsection 1 of North Dakota Century Code section 23-09.5-01 and therefore not authorized for sale under North Dakota Century Code chapter 23-09.5:

1. Meat, wild game, fish, seafood, or shellfish, or products containing such items. A cottage food operator may only sell uninspected raw poultry or shell eggs as authorized by subdivision d of subsection 3 of North Dakota Century Code section 23-09.5-02. Pursuant to subsection 7 of North Dakota Century Code section 23-09.5-02 such products requiring time and temperature control for safety must be transported and maintained frozen and include the required safe handling instructions and product disclosure statement.
2. Home-canned products, unless the products are high acid or acidified foods that are processed and canned in this state and the pH level is verified by a calibrated pH meter.
3. Food requiring time and temperature control for safety, unless the food is otherwise authorized under this section or meets the requirements of this subsection. Food requiring time and temperature control for safety must be transported and maintained frozen and include the required safe handling instructions and product disclosure statement. Cottage food products authorized for sale under this subsection are the following:
  - a. Baked goods;
  - b. Home-processed fresh cut fruits and vegetables that are dehydrated or freeze dried and have a safe moisture level;
  - c. Home-processed fresh cut fruits and vegetables that are blanched and frozen; or
  - d. Uninspected raw poultry pursuant to subdivision d of subsection 3 of North Dakota Century Code section 23-09.5-02.
4. Dairy, unless properly pasteurized and used as an ingredient.

5. Wild-harvested noncultivated mushrooms.
6. Alcoholic beverages.
7. Animal feed or any products not intended for human consumption.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 23-01-03(3)

**Law Implemented:** NDCC 23-09.5

### **33-33-10-03. Safe handling instructions and product disclosure statement.**

1. A cottage food operator may not sell an adulterated or misbranded cottage food product.
2. A cottage food operator shall label all cottage food products that require time and temperature control for safety with safe handling instructions and a product disclosure statement as required under subsection 7 of North Dakota Century Code section 23-09.5-02. The safe handling instructions and product disclosure statement required under subsection 7 of North Dakota Century Code section 23-09.5-02 must:
  - a. Appear on the product packaging labeled prominently and conspicuously and in a legible type size;
  - b. Include the phrase "safe handling instructions" in bold capital letters; and
  - c. Contain the following safe handling instructions where applicable:
    - (1) For baked goods that require time and temperature control for safety: "Previously Handled Frozen for Your Protection - Refreeze or Keep Refrigerated."
    - (2) For fresh cut fruits and vegetables that are blanched and frozen: "Handled Frozen for Your Protection - Refreeze or Keep Refrigerated."
    - (3) For uninspected raw poultry: "Previously Handled Frozen for Your Protection - Refreeze or Keep Refrigerated. Thaw in a refrigerator or microwave. Keep poultry separate from other foods. Wash cutting surfaces, utensils, and hands after touching raw poultry. Cook thoroughly."

**History:** Effective January 1, 2020.

**General Authority:** NDCC 23-01-03(3)

**Law Implemented:** NDCC 19-02.1, 23-09.5-02

### **33-33-10-04. Illness or environment health complaint investigation.**

1. Authorized representatives of the department or local regulating authority may access a cottage food production area of a cottage food operator's private home, point of sale, or venue where transactions of cottage foods take place to conduct an investigation upon complaint of an illness or environmental health. The cottage food operator may request to see the representatives' credentials.
2. If the department or local regulatory authority determines, as part of an investigation conducted in accordance with subsection 9 of North Dakota Century Code section 23-09.5-02 the source of an environmental health hazard or an illness complaint is associated with preparation, processing, packaging, or point of sale of a cottage food product, or otherwise associated with the cottage food operation, and poses a threat to public health or safety, where all reasonable measures have not been taken to ensure a cottage food product is not adulterated, contaminated by undesirable micro-organisms, or that cottage food product is misbranded or misrepresented to the informed end consumer, the cottage food operator will

be notified and the department will act in accordance with North Dakota Century Code chapter 19-02.1.

3. The cottage food operator shall prepare and submit to the department a plan of correction in accordance with the minimum standards of these rules and North Dakota Century Code chapter 23-09.5. The plan shall contain adequate information to enable the department to determine whether the proposed corrective action measures will abate or prevent ongoing threat to public health.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 23-01-03(3)

**Law Implemented:** NDCC 19-02.1, 23-09.5-02(9)

### 33-33-10-05. Infectious disease.

A cottage food operator or member of the cottage food operator's private home afflicted with symptoms consistent with a contagious or infectious disease may not knowingly:

1. Handle or prepare cottage food products; or
2. Work in a cottage food production area.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 23-01-03(3)

**Law Implemented:** NDCC 23-01-03(3), 23-09.5





**TITLE 50**  
**NORTH DAKOTA BOARD OF MEDICINE**



## JANUARY 2020

### CHAPTER 50-02-02

#### 50-02-02-01. Exceptions to technical requirements on licensure.

A license issued under this section is, for all purposes, the same as a regular medical license issued by the board.

1. The board shall issue a license to an applicant who holds a current valid letter of qualification issued through the interstate medical licensing compact. The issuance of a license does not preclude the board's ability to require additional information from the applicant.

2. The board may issue a medical license to an applicant who does not meet all technical eligibility requirements if the board determines the applicant is uniquely qualified through training or experience or will make a unique or special contribution to the practice of medicine not readily available to the citizens of the state. In applying this rule, the board shall make written findings supporting the issuance of a special license. In addition to the potential benefit to the state, the board shall include in its analysis consideration of the following:

1.a. Board certification;

2.b. Nature and length of medical practice;

3.c. Nature and length of postgraduate training or research;

4.d. Licenses issued by other states;

5.e. The existence of disciplinary actions by other medical boards or adverse actions by medical facilities;

6.f. History of malpractice judgments or settlements;

7.g. Licensing examinations, such as the United States medical licensing examination (USMLE) or special purpose examination (SPEX); and

8.h. Such other considerations that bear upon an applicant's eligibility.

~~A license issued under this section is, for all purposes, the same as a regular medical license issued by the board.~~

**History:** Amended effective February 1, 1985; January 1, 2018; January 1, 2020.

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

**Law Implemented:** NDCC 43-17

## CHAPTER 50-03-01 PHYSICIAN ASSISTANTS

### Section

50-03-01-01	Description and Authority of Physician Assistant <u>[Repealed]</u>
<u>50-03-01-01.1</u>	<u>Description and Scope of Practice of the Physician Assistant</u>
50-03-01-02	Examination Requirements
50-03-01-03	Supervision Contract Requirements <u>[Repealed]</u>
<u>50-03-01-03.1</u>	<u>Collaboration With Physicians and Other Health Care Providers</u>
<u>50-03-01-03.2</u>	<u>Practice Requirements</u>
50-03-01-04	Supervising Physician's Responsibility <u>[Repealed]</u>
50-03-01-05	Designation of Substitute Supervising Physician <u>[Repealed]</u>
50-03-01-06	Assistant's Functions Limited <u>[Repealed]</u>
50-03-01-07	Drug Therapy <u>[Repealed]</u>
<u>50-03-01-07.1</u>	<u>Medication Dispensation</u> <u>[Repealed]</u>
50-03-01-08	Assignment of Tasks by Supervising Physician <u>[Repealed]</u>
50-03-01-09	Number of Assistants Under Physician's Supervision Limited <u>[Repealed]</u>
<u>50-03-01-09.1</u>	<u>Physician Assistant for More Than One Physician</u> <u>[Repealed]</u>
<u>50-03-01-09.2</u>	<u>Physician Assistants Under Physician's Supervision</u> <u>[Repealed]</u>
50-03-01-10	Assistant's Services Limited <u>[Repealed]</u>
<u>50-03-01-10.1</u>	<u>Disciplinary Action</u>
<u>50-03-01-10.2</u>	<u>Disciplinary Proceedings</u>
50-03-01-11	Grounds for Disciplinary Action
50-03-01-12	Physician's Delegation to Qualified Person Not Restricted <u>[Repealed]</u>
50-03-01-13	Fees
50-03-01-14	License Renewal Requirements
50-03-01-15	Forms of Licensure
50-03-01-16	Renewal of Licenses
50-03-01-17	Late Fees
<u>50-03-01-18</u>	<u>Physician Assistant - Use of Certain Words or Initials Prohibited</u>

### **50-03-01-01. Description and authority of physician assistant.**

Repealed effective January 1, 2020.

~~—The physician assistant is a skilled person, qualified by academic and clinical training to provide patient services under the supervision and responsibility of a licensed doctor of medicine or osteopathy who is responsible for the performance of that assistant. The assistant may be involved with the patients of the physician in any medical setting for which the physician is responsible.~~

~~**History:** Amended effective July 1, 1988; November 1, 1993.~~

~~**General Authority:** NDCC 43-17-13~~

~~**Law Implemented:** NDCC 43-17-02(10)~~

### **50-03-01-01.1. Description and scope of practice of the physician assistant.**

The physician assistant is a medical professional qualified by academic and clinical training to provide patient services, including the diagnosing of illnesses, developing and managing treatment plans, prescribing medications, and often serving as a patient's principal health care provider in collaboration with physicians and other health care providers.

1. A physician assistant may:

- a. Provide a legal medical service for which a physician assistant is prepared by education, training, and experience and is competent to perform, including:

- (1) Obtaining and performing a comprehensive health history and physical examination;
- (2) Evaluating, diagnosing, managing, and providing medical treatment;
- (3) Ordering and evaluating a diagnostic study and therapeutic procedure;
- (4) Performing a diagnostic study or therapeutic procedure not involving the use of medical imaging as defined in North Dakota Century Code section 43-62-01 or radiation therapy as defined in North Dakota Century Code section 43-62-01;
- (5) Performing limited sonography on a focused imaging target to assess specific and limited information about a patient's medical condition or to provide real-time visual guidance for another procedure;
- (6) Educating a patient on health promotion and disease prevention;
- (7) Providing consultation upon request; and
- (8) Writing a medical order;

b. Obtain informed consent;

c. Supervise, delegate, and assign therapeutic and diagnostic measures not involving the use of medical imaging as defined in North Dakota Century Code section 43-62-01 or radiation therapy as defined in North Dakota Century Code section 43-62-01 to licensed or unlicensed personnel;

d. Certify the health or disability of a patient as required by any local, state, or federal program;

e. Authenticate any document with the signature, certification, stamp, verification, affidavit, or endorsement of the physician assistant if the document may be authenticated by the signature, certification, stamp, verification, affidavit, or endorsement of a physician; and

f. Pronounce death.

2. A physician assistant:

a. May prescribe, dispense, administer, and procure drugs and medical devices;

b. May plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions, including durable medical equipment, nutrition, blood and blood products, and diagnostic support services, including home health care, hospice, and physical and occupational therapy;

c. May prescribe and dispense schedule II through V substances as designated by the federal drug enforcement administration and all legend drugs;

d. May not dispense a drug, unless pharmacy services are not reasonably available, dispensing is in the best interest of the patient, or an emergency exists;

e. May request, receive, and sign for a professional sample, and may distribute a professional sample to a patient; and

f. If prescribing or dispensing a controlled substance, shall register with the federal drug enforcement administration and shall comply with appropriate state and federal laws.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 43-17-02.1

**Law Implemented: NDCC 43-17-02.1**

**50-03-01-02. Examination requirements.**

No ~~individual may be licensed as a~~ physician assistant ~~may be employed in the state until the assistant has passed~~without passing the certifying examination of the national commission on certification of physician assistants or other certifying examinations approved by the North Dakota board of medicine.

**History:** Amended effective July 1, 1988; November 1, 1993; January 1, 2020.

**General Authority:** NDCC ~~43-17-13~~43-17

**Law Implemented:** NDCC ~~43-17-02(10)~~43-17-02.1

**50-03-01-03. Supervision contract requirements.**

Repealed effective January 1, 2020.

~~— Upon undertaking the supervision of a physician assistant as contemplated by this chapter, the physician shall file with the board a copy of the contract establishing that relationship. That contract must be approved by the North Dakota board of medicine.~~

~~— The contract must be confirmed annually by completing and filing with the board such forms as are requested and provided by the board. The board must be notified within seventy-two hours of any contract termination or modification.~~

~~— Every physician who supervises a physician assistant under this chapter must practice medicine in North Dakota. No physician may act as a supervising physician for any physician assistant who is a member of the physician's immediate family unless specific authorization for such supervision has been approved by the North Dakota board of medicine. For purposes of this section, "immediate family" means a spouse, parent, child, or sibling of the supervising physician.~~

~~**History:** Amended effective July 1, 1988; July 1, 1994; April 1, 1996; August 1, 2002.~~

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

~~**Law Implemented:** NDCC 43-17-02(10)~~

**50-03-01-03.1. Collaboration with physicians and other health care providers.**

A physician assistant shall collaborate with, consult with, or refer to the appropriate member of the health care team as indicated by the condition of the patient, the education, experience, and competence of the physician assistant, and the standard of care. The degree of collaboration must be determined at the practice which may include decisions made by the employer, group, hospital service, and the credentialing and privileging systems of a licensed facility. A physician assistant is responsible for the care provided by that physician assistant and a written agreement is not required.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 43-17-02.1

**Law Implemented:** NDCC 43-17-02.1

**50-03-01-03.2. Practice requirements.**

A physician assistant shall practice at a:

1. Licensed health care facility;
2. Facility with a credentialing and privileging system;
3. Physician-owned facility or practice; or

4. Facility or practice approved by the board. If a physician assistant has less than four thousand hours of practice experience and seeks to practice at a facility or practice that is not a licensed health care facility, a facility with a credentialing and privileging system, or a physician-owned facility or practice, the physician assistant must execute a written collaborative agreement with a physician that describes how collaboration with that physician will occur and provide it to the board upon request.

A physician assistant shall comply with any privileging and credentialing systems at the facility at which the physician assistant practices.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 43-17-02.1

**Law Implemented:** NDCC 43-17-02.1

#### **50-03-01-04. Supervising physician's responsibility.**

Repealed effective January 1, 2020.

~~— For purposes of this section, "supervision" means overseeing the activities of, and accepting the responsibility for, the medical services rendered by a physician assistant. Supervision shall be continuous but shall not be construed as necessarily requiring the physical presence of the supervising physician at the time and place that the services are rendered. It is the responsibility of the supervising physician to direct and review the work, records, and practice of the physician assistant on a continuous basis to ensure that appropriate and safe treatment is rendered. The supervising physician must be available continuously for contact personally or by telephone or other electronic means. It is the obligation of each team of physicians and physician assistants to ensure that the physician assistant's scope of practice is identified; that delegation of medical tasks is appropriate to the physician assistant's level of competence; that the relationship of, and access to, the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.~~

~~**History:** Amended effective July 1, 1988; November 1, 1993; May 1, 2002.~~

~~**General Authority:** NDCC 43-17-13~~

~~**Law Implemented:** NDCC 43-17-02(10)~~

#### **50-03-01-05. Designation of substitute supervising physician.**

Repealed effective January 1, 2020.

~~— Under no circumstances shall the supervising physician designate the physician assistant to take over the physician's duties or cover the physician's practice. During any absence or temporary disability of a supervising physician, it is mandatory that the supervising physician designate a substitute supervising physician to assume all duties and responsibilities of the supervising physician. The physician assistant, during this period, will be responsible to the substitute physician. The designation of a substitute supervising physician must be in writing; signed by the supervising physician, the substitute supervising physician, and the physician assistant; and contain the following information:~~

~~— 1. The name of the substitute supervising physician.~~

~~— 2. The period during which the substitute supervising physician will assume the duties and responsibilities of the supervising physician.~~

~~— 3. Any substantive change in the physician assistant's duties or responsibilities.~~

~~The appointment of a substitute supervising physician does not become effective unless it is first approved by the North Dakota board of medicine.~~

~~**History:** Amended effective July 1, 1988; November 1, 1993; July 1, 1994.~~

~~**General Authority:** NDCC 43-17-13~~

~~**Law Implemented:** NDCC 43-17-02(10)~~

#### **50-03-01-06. Assistant's functions limited.**

~~Repealed effective January 1, 2020.~~

~~—Physician assistants may perform only those duties and responsibilities that are delegated by their supervising physicians. No supervising physician may delegate to a physician assistant any duty or responsibility for which the physician assistant has not been adequately trained. Physician assistants are the agents of their supervising physicians in the performance of all practice-related activities. A physician assistant may provide patient care only in those areas of medical practice where the supervising physician provides patient care.~~

~~**History:** Amended effective July 1, 1988; November 1, 1993; July 1, 1994; April 1, 1996.~~

~~**General Authority:** NDCC 43-17-13~~

~~**Law Implemented:** NDCC 43-17-02(10)~~

#### **50-03-01-07.1. Medication dispensation.**

~~Repealed effective January 1, 2020.~~

~~—A physician assistant may dispense medications which the physician assistant is authorized to prescribe in the following circumstances:~~

- ~~—1. The dispensation is in compliance with all applicable federal and state regulations;~~
- ~~—2. Pharmacy services are not reasonably available, or an emergency requires the immediate dispensation of medication for the appropriate medical care of a patient; and~~
- ~~—3. Dispensation of medications by the physician assistant is within the guidelines of the supervising physician.~~

~~**History:** Effective January 1, 2010.~~

~~**General Authority:** NDCC 43-17-07.1~~

~~**Law Implemented:** NDCC 43-17-02(9)~~

#### **50-03-01-09.1. Physician assistant for more than one physician.**

~~Repealed effective January 1, 2020.~~

~~—A physician assistant may provide services for more than one physician in the following circumstances if each of the physicians for whom the physician assistant provides services has filed a proper contract under section 50-03-01-03:~~

- ~~—1. In a group practice setting where one physician is designated as the primary supervising physician, the primary supervising physician will remain primarily responsible for the acts of the physician assistant even when the physician assistant is acting under the immediate supervision of another physician in the group; or~~
- ~~—2. If two or more physicians who are not associated in practice require assistance on a part-time basis, each may contract with the physician assistant as a supervising physician provided that a physician assistant has one primary supervising physician who is affiliated with each of the unassociated practice arrangements.~~

~~**History:** Effective July 1, 1994; amended effective March 1, 2003.~~

~~**General Authority:** NDCC 43-17-13~~



~~Law Implemented: NDCC 43-17-02(10)~~

#### **50-03-01-09.2. Physician assistants under physician's supervision.**

Repealed effective January 1, 2020.

~~—Subject to approval by the board, a physician may act as primary supervising physician for such number of physician assistants as is consistent with good medical practice, considering the type and circumstance of the physician's practice and the authority delegated to the physician assistants and which permits the physician to fulfill all supervisory duties required by law.~~

~~History: Effective January 1, 2010.~~

~~General Authority: NDCC 43-17-07.1~~

~~Law Implemented: NDCC 43-17-02(9)~~

#### **50-03-01-10.2. Disciplinary proceedings.**

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a physician assistant, the board may direct any physician assistant to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and its investigative panels of the board in the investigation and prosecution of the case. If applicable, the physician's or physician assistant's license may be suspended until the costs are paid to the board. A physician assistant may challenge the reasonableness of any cost item in a hearing under North Dakota Century Code chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the judge is final. The hearing must occur before the physician assistant's license may be suspended for nonpayment.

History: Effective January 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-31.1

#### **50-03-01-11. Grounds for disciplinary action.**

The board may deny an application for licensure or may take disciplinary action against a physician assistant upon any of the following grounds:

1. Failing to demonstrate the qualifications for licensure under this act or the regulations of the board.
2. Soliciting or receiving any form of compensation from any person other than the physician assistant's ~~registered~~-employer or third-party payer for services performed as a physician assistant.
3. The use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with any of the licensing requirements.
4. The making of false or misleading statements about the physician assistant's skill or the efficacy of any medicine, treatment, or remedy.
5. The conviction of any misdemeanor, determined by the board to have a direct bearing upon a person's ability to serve the public as a physician assistant, or any felony. A license may not be withheld contrary to the provisions of North Dakota Century Code chapter 12.1-33.
6. The habitual or excessive use of intoxicants or drugs.

7. Physical or mental disability materially affecting the ability to perform the duties of a physician assistant in a competent manner.
8. Aiding or abetting the practice of medicine by a person not licensed by the board or by an incompetent or impaired person.
9. Gross negligence in the performance of the person's duties as a physician assistant.
10. Manifest incapacity or incompetence to perform as a physician assistant.
11. The willful or negligent violation of the confidentiality between physician assistant and patient, except as required by law.
12. The performance of any dishonorable, unethical, or unprofessional conduct.
13. Obtaining any fee by fraud, deceit, or misrepresentation.
14. ~~Repeated or willful violation of the contract of employment on file with the board.~~
- ~~15.~~ The violation of any provision of a physician assistant practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
- ~~16.~~15. Representing himself or herself to be a physician.
- ~~17.~~16. The advertising of the person's services as a physician assistant in an untrue or deceptive manner.
- ~~18.~~17. Sexual abuse, misconduct, or exploitation related to the licensee's performance of the licensee's duties as a physician assistant.
- ~~19.~~18. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
- ~~20.~~19. The failure to comply with the reporting requirements of North Dakota Century Code section 43-17.1-05.1.
- ~~21.~~20. A continued pattern of inappropriate care as a physician assistant.
- ~~22.~~21. The use of any false, fraudulent, or deceptive statement in any document connected with the performance of the person's duties as a physician assistant.
- ~~23.~~22. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- ~~24.~~23. The violation of any state or federal statute or regulation relating to controlled substances.
- ~~25.~~24. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to perform duties as a physician assistant based upon acts or conduct by the physician assistant that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- ~~26.~~25. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.

~~27.26.~~ The failure to furnish the board or the investigative panel, their investigators or representatives, information legally requested by the board or the investigative panel.

27. Noncompliance with the physician health program established under North Dakota Century Code chapter 43-17.3.

**History:** Amended effective July 1, 1988; November 1, 1993; April 1, 1996; October 1, 1999; August 1, 2002; January 1, 2020.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(10)

**50-03-01-13. Fees.**

The fee for initial licensure of a physician assistant is fifty dollars. The annual renewal fee is fifty dollars. The fee for ~~approval of employment contract changes~~ a change in practice location is twenty-five dollars.

**History:** Effective July 1, 1988; amended effective November 1, 1993; December 1, 1996; October 1, 1999; January 1, 2020.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(10)

**50-03-01-14. License renewal requirements.**

Every second year after the initial licensure certification of a physician assistant, the physician assistant's license renewal application must be accompanied with evidence of the successful completion of one hundred hours of continued education for physician assistants. ~~The applicant must demonstrate as verified by~~ current certification by the national commission on certification of physician assistants or other certifying entity approved by the board.

**History:** Effective August 1, 1989; amended effective November 1, 1993; October 1, 1999; July 1, 2013; January 1, 2020.

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

**Law Implemented:** NDCC 43-17-02(9)

**50-03-01-18. Physician assistant - Use of certain words or initials prohibited.**

A person that is not a physician assistant may not represent oneself as a physician assistant or act as a physician assistant or use any combination or abbreviation of the term or title "physician assistant" or "PA" to indicate or imply the person is a physician assistant. However, an individual who is not licensed as a physician assistant under this chapter but who meets the qualifications for licensure as a physician assistant under this chapter may use the title "physician assistant" or "PA" but may not act or practice as a physician assistant unless licensed under this chapter.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 43-17-02.2

**Law Implemented:** NDCC 43-17-02.2

**CHAPTER 50-03-04  
FLUOROSCOPY TECHNOLOGISTS**

[Repealed effective January 1, 2020]

**Section**

- ~~50-03-04-01 — Definitions~~
- ~~50-03-04-02 — Permit Required~~
- ~~50-03-04-03 — Initial Requirements for Permit~~
- ~~50-03-04-04 — Annual Permit Renewal~~
- ~~50-03-04-05 — Fees~~
- ~~50-03-04-06 — Scope of Practice~~
- ~~50-03-04-07 — Supervising Physician~~
- ~~50-03-04-08 — Supervision Contract Requirements~~
- ~~50-03-04-09 — Primary Supervising Physician's Responsibility~~
- ~~50-03-04-10 — Onsite Supervising Physician Required~~
- ~~50-03-04-11 — Requirements to Serve as an Onsite Supervising Physician~~
- ~~50-03-04-12 — Designation of Substitute Primary Supervising Physician~~
- ~~50-03-04-13 — Number of Technologists Under Physician's Supervision Limited~~
- ~~50-03-04-14 — Disciplinary Action~~
- ~~50-03-04-15 — Grounds for Disciplinary Action~~
- ~~50-03-04-16 — Communications~~

**TITLE 56**  
**OPTOMETRY, BOARD OF**



## JANUARY 2020

### CHAPTER 56-01-01

#### 56-01-01-01. Organization of board of optometry.

1. **History and function.** The 1903 legislative assembly passed legislation regulating the practice of optometry, codified as North Dakota Century Code chapter 43-13. This chapter establishes a seven-member board of optometry appointed by the governor. The board regulates the profession of optometry in the state.
2. **Board membership.** The board consists of seven members appointed by the governor. Five members are resident registered optometrists and have established optometric practices in the state. Members of the board serve five-year terms.
3. **Secretary Officers.** The board annually shall elect from its number a president and a secretary. The president shall preside at all meetings of the board. The secretary is a member of the board elected as secretary of the board. The secretary maintains records of board proceedings and is responsible for administration of the board's activities shall preside in the absence of the president.
4. **Inquiries.** Inquiries regarding the board ~~may~~and any submissions to the board or any officers of the board shall be addressed submitted to the ~~secretary~~board administrator:

Alan J. King, OP  
~~Secretary~~Board Administrator  
State Board of Optometry  
45 West Eighth Street  
Dickinson, ND 58601

**History:** Amended effective December 1, 1987; October 1, 1989; January 1, 1992; January 1, 2020.

**General Authority:** NDCC 28-32-02.1, 43-13-13

**Law Implemented:** NDCC 28-32-02.1

## ARTICLE 56-02 OPTOMETRIST LICENSURE

Chapter	
56-02-01	Optometrist Examination and Licensure
56-02-02	Continuing Education
56-02-03	Unethical Practices
56-02-04	Equipment, Examination, Prescription, and Fee Requirements
56-02-05	Certification - Pharmaceutical Agents, Controlled Substances, and Treatment of Glaucoma
56-02-06	Disciplinary Action - Procedure
<u>56-02-07</u>	<u>Prescription Drug Monitoring Program</u>

### CHAPTER 56-02-01 OPTOMETRIST EXAMINATION AND LICENSURE

Section	
56-02-01-01	Requirements for Licensure
56-02-01-02	Examination Questions Concerning Optometric Jurisprudence
56-02-01-03	Waiver of Practical Examination [Repealed]
56-02-01-04	Address of Each Optometric Office
56-02-01-05	Waiver of License Fee [Repealed]
56-02-01-06	Optometrist Compliance Verification
56-02-01-07	Licensure Fees
<u>56-02-01-08</u>	<u>Licensure Renewal</u>
<u>56-02-01-09</u>	<u>Military Spouse Licensure</u>

#### **56-02-01-01. Requirements for licensure.**

The board shall provide application forms to be completed by applicants and ~~set the date, time, place, and content of each examination for an initial license to practice optometry. Such~~ identify the examinations required of applicants and licensees to determine an individual's fitness under the law and this title for licensure. The board shall require applicants to pass the North Dakota state optometry law examination and to pass written national tests ~~and standards as are~~ deemed reasonably necessary ~~and uniformly applied~~ by the board ~~may be required by the board to determine a candidate's fitness under the law and this title for such licensure.~~ The board shall require applicants to take a practical examination and may require a licensee to take an examination on optometric knowledge and skills.

**History:** Amended effective December 1, 1987; April 1, 1990; January 1, 2020.

**General Authority:** NDCC 43-13-13

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

#### **56-02-01-04. Address of each optometric office.**

Registered optometrists shall at all times keep the ~~secretary of the North Dakota state~~ board of ~~optometry~~ informed of the correct street addresses of each of their offices and their correct mailing addresses.

**History:** Amended effective December 1, 1987; January 1, 2020.

**General Authority:** NDCC 43-13-13

**Law Implemented:** NDCC 43-13-11, 43-13-23

#### **56-02-01-07. Licensure fees.**

The following fees must be paid to the board:



1. A fee ~~fixed by the board, not to exceed~~of two hundred ~~fifty~~ dollars; must accompany an application for ~~examination for~~a license to practice optometry.
2. A fee ~~fixed by the board, not to exceed five~~of two hundred dollars; must be paid by any optometrist seeking to be licensed in this state by reciprocity.
3. A fee ~~fixed by the board, not to exceed five~~of two hundred dollars; must be paid annually for renewal of a license to practice optometry.

**History:** Effective April 1, 1990; amended effective January 1, 1995; January 1, 2020.

**General Authority:** NDCC 43-13-13

**Law Implemented:** NDCC 43-13-17, 43-13-18, 43-13-20

#### 56-02-01-08. Licensure renewal.

The board shall provide forms upon which applications for renewal must be submitted. Renewal applications must be submitted annually, during December of each year. A license may be renewed by the board upon the satisfactory submission of:

1. A completed application for renewal form.
2. The fee for renewal of a license.
3. Documents indicating the applicant for renewal has met continuing education requirements.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 43-13-13

**Law Implemented:** NDCC 43-13-20

#### 56-02-01-09. Military spouse licensure.

1. The board shall license individuals who meet the definition of military spouse set forth in North Dakota Century Code section 43-51-01 who meet the following requirements:
  - a. The military spouse demonstrates competency in optometry through methods or standards determined by the board which must include experience in optometry for at least two of the four years preceding application.
  - b. The board determines the issuance of the license will not substantially increase risk of harm to the public.
2. The board may require the submission of any information it deems necessary to assist it in making its determination. The board may deny a license if the board determines the applicant does not meet the above requirements. If the board determines the applicant substantially meets the above requirements, the board may issue a provisional license. When issuing a provisional license, the board may explain the steps necessary for the applicant to fully meet the above requirements and be issued a nonprovisional license. A provisional license must be automatically granted by the board if the board does not deny or grant the license within thirty days of application. The board may place conditions on any license or provisional license. Military spouses may not be assessed fees for the issuance of a license or provisional license under this section. A provisional license may be valid for up to two years. Provisional licenses expire if:
  - a. The board grants the application for license.
  - b. The board denies the application for licensure.
  - c. The provisional license expires.

d. The board revokes the provisional license to protect the public safety.

e. The applicant fails to meet any steps or conditions the board placed on the provisional license.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 43-13-13

**Law Implemented:** NDCC 43-51-11.1

## CHAPTER 56-02-02 CONTINUING EDUCATION

### Section

56-02-02-01	<del>Postgraduate</del> Continuing Educational Requirements
56-02-02-02	Compliance With Educational Requirements
56-02-02-03	Notification by Secretary of the Board [Repealed]
56-02-02-04	<del>Certificate of Compliance</del> Categories of Educational Requirements
56-02-02-05	Secretary to <del>Keep Records of</del> Verify Compliance

### 56-02-02-01. ~~Postgraduate~~Continuing educational requirements.

1. ~~As a condition of the annual renewal of the license to practice optometry, every registered optometrist~~The continuing educational requirements in effect through December 31, 2021, are as follows: every licensee shall have attended, during the three-year period preceding the date of renewal, fifty classroom hours of optometric educational programs required by North Dakota Century Code section 43-13-20, hereinafter called educational requirements.

2. The continuing educational requirements that take effect on January 1, 2022, are as follows:

a. Licensees shall submit a renewal application form in December of every year. When renewing a license in odd-numbered years the board shall confirm the licensee attended, during the two-year period preceding the date of renewal, no less than forty hours of optometric educational programs required by North Dakota Century Code section 43-13-20, hereinafter called educational requirements.

b. Licensees whose initial license was issued by the board during an odd-numbered year need not submit proof of continuing education when renewing the license in December of that first year of licensure.

c. Licensees whose initial license was issued by the board during an even-numbered year shall submit proof of completing twenty hours of continuing education when renewing the license in December of the subsequent odd-numbered year.

**History:** Amended effective December 1, 1987; April 1, 1990; November 1, 1997; July 1, 2008; January 1, 2020.

**General Authority:** NDCC 43-13-13

**Law Implemented:** NDCC 43-13-20

### 56-02-02-02. Compliance with educational requirements.

The required number of hours of educational requirements may be obtained by one or more of the following methods:

1. Educational programs, clinics, seminars, meetings, or study sessions without or within North Dakota ~~that may be~~ approved by the state board of optometry. A request for approval for a particular educational program, clinic, seminar, meeting, or study session must be made to the board at least thirty days prior to the educational meeting and the board shall either grant or deny its approval of such educational meeting within a reasonable period of time in advance of such educational meeting.
2. In situations of extenuating circumstances that result in a hardship and upon receipt by the board of satisfactory evidence of such circumstances, the board may approve ~~specific home study educational material for part or all of such~~extensions of the deadlines for meeting educational requirements.

**History:** Amended effective December 1, 1987; January 1, 1995; January 1, 2020.

**General Authority:** NDCC 43-13-20

**Law Implemented:** NDCC 43-13-20

**56-02-02-04. ~~Certificate of compliance~~ Categories of educational requirements.**

All optometrists licensed in this state must file with the secretary a certification of educational program compliance with the optometrist's annual license fee on forms which shall be provided by the secretary. No more than ~~twenty-five percent of the total~~ six hours ~~certified~~ certified within a two-year reporting cycle may be in practice management. No more than ~~twenty-five percent of the total~~ sixteen hours ~~certified~~ certified within a two-year reporting cycle may be earned by ~~correspondence~~ means other than in-person, face-to-face sessions. Submission of proof that a licensee has completed a course on cardiopulmonary resuscitation approved by the board, and that is deemed by the course provider as being valid through the two-year reporting cycle, may be accepted as the equivalent of two hours.

**History:** Amended effective December 1, 1987; January 1, 1995; January 1, 2020.

**General Authority:** NDCC 43-13-20

**Law Implemented:** NDCC 43-13-20

**56-02-02-05. Secretary to ~~keep records of~~ verify compliance.**

The secretary, or the secretary's designee, shall ~~keep accurate~~ verify records of the number of ~~classroom~~ hours which registered optometrists have credited toward meeting the educational requirements. At least six months prior to the end of any applicable registration period, the secretary shall give notice, ~~by certified mail,~~ to any registered optometrist who is six or more hours short of meeting the educational requirements for the ~~three-year~~ two-year period ending on the date of renewal. Such notice must advise the registered optometrist of the number of hours of optometric educational programs which must be completed within the balance of the ~~three-year~~ two-year period in order to comply with this section and North Dakota Century Code section 43-13-20.

**History:** Amended effective December 1, 1987; January 1, 2020.

**General Authority:** NDCC 43-13-13

**Law Implemented:** NDCC 43-13-20

**CHAPTER 56-02-07**  
**PRESCRIPTION DRUG MONITORING PROGRAM**

Section

56-02-07-01 Optometrist Prescribers and Use of the Prescription Drug Monitoring Program

56-02-07-02 Exceptions to the Review Requirement

**56-02-07-01. Optometrist prescribers and use of the prescription drug monitoring program.**

Subject to the exceptions described in section 56-02-07-02, prior to the initial prescribing of any controlled substance, including samples, an optometrist authorized by the drug enforcement administration to prescribe, administer, sign for, dispense, or procure pharmaceuticals shall authorize an employee to review or personally request and review the prescription drug monitoring program report for all available prescription drug monitoring program data on the patient within the previous twelve months, and shall do all of the following:

1. Assess a patient's drug monitoring program data every twelve months during the patient's treatment with a controlled substance.
2. Review the patient's prescription drug monitoring program data if the patient requests early refills or demonstrates a pattern of taking more than the prescribed dosage.
3. Review the patient's prescription drug monitoring program data if there is a suspicion of or a known drug overuse, diversion, or abuse by the patient.
4. Document the assessment of the patient's prescription drug monitoring program data.
5. Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.
6. Request and review prescription drug monitoring program data on the patient if the practitioner becomes aware a patient is receiving controlled substances from multiple prescribers.
7. Request and review the patient's prescription drug monitoring program data if the prescriber has a reasonable belief the patient may be seeking the controlled substance, in whole or in part, for any reason other than the treatment of an existing medical condition.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 43-13-01(5); 43-13-13

**Law Implemented:** NDCC 19-03.5-09; 43-13-13(2)

**56-02-07-02. Exceptions to the review requirement.**

An optometrist may not be required to review a patient's prescription drug monitoring program data if any of the following apply:

1. The controlled substance is prescribed or dispensed for a patient who is currently receiving hospice care.
2. The optometrist obtains a report through a board-approved risk assessment tool for health care providers that accesses patient prescription information from prescription drug monitoring program databases, analyzes the data, and provides a risk-based score that includes prescription drug monitoring program data.

3. The optometrist prescribes a controlled substance after the performance of a primary eye care procedure and no more than a seventy-two hour supply of the controlled substance is prescribed.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 43-13-01(5); 43-13-13

**Law Implemented:** NDCC 19-03.5-09; 43-13-13(2)

**TITLE 66**  
**PSYCHOLOGIST EXAMINERS, BOARD OF**





## JANUARY 2020

### 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, and 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 seven members appointed by the governor. 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 licensed under this chapter for at least five years.
  - c. At least one member must be currently engaged primarily in providing service directly to the public.
  - d. At least one member must be engaged primarily in teaching, training, or research.
4. **Board officers.** The board annually elects from its membership a president, vice president, and secretary.
5. **Inquiries.** Inquiries regarding the board may be addressed to the board office:

Board Office  
North Dakota State Board of Psychologist Examiners  
~~402 East Main Street, Suite 5~~ PO Box 1338  
Bismarck, ND ~~58501-4421~~ 58502-1338  
[www.ndsbpe.org](http://www.ndsbpe.org)  
[Email: boardoffice@ndsbpe.org](mailto:boardoffice@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; July 1, 2018; [January 1, 2020](#).

**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, <u>and</u> Industrial-Organizational Psychologists, <del>and Applied Behavior Analysts, or Registration of Applied Behavior Analysts</del> , From Other Jurisdictions - Expedited Licensing
<u>66-02-01-03.1</u>	<u>Military Spouse Licensure</u>
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 Allegations From the Same Individual
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 Professional Responsibility 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 <u>[Repealed]</u>
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 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; January 1, 2020.

**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, and industrial-organizational psychologists, ~~and applied behavior analysts, or registration of applied behavior analysts~~, from other jurisdictions - Expedited licensing.**

1. Licensing of psychologists, and industrial-organizational psychologists, ~~and applied behavior analysts, or registration of applied behavior analysts~~, who are licensed ~~or registered~~ by other jurisdictions must follow the procedures described in North Dakota Century Code sections 43-32-19.1 and 43-51-06 and one of the following requirements:
  - a. Expedited licensing. A license ~~or registration~~ may be granted to an individual licensed ~~or registered~~ in good standing in another jurisdiction if the board concludes it received verified documentation of:
    - (1) Graduation from an accredited program in the degree level of licensure sought in North Dakota;

- (2) Previously passed any national examination required by North Dakota;
  - (3) Documentation of all professional licensures held at any time in any field and current status of those licenses, including an explanation and documentation related to all disciplinary history; and
  - (4) Provide endorsements of application from behavioral health professionals that possess a current license, certification, registration, or other written authorization to practice from a state or provincial regulatory body, as approved by the board.
- 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; or industrial-organizational psychologists; ~~or applied behavior analysts~~.
2. An applicant for licensure pursuant to North Dakota Century Code chapters 43-32 and 43-51 must pass the North Dakota oral examination or, once developed, 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. Upon a showing of good cause, the board may grant extensions of provisional licenses ~~or registrations~~ for periods of up to six months. If an application for licensure is denied during the time an applicant holds a provisional license ~~or registration~~, the provisional license ~~or registration~~ expires on the date of the denial of the application for licensure.

**History:** Amended effective September 1, 2000; April 1, 2007; October 1, 2011; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2020.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-19.1, 43-51-06

#### 66-02-01-03.1. Military spouse licensure.

1. The board shall license individuals who meet the definition of military spouse set forth in North Dakota Century Code section 43-51-01 who, through the submission of a completed application initiation form, demonstrate the following:
  - a. The military spouse demonstrates competency in psychology or industrial-organizational psychology through methods or standards determined by the board which must include experience in psychology or industrial-organizational psychology for at least two of the four years preceding application.
  - b. The board determines the issuance of the license will not substantially increase risk of harm to the public.
2. The board may require the submission of any information it deems necessary to assist it in making its determination. The board may deny a license if the board determines the applicant does not meet the above requirements. If the board determines the applicant substantially meets the above requirements, the board may issue a provisional license. When issuing a provisional license, the board may explain the steps necessary for the applicant to fully meet the above requirements and be issued a nonprovisional license. A provisional license must be

automatically granted by the board if the board does not deny or grant the license within thirty days of application. The board may place conditions on any license or provisional license. Military spouses may not be assessed fees for the issuance of a license or provisional license under this section. A provisional license may be valid for up to two years. Provisional licenses expire if:

- a. The board grants the application for licensure.
- b. The board denies the application for licensure.
- c. The provisional license expires.
- d. The board revokes the provisional license to protect the public safety.
- e. The applicant fails to meet any steps or conditions the board placed on the provisional license.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-19.1, 43-51-11.1

#### **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 3 of North Dakota Century Code section 43-32-20.~~

**History:** Amended effective July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2020.

**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 any individual licensed ~~or registered~~ by the board or any applicant for licensure ~~or registration~~ by the board. ~~The behavior analyst certification board professional and ethical compliance code for behavior analysts, revised 2014, shall apply to 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; [January 1, 2020](#).

**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 allegations from the same individual.**

If an individual filed an allegation that was previously dismissed by the board, the board may dismiss subsequent allegations filed by that 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; [January 1, 2020](#).

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-27.1

**66-02-01-08. Fees.**

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:

Document or Process	Temporal Requirement or Deadline for Receipt by Board Office	Fee Amount
Supervisor form, submitted by any licensee supervising the practice of psychology residents <del>or registered applied behavior analysis</del> in North Dakota	Prior to beginning practice in North Dakota	\$0
Application initiation form	Accepted any time prior to completion of online application and prior to beginning practice in North Dakota	\$450
Online application	Completed prior to board review	Fee assessed by and payable to the association of state and provincial psychology boards
Provisional licensure letter <del>or provisional registration letter</del>	Issued by the board upon receipt of the completed application initiation form and fee	\$0
Psychology resident letter	Issued by the board upon receipt of the completed supervisor form, application initiation form, and fee	\$0
The national written examination for the professional practice of psychology	Occurs after applicant is approved by the board	A fee is assessed by and payable to test company and a fee is assessed by and payable to the testing site
Oral examination	Occurs after applicant is approved by the board or passes the national written examination	\$0
North Dakota professional responsibility examination	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	\$50

<del>Temporary</del> <del>limited</del> <u>Limited</u> practice application	Complete documentation must be received and approved by the board prior to practice	\$25
<del>Temporary</del> <del>limited</del> <u>Limited</u> practice certificate	Issued upon board approval of application	\$0
License renewal <del>or registration renewal</del> application	November 15, for renewal on January 1 of the next year	\$250
Late renewal application	Received after November 15 and prior to December 31 of the next year	\$100
Late request for an extension of time to submit continuing education documentation	Received after November 15 but prior to January 1 of subsequent year	\$100
Continuing education documentation form	Prior to November 15 of reporting cycle	\$0
Incomplete continuing education requirements	Continuing education completed after November 1 of reporting cycle	\$50
Official licensee <del>or registrant</del> verification, per record	Upon request of verification of licensure <del>or registration</del> by third parties	\$15
Official licensee <del>or registrant</del> verification, per record	Upon request of verification of licensure by regulatory body	\$0
Continuing education program approval application	Accepted any time from continuing education sponsors	\$25
Continuing education program approval application	Accepted from licensees <del>or registrants</del> prior to November 1 of next reporting cycle	\$0
Various service related	Prior to processing	Variable fees as set by third parties approved by the board, related to examinations, online application, and payment processing

**History:** Amended effective March 1, 1985; April 1, 1988; September 1, 2000; April 1, 2007; October 1, 2011; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2020.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-12, 43-32-13

#### **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, or 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 one board member 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 a subsequent board meeting vote to confirm passage.

**History:** Effective September 1, 2000; amended effective February 1, 2002; April 1, 2007; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2020.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20, 43-32-23

**66-02-01-10. Guidelines for professional responsibility examinations.**

The professional responsibility examination will be scheduled as appropriate but not less than twice a year. The examination shall assess the applicant's knowledge of North Dakota law regulating the practice of psychology, ~~or 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 in either oral or written form. The oral examination will be administered by an examination committee made up of at least two board members and any other licensed psychologist ~~or licensed applied behavior analyst~~ whom the board sees fit to add to the examining committee. The examination committee will use a structured oral examination, will record the applicants' answers, and will discuss the results. 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 present at the meeting vote to confirm passage.

**History:** Effective March 1, 1985; amended effective April 1, 1988; April 1, 2007; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2020.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20, 43-32-22, 43-32-23, 43-32-34

**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, 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~~four 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 the board determines the applicant to be eligible for licensure upon completion of examinations and supervised experience requirements. The applicant will be informed of the results and may be re-examined at a subsequent examination upon again paying any required examination fee.
  - b. A psychology resident or an industrial-organizational psychology resident who has passed the national written examination may sit for the professional responsibility examination approved by the board. The applicant will be informed of the results and may be re-examined at a subsequent examination upon again paying any required examination fee.
  - c. The psychology resident or an industrial-organizational psychology resident and supervising psychologist or psychologists must update the online application report all completed supervised postdoctoral experience 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 three years from the date the residency is issued.
3. A psychology resident or industrial-organizational psychology resident must specify that individual's professional title in reports, letters, business cards, and public presentations, and inform service recipients of the supervisor's identity and contact information for the services provided.
  4. Supervising psychologists of psychology residents must 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 their supervisee undertakes. All supervising psychologists must meet the continuing education requirements in section 66-03-01-04.
  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; July 1, 2018; [January 1, 2020](#).

**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, or 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; [January 1, 2020](#).

**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.**

[Repealed effective January 1, 2020.](#)

- ~~1. The board may grant an applied behavior analyst license to an applicant 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 or verified 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, or the North Dakota professional responsibility examination once developed and approved by the board.~~
- ~~2. The board may grant an applied behavior analyst registration to an applicant 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 or verified 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.~~~~~~
  - ~~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 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.~~

~~d. The applicant has passed the North Dakota oral examination or, the North Dakota professional responsibility examination once developed and approved by the board.~~

~~**History:** Effective October 1, 2012; amended effective April 1, 2016; July 1, 2018.~~

~~**General Authority:** NDCC 43-32-08~~

~~**Law Implemented:** NDCC 43-32-34~~

**66-02-01-16. Limited practice without a license.**

Upon prior written application to and approval by the board, a psychologist; or industrial-organizational psychologist; ~~or applied behavior analyst~~ licensed in good standing in another jurisdiction may practice psychology; or industrial-organizational psychology; ~~or applied behavior analysis~~ in North Dakota for no more than thirty full or partial days per calendar year. The application must include all of the following:

1. A verification from the licensing authority in the other jurisdiction that the applicant is licensed in good standing.
2. A description of the nature of the services to be provided.
3. An explanation of when the services are to be provided.
4. A fee of twenty-five dollars.

~~**History:** Effective July 1, 2012; amended effective January 1, 2020.~~

~~**General Authority:** NDCC 43-32-08~~

~~**Law Implemented:** NDCC 43-32-30, 43-51-05~~

## CHAPTER 66-03-01

### 66-03-01-01. Continuing education.

Every psychologist, or industrial-organizational psychologist, ~~applied behavior analyst, and registered applied behavior analyst~~ shall complete continuing education credits relevant to the practice of psychology, or 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 that began on November 1, 1992.

**History:** Effective February 1, 1995; amended effective April 1, 2007; July 1, 2012; April 1, 2016; January 1, 2020.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-08.1, 43-32-08.2

### 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. 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 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, 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; January 1, 2020.

**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~~ 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.
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 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; [January 1, 2020](#).

**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 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 fifteenth of the reporting year. If the extension request is received after November fifteenth 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. 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, 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. Expired license ~~or registration~~. A license ~~or registration~~ that is 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~~ 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; July 1, 2018; [January 1, 2020](#).

**General Authority:** NDCC 43-32-08  
**Law Implemented:** NDCC 43-32-08.1, 43-32-08.2



**TITLE 67**  
**PUBLIC INSTRUCTION, SUPERINTENDENT OF**





JANUARY 2020

CHAPTER 67-08-01  
HOMELESS CHILDREN EDUCATION

Section

67-08-01-01	Purpose
67-08-01-02	<del>Definition</del> <u>Definitions</u>
67-08-01-03	Responsibility
<u>67-08-01-04</u>	<u>Accountability</u>

**67-08-01-01. Purpose.**

The purpose of this chapter is to facilitate the enrollment of homeless children of school age in the public school districts of North Dakota to enable them to have access to a free, appropriate public school education, and to be free of being stigmatized on the basis of their status as homeless.

**History:** Effective May 1, 1992; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-47-01.115.1-19-08, 28-32-02~~

**Law Implemented:** NDCC ~~15-47-01.115.1-19-08~~

**67-08-01-02. ~~Definition~~ Definitions.**

~~— In this article and for the purposes of North Dakota Century Code section 15-47-01.1, "homeless child or youth" means a child or youth between the ages of six and eighteen who lacks a fixed, regular, and adequate nighttime residence and includes a child or youth who is living on the street, in a car, tent, abandoned building, some other form of shelter not designed as a permanent home, or who is living in a community shelter facility.~~

1. "District of origin" means the public school district in North Dakota in which the child was last enrolled or which the child last attended when permanently housed.

2. "Guardian" means a person of majority age with whom a homeless child or youth of school age is living or a person of majority age who has accepted responsibility for the homeless child or youth, whether or not the person has legal guardianship over the child or youth.

3. "Homeless child or youth" means a child or youth from the age of three through twenty-one who lacks a fixed, regular, and adequate nighttime residence and includes the following:

- a. A child or youth who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; is living in a motel, hotel, trailer park, or camping grounds due to the lack of alternative adequate accommodations; is living in an emergency or transitional shelter; or is abandoned in a hospital;

- b. A child or youth who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- c. A child or youth who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting; or
- d. A migratory child or youth who qualifies as homeless because the child or youth is living in circumstances described in subdivisions a, b, and c of subsection 3.

4. "Preschool child" means a child who is three, four, or five years of age before September fifteenth of the current school year.

5. "School of origin" means the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool. When the child or youth completes the final grade level served by the school of origin, the term "school of origin" includes the designated receiving school at the next grade level for all feeder schools.

6. "Unaccompanied youth" means a youth not in the physical custody of a parent or guardian.

**History:** Effective May 1, 1992; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-47-01.115.1-19-08~~, 28-32-02

**Law Implemented:** NDCC ~~15-47-01.115.1-19-08~~

### **67-08-01-03. Responsibility.**

~~—A public school district must:~~

- ~~1. Provide an appropriate free public school education to a homeless child or youth who is found within the district, whether or not the child or youth is enrolled in school.~~
- ~~2. Post information at community shelters and other locations in the district (where services or assistance is provided to the homeless) encouraging homeless children of school age to enroll in the public school.~~
- ~~3. Examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of homeless children, consistent with this chapter.~~

Each district in North Dakota shall:

- 1. Locate and identify children and youth experiencing homelessness within the district, whether or not they are enrolled;
- 2. Post notice of rights, that provides information regarding the educational rights of children and youth experiencing homelessness, in all school buildings as well as other locations in the district where services or assistance is provided to those experiencing homelessness.
- 3. Examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of children or youth experiencing homelessness. Examination and revision include identifying and removing barriers that prevent such children and youth from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with state, local, and school policies. Examination and revision also include ensuring homeless children and youth who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the state and local levels. School

districts are encouraged to cooperate with agencies and organizations for the homeless to explore comprehensive, equivalent alternative educational programs and support services for children and youth experiencing homelessness to implement the intent of these rules.

4. Enact a policy prohibiting the segregation of children and youth experiencing homelessness from other students enrolled in the public school district.
5. Immediately enroll a child or youth experiencing homelessness, pending resolution of any dispute regarding in which school the child or youth shall be enrolled.
6. Determine school placement based on the best interests of a child or youth experiencing homelessness. Each district, to the extent feasible, shall keep a child or youth who is experiencing homelessness in the school of origin, except when doing so is contrary to the wishes of the child's or youth's parents or guardian. If the child or youth becomes permanently housed during an academic year, enrollment must continue in the school of origin for the remainder of that academic year unless the parents agree otherwise.
7. Designate an appropriate staff person as local homeless liaison who is able and has been trained to carry out the following duties:
  - a. Ensure children and youth experiencing homelessness are identified by school personnel through outreach and coordination activities with other entities and agencies;
  - b. Ensure children and youth experiencing homelessness are enrolled in, and have a full and equal opportunity to succeed in, schools of the district;
  - c. Ensure families, children and youth experiencing homelessness receive educational services for which they are eligible, including services through head start programs, including early head start programs, under the Head Start Act [42 U.S.C. 9831, et seq.], early intervention services under part C of the Individuals With Disabilities Education Act [20 U.S.C. 1431, et seq.], and other preschool programs administered by the district, and referrals to health care services, dental services, mental health services, and other appropriate services;
  - d. Ensure families and children and youth experiencing homelessness receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;
  - e. Ensure the parents or guardians of children and youth experiencing homelessness are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
  - f. Ensure public notice of the educational rights of children and youth experiencing homelessness are disseminated in locations frequented by parents or guardians of such children and youth, and unaccompanied youth, including schools, shelters, public libraries, and soup kitchens, in a manner and form understandable to the parents and guardians of children and youth experiencing homelessness and unaccompanied youth;
  - g. Ensure enrollment disputes are mediated in accordance with 42 U.S.C. 11432(g)(3)(E), which requires the following:
    - (1) The child or youth must immediately be enrolled in the school in which enrollment is sought pending resolution of the dispute;
    - (2) The parent or guardian of the child or youth must be provided written explanation of the school's decision regarding school selection or enrollment, including the rights of the parents, guardian, or youth to appeal the decision;

(3) In the case of an unaccompanied youth, the local educational agency liaison shall ensure the youth is enrolled immediately in the school in which enrollment is sought pending resolution of the dispute.

h. Ensure the parent or guardian of a child or youth experiencing homelessness, or the unaccompanied youth, is informed fully of all transportation services and is assisted in accessing transportation to the school of enrollment;

i. Ensure school personnel receive professional development and other support;

j. Ensure unaccompanied youth:

(1) Are enrolled in school;

(2) Have opportunities to meet the same challenging academic standards as are established for other children and youth, including implementation of the procedures under the Every Student Succeeds Act; and

(3) Are informed of their status as an independent student under Section 480 of the Higher Education Act of 1965 [20 U.S.C. 1087vv] and that the youth may obtain assistance from the local educational agency liaison to receive verification of such status for the purposes of the free application for federal student aid described in Section 483 of such Act [20 U.S.C. 1090]; and

k. Coordinate and collaborate with state coordinator and community and school personnel responsible for the provision of education and related services to children and youth experiencing homelessness.

**History:** Effective May 1, 1992; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-47-01.1~~15.1-19-08, 28-32-02.

**Law Implemented:** NDCC ~~15-47-01.1~~15.1-19-08; 42 USC 9831, et seq., 20 USC 1431, et seq., 20 USC 1087vv, 20 U.S.C. 1090, P.L. 114-95, 42 USC 11432(g)(3)(E)

#### **67-08-01-04. Accountability.**

A district shall include homeless students in its academic assessment and accountability system under the federal Every Student Succeeds Act [P.L. 114-95]. A district shall report disaggregated data regarding the academic achievement and graduation rates for homeless children, as required by Section 1111 of the Every Student Succeeds Act.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-19-08, 28-32-02

**Law Implemented:** NDCC 15.1-19-08; P.L. 114-95

## ARTICLE 67-11 EDUCATION PROFESSIONAL CREDENTIALS

Chapter	
67-11-01	Driver Education Instructor's Credential [Repealed]
67-11-02	Elementary Principal's Credential [Repealed]
67-11-03	Reading Credentials [Repealed]
67-11-03.1	Reading and Mathematics Credentials [Repealed]
67-11-03.2	Reading and Mathematics Credentials [Repealed]
67-11-03.3	Title I Coordinator Credential [Repealed]
<u>67-11-03.4</u>	<u>Title I Coordinator Credential</u>
67-11-04	Library Media Credential
67-11-05	School Counselor Credentials
67-11-06	Secondary Principal's Credential [Repealed]
67-11-07	Superintendent's Credential
67-11-08	Special Education Director's Credential
67-11-09	Early Childhood Special Education Teacher Credential <u>[Repealed]</u>
67-11-10	Emotional Disturbance Teacher Credential <u>[Repealed]</u>
67-11-11	Gifted and Talented Teacher Credential <u>[Repealed]</u>
67-11-12	Physical Disabilities Teacher Credential <u>[Repealed]</u>
67-11-13	Specific Learning Disabilities Teacher Credential <u>[Repealed]</u>
67-11-14	Certificate of Completion for Paraprofessionals
67-11-15	School Psychology Intern Approval
67-11-16	Special Education Strategist Credential <u>[Repealed]</u>
67-11-17	Mental Retardation Teacher Credential <u>[Repealed]</u>
67-11-18	Credential Requirement for Teachers of the Visually Impaired <u>[Repealed]</u>
67-11-19	Credential Requirement for Teachers of Students Who Are Deaf or Hard of Hearing <u>[Repealed]</u>
67-11-20	Certificate of Completion for Speech-Language Pathology Paraprofessionals
67-11-21	Principal Credentials

### **CHAPTER 67-11-03.4** **TITLE I COORDINATOR CREDENTIAL**

#### Section

<u>67-11-03.4-01</u>	<u>Requirements for a Title I Coordinator Credential</u>
<u>67-11-03.4-02</u>	<u>Duties of Title I Coordinators</u>
<u>67-11-03.4-03</u>	<u>Application for Title I Coordinator Credentials</u>
<u>67-11-03.4-04</u>	<u>Renewal of Title I Coordinator Credentials</u>

#### **67-11-03.4-01. Requirements for a title I coordinator credential.**

1. The department issues credentials for title I coordinators. A title I coordinator credential is issued to coincide with the period for which the individual is licensed to teach or approved to teach by the North Dakota education standards and practices board; however, an individual holding a lifetime educator's professional license shall renew the individual's credential every five years. A title I coordinator credential may be obtained to recognize the qualifications and duties of persons who coordinate title I programs but are not paid with title I funds. A title I coordinator credential is available for individuals paid to any extent with title I funds who assume duties as described in subsection 2.

2. To obtain a title I coordinator credential, a person must:

a. Hold a valid North Dakota educator's professional license;

b. Have a major or endorsement in elementary, middle school, or secondary education; and

c. Have one of the following:

(1) A master's degree in an educational field from a state-approved program; or

(2) Hold an elementary, middle school, or secondary title I teacher's credential issued under this article and have a minimum of three years of title I teaching experience.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-02-16(8); 20 USC 6319

**Law Implemented:** NDCC 15.1-02-16(8); 20 USC 6319

#### **67-11-03.4-02. Duties of title I coordinators.**

A title I coordinator performs the job duties of coordinating a districtwide or school title I program, including development of budgets, preparation of a consolidated title I application, training title I staff, submitting title I reports, planning and conducting parent and family engagement activities, facilitating professional development, conducting the annual evaluation of the program, and also may supervise one or more title I teachers.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-02-16(8); 20 USC 6319

**Law Implemented:** NDCC 15.1-02-16(8); 20 USC 6319

#### **67-11-03.4-03. Application for title I coordinator credentials.**

An applicant for a title I coordinator credential must submit an online application.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-02-16(8); 20 USC 6319

**Law Implemented:** NDCC 15.1-02-16(8); 20 USC 6319

#### **67-11-03.4-04. Renewal of title I coordinator credentials.**

1. A credential issued under this chapter is valid only while the credentialed individual holds a valid North Dakota educator's professional license.

2. An applicant for renewal of a title I coordinator credential who holds a valid five-year North Dakota educator's professional license or a life license shall:

a. Renew the credential prior to the expiration of the applicant's educator's professional license, or every five years if the applicant has a life license;

b. Submit an online application; and

c. Participate in department-sponsored title I trainings as evidenced by a certificate of attendance at four or more title I workshops since the date the current credential was issued.

3. An applicant for renewal of a title I coordinator credential who holds a valid two-year North Dakota educator's professional license shall:

a. Renew the credential prior to the expiration of the applicant's educator's professional license;

b. Submit an online application; and

c. Participate in department-sponsored title I trainings as evidenced by a certificate of attendance at two or more title I workshops since the date the current credential was issued.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-02-16(8); 20 USC 6319

**Law Implemented:** NDCC 15.1-02-16(8); 20 USC 6319

**CHAPTER 67-11-09  
EARLY CHILDHOOD SPECIAL EDUCATION TEACHER CREDENTIAL**

[Repealed effective January 1, 2020]

**Section**

- ~~67-11-09-01 — Credentials Required~~
- ~~67-11-09-02 — Issuing Agency~~
- ~~67-11-09-03 — Credential Standards~~
- ~~67-11-09-04 — Types of Credentials~~
- ~~67-11-09-05 — Application Process~~
- ~~67-11-09-06 — Renewal Requirements~~
- ~~67-11-09-07 — Notification of Denial~~
- ~~67-11-09-08 — Effective Dates~~



**CHAPTER 67-11-10  
EMOTIONAL DISTURBANCE TEACHER CREDENTIAL**

[Repealed effective January 1, 2020]

**Section**

- ~~67-11-10-01 — Credentials Required~~
- ~~67-11-10-02 — Issuing Agency~~
- ~~67-11-10-03 — Credential Standards~~
- ~~67-11-10-04 — Types of Credentials~~
- ~~67-11-10-05 — Application Process~~
- ~~67-11-10-06 — Renewal Requirements~~
- ~~67-11-10-07 — Notification of Denial~~
- ~~67-11-10-08 — Effective Dates~~

**CHAPTER 67-11-11  
GIFTED AND TALENTED TEACHER CREDENTIAL**

[Repealed effective January 1, 2020]

**Section**

- ~~67-11-11-01 — Credentials Required~~
- ~~67-11-11-02 — Issuing Agency~~
- ~~67-11-11-03 — Credential Standards~~
- ~~67-11-11-04 — Types of Credentials~~
- ~~67-11-11-05 — Application Process~~
- ~~67-11-11-06 — Renewal Requirements~~
- ~~67-11-11-07 — Notification of Denial~~
- ~~67-11-11-08 — Effective Dates~~

**CHAPTER 67-11-12  
PHYSICAL DISABILITIES TEACHER CREDENTIAL**

[Repealed effective January 1, 2020]

**Section**

- ~~67-11-12-01 — Credentials Required~~
- ~~67-11-12-02 — Issuing Agency~~
- ~~67-11-12-03 — Credential Standards~~
- ~~67-11-12-04 — Types of Credentials~~
- ~~67-11-12-05 — Application Process~~
- ~~67-11-12-06 — Renewal Requirements~~
- ~~67-11-12-07 — Notification of Denial~~
- ~~67-11-12-08 — Effective Dates~~

**CHAPTER 67-11-13  
SPECIFIC LEARNING DISABILITIES TEACHER CREDENTIAL**

[Repealed effective January 1, 2020]

**Section**

- ~~67-11-13-01 — Credentials Required~~
- ~~67-11-13-02 — Issuing Agency~~
- ~~67-11-13-03 — Credential Standards~~
- ~~67-11-13-04 — Types of Credentials~~
- ~~67-11-13-05 — Application Process~~
- ~~67-11-13-06 — Renewal Requirements~~
- ~~67-11-13-07 — Notification of Denial~~
- ~~67-11-13-08 — Effective Dates~~

**CHAPTER 67-11-14**  
**CERTIFICATE OF COMPLETION FOR PARAPROFESSIONALS**

Section

67-11-14-00.1	Definitions
67-11-14-01	Certificate of Completion Required
67-11-14-02	Issuing Agency
67-11-14-03	Certificate of Completion Standards
67-11-14-04	Verification Process - Exclusion
67-11-14-05	Effective Dates <u>[Repealed]</u>
67-11-14-06	Reconsideration
67-11-14-07	Use of Federal Rules and Policies

**67-11-14-01. Certificate of completion required.**

Paraprofessionals providing instructional support in a program supported with title I funds and paraprofessionals serving students with disabilities, except paraprofessionals providing services only in the speech-language pathology discipline, must hold the North Dakota certificate of completion for their respective discipline. Paraprofessionals providing instructional services in a program supported with title I funds must obtain the North Dakota certificate of completion immediately upon hire.

**History:** Effective February 1, 2000; amended effective December 1, 2003; January 1, 2020.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-14-05. Effective dates.**

Repealed effective January 1, 2020.

- ~~1. Effective on December 1, 2003, all certificates will be issued based on the standards and procedures provided in this chapter. Paraprofessionals previously authorized to provide instructional paraprofessional services who continue to work in the same school district must comply with this chapter by July 1, 2005, or must receive an extension from the department, as outlined in subsection 2. Paraprofessionals previously authorized to provide instructional paraprofessional services, who initially begin employment in another school district on or after January 8, 2002, and paraprofessionals initially providing instructional paraprofessional services on or after January 8, 2002, must comply with this chapter immediately.~~
- ~~2. Paraprofessionals previously authorized to provide paraprofessional services who continue to work in the same school district may seek an extension of time to complete their training if the person seeking the extension:~~
- ~~a. Was providing paraprofessional services in the same school district since January 7, 2002;~~
  - ~~b. Is pursuing the certificate of completion through one of the options provided in subsection 2 of section 67-11-14-03;~~
  - ~~c. Submits a written plan of study or an assurance to the department documenting that the person will qualify for the certificate of completion by July 1, 2006; and~~
  - ~~d. On or before July 1, 2006, provides the department with the following items:~~
    - ~~(1) A completed application for paraprofessional certificate of completion form, including the applicant's name, address, telephone number, date of application, type of credential applied for, employment information, and the applicant's signature; and~~

~~(2) A copy of the applicant's official transcripts showing successful completion of an education curriculum as provided in subsection 2 of section 67-11-14-03, or documentation of the applicant's passing score on a state-approved mathematics, reading, and writing assessment.~~

~~An extension must be approved by the department before a paraprofessional may work in a program supported by title I funds. An extension under this subsection is valid only until July 1, 2006.~~

~~**History:** Effective February 1, 2000; amended effective December 1, 2003; July 1, 2006.~~

~~**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09~~

~~**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(14); 20 USC 6319(c)-(f); 34 CFR 200.58~~

**CHAPTER 67-11-16  
SPECIAL EDUCATION STRATEGIST CREDENTIAL**

[Repealed effective January 1, 2020]

**Section**

- ~~67-11-16-01 — Credentials Required~~
- ~~67-11-16-02 — Issuing Agency~~
- ~~67-11-16-03 — Credential Standards~~
- ~~67-11-16-04 — Types of Credentials~~
- ~~67-11-16-05 — Application Process~~
- ~~67-11-16-06 — Renewal Requirements~~
- ~~67-11-16-07 — Notification of Denial~~

**CHAPTER 67-11-17  
MENTAL RETARDATION TEACHER CREDENTIAL**

[Repealed effective January 1, 2020]

**Section**

- ~~67-11-17-01 — Credentials Required~~
- ~~67-11-17-02 — Issuing Agency~~
- ~~67-11-17-03 — Credential Standards~~
- ~~67-11-17-04 — Types of Credentials~~
- ~~67-11-17-05 — Application Process~~
- ~~67-11-17-06 — Renewal Requirements~~
- ~~67-11-17-07 — Notification of Denial~~



**CHAPTER 67-11-18**  
**CREDENTIAL REQUIREMENT FOR TEACHERS OF THE VISUALLY IMPAIRED**

[Repealed effective January 1, 2020]

**Section**

- ~~67-11-18-01~~ — ~~Credentials Required~~
- ~~67-11-18-02~~ — ~~Issuing Agency~~
- ~~67-11-18-03~~ — ~~Credential Standards~~
- ~~67-11-18-04~~ — ~~Validity of Credentials~~
- ~~67-11-18-05~~ — ~~Application Process~~
- ~~67-11-18-06~~ — ~~Renewal Requirements~~
- ~~67-11-18-07~~ — ~~Notification of Denial~~

**CHAPTER 67-11-19  
CREDENTIAL REQUIREMENT FOR TEACHERS OF STUDENTS WHO ARE DEAF OR  
HARD OF HEARING**

[Repealed effective January 1, 2020]

Section

- ~~67-11-19-01 — Credentials Required~~
- ~~67-11-19-02 — Issuing Agency~~
- ~~67-11-19-03 — Credential Standards~~
- ~~67-11-19-04 — Validity of Credentials~~
- ~~67-11-19-05 — Application Process~~
- ~~67-11-19-06 — Renewal Requirements~~
- ~~67-11-19-07 — Notification of Denial~~

## CHAPTER 67-13-01

### 67-13-01-05. Cooperative program.

The school district cooperative must address the following:

1. A plan for providing unduplicated grade level services for at least four grade levels, unless the school district has taxable property located in the same city as the other school district under the cooperative plan;
2. A plan for sharing administration, at a minimum a shared superintendent unless the school district has taxable property located in the same city as the other school district under the cooperative plan;
3. A plan for sharing cooperative expenditures between the member districts;
4. A plan for sharing cooperative revenues upon termination of the cooperative; and
5. A plan for the changing of the agreement.

**History:** Effective May 1, 1999; amended effective January 1, 2018; January 1, 2020.

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

**Law Implemented:** NDCC 15.1-27-16

## ARTICLE 67-21 SCHOOL FOOD PROGRAMS

Chapter	
67-21-01	School Lunch Program
67-21-02	School Breakfast Program
67-21-03	Special Milk Program
67-21-04	Child and Adult Care Food Program
67-21-05	Summer Food Service Program
67-21-06	Food Distribution Program
67-21-07	Food Distribution on Indian Reservations
67-21-08	The Emergency Food Assistance Program
<u>67-21-09</u>	<u>The Commodity Supplemental Food Program</u>
<u>67-21-10</u>	<u>Fresh Fruit and Vegetable Program</u>

### CHAPTER 67-21-01 SCHOOL LUNCH PROGRAM

Section	
67-21-01-01	Purpose
67-21-01-02	State Agency
67-21-01-03	Use of Federal Rules and Policies
67-21-01-04	Eligibility
67-21-01-05	Application
67-21-01-06	Monitoring
67-21-01-07	Reimbursement Claims
67-21-01-08	Meal Costs
67-21-01-09	Menus
67-21-01-10	Food Distribution
67-21-01-11	Health and Safety
67-21-01-12	Fiscal Management
67-21-01-13	<del>Operating Report</del> <u>Procurement Standards</u>

#### **67-21-01-06. Monitoring.**

The department of public instruction will conduct onsite reviews of local agency program operations ~~once every four years~~ as specified by federal regulations for the purpose of providing guidance and technical assistance to local agency food service programs. All such reviews ~~will~~ must include the assessment of claims by the state agency for any overpayment and appropriate corrective action.

**History:** Effective January 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210; 7 CFR 210.18

#### **67-21-01-08. Meal costs.**

The local agency has complete discretion in establishing student meal prices. However, if student payments are required, they cannot exceed forty cents for a reduced-price lunch. Qualifying students shall receive lunch free or at a reduced price. Local agencies must agree to establish and use fair hearing procedures as stipulated in the free and reduced-price policy for households contesting the agency's decision regarding an application for reduced-price or free meals. Local agencies under alternative provisions 2 and 3 for annual determinations of eligibility for free and reduced-price school meals and daily meal count by type, or the community eligibility provision may not charge for meals.

**History:** Effective January 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.14; 7 CFR 245

#### **67-21-01-10. Food distribution.**

Local participating agencies may receive ~~commodities provided~~ United States department of agriculture foods or the value of entitlement through the federal food distribution program through ~~two~~four categories:

1. Entitlement ~~commodities~~United States department of agriculture foods, which are ~~commodities~~foods that local agencies are entitled to receive under the regulation and are distributed by the state contracted warehouse and transportation facility.
2. ~~Bonus commodities, which are commodities that exceed the entitlement limits, are periodic, and are free to local agencies~~A portion of United States department of agriculture food entitlements allocated by local agencies into the department of defense fresh fruit and vegetable program. Local agencies place orders through the department of defense fruit and vegetable ordering and reporting system and receive deliveries from the nationally contracted distributor.
3. A portion of their United States department of agriculture food entitlements allocated by local agencies into the net off invoice value pass through system. Local agencies order state procured and approved net off invoice United States department of agriculture food items directly from their contracted distributor.
4. Bonus United States department of agriculture foods, which are foods offered by United States department of agriculture and do not deduct from United States department of agriculture food entitlement. These foods are periodic and only available if offered by the United States department of agriculture.

The amount of ~~commodities for both categories~~United States department of agriculture food entitlement to which local agencies are entitled is determined by 7 CFR 210 and 7 CFR 250 and the availability of the ~~commodities~~United States department of agriculture foods.

**History:** Effective January 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC 15-54-02, 15-54-03, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.4

#### **67-21-01-12. Fiscal management.**

Each local agency must maintain a financial management system to account for revenues and expenditures of its food service program. In local agencies that are public schools, ledgers must be ~~designed to identify revenue and expenditure codes from the North Dakota school district financial report, which is~~reported and available at the department of public instruction.

**History:** Effective January 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC 15-54-04, 15-54-05, 28-32-02

**Law Implemented:** NDCC 15-54-01; 7 CFR 210.14

#### **67-21-01-13. ~~Operating report~~Procurement standards.**

~~An operating form, available at the department of public instruction, must be filed by the local agency no later than July fifteenth of each year and before the renewal agreement for the subsequent year may be approved. The form allows for the reporting of revenue, expenses, and beginning and ending cash balances.~~Local agencies shall comply with the requirements of the office of management and budget guidance for grants and agreements, 2 CFR 200 subpart D, concerning the procurement of supplies, food, equipment, and other services with program funds.

**History:** Effective January 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-05~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-01~~15.1-35-03, 15.1-35-05; 2 CFR 200 subpart D, 7 CFR 210.15

## CHAPTER 67-21-02

### 67-21-02-06. Monitoring.

The department of public instruction shall conduct onsite reviews of local agency program operations ~~once every four years~~ as specified by federal regulations for the purpose of providing guidance and technical assistance to local agency food service programs. All such reviews must include the assessment of claims by the state agency for any overpayment and appropriate corrective action.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-05~~ 15.1-35-05, 28-32-02

**Law Implemented:** NDCC ~~15-54-05~~ 15.1-35-05; 7 CFR 220.15

### 67-21-02-08. Meal costs.

The local agency has complete discretion in establishing student meal prices. However, if student payments are required, they may not exceed thirty cents for a reduced-price breakfast. Qualifying students must receive breakfast free or at a reduced price. Local agencies must agree to establish and use fair hearing procedures as stipulated in the free and reduced-price policy for households contesting the agency's decision regarding an eligibility determination on an application for reduced-price or free meals. Local agencies under alternative provisions 2 and 3 for annual determinations of eligibility for free and reduced-price school meals and daily meal count by type, or the community eligibility provision are not allowed to charge for meals.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~ 15.1-35-03, 15.1-35-05; 7 CFR 210.19

### 67-21-02-10. Procurement standards.

Local agencies must comply with the requirements of the office of management and budget ~~circular 102 and the department's uniform federal assistance regulation, 7 CFR 3015 subpart S~~ guidance for grants and agreements, 2 CFR 200 subpart D, concerning the procurement of supplies, food, equipment, and other services with program funds.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~ 15.1-35-03, 15.1-35-05; 2 CFR 200 subpart D, 7 CFR 220.16

**CHAPTER 67-21-03  
SPECIAL MILK PROGRAM**

Section	
67-21-03-01	Purpose
67-21-03-02	State Agency
67-21-03-03	Use of Federal Rules and Policies
67-21-03-04	Eligibility
67-21-03-05	Application
67-21-03-06	Monitoring
67-21-03-07	Reimbursement Claims
<u>67-21-03-08</u>	<u>Health and Safety</u>

**67-21-03-08. Health and safety.**

The local agency food service program shall adhere to state and local health and food safety requirements, as adopted by the state department of health, overviews of which are available from the department of public instruction.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 15.1-35-08, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 7 CFR 210.13



## CHAPTER 67-21-04 CHILD AND ADULT CARE FOOD PROGRAM

### Section

67-21-04-01	Purpose
67-21-04-02	State Agency
67-21-04-03	Use of Federal Funds
67-21-04-04	Eligibility
67-21-04-05	Application
67-21-04-06	Monitoring
67-21-04-07	Reimbursement Claims
67-21-04-08	Meal Service
67-21-04-09	Food Distribution
67-21-04-10	Health and Safety
67-21-04-11	Fiscal Management
67-21-04-12	Family Day Care Home Sponsoring Organization
<u>67-21-04-13</u>	<u>Procurement Standards</u>

### **67-21-04-04. Eligibility.**

Local agencies eligible to participate in the program include:

1. An adult day care center, licensed or approved, independent or under the auspices of a sponsoring organization.
2. Public or private nonprofit child care centers, or any proprietary title XX centers that meet federal requirements.
3. A child care facility that is a licensed or approved child care center, outside-school-hours care center, or day care home under the auspices of a sponsoring organization.
4. A sponsoring organization that is a public or nonprofit private organization responsible for the administration of the food program in:
  - a. One or more day care homes;
  - b. A child care center, outside-school-hours care center, or adult day care center;
  - c. Two or more child care centers, outside-school-hours care centers, or adult day care centers; or
  - d. Any combination of child care centers, adult day care centers, day care homes, or outside-school-hours care centers.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~ 15.1-35-03, 15.1-35-05; 7 CFR 226.2

### **67-21-04-05. Application.**

Application forms are available at the Department of Public Instruction, 600 East Boulevard Avenue, Department 201, Bismarck, North Dakota 58505-0440. The application forms include:

1. A program agreement, which includes:
  - a. A provision that the institution shall accept final financial and administrative responsibility for management of an effective food service and comply with all program requirements;

- b. Verification that the local agency will comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and all provisions required by the implementing regulations of the United States department of agriculture. Signature by an authorized representative of the local agency will serve as verification;
  - c. Verification of agreement that the local agency agrees to compile data, maintain records, and submit reports as required and permit authorized personnel to review such records, books, and accounts as needed to ascertain compliance with the program. Signature by an authorized representative of the local agency will serve as verification. Such records must be maintained for three years plus the current year; and
  - d. A requirement that each sponsoring organization shall submit a management plan and administrative budget with its application for review and approval. The state agency will review and approve all individual budget line items, including administrative labor and benefits.
2. A renewal agreement, which must be presented annually to the local agency by the state agency for any appropriate revisions. Forms and information are forwarded to the local agency in August and must be returned for approval and renewal by September.
  3. A free or reduced-price policy statement and attachments, which must be automatically renewed unless a new or updated statement is entered into by the state and local agency.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR 226.6

#### **67-21-04-09. Food distribution.**

Certain local participating agencies, as prescribed in the federal regulations, must make an annual selection of accepting donated ~~commodities~~United States department of agriculture foods or cash in lieu of ~~commodities~~United States department of agriculture foods. The amount of commodities for both categories to which local agencies are entitled is determined by law and the availability of commodities.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR 226.5

#### **67-21-04-10. Health and safety.**

~~The lead worker, as identified by the authorized representative, must complete a ten-hour initial course and subsequent update sessions once every three years. Certain agencies, because of the nature of meal service provided or the educational and training background of the lead worker, may be exempt from this requirement. In such cases, a waiver must be submitted by the local agency and approved by the department.~~The local agency food service program shall adhere to state and local health and food safety requirements, as adopted by the North Dakota state department of health, overviews of which are available from the department of public instruction. A school food service employee who functions as a food preparation site manager shall complete training in food safety and sanitation as defined by the superintendent of public instruction.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03~~15.1-35-03

### **67-21-04-12. Family day care home sponsoring organization.**

The department of public instruction has established special provisions that apply to the family day care home sponsoring organizations.

1. Two of the three periodic monitoring visits made to day care home providers must be made without announcement.
2. Day care home providers may only switch sponsoring organizations at the beginning of a new federal fiscal year.
3. The administrative staff members of family day care home sponsorships may not directly solicit providers known to be currently operating under another sponsorship.
4. The department shall provide oversight in the budgetary planning of sponsoring organizations as stipulated in 7 CFR 226.16. Fiscal year salary adjustments or increases of sponsoring organization administrative staff members must be in line with the corresponding salary increases allowed employees of the state of North Dakota for the same time period.
5. Day care home providers who meet eligibility requirements may claim reimbursement for meals fed to their children only when other child care children are present and eating at the same meal service time.
6. Individuals who are employed by a family day care home sponsoring organization may not simultaneously participate under the same sponsorship as a provider.
7. An eligible family day care home must be a building that is currently a residence ~~or a building that~~ was originally built as a residence. ~~The facility must be currently inhabitable as determined by the family day care home sponsoring organization and the provider must certify that the provider resides in the facility, or could be used as a residence with no additional remodeling.~~

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~ 15.1-35-03, 15.1-35-05; 7 CFR 226

### **67-21-04-13. Procurement standards.**

Local agencies shall comply with the requirements of the office of management and budget guidance for grants and agreements, 2 CFR 200 subpart D, concerning the procurement of supplies, food, equipment, and other services with program funds.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03, 15.1-35-05; 2 CFR 200 subpart D

## CHAPTER 67-21-05 SUMMER FOOD SERVICE PROGRAM

Section	
67-21-05-01	Purpose
67-21-05-02	State Agency
67-21-05-03	Use of Federal <del>Funds</del> <u>Rules and Procedures</u>
67-21-05-04	Eligibility
67-21-05-05	Application
67-21-05-06	Monitoring
67-21-05-07	<del>Program Payments</del> <u>Reimbursement Claims</u>
67-21-05-08	Meal Service
<u>67-21-05-08.1</u>	<u>Food Distribution</u>
<u>67-21-05-08.2</u>	<u>Health and Safety</u>
67-21-05-09	Fiscal Management
<u>67-21-05-10</u>	<u>Procurement Standards</u>

### **67-21-05-02. State agency.**

The department of public instruction has been designated as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program for local agencies that wish to participate.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03~~15.1-35-03; 7 CFR 225.3

### **67-21-05-03. Use of federal ~~funds~~rules and procedures.**

Unless otherwise specified in this chapter, eligibility to participate in the summer food service program is governed by federal summer food service program regulations. Local agencies must conform to lawfully issued regulations and policies relating to the program.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR 225

### **67-21-05-04. Eligibility.**

Local agencies eligible to participate include public and private nonprofit agencies including schools, camps, and migrant programs. The department of public instruction will determine the eligibility of applicant sponsors in accordance with criteria established in federal rule 7 CFR ~~225.13~~225.6.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR 225.6

### **67-21-05-05. Application.**

Application forms are available at the Department of Public Instruction, 600 East Boulevard Avenue, Department 201, Bismarck, North Dakota 58505-0440. The application forms include:

1. Program agreement that includes:

a. Identification of the program or programs the local agency wants to participate in;

b. Verification the local agencies will comply with title VI of the Civil Rights Act of 1964 [Pub. L. 88-352] and all requirements imposed by the regulations of the United States department of agriculture [7 CFR part 15], department of justice [28 CFR parts 42 and 50] and food and nutrition directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States, on the ground of race, color, national origin, sex, age, or disability, may be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the program applicant received federal financial assistance from the United States department of agriculture; and hereby gives assurance it immediately will take any measures necessary to fulfill this agreement. Signature by an authorized representative of the local agency serves as verification; and

c. The local agencies agree to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized United States department of agriculture personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the United States department of agriculture food and nutrition services may seek judicial enforcement of this assurance. This assurance is binding on the program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the United States department of agriculture. Signature by an authorized representative of the local agency serves as verification. Such records must be maintained for three years after the end of the fiscal year to which they pertain.

2. Renewal agreement. This document is presented annually to the local agency by the state agency for any appropriate revisions. Forms and information are forwarded to the local agency in April and must be returned for approval and renewal before the start of the program. The renewal documentation includes:

a. A site information sheet.

2.b. Documentation supporting the eligibility of the site as serving an area in which poor economic conditions exist, if not a camp or a homeless feeding site.

3.c. For camps, documentation showing the number of children enrolled who meet the program's income standards.

4.d. With site information for a homeless feeding site, information to demonstrate that the site is not a residential child care institution.

5.e. For national youth sports program sites, a certification that all children are enrolled in the national youth sports program.

6.f. Information to enable the department of public instruction to determine whether the applicant meets the criteria for participation in the program as set forth in 7 CFR 225.14, the extent of program payments needed including a request for advance and startup payments, and, if applicable, a staffing and monitoring plan.

7.g. A complete administrative and operating budget for approval by the department of public instruction.

8.h. A plan for and a synopsis of its invitation to bid for food service, if required.

9.3. A free meal policy statement as defined in 7 CFR 225.6.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~ 15.1-35-03, 15.1-35-05; 7 CFR 225.6

**67-21-05-07. Program payments ~~Reimbursement claims~~.**

Program payments must be made to approved and operating local agencies upon the submission of the appropriate reports and claim forms. Claim forms are due on the tenth day of the month following the month of the claim. Federal reimbursement levels are determined on an annual basis according to federal law.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~ 15.1-35-03, 15.1-35-05; 7 CFR 225.9

**67-21-05-08.1. Food distribution.**

1. Local agencies may receive United States department of agriculture foods or the value of entitlement through the federal food distribution program through three categories:
  - a. Entitlement United States department of agriculture foods, which are foods that local agencies are entitled to receive under the regulation and are distributed by the state contracted warehouse and transportation facility.
  - b. Local agencies may allocate a portion of their United States department of agriculture food entitlement into the department of defense fresh fruit and vegetable program. Local agencies place orders through the department of defense fruit and vegetable ordering and reporting system and receive deliveries from the nationally contracted distributor.
  - c. Bonus United States department of agriculture foods, which are foods offered by United States department of agriculture and do not deduct from United States department of agriculture food entitlement. These foods are periodic and only available if offered by the United States department of agriculture.
2. The amount of United States department of agriculture food entitlement, to which local agencies are entitled, is determined by 7 CFR 225.9.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03, 7 CFR 225.9

**67-21-05-08.2. Health and safety.**

The local agency food service program shall adhere to state and local health and food safety requirements, as adopted by the North Dakota state department of health, overviews of which are available from the department of public instruction. A school food service employee who functions as a food preparation site manager shall complete training in food safety and sanitation as defined by the superintendent of public instruction.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 15.1-35-08, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 7 CFR 225.14

**67-21-05-10. Procurement standards.**

Local agencies shall comply with the requirements of the office of management and budget guidance for grants and agreements, 2 CFR 200 subpart D concerning the procurement of supplies, food, equipment, and other services with program funds.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03, 15.1-35-05; 2 CFR 200 subpart D

## CHAPTER 67-21-06 FOOD DISTRIBUTION PROGRAM

### Section

67-21-06-01	Purpose
67-21-06-02	State Agency
67-21-06-03	Use of Federal Rules and Policies
67-21-06-04	Eligibility
67-21-06-05	Agreements
67-21-06-06	Distribution and Control of <del>Donated</del> <u>United States Department of Agriculture</u> Foods
67-21-06-07	Storage of <del>Commodity</del> <u>United States Department of Agriculture</u> Foods - Standards for Storage Facilities
67-21-06-08	Financial Management
67-21-06-09	Maintenance of Records
67-21-06-10	Monitoring
67-21-06-11	Buy American
67-21-06-12	Civil Rights
<u>67-21-06-13</u>	<u>Procurement</u>

### **67-21-06-01. Purpose.**

The food distribution program, initiated at the federal level and in partnership with the states, is designed to make ~~commodity~~ United States department of agriculture foods available to participating states and local agencies to safeguard the health and well-being of the nation's people with better diets and to encourage the domestic consumption of nutritious agricultural commodities and other foods produced by American farmers.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54~~ 15.1-35-03; 7 CFR 250

### **67-21-06-02. State agency.**

The department of public instruction has been designated by the United States department of agriculture as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of ~~the program~~ all United States department of agriculture food distribution programs.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03~~ 15.1-35-03; 7 CFR ~~250.10~~ 250.4

### **67-21-06-05. Agreements.**

A local agency shall enter into a written program-specific agreement with the department as outlined in 7 CFR 250. Signature by an authorized representative of the local agency or program will serve as verification. Such records must be maintained for three years after the end of the fiscal years to which they pertain.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03~~, ~~15-54-05~~ 15.1-35-03, 15.1-35-05; 7 CFR ~~250.12~~ 250.4



**67-21-06-06. Distribution and control of ~~donated~~United States department of agriculture foods.**

~~Donated~~United States department of agriculture foods shall be available for distribution and use in accordance with the provisions of 7 CFR 250. ~~Donated~~United States department of agriculture foods may not be sold, exchanged, or otherwise disposed of without approval of the department. Any transfer of ~~donated~~United States department of agriculture food must be documented. The quantity of ~~donated~~United States department of agriculture foods to be made available is determined in accordance with pertinent legislation. ~~Donated~~United States department of agriculture foods shall be requested and distributed only in quantities that can be consumed without waste. The department will consistently use the ~~commodity~~United States department of agriculture food value established by the United States department of agriculture ~~in allocated commodity~~when allocating United States department of agriculture foods. The department will maintain a monthly distribution schedule that provides equitable and reliable deliveries to local and recipient agencies. The department will distribute ~~donated~~United States department of agriculture foods only to local and recipient agencies that are eligible.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR 250.13

**67-21-06-07. Storage of ~~commodity~~United States department of agriculture foods - Standards for storage facilities.**

~~Recipient~~Local and recipient agencies shall provide facilities for the handling, storage, and distribution of ~~donated~~United States department of agriculture foods ~~which~~that are sanitary; provide safeguards against theft, spoilage, and other loss; maintain foods at proper temperature; and stock and space foods in a manner so that the ~~donated~~United States department of agriculture food is readily identified. ~~Recipient inventory.~~ Local and recipient agencies shall take a physical inventory of ~~donated~~United States department of agriculture food annually according to the specific regulations of each program. The department shall take a physical inventory of United States department of agriculture foods at all state-contracted warehouse facilities. Excess inventory must be reported to the department.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR 250.14

**67-21-06-08. Financial management.**

~~Recipient~~Local and recipient agencies shall use program funds to pay part of all or part of the direct costs for intrastate storage and distribution of ~~donated~~United States department of agriculture food. ~~The department shall advise agencies annually of the fees and processes for remitting payment for these services.~~The department acts as a passthrough entity and uses state and federal program funding to pay for warehouse and transportation expenses on behalf of those programs receiving United States department of agriculture foods from a state-contracted warehouse facility. Local agencies that have depleted their state program funding are responsible for payment of warehousing and transportation within thirty days of shipment. ~~A notice of nonpayment must be sent to local agencies if payment is not received on time. If payment is not received within sixty days of shipment, future shipments may be canceled. Recipient agencies are required to replace or pay for loss or damaged food as stipulated in 7 CFR 250.15(c).~~

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-04, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR ~~250.15~~250.17

#### 67-21-06-09. Maintenance of records.

RecipientLocal and recipient agencies shall maintain accurate and complete records regarding the receipt, distribution, use, and inventory of ~~donated~~United States department of agriculture food including end products processed from ~~donated food~~bulk United States department of agriculture foods. All records required under 7 CFR ~~250.16~~250.19 must be retained for three years from the close of the fiscal year to which they pertain, unless there are claims or audit findings that have not been resolved.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-05, 28-32-02

**Law Implemented:** NDCC ~~15-54-05~~15.1-35-05; 7 CFR ~~250.16~~250.19

#### 67-21-06-10. Monitoring.

The state agency shall conduct onsite reviews of local agency program operations ~~once every four years for the purpose of providing guidance and technical assistance to local agencies~~according to the federal requirements set forth for each food distribution program. The state agency will conduct an annual onsite review of state contracted warehouse and transportation facility operations.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-05~~15.1-35-05, 28-32-02

**Law Implemented:** NDCC ~~15-54-05~~15.1-35-05; 7 CFR ~~250.19~~250.21

#### 67-21-06-11. Buy American.

RecipientLocal and recipient agencies, whenever possible, shall purchase only food products that are produced in the United States when using federal funds. When funds obtained in accordance with this section are used to purchase foods in the commercial market, a distributing or recipient agency in the continental United States, and in Hawaii, to the maximum extent practical, shall purchase only domestic foods or food products. Such requirement also is applicable to food purchases made with the cash-in-lieu-of-donated foods provided in national school lunch program and child and adult care food program, in accordance with 7 CFR 250.56(e) and 250.61(c). For the purposes of this section, domestic foods or food products are:

1. Agricultural commodities that are produced in the United States; or
2. Food products that are processed in the United States substantially using agricultural commodities that are produced in the United States.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR ~~250.23~~250.17

#### 67-21-06-13. Procurement.

The state agency and local agencies shall comply with the requirements in 2 CFR 200 subpart D and 2 CFR 400.1, as applicable, in purchasing end products, distribution, or other processing services from processors. The state agency and local agencies may use procurement procedures that conform to applicable state or local laws and regulations but must ensure compliance with the procurement requirements in 2 CFR 200 subpart D and 2 CFR 400.1, as applicable.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03; 2 CFR 200 subpart D, 2 CFR 400.1

## CHAPTER 67-21-07 FOOD DISTRIBUTION ON INDIAN RESERVATIONS

### Section

67-21-07-01	Purpose
67-21-07-02	State Agency
67-21-07-03	Use of Federal Rules and Policies
67-21-07-04	<del>Commodity Control</del> <u>Availability of United States Department of Agriculture Foods, Storage, and Distribution</u>
<u>67-21-07-04.1</u>	<u>Eligibility</u>
<u>67-21-07-04.2</u>	<u>Monitoring</u>
67-21-07-05	Administrative Payments

### **67-21-07-01. Purpose.**

The food distribution program on Indian reservations, initiated at the federal level and in partnership with the states, authorizes the receipt and distribution of ~~commodity~~ United States department of agriculture foods by state agencies to tribal organizations.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54~~ 15.1-35-03; 7 CFR 253.1

### **67-21-07-03. Use of federal rules and policies.**

Unless otherwise specified in this chapter, eligibility to participate in the food distribution program on Indian reservations is governed by federal rules. The tribal organization shall conform to lawfully issued rules and policies relating to the food distribution program.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03~~, ~~15-54-05~~ 15.1-35-03, 15.1-35-05; 7 CFR 253

### **67-21-07-04. ~~Commodity control~~ Availability of United States department of agriculture foods, storage, and distribution.**

Tribal organizations are eligible to receive ~~commodities~~ United States department of agriculture foods that are made available under the program. ~~The commodities must be allocated to tribal organizations on the basis of the food issuance rates established in the federal rules. Delivery must be arranged upon the receipt of a valid order from the tribal organization~~ Food and Nutrition Act of 2008. Shipments of ~~commodities~~ United States department of agriculture foods to tribal organizations must be made under the terms of the existing state transportation contract and in accordance with a schedule jointly determined by the department and the tribal organization. Tribal organizations shall maintain control of and accountability for ~~commodities~~ United States department of agriculture foods, conduct inventories as necessary, provide and maintain adequate and appropriate storage facilities, and distribute the ~~commodities~~ United States department of agriculture foods to individuals on the basis of established eligibility. ~~The department will take action to obtain restitution in connection with claims arising for improper distribution, use, loss, or damage of commodities.~~

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~ 15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03~~, ~~15-54-05~~ 15.1-35-03, 15.1-35-05; 7 CFR ~~253.8~~ 253.10

### **67-21-07-04.1. Eligibility.**

Within the United States department of agriculture, the food and nutrition service determines if an Indian tribal organization is capable of effective and efficient administration of the program. If the food

and nutrition service determines the Indian tribal organization is not capable of effective and efficient administration of the program, the appropriate agency of the state government is responsible for the program on all or part of the Indian reservation. The appropriate agency of the state government may administer the program on behalf of an otherwise capable tribe if agreed to in writing by both parties.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03; 28-32-02

**Law Implemented:** NDCC 15.1-35-03; 7 CFR 253.4

#### **67-21-07-04.2. Monitoring.**

The department of public instruction shall conduct annual onsite reviews of tribal organization program operations, as specified in the federal regulations, for the purpose of providing guidance and technical assistance to local agencies. All reviews must ensure tribal organizations meet program requirements and objectives. Program deficiencies must be documented and specific plans of corrective action for deficiencies must be established and implemented.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03; 28-32-02

**Law Implemented:** NDCC 15.1-35-03; 7 CFR 253.5

#### **67-21-07-05. Administrative payments.**

The department shall reimburse tribal organizations not considered to be Indian tribal organizations for costs that are allowable under federal rule 7 CFR ~~253-9~~253.11, in accordance with the approved tribal organization budget. The department also shall use administrative funds to cover all warehouse and transportation expenses for those Indian tribal organizations that receive United States department of agriculture foods from the state contracted warehouse facility.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR ~~253-9~~253.11

## CHAPTER 67-21-08 THE EMERGENCY FOOD ASSISTANCE PROGRAM

### Section

67-21-08-01	Purpose
67-21-08-02	State Agency
67-21-08-03	Use of Federal Rules and Policies
67-21-08-04	Availability of <del>Commodities</del> <u>United States Department of Agriculture Foods, Storage, and Distribution</u>
67-21-08-05	Eligibility
<u>67-21-08-05.1</u>	<u>Monitoring</u>
67-21-08-06	Distribution Plan [ <del>Repealed</del> ]
67-21-08-07	Administrative Payments

#### **67-21-08-01. Purpose.**

The emergency food assistance program, initiated at the federal level and in partnership with the states, authorizes the receipt and distribution of ~~commodity~~United States department of agriculture foods by state agencies to eligible local emergency feeding organizations.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54~~15.1-35-03; 7 CFR 251.1

#### **67-21-08-02. State agency.**

The department of public instruction has been designated by the United States department of agriculture as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program for local agencies that wish to participate.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03~~15.1-35-03; 7 CFR 251.2

#### **67-21-08-04. Availability of ~~commodities~~United States department of agriculture foods, storage, and distribution.**

Emergency feeding organizations are eligible to receive ~~commodities~~United States department of agriculture foods that are made available under sections 202 and 214 of the Emergency Food Assistance Act of 1983. The availability and control of donated commodities must be in accordance with ~~section 40-251.4 of the Emergency Food Assistance Act of 1983~~the federal regulations 7 CFR 251.4 availability of commodities. The department of public instruction establishes an annual allocation of food entitlement for participating emergency feeding organizations on the basis of participation.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03~~, ~~15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR 251.4, 7 CFR 251.6

#### **67-21-08-05. Eligibility.**

Local agencies and programs eligible for participation in the emergency food assistance program are public and nonprofit private organizations that have entered into an agreement with the department of public instruction to provide nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons. Emergency feeding organizations include ~~charitable institutions~~food pantries, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR ~~251.3~~251.5

#### 67-21-08-05.1. Monitoring.

The department of public instruction shall conduct onsite reviews of local agency and subrecipient agency program operations, as specified in the federal regulations, for the purpose of providing guidance and technical assistance to local agencies. All reviews must ensure local agencies meet program requirements and objectives.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03; 7 CFR 251.10

#### **67-21-08-06. Distribution plan.**

Repealed effective January 1, 2020.

~~—The department of public instruction shall establish an annual commodity distribution plan order under which commodities are allocated to participating emergency feeding organizations on the basis of participation.~~

~~**History:** Effective February 1, 2000.~~

~~**General Authority:** NDCC ~~15-54-03, 28-32-02~~~~

~~**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~; 7 CFR ~~251.6~~~~

#### **67-21-08-07. Administrative payments.**

The department of public instruction shall provide administrative payments to emergency feeding organizations to support expenses associated with the storage and further distribution of ~~commodities~~United States department of agriculture foods. Administrative funds are allocated to participating emergency feeding organizations on the basis of individual participation.

**History:** Effective February 1, 2000; amended effective January 1, 2020.

**General Authority:** NDCC ~~15-54-03~~15.1-35-03, 28-32-02

**Law Implemented:** NDCC ~~15-54-03, 15-54-05~~15.1-35-03, 15.1-35-05; 7 CFR 251.8

**CHAPTER 67-21-09**  
**THE COMMODITY SUPPLEMENTAL FOOD PROGRAM**

Section

<u>67-21-09-01</u>	<u>Purpose</u>
<u>67-21-09-02</u>	<u>State Agency</u>
<u>67-21-09-03</u>	<u>Use of Federal Rules and Policies</u>
<u>67-21-09-04</u>	<u>Availability of United States Department of Agriculture Foods, Storage, and Distribution</u>
<u>67-21-09-05</u>	<u>Eligibility</u>
<u>67-21-09-06</u>	<u>Monitoring</u>
<u>67-21-09-07</u>	<u>Administrative Payments</u>

**67-21-09-01. Purpose.**

The commodity supplemental food program, initiated at the federal level and in partnership with the states, authorizes the receipt and distribution of United States department of agriculture foods by state agencies to eligible local agencies.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03; 7 CFR 247.2

**67-21-09-02. State agency.**

The department of public instruction has been designated by the United States department of agriculture as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program for local agencies that wish to participate in this manner.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03, 15.1-35-05; 7 CFR 247.3

**67-21-09-03. Use of federal rules and policies.**

Unless otherwise specified in this chapter, eligibility to participate in the commodity supplemental food program is governed by federal rules. The local program shall conform to lawfully issued rules and policies relating to the food distribution program.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03, 15.1-35-05; 7 CFR 247

**67-21-09-04. Availability of United States department of agriculture foods, storage, and distribution.**

Local agencies are eligible to receive United States department of agriculture foods that are made available under the Agriculture and Consumer Protection Act of 1973 and the Agricultural Act of 2014. The availability and control of donated United States department of agriculture foods must be in accordance with 7 CFR 247.10 for the commodity supplemental food program.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03, 15.1-35-05; 7 CFR 247.10

#### **67-21-09-05. Eligibility.**

Local agencies and programs eligible for participation in the commodity supplemental food program are public and nonprofit private organizations that have entered an agreement with the department of public instruction to provide nutrition assistance to low-income elderly persons. Local agencies include community action agencies, food banks, hunger centers, and similar public or private nonprofit local agencies.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03, 15.1-35-05; 7 CFR 247.7, 7 CFR 247.9

#### **67-21-09-06. Monitoring.**

The department of public instruction shall conduct onsite reviews of local agency program operations, as specified in the federal regulations, for the purpose of providing guidance and technical assistance to local agencies. All reviews must ensure local agencies meet program requirements and objectives.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03, 15.1-35-05; 7 CFR 247.34

#### **67-21-09-07. Administrative payments.**

The department of public instruction shall provide administrative payments to local agencies to support expenses associated with the storage and further distribution of United States department of agriculture foods. Administrative funds are allocated to participating local agencies based on a submitted budget and on the basis of individual participation.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-03, 15.1-35-05; 7 CFR 247.23, 7 CFR 247.25



## **CHAPTER 67-21-10**

### **FRESH FRUIT AND VEGETABLE PROGRAM**

#### Section

<u>67-21-10-01</u>	<u>Purpose</u>
<u>67-21-10-02</u>	<u>State Agency</u>
<u>67-21-10-03</u>	<u>Use of Federal Rules and Policies</u>
<u>67-21-10-04</u>	<u>Eligibility</u>
<u>67-21-10-05</u>	<u>Application</u>
<u>67-21-10-06</u>	<u>Outreach</u>
<u>67-21-10-07</u>	<u>Notice of Availability</u>
<u>67-21-10-08</u>	<u>Per-Student Grant</u>
<u>67-21-10-09</u>	<u>Monitoring</u>
<u>67-21-10-10</u>	<u>Reimbursement Claims</u>
<u>67-21-10-11</u>	<u>Health and Safety</u>

#### **67-21-10-01. Purpose.**

The fresh fruit and vegetable program, initiated at the federal level and in partnership with the states, is designed to provide free fresh fruits and vegetables to students in participating elementary schools during the school day at times other than breakfast, lunch, or after school snack and to encourage healthier school environments by promoting nutrition education and expansion of the variety of fruits and vegetables that children experience, through grants-in-aid and other means.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-02, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 42 USC 1769a

#### **67-21-10-02. State agency.**

The department of public instruction has been designated by the United States department of agriculture as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-02, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 42 USC 1769a

#### **67-21-10-03. Use of federal rules and policies.**

Unless otherwise specified in this chapter, eligibility to participate in the fresh fruit and vegetable program is governed by federal regulations. The local program shall conform to lawfully issued rules and policies relating to the federal fresh fruit and vegetable program.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-02, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 42 USC 1769a

#### **67-21-10-04. Eligibility.**

Local agencies eligible for participation in the fresh fruit and vegetable program include:

1. Educational units of elementary school grade, recognized as part of the educational system in the state;

2. Schools must participate in the national school lunch program to operate the fresh fruit and vegetable program; and
3. Section 19 of the National School Lunch Act requires schools with the highest free and reduced-price enrollment be given priority for participation in the fresh fruit and vegetable program.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 42 USC 1769a

#### **67-21-10-05. Application.**

Local educational agencies must submit a fresh fruit and vegetable application that includes:

1. The total number of enrolled children;
2. The percentage of children certified as eligible for free and reduced-price meals;
3. A certification of support for participation of the fresh fruit and vegetable program signed by the school food service manager, the school principal, and the district superintendent; and
4. A program implementation plan, including efforts to integrate the fresh fruit and vegetable program with other efforts to promote childhood health and nutrition.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 7 CFR 210.9; 42 USC 1769a

#### **67-21-10-06. Outreach.**

Before making decisions regarding school participation in the program, the state agency shall inform the schools within the state with the highest proportion of free and reduced-price meal eligibility, including Native American schools, of the eligibility of the schools for the program with respect to priority granted to schools with the highest proportion of free and reduced-price eligibility.

In providing information to high priority schools, a state agency shall inform the schools that likely would be chosen to participate in the program.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 7 CFR 210.9; 42 USC 1769a

#### **67-21-10-07. Notice of availability.**

If selected to participate in the program, a school shall widely publicize within the school the availability of free fresh fruits and vegetables under the program.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 7 CFR 210.9; 42 USC 1769a

#### **67-21-10-08. Per-student grant.**

The per-student grant provided to a school is determined by the state agency and may not be less than fifty dollars, nor more than seventy-five dollars.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 7 CFR 210.9; 42 USC 1769a

**67-21-10-09. Monitoring.**

The department of public instruction shall conduct onsite reviews of local agency program operations as specified by federal regulation for the purpose of providing guidance and technical assistance to local agency food service programs. All such reviews must include the assessment of claims by the state agency for any overpayment and appropriate corrective action.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-05, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 7 CFR 210; 42 USC 1769a

**67-21-10-10. Reimbursement claims.**

Local agencies are required to submit claims for reimbursement using the basic claim for reimbursement form provided by the department of public instruction. Such claims are due on the tenth day of the month following the month of the claim.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-05, 28-32-02

**Law Implemented:** NDCC 15.1-35-01; 42 USC 1769a

**67-21-10-11. Health and safety.**

The local agency food service program shall adhere to state and local health and food safety requirements, as adopted by the North Dakota state department of health, overviews of which are available from the department of public instruction.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15.1-35-03, 15.1-35-08, 28-32-02

**Law Implemented:** NDCC 15.1-35-01

## CHAPTER 67-23-01

### 67-23-01-01. Definitions.

As used in this article, the following definitions apply:

1. "Individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the IDEA section 614(d) [20 U.S.C. 1414(d)].
2. "Individuals With Disabilities Education Act" or "IDEA" means the Individuals With Disabilities Education Improvement Act of 2004, Public Law 108-446 [118 Stat. 2647; 20 U.S.C. 1400-1420].
3. "Least restrictive environment" means that to the maximum extent appropriate, children with disabilities are educated with children who are not disabled and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
4. "Local education agency" means a school district, multidistrict special education unit organized under North Dakota Century Code chapter 15.1-33, or other legally constituted public authority for administrative control or direction of, or to perform a service function for, public elementary or secondary schools.
5. "Multidisciplinary team" means a team of professionals and parents which develops an IEP for a student with disabilities.
6. "Multidistrict special education unit" means a public corporation organized under North Dakota Century Code chapter 15.1-33 for purposes of planning and delivering special education and related services.
7. "Nonsectarian" means not affiliated with or restricted to a particular religion.
8. "Organization" includes school districts, multidistrict local education agencies, child care centers, vocational education centers, private or public residential facilities, counties, and nonprofit agencies.
9. "Related services" means transportation and developmental, corrective, or supportive services needed to help a student with disabilities to benefit from special education.
10. "Resident district" means the school district of residence of the student as determined by law.
11. "Special education unit" means a single-district special education unit or a multidistrict special education unit.
12. "Student with disabilities" or "child with disabilities" means an individual who:
  - a. Is at least three years of age but who has not reached the age of twenty-one before ~~September~~August first of the year in which the individual turns twenty-one, and who because of mental, physical, emotional, or learning characteristics requires regular or special education and related services designed to meet the individual's educational needs; and
  - b. Is an individual with mental retardation, hearing impairment including deafness, speech or language impairment, visual impairment including blindness, emotional disturbance,

orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, deaf-blindness, or multiple disabilities.

**History:** Effective February 1, 2000; amended effective January 1, 2008; [January 1, 2020](#).

**General Authority:** NDCC 15.1-32-09

**Law Implemented:** NDCC 15.1-32-09; 20 USC 1400-1419



**TITLE 67.1**  
**EDUCATION STANDARDS AND PRACTICES BOARD**





## JANUARY 2020

### CHAPTER 67.1-02-02

#### 67.1-02-02-02. Initial licenses.

1. Initial teacher licensure for in-state graduates or graduates of out-of-state programs requires a minimum of a four-year bachelor's degree from a state agency-approved teacher education program. The approved program must include a general studies component, a North Dakota recognized program area major, and a professional pedagogy core as defined in this section and the North Dakota standards for teacher education program approval:
  - a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.
  - b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific kindergarten through grade twelve majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcribed by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors. Majors must include a minimum of thirty-two semester hours of coursework specific to the major beyond the introductory level. All official transcripts from all institutions of higher education must be submitted to the education standards and practices board.
    - (1) The secondary content-specific major must include a minimum of four semester hours in special methods of teaching at the secondary level and special methods of teaching in the specific content area. Effective July 1, 2008, all initial secondary licensure applicants grades five through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the content test as set by the education standards and practices board. Effective July 1, 2010, all initial secondary licensure applicants grades five through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the pedagogical test as set by the education standards and practices board. For purposes of this section, English, reading and language arts, mathematics, science, foreign languages, music, visual arts, history, civics and government, geography, and economics are considered core academic areas. All other areas are considered non-core academic areas.
    - (2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas at the middle level, and twenty-four semester hours of content coursework in one of the content areas of English and

language arts, social studies, science, or mathematics meeting the teacher education program approval standards, and special methods of teaching at the middle level. Study of these areas must total a minimum of thirty-two semester hours, which includes at least two semester hours of special methods of teaching at the middle level and middle level classroom field experience. Effective July 1, 2008, all initial middle level licensure applicants grades five through eight in the core and non-core academic areas will need to meet or exceed the cut scores for the content test as set by the education standards and practices board. Effective July 1, 2012, all initial middle level licensure applicants grades five through eight in the core and non-core academic areas will need to meet or exceed the cut scores for the pedagogical test as set by the education standards and practices board.

- (3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school mathematics, science, social studies, reading, and language arts. Effective July 1, 2006, all initial elementary licensure applicants for grades one through eight restricted licenses will need to meet or exceed the cut scores as set by the education standards and practices board for the elementary test and the pedagogical test. For the school year 2005-06 and beyond, all elementary teachers new to the profession, but previously licensed, will need to complete the elementary test and pedagogical test during the school year. Classroom teaching experience will be accepted from all other states toward the requirements of this paragraph.
  - (4) Prekindergarten through grade twelve preparation programs in special education, foreign language, art, music, physical education, business education, technology education, and computer education must include a minimum of four semester hours of special methods of teaching inclusive of kindergarten through grade twelve, special methods of teaching in the specific content area, and student teaching in elementary and secondary schools, grades prekindergarten through grade twelve. Effective July 1, 2006, all applicants in foreign language, art, and music will need to meet or exceed the cut scores for the content tests and the pedagogical tests grades seven through twelve as set by the education standards and practices board. Effective July 1, 2012, all initial prekindergarten through grade twelve licensure applicants grades seven through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the content test and the pedagogical test grades seven through twelve as set by the education standards and practices board.
  - (5) The early childhood major must include study of child development, birth through age eight, and include special methods of teaching at the early childhood level. Effective July 1, 2012, all initial early childhood licensure applicants birth through grade three will need to meet or exceed the cut scores for the praxis II principles of teaching and learning test and the praxis II early childhood education content specific cut score as set by the education standards and practices board.
  - (6) Effective July 1, 2008, all applicants in special education majors or endorsements must meet or exceed the state-approved test cut scores as set by the education standards and practices board.
- c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education

component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels. The professional education component, including student teaching, must be completed under the supervision of a teacher training institution approved by the education standards and practices board in North Dakota or the appropriate state, provincial, or similar jurisdictional authority for out-of-state institutions.

- d. Student teaching exception - Internship. An applicant who graduated from a state-approved teacher education program prior to January 1, 1988, which did not include a minimum of ten weeks of full-time student teaching may qualify under one of the two options under this subdivision. These options are available only if the applicant has met all other requirements for licensure of the education standards and practices board and North Dakota Century Code sections 15.1-18-02 and 15.1-18-03, except the requirement of ten weeks of student teaching.
  - (1) The applicant must document a minimum of eight full weeks of student teaching at the appropriate level in the major field of study under the supervision of a state-approved teacher education program and document five years of successful teaching within the last ten years; or
  - (2) An applicant who can document a minimum of eight weeks of successful student teaching but cannot document a minimum of five years of successful teaching experience must either complete the additional student teaching hours or may choose to complete an internship under the supervision of a state-approved college of teacher education to fulfill the additional hours.
    - (a) The internship contact hours in the classroom must consist of classroom time blocks not less than one-half day and when added to the applicant's existing student teaching hours total a minimum of ten weeks of full-time equivalent student teaching and supervised internship experience.
    - (b) The internship must occur in a regular kindergarten through grade twelve classroom setting and allow the intern to experience the full range of curriculum and classroom operations.
    - (c) The internship must be approved by the education standards and practices board and transcribed through a state-approved teacher education institution.
- e. Teaching minors. A teaching minor may only be earned or added to a teaching major. An individual may not be licensed or change grade levels of licensure with only a teaching minor.

A teaching minor is defined as a minimum of sixteen semester or twenty-four quarter credit hours in a single designated academic area and the methods of teaching the content area. These sixteen semester or twenty-four quarter credit hours must be in courses for which the institution gives credit toward graduation in the major and be included in the teacher education program approval process.

## 2. Grade point average.

- a. An applicant must have a minimum overall grade point average of 2.50. The education standards and practices board will use the college-figured grade point average if all previous college coursework is on the transcript. If the student has transferred from another institution, and the grade point average calculated by the institution granting the

- degree is only for those credits at that institution, the education standards and practices board will refigure the grade point average using all previous college coursework.
- b. An applicant must have a minimum grade point average (GPA) of 2.50 for all coursework required for the applicant's degree. Coursework not needed for a degree in teacher education need not be included in GPA calculations. Coursework used in any way for licensure or endorsements must be included in GPA calculations. If the student has coursework from more than one institution, the education standards and practices board will review the grade point average using the program of studies approved by the approved North Dakota teacher education institution.
3. Verification of eligibility for home state licensure may be requested.
  4. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.
  5. Application form.
    - a. An application fee of thirty dollars must accompany a request for an initial application form.
    - b. The original completed application form, including the original signature of the applicant and recommendation by the state-approved teacher education program will be considered for licensure by the education standards and practices board.
    - c. A fee of seventy dollars must accompany the application for initial licensure for in-state and out-of-state graduates. An additional fee of one hundred seventy-five dollars for transcript review from out-of-state graduates must also accompany the licensure application.
    - d. The application will be kept on file at the education standards and practices board office for six months. Upon expiration of the six-month period, applicable fees will be refunded to the applicant if the license has not been issued.
  6. All initial licenses are valid for at least two consecutive years and will expire on the applicant's birthday.
  7. Fingerprinting. In addition to completing the licensure application process outlined in this section, an applicant applying for licensure in North Dakota for the first time after August 1, 1997, must submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14.
    - a. An applicant graduating from a North Dakota teacher preparation program may obtain the fingerprinting materials from college officials. Previous graduates and out-of-state graduates must contact the education standards and practices board directly for the fingerprinting materials. Fingerprint screening reports from other agencies are not available to the education standards and practices board. Applicants must complete the process with cards and release forms designating the education standards and practices board as the agency to receive the report.
    - b. The applicant must have the fingerprinting done by an authorized law enforcement agency such as a sheriff's office, police department, campus police, or private fingerprinting company. Both cards are to be completed with a ten-finger check. The criminal record inquiry authorization form must also be completed, including an original signature. The fingerprint cards and authorization form must be returned directly to the education standards and practices board office.

- c. Unofficial, incomplete, altered, or damaged cards and forms will not be accepted.
  - d. The applicant is responsible for all local, state, and federal law enforcement agency fees related to the fingerprint background check.
  - e. The applicant is advised to allow a minimum of eight weeks for the fingerprint screening process. An applicant must hold a valid North Dakota license to be employed or permitted to teach in North Dakota. Individuals who have completed all requirements for the professional educator's license except final completion of the fingerprint background check may obtain a provisional license under section 67.1-02-04-04.
  - f. Fingerprint screening reports must be recent and may only be used for licensure for eighteen months from the date the report is received by the education standards and practices board.
8. Reeducation for initial licensure. Applicants who hold nonteaching degrees in content areas taught in public schools may receive initial licensure by completing the professional education requirements at a state-approved program authorized through program approval to recommend applicants for licensure in the approved program area. This reeducation may be completed at the undergraduate or graduate level. The institution with the approved program must document that the applicant's specialty area degree is equivalent to its approved program's specialty area requirements in subdivisions b and c of subsection 1, and recommend the applicant for licensure. Applicants applying under this section must file a completed application form as other initial applicants, comply with the fingerprint background check in subsection 9, complete all tests, and pay all applicable fees.
9. Preprofessional skills test. On July 1, 2002, all initial applicants for licensure will be required to submit their test scores in reading, writing, and mathematics. Beginning July 1, 2003, all applicants for initial licensure will need to submit their test scores in reading, writing, and mathematics which meet or exceed the state cut score or composite score. Documentation of the scores must be submitted with the application form.
10. The board may issue an initial license to an individual with a documented disability, as determined by the board, which allows the individual to teach in areas where documented shortages of regularly licensed teachers exist, as determined by the board, if due to the documented disability, the individual is unable to meet all the requirements of the Praxis I, Praxis II PLT, or Praxis II content-specific test in the content area to be assigned but who is otherwise qualified to teach as determined by the board.
11. The board may issue a second alternative access license to an individual who is on an initial alternative access license and has attempted the content-specific test three times during the initial alternative access license period. If the applicant has attempted the Praxis II content-specific test an additional two times during the second alternative access license and provides documentation, during the third year following the applicant's receipt of the initial alternative access license the applicant will be issued an initial license when the following requirements are met and approved by the board:
- a. A letter from the superintendent requesting an initial license for the applicant;
  - b. A letter from the applicant acknowledging financial responsibility for observation by a content expert;
  - c. Documentation of a positive observation;
  - d. Evidence of passing the pedagogy test; and

e. If required, a criminal history background check as required by North Dakota Century Code section 15.1-13-14.

**History:** Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998; April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010; April 1, 2012; July 1, 2012; October 1, 2014; January 1, 2015; April 1, 2018; January 1, 2020.

**General Authority:** NDCC 15.1-13-08, 15.1-13-09, 15.1-13-10

**Law Implemented:** NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12, 15.1-13-14

**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**





## JANUARY 2020

### ARTICLE 75-02 ECONOMIC ASSISTANCE

Chapter	
75-02-01	Aid to Families With Dependent Children [Repealed]
75-02-01.1	Aid to Families With Dependent Children [Repealed]
75-02-01.2	Temporary Assistance for Needy Families Program
75-02-01.3	Child Care Assistance
75-02-02	Medical Services
75-02-02.1	Eligibility for Medicaid
75-02-02.2	Children's Health Insurance Program <u>[Repealed]</u>
75-02-03	Homes for Aged and Infirm [Superseded]
75-02-04	Child Support Division
75-02-04.1	Child Support Guidelines
75-02-04.2	State Disbursement Unit
75-02-05	Provider Integrity
75-02-05.1	Nursing Home Sanctions [Repealed]
75-02-05.2	Nursing Facility Enforcement Action
75-02-06	Ratesetting for Nursing Home Care
75-02-07	Provider Reimbursement - Basic Care Facilities [Repealed]
75-02-07.1	Ratesetting for Basic Care Facilities
75-02-08	Homes for the Aged and Infirm [Repealed]
75-02-09	Ratesetting for Psychiatric Residential Treatment Facilities
75-02-10	Aid to Vulnerable Aged, Blind, and Disabled Individuals
75-02-11	Food Stamp Program [Repealed]

#### CHAPTER 75-02-01.2

##### **75-02-01.2-02.2. Kinship care assistance.**

1. Kinship care provides a monthly maintenance payment and supportive services to a child residing outside the child's parental home with a caretaker who is related to that child within the fifth degree of kinship. To be eligible:
  - a. A court of competent jurisdiction must have entered an order placing a child's care, custody, and control with a county agency, an official of a county agency, the executive director of the department, ~~or~~ the division of juvenile services, or with a tribal agency; and
  - b. Before placing a child in kinship care for more than thirty days, the child's custodian must have completed a family study, a child abuse and neglect background check, and other

investigations, as identified in chapter 75-03-14, as the department may determine necessary to demonstrate that:

- (1) The home in which care is provided is in fit and sanitary condition and properly equipped to provide good care to the child;
  - (2) The caretaker and other adults residing in the home of the caretaker properly qualify to carry out the duties and responsibilities of a kinship care provider;
  - (3) Kinship care provided in the home is for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all children cared for in the home; and
  - (4) The home is maintained according to standards prescribed for its conduct by the department.
2. Within the limits established by the department, supportive services may provide reimbursements for child care expenses, transportation, clothing, emergent needs, activity fees, and, as a payer of last resort, reasonable legal fees incurred by or on behalf of a child and approved by the department.
  3. For purposes of this section, a relative is within the fifth degree of kinship if the relative by birth, marriage, or adoption, is the child's sibling; niece; nephew; grandniece; grandnephew; grandparent; aunt; uncle; first cousin; first cousin once removed; great-grandparent; great-aunt; great-uncle; parent's first cousin; great, great-grandparent; great, great-aunt; great, great-uncle; or great, great, great-grandparent.
  4. Kinship care monthly maintenance payments must be the same as the standard of need amount for a shared living arrangement for a child under the temporary assistance for needy families program and an additional monthly amount established by the department.

**History:** Effective June 1, 2005; amended effective January 1, 2009; January 1, 2011; January 1, 2017; [January 1, 2020](#).

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

## **CHAPTER 75-02-02.1 ELIGIBILITY FOR MEDICAID**

### Section

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**75-02-02.1-01. Definitions.**

For the purposes of this chapter:

1. "Agency" means the North Dakota department of human services.
2. "Applicant" means an individual seeking health care coverage benefits.
3. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
- ~~3.4.~~ "Blind" has the same meaning as the term has when used by the social security administration in determining blindness for title II or XVI of the Act.
- ~~4.5.~~ "Child" means ~~a person~~an individual, under twenty-one, or, if blind or disabled, under age eighteen, who is not living independently.
- ~~5.6.~~ "Children's health insurance program" means the North Dakota children's health insurance program implemented pursuant to North Dakota Century Code chapter 50-29 and 42 U.S.C. 1397aa et seq. to furnish health assistance to low-income children funded through title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.].
7. "Contiguous" means real property which is not separated by other real property owned by others. Roads and other public rights of way which run through the property, even if owned by others, do not affect the property's contiguity.
- ~~6.8.~~ "County agency" means the ~~county social service board~~human service zone.
- ~~7.9.~~ "Creditable health insurance coverage" means a health benefit plan which includes coverage for hospital, medical, or major medical. The following are not considered creditable health insurance coverage:
  - a. Coverage only for accident or disability income insurance;

- b. Coverage issued as a supplement to automobile liability insurance;
- c. Liability insurance, including general liability insurance and automobile liability insurance;
- d. Workforce safety and insurance or similar insurance;
- e. Automobile medical payment insurance;
- f. Credit-only insurance;
- g. Coverage for onsite medical clinics;
- h. Other similar insurance coverage specified in federal regulations under which benefits for medical care are secondary or incidental to other insurance;
- i. Coverage for dental or vision;
- j. Coverage for long-term care, nursing home care, home health care, or community-based care;
- k. Coverage only for specified disease or illness;
- l. Hospital indemnity or other fixed indemnity insurance; and
- m. Coverage provided through Indian health services.

10. "Department" means the North Dakota department of human services.

~~8.~~11. "Deprived child" means a child who is deprived of parental support or care because one or both parents are deceased, incapacitated, disabled, aged, or maintains and resides in a separate verified residence for reasons other than employment, education, training, medical care, or uniformed service.

~~9.~~12. "Disabled" has the same meaning as the term has when used by the social security administration in determining disability for title II or XVI of the Act.

~~10.~~13. "Disabled adult child" means a disabled or blind ~~person~~individual over the age of twenty-one who became blind or disabled before age twenty-two.

~~11.~~14. "Full calendar month" means the period which begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.

~~12.~~15. "Good-faith effort to sell" means an honest effort to sell in a manner which is reasonably calculated to induce a willing buyer to believe that the property offered for sale is actually for sale at a fair price. A good-faith effort to sell includes, at a minimum, making the offer at a price based on an appraisal, a market analysis by a realtor, or another method which produces an accurate reflection of fair market value or, with respect to a determination of qualified disabled and working individual benefits under section 75-02-02.1-23, sixty-six and two-thirds percent of fair market value, in the following manner:

- a. To any co-owner, joint owner, possessor, or occupier of the property, and, if no buyer is thereby secured;
- b. To the regular market for such property, if any regular market exists, or, if no regular market exists;
- c. By public advertisement for sale in a newspaper of general circulation, the circulation area of which includes the location of any property resource offered for sale, which advertisement was published successively for two weeks if the newspaper is a weekly

publication and for one week if the newspaper is a daily publication, and which includes a plain and accurate description of the property, the selling price, and the name, address, and telephone number of a person who will answer inquiries and receive offers.

~~13. "Healthy steps" means an insurance program, for children up to age nineteen, administered under North Dakota Century Code chapter 50-29 and title XXI of the Act.~~

44.16. "Home" includes, when used in the phrase "the home occupied by the Medicaid unit", the land on which the home is located, provided that the acreage [hectarage] does not exceed one hundred sixty contiguous acres [64.75 hectares] if rural or two acres [.81 hectares] if located within the established boundaries of a city.

45.17. "Home and community-based services" means services, provided under a waiver secured from the United States department of health and human services, which are:

- a. Not otherwise available under Medicaid; and
- b. Furnished only to individuals who, but for the provision of such services, would require the level of care provided in a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities.

46.18. "Institutionalized individual" means an individual who is an inpatient in a nursing facility, an intermediate care facility for individuals with intellectual disabilities, the state hospital, a psychiatric residential treatment facility, an institution for mental disease, or who receives swing-bed care in a hospital.

47.19. "Living independently" means, in reference to an individual under the age of twenty-one, a status which arises in any of the following circumstances:

- a. The individual has served a tour of active duty with the armed services of the United States and lives separately and apart from the parent.
- b. The individual has married, even though that marriage may have ended through divorce or separation. A marriage ended by legal annulment is treated as if the marriage never occurred.
- c. The individual has lived separately and apart from both parents for at least three consecutive full calendar months after the date the individual left a parental home, continues to live separately and apart from both parents, and has received no support or assistance from either parent while living separately and apart. For purposes of this subsection:
  - (1) Periods when the individual is attending an educational or training facility, receiving care in a specialized facility, or is an institutionalized individual are deemed to be periods when the individual is living with a parent unless the individual first established that the individual was living independently; and
  - (2) Health insurance coverage and court-ordered child support payments are not "assistance or support".
- d. The individual is a former foster care recipient who has established a living arrangement separate and apart from either parent and received no support or assistance from either parent.
- e. The individual lives separately and apart from both parents due to incest and receives no support or assistance from either parent.

- ~~18-20.~~ "Long-term care" means the services received by an individual when the individual is screened or certified as requiring long-term care services.
21. "MAGI-based methodology" means the method of determining eligibility for Medicaid that generally follows modified adjusted gross income rules.
- ~~19-22.~~ "Medicaid" means a program implemented pursuant to North Dakota Century Code chapter 50-24.1 and title XIX of the Act [42 U.S.C. 1396 et seq.].
- ~~20-23.~~ "Medicare cost sharing" means the following costs:
- a. (1) Medicare part A premiums; and  
(2) Medicare part B premiums;
  - b. Medicare coinsurance;
  - c. Medicare deductibles; and
  - d. Twenty percent of the allowed cost for Medicare covered services where Medicare covers only eighty percent of the allowed costs.
- ~~21-24.~~ "Nursing care services" means nursing care provided in a medical institution, a nursing facility, a swing-bed, the state hospital, or a home and community-based services setting.
- ~~22-25.~~ "Occupied" means, when used in the phrase "the home occupied by the Medicaid unit", the home the Medicaid unit is living in or, if temporarily absent from, possessed with an intention to return and the capability of returning within a reasonable length of time. Property is not occupied if the right to occupy has been given up through a rental or lease agreement, whether or not that rental or lease agreement is written. Property is not occupied by an individual in long-term care or the state hospital, with no spouse, disabled adult child, or child under age twenty-one at home, unless a physician has certified that the individual is likely to return home within six months.
- ~~23-26.~~ "Poverty level" means the income official poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2).
- ~~24-27.~~ "Property that is essential to earning a livelihood" means property that a member of a Medicaid unit owns, and which the Medicaid unit is actively engaged in using to earn income, and where the total benefit of such income is derived for the Medicaid unit's needs. A member of a Medicaid unit is actively engaged in using the property if a member of the unit contributes significant current personal labor in using the property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active use of the property.
- ~~25-28.~~ "Property that is not saleable without working an undue hardship" means property which the owner has made a good-faith effort to sell which has produced no buyer willing to pay an amount equaling or exceeding seventy-five percent of the property's fair market value, or sixty-six and two-thirds percent of the property's fair market value with respect to determination of qualified disabled and working individual benefits under section 75-02-02.1-23, and which is continuously for sale. Property may not be included within this definition at any time earlier than the first day of the first month in which a good-faith effort to sell is begun or if a bona fide offer is received by the third month after the month in which the good-faith effort to sell is begun.
- ~~26-29.~~ "Recipient" means an individual approved as eligible for health care coverage.

- | 30. "Regulation", as used in 42 CFR 431.210, 431.244, and 435.912, includes any written statement of federal or state law or policy, including, but not limited to, federal and state constitutions, statutes, regulations, rules, policy manuals or directives, policy letters or instructions, and relevant controlling decisions of federal or state courts.
- | ~~27.~~31. "Remedial services" means those services, provided in specialized facilities, which produce the maximum reduction of physical or mental disability and restoration of the facilities' residents to the residents' best possible level of functioning.
- | ~~28.~~32. "Residing in the home" refers to individuals who are physically present, individuals who are temporarily absent, or individuals attending educational facilities.
- | ~~29.~~33. "Specialized facility" means a residential facility, including a basic care facility, a licensed family foster care home for children or adults, a licensed group foster care home for children or adults, a transitional living facility, a facility established to provide quarters to clients of a sheltered workshop, and any other facility determined by the department to be a provider of remedial services, but does not mean an acute care facility or a nursing facility.
- | ~~30.~~34. "State agency" means the North Dakota department of human services.
- | ~~31.~~35. "Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general educational development classes, college, university, vocational training, including summer vacation periods if the individual intends to return to school in the fall, or a home school program recognized or supervised by the student's state or local school district. A full-time student is ~~a person~~ an individual who attends school on a schedule equal to a full curriculum.
- | ~~32.~~36. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
- | ~~33.~~37. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Act [42 U.S.C. 601 et seq.].
- | ~~34.~~38. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
- | ~~35.~~39. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
- | ~~36.~~40. "Title IV-E" means title IV-E of the Social Security Act [42 U.S.C. 670 et seq.].
- | ~~37.~~41. "Title XIX" means title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].
- | 42. "Title XXI" means title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.].

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003; August 1, 2005; April 1, 2008; January 1, 2011; April 1, 2012; July 1, 2012; January 1, 2014; January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01, 50-24.1-37; 42 USC 1396a(e)

#### **75-02-02.1-02.1. Duty to establish eligibility.**

It is the responsibility of the applicant or recipient to provide information sufficient to establish the eligibility of each individual for whom assistance is requested, including furnishing of a social security number, and establishing age, identity, residence, citizenship, blindness, disability, and financial eligibility in each of the months in which ~~Medicaid~~ benefits are requested.

**History:** Effective December 1, 1991; amended effective July 1, 2003; January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-24.1-04



**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-03. Decision and notice.**

1. A decision as to eligibility will be made promptly on applications, within forty-five days, or within ninety days in cases with a disability determination pending, except in unusual circumstances.
2. Following a determination of eligibility or ineligibility, an applicant must be notified of either approval or denial of ~~Medicaid~~ benefits.
3. Notice must be sent at the time, and in the manner, required by 42 CFR 431.210 through 431.214.
4. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

**History:** Effective December 1, 1991; amended effective July 1, 2003; January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-05. Coverage groups.**

Within the limits of legislative appropriation, the department may provide ~~Medicaid~~ benefits to coverage groups described in the approved Medicaid state plan in effect at the time those benefits are sought. These coverage groups do not define eligibility for ~~Medicaid~~ benefits. Any ~~person~~ individual who is within a coverage group must also demonstrate that all other eligibility criteria are met.

1. The categorically needy coverage group includes:
  - a. Children for whom adoption assistance maintenance payments are made under title IV-E;
  - b. Children for whom foster care maintenance payments are made under title IV-E;
  - c. Children who are living in North Dakota and are receiving title IV-E adoption assistance payments from another state;
  - d. Children in a foster care placement in North Dakota and receiving a title IV-E foster care payment from another state;
  - e. Caretakers of deprived children who meet the parent and caretaker relative eligibility criteria;
  - f. Families who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which the family became ineligible because of the caretaker relative's earned income or because a member of the unit has a reduction in the time-limited earned income disregard;
  - g. Families who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which they became ineligible as a result, wholly or partly, of the collection or increased collection of child or spousal support continue eligible for Medicaid for four calendar months;
  - h. Pregnant women who meet the nonfinancial requirements with modified adjusted gross income at or below the modified adjusted gross income level for pregnant women;

- i. Eligible pregnant women who applied for and were eligible for Medicaid as categorically needy during pregnancy continue to be eligible for sixty days beginning on the last day of the pregnancy, and for the remaining days of the month in which the sixtieth day falls;
  - j. Children born to categorically needy eligible pregnant women who applied for and were found eligible for Medicaid on or before the day of the child's birth, for sixty days beginning on the day of the child's birth and for the remaining days of the month in which the sixtieth day falls;
  - k. Children up to age nineteen who meet the nonfinancial Medicaid requirements with modified adjusted gross income at or below the modified adjusted gross income level for that child's age;
  - l. Adults between the ages of nineteen and sixty-four, inclusive, who meet the nonfinancial Medicaid requirements:
    - (1) Who are not eligible under subdivisions e through k above; or
    - (2) Who are not eligible for supplemental security income, unless they fail the medically needy asset test; or
    - (3) Whose modified adjusted gross income is at or below the established modified adjusted gross income level for this group;
  - m. Former foster care children through the month they turn twenty-six years of age, who were enrolled in Medicaid and were in foster care in this state when they turned eighteen years old, provided they are not eligible under any of the categorically eligible groups other than the group identified in subdivision l.
  - n. Aged, blind, or disabled individuals who are receiving supplemental security income payments or who appear on the state data exchange as zero payment as a result of supplemental security income's recovery of an overpayment or who are suspended because the individuals do not have a protective payee, provided that the more restrictive Medicaid criteria is met; and
  - o. Individuals who meet the more restrictive requirements of the Medicaid program and qualify for supplemental security income benefits under section 1619(a) or 1619(b) of the Act [42 U.S.C. 1382h(a) or 1382h(b)].
2. The optional categorically needy coverage group includes:
- a. Individuals under age twenty-one who are residing in adoptive homes and who have been determined under the state-subsidized adoption program to be eligible as provided in state law and in accordance with the requirements of the department; ~~and~~
  - b. Uninsured ~~women~~ individuals under age sixty-five, who are not otherwise eligible for Medicaid, who have been screened for breast ~~and~~ or cervical cancer under the centers for disease control and prevention breast and cervical cancer early detection program, and who need treatment for breast or cervical cancer, including a precancerous condition of the breast or cervix; ~~;~~
  - c. Gainfully employed individuals with disabilities age eighteen to sixty-five who meet medically needy nonfinancial criteria, have countable assets within the medically needy asset levels, have income below two hundred twenty-five percent of the poverty level, and are not eligible for Medicaid under any other provision except as a qualified Medicare beneficiary or a special low-income Medicare beneficiary. Coverage under this

group ends on the last day of the month before the month in which the individual attains the age of sixty-five; and

- d. Individuals under age nineteen who are disabled, who meet medically needy nonfinancial criteria, who have income at or below two hundred fifty percent of the poverty level, and who are not eligible for Medicaid under any other provision. Coverage under this group ends on the last day of the month in which the individual reaches age nineteen.
3. The medically needy coverage group includes:
    - a. Individuals under the age of twenty-one who qualify for and require medical services on the basis of insufficient income, but who do not qualify under categorically needy or optional categorically needy groups, including foster care children who do not qualify as categorically needy or optional categorically needy;
    - b. Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility;
    - c. Eligible pregnant women who applied for Medicaid during pregnancy, and for whom recipient liability for the month was met no later than on the date each pregnancy ends, continue to be eligible for sixty days beginning on the last day of pregnancy and for the remaining days of the month in which the sixtieth day falls;
    - d. Children born to eligible pregnant women who have applied for and been found eligible for Medicaid on or before the day of the child's birth, for sixty days, beginning on the day of the child's birth, and for the remaining days of the month in which the sixtieth day falls;
    - e. Aged, blind, or disabled individuals who are not in receipt of supplemental security income; and
    - f. Individuals under age twenty-one who have been certified as needing the service, or age sixty-five and over in the state hospital who qualify on the basis of financial eligibility.
  4. The poverty level coverage group includes:
    - a. Qualified Medicare beneficiaries who are entitled to Medicare part A benefits, who meet the medically needy nonfinancial criteria, whose assets do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], and have income at or below one hundred percent of the poverty level;
    - b. Qualified disabled and working individuals who are individuals entitled to enroll in Medicare part A under section 1818a of the Social Security Act [42 U.S.C. 1395i-2(a)], who have income no greater than two hundred percent of the federal poverty level and assets no greater than twice the supplemental security income resource standard, and who are not eligible for Medicaid under any other provision;
    - c. Special low-income Medicare beneficiaries who are entitled to Medicare part A benefits, who meet the medically needy nonfinancial criteria, whose assets do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], and have income above one hundred percent of the poverty level, but not in excess of one hundred twenty percent of the poverty level; and
    - d. Qualifying individuals who are entitled to Medicare part A benefits, who meet the medically needy nonfinancial criteria, whose assets do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42

U.S.C. 1395w-114(a)(3)], have income above one hundred twenty percent of the poverty level, but not in excess of one hundred thirty-five percent of the poverty level, and are not eligible for Medicaid under any other provision.

5. Children's health insurance program includes individuals under age nineteen, and who have income at or below one hundred seventy percent of the poverty level. Coverage under this group ends on the last day of the month in which the individual reaches age nineteen.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; January 1, 1994; January 1, 1997; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; April 1, 2012; January 1, 2014; April 1, 2018; January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02, 50-24.1-31, 50-24.1-37; 42 USC 1396a(e)

**75-02-02.1-08. Medicaid unit.**

1. For individuals not subject to MAGI-based methodology, a Medicaid unit may be one individual, a married couple, or a family with children under twenty-one years of age or, if blind or disabled child, under age eighteen, whose income and assets are considered in determining eligibility for any member of that unit, without regard to whether the members of the unit all physically reside in the same location. An applicant or recipient who is also a caretaker of children under twenty-one years of age may select the children who will be included in the Medicaid unit. Anyone whose needs are included in the unit for any month is subject to all Medicaid requirements which may affect the unit. The financial responsibility of relatives must be considered with respect to all members of the assistance unit.
2. For individuals subject to a MAGI-based methodology, a Medicaid unit is determined by the individual's tax filing status as well as the individual's relationship to those with whom the individual lives.

Each individual will have his or her own Medicaid unit determined as follows:

- a. If the individual is a tax filer, and is not also claimed as a dependent by someone else, the individual's Medicaid unit consists of the individual, the individual's spouse, if living with the individual, and anyone the individual or his or her spouse claims as a dependent, plus a dependent's spouse that lives with them, and any unborn children of a pregnant woman who is included in the unit.
- b. If the individual is claimed as a tax dependent by another, even if the individual files his or her own tax return, and does not meet any of the following exceptions, that individual's Medicaid unit is the same as the household that claims the individual as a dependent, plus the individual's spouse that lives with them and any unborn children of a pregnant woman who is included in the unit:
  - (1) The individual is claimed as a dependent by someone other than a spouse, or a natural, adopted, or stepparent;
  - (2) The individual is under nineteen years old and is living with both parents but the parents are not filing a joint return; or
  - (3) The individual is under nineteen years old and will be claimed as a dependent by a noncustodial parent.
- c. If the individual is not a tax filer, is not expected to be claimed as a dependent by another, or meets one of the conditions set forth in paragraphs 1, 2, or 3 of subdivision b, the individual is subject to the nonfiler rules. A nonfiler individual's Medicaid unit is the individual, and, if living with the individual, the individual's spouse; natural, adopted, or

stepchildren under nineteen years old; natural, adopted, or stepparents; or natural, adopted, or step-siblings under nineteen years old, plus any of their spouses that live with them, and any unborn children of a pregnant woman who is in the household.

3. Individuals may not be opted out of a Medicaid household unit determined under subsection 2.
4. To determine medically needy eligibility for pregnant women, children aged to nineteen, or parent or caretaker relatives, income budgeting will be based on non-MAGI income methodology with the exclusion of assets.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; January 1, 2014; January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01, 50-24.1-37; 42 USC 1396a(e)

#### **75-02-02.1-10. Eligibility - Current and retroactive.**

1. Current eligibility may be established from the first day of the month in which the application was received. This subsection does not apply to qualified Medicare beneficiaries.
2. Retroactive eligibility may be established for as many as three calendar months prior to the month in which the application was received. Eligibility can be established in each of those months for which benefits are sought and if all factors of eligibility are met during each such month. If a previous application has been taken and denied in the same month, eligibility for that entire month may be established based on the current application. Retroactive eligibility may be established even if there is no eligibility in the month of application. This subsection does not apply to qualified Medicare beneficiaries.
3. An individual determined eligible for part of a month is eligible for the entire calendar month unless a specific factor prevents eligibility during part of that month. Specific factors include:
  - a. An individual is born in the month, in which case the date of birth is the first date of eligibility;
  - b. An individual who is not receiving Medicaid benefits from another state enters the state, in which case the earliest date of eligibility is the date the individual entered the state;
  - c. An individual who is receiving Medicaid benefits from another state enters the state, in which case the later of the date of entry or the day after the last day of eligibility under the other state's Medicaid program is the first date of eligibility; and
  - d. An individual is discharged from a public institution, in which case the date of eligibility is the date of discharge.
4. Eligibility for qualified Medicare beneficiaries begins in the month following the month in which the eligibility determination is made.
5. An individual cannot be eligible as a qualifying individual and be eligible under any other Medicaid coverage for the same period of time.
6. A child cannot be eligible for Medicaid for the same period of time the child is covered under the ~~healthy steps~~ children's health insurance program.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

### **75-02-02.1-24.3. Eligibility for children with disabilities.**

1. A child must be enrolled as a member of the children with disabilities coverage if that child:
  - a. Is under age nineteen, including the month the child turns age nineteen;
  - b. Is disabled;
  - c. Meets the requirements of this section; and
  - d. Is not in receipt of any other Medicaid benefits under this chapter.
2. As a condition of eligibility, a child must be enrolled in a health insurance policy if:
  - a. The child's family has an employer-based health insurance plan available to them; and
  - b. The employer pays at least fifty percent of the premium.
3. A monthly premium is due on the tenth day of each month for which coverage is sought and is equal to five percent of the family's gross countable income. This premium may be offset by any other health insurance premium the family pays for a health insurance plan that provides coverage for the individual claiming eligibility under this section. This subsection does not apply to Indians who are exempt from cost-sharing under federal law.
4. If the premium established for an individual's coverage under this section is not paid for three months, the individual will be disenrolled and may not be re-enrolled without first reestablishing eligibility under this section and paying all outstanding premiums. Any month in which no payment is due may not be counted as a month in which the individual's premium failed to be paid.
5. Payments received by the department from or on behalf of an individual claiming eligibility under this section will be credited first to the oldest unpaid premium. The department will credit payments on the day received, provided that credit for any payment made by an instrument that is not honored will be reversed. The department may require any individual who has attempted payment by a dishonored instrument to make subsequent payments in a specified manner.
6. No individual may be found eligible under this section if the individual and the individual's family have total net income in excess of two hundred fifty percent of the poverty level.
7. This section becomes effective March 1, 2008, remains effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.
8. For purposes of this section, "family" means any member of the Medicaid unit who is a spouse, parent, financially responsible caretaker relative, sibling, or child of the individual requesting benefits under this section.

**History:** Effective April 1, 2008; amended effective January 1, 2011; [January 1, 2020](#).

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-31

### **75-02-02.1-28. Excluded assets.**

Except as provided in section 75-02-02.1-28.1, the following types of assets will be excluded in determining if the available assets of an applicant or recipient exceed asset limits:

1. The home occupied by the Medicaid unit, including trailer homes being used as living quarters.
2. Personal effects, wearing apparel, household goods, and furniture.
3. One motor vehicle.
4. Indian trust or restricted lands and the proceeds from the sale thereof, so long as those proceeds are impressed with the original trust.
5. Indian per capita funds and judgment funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exemption.
6.
  - a. In determining the eligibility of an individual with respect to skilled nursing services, swing-bed, or home and community-based benefits, the individual will be ineligible for those Medicaid benefits if the individual's equity interest in the individual's home exceeds five hundred thousand dollars.
  - b. The dollar amount specified in this subsection will be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers, all items, United States city average, rounded to the nearest one thousand dollars.
  - c. This subsection does not apply to an individual whose spouse, or child who is under age twenty-one or is blind or disabled, lawfully resides in the individual's home.
  - d. This subsection may not be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.
  - e. This subsection applies only to individuals who made application for Medicaid with respect to skilled nursing facility services, swing-bed, or home and community-based benefits on or after January 1, 2006.
7.
  - a. Notwithstanding any other provision to the contrary, the assets of an individual must be disregarded when determining Medicaid eligibility in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that:
    - (1) Covers an insured who was a resident of North Dakota when coverage first became effective under the policy;
    - (2) Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, issued not earlier than the effective date of the state plan amendment described in subdivision b;
    - (3) The agency determines meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the state insurance commissioner certifies that the policy meets such requirements; and
    - (4) Is sold to an individual who:

- (a) Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;
    - (b) Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or
    - (c) Has attained age seventy-six as of the date of purchase.
  - b. This subsection applies only to individuals who have purchased a long-term care insurance policy described in this subsection with an issue date on or after the date specified in an approved Medicaid state plan amendment that provides for the disregard of assets:
    - (1) To the extent that payments are made under such a long-term care insurance policy; or
    - (2) Because an individual has received or is entitled to receive benefits under such a long-term care insurance policy.
8. Property that is essential to earning a livelihood.
- a. Property may be excluded as essential to earning a livelihood only during months in which a member of the Medicaid unit is actively engaged in using the property to earn a livelihood, or during months when the Medicaid unit is not actively engaged in using the property to earn a livelihood, if the Medicaid unit shows that the property has been in such use and there is a reasonable expectation that the use will resume:
    - (1) Within twelve months of the last use; or
    - (2) If the nonuse is due to the disabling condition of a member of the Medicaid unit, within twenty-four months of the last use.
  - b. Property consisting of an ownership interest in a business entity that employs anyone whose assets are used to determine eligibility may be excluded as property essential to earning a livelihood if:
    - (1) The individual's employment is contingent upon ownership of the property; or
    - (2) There is no ready market for the property.
  - c. A ready market for property consisting of an ownership interest in a business entity exists if the interest may be publicly traded. A ready market does not exist if there are unreasonable limitations on the sale of the interest, such as a requirement that the interest be sold at a price substantially below its actual value or a requirement that effectively precludes competition among potential buyers.
  - d. Property currently enrolled in the conservation reserve program is considered to be property essential to earning a livelihood.
  - e. Property from which a Medicaid unit is receiving only rental or lease income is not essential to earning a livelihood.
  - f. Liquid assets, to the extent reasonably necessary for the operation of a trade or business, are considered to be property essential to earning a livelihood. Liquid assets may not otherwise be treated as essential to earning a livelihood.
9. Property which is not saleable without working an undue hardship. Such property may be excluded no earlier than the first day of the month in which good-faith attempts to sell are



begun, and continues to be excluded only for so long as the asset continues to be for sale and until a bona fide offer for at least seventy-five percent of the property's fair market value is made. Good-faith efforts to sell must be repeated at least annually in order for the property to continue to be excluded.

- a. Persons seeking to establish retroactive eligibility must demonstrate that good-faith efforts to sell were begun and continued in each of the months for which retroactive eligibility is sought. Information concerning attempts to sell, which demonstrate that an asset is not saleable without working an undue hardship, are relevant to establishing eligibility in the month in which the good-faith efforts to sell are begun, but are not relevant to months prior to that month and do not relate back to prior months.
    - (1) A good-faith effort to sell real property or a mobile home must be made for at least three calendar months in which no bona fide offer for at least seventy-five percent of the property's fair market value is received before the property can be shown to be not saleable without working an undue hardship. The three calendar months must include a good-faith effort to sell through the regular market for three calendar months.
    - (2) A good-faith effort to sell property other than real property, a mobile home, or an annuity must be made for at least thirty days in which no bona fide offer for at least seventy-five percent of the property's fair market value is received before the property can be shown to be not saleable without working an undue hardship.
  - b. Property may not be shown to be not saleable without working an undue hardship if the owner of the property fails to take action to collect amounts due and unpaid with respect to the property or otherwise fails to assure the receipt of regular and timely payments due with respect to the property.
10. a. Any pre-need burial contracts, prepayments, or deposits up to the amount set by the department in accordance with state law and the Medicaid state plan, which are designated by an applicant or recipient for the burial of the applicant or recipient. Earnings accrued on the total amount of the designated burial fund are excluded.
- (1) The burial fund must be identifiable and ~~may not be commingled with other funds. Checking accounts are considered to be commingled~~irrevocable.
  - (2) The value of an irrevocable burial arrangement shall be considered toward the burial exclusion. ~~The irrevocable amount may not exceed the amount of the burial asset exclusion at the time of the contract is entered, plus the portion of the three thousand dollar asset limitation the purchaser designates for funeral expenses.~~
  - (3) The prepayments on a whole life insurance policy or annuity are the lesser of the face value or the premiums that have been paid.
  - (4) Any fund, insurance, or other property given to another person or entity in contemplation that its value will be used to meet the burial needs of the applicant or recipient ~~shall be considered part of the burial fund. If an applicant or recipient's burial is funded by an insurance policy, the amount considered set aside for the burial is the lesser of the cost basis or the face value of the insurance policy~~must be irrevocable.
  - (5) ~~At the time of application, the value of a designated burial fund shall be determined by identifying the value of the prepayments which are subject to the burial exclusion and asset limit amounts.~~

~~(6) Designated burial funds which have been decreased prior to application for Medicaid shall be considered redesignated as the date of last withdrawal. The balance at that point shall be considered the prepayment amount and earnings from that date forward shall be disregarded.~~

~~(7) Reductions made in a designated burial fund after eligibility is established must first reduce the amount of earnings.~~

~~(8) An applicant shall be determined eligible for the three-month prior period when a burial fund is established at the time of application if the value of all assets are within the Medicaid burial fund exclusion and asset limit amounts for each of the three prior months. Future earnings on the newly established burial fund must be excluded.~~

b. A burial plot for each family member.

11. Home replacement funds, derived from the sale of an excluded home, and if intended for the purchase of another excluded home, until the last day of the third month following the month in which the proceeds from the sale are received. This asset must be identifiable and not commingled with other assets.
12. Unspent assistance, and interest earned on unspent assistance, received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288] or some other federal statute, because of a presidentially declared major disaster, and comparable disaster assistance received from a state or local government, or from a disaster assistance organization. This asset must be identifiable and not commingled with other assets.
13. Payments, interest earned on the payments, and in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets are excluded for nine months, and may be excluded for an additional twenty-one months, if circumstances beyond the person's control prevent the repair or replacement of the lost, damaged, or stolen assets, and keep the person from contracting for such repair or replacement. This asset must be identifiable and not commingled with other assets.
14. For nine months, beginning after the month of receipt, unspent assistance received from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient demonstrates that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
15. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
16. Payments made pursuant to the Confederate Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, [Pub. L. 103-436; 108 Stat. 4577 et seq.]. This asset must be identifiable and not commingled with other assets.
17. Stock in regional or village corporations held by natives of Alaska issued pursuant to section 7 of the Alaska Native Claims Settlement Act, [Pub. L. 92-203; 42 U.S.C. 1606].
18. For nine months beginning after the month of receipt, any educational scholarship, grant, or award and any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution. This asset must be identifiable and not commingled with other assets.

19. For nine months beginning after the month of receipt, any income tax refund, any earned income tax credit refund, or any advance payments of earned income tax credit. This asset must be identifiable and not commingled with other assets.
20. Assets set aside, by a blind or disabled, but not an aged, supplemental security income recipient, as a part of a plan to achieve self-support which has been approved by the social security administration.
21. The value of a life estate.
22. Allowances paid to children of Vietnam veterans who are born with spina bifida. This asset must be identifiable and not commingled with other assets.
23. The value of mineral acres.
24. Funds, including interest accruing, maintained in an individual development account established under title IV of the Assets for Independence Act, as amended [Pub. L. 105-285; 42 U.S.C. 604, note].
25. Property connected to the political relationship between Indian tribes and the federal government which consists of:
  - a. Any Indian trust or restricted land, or any other property under the supervision of the secretary of the interior located on a federally recognized Indian reservation, including any federally recognized Indian tribe's pueblo or colony, and including Indian allotments on or near a reservation as designated and approved by the bureau of Indian affairs of the department of interior.
  - b. Property located within the most recent boundaries of a prior federal reservation, including former reservations in Oklahoma and Alaska native regions established by the Alaska Native Claims Settlement Act.
  - c. Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.
  - d. Property with unique Indian significance such as ownership interests in or usage rights to items not covered by subdivisions a through c that have unique religious, spiritual, traditional, or cultural significance, or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.
26. Funds held in retirement plans that are considered qualified retirement plans in the Internal Revenue Code [26 U.S.C.].
27. A charitable gift annuity that is irrevocable and may not be assigned to another person.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; August 1, 2005; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012; April 1, 2014; April 1, 2018; [January 1, 2020](#).

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02, 50-24.1-02.3

#### **75-02-02.1-40. Income levels.**

1. Levels of income for maintenance shall be used as a basis for establishing financial eligibility for Medicaid. The income levels applicable to individuals and units are:

- a. Categorically needy income levels.
  - (1) Family coverage income levels established in the Medicaid state plan are applied to the family coverage group. The family size is increased for each unborn child when determining the appropriate family size.
  - (2) Except for individuals subject to the nursing care income level, the income level for categorically needy aged, blind, or disabled recipients is that which establishes supplemental security income eligibility.
  
- b. Medically needy income levels.
  - (1) Medically needy income levels established in the Medicaid state plan are applied when a Medicaid individual or unit resides in the individual's or the unit's own home or in a specialized facility, and when a Medicaid individual has been screened as requiring nursing care, but elects to receive home and community-based services. The family size is increased for each unborn child when determining the appropriate family size.
  - (2) The nursing care income levels established in the Medicaid state plan are applied to residents receiving care in a nursing facility, an intermediate care facility for individuals with intellectual disabilities, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, or receiving swing-bed care in a hospital.
  - (3) The community spouse income level for a Medicaid eligible community spouse is subject to subdivision a, paragraph 1 of subdivision b, or subdivision c. The level for an ineligible community spouse is the greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under section 1924(d)(3)(c) of the Act [42 U.S.C. 1396r-5(d)(3)(C)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
  - (4) The income level for each ineligible family member in a spousal impoverishment prevention case is equal to one-third of an amount determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member. For purposes of this paragraph, "family member" has the meaning given in subsection 1 of section 75-02-02.1-24.
  
- c. Poverty income level.
  - (1) The income level for ~~pregnant women and~~ children under age six is equal to one hundred forty-seven percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
  - (2) The income level for pregnant women is equal to one hundred fifty-seven percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
  - (3) Qualified Medicare beneficiaries. The income level for qualified Medicare beneficiaries is equal to one hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
  - ~~(3)~~(4) The income level for children aged six to nineteen and adults aged nineteen to sixty-five is equal to one hundred thirty-three percent of the poverty level applicable

to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.

- (4)(5) The income level for transitional Medicaid benefits is equal to one hundred and eighty-five percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (5)(6) The income level for qualified working and disabled individuals is equal to two hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (6)(7) The income level for specified low-income Medicare beneficiaries is equal to one hundred twenty percent, of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (7)(8) The income level for qualified individuals is equal to one hundred thirty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (8)(9) The income level for workers with disabilities is two hundred twenty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (9)(10) The income level for children with disabilities is two hundred fifty percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

2. Determining the appropriate income level in special circumstances.

- a. During a month in which an individual enters a specialized facility or leaves a specialized facility to return home, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate income level. An individual residing in a specialized facility shall be allowed the appropriate medically needy, workers with disabilities, or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.
- b. During a month in which an individual with eligible family members in the home enters or leaves a nursing facility to return home, or elects to receive home and community-based services or terminates that election, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate medically needy, workers with disabilities, or children with disabilities income level. An individual in a nursing facility shall be allowed sixty-five dollars to meet maintenance needs during all full calendar months in which the individual resides in the nursing facility. A recipient of home and community-based services shall be allowed the medically needy income level for one during all full calendar months in which the individual receives home and community-based services. In determining eligibility for workers with disabilities or children with disabilities coverage, individuals in a nursing facility, or in receipt of home and community-based services, will be allowed the appropriate workers with disabilities or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.
- c. For an institutionalized spouse with an ineligible community spouse, the sixty-five dollar income level is effective in the month of entry, during full calendar months, and in the month of discharge. The ineligible community spouse and any other family members

remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.

- d. For a spouse electing to receive home and community based services, who has an ineligible community spouse, the medically needy income level for one is effective in the month the home and community-based services begin, during full calendar months, and in the month the home and community-based services are terminated. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.
- e. An individual with no spouse, disabled adult child, or child under age twenty-one at home who enters a nursing facility may receive the medically needy income level for one if a physician certifies that the individual is likely to return to the individual's home within six months. The six-month period begins with the first full calendar month the individual is in the nursing facility. If, at any time during the six-month period, the individual's status changes and the stay in the nursing facility is expected to exceed the six months, the individual may have only the nursing care income level beginning in the month following the month of the status change. An individual may receive the medically needy income level for only one six-month period per stay in a nursing facility. If an individual is discharged, then readmitted to a nursing facility, there must be a break of at least one full calendar month between the periods of institutionalization in order for the new stay to be considered a new period of institutionalization.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; January 1, 2011; July 1, 2012; January 1, 2014; [January 1, 2020](#).

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02, [50-24.1-02.7](#), [50-24.1-21](#), 50-24.1-37, [50-24.1-41](#)

#### **75-02-02.1-41.1. Recipient liability.**

Recipient liability is the amount of monthly net income remaining after all appropriate deductions, disregards, and Medicaid income levels have been allowed. All such income must be considered to be available for the payment of medical services provided to the eligible individual or family.

4.—The following deductions apply to [all](#) individuals ~~not subject to a MAGI-based methodology~~:

~~a.1.~~ Up to fifteen dollars per month of expenses for necessary medical or remedial care, incurred by a member of the Medicaid unit or spouse or child for whom that member is legally responsible, in a month prior to the month for which eligibility is being determined, may be subtracted from recipient liability other than recipient liability created as a result of medical care payments, to determine remaining recipient liability, provided that:

~~(1)a.~~ The expense was incurred in any month during which the individual who received the medical or remedial care was not a Medicaid recipient or the expense was incurred in a month the individual was a Medicaid recipient, but for a medical or remedial service not covered by Medicaid;

~~(2)b.~~ The expense was not previously applied in determining eligibility for, or the amount of, Medicaid benefits for any Medicaid recipient;

~~(3)c.~~ The medical or remedial care was provided by a medical practitioner licensed to furnish the care;

~~(4)d.~~ The expense is not subject to payment by any third party, including Medicaid and Medicare;

- ~~(5)~~e. The expense was not incurred for swing-bed services provided in a hospital, nursing facility services, or home and community-based services during a period of ineligibility determined under section 75-02-02.1-33.1;
  - ~~(6)~~f. Each expense claimed for subtraction is documented by the applicant or recipient in a manner which describes the service, the date of the service, the amount of the cost incurred, the amount of the cost remaining unpaid, the amount of the cost previously applied in determining Medicaid benefits for any Medicaid recipient, and the name of the service provider; and
  - ~~(7)~~g. The Medicaid unit is still obligated to pay the provider of the medical or remedial service.
- b.2. The Medicaid unit must apply the remaining recipient liability to expenses of necessary medical care incurred by a member of the Medicaid unit in the month for which eligibility is being determined. The Medicaid unit is eligible for Medicaid benefits to the extent the expenses of necessary medical care incurred in the month for which eligibility is being determined exceed remaining recipient liability in that month.

~~2. Effective January 1, 2014, individuals subject to a MAGI-based methodology are allowed a standard deduction of five percent of the one hundred percent of poverty level applicable to the size of the household.~~

**History:** Effective December 1, 1991; amended effective January 1, 2003; January 1, 2014; January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01, 50-24.1-37; 42 USC 1396a(e)

#### 75-02-02.1-44. Children's health insurance program.

##### 1. Eligibility criteria.

- a. Children ages birth through eighteen years of age are eligible for plan coverage provided all other eligibility criteria are met. Coverage for children who are eighteen years of age will continue through the last day of the month in which the child turns nineteen years of age.
- b. A child who has current creditable health insurance coverage or has coverage, which is available at no cost, as defined in section 2701 (c) of the Public Health Service Act [42 U.S.C. 300gg(c)] is not eligible for plan coverage.
- c. If the department estimates available funds are insufficient to allow plan coverage for additional applicants, the department may take any action appropriate to avoid commitment of funds in excess of available funds, including denying applications and establishing waiting lists not forbidden by title XXI of the Social Security Act [42 U.S.C. section 1397aa et seq.] or regulations adopted thereunder. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

2. Asset considerations. Assets may not be considered in determining eligibility for plan coverage.

3. Children's health insurance program unit. This subsection applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014. A plan unit may consist of one individual, a married couple, or a family with children under twenty-one years of age, or if disabled, under age eighteen, whose income is considered in determining eligibility for any member of that unit, without regard to whether the members of the unit all

physically reside in the same location. A parent or other caretaker of children under twenty-one years of age may select the children who will be included in the plan unit. Anyone who is included in the unit for any month is subject to all plan requirements that may affect the unit. The financial responsibility of relatives must be considered with respect to all members of the assistance unit.

**4. Income considerations.** This subsection applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014.

a. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant, recipient, or responsible relative when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available; or when the applicant, recipient, or responsible relative has the lawful power to make the income available or to cause the income to be made available.

b. It is presumed all parental income is actually available to a child under twenty-one years of age. This presumption may be rebutted by a showing that the child is:

(1) Living independently; or

(2) Living with a parent who is separated from the child's other parent, with or without court order, if the parents did not separate for the purpose of securing plan coverage.

c. As a condition of eligibility, an applicant, recipient, and financially responsible relative must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include veterans' compensation and pensions; old-age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.

(1) Good cause under this section exists if receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage. Good cause must be documented in the case file.

(2) Application for needs-based payments such as social security supplemental security income benefits or temporary aid to needy families benefits cannot be imposed as a condition of eligibility.

d. The financial responsibility of any individual for any other member of the plan unit is limited to the responsibility of spouse for spouse and parents for children under age twenty-one or under age eighteen if the child is disabled. Such responsibility is imposed as a condition of plan eligibility. Except as otherwise provided in this subsection, the income of the spouse and parents is considered available even if that income is not actually contributed. Natural and adoptive parents, but not stepparents, are treated as parents.

e. Income may be received weekly, biweekly, monthly, intermittently, or annually. A monthly income amount must be computed by the department or county agency regardless of how often income is received.

f. The following types of income must be disregarded in determining eligibility for plan coverage:

(1) Supplemental security income benefits provided by the social security administration.



(2) Income disregards in section 75-02-02.1-38.2.

g. (1) In determining ownership of income from a document, income must be considered available to each individual as provided in the document or in the absence of a specific provision in the document:

(a) Income is considered available only to the individual if payment of the income was made solely to that individual; and

(b) Income is considered available to each individual in proportion to the individual's interest if payment of income is made to more than one individual.

(2) One-half of income is considered available to each spouse in the case of income available to a married couple in which there is no document establishing ownership otherwise.

(3) Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent the applicant or recipient can establish the ownership interests are otherwise than as provided in subdivision f of subsection 4.

h. To determine the appropriate income level for a plan unit:

(1) The size of the household is increased by one for each unborn child of a household member;

(2) A child who is away at school is not treated as living independently, but is allowed a separate income level for one in addition to the income level applicable for the family unit remaining at home;

(3) A child who is living outside of the parental home but who is not living independently; or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse, is allowed a separate income level. This does not apply to situations in which an individual simply decides to live separately;

(4) An individual in a specialized facility is allowed a separate income level for one during all full calendar months in which the individual resides in the facility;

(5) An individual in a nursing facility is allowed a separate income level for one; and

(6) A recipient of home and community-based services is allowed a separate income level for one.

i. For a child to be eligible for plan coverage, the income remaining after allowing the appropriate disregards and deductions must be equal to or below the income level set by the department in accordance with state law and federal authorization and must be based on the size of the household. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

5. **Income deductions.** This subsection applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014. The following deductions must be subtracted from monthly income to determine adjusted gross income:

a. For household members with countable earned income:

(1) Actual mandatory payroll deductions, including federal, state, or social security taxes or ninety dollars per month, whichever is greater;

(2) Mandatory retirement plan deductions;

(3) Union dues actually paid; and

(4) Expenses of a nondisabled blind individual, reasonably attributable to earning income;

b. Reasonable child care expenses, not otherwise reimbursed by third parties if necessary to engage in employment or training. Reasonable child care expenses do not include payments to parents to care for their own children;

c. Except for a support payment withheld from an extra check that is disregarded, nonvoluntary child and spousal support payments if actually paid by a parent on behalf of an individual who is not a member of the household;

d. With respect to each individual in the unit who is employed or in training, thirty dollars as a work or training allowance, but only if the individual's income is counted in the eligibility determination;

e. The cost of premiums for health insurance may be deducted from income in the month the premium is paid or may be prorated and deducted from income in the months for which the premium affords coverage. This deduction applies primarily for premiums paid for health insurance coverage of members in the unit who are not eligible for this plan coverage. For eligible members, this deduction may be allowed if the health insurance coverage is not creditable coverage for hospital, medical, or major medical coverage; and

f. The cost of medical expenses for necessary medical or remedial care for members of the unit who are not eligible for this plan coverage.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-29

**Law Implemented:** NDCC 50-24.1-37, 50-29; 42 U.S.C. 1397aa et seq.

**CHAPTER 75-02-02.2**  
**CHILDREN'S HEALTH INSURANCE PROGRAM**

[Repealed effective January 1, 2020]

Section

- ~~75-02-02.2-01 Definitions~~
- ~~75-02-02.2-02 Application, Redetermination, and Eligibility Periods~~
- ~~75-02-02.2-03 Duty to Establish Eligibility~~
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- ~~75-02-02.2-06.1 Children's Health Insurance Program Unit~~
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## CHAPTER 75-02-06

### 75-02-06-01. Definitions.

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

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factor" means the inflation rate for nursing home services used to develop the legislative appropriation for the department for the applicable rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
6. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:
  - a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 3 of section 75-02-06-07;
  - b. A sale and leaseback to the same licensee;
  - c. A transfer of an interest to a trust;
  - d. Gifts or other transfers for nominal or no consideration;
  - e. A merger of two or more related organizations;
  - f. A change in the legal form of doing business;
  - g. The addition or deletion of a partner, owner, or shareholder; or
  - h. A sale, merger, reorganization, or any other transfer of interest between related organizations.
7. "Building" means the physical plant, including building components and building services equipment, licensed as a facility, and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings located on the site used directly for resident care.
8. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
9. "Certified nurse aide" means:
  - a. An individual who has satisfactorily completed a nurse aide training and competency evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154 and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or who has been deemed or determined

competent as provided in 42 CFR 483.151(a) and (b) and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or

- b. An individual who has worked less than four months as a nurse aide and is enrolled in a training and evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154.
10. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.
11. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
12. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. It does not include a donation to a charity.
13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.
14. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.
15. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.
16. "Department" means the department of human services.
17. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
18. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
19. "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised ~~2013~~2018 edition.
20. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
21. "Direct care costs" means the cost category for allowable nursing and therapy costs.
22. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
23. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the nursing facility premises.
24. "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
25. "Established rate" means the rate paid for services.

26. "Facility" means a nursing facility not owned or administered by state government or a nursing facility, owned or administered by state government, which agrees to accept a rate established under this chapter. It does not mean an intermediate care facility for individuals with intellectual disabilities.
27. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
28. "Final decision rate" means the amount, if any, determined on a per day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration, a request for an administrative appeal, or a request for judicial appeal taken from a decision on an administrative appeal.
29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
31. "Freestanding facility" means a nursing facility which does not share basic services with a hospital-based provider.
32. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, uniform allowances, and medical services furnished at nursing facility expense.
33. "Highest market-driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
34. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
35. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other settings. It does not mean care provided to an individual residing in a nursing facility.
36. "Hospice inpatient respite care" means short-term inpatient care provided to an individual when necessary to relieve family members or other persons caring for the individual at home. Care may be provided for no more than five consecutive days. For purposes of the definition, home does not include nursing facility.
37. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient or has been identified in a resident assessment instrument as "discharged anticipated to return".
38. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
39. "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.
40. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, swing-bed facility, transitional care unit, subacute care unit, or intermediate care facility for individuals with intellectual disabilities.

41. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
42. "Limit rate" means the rate established as the maximum allowable rate for a cost category.
43. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
44. "Managed care organization" means a Medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].
45. "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.
46. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.
47. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
48. "Noncovered day" means a resident day that is not payable by medical assistance but is counted as a resident day.
49. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
50. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act (FICA) taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
51. "Pending decision rate" means the amount, determined on a per day basis, by which a rate otherwise set under this chapter would increase if a facility prevails on a request for reconsideration, on a request for an administrative appeal, or on a request for a judicial appeal taken from a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter.
52. "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or Medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services to the resident.
53. "Private room" means a room equipped for use by only one resident.
54. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.
55. "Provider" means the organization or individual who has executed a provider agreement with the department.
56. "Rate adjustment percentage" means the percentage used to determine the minimum adjustment threshold to the rate weight of one for all facilities. The percentage is thirty-sixth hundredths of one percent effective with the June 30, 2019, cost reporting period.

57. "Rate year" means the calendar year from January first through December thirty-first.
- ~~57.~~58. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
- ~~58.~~59. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.
- ~~59.~~60. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
- ~~60.~~61. "Resident" means a person who has been admitted to the facility, but not discharged.
- ~~61.~~62. "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital leave days and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.
- ~~62.~~63. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.
- ~~63.~~64. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
- ~~64.~~65. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater; but does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds, and does not mean an increase in a nursing facility's licensed capacity resulting from converting beds formerly licensed as basic care beds.
- ~~65.~~66. "Standardized resident day" means a resident day times the classification weight for the resident.
- ~~66.~~67. "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, swing-bed facility, transitional care unit, subacute unit, an intermediate care facility for individuals with intellectual disabilities, or an acute care setting, or, if not in an institutional setting, is not receiving home- and community-based waived services.
- ~~67.~~68. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
- ~~68.~~69. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

**History:** Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; July 2, 2003; December 1, 2005; October 1, 2010; July 1, 2012; January 1, 2014; July 1, 2016; [January 1, 2020](#).



**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

#### **75-02-06-02.2. Direct care costs.**

Direct care costs include only those costs identified in this section.

##### **1. Therapies.**

- a. Salary and employment benefits for speech, occupational, and physical therapists, or for personnel, who are not reported in subsection 2, performing therapy under the direction of a licensed therapist.
- b. The cost of noncapitalized therapy equipment or supplies used to directly provide therapy.
- c. Training required to maintain licensure, certification, or professional standards, and the related travel costs.

##### **2. Nursing.**

- a. Salary and employment benefits for the director of nursing, nursing supervisors, inservice trainers for nursing staff, registered nurses, licensed practical nurses, quality assurance personnel, certified nurse aides, individuals providing assistance with activities of daily living identified in subdivision a of subsection 5 of section 75-02-06-17, individuals with a cognitive impairment who provide care-related services and who require the direction or supervision of a registered nurse in order to perform those services, and ward clerks.
- b. ~~Routine~~Allowable routine nursing ~~care supplies including items furnished routinely and relatively uniformly to all residents; items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities; and items used by individual residents that are reusable, vary by the needs of an individual, and are expected to be available in the facility,~~ personal hygiene supplies, medical supplies, and noncapitalized equipment necessary to provide for the care of residents routinely used in the provision of daily care of residents based on the resident's needs.
- c. Training required to maintain licensure, certification, or professional standards requirements, and the related travel costs.
- d. Routine hair care.
- e. The cost of noncapitalized wheelchairs.

**History:** Effective January 1, 1990; amended effective January 1, 1992; November 22, 1993; January 1, 1996; January 1, 2000; July 2, 2002; November 19, 2003; January 1, 2020.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

#### **75-02-06-02.4. Indirect care costs.**

Indirect care costs include all costs specifically identified in this section. Indirect care costs must be included in total, without direct or indirect allocation to other cost categories unless specifically provided for elsewhere.

##### **1. Administration.** Direct costs for administering the overall activities of the facility include:

- a. Salary and employment benefits for administrators, except in a facility of sixty or fewer beds, part of an administrator's salary may be allocated to other cost categories provided

adequate records identifying the hours and services provided are maintained by the facility.

- b. Salary and employment benefits for assistant administrators, top management personnel, accounting personnel, clerical personnel, secretaries and receptionists, data processing personnel, purchasing, receiving, and store personnel, medical director, security personnel, and of all personnel not designated in other cost categories.
- c. Board of directors' fees and related travel expenses.
- d. Security personnel or services.
- e. Supplies except as specifically provided for in the direct care, other direct care, and other cost centers of the indirect care cost category.
- f. Insurance, except insurance included as a fringe benefit and insurance included as part of related party lease costs.
- g. Telephone and telegraph.
- h. Postage and freight.
- i. Membership dues and subscriptions.
- j. Professional fees for services such as legal, accounting, and data processing.
- k. Central or home office costs including property costs except as provided for in section 75-02-06-06.1.
- l. Advertising and personnel recruitment costs.
- m. Management consultants and fees.
- n. Bad debts and collection fees as provided for in section 75-02-06-10.
- o. Business meetings, conventions, association meetings, and seminars.
- p. Travel, except as necessary for training programs for personnel required to maintain licensure, certification, or professional standards requirements.
- q. Training, except for training for personnel required to maintain licensure, certification, or professional standards requirements.
- r. Business office functions.
- s. ~~Computer software costs, except costs that must be capitalized, and computer-maintenance contracts.~~
- ~~t.~~ Working capital interest.
- ~~u.~~ Any costs that cannot be specifically classified to other cost categories.

## 2. **Chaplain.**

- a. Salary and employment benefits for all personnel assigned to meet the spiritual needs of the residents.
- b. Supplies and other expenses related to meeting the spiritual needs of the residents.

3. **Pharmacy.** Compensation for pharmacy consultants.
4. **Plant operations.**
  - a. Salary and employment benefits for a director of plant operations, engineers, carpenters, electricians, plumbers, caretakers, vehicle drivers, and all other personnel performing tasks related to maintenance or general plant operations.
  - b. The cost of heating and cooling, electricity, water, sewer and garbage, and cable television.
  - c. Repairs and maintenance contracts and purchased services.
  - d. Supplies necessary for repairs and maintenance of the facility, including hardware, building materials and tools, other maintenance-related supplies, and noncapitalized equipment not included elsewhere.
  - e. Motor vehicle operating and resident transportation expenses.
5. **Housekeeping.**
  - a. Salary and employment benefits for a director of housekeeping, housekeepers, and other cleaning or housekeeping personnel.
  - b. Cost of cleaning supplies including soaps, waxes, polishes, household paper products such as hand towels and toilet paper, and noncapitalized cleaning equipment.
  - c. Contracted services for housekeeping.
6. **Dietary.**
  - a. Salary and employment benefits for a director of dietary, nutritionists, dieticians, cooks, and kitchen personnel involved in the preparation and delivery of food.
  - b. The cost of dietary supplies and utensils including dietary paper products, silverware, and noncapitalized kitchen and dining equipment.
7. **Medical records.** Salary and employment benefits for personnel performing medical records maintenance.

**History:** Effective January 1, 1990; amended effective November 1, 1992; November 22, 1993; January 1, 1996; January 1, 2000; [January 1, 2020](#).

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

#### **75-02-06-02.5. Property costs and other passthrough costs.**

Property-related costs and other passthrough costs include only those costs identified in this section:

1. Depreciation.
2. Interest expense on capital debt.
3. Property taxes including special assessments as provided for in section 75-02-06-09.
4. Lease and rental costs.
5. Startup costs.

6. Reasonable legal and related expenses:
  - a. Incurred or as a result of a successful challenge to a decision by a governmental agency, made on or after January 1, 1990, regarding a rate year beginning on or after January 1, 1990;
  - b. Related to legal services furnished on or after January 1, 1990; and
  - c. In the case of a partially successful challenge, not in excess of an amount determined by developing a ratio of total amounts claimed successfully to total amounts claimed in the partially successful challenge and applying that ratio to the total legal expenses paid.
7. Allowable bad debt expense under section 75-02-06-10 in the report year in which bad debt is determined to be uncollectible with no likelihood of future recovery.
8. Education expense allowed under section 75-02-06-12.1 in the report year in which it is expended.
9. Computer software and related technology costs, including cloud-based costs.

**History:** Effective January 1, 1990; amended effective November 22, 1993; January 1, 1996; January 1, 2010; [January 1, 2020](#).

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

#### **75-02-06-03. Depreciation.**

1. Ratesetting principles require that payment for services includes depreciation on all capital assets used to provide necessary services.
  - a. Capital assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program, may be depreciated. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. To properly provide for costs or the valuation of such assets, an appraisal is required if the provider has no historical cost records or has incomplete records of the capital assets.
  - b. A depreciation allowance is permitted on assets used in a normal standby or emergency capacity.
  - c. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.
2. Depreciation methods.
  - a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared by the facility.
  - b. Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite

useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:

- (1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or
  - (2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.
- c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:
- (1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and
  - (2) A composite remaining useful life for movable equipment, determined from the seller's records.
3. Acquisitions.
- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, must be capitalized as a part of the cost of the asset.
  - b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.
4. Proper records must provide accountability for the fixed assets and provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.
5. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and may be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.
6. Basis for depreciation of assets acquired as an ongoing operation. Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.
- a. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1985, is limited to the lowest of:
    - (1) Purchase price paid by the purchaser;

- (2) Fair market value at the time of the sale; or
  - (3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes.
- b. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer.
  - c. The cost basis of a facility and its depreciable assets acquired by donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer or donee.
  - d. In order to calculate the increase over the seller's cost basis, an increase may be allowed, under subdivision a, only for assets with a historical cost basis established separately and distinctly in the seller's depreciable asset records.
  - e. An adjustment may not subsequently be allowed for any depreciable cost disallowed in rate periods prior to January 1, 2006.
  - f. For purposes of this subsection, "date of acquisition" means the date when ownership of the depreciable asset transfers from the transferor to the transferee such that both are bound by the transaction. For purposes of transfers of real property, the date of acquisition is the date of delivery of the instrument transferring ownership. For purposes of titled personal property, the date of acquisition is the date the transferee receives a title acceptable for registration. For purposes of all other capital assets, the date of acquisition is the date the transferee possesses both the asset and an instrument, describing the asset, which conveys the property to the transferee.
  - g. For rate years beginning on or after January 1, 2006, the limitations of paragraph 3 of subdivision a shall not apply to the valuation basis of assets acquired as an ongoing operation between July 1, 1985, and July 1, 2000.
7. A per bed cost limitation based on single and double occupancy must be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling.
- a. Effective July 1, ~~2015~~2019, the per bed limitation basis for double occupancy is ~~\$156,783~~\$168,864 and for a single occupancy is ~~\$235,176~~\$253,297.
  - b. The per bed limitation basis for single occupancy must be calculated using the limitation determined in subdivision a, multiplied by 1.5.
  - c. The double and single occupancy per bed limitation must be adjusted annually on July first, using the increase, if any, in the consumer price index for all urban consumers, United States city average, all items, for the twelve-month period ending the preceding May thirty-first.
  - d. The per bed limitation in effect at the time a construction, renovation, or remodeling project is put in service must be multiplied times the number of beds in double and single occupancy rooms to establish the maximum allowable cost basis of buildings and fixed equipment.

- e. The cost basis of a facility's buildings and fixed equipment must be limited to the lower of the recorded cost of total facility buildings and fixed equipment or the per bed limitation.
- f. The per bed limitation is not applicable to projects started or approved by the state health council before July 1, 1994.
- g. For rate years beginning after December 31, 2007, the limitations of subdivision a do not apply to the valuation basis of assets acquired as a result of a natural disaster before December 31, 2006. The provisions of this subsection may not be applied retroactively to any rate year before January 1, 2008.

**History:** Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; July 2, 2003; September 7, 2007; July 1, 2009; January 1, 2014; July 1, 2016; [January 1, 2020](#).

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

### **75-02-06-05. Compensation.**

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the highest market-driven compensation of an administrator employed by a freestanding facility, with licensed capacity, during the [previous](#) report year, at least equal to the licensed capacity of the smallest facility within the top quartile of all facilities ranked by licensed capacity, [increased by the consumer price index for all urban consumers \(all items, United States city average\)](#). Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation divided by three hundred sixty-five times the number of calendar days the individual was employed.
2. Compensation includes:
  - a. Salary for managerial, administrative, professional, and other services.
  - b. Amounts paid for the personal benefits of the person, e.g., housing allowance, flat-rate automobile allowance.
  - c. The cost of assets and services the person receives from the facility.
  - d. Deferred compensation, pensions, and annuities.
  - e. Supplies and services for the personal use of the person.
  - f. The cost of a domestic or other employee who works in the home of the person.
  - g. Life and health insurance premiums paid for the person and medical services furnished at facility expense.
3. Reasonable compensation for a person with at least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount normally required to be paid for the same services if provided by a nonrelated employee. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable compensation on an hourly basis may not exceed the amount determined to be the limitation in subsection 1, divided by two thousand eighty.

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

**History:** Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; September 1, 1987; January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1999; [January 1, 2020](#).

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

#### **75-02-06-14. Resident days.**

1. A resident day is any day for which service is provided or for which payment is ordinarily sought for use of a bed. The amount of remuneration has no bearing on whether a day should be counted.
2. Adequate census records must be prepared and maintained on a daily basis by the facility to allow for proper audit of the census data. The daily census records must include:
  - a. Identification of the resident;
  - b. Entries for all days, and not just by exception;
  - c. Identification of type of day, i.e., hospital, in-house;
  - d. Identification of the resident's classification; and
  - e. Monthly totals by resident, by classifications for all residents, and by type of day.
3. A maximum of fifteen days per occurrence may be allowed for payment by the medical assistance program for hospital leave. The payment rate for allowed hospital leave days may not exceed the established rate for group PA1 under the reduced physical functioning category. Hospital days in excess of fifteen consecutive days not billable to the medical assistance program are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
4. A maximum of twenty-four therapeutic leave days per individual per rate year may be allowed for payment by the medical assistance program. The payment rate for allowed therapeutic leave days may not exceed the established rate for group PA1 under the reduced physical functioning category. Therapeutic leave days in excess of twenty-four per year are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
5. Institutional leave days are not billable to the department and are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
6. Hospital and therapeutic leave days, occurring immediately following a period when a resident was receiving Medicare part A benefits in the facility, are not billable to the department and are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
7. Residents admitted to the facility through a hospice program or electing hospice benefits while in a facility must be identified as hospice residents for ~~census and~~ billing purposes.

**History:** Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; July 2, 2002; [January 1, 2020](#).

**General Authority:** NDCC 50-24.1-04, 50-24.4-02



**75-02-06-16. Rate determinations.**

1. For each cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident days for the direct care cost category and resident days for other direct care, indirect care, and property cost categories. The actual rate as calculated is compared to the limit rate for each cost category to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification. The lesser of the actual rate or the limit rate for other direct care, indirect care, and property costs, and the adjustments provided for in subsection 2 and 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.
2.
  - a. For a facility with an actual rate below the limit rate for indirect care costs, an incentive amount equal to seventy percent times the difference between the actual rate, exclusive of the adjustment factor, and the limit rate in effect at the end of the year immediately preceding the rate year, up to a maximum of two dollars and sixty cents or the difference between the actual rate, inclusive of the adjustment factor and the limit rate for indirect care costs, whichever is less, must be included as part of the indirect care cost rate.
  - b. A facility shall receive an operating margin of ~~three~~four and four-tenths percent, effective January 1, 2020, through June 30, 2021, and three percent effective July 1, 2021, based on the lesser of the actual direct care and other direct care rates, exclusive of the adjustment factor, or the limit rate in effect at the end of the year immediately preceding the rate year. The ~~three percent~~ operating margin must be added to the rate for the direct care and other direct care cost categories.
3. Limitations.
  - a. The department shall accumulate and analyze statistics on costs incurred by facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.
  - b. The department shall review, on an ongoing basis, aggregate payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under Medicare payment principles. If aggregate payments to facilities exceed estimated payments under Medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under Medicare payment principles.
  - c. All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, 2014. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.
  - d. The limit rate for each of the cost categories must be established as follows:

- (1) Historical costs for the report year ended June 30, 2014, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.
- (2) For the rate year beginning June 1, 2017, the limit rate for each cost category is:
  - (a) For the direct care cost category, one hundred seventy-eight dollars and eighteen cents;
  - (b) For the other direct care cost category, twenty-eight dollars and fifteen cents; and
  - (c) For the indirect care cost category, seventy-seven dollars and twenty-nine cents.
- e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.
- f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:
  - (1) Actual census for the report year; or
  - (2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:
    - (a) Multiplied times three hundred sixty-five; and
    - (b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.
- g. The department may waive or reduce the application of subdivision f if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:
  - (1) The facility has reduced licensed capacity; or
  - (2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision f.
- h. The department may waive the application of paragraph 2 of subdivision f for nongeriatric facilities for individuals with disabilities or geropsychiatric facilities or units if occupancy below ninety percent is due to lack of department-approved referrals or admissions.
4. An adjustment factor shall be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care under subsection 1 and for purposes of adjusting the limit rates for direct care costs, other direct care costs, and indirect care costs under subsection 3, but may not be used to adjust property costs under either subsection 1 or 3.
5. Rate adjustments.
  - a. Desk audit rate.
    - (1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by ~~facsimile transmission or~~ electronic

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

- (2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.
- (3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate except as provided for in section 75-02-06-22 or subdivision c.
- (4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. No decision on the request for reconsideration of the desk rate may be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.
- (5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.
- (6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year that result in a change of at least ~~ten cents~~ the rate adjustment percentage per day ~~for the rate weight of one~~.

b. Final rate.

- (1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.
- (2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least ~~ten cents~~ the rate adjustment percentage per day ~~for the rate weight of one~~ that are found during a field audit or are reported by the facility within twelve months of the rate yearend.
- (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c.
- (4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.
- (5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
  - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least ~~ten cents~~ the rate adjustment percentage per day ~~for the rate weight of one~~ must result in a change to the final rate. The change must be applied retroactively as provided for in this section.

- (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least ~~ten cents~~the rate adjustment percentage per day ~~for the rate weight of one~~ had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.
- (c) ~~Adjustments resulting from an audit of home office costs, that result in a change of at least ten cents per day for the rate weight of one, must be included as an adjustment in the report year in which the costs were incurred.~~
- ~~(d) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.~~

c. Pending decision rates for private-pay residents.

- (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.
  - (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.
  - (3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.
  - (4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.
- d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least one dollar per day,

except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

6. Rate payments.

- a. The rate as established must be considered as payment for all accommodations and includes all items designated as routinely provided. No payments may be solicited or received from the resident or any other person to supplement the rate as established.
- b. The rate as established must be paid by the department only if the rate charged to private-pay residents for semiprivate accommodations equals the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to the department for the same bed type, i.e., hospital or leave days.
- c. If the established rate exceeds the rate charged to a private-pay resident, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund must be the difference between the established rate and the rate charged the private-pay resident times the number of medical assistance resident days paid during the period in which the established rate exceeded the rate charged to private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.
- d. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments may not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.
- e. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year that exceed the established rate may be made unless specifically provided for in this section.

7. Partial year.

- a. Rates for a facility changing ownership during the rate period are set under this subdivision.
  - (1) The rates established for direct care, other direct care, indirect care, operating margins, and incentives for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:
    - (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period;
    - (b) For a facility with less than four months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 4; or
    - (c) If the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.

- (2) Unless a facility elects to have a property rate established under paragraph 3, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:
    - (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period;
    - (b) For a facility with less than four months of operation under the new ownership during the report year, by using the rate established for the previous owner for the previous rate year; or
    - (c) If the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.
  - (3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
- b. For a new facility, the department shall establish an interim rate equal to the limit rates for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the property rate. The property rate must be calculated using projected property costs and projected census. The interim rate must be in effect for no less than ten months and no more than eighteen months. Costs for the period in which the interim rate is effective must be used to establish a final rate. If the final rates for direct care, other direct care, and indirect care costs are less than the interim rates for those costs, a retroactive adjustment as provided for in subsection 5 must be made. A retroactive adjustment to the property rate must be made to adjust projected property costs to actual property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs must be the greater of actual census, projected census, or census imputed at ninety-five percent of licensed beds.
- (1) If the effective date of the interim rate is on or after March first and on or before June thirtieth, the interim rate must be effective for the remainder of that rate year and must continue through June thirtieth of the subsequent rate year. The facility shall file by March first an interim cost report for the period ending December thirty-first of the year in which the facility first provides services. The interim cost report is used to establish the actual rate effective July first of the subsequent rate year. The partial year rate established based on the interim cost report must include applicable incentives, margins, phase-ins, and adjustment factors and may not be subject to any cost settle-up. The cost reports for the report year ending June thirtieth of the current and subsequent rate years must be used to determine the final rate for the periods that the interim rate was in effect.
  - (2) If the effective date of the interim rate is on or after July first and on or before December thirty-first, the interim rate must remain in effect through the end of the

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

- (3) If the effective date of the interim rate is on or after January first and on or before February twenty-ninth, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. The facility shall file a cost report for the period ending June thirtieth of the current rate year. This cost report must be used to establish the rate for the subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the current rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the period that the interim rate was in effect.
  - (4) The final rate for direct care, other direct care, and indirect care costs established under this subdivision must be limited to the lesser of the limit rate for the current rate year or the actual rate.
- c. For a facility with renovations or replacements in excess of one hundred thousand dollars, and without a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first day of the month beginning after the date the project is completed and placed into service or the first day of the month beginning after the date the request for a projected property rate is received by the department, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.
  - d. For a facility with a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, must be applied to all licensed beds. A projected property rate must be established based on projected property costs and projected census. The projected property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health or the first day of the month beginning after the date when the request for a projected property rate is made to the department, whichever is later, through the end of the rate year. The property rate for the subsequent rate year must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on property costs actually incurred during the report year; and may not be subject to retroactive cost settle-up. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

- e. For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.
  - f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.
  - g. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subdivision c or d and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subdivision c or d may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
8. One-time adjustments.
- a. Adjustments to meet certification standards.
    - (1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.
    - (2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:
      - (a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;
      - (b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and
      - (c) Provide a detailed list of any other costs necessary to meet survey standards.
    - (3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the limit rate.
    - (4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.
  - b. Adjustments for unforeseeable expenses.
    - (1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.



- (2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:
    - (a) An explanation as to why the facility believes the expense was unforeseeable;
    - (b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and
    - (c) A detailed breakdown of the unforeseeable expenses by expense line item.
  - (3) The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on its background and knowledge of nursing care industry and business trends.
  - (4) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.
  - (5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.
- c. Adjustment to historical operating costs.
- (1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.
  - (2) The following conditions must be met before a facility can receive the adjustment:
    - (a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;
    - (b) The facility shall document all available resources, including efficiency incentives, if used to increase nursing hours, are not sufficient to meet the minimum standards; and
    - (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.
  - (3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any rate limitations that may apply.
  - (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the

adjustment must be adjusted in accordance with the methodologies set forth in subsection 5.

- (5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.
- d. Adjustments for disaster recovery costs when evacuation of residents occurs.
- (1) A facility may incur certain costs when recovering from a disaster such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.
  - (2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.
  - (3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.
  - (4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for the first six months following the month the facility readmits the first resident.
  - (5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.
9. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds ~~ten cents~~the rate adjustment percentage per day ~~for the rate weight of one.~~

**History:** Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002; July 2, 2003; December 1, 2005; January 1, 2010; July 1, 2010; January 1, 2012; January 1, 2014; July 1, 2016; April 1, 2018; January 1, 2020.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

#### **75-02-06-17. Classifications.**

1. A facility shall complete a resident assessment for any resident occupying a licensed facility bed, except a respite care, hospice inpatient respite care, or hospice general care resident.
2. A resident must be classified in one of forty-eight classifications based on the resident assessment. If a resident assessment is not performed in accordance with subsection 3, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, the resident must be included in group AAA, not classified, until the next required resident assessment is performed in accordance with subsection 3. For purposes of

determining standardized resident days, any resident day classified as group AAA must be assigned the relative weight of one. A resident, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, who has not been classified, must be billed at the group AAA established rate. The case-mix weight for establishing the rate for group AAA is 0.45. Days for a respite care, hospice inpatient respite care, or hospice general inpatient care resident who is not classified must be given a weight of one when determining standardized resident days. Therapeutic, hospital, or institutional leave days that are resident days must be given a weight of 0.45 when determining standardized resident days.

3. Resident assessments must be completed as follows:
  - a. The facility shall assess the resident within the first fourteen days after any admission or return from an acute hospital stay. The assessment reference date must be between day seven and day fourteen.
  - b. The facility shall assess the resident quarterly after any admission or return from an acute hospital stay. The quarterly assessment reference period ends on the day of the third subsequent month corresponding to the day of admission or return from an acute hospital stay, except if that month does not have a corresponding date, the quarterly assessment reference period ends on the first day of the next month. The assessment reference period begins seven days prior to the ending date of a quarterly assessment period. The assessment reference date used for the resident assessment instrument must be within the assessment reference period.
  - c. An assessment must be submitted upon initiation of rehabilitation therapy if initiation of rehabilitation therapy occurs outside of the quarterly assessment reference period established in subdivision b.
  - d. An assessment must be submitted upon discontinuation of rehabilitation therapy if discontinuation of rehabilitation therapy occurs outside of the quarterly assessment reference period established in subdivision b.
4. The resident classification is based on resident characteristics and health status recorded on the resident assessment instrument, including the ability to perform activities of daily living, diagnoses, and treatment received. The resident is first classified in one of seven major categories. The resident is then classified into subdivisions of each major category based on the resident's activities of daily living score and whether nursing rehabilitation services are needed or the resident has signs of depression.
5. For purposes of this section:
  - a. A resident's activities of daily living score used in determining the resident's classification is based on the amount of assistance, as described in the resident assessment instrument, the resident needs to complete the activities of bed mobility, transferring, toileting, and eating;
  - b. A resident has a need for nursing rehabilitation services if the resident receives two or more of the following for at least fifteen minutes per day for at least six of the seven days preceding the assessment:
    - (1) Passive or active range of motion;
    - (2) Amputation or prosthesis care;
    - (3) Splint or brace assistance;
    - (4) Dressing or grooming training;

- (5) Eating or swallowing training;
  - (6) Bed mobility or walking training;
  - (7) Transfer training;
  - (8) Communication training; or
  - (9) Urinary toileting, bladder, or bowel training program; and
- c. A resident has signs of depression if the resident's total severity score for depression is at least ten based on the following:
- (1) Little interest or pleasure in doing things;
  - (2) Feeling down, depressed, or hopeless;
  - (3) Trouble falling asleep or staying asleep or sleeping too much;
  - (4) Feeling tired or having little energy;
  - (5) Poor appetite or overeating;
  - (6) Feeling bad or failure or let self or others down;
  - (7) Trouble concentrating on things;
  - (8) Moving or speaking slowly or being fidgety or restless;
  - (9) Thoughts of being better off dead or hurting self; or
  - (10) Short-tempered or easily annoyed.
6. The major categories in hierarchical order are:
- a. Rehabilitation category. To qualify for the rehabilitation category, a resident must receive rehabilitation therapy. A resident who qualifies for the rehabilitation category is assigned a subcategory based on the resident's activities of daily living score. The rehabilitation category may be assigned within a classification period based on initiation or discontinuation dates if therapies are begun or discontinued on any date not within an assessment reference period.
  - b. Extensive services category. To qualify for the extensive services category, a resident must have an activities of daily living score of at least two and within the fourteen days preceding the assessment, received tracheostomy care or required a ventilator; or respirator; ~~or infection isolation~~ while a resident.
  - c. Special care high category.
    - (1) To qualify for the special care high category, a resident must have at least one of the following conditions or treatments with an activities of daily living score of at least two:
      - (a) Comatose and completely dependent for activities of daily living;
      - (b) Septicemia;
      - (c) Diabetes with:

- [1] Insulin injections seven days a week; and
  - [2] Insulin order changes on two or more days;
  - (d) Quadriplegia with an activities of daily living score of at least five;
  - (e) Chronic obstructive pulmonary disease and shortness of breath when lying flat;
  - (f) A fever in combination with:
    - [1] Pneumonia;
    - [2] Vomiting;
    - [3] Weight loss; or
    - [4] Tube feedings while a resident that comprise at least:
      - [a] Twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day; or
      - [b] Fifty-one percent of daily caloric requirements;
  - (g) Parenteral or intravenous feedings provided in and administered in and by the nursing facility; or
  - (h) Respiratory therapy seven days a week.
  - (2) A resident who qualifies for the special care category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.
- d. Special care low category.
- (1) To qualify for the special care low category, a resident must have at least one of the following conditions or treatments with an activities of daily living score of at least two:
    - (a) Multiple sclerosis, cerebral palsy, or Parkinson's disease with an activities of daily living score of at least five;
    - (b) Respiratory failure and oxygen therapy while a resident administered continuously for at least two hours or intermittently with at least two applications of at least thirty minutes each within the facility in the fourteen days preceding the assessment;
    - (c) Tube feedings while a resident that comprise at least:
      - [1] Twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day; or
      - [2] Fifty-one percent of daily caloric requirements.
    - (d) Two or more stage two pressure ulcers with two or more skin treatments;
    - (e) Stage three or four pressure ulcer with two or more skin treatments;
    - (f) Two or more venous or arterial ulcers with two or more skin treatments;

- (g) One stage two pressure ulcer and one venous or arterial ulcer with two or more skin treatments;
  - (h) Foot infection, diabetic foot ulcer, or other open lesion of foot with application of dressings to the foot;
  - (i) Radiation treatment while a resident; or
  - (j) Dialysis treatment while a resident.
- (2) A resident who qualifies for the special care low category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.
- e. Clinically complex category.
- (1) To qualify for the clinically complex category, a resident must have one or more of the conditions for the extensive services or special care categories with an activities of daily living score of zero or one or have at least one of the following conditions, treatments, or circumstances:
- (a) Pneumonia;
  - (b) Hemiplegia or hemiparesis with an activities of daily living score of at least five;
  - (c) Surgical wounds or open lesions with at least one skin treatment;
  - (d) Burns;
  - (e) Chemotherapy while a resident;
  - (f) Oxygen therapy while a resident administered continuously for at least two hours or intermittently with at least two applications of at least thirty minutes each within the facility in the fourteen days preceding the assessment;
  - (g) Intravenous medication provided, instilled, and administered by staff within the facility while a resident; or
  - (h) Transfusions while a resident.
- (2) A resident who qualifies for the clinically complex category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.
- f. Behavioral symptoms and cognitive performance category. To qualify for the behavioral symptoms and cognitive performance category, a resident must have an activities of daily living score of less than six.
- (1) To qualify for the behavioral symptoms and cognitive performance category, a resident must either:
- (a) Be cognitively impaired based on one of the following:
    - [1] A brief interview of mental status score of less than ten;
    - [2] Coma and completely dependent for activities of daily living;
    - [3] Severely impaired cognitive skills; or

- [4] Have a severe problem being understood or severe cognitive skills problem and two or more of the following:
  - [a] Problem being understood;
  - [b] Short-term memory problem; or
  - [c] Cognitive skills problem.
- (b) Exhibit behavioral symptoms with one or more of the following symptoms:
  - [1] Hallucinations;
  - [2] Delusions;
  - [3] Physical or verbal behavior symptoms directed toward others on at least four days in the seven days preceding the assessment;
  - [4] Other behavioral symptoms not directed toward others on at least four days in the seven days preceding the assessment;
  - [5] Rejection of care on at least four days in the seven days preceding the assessment; or
  - [6] Wandering on at least four days in the seven days preceding the assessment.
- (2) A resident who qualifies for the behavioral symptoms and cognitive performance category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.
- g. Reduced physical functioning category. To qualify for the reduced physical functioning category, a resident may not qualify for any other group. A resident who qualifies for the reduced physical functioning category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.
- 7. Except as provided in subsection 2, each resident must be classified into a case-mix class with the corresponding group label, activities of daily living score, other criteria, and case-mix weight as follows:
  - a. Rehabilitation with an activities of daily living score of fifteen or sixteen (group RAE); case-mix weight: 1.65.
  - b. Rehabilitation with an activities of daily living score between eleven and fourteen, inclusive (group RAD); case-mix weight: 1.58.
  - c. Rehabilitation with an activities of daily living score between six and ten, inclusive (group RAC); case-mix weight: 1.36.
  - d. Rehabilitation with an activities of daily living score between two and five, inclusive (group RAB); case-mix weight: 1.10.
  - e. Rehabilitation with an activities of daily living score of zero or one (group RAA); case-mix weight: 0.82.
  - f. Extensive services with an activities of daily living score of at least two and received tracheostomy care and ventilator or respirator care (group ES3); case-mix weight: 3.00.

- g. Extensive services with an activities of daily living score of at least two and received tracheostomy, ventilator, or respirator care (group ES2); case-mix weight: 2.23.
- h. Extensive services with an activities of daily living score of at least two and required infection isolation (group ES1); case-mix weight: 2.22.
- i. Special care high with depression and an activities of daily living score of fifteen or sixteen (group HE2); case-mix weight: 1.88.
- j. Special care high with an activities of daily living score of fifteen or sixteen (group HE1); case-mix weight: 1.47.
- k. Special care high with depression and an activities of daily living score between eleven and fourteen, inclusive (group HD2); case-mix weight: 1.69.
- l. Special care high with an activities of daily living score between eleven and fourteen, inclusive (group HD1); case-mix weight: 1.33.
- m. Special care high with depression and an activities of daily living score between six and ten, inclusive (group HC2); case-mix weight: 1.57.
- n. Special care high with an activities of daily living score between six and ten, inclusive (group HC1); case-mix weight: 1.23.
- o. Special care high with depression and an activities of daily living score between two and five, inclusive (group HB2); case-mix weight: 1.55.
- p. Special care high with an activities of daily living score between two and five, inclusive (group HB1); case-mix weight: 1.22.
- q. Special care low with depression and an activities of daily living score of fifteen or sixteen (group LE2); case-mix weight: 1.61.
- r. Special care low with an activities of daily living score of fifteen or sixteen (group LE1); case-mix weight: 1.26.
- s. Special care low with depression and an activities of daily living score between eleven and fourteen, inclusive (group LD2); case-mix weight: 1.54.
- t. Special care low with an activities of daily living score between eleven and fourteen, inclusive (group LD1); case-mix weight: 1.21.
- u. Special care low with depression and an activities of daily living score between six and ten, inclusive (group LC2); case-mix weight: 1.30.
- v. Special care low with an activities of daily living score between six and ten, inclusive (group LC1); case-mix weight: 1.02.
- w. Special care low with depression and an activities of daily living score between two and five, inclusive (group LB2); case-mix weight: 1.21.
- x. Special care low with an activities of daily living score between two and five, inclusive (group LB1); case-mix weight: 0.95.
- y. Clinically complex with depression and an activities of daily living score of fifteen or sixteen (group CE2); case-mix weight: 1.39.



- z. Clinically complex with an activities of daily living score of fifteen or sixteen (group CE1); case-mix weight: 1.25.
- aa. Clinically complex with depression and an activities of daily living score between eleven and fourteen, inclusive (group CD2); case-mix weight: 1.29.
- bb. Clinically complex with an activities of daily living score between eleven and fourteen, inclusive (group CD1); case-mix weight: 1.15.
- cc. Clinically complex with depression and an activities of daily living score between six and ten, inclusive (group CC2); case-mix weight: 1.08.
- dd. Clinically complex with an activities of daily living score between six and ten, inclusive (group CC1); case-mix weight: 0.96.
- ee. Clinically complex with depression and an activities of daily living score between two and five, inclusive (group CB2); case-mix weight: 0.95.
- ff. Clinically complex and an activities of daily living score between two and five, inclusive (group CB1); case-mix weight: 0.85.
- gg. Clinically complex with depression and an activities of daily living score of zero or one (group CA2); case-mix weight: 0.73.
- hh. Clinically complex and an activities of daily living score of zero or one (group CA1); case-mix weight: 0.65.
- ii. Behavioral symptoms and cognitive performance with nursing rehabilitation and an activities of daily living score between two and five, inclusive (group BB2); case-mix weight: 0.81.
- jj. Behavioral symptoms and cognitive performance with an activities of daily living score between two and five, inclusive (group BB1); case-mix weight: 0.75.
- kk. Behavioral symptoms and cognitive performance with nursing rehabilitation and an activities of daily living score of zero or one (group BA2); case-mix weight: 0.58.
- ll. Behavioral symptoms and cognitive performance with an activities of daily living score of zero or one (group BA1); case-mix weight: 0.53.
- mm. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of fifteen or sixteen, (group PE2); case-mix weight: 1.25.
- nn. Reduced physical functioning with an activities of daily living score of fifteen or sixteen, (group PE1); case-mix weight: 1.17.
- oo. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between eleven and fourteen, inclusive (group PD2); case-mix weight: 1.15.
- pp. Reduced physical functioning with an activities of daily living score between eleven and fourteen, inclusive (group PD1); case-mix weight: 1.06.
- qq. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between six and ten, inclusive (group PC2); case-mix weight: 0.91.
- rr. Reduced physical functioning with an activities of daily living score between six and ten, inclusive (group PC1); case-mix weight: 0.85.

- ss. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between two and five, inclusive (group PB2); case-mix weight: 0.70.
  - tt. Reduced physical functioning with an activities of daily living score between two and five, inclusive (group PB1); case-mix weight: 0.65.
  - uu. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of zero or one (group PA2); case-mix weight: 0.49.
  - vv. Reduced physical functioning with an activities of daily living score of zero or one (group PA1); case-mix weight: 0.45.
8. The classification is effective the date the resident assessment must be completed in all cases except an admission or for a return from an acute hospital stay. The classification for an admission or for a return is effective the date of the admission or return.
  9. A facility complying with any provision of this section that requires a resident assessment must use the minimum data set in a resident assessment instrument that conforms to standards for a resident classification system described in 42 CFR 413.333.

**History:** Effective September 1, 1987; amended effective January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; October 1, 2010; January 1, 2012; January 1, 2014; [January 1, 2020](#).

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

#### **75-02-06-25. Notification of rates.**

1. The department shall notify each facility of the desk audit rate on or before November twenty-second of the year preceding the rate year, except a facility that has requested and received a cost reporting deadline extension of fifteen days or less shall be notified on or before November thirtieth of the year preceding the rate year, and a facility that has requested and received a cost reporting deadline extension in excess of fifteen days shall be notified on or before December fifteenth of the year preceding the rate year.
2. The facility shall provide to all private-pay residents a thirty-day written notification of any increase in the rates for each classification. An increase in rates is not effective unless the facility has notified private-pay residents that the rate increase is effective by the first day of the second month following the date of notification by the department. If the facility does not notify private-pay residents by the first day of the first month following notification by the department, the established rate in effect at the time of notification by the department must remain in effect until the date the rate is payable by private-pay residents. No retroactive adjustment may be made to an established rate that remains in effect because the facility did not promptly notify private-pay residents unless the adjustment would result in a decrease of at least ~~ten cents~~ [the rate adjustment percentage](#) per day ~~for the rate weight of one~~. A facility may make a rate change without giving a thirty-day written notice when the purpose of the rate change is to reflect a necessary change in the case-mix classification of a resident.
3. If the department fails to notify the facility of the desk rate, as provided in subsection 1, the time required for giving written notice, as provided for in subsection 2, must be decreased by the number of days by which the department was late in setting the rate.

**History:** Effective January 1, 1996; amended effective January 1, 2000; [January 1, 2020](#).

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**CHAPTER 75-03-21.1**  
**LICENSING OF AGENCY FOSTER HOMES FOR ADULTS**

Section

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### 75-03-21.1-01. Definitions.

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

1. "Abuse" means any willful act or omission by an individual which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation to or of a resident.
2. "Agency" means an organization which operates the facility.
3. "Agency foster home for adults" means a residential home in which foster care for adults is regularly provided exclusively to Medicaid waiver recipients by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
4. "Applicant" means the agency completing and submitting to the department an application to be licensed to provide agency foster care for adults.
5. "Care" means the provision of residential habilitation or community support services, as defined by chapter 75-03-23, in an agency foster care for adults.
6. "Department" means the North Dakota department of human services.
7. "Facility" means a licensed agency foster care home for adults providing residential habilitation or community support services.
8. "Financial exploitation" means use or receipt of services provided by the vulnerable adult without just compensation, the taking, acceptance, misappropriation, or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.
9. "Home and community-based setting experience interview" means an instrument used to record information about a resident's experiences in the facility.
10. "License" means a document issued by the department authorizing an applicant to operate a facility.
11. "Mental anguish" means psychological or emotional damage that requires medical treatment or medical care or is characterized by behavioral changes or physical symptoms.
12. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with laws, rules, and standards pertaining to care and the resident's rights related to the facility.
13. "Neglect" means the failure of the provider to provide the goods or services necessary to avoid subjecting a resident to physical harm, mental anguish, or mental illness.
14. "Person-centered service plan" means a plan that describes the Medicaid waiver recipient resident's assessed needs, outcomes, and goals and how the services and natural supports provided will assist the resident in achieving their outcomes and live safely and successfully in the community.
15. "Provider" means an agency enrolled to operate the facility whose employees have documented qualifications in providing care and is enrolled as a qualified service provider agency.
16. "Qualified service provider agency" means an organization that has met all standards and requirements for that status established under chapter 75-03-23.

17. "Resident" means any adult who is receiving care in a facility for compensation up to twenty-four hours per day.
18. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, 12.1-20-11, 12.1-20-12.1, and 12.1-20-12.2, and North Dakota Century Code chapter 12.1-41.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-02. Application.**

1. An agency's application for a license to operate a facility must be made to the department.
2. An application must be made in the form and manner prescribed by the department.
3. An application for a license must be filed immediately upon change of agency or facility's location.
4. An application is not complete until all required information and verifications are submitted to the department including:
  - a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 1 of section 75-03-21.1-26;
  - b. Sanitation and safety inspection reports, when requested by the department;
  - c. Completed application form;
  - d. Licensing study report assessing the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11;
  - e. Evidence that all agency employees are properly qualified to provide care as provided in section 75-03-21.1-29;
  - f. A successfully completed criminal background check as specified in North Dakota Century Code section 50-11-02.4;
  - g. Description of the type of documentation to be used to account for service time and tasks performed for each resident;
  - h. An evacuation disaster plan; and
  - i. A sample menu plan compliant with dietary guidelines outlined in subsection 4 of section 75-03-21.1-38.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-03. License.**

1. Issuance of a license to operate a facility indicates an agency's compliance with the required standards, rules, and laws at the time of issuance.
2. A license is nontransferable.

3. A license is valid only for the agency named and the facilities' premises described on the license.
4. A license is valid only for the maximum number of residents for which the agency is licensed.
5. A license is only valid for those services or facilities identified on the license.
6. An initial license is valid for no longer than twelve months from the date of issuance.
7. A license issued after the initial licensing period has expired is valid for no longer than twenty-four months from the date of issuance or the date of expiration of the agency's status as a qualified service provider, whichever occurs first.
8. If the agency adult foster care, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized Indian reservation in North Dakota, an affidavit from an agent of the tribal agency or an appropriate tribal officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the agency and facility was completed by the tribe's agency or tribal council.
  - b. That the prospective agency and facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.
9. If the agency adult foster care, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized military base in North Dakota, an affidavit from an agent of the base agency or other appropriate military officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the agency and facility was completed by the military base's agency.
  - b. That the prospective agency and facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-04. Single or multiple license.**

A single license may be issued authorizing the provision of both residential habilitation and community support services by one applicant or single licenses may be issued authorizing the provision of each discrete service, at the discretion of the department. A license denial or revocation may affect all or some of the services and facilities operated by an agency, as determined by the department.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-05. Notification of license.**

1. The department, within sixty days from the date of the receipt of an application for a license, or upon finding an agency in noncompliance with the rules of the department, shall notify the applicant or agency's principal officer of the department's intent to grant, deny, or revoke a license.

2. The department shall notify the applicant or agency in writing. Service of the notification is made upon deposit with the United States postal service. The department shall issue a notice of denial or revocation in accordance with North Dakota Century Code section 50-11-08.
3. The applicant or agency may appeal the denial or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within twenty days after service of the denial or revocation. The hearing must be governed by the provisions of chapter 75-01-03.
4. The agency may continue to provide services until the final appeal decision is rendered. If residents have been removed from the facility or service because of a health, welfare, or safety issue, the residents shall remain out of the facility or service while the appeal is pending.
5. The agency, upon final revocation notification, immediately shall return the license to the department.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-06. Types of licenses.**

1. A license issued pursuant to this chapter must be denominated "unrestricted license" or "provisional license".
2. An "unrestricted license" may be issued to an applicant who complies with the rules and regulations of the department and North Dakota Century Code chapter 50-11, and who is accredited by the council on quality and leadership for services for individuals with disabilities in accordance with 2015 third edition of the Basic Assurances tool, including all factors and indicators.
3. A "provisional license" may be issued subject to the provisions of section 75-03-21.1-07.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-07. Provisional license.**

1. An applicant may submit an application, on a form provided, for a provisional license, permitting the provision of a new provider agency.
  - a. A provisional license may be issued to an applicant who complies with the rules and regulations of the department and North Dakota Century Code chapter 50-11 and who has the initial level of accreditation by the council on quality and leadership for services for individuals with disabilities in accordance with 2015 third edition of the Basic Assurances tool, including all factors and indicators.
  - b. A provisional license issued under this subsection may be renewed for an additional six months only upon the department's determination the agency has made significant progress toward full accreditation by the council of quality and leadership for services for individuals with disabilities in accordance with 2015 third edition of the Basic Assurances tool, including all factors and indicators, as determined by the department.
  - c. The department shall terminate a provisional license and issue an unrestricted license to the agency upon full accreditation by the council of quality and leadership for services for

individuals with disabilities in accordance with 2015 third edition of the Basic Assurances tool, including all factors and indicators, as determined by the department.

d. The department shall issue a notice of denial or revocation of a provisional license in accordance with North Dakota Century Code section 50-11-08.

e. Notice of a denial or revocation of a provisional license may be appealed in the same manner as a notice of denial or revocation of a license.

2. A provisional license may be issued to an agency with an acceptable plan of correction notwithstanding a finding of noncompliance with the rules and regulations of the department and North Dakota Century code chapter 50-11.

a. A provisional license may not be issued to an agency whose practices or facilities pose a clear and present danger to resident health and safety, including fire safety requirements as evidenced in writing by the state fire marshal, negligent or intentional misrepresentations to the department regarding any aspect of the agency's operations, or any violation that places a resident's life in danger.

b. A provisional license may be issued for any or all services provided, or facilities operated by an agency, as determined by the department.

c. Upon a finding that the agency is not in compliance, the department shall notify the agency, in writing, of its intent to issue a provisional license. The notice must provide the reasons for the action, the specific statute or rule violated, the specific services that are affected by the provisional license, specify the time allowed for correction, and describe the corrective actions required of the agency.

d. The agency, within ten days of the receipt of notice under subdivision c, shall submit to the department, on a form provided, a plan of correction. The plan of correction must include the elements of noncompliance, a description of the corrective action to be undertaken, and a date of compliance. The department may accept, modify, or reject the agency's plan of correction and shall notify the agency of the department's decision within thirty days. If the plan of correction is rejected, the department shall notify the agency that the license is being revoked in accordance with North Dakota Century Code section 50-11-08. The department may conduct periodic inspections of the facilities and operations of the agency to evaluate the implementation of a plan of correction.

e. The department shall terminate a provisional license and issue an unrestricted license to the agency upon successful completion of an accepted plan of correction, as determined by the department.

f. A provisional license issued under this subsection may be issued for any period not exceeding one year. A provisional license may be renewed for an additional six months only upon the department's determination the agency has made significant progress toward meeting the rules and regulations of the department and North Dakota Century Code chapter 50-11, as identified in the plan of correction or the agency has shown good cause for failure to implement the plan of correction. A provisional license is nontransferable and valid only for the facilities or services identified thereon.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03



#### **75-03-21.1-08. Display of license.**

The agency shall place the license in an area accessible to the public and where it may be readily seen. Licenses need not be placed on display in residences or residential areas of a facility but must be available to the public or the department upon request.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-09. Purchase of service or recognition of unlicensed entities.**

The department may not recognize or approve the activities of unlicensed entities in securing public funds from the United States, North Dakota, or any of its political subdivisions. The department may not purchase any service from such unlicensed entities.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-10. Unlicensed entities - Notification.**

Upon a determination that activities subject to licensure are occurring or have occurred, the department shall notify the person that the activities are subject to licensure. The notice must include a citation of the applicable provisions of these rules, an application for a license, a date by which the application must be submitted, and, if applicable, a request for the persons to explain that the activities identified in the notification are not subject to licensure. A person who receives notification shall submit a completed application to the department within thirty days of notice.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-11. Standards of the department.**

The department herein adopts and makes a part of these rules for all agencies the 2015 third edition of the Basic Assurances tool, including all factors and indicators standards used for accreditation by the council on quality and leadership. If an agency fails to meet an accreditation standard, the department may analyze the agency's failure using the appropriate current standards of the council on quality and leadership, this chapter, and North Dakota Century Code chapter 50-11.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-12. Identification of basic services subject to licensure.**

Services provided to eligible residents must be identified and licensed by the following titles for older adults and individuals with physical disabilities:

1. Residential habilitation services; or

2. Community support services.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

### **75-03-21.1-13. Facility.**

1. The facility must be:
  - a. Free of warped or damaged floors, loose or unsecured floor coverings, loose tiles, broken or damaged windows, loose or broken handrails, broken light bulbs, and other hazards that would affect the safety of a resident;
  - b. Maintained by a central heating and cooling system at a temperature of at least sixty-eight degrees Fahrenheit [20 degrees Celsius];
  - c. Maintained so as to prevent crawling and flying pests from entering the facility through windows;
  - d. Equipped with handrails in all stairways;
  - e. Equipped with nonporous surfaces for shower enclosures;
  - f. Equipped with safety mats or slip-preventing materials on the bottom of tubs and floors of showers; and
  - g. Physically accessible for the resident.
2. The facility must have a telecommunication device on the main floor available for use by residents.
3. Use of video surveillance equipment by the provider in the resident's bedroom and bathroom is prohibited.
4. Mobile home units used as a facility must:
  - a. Have been constructed after 1976;
  - b. Have been designed for use as a dwelling that is placed on a permanent foundation, rather than as a travel trailer;
  - c. Meet the flame spread rate requirements; and
  - d. Have a manufacturer's label permanently affixed stating the mobile home meets the requirements of the department of housing and urban development or the American national standards institute.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

### **75-03-21.1-14. Facility design.**

1. Facilities must be small enough and of a modest design, minimizing the length of hallways, the number of exterior corners, and the complexity of construction, to ensure the development of meaningful interpersonal relationships and the provision of proper programming, services, and direct care.
2. Facilities must simulate the most homelike atmosphere possible in order to encourage a personalized environment.
3. Facilities shall provide, at a minimum, enough living space, based on the needs of both males and females, with provisions for privacy and appropriate access to quiet areas where a resident can be alone.

4. Facilities shall provide arrangement of space to permit residents to participate in different kinds of activities, both in groups and individually. Space must be arranged to minimize noise and permit communication at normal conversational levels.
5. Facilities must be accessible to nonambulatory residents, visitors, and employees.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-15. Facility location.**

1. Facilities must be located at least three hundred feet [91.44 meters] from hazardous areas, including bulk fuel or chemical storage, anhydrous ammonia facilities, or other fire hazards or sources of noxious or odoriferous emissions.
2. Facilities may not be located in areas subject to adverse environmental conditions, including mudslides, harmful air pollution, smoke or dust, sewage hazards, rodent or vermin infestations, excessive noise, vibrations, or vehicular traffic.
3. Facilities may not be located in an area within the one-hundred-year base flood elevations unless:
  - a. The facility is covered by flood insurance as required by 42 U.S.C. 4101; or
  - b. The finished lowest floor elevation is above the one-hundred-year base flood elevation and the facility is free from significant adverse effects of the velocity of moving water or by wave impact during the one-hundred-year flood.
4. Facilities must be located in residential neighborhoods reasonably accessible to shops, commercial facilities, and other community facilities; and must be located not less than six hundred feet [182.88 meters] from existing group homes or day service facilities licensed by the department to serve individuals with developmental disabilities, schools for the disabled, agency foster care home for adults, long-term care facilities, or other institutional facilities. Upon written application, and good cause shown, the department may grant a variance from the provisions of this subsection upon terms the department may prescribe.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-16. Facility bedrooms.**

1. Bedrooms must accommodate no more than two residents.
2. Bedrooms must provide at least one hundred square feet [7.43 square meters] per resident in a single occupancy bedroom, and at least eighty square feet [5.57 square meters] per resident in a double occupancy bedroom, both exclusive of closet and bathroom space.
3. Bedrooms must be located on outside walls and separated from other rooms and spaces by walls extending from floor to ceiling and be at or above grade level.
4. Bedrooms must not have doors with vision panels.
5. Each resident must have the opportunity to furnish and decorate their bedrooms as they choose, such as a chest of drawers, table, or desk.

6. Bedrooms must provide storage space for clothing in the bedroom, which is accessible to all, including nonambulatory individuals.
7. Bedrooms for all residents must be constructed as a bedroom with walls or partitions of standard construction which extend from floor to ceiling and which provide privacy for the resident.
8. Bedroom ceilings must be at least six feet and eight inches [203.20 centimeters] above the finished floor surface at the ceiling's lowest point.
9. No more than one resident may be assigned to a bedroom unless requested by both residents. No more than two residents may reside in one bedroom.
10. Bedroom and bathroom doors must be lockable by the resident for privacy, with only the resident and appropriate employee having keys to the bedroom doors. Any restrictions on having a lockable bedroom or bathroom door must be documented and justified in the person-centered service plan.
11. Bedrooms occupied by residents may not be located in a level of the facility below grade level unless there are two means of egress, one of which leads to the outside of the facility.
12. At least one full bathroom must be available on the same floor as any bedroom occupied by a resident.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-17. Facility kitchens.**

1. Kitchens must provide sufficient space to permit participation by both employees and residents in the preparation of food.
2. Kitchens must provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.
3. Kitchens must have hot water supplied to sinks in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude resident access.
4. Kitchens must be maintained in such a way that they provide for safe food handling and food storage, and meet acceptable standards to assure a healthy environment.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-18. Facility bathrooms.**

1. Bathrooms must be located in places that facilitate maximum self-help by residents.
2. Bathrooms must provide showers or bathtubs, toilets, and lavatories approximating normal patterns found in homes, unless specifically contraindicated by program needs.
3. Bathrooms must serve only up to four residents each.
4. At least one bathroom per facility must be accessible and usable by nonambulatory residents, visitors, and employees.

5. Bathrooms must have hot water supplied to lavatories and bathing facilities in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude resident access.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-19. Facility laundry.**

Laundry space must provide a washer and dryer, storage for laundry supplies, accommodations for ironing, and counterspace for folding clothing and linen.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-20. Facility use of space.**

1. Facilities shall provide access to all areas of the facility, with due regard for privacy, personal possessions, and service provision, with limitations of personal areas of employees.
2. Facilities shall provide for a resident to personalize the resident's portion of the living unit and mount pictures on the walls.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-21. Facility water supply.**

1. Facilities must be located in areas where public or private water supplies approved by the department of environmental quality are available. Approved public water supplies must be used where available.
2. When a private water supply is used, water samples must be submitted to a certified laboratory approved by the department of environmental quality at the earliest possible date prior to occupancy, and every six months thereafter to determine chemical and bacteriological acceptability.
3. Drinking water must be obtained from an approved community water system or from a source tested by a certified laboratory and approved by the department of environmental quality. A copy of the test report must be submitted to the department. The water and wastewater plumbing systems must comply with article 62-03.1, plumbing installation standards.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-22. Facility sewage disposal.**

1. Facilities must be located in areas where public or private sewage disposal systems approved by the department of environmental quality are available. Approved public sewage disposal systems must be used, where available.
2. Plans and specifications for proposed private sewage disposal systems or alteration to such systems must be approved by the department of environmental quality prior to the construction, maintenance, and operation of such systems.

3. Septic tanks or other nonmunicipal sewage disposal systems must comply with chapter 62-03.1-03, private sewage disposal systems.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-23. Emergency plans.**

An agency shall have written plans and procedures, that are clearly communicated to and periodically reviewed with employees and residents for meeting emergencies, including fire, serious illness, severe weather, and missing residents. Applicable requirements of state law and regulations by the state fire marshal and applicable licensing authorities must be met.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-24. Insurance and bond requirements.**

An agency shall secure and maintain adequate insurance and bonds appropriate for the size of the programs including:

1. A blanket fidelity bond equal to not less than ten percent of the total operating costs of the program;
2. Property insurance covering all risks at replacement costs and costs of extra expense for loss of use;
3. Liability insurance covering bodily injury, property damage, personal injury, professional liability, and umbrella liability as applicable; and
4. Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no-fault on all vehicles operated by the agency or the agency's employees in which residents may be a passenger.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-25. Variance.**

Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance to an agency from subsection 1 of section 75-03-21.1-14 and subsections 2 and 3 of section 75-03-21.1-16, except no variance may permit or authorize a danger to the health or safety of a resident.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-26. Applicant's buildings.**

Applicants occupying buildings, whether owned or leased, shall provide the department with the following:

1. The written report of an authorized fire inspector, following an initial or subsequent annual inspection of a building, which states:

- 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. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances; and
3. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or
4. Plans and specifications of buildings and site plans for facilities proposed for use but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-27. Safety codes.**

1. Applicants shall meet the applicable life safety standards established by the local governing municipality's ordinances. If the local governing municipality has no ordinances establishing life safety standards, the residential service facilities shall meet, as determined by the department, the one-family and two-family dwellings chapter of the Life Safety Code of the national fire protection association, 2000 edition.
2. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from any specific requirement of the Life Safety Code, upon terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of the facility or violate the provisions of North Dakota Century Code chapter 50-11.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-28. Safety - Inspections.**

1. Pets not confined in enclosures may not present a danger to a resident, visitors, or employees based upon the size, temperament, or obedience of the pet. Proof of pet vaccination is required and shall be submitted to the department.
2. The facility must be located where a community or rural fire department is available.
3. Interior doors with a locking mechanism must be provided with a means to unlock the door from either side.
4. The heating and electrical system must be inspected for operability and safety at the time of the initial license application and upon relicensing.
5. Food preparation areas, equipment, and food storage areas must be clean, free of offensive odors, and in sound working condition.
6. The department requires the facility be inspected by a local fire inspector or the state fire marshal at the time of initial license application and periodically thereafter if the department suspects the facility is not fire safe or when structural changes are made to the facility.

7. Deficiencies noted during an inspection must be corrected within sixty days after the issuance of the inspection report.
8. Any fees for the inspections required by the department or costs associated with correcting deficiencies noted during an inspection must be the responsibility of the applicant or agency.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21.1-29. Direct service provider employee qualifications.**

1. The direct service provider employee must:
  - a. Be eighteen years of age or older;
  - b. Possess the physical health necessary to provide care;
  - c. Be literate and capable of understanding instructions and communicating in the English language;
  - d. Be in good physical health, emotionally, and functionally stable, and not abusing drugs or alcohol;
  - e. Successfully complete criminal background check requirements as specified in North Dakota Century Code sections 50-11-02.4 and 50-11-06.8; and
  - f. Complete department-approved training on the administration of routine medications, traumatic brain injury, and dementia.
2. In addition to the requirements of subsection 1, the direct service provider employee shall:
  - a. Provide evidence of competence in the generally accepted:
    - (1) Procedure for infection control and proper handwashing methods;
    - (2) Procedure for handling and disposing of body fluids;
    - (3) Procedure for tub, shower, and bed bathing techniques;
    - (4) Procedure for hair care techniques, bed and sink shampoo, and shaving;
    - (5) Procedure for oral hygiene techniques of brushing teeth and cleaning dentures;
    - (6) Procedure for caring for an incontinent resident;
    - (7) Procedure for feeding or assisting a resident with eating;
    - (8) Procedure for basic meal planning and preparation;
    - (9) Procedure for assisting a resident with the self-administration of medications;
    - (10) Procedures and techniques, which include dusting, vacuuming, sweeping, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;
    - (11) Procedures in laundry techniques, which include mending, washing, drying, folding, putting away, ironing, and related work;



(12) Procedure for assisting a resident with bill paying and balancing a check book;

(13) Procedure for dressing and undressing a resident;

(14) Procedure for assisting with toileting;

(15) Procedure for routine eye care;

(16) Procedure for proper care of fingernails;

(17) Procedure for caring for skin;

(18) Procedure for turning and positioning a resident in bed;

(19) Procedure for transfer using a belt, standard sit, bed to wheelchair;

(20) Procedure for assisting a resident with ambulation; and

(21) Procedure for making beds; or

b. Meet developmental disability competency standards for facilities in which the responsible direct service provider employee is employed by a licensed provider in accordance with chapter 75-04-01 and North Dakota Century Code chapter 25-16, and services are provided according to chapter 75-04-01.

3. Direct service provider employees shall undergo a medical examination, psychological evaluation, or substance abuse evaluation when requested by the department or human service zone when there is reason to believe that such an examination or evaluation is reasonably necessary.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-30. Verifications and demonstration of competence.**

1. A physician, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in specialized areas of care shall verify in writing, on forms furnished by the department, that a direct service provider employee is competent to perform each procedure specified in subsection 2 of section 75-03-21.1-29. Verification that a direct service provider employee is competent to perform a procedure is evidence of competence with respect to that procedure.

2. 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.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-31. General practices.**

The provider:

1. Shall permit a representative of the department, human service zone, or other individual or organization serving a resident entry into the facility without prior notice;
2. Shall provide information about the residents to the department, human service zone, or other individual or organization serving a resident with reasonable promptness;
3. Shall report illness, hospitalization, or unusual behavior of a resident to the individual or organization serving the resident, and to the resident's legal representative, whichever is appropriate;
4. Shall assure information related to the resident is kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, required or permitted by law, or as authorized by the resident;
5. May not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, age, religion, national origin, marital status, political belief, or mental or physical disability;
6. Shall accept direction, advice, and suggestions concerning the care of residents from the department, human service zone, or other individual or organization serving a resident;
7. Shall assure residents receiving care are not subjected to abuse, sexual abuse, neglect, or financial exploitation by the provider, employees, or volunteers;
8. Shall coordinate and facilitate the release of a report of any examination or evaluation, required under subsection 3 of section 75-03-21.1-29, to the department or human service zone;
9. Immediately shall report changes in the identity or number of individuals living in the facility to the department;
10. Immediately shall report an inability to provide care to the resident to the department;
11. Shall allow a representative of the department, or human service zone, to enter the premises, examine the facility, and interview the residents, provider, and employees in order to evaluate compliance with this chapter and North Dakota Century Code chapter 50-11;
12. Shall cooperate with the department or human service zone in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, human service zone, ombudsman, or other authorized individuals to the facility and its residents;
13. May not retaliate against any resident who has filed a complaint with the department or human service zone by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner;
14. May not use a transfer of ownership of a resident's possessions or property as payments;
15. May not purchase property or possessions from a resident without providing documented proof to the department that the item or property was purchased at fair market value;
16. May not accept or solicit personal property or a purchased item with a fair market value of at least twenty-five dollars that the resident, resident's family, or both, choose to give to the provider or employees;

17. May not accept or solicit personal property or a purchased item with a fair market value of twenty-five dollars or less that the resident, resident's family, or both, chose to give to the licensed provider or employees exceeding more than two times in a calendar year;

18. For the purpose of this section, fair market value means:

a. In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;

b. In the case of real or personal property that is subject to reasonable dispute concerning its value:

(1) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the resident or anyone acting on the resident's behalf, seventy-five percent of estimated fair market value; or

(2) If conveyed to someone in a confidential relationship with the resident or anyone acting on the resident's behalf, one hundred percent of estimated fair market value; and

c. In the case of income, one hundred percent of apparent fair market value;

19. Shall notify the department if the provider holds, or will be accepting, appointment as a power of attorney agent for a resident. The department may revoke the license of a provider who holds, or will be accepting, appointment as a power of attorney agent for a resident if the department considers it to be a conflict of interest or a result of undue influence;

20. Shall notify the resident or the resident's legal representative of their right to manage the resident's finances. The provider shall notify the department in writing if the resident, or the resident's legal representative, requests the provider to act as representative payee;

21. Shall provide the department, upon request, an accounting of the resident's expenses, including receipts, for all deposits and expenditures if the provider is assisting a resident with management of personal funds; and

22. Shall provide twenty-four-hour care and supervision of all residents residing in the facility, unless otherwise documented and justified in the person-centered service plan or service.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

### **75-03-21.1-32. Recording and reporting critical incidents.**

An agency shall implement policies and procedures to assure that critical incidents including alleged abuse, neglect, and exploitation and use of restraint are immediately reported as required by the department.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

### **75-03-21.1-33. Entry and inspection.**

1. The applicant shall affirm the right of the department or human service zone to enter any of the applicant's buildings or facilities and access to its records to determine the extent to which

the applicant is in compliance with the rules of the department, to facilitate verification of the information submitted with an application for licensure, and to investigate complaints.

2. The agency shall authorize the department or human service zone, entry to its facilities and access to its records if the agency declares bankruptcy, transfers ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties. The department's entry is for the purpose of facilitating the orderly transfer of residents to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-34. Access to records.**

The applicant shall affirm the right of duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department and North Dakota Century Code chapter 50-11.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-35. Denial of access to facilities and records.**

Any applicant or agency that denies the department or human service zone access to a facility or its records, must have its license revoked or its application denied.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-36. Criminal conviction - Effect on licensure and operation of a facility.**

1. An individual employed by, or providing care in, a facility and any adult living in the facility, but not being provided care in the facility, may not 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; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code section 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of 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; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 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; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult; 12.1-31-07.1, exploitation of an eligible adult; 14-09-22, abuse of a child; 14-09-22.1, neglect of a child; 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; or

b. An offense, other than a direct-bearing offense identified in subsection 1, if the department determines the individual has not been sufficiently rehabilitated.

(1) 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, unless sufficient evidence is provided of rehabilitation.

(2) 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.

2. In the case of an offense described in North Dakota Century Code section 12.1-17-01, simple assault, if a felony; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence, if a misdemeanor; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-18-03, unlawful imprisonment; 12.1-20-05, corruption or solicitation of minors, if a misdemeanor; 12.1-20-07, sexual assault, if a misdemeanor; 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 convictions.

3. The department has determined the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to be employed by, providing care in, a facility, or be an adult living in the facility, but not being provided care in the facility.

4. A provider shall submit an application and payment for a fingerprint-based criminal history record check at the time of application and on any individual employed by, or providing care in, the facility and any adult living in the facility, but not being provided care in the facility. 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 January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-37. Disclosure of a criminal record.**

1. Each member of the governing body of the applicant or agency, the chief executive officer, and any employees, volunteers, or agents who receive and disburse funds on behalf of the governing body, shall disclose to the department if they have been found guilty of, pled guilty to, or pled no contest to a criminal offense.

2. The applicant or agency shall disclose to the department the names, type of offenses, dates of having been found guilty of, pled guilty to, or pled no contest to a criminal offense, and position and duties within the applicant's or agency's organization of employees and volunteers with a criminal record.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21.1-38. Meals and nutrition.**

1. Three meals must be served daily.
2. Residents must be allowed access to food at any time and meal choices must be provided. Any restrictions on access to or choice of food because of health and safety concerns must be documented and justified in the person-centered service plan or service and rental agreement.
3. There may be no more than fourteen hours between the conclusion of the evening meal and service of breakfast.
4. Each meal must be nutritious and well-balanced in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.
5. Adequate amounts of food must be available at all meals.
6. The special dietary needs of the residents must be considered in all menu planning, food selection, and meal preparation.
7. Consideration must be given to residents' cultural, ethnic, and religious backgrounds in food preparation.
8. Meals must be regularly and routinely prepared in the facility where the residents live.
9. Charges imposed for resident meals provided by individuals or businesses other than the provider must be paid by the provider unless the provider made a meal available at the facility.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21.1-39. Lease or rental agreement.**

The provider shall furnish each prospective resident, or the resident's legal representative, and the department with a signed copy of the provider's lease or rental agreement prior to the resident entering the facility. A copy signed by the resident or legal representative and the provider must be kept in the resident's record.

1. The lease or rental agreement must include all of the following information:
  - a. Landlord tenant eviction and appeals process;
  - b. Any relevant expectations with which the resident is expected to comply, including restrictions on the use of alcohol or tobacco in the facility; and
  - c. Procedure used for billing, collecting, and reimbursing the charge for board, room, and care.
2. All modifications made after the date the initial lease or rental agreement was signed must be in writing and signed by the resident or the resident's legal representative and the provider. The provider shall furnish the resident, or the resident's legal representative, and the department with a signed copy of the modifications. A copy of the modifications must be kept in the resident's records.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21.1-40. Applicant guarantees and assurances.**

1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner that:
  - a. Guarantees each resident a person-centered service plan;
  - b. Guarantees the resident the right to receive authorized services and supports included in his or her person-centered service plan in a timely manner and the opportunity to fully participate in the benefits of community living, vote, worship, interact socially, freely communicate and receive guests, own and use personal property, and unrestricted access to legal counsel;
  - c. Guarantees such restrictions as may be imposed upon a resident relate solely to capability and are imposed pursuant to the provisions of a person-centered service plan;
  - d. Guarantees the confidentiality of all resident records;
  - e. Guarantees the applicable legal documents establishing guardianship and of durable power of attorney are kept in the resident record and provided to the case manager;
  - f. Guarantees the resident the right to choose and refuse services, who provides the services, the right of the resident and the resident's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may harm the resident or others;
  - g. Assures the resident safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff;
  - h. Assures adaptive equipment, where appropriate for personal hygiene, self-care, mobility, or communication, is provided in the service for use by residents with disabilities consistent with the person-centered service plan;
  - i. Assures all employees demonstrate basic professional competencies as required by their job descriptions and complies with all required trainings, credentialing, and professional development activities;
  - j. Assures annual evaluations that measure program outcomes against previously stated goals and objectives are conducted;
  - k. Assures all vehicles transporting residents are subject to routine inspection and maintenance, licensed by the department of transportation, equipped with a first-aid kit and a fire extinguisher, carry no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible, where appropriate, and are driven by individuals who hold a valid state driver's license;
  - l. Guarantees a grievance procedure, reviewed and approved by the department, affords the resident or the resident's authorized representative or advocate, the right to a hearing of any complaint; and guarantees that records of such hearings are maintained and must note therein the complaint, the names of the individuals complaining, and the resolution of the grievance;

- m. Assures policies and procedures regarding admission to the agency's services and termination of services are in conformance with the rules of the department;
- n. Assures all documentation, data reporting requirements, rules, regulations, and policies are conducted as required by the department;
- o. Assures all applicable municipal, federal, and state laws and regulations are being abided by;
- p. Assures the residents right to use medical marijuana if the resident is a qualified patient who has the required documentation necessary to legally obtain medical marijuana. The facility is not required to administer or store medical marijuana and can limit where a resident uses medical marijuana to a certain part of the facility; and
- q. Assures the facility complies with all requirements of title 28, Code of Federal Regulations, part 35, app. B.

- 2. Accredited applicants shall submit evidence, satisfactory to the department, of accreditation.
- 3. The department shall determine the degree to which the unaccredited applicant's policies and procedures are in compliance with the standards.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-41. Termination of care.**

- 1. The provider shall terminate care of a resident when care is no longer required or when the provider is no longer qualified to provide the care needed by the resident.
- 2. The provider who anticipates the termination of care to a resident shall provide the resident, or the resident's legal representative, and the department with at least thirty-days written notice of the termination. The provider shall assist with the transfer of the resident to a setting more appropriate to the resident's needs. The provider also shall comply with the provider's lease or rental agreement and landlord-tenant eviction laws.
- 3. If an emergency placement outside of the facility is needed or a resident is hospitalized and the resident's condition has changed to the extent that the provider is no longer able to provide the resident's care, consideration will be given to waiving the thirty-day written notice required under subsection 2 provided keeping the resident or returning the resident to the facility would negatively impact the health and well-being of the resident, or other residents living in the facility. The department must be contacted by the provider prior to receiving authority to waive the thirty-day requirement.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-42. Permitting operation after notice of revocation.**

The department may revoke or deny a license for any of the reasons permitted by law, or any combination of reasons. A revocation or denial based on one or more reasons must be affirmed, on appeal, if the evidence supports any reason given for revocation or denial. An agency that receives a notice of revocation, and that makes a timely appeal of that notice, may continue to operate the facility pending a final administrative appeal decision, unless the license expires. If the revocation is based on



reasons which present an imminent danger to the health, welfare, or safety of residents, an agency may not provide care to a resident pending a final administrative appeal decision.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-43. Distribution of notice of denial or revocation.**

A copy of a notice of revocation or a notice of denial of a license application may be provided to any resident, any individual who resides in a place under circumstances which may require that place to be licensed as a facility for care of that individual, to any legal representative, agency, or individual making placement of that resident or individual.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-44. Reapplication after denial or revocation.**

An agency or applicant whose license has been revoked or whose license application has been denied may not reapply, without the written permission of the department, until a final determination has been made with respect to the denial or revocation.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-45. Time period for correcting deficiencies.**

The following time periods are established for correction of deficiencies identified in a correction order:

1. For a deficiency that requires an agency to provide written documentation of qualifications in providing foster care for adults, a period of up to thirty days must be allowed to correct the deficiency;
2. For a deficiency that requires an inspection for compliance with fire, safety, and sanitation, a period of up to thirty days must be allowed to correct the deficiency;
3. For a deficiency that requires obtaining and providing the results of a substance use evaluation, psychological evaluation, or a physical examination, a period of up to sixty days must be allowed to correct the deficiency;
4. For deficiencies that require building remodeling, renovation, or change, a period of up to sixty days must be allowed to correct the deficiency;
5. For all other deficiencies, a period of up to thirty days must be allowed to correct the deficiency;
6. All time periods must commence with the date the correction order is received by the agency;  
and
7. The department may grant extensions for a period of one-half the original allowable time to correct a deficiency upon demonstration by the agency that the need for an extension is created by circumstances beyond the control of the agency and that the agency has diligently pursued the correction of the deficiency.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 50-06-16, 50-11  
**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-46. Penalties.**

An agency, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions.

1. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of twenty-five dollars per day--subsections 1 or 2 of section 75-03-21.1-13; subsections 2, 8, or 11 of section 75-03-21.1-16; subsections 3 or 4 of section 75-03-21.1-17; subsection 3 of section 75-03-21.1-21; sections 75-03-21.1-22 or 75-03-21.1-27; subsections 3, 4, or 5 of section 75-03-21.1-28; subsection 1 of section 75-03-21.1-29; subsection 4 of section 75-03-21.1-31; subsections 4 or 5 of section 75-03-21.1-38; or subsection 1 of section 75-03-21.1-41.
2. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of fifteen dollars per day--subsections 1, 9, or 12 of section 75-03-21.1-16; subsections 6, 9, 10, 11, 12, 13, or 14 of section 75-03-21.1-31; or section 75-03-21.1-39.
3. A violation of any other provision of this chapter not noted in subsections 1 and 2 subjects the licensed provider to a fiscal sanction of five dollars per day.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 50-06-16, 50-11  
**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-47. Records.**

The following records must be kept and maintained for each resident in the facility:

1. The resident's full name and birth date;
2. The name, address, and telephone number of the resident's legal representative when one exists and an emergency contact;
3. Names, addresses, and telephone numbers of individuals who can assume responsibility or consent to health care under North Dakota Century Code section 23-12-13 for the resident if the legal representative cannot be reached immediately in an emergency;
4. Applicable legal documents establishing guardianship, durable power of attorney, or health care directive for the resident;
5. An agency shall submit and retain all requisite documentation to demonstrate the right to receive payment for all services and supports and comply with all federal and state laws, regulations, and policies necessary to disclose the nature and extent of services provided and all information to support claims submitted by, or on behalf of, the agency;
6. A record of any matter required to be reported under section 75-03-21.1-32 and of any accident resulting in injury to a resident; and
7. An accounting of any real or personal property the resident or the resident's family gives, sells, or otherwise transfers to the provider.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 50-06-16, 50-11  
**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-48. Documentation and data reporting requirements.**

1. An agency shall maintain program records, fiscal records, and supporting documentation, including:
  - a. Authorization from the department for each resident for whom service is billed;
  - b. Attendance sheets and other records documenting the days and times the residents received the billed services from the agency; and
  - c. Records of all bills submitted to the department for payment.
2. An agency shall report the results of designated quality and performance indicators, as requested by the department.
3. An agency shall retain a copy of the records required for forty-two months from the last date of the service unless an audit in process requires a longer retention.
4. The department maintains the right to withhold a payment for services or suspend or terminate Medicaid enrollment if the agency has failed to abide by terms of the Medicaid contract, federal and state laws, regulations, and policies regarding documentation or data reporting.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-49. Monitoring.**

The department shall conduct facility visits at the time of licensure, licensure renewal, or upon evidence of noncompliance. Monitoring visits at the time of licensure renewal or upon evidence of noncompliance must include home and community-based setting experience interviews with all residents.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21.1-50. Developmental disability licensure.**

Agencies and facilities licensed according to chapter 75-04-01 and North Dakota Century Code chapter 25-16 that provide residential habilitation services satisfy the requirements of section 75-03-21.1-11; sections 75-03-21.1-13 through 75-03-21.1-24; and sections 75-03-21.1-26, 75-03-21.1-27, 75-03-21.1-29, and 75-03-21.1-30.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**CHAPTER 75-03-23**  
**PROVISION OF HOME AND COMMUNITY-BASED SERVICES UNDER THE SERVICE**  
**PAYMENTS FOR ELDERLY AND DISABLED PROGRAM AND THE MEDICAID WAIVER**  
**FOR THE AGED AND DISABLED PROGRAM**

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**75-03-23-01. Definitions.**

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-06.2. In addition, as used in this chapter:

1. "Activities of daily living" means the daily self-care personal activities that include bathing, dressing or undressing, eating or feeding, toileting, continence, transferring in and out of bed or chair or on and off the toilet, and mobility inside the home.
2. "Adaptive assessment" means an evaluation to identify adaptive devices, equipment, or modifications that enhance the independence and functional capabilities of an individual who may otherwise be unable to remain in the individual's home.
3. "Aged" means sixty-five years of age or older.
4. "Client" means an individual who meets the eligibility requirements and is receiving services reimbursed under North Dakota Century Code chapter 50-06.2 or this chapter.
5. "Congenital disability" means a disability that exists at birth or shortly thereafter, and is not attributable to a diagnosis of either mental retardation or a closely related condition of mental retardation.
6. "Department" means the North Dakota department of human services.
7. "Disability due to trauma" means a disability that results from an injury or assault to the body by an external force.
8. "Disability that is acquired" means a disability that results from an assault that occurs internally within the body.

9. "Disabled" means under age sixty-five with a congenital disability, a disability due to trauma, or a disability that is acquired.
10. "Functional assessment" means an instrument used to record basic demographic and medical information about an individual, including age, date of birth, spoken language, marital status, individuals residing with, emergency contacts, medical resources, health care coverage, and source and reason for referral; and to secure measurable information regarding:
  - a. Physical health;
  - b. Cognitive and emotional functioning;
  - c. Activities of daily living;
  - d. Instrumental activities of daily living;
  - e. Informal supports;
  - f. Need for twenty-four-hour supervision;
  - g. Social participation;
  - h. Physical environment;
  - i. Financial resources;
  - j. Adaptive equipment;
  - k. Environmental modification; and
  - l. Other information about the individual's condition not recorded elsewhere.
11. "Functional impairment" means the inability to perform, either by oneself or with adaptive aids or with human help, specific activities of daily living or instrumental activities of daily living.
12. "Home and community-based services" means the array of services under the SPED program and Medicaid waiver defined in the comprehensive human service plan and the other services the department determines to be essential and appropriate to sustain individuals in their homes and in their communities, and to delay or prevent institutional care.
13. "Institution" means a hospital, swing bed facility, nursing facility, or other provider-operated living arrangement receiving prior approval from the department.
14. "Instrumental activities of daily living" means activities requiring cognitive ability or physical ability, or both. Instrumental activities of daily living include preparing meals, shopping, managing money, housework, laundry, taking medicine, transportation, using the telephone, and mobility outside the home.
15. "Medicaid waiver program" means the federal Medicaid waiver for the aged and disabled program, as defined in subpart G of 42 CFR 441, under which the department is authorized to provide specific home and community-based services to aged and disabled persons who are at risk of being institutionalized.
16. "Sanction" means an action taken by the department against a qualified service provider for noncompliance with a federal or state law, rule, or policy, or with the provisions of the Medicare provider agreement.
17. "Service fee" means the amount a SPED client is required to pay toward the cost of the client's SPED services.

- | ~~17.18.~~ "Service payment" means the payment issued by the department to a qualified service provider for the provision of authorized home and community-based services to eligible aged and disabled persons.
- | ~~18.19.~~ "SPED program" means the service payments for elderly and disabled program, a state program which authorizes the department to reimburse qualified service providers for the provision of covered home and community-based services to eligible aged and disabled individuals.
- | ~~19.20.~~ "SPED program pool" means the list maintained by the department which contains the names of clients for whom SPED program funding is available when the clients' names are transferred from the SPED program pool to SPED program active status.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; January 1, 2018; [January 1, 2020](#).

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-01(3), 50-06.2-03(5)

#### **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 foster care using a licensed adult foster care provider to a client eighteen years of age or older:
  - a. Who resides in a licensed adult foster care home;
  - b. Who requires care or supervision;
  - c. Who would benefit from a family [or shared living](#) 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 foster care may choose a respite provider and is not required to use a relative of the adult 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; [January 1, 2020](#).

**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 foster care, using a licensed adult foster care provider, to a client who resides in a licensed adult foster care home who:
  - a. Is eighteen years of age or older;
  - b. Requires care or supervision;
  - c. Would benefit from a family [or shared living](#) 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 foster care home may choose a respite provider and is not required to use a relative of the adult 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 community transition services to a client who is transitioning from an institution or another provider-operated living arrangement to a living arrangement in a private residence where the client is directly responsible for his or her own living expenses and needs nonrecurring set-up expenses. Community transition services include one-time transition costs and transition coordination.
- a. Allowable expenses are those necessary to enable a client to establish a basic household that do not constitute room and board and may include:
    - (1) Security deposits that are required to obtain a lease on a private residence;
    - (2) Essential household furnishings required to occupy and use a private residence, including furniture, window coverings, food preparation items, and bed and bath linens;
    - (3) Setup fees or deposits for utility or service access, including telephone, electricity, heating, and water;
    - (4) Services necessary for the client's health and safety, such as pest eradication and one-time cleaning prior to occupancy;
    - (5) Moving expenses;
    - (6) Necessary home accessibility adaptations; and
    - (7) Activities to assess need and to arrange for and procure need resources.
  - b. Community transition services do not include monthly rental or mortgage expenses, escrow, specials, insurance, food, regular utility or service access charges, household appliances, or items that are intended for purely diversional or recreational purposes.
  - c. Community transition services are furnished only to the extent that they are reasonable and necessary as determined through the service plan development process, clearly identified in the service plan and the client is unable to meet such expense, or when the services cannot be obtained from other sources.
20. The department may provide a nurse assessment to a client who requires an evaluation of his or her health care needs to ensure the health, welfare, and safety of the client. The service is limited to a nurse assessment, consultation, and recommendations to address the

health-related need for services that are necessary to support a client in a home- or community-based setting. The service must be provided by an advanced practice registered nurse or a registered nurse who is in good standing.

21. The department may provide other services as permitted by an approved waiver.
22. Subsections 19 and 20 become effective on the effective date of approved amendments to the 1915(c) Medicaid waiver sufficient to secure federal financial participation in the cost of services provided to individuals found eligible under subsections 19 and 20, remain effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.

23. The department may provide residential habilitation up to twenty-four hours per day to a client who lives alone or with an adult who is unable or is not obligated to provide care and needs formalized training and supports and requires some level of ongoing daily support. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community. Residential habilitation may be provided in an agency foster home for adults facility or in a private residence owned or leased by a client or their family member.

24. The department may provide community support services up to twenty-four hours per day to a client who lives alone or with an adult who is unable or is not obligated to provide care who requires some level of ongoing daily support. This service is designed to assist with self-care tasks and socialization that improves the client's ability to independently reside and participate in an integrated community. Community support services may be provided in an agency foster home for adults facility or in a private residence owned or leased by a client or their family member.

25. The department may provide companionship services up to ten hours per month to clients who live alone and could benefit from services to help reduce social isolation.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2018; January 1, 2020.

**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; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code section

12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of 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; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 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; 14-09-22, abuse of a child; 14-09-22.1, neglect of a child;~~ 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 unless~~ 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~~In the case of an offense described in North Dakota Century Code section 12.1-17-01, simple assault, if a felony; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence, if a misdemeanor; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-18-03, unlawful imprisonment; 12.1-20-05, corruption or solicitation of minors, if a misdemeanor; 12.1-20-07, sexual assault, if a misdemeanor; 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 convictions;
- 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;
  - 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.
  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.
  5. Evidence of competency for adult 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.
  6. A provider of services for adult day care, adult foster care, attendant care, [community support services](#), extended personal care, family personal care, nurse assessment, personal care, residential care, respite care, [residential habilitation](#), supervision, 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.
7. An applicant for qualified service provider status for attendant care, adult foster care, extended personal care, family personal care, nurse assessment, personal care, residential care, supervision, 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, physician assistant, 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.
  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.
  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.

10. The department shall notify the individual or the agency of its decision on designation as a qualified service provider.
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.
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; January 1, 2018; [January 1, 2020](#).

**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~~ 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;~~



- ~~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.1.~~ The applicant voluntarily withdraws the application;
  - ~~b.2.~~ The applicant is not in compliance with applicable state laws, state regulations, or program issuances governing providers;
  - ~~c.3.~~ 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.4.~~ 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.5.~~ 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.6.~~ The applicant, if previously enrolled as a qualified service provider, had demonstrated a pattern of submitting inaccurate billings or cost reports;
  - ~~g.7.~~ 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.8.~~ 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.9.~~ The applicant has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals;
  - ~~j.10.~~ 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.11.~~ The applicant, if previously enrolled as a qualified service provider, owes the department money for payments incorrectly made to the provider;
  - ~~l.12.~~ The qualified service provider is currently excluded from participation in Medicare, Medicaid, or any other federal health care program;
  - ~~m.13.~~ 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~~.14. 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;
- ~~e~~.15. The applicant previously has been terminated for inactivity and does not have a prospective public pay client;
- ~~p~~.16. The applicant previously has been terminated for inactivity and has not provided valid reason for the inactivity; or
- ~~e~~.17. For other good cause.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2020.

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-03(5)

### 75-03-23-08.1. Sanctions and termination of qualified service providers.

1. The department may impose sanctions against a qualified service provider for any of the reasons listed under section 75-02-05-05 or subdivisions b through g of subsection 4. Prior to imposing sanctions, the department may require provider education or a business integrity agreement.
2. The department may consider the following in determining the sanction to be imposed:
  - a. Seriousness of the qualified service provider's offense.
  - b. Extent of the qualified service provider's violations.
  - c. Qualified service provider's history of prior violations.
  - d. Prior imposition of sanctions against the qualified service provider.
  - e. Prior provision of information and training to the qualified service provider.
  - f. Qualified service provider's agreement to make restitution to the department.
  - g. Actions taken or recommended by peer groups or licensing boards.
  - h. Access to care for recipients.
  - i. Qualified service provider's self-disclosure or self-audit discoveries.
  - j. Qualified service provider's willingness to enter a business integrity agreement.
3. The department may impose any of the sanctions listed in subsections 8 or 9 of section 75-02-05-07.
4. 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.
- 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. The qualified service provider refuses to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments.
- o. There has been no billing activity within the twelve months since the qualified service provider's enrollment or most recent re-enrollment date.
- p. For other good cause.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-03(5)

#### **75-03-23-12. Provider - Request for review.**

- ~~1. A qualified service provider may request a review of a decision made by the department regarding provider reimbursement.~~
- ~~2. A qualified service provider who requests a review of a decision regarding provider reimbursement under this section must do so in writing within ten days of the date the qualified service provider was notified of the determination by the department. The written notice must identify each disputed item and the reason or basis for the dispute. A provider may not request a review under this section of the rate paid for each disputed item.~~

- ~~3. Within thirty days after requesting a review, a provider shall provide to the department all documents, written statements, exhibits, and other written information that supports the provider's request for review.~~
- ~~4. The department shall assign a provider's request for review to someone other than an individual who was involved in the initial disputed decision.~~
- ~~5. The department shall make and issue its final decision within seventy-five days of the date the department received the notice of request for review.~~
- ~~6. A provider may contact the department employee who made the disputed decision for an informal conference regarding the disputed decision any time before that provider submits a formal request for review to the department.~~

A qualified service provider may request a review of denial of payment in accordance with North Dakota Century Code section 50-24.1-24.

**History:** Effective January 1, 2009; amended effective January 1, 2020.

**General Authority:** NDCC 50-06.2-03, 50-24.1-24

**Law Implemented:** NDCC 50-06.2-03, 50-24.1-24

#### **75-03-23-16. Reapplication after denial or termination.**

A provider or applicant whose qualified service provider status has been terminated or denied may not reapply if:

1. The provider's or applicant's status as a qualified service provider has been denied or revoked within the twelve months prior to the date of the current application; except in the case of an individual who has been denied or terminated under subparagraph a of paragraph 2 of subdivision b of subsection 2 of section 75-03-23-07, the individual may reapply after completion of the term of probation; or
2. The provider's or applicant's status as a qualified service provider has been denied or revoked three or more times and the most recent revocation or denial occurred within the three years immediately preceding the application date.

**History:** Effective October 1, 2014; amended effective January 1, 2020.

**General Authority:** NDCC 50-06.2-03

**Law Implemented:** NDCC 50-06.2-03

**CHAPTER 75-03-39  
AUTISM SERVICES WAIVER**

Section

75-03-39-01 Definitions

75-03-39-02 Eligibility for Services Under the Medicaid Autism Spectrum Disorder Birth Through ~~Eleven~~Thirteen Waiver

**75-03-39-02. Eligibility for services under the Medicaid autism spectrum disorder birth through ~~eleven~~thirteen waiver.**

1. A child is eligible for autism services under the department's Medicaid autism spectrum disorder birth through ~~eleven~~thirteen waiver if the following conditions are met:
  - a. The age of the child is birth through ~~eleven~~thirteen years of age;
  - b. The child has an autism spectrum disorder diagnosis from a qualified professional able to determine diagnosis; and
  - c. An autism spectrum disorder waiver slot is available.
2. Annual redetermination for continued waiver services is required to determine if the child meets the institutional level of care required by the centers for Medicare and Medicaid services.

**History:** Effective July 1, 2014; amended effective April 1, 2018; January 1, 2020.

**General Authority:** NDCC ~~23-01-41~~50-24.1-26

**Law Implemented:** NDCC ~~23-01-41~~50-24.1-26



**TITLE 85**  
**UNIVERSITY AND SCHOOL LANDS, BOARD OF**





## JANUARY 2020

### CHAPTER 85-01-01

#### 85-01-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 15-08, 15-08.1, 38-09, 47-06, 47-30.1, and 57-62, apply to this title:

1. "Arm's length transaction" means a transaction between parties with adverse economic interests in which each party to the transaction is in a position to distinguish its economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint venturers, or between corporations or other entities having interlocking directorships or close business relationships that may compromise their individual interests.
2. "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, haying, and honey bee pasture or meadow.
3. "Board" means the board of university and school lands.
- ~~2.4.~~ "Bonus" means the monetary consideration paid by a lessee for the execution of a lease by the board.
5. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in both oxidized and nonoxidized forms, and leonardite, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.
6. "Coal lease" means a contract entered between the board and a third party for a coal mining operation on trust lands.
7. "Coal leased premises" means the land subject to a given coal lease.
8. "Coal mining operation" means any type of activity conducted to discover, or prospect for, the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.
9. "Commercial quantities" means whether:
  - a. The well yields a profit exceeding operating costs over a reasonable period of time; and

b. A reasonably prudent operator would continue operating a well in the manner being operated under the facts and circumstances.

10. "Commissioner" means the commissioner of university and school lands.

~~3~~11. "Construction aggregate" means gravel, sand, scoria, road material, building stone, colloidal or other clays, and cement materials.

12. "Construction aggregate lease" means a contract entered between the board and a third party for mining of construction aggregate on trust lands.

13. "Construction aggregate leased premises" means the land area subject to a given construction aggregate lease.

14. "Construction aggregate mining operation" means any type of activity conducted to discover, or prospect for, the presence of construction aggregate, or to remove the construction aggregate so discovered from its original position on or in the land by any means whatsoever.

15. "Custodial agreement" means an agreement between the lessee and a third party in which the lessee agrees to take custody of livestock not owned by the lessee for a specified period of time and to provide day-to-day care for the livestock.

16. "Delay rental" means the annual minimum payment given to maintain a lease in the absence of production in commercial quantities during the primary term.

17. "Department" means the office of the commissioner and the department of trust lands.

~~4~~18. "Disturbed" means any alteration of the surface or subsurface of any lands subject to a lease or encumbrance with the board.

19. "Encumbrance" means a right other than an ownership interest in real property. The term includes easements, permits, surface damage agreements and any other restrictions, encroachments, licenses, mortgages, and liens that relate to trust lands, and specifically excludes leases for agricultural use, construction aggregate, sodium sulfate, chemical substances, metallic ores, uranium ores, and oil, gas, and coal which are administered separately.

20. "Fair market value" means the price set by the commissioner after an analysis of prices paid for similar products or services in the local area under article 85-04.

21. "F.O.B." means free on board.

22. "Gas" means all natural gas and all other gaseous or fluid hydrocarbons not defined as oil, but does not include coal, lignite, oil shale, or similar hydrocarbons.

23. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota industrial commission, other than from coalbed methane.

24. "Gross proceeds" means the sum of all consideration in whatever form or forms, paid for the gas attributable to the lease.

25. "Invasive species" means a species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

26. "Market value" means the price a willing buyer would pay a willing seller in an arm's length transaction in which the buyer is not compelled to buy or the seller is not compelled to sell.

27. "Net construction aggregate interest" means the undivided portions of the total construction aggregate estate on a given tract of land.
28. "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity produced in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
29. "Oil and gas lease" means a contract entered between the board and a third party for oil and gas production.
30. "Oil and gas leased premises" means the land subject to a given oil and gas lease.
31. "Oil well" means a well capable of producing oil and which is not a gas well as defined herein.
32. "Payor" means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee's rights and responsibilities under a lease.
33. "Pest" means any insect, rodent, nematode, fungus, weed, any form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms, whose presence causes or is likely to cause economic or environmental harm or harm to human health.
34. "Surface land lease" means a contract entered between the board and a third party for agricultural use on trust lands.
35. "Surface land leased premises" means the land area subject to a given surface land lease.
36. "Terminate," unless otherwise provided, has the same meaning as the word "cancel."
37. "Trust lands" means any property owned by the state of North Dakota and managed by the board.
- ~~5.38.~~ "Trusts" means permanent trusts and other funds managed or controlled by the board.
39. "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway or trail, except devices moved by human power.
40. "When run" means that point in the time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time must be considered to be 7:00 a.m., on the day the production is delivered, using central standard time, to the purchaser or user regardless of the actual time delivered.

**History:** Effective January 1, 2019; amended effective January 1, 2020.

**General Authority:** NDCC ~~28-32-02~~ 15-05-05, 15-07-20, 15-08.1-06, 28-32, 61-33-06

**Law Implemented:** NDCC 4.1-47-04, 15-01, 15-04, 15-05, 15-07, 15-08, 15-08.1

#### **85-01-01-02. Exception.**

The board may grant an exception to ~~article~~articles ~~85-03, 85-04, and 85-06,~~ after due notice and hearing, when such exception is in the best interests of the trusts.

**History:** Effective January 1, 2019; amended effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02

**ARTICLE 85-04**  
**SURFACE LAND MANAGEMENT**

Chapter

<u>85-04-01</u>	<u>Leasing Trust Lands for Agricultural Use</u>
<u>85-04-02</u>	<u>Construction Aggregate</u>
<u>85-04-03</u>	<u>Permanent Improvements</u>
<u>85-04-04</u>	<u>Encumbrances of Trust Lands</u>
<u>85-04-05</u>	<u>Public Access and Use</u>

**CHAPTER 85-04-01**  
**LEASING TRUST LANDS FOR AGRICULTURAL USE**

Section

<u>85-04-01-01</u>	<u>Failure to Pay or Nonsufficient Funds at Auction</u>
<u>85-04-01-02</u>	<u>Annual Surface Land Lease Rental Payment</u>
<u>85-04-01-03</u>	<u>Assignment and Use by a Third Party</u>
<u>85-04-01-04</u>	<u>Sale of Surface Land Lease for Agricultural Use Prohibited</u>
<u>85-04-01-05</u>	<u>Inspection by Prospective Lessee or Purchaser</u>
<u>85-04-01-06</u>	<u>Custodial Agreement</u>
<u>85-04-01-07</u>	<u>Right of Entry</u>
<u>85-04-01-08</u>	<u>Surface Land Lease Termination</u>
<u>85-04-01-09</u>	<u>Board Review</u>
<u>85-04-01-10</u>	<u>Cost-Share on Surface Land Leased Premises</u>
<u>85-04-01-11</u>	<u>Cost-Share Application</u>
<u>85-04-01-12</u>	<u>Cost-Share on Cropland</u>
<u>85-04-01-13</u>	<u>Cost-Share Payments</u>
<u>85-04-01-14</u>	<u>Biological Control Agents</u>
<u>85-04-01-15</u>	<u>Record Maintenance</u>

**85-04-01-01. Failure to pay or nonsufficient funds at auction.**

1. The commissioner may not issue a surface land lease for agricultural use until payment in full is received by the department.
2. A successful bidder who fails to pay for a surface land lease is deemed ineligible to bid at subsequent surface land lease auctions administered by the board for the remainder of the current calendar year plus three additional calendar years.
3. If a surface land lease payment made at auction is, for any reason, not paid by the bank on which it is drawn, the commissioner shall notify the bidder by mail addressed to the bidder's post office address on file with the department that payment by cashier's check or money order is required within ten business days from the date the letter is mailed.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-07-20, 54-30-17.1

**85-04-01-02. Annual surface land lease rental payment.**

1. The annual surface land lease rental payment for the second and succeeding years of a surface land lease must be received by the department no later than five p.m. central standard time on the last business day of January of the surface land lease year. If payment is not received, the surface land lease automatically terminates without notice.

2. If the annual surface land lease rental payment, for any reason, is not paid by the bank on which it is drawn after five p.m. central standard time on the last business day of January of the surface land lease year, the surface land lease automatically terminates and the commissioner may designate the lessee ineligible to bid at subsequent surface land lease auctions for the remainder of the current calendar year plus three additional calendar years.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

#### **85-04-01-03. Assignment and use by a third party.**

1. A surface land lease or any part thereof may not be assigned, nor may the lessee allow the surface land leased premises or any part thereof to be used in any manner by anyone other than the lessee without the written consent of the commissioner. A grazing permit issued by a grazing association to a member-permittee is authorized.
2. A lessee may request an assignment of a surface land lease from the department. The commissioner shall approve or deny an assignment based on the best interests of the trusts. The following assignments may be approved:
  - a. An assignment without restriction to a close relative including the spouse, father, mother, son, daughter, brother, or sister for the same terms and conditions as the original surface land lease.
  - b. An assignment of less than the full surface land lease term to a third party if the lessee is temporarily out of the livestock business or unable to properly stock the surface land leased premises. Being temporarily out of the livestock business means no longer owning or leasing the livestock and personally providing for their day-to-day care, with the intent to return to the livestock business within two years or less. The assignment must be for two years or less. The rent payable by the assignee must be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.
  - c. An assignment to a third party with the surface land lease expiring at the end of the current surface land lease year. The rent payable by the assignee must be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

#### **85-04-01-04. Sale of surface land lease for agricultural use prohibited.**

A lessee is prohibited from selling a board-issued surface land lease for agricultural use and any attempt to do so may result in surface land lease termination in accordance with this chapter.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

#### **85-04-01-05. Inspection by prospective lessee or purchaser.**

The surface land leased premises must be made available for inspection to a prospective lessee or purchaser. If the surface land leased premises contains an occupied farmstead, a prospective lessee or

purchaser must provide the current resident with at least two days advance notice of the intended time and date to inspect the property.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

#### **85-04-01-06. Custodial agreement.**

A custodial agreement may be permitted if a lessee does not own livestock or is understocked. The custodial agreement must be in writing and a copy furnished to the department or the arrangement will be treated as third-party use. Unless approval is given by the commissioner, a custodial agreement is not permitted for more than three years.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

#### **85-04-01-07. Right of entry.**

The department may enter the land subject to the surface land lease at any time without notice for the purpose of inspecting the land and improvements.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

#### **85-04-01-08. Surface land lease termination.**

1. Failure to comply with the surface land lease terms, board rules and policies, and applicable laws may result in surface land lease termination by the commissioner. Before a surface land lease is terminated, the department personally shall serve the lessee with the notice of intent to terminate the surface land lease specifying the reason for termination.
2. A lessee may file with the department a written request for waiver of the notice of intent to terminate the surface land lease, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after service on the lessee of the notice of intent to terminate the surface land lease. A request for a waiver is deemed filed when personally delivered to or when received by the department. The commissioner may waive any breach except those terms required under applicable laws, or the commissioner may allow the lessee time to cure the breach.
3. Not less than ten business days after the notice of intent to terminate the surface land lease is served on the lessee, the commissioner may terminate the surface land lease. Surface land lease termination is effective upon actual delivery of a notice of termination by the department. The notice of termination of the surface land lease must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service. Termination of the surface land lease does not release the lessee from liability for any sum due the board or from any damages due.
4. When a surface land lease is terminated, the former lessee is ineligible to bid at a surface land lease auction administered by the department for a minimum of the remainder of the current calendar year plus three additional calendar years.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 15-07-21, 54-30-17.1

**85-04-01-09. Board review.**

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

**History:** Effective January 1, 2020

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-10. Cost-share on surface land leased premises.**

The lessee is responsible for noxious weed and invasive species and pest control on the surface land leased premises. The department may participate in cost-share reimbursement, as follows:

1. Payments for state-listed noxious weed control costs;
2. Payments for county-listed noxious weed control costs; or
3. Payments for other invasive species and pests as allowed by the department.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-04-24

**85-04-01-11. Cost-share application.**

A lessee shall submit a request for cost-share using the electronic cost-share application available on the department's website or a paper application provided upon request. A lessee shall provide all information specifically required by the application and any supplemental information requested by the department. The amount of the cost-share must be determined by the department consistent with the department's cost-share policy.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-04-24

**85-04-01-12. Cost-share on cropland.**

Noxious weeds and invasive species on cropland are not eligible for cost-share.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-04-24

**85-04-01-13. Cost-share payments.**

Cost-share payments may be made upon receipt of an invoice for allowable expenses.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-04-24

**85-04-01-14. Biological control agents.**

Use of biological control agents to control noxious weeds is authorized in addition to the chemical control.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-04-24

**85-04-01-15. Record maintenance.**

A lessee shall furnish complete and accurate information concerning cultivated acres, hayland acres, noxious weed control, grazing, improvements, or any other information concerning the surface land leased premises when requested by the department.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1



## **CHAPTER 85-04-02**

### **CONSTRUCTION AGGREGATE**

#### Section

<u>85-04-02-01</u>	<u>Application</u>
<u>85-04-02-02</u>	<u>Construction Aggregate Lease Term</u>
<u>85-04-02-03</u>	<u>Commissioner Authorization</u>
<u>85-04-02-04</u>	<u>Notice of Construction Aggregate Leasing</u>
<u>85-04-02-05</u>	<u>Auctioned Construction Aggregate Leases</u>
<u>85-04-02-06</u>	<u>Use of Construction Aggregate Leased Premises</u>
<u>85-04-02-07</u>	<u>Advance Royalties</u>
<u>85-04-02-08</u>	<u>Royalties</u>
<u>85-04-02-09</u>	<u>Testing</u>
<u>85-04-02-10</u>	<u>Mining and Reclamation Plan</u>
<u>85-04-02-11</u>	<u>Bond</u>
<u>85-04-02-12</u>	<u>Theft of Construction Aggregate</u>
<u>85-04-02-13</u>	<u>Records and Inspections</u>
<u>85-04-02-14</u>	<u>Construction Aggregate Mining Operations</u>
<u>85-04-02-15</u>	<u>Reserved Rights and Termination</u>
<u>85-04-02-16</u>	<u>Board Review</u>
<u>85-04-02-17</u>	<u>Surrender by Lessee</u>
<u>85-04-02-18</u>	<u>Conditions on Expiration, Termination, or Surrender</u>
<u>85-04-02-19</u>	<u>Surface Owner Consent</u>
<u>85-04-02-20</u>	<u>Surface Lessee Protection</u>
<u>85-04-02-21</u>	<u>Protection of Cultural Resources</u>

#### **85-04-02-01. Application.**

An applicant shall submit a request for a construction aggregate lease, amendment, assignment, or extension using the electronic application available on the department's website or a paper application provided upon request. The application must clearly state whether the request is for a construction aggregate lease, amendment, assignment, or extension. An application submitted on any other form may not be accepted. An application fee may be charged as determined by the board. Each application and construction aggregate lease is limited to a maximum of one hundred sixty contiguous acres [64.75 contiguous hectares] of like net construction aggregate interest. An application must be made as follows:

1. Construction aggregate lease. An applicant shall provide all information required by the application and any supplemental information requested by the department. An application must designate the type of construction aggregate desired. An application is deemed filed and complete when the department receives an application, the application fee, and any supplemental information requested by the department.
2. Amendment. A lessee may submit a request for an amendment to a construction aggregate lease for a specific purpose. If the request for an amendment is granted, the department shall mail the amendment to the applicant for signature.
3. Assignment. A construction aggregate lease may be assigned upon written consent of the commissioner. Assignments must be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign a construction aggregate lease for good cause. The assignor remains responsible for compliance of all construction aggregate lease terms and this chapter until the assignment is approved by the commissioner. Upon approval, the assignee is responsible for compliance with all construction

aggregate lease terms and this chapter. If the request for an assignment is granted, the department shall mail the assignment to the applicant for signature.

4. Extension. A lessee may submit a request for an extension of a construction aggregate lease for up to an additional five-year term to be granted at the discretion of the commissioner. The department may adjust the royalty rate if an additional term is granted. If the request for a construction aggregate lease extension is granted, the department shall mail the construction aggregate lease extension to the applicant for signature.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-02. Construction aggregate lease term.**

1. A construction aggregate lease term may not exceed five years.
2. When the lessee is a state agency or a political subdivision, the royalty rate must be fixed for a construction aggregate lease term of one year or less. For a construction aggregate lease term greater than one year, the royalty rate must be based on fair market value with an annual adjustment based on the current fair market value.
3. When the lessee is a private entity requesting less than five thousand cubic yards [3822.77 cubic meters] of construction aggregate, the term of the construction aggregate lease must be for one year or less.
4. A construction aggregate lease to any entity other than a state agency or a political subdivision for a term greater than one year must be offered at public auction.
5. When construction aggregate is requested for an emergency, the term of the construction aggregate lease may not exceed one year.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-03. Commissioner authorization.**

1. The commissioner is authorized to approve and issue a construction aggregate lease on the board's behalf in accordance with this chapter.
2. If an application does not comply with this chapter, or if the commissioner determines board review is desirable, the application may be brought before the board for its consideration.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-04. Notice of construction aggregate leasing.**

Upon receipt of an application for a construction aggregate lease and a determination that the application covers a tract the commissioner is willing to lease, the department shall post on the department's website a notice of the application for construction aggregate lease, any supporting documentation, and instructions for submitting public comments. Comments must be received by the department no later than five p.m. central standard time fourteen days after posting the notice of the application for a construction aggregate lease to be considered. All comments must be in writing and contain the following:

1. Name and address of the interested person;
2. Applicant's name and address;
3. The legal description of the proposed construction aggregate leased premises as shown on the published notice; and
4. A detailed statement as to whether the interested person supports or opposes the issuance of the construction aggregate lease.

Those comments must be brought to the board along with the department's recommendations.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 15-05-18  
**Law Implemented:** NDCC 15-05-18

#### **85-04-02-05. Auctioned construction aggregate leases.**

Notice of an auction must be published in the official newspaper of the county where the proposed construction aggregate leased premises is located and in the Bismarck Tribune. The notice must be published once at least ten days prior to the day of the auction. The notice must contain the legal description of the proposed construction aggregate leased premises, the construction aggregate lease term, and the time and place where the auction will be held. Bidding must be on a royalty per yard basis. Immediately after the bidding session, comments as to whether a construction aggregate lease should be issued can be presented to the department.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 15-05-18  
**Law Implemented:** NDCC 15-05-18

#### **85-04-02-06. Use of construction aggregate leased premises.**

A lessee may use as much of the construction aggregate leased premises as necessary for prospecting, mining, removal of construction aggregate, and reclamation subject to the requirements of this chapter.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 15-05-18  
**Law Implemented:** NDCC 15-05-18

#### **85-04-02-07. Advance royalties.**

1. As consideration for a construction aggregate lease with a term greater than one year, the lessee shall pay on the date a construction aggregate lease is issued an advance on the yearly royalty, as determined by the commissioner, but not less than one thousand dollars.
  - a. The advance payment is due each year in which the construction aggregate lease is in force and is due prior to the construction aggregate lease anniversary date.
  - b. The advance payment may be credited against construction aggregate mined during the term of the construction aggregate lease. Advance royalty payments for which a credit is not claimed must be forfeited.
  - c. The commissioner may adjust the advance royalty payment amount. Any adjustment takes effect on the anniversary date of the construction aggregate lease following notice to lessee.

2. The commissioner may require an advance royalty deposit for a construction aggregate lease with a term of one year or less. The deposit must be credited against construction aggregate mined during the term of the construction aggregate lease.
3. If payment is not timely received, a notice of intent to terminate the construction aggregate lease must be issued by the department.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 15-05-18  
**Law Implemented:** NDCC 15-05-18

#### **85-04-02-08. Royalties.**

Royalties must be received by the department by five p.m. central standard time on the last business day of the calendar month following sale, utilization, stockpiling, or removal from the construction aggregate leased premises of the construction aggregate mined. If payment is not timely received, a notice of intent to terminate the construction aggregate lease must be issued. Royalties must be paid in full on any stockpiled construction aggregate remaining on the construction aggregate leased premises ninety days prior to the expiration of the construction aggregate lease.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 15-05-18  
**Law Implemented:** NDCC 15-05-18

#### **85-04-02-09. Testing.**

The department may require a lessee to conduct drilling tests on the construction aggregate leased premises prior to mining. If required, sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the construction aggregate deposit and estimate the quality, quantity, and type of construction aggregate located on the construction aggregate leased premises. The lessee shall furnish the department a map of the construction aggregate leased premises showing the boundaries of the construction aggregate deposit and furnish the department a written report estimating the thickness, depth, quality, quantity, and type of construction aggregate. All test holes must be reclaimed to the satisfaction of the department at the conclusion of testing. Failure to conduct test drilling when required or failure to furnish the required information must result in a notice of intent to terminate the construction aggregate lease being issued.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 15-05-18  
**Law Implemented:** NDCC 15-05-18

#### **85-04-02-10. Mining and reclamation plan.**

1. Prior to issuance of a construction aggregate lease, the department, in consultation with the lessee, shall develop a mining and reclamation plan for the commissioner's approval. Mining may not begin on the construction aggregate leased premises unless the mining and reclamation plan is approved by the commissioner.
2. The intent of the reclamation plan is to reclaim the construction aggregate leased premises to its previous potential use and productivity. The reclamation plan may be modified by the commissioner and the lessee shall comply with any modifications to the plan. If the lessee does not comply with the modified reclamation plan, the construction aggregate lease may be terminated.
3. The reclamation plan must indicate the location of the construction aggregate mining operation in relation to the construction aggregate deposit and a plan for the reclamation once the construction aggregate has been removed. The reclamation plan must include the leveling

of the disturbed surface at the close of the construction aggregate mining operations to as close to its original contour as is reasonably possible taking into consideration the amount of construction aggregate removed, the preservation and respreading of topsoil, and the revegetation of the surface with appropriate flora.

4. Special reclamation plans for the propagation of wildlife habitat, the creation of a nature preserve, or other alternate land use may be required by the commissioner, provided the costs of such reclamation do not unreasonably increase the cost of reclamation.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-11. Bond.**

1. Payment of all royalties and reclamation of any portion of the construction aggregate leased premises disturbed by the lessee is the responsibility of the lessee. To assure payment of royalties and satisfactory reclamation, the lessee must obtain and retain in force a surety bond, in an amount determined by the commissioner.
2. The lessee, in lieu of a surety bond, may file another form of security subject to the commissioner's approval.
3. The commissioner shall set the initial surety bond amount at a minimum of five thousand dollars per acre for the initial mine area, with no initial surety bond amount being less than ten thousand dollars.
4. The commissioner may adjust the amount of the surety bond annually, with the adjustment based on the estimated cost to reclaim the remaining disturbed site and the amount of stockpiled construction aggregate. If the commissioner determines an additional surety bond or other security is required, the lessee shall submit the additional surety bond or other security within thirty days after request by the commissioner as required by this section.
5. The lessee may submit a written request for a full or partial release of the surety bond to the commissioner. At the commissioner's discretion, the surety bond may be released in whole or in part.
6. Upon the payment of all outstanding royalties and satisfactory completion of the reclamation, the commissioner shall release the surety bond. The surety bond may be forfeited to pay outstanding royalties or to complete reclamation. The commissioner shall give final approval of the reclamation before the surety bond is released. The forfeiture of the surety bond by the lessee does not release the lessee of the duty and responsibility to reclaim the construction aggregate leased premises.
7. Upon written request, the commissioner may waive the bonding requirement for a political subdivision or other state agency.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-12. Theft of construction aggregate.**

The lessee is responsible for the loss or theft of any construction aggregate from the construction aggregate leased premises and such loss or theft does not relieve the lessee from the responsibility to pay royalties for the construction aggregate.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 15-05-18  
**Law Implemented:** NDCC 15-05-18

#### **85-04-02-13. Records and inspections.**

The lessee shall keep an accurate record of the quantity, quality, and type of construction aggregate mined. The department may audit, examine, and copy any records as may be necessary to assure the lessee is complying with all provisions of the construction aggregate lease, board rules and policies, and applicable laws, and may examine all samples, logs, assays, or cores. All construction aggregate mining operations and reclamation operations may be inspected by the department.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 15-05-18  
**Law Implemented:** NDCC 15-05-18

#### **85-04-02-14. Construction aggregate mining operations.**

The lessee shall conduct construction aggregate mining operations in a good and workmanlike manner and in accordance with the construction aggregate lease terms, board rules and policies, and applicable laws, and a construction aggregate lease may be terminated by the lessor for a failure to comply. The lessee shall take reasonable steps to prevent construction aggregate mining operations from unnecessarily causing or increasing soil erosion or drainage and damage to crops, pasture, or trees.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 15-05-18  
**Law Implemented:** NDCC 15-05-18

#### **85-04-02-15. Reserved rights and termination.**

1. Failure to comply with construction aggregate lease terms, board rules and policies, and applicable laws may result in construction aggregate lease termination by the commissioner. Before a construction aggregate lease is terminated, the department personally shall serve the lessee with the notice of intent to terminate construction aggregate lease specifying the reason for termination.
2. The lessee may file with the department a written request for waiver of the notice of intent to terminate the construction aggregate lease, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after service on the lessee of the notice of intent to terminate the construction aggregate lease. A request for a written waiver is deemed filed when personally delivered to or when received by the department. The commissioner may waive any breach except a breach in violation of applicable laws, or the commissioner may allow the lessee time to cure the breach. Termination does not release the lessee from liability for royalty owed the board, damages resulting from a breach of a construction aggregate lease term, or to reclaim the construction aggregate leased premises.
3. The board reserves the right to use, rent, lease, sell, or encumber the construction aggregate leased premises and reserves all historical, archaeological, and paleontological materials on or beneath the surface of the construction aggregate leased premises. Leases for the production of coal, oil and gas, uranium, potash, or other valuable minerals have priority over any lease for the mining of construction aggregate.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 15-05-18  
**Law Implemented:** NDCC 15-05-18

#### **85-04-02-16. Board review.**

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-17. Surrender by lessee.**

The lessee may surrender a construction aggregate lease upon payment of all outstanding royalties and other debts owed the board. Surrender of a construction aggregate lease does not release the lessee from its responsibility to reclaim the construction aggregate leased premises.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-18. Conditions on expiration, termination, or surrender.**

At the expiration, termination, or surrender of a construction aggregate lease and, upon the completion of reclamation, unless otherwise waived, the lessee shall remove its property from the construction aggregate leased premises within one hundred twenty days from the date of expiration, termination, surrender, or the date reclamation is completed. The lessee is liable to the board for the costs of removal of any property remaining on the construction aggregate leased premises after the deadline for removal. If the lessee does not remove all stockpiled construction aggregate from the construction aggregate leased premises by the construction aggregate lease expiration, termination, or surrender date, it is considered abandoned and becomes the property of the board.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-19. Surface owner consent.**

Where the surface of the construction aggregate leased premises is not managed or owned by the board, the lessee shall give the surface owner a written description of the specific locations of any land disturbance contemplated by the lessee, accompanied by a map, at least one hundred twenty days prior to the commencement of any construction aggregate mining. The lessee shall provide the department with proof of consent to mine from the surface owner. If there is a change in the nature of the land disturbance contemplated, an updated written description must be provided to the surface owner as soon as possible.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-20. Surface lessee protection.**

Where the surface of the construction aggregate leased premises is managed or owned by the board and is leased to a person other than the construction aggregate lessee, the construction aggregate lessee shall restore all fences that have been damaged, moved, or removed as a result of

construction aggregate mining operations and shall further compensate the surface lessee for any damage to or loss of other improvements owned by the surface lessee.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-21. Protection of cultural resources.**

If any historical, archaeological, paleontological, or other cultural artifacts, vestiges, or remains are found prior to, during, or after any exploration, testing, production, mining, or reclamation operations on the construction aggregate leased premises, the director of the state historical board and the commissioner must be notified immediately and the site and the materials must be protected by the lessee from further disturbance until a professional examination can be made or until some other form of clearance to proceed is authorized by the commissioner. Upon written request, the commissioner may grant an extension of the construction aggregate lease term for delays in operations caused by the requirements of this section. If no further disturbance is allowed, the construction aggregate lease may be terminated and the lessor shall refund to the lessee any advance royalties not already credited or forfeited as provided in this chapter. The department and the director of the state historical board may inspect the construction aggregate leased premises at all times to determine compliance with this section.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18, 55-02-07



## **CHAPTER 85-04-03 PERMANENT IMPROVEMENTS**

### Section

<u>85-04-03-01</u>	<u>Permanent and Nonpermanent Improvements</u>
<u>85-04-03-02</u>	<u>Application</u>
<u>85-04-03-03</u>	<u>Rent Credit, Cost-Share, and Depreciation</u>
<u>85-04-03-04</u>	<u>General Standards for a Permit for a Permanent Improvement</u>
<u>85-04-03-05</u>	<u>Issuance of a Permit for Permanent Improvement</u>

### **85-04-03-01. Permanent and nonpermanent improvements.**

1. Permanent improvements may not be placed on, removed from, or applied to any surface land leased premises without the written consent of the commissioner. Permanent improvements placed on or implemented on any surface land leased premises are the property of the state of North Dakota.
2. A lessee may place nonpermanent improvements on any surface land leased premises without written consent of the commissioner. Upon expiration of the surface land lease, the lessee may remove the nonpermanent improvements within one hundred twenty days after the surface land lease expires. Any nonpermanent improvements not removed within one hundred twenty days become the property of the next lessee. The commissioner, upon written application from the lessee before the end of the one-hundred-twenty-day period, for good cause, may extend the period of time for removing nonpermanent improvements.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-08-26

### **85-04-03-02. Application.**

A lessee shall submit a request for a permanent improvement, using the electronic application available on the department's website or a paper application provided upon request. The lessee shall provide all information specifically required by the application and any supplemental information requested by the department.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-08-26

### **85-04-03-03. Rent credit, cost-share, and depreciation.**

1. Rent credits, cost-share, and depreciation of project costs may be authorized at the sole discretion of the commissioner.
2. Rent credits or cost-share may not exceed the approved maximum project cost as determined by the commissioner or the actual project cost, less reimbursements from nondepartment sources, whichever is lower.
3. The commissioner may depreciate project costs less reimbursements to the lessee from nondepartment sources and rent credits or cost-share from the department for a period not to exceed ten years.
4. Any unexpired depreciation amount must be available from the department before the surface land lease auction and must be announced at the surface land lease auction. If the former lessee is not the successful bidder at auction, the new lessee is required to compensate the

former lessee for the undepreciated amount and the department shall continue to depreciate through the original depreciation term. The commissioner may cancel any undepreciated cost of constructing a permanent improvement if the lessee fails to offer the minimum bid for the land and the land is not leased at the next auction at which the land is offered, or if the lessee fails to comply with the conditions of the surface land lease.

5. No rent credits, cost-share, or depreciation for livestock water developments are allowed on surface land leased premises that receive an up-front livestock water deduction in determining the minimum bid for public auction.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-04-24, 15-08-26

#### **85-04-03-04. General standards for a permit for a permanent improvement.**

In reviewing an application for a permit for a permanent improvement, the commissioner may consider the following:

1. Financial benefit to the trusts;
2. Availability of alternate site or route;
3. The least environmentally damaging site or route;
4. Physical stability of the landscape;
5. Whether technical assistance was sought in planning the proposed permanent improvement;
6. Potential for mineral development, including oil, gas, coal, construction aggregate, sodium sulfate, chemical substances, metallic ore, or uranium ore;
7. Feasibility for reclamation;
8. Maintenance of existing wetlands and waterflows;
9. Any cultural, historical, archeological, and paleontological resources;
10. Habitat for federally listed threatened and endangered species;
11. Location of the proposed route or site in relation to section lines, quarter section lines, and corridors;
12. Potential liability to the trusts; and
13. Any other information relevant to the application which would assist in the commissioner's determination.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-08-26

#### **85-04-03-05. Issuance of a permit for permanent improvement.**

The commissioner may determine whether to issue a permit for a permanent improvement and to determine the maximum project cost, rent credit, cost-share, and depreciation amounts. The commissioner may impose such terms on a permit as the commissioner deems necessary. A permit must be issued prior to site preparation or construction.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 15-08-26

## **CHAPTER 85-04-04**

### **ENCUMBRANCES OF TRUST LANDS**

#### Section

85-04-04-01	Application
85-04-04-02	Surveying and Planning Permit Requirements
85-04-04-03	General Standards for an Encumbrance
85-04-04-04	Issuance of an Encumbrance
85-04-04-05	Right of Entry
85-04-04-06	Expiration of an Encumbrance

#### **85-04-04-01. Application.**

An applicant shall submit a request for an encumbrance, amendment, assignment, extension, or renewal using the electronic application form available on the department's website or a paper application provided upon request. The application must clearly state whether the request is for an encumbrance, amendment, assignment, extension, or renewal. An application submitted on any other form will not be accepted. An application fee may be charged as determined by the board. An application must be made as follows:

1. Encumbrance. An applicant shall provide all information required by the application form and any supplemental information requested by the department. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.
2. Amendment. An applicant may request an amendment to an encumbrance for a specific purpose, including a request to change the site location or route of a previously issued encumbrance. If the request for an amendment is granted, the department will mail the amendment to the applicant for signature.
3. Assignment. An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner. An assignment must be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign an encumbrance for good cause. The assignor remains responsible for compliance with all terms of the encumbrance and this chapter until the assignment is approved by the commissioner. If the commissioner's approval is not required, the assignor is responsible for compliance with all terms of the encumbrance and this chapter until the department is notified of the assignment. Upon approval or notification, the assignee is responsible for compliance with all terms of the encumbrance and this chapter. If the request for an assignment is granted, the department shall mail the assignment to the applicant for signature.
4. Extension or renewal. An applicant may request an extension or renewal of an encumbrance for an additional term. Additional compensation may be requested by the department. If the request for an extension or renewal is granted, the department shall notify the applicant.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02, 15-05-01

#### **85-04-04-02. Surveying and planning permit requirements.**

1. Prior to accessing trust lands to conduct surveys, including metes-and-bounds, centerline, cadastral, ocular reconnaissance cultural resource surveys, and wetland delineations, an applicant shall obtain a surveying and planning permit from the department. The applicant

shall complete an electronic application available on the department's website or a paper application provided upon request. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.

2. Upon issuance of the surveying and planning permit to the applicant, access to trust lands under the permit is only permissible if a third-party applicant has filed an application for an encumbrance. The surface tenant must be notified by the third-party applicant of the required access to trust lands at least one calendar week prior to the date of access.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02, 15-05-01

#### **85-04-04-03. General standards for an encumbrance.**

In reviewing an application for an encumbrance, the following may be considered:

1. Financial benefit to the trusts;
2. Availability of alternate encumbrance site or route;
3. The least environmentally damaging site or route regardless of property ownership;
4. Physical stability of the landscape;
5. Other potential future uses for the trust lands, including urban development;
6. Potential mineral and other material development, including oil, gas, coal, construction aggregate, sodium sulfate, chemical substances, metallic ore, or uranium ore;
7. Feasibility for reclamation;
8. Maintenance of existing wetlands and waterflows;
9. Any cultural, historical, archeological, and paleontological resources;
10. Habitat for federally listed threatened and endangered species;
11. Location of the proposed route or site in relation to section lines, quarter section lines, and corridors;
12. Potential liability to the trusts;
13. Applicant's past encumbrances on trust lands;
14. Applicant's financial stability; and
15. Any other information relevant to the application which would assist in the determination.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

#### **85-04-04-04. Issuance of an encumbrance.**

1. The commissioner may approve and issue an encumbrance on the board's behalf in accordance with this chapter.

2. If an application does not comply with this chapter, or if the commissioner determines board review is desirable, the application may be brought before the board for its consideration.

3. The commissioner may impose such terms as the commissioner deems necessary. An encumbrance must be issued prior to site preparation or construction.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

**85-04-04-05. Right of entry.**

The department may enter the land at any time without notification for the purpose of inspecting the land, activity, or construction.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

**85-04-04-06. Expiration of an encumbrance.**

Unless otherwise stated in the encumbrance, the encumbrance expires two years from the date of issuance if the activity or construction is not fully completed. An encumbrance automatically terminates without notice at the end of its term or for failure to complete an activity or construction. Prior to the expiration of the encumbrance, the holder may apply for an amendment or extension in accordance with this chapter.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

## **CHAPTER 85-04-05**

### **PUBLIC ACCESS AND USE**

#### Section

<u>85-04-05-01</u>	<u>Vehicular Access</u>
<u>85-04-05-02</u>	<u>Public Access</u>
<u>85-04-05-03</u>	<u>Prohibited Activities</u>
<u>85-04-05-04</u>	<u>Organized Event</u>

#### **85-04-05-01. Vehicular access.**

The use of vehicles on trust lands is prohibited, except:

1. Within thirty-three feet [10.06 meters] of section lines;
2. As allowed by the terms of a lease, permit, or easement issued by the board;
3. When used for travel on a public road easement issued by the board;
4. When used by government personnel in the performance of official duties; or
5. When hunting under a special permit issued by the director of the North Dakota game and fish department to shoot from a stationary vehicle and with written permission from the lessee and commissioner.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02, 20.1-02-05(10)

#### **85-04-05-02. Public access.**

1. Nonvehicular public access to leased and unleased trust lands is allowed, if in the best interests of the trusts, unless:
  - a. Specifically prohibited by the commissioner; or
  - b. The lessee posts the land with signage issued by the department, which:
    - (1) Requires notification to the lessee before entry by the public; or
    - (2) Closes the trust lands to all public access.
2. Lessee may not lease, sell, or otherwise be compensated for access to, on, across, or over leased trust lands.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02, 15-02-05

#### **85-04-05-03. Prohibited activities.**

The following activities and items are prohibited on trust lands:

1. Target shooting, explosives, and exploding targets;
2. Camping, picnicking, or campfires;
3. Unattended hunting blinds, tree stands, and screw in steps;

4. Baiting to attract, lure, feed, or habituate wildlife for any purpose. Bait includes grains, screenings, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting;
5. Disturbing or removing artifacts or any cultural, historical, archeological, or paleontological resources found on trust lands without written permission from the board;
6. Disposing of refuse, including garbage, bottles, cans, trees, branches, or other waste materials;
7. Dog training;
8. Metal detecting;
9. Guiding and outfitting;
10. Collecting plant parts for sale or other commercial purposes;
11. Trapping, unless authorized in writing by the commissioner;
12. Tree cutting and firewood gathering, unless authorized in writing by the commissioner; and
13. Beehives, unless specifically authorized in a surface land lease.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-04-18, 15-04-20, 20.1-03-42, 55-02-07, 55-10-09

**85-04-05-04. Organized event.**

Upon written request, the commissioner may allow by written agreement or permit, an organized event involving public access or activity on trust lands if the event:

1. Is an appropriate use of trust lands;
2. Does not damage trust lands;
3. Does not negatively impact the value or financial return of the trust lands in violation of the board's fiduciary duty to the applicable trusts as determined by the commissioner;
4. Protects the state of North Dakota from liability and other claims for damage; and
5. Has been approved by the current surface land lessee, if leased.

**History:** Effective January 1, 2020.

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

**Law Implemented:** NDCC 15-01-02



**ARTICLE 85-05**  
**INVESTMENTS**

Chapter  
85-05-01 Investment of Fund Assets

**CHAPTER 85-05-01**  
**INVESTMENT OF FUND ASSETS**

Section  
85-05-01-01 Investment of Fund Assets

**85-05-01-01. Investment of fund assets.**

The board shall invest the financial assets under its control in accordance with the prudent investor rule as defined in North Dakota Century Code section 21-10-07.

**History:** Effective January 1, 2020.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 15-03-04

**ARTICLE 85-06**  
**MINERALS MANAGEMENT**

Chapter

85-06-01 Oil and Gas

85-06-02 Coal

**CHAPTER 85-06-01**  
**OIL AND GAS**

Section

85-06-01-01 Oil and Gas Lease Nomination

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**85-06-01-01. Oil and gas lease nomination.**

The department shall accept an oil and gas lease nomination for a tract not already under an oil and gas lease as reflected in department records and may accept a nomination for a tract under an oil and gas lease which will expire prior to the date of the oil and gas lease sale. The first nomination received on a tract is considered an offer and determines the opening bid.

1. The department shall accept a nomination for an oil or gas lease either electronically through the department's website or in writing. The nomination period for an oil and gas lease must be the period set by the commissioner during which the department shall accept oil and gas lease nominations. A nomination must be accompanied by a nonrefundable nomination fee, in an amount set by the department, and the fee must be submitted to the department prior to the published deadline for each nomination period.
2. An oil and gas lease nomination must be limited to a maximum of one quarter section, unless otherwise authorized under subsection 3, or by the board.
3. A nomination for a tract containing a body of water may include up to a section of land if the tract cannot reasonably be subdivided by quarter section or half section. The tract acreage, including islands, may be offered and described as "more or less" and may be adjusted by the board within each quarter section.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 61-33-06, 61-33.1

### **85-06-01-02. Advertisement for public auction.**

The department shall publish notice of an oil and gas lease auction in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. The notice must be published once, ten days prior to the day of the auction. The advertisement must specify the date, time, and place of the auction, and how an interested person may obtain a list of the tracts to be auctioned. If publication of any notice is inadvertently omitted by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled leasing if it appears the omission or error is not prejudicial to the department's interest.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 38-09-15

### **85-06-01-03. Public auction.**

The board may issue an oil and gas lease by public auction. Public auctions may be hosted either live or online at the discretion of the commissioner. Bidding is based on a bonus of not less than one dollar per acre, and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued.

1. The successful bidder at an online auction shall pay the bonus, the rental payments for the primary term as defined by the oil and gas lease, the advertising fee, and any processing fees via automated clearing house or wire transfer, by five p.m. central standard time, ten days after the date the auction closed. The board may not issue an oil and gas lease until receipt of the bonus, rental payments, and fees.
2. The successful bidder at a live auction shall pay the bonus, at least one year of rental payments, and the advertising fee via automated clearing house or wire transfer, by five p.m. central standard time ten days after the date the auction closed. The board may not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.
3. If no bids are received, the nominator is deemed the successful bidder and shall pay the bonus, at least one year of rental payments, the advertising fees, and any processing fee via cash, check, automated clearing house, or wire transfer, by five p.m. central standard time, ten days after the date the auction closed. The board may not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

### **85-06-01-04. Rejection of nomination and bids.**

The commissioner, in the best interests of the trusts, may reject a nomination or a bid any time prior to the issuance of an oil and gas lease.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09

### **85-06-01-05. Form and term of oil and gas lease.**

An oil and gas lease must be issued on a form approved by the board. An oil and gas lease must be made for a term of not less than five years and continue in effect under such term and for as long as oil or gas may be produced from the oil and gas leased premises in commercial quantities or unless otherwise extended. An oil and gas lease must provide for a bonus of not less than one dollar per acre

and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued. An oil and gas lease may contain such other terms and conditions as the board deems appropriate.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

### 85-06-01-06. Assignment, amendment, or extension.

A lessee shall submit a written request to the department for an assignment, amendment, or extension of an oil and gas lease, or a portion of the oil and gas leased premises, utilizing the form available on the department's website. A request must include any documents requested by the department. The lessee shall submit a fee, in an amount set by the board, to the department with the request.

1. Assignments. All oil and gas lease obligations must be current at the time the assignment is approved. The lessee remains bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the assignment is approved by the department. Upon approval of the assignment, the assignee is bound by all the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws. The assignor shall provide the department with a copy of the fully executed assignment within thirty days from the approval.
2. Extensions. If, at the expiration of the primary term, production of oil or gas or both has not been obtained in commercial quantities on the leased premises but drilling, testing, completion, recompletion, reworking, deepening, plugging back, or repairing operations are being conducted thereon in good faith, the lessee may, on or before the expiration of the primary term, file a written application with the department for a one hundred eighty day extension of this oil and gas lease, such application to be accompanied by a payment of ten dollars per acre, and the commissioner, in writing, shall extend this oil and gas lease for a period of one hundred eighty days beyond the expiration of the primary term and as long as oil or gas or both is produced in commercial quantities; the lessee may, as long as such drilling, testing, or completion operations are being conducted in good faith, make written application to the commissioner, on or before the expiration of the initial extended period of one hundred eighty days for an additional extension of one hundred eighty days, such application to be accompanied by a payment of twenty dollars per acre, and the commissioner, in writing, shall extend this oil and gas lease for an additional one hundred eighty day period from and after the expiration of the initial extended period of one hundred eighty days, and as long as oil or gas or both is produced in commercial quantities; this oil and gas lease must not be extended for more than a total of three hundred sixty days from and after the expiration of the primary term unless production in commercial quantities has been obtained or unless extended by some other provision hereof.
3. Amendments. A lessee may request an amendment to an oil and gas lease for a specific purpose. A request for an amendment must state the specific grounds for the request. Approval of a request is at the discretion of the commissioner and the department shall notify the lessee in writing whether or not the request is approved.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-15

### **85-06-01-07. Voluntary release.**

To request a voluntary release of an oil and gas lease, a lessee shall submit a written request to the department for the voluntary release of an oil and gas lease, or portion of an oil and gas leased premises, utilizing the form available on the department's website and all other documents requested by the department. Approval of a voluntary release is at the discretion of the commissioner and the department shall notify the lessee in writing whether or not the voluntary release is approved. All oil and gas lease obligations must be current at the time the voluntary release is approved. The lessee remains bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the voluntary release is approved by the commissioner.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09

### **85-06-01-08. Royalties.**

If a sale of gas, carbon black, sulfur, or any other products produced or manufactured from gas produced and marketed from the oil and gas leased premises, including liquid hydrocarbons recovered from such gas processed in a plant, does not constitute an arm's length transaction, the royalties due the lessor are as follows:

1. On any gas produced and marketed, except as provided herein with respect to gas processed in a plant for the extraction of gasoline, liquid hydrocarbons, or other products; the royalty, as determined by the board, is based on the gross production or the market value thereof, at the option of the lessor, such value to be based on the highest market price paid for gas of comparable quality and quantity under comparable conditions of sale for the area where produced and when run, or the gross proceeds of sale, whichever is greater; provided the maximum pressure base in measuring the gas under an oil and gas lease at any time may not exceed fourteen and seventy-three hundredths (14.73) pounds per square inch absolute, and the standard base temperature shall be sixty degrees Fahrenheit, correction to be made for pressure according to Boyle's Law, and for specific gravity according to a test made by the balance method or by the most approved method of testing being used by the industry at the time of testing.
2. On any gas processed in a gasoline plant or other plant for the recovery of gasoline or other liquid hydrocarbons, the royalty, as determined by the board, is based on the residue gas and the liquid hydrocarbons extracted or the market value thereof, at the option of the lessor. All royalties due herein is based on eighty percent or that percent accruing to the lessee, whichever is greater, of the total plant production of residue gas attributable to gas produced from the oil and gas leased premises, and on forty percent or that percent accruing to the lessee, whichever is greater, of the total plant production of liquid hydrocarbons attributable to the gas produced from the oil and gas leased premises; provided that if a third party or parties are processing gas through the same plant pursuant to arm's length transaction and one such transaction accounts for an annual average of ten percent or more, or all such transactions collectively account for an annual average of thirty percent or more of the gas being processed in such plant, the royalty is based on the gross proceeds of sale that would accrue to the lessee if the gas were processed under the terms of the most remunerative third-party transaction for processing gas in such plant. Respective royalties on residue gas and on liquid hydrocarbons for which the requirements for using third-party transactions cannot be met must be determined by the greater of:
  - a. The highest market price paid for any gas or liquid hydrocarbons of comparable quality and quantity under comparable conditions of sale in the general area F.O.B. at the plant after processing;

b. The gross proceeds of sale for such residue gas or the weighted average gross proceeds of sale for the respective grades of liquid hydrocarbons, F.O.B. at the plant after processing; or

c. The gross proceeds of sale paid to a third party processing gas through the plant. The lessee shall furnish copies of any and all third-party gas processing agreements pertaining to the plant upon lessor's request.

3. On carbon black, sulfur, or any other products produced or manufactured from gas, excepting liquid hydrocarbons, whether said gas be "casinghead", "dry", or any other gas, by fractionating, burning, or any other processing, is based on the gross production of such productions, or the market value thereof, at the option of the lessor. Such market value is to be the greater of:

a. The highest market price paid for each of the products of comparable quality and quantity under comparable conditions of sale in the general area during the same month in which such products are produced; or

b. The average gross proceeds of sale for each of the products for the same month in which such productions are produced, provided that if a third-party transaction is used to determine royalty in accordance with subsection 2, the royalty due under this subsection shall be determined in accordance with such transaction.

4. The lessee agrees all royalties accruing to the lessor under this rule are without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, vapor recovery, compressing, processing, transporting, conditioning, removing impurities, depreciation, risk capital, and otherwise making the oil, gas, and other products produced hereunder ready for sale or use.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-09. Disputed title royalty escrow account.**

Any payor that proposes to withhold royalty payments based upon an ownership dispute shall establish an escrow deposit account and shall deposit the disputed payments into this account.

1. The account must be established at the Bank of North Dakota, or other state or national chartered insured financial institution approved by the commissioner, with the board as a party to the escrow agreement.

2. Prior to a final resolution of the dispute, a partial release of the disputed payments may be made upon written approval by the commissioner and the payor. Upon approval, the disputed payments must be distributed back to the payor for proper distribution to the rightful owner.

3. Upon final resolution of the ownership dispute, and with consent of the commissioner, the escrow agent is authorized to release all disputed payments held in the account to the payor for proper distribution to the rightful owner. The board is entitled to any interest income earned on the account attributable to North Dakota's ownership interest.

4. This section applies to matters where the amount of the disputed payments is twenty-five thousand dollars or more over a twelve-month period. The commissioner and the payor may agree this section applies to oil and gas leases executed prior to the effective date of this section.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-10. Breach of oil and gas lease.**

1. Other than as provided in subsection 7, an oil and gas lease may be canceled for:
  - a. Nonpayment of any sum due under the oil and gas lease;
  - b. Breach of any of the oil and gas lease terms or conditions provided such cancellation must not release the lessee from liability for any sum due the lessor or from any damages due to the breach; or
  - c. A violation of the board rules and policies, and applicable laws.
2. Before an oil and gas lease is canceled, the department shall mail a notice of intention to cancel the oil and gas lease specifying the reason for cancellation to the lessee by mail requiring a signed receipt at the address of the lessee as shown in the records of the department. If the notice of intention to cancel is returned undeliverable or refused, the notice must be published in the official newspaper of the county in which the oil and gas leased premises is located.
3. A lessee may file with the commissioner a request for a waiver or a request for the commissioner to review the notice of intention to cancel the oil and gas lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the commissioner within thirty days after the date of notice of intention to cancel the oil and gas lease is received or the date of publication. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The board may waive any breach except a breach of oil and gas lease terms required under North Dakota Century Code, or the board may allow the lessee time to cure the breach. Any waiver must be limited to the particular breach waived and may not limit the board's right to cancel the oil and gas lease for any other breach.
4. If the lessee has not requested waiver or commissioner review or remedied the default within thirty days after receipt of a notice of intention to cancel or the date of publication, the commissioner shall cancel the oil and gas lease.
5. Cancellation of the oil and gas lease does not release the lessee from liability for any sum due to the board, other than as provided in subsection 7, or from any damages from a breach of the oil and gas lease.
6. Upon cancellation of the oil and gas lease, the department shall file a satisfaction of oil and gas lease with the register of deeds' office in the county where the oil and gas leased premises is located.
7. An oil and gas lease automatically terminates for failure to pay the annual delay rental by the date due without further notice by the department or opportunity for the lessee to remedy the default.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-11. Board review.**

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information

required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if a board review is warranted.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-12. Reports of lessee - Delinquency penalty.**

Royalty payment and reporting are due on forms prescribed by the department as follows:

1. For gas:

- a. Within one hundred twenty-three days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
- b. Successive royalty payments and reporting are due within sixty-one days of the last day of the month in which production occurs.

2. For oil:

- a. Within ninety-two days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
- b. Successive royalty payments and reporting are due within thirty days of the last day of the month in which production occurs.

3. The royalty payment and reporting deadline may be extended by the commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.

4. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty day period of delinquency or fraction of delinquency period, unless a waiver or board review is requested under subsection 6.

5. Unpaid royalties bear interest under North Dakota Century Code section 47-16-39.1.

6. A lessee has thirty days from the date of the receipt of a notice of a penalty and interest assessment to pay the penalty and interest, request a waiver or reduction, or to request board review.

- a. A request for a waiver or reduction of the penalty or interest or a request for board review must be in writing and provide the grounds for the request.
- b. The following factors may be considered when deciding to waive or reduce the penalty or interest: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.
- c. The commissioner, for good cause, may waive up to twenty-five thousand dollars of the penalty or reduce interest initially sought. A request for a waiver or reduction of penalty in excess of twenty-five thousand dollars must be presented to the board, with the commissioner's recommendation, for review and decision.



- d. A waiver or reduction of penalty and interest does not constitute a waiver of the right to seek the full amount of both penalty and interest if the initial claim for royalty payment is not paid. If a claim for unpaid royalties, penalties, and interest is settled and payment received, the amount of penalties and interest not collected is deemed waived.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10, 47-16-39.1, 47-16-39.2

#### **85-06-01-13. Audit and examination.**

1. The department may audit and examine any records, including:
  - a. Books, accounts, and receipts; and
  - b. Contracts and other records pertaining to the production, transportation, sale, and marketing of the oil or gas or other products produced from the oil and gas leased premises.
2. The department shall serve by certified mail, a written request to the payor specifying the documents requested.
3. After audit and examination of the records set forth in subsection 1, the department shall notify the payor of the results, including the audit findings, the basis for that determination, and the date by which a response to the findings is due.
4. A payor has sixty days from the date of the receipt of the audit findings to comply, request an extension, respond to the findings, or request commissioner review. A request for an extension or for commissioner review must be made in writing. A request for commissioner review must include a statement of the reasons for disagreement with the audit findings. If a payor fails to comply with the audit findings, respond to the findings, or request commissioner review within sixty days, the oil and gas lease is subject to cancellation under section 85-06-01-10.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 47-16-39.1, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10, 47-16-39.2

#### **85-06-01-14. Request for shut-in status for oil.**

1. A lessee requesting shut-in status of an oil well, without canceling the oil and gas lease, shall submit a written request to the department utilizing the form available on the department's website. The request must contain the following information:
  - a. The name and well file number assigned by the North Dakota department of mineral resources oil and gas division;
  - b. The township, range, and section of the surface location of the well;
  - c. The board's oil and gas lease number for the subject lease, the date of the oil and gas lease, the acreage covered by the oil and gas lease, and the current lessee;
  - d. The name and address of the operator of the well;
  - e. The cumulative oil production and the number of days of production for the three months immediately preceding the request;
  - f. The written approval of the request from the operator;

g. The grounds for the request and the anticipated length of time the well will be shut-in; and

h. Any additional information requested by the department.

2. An application fee, in an amount set by the department, and the shut-in royalty payment must be submitted with the application. If the application is denied, the shut-in royalty payment will be refunded by the department.

3. An application is deemed filed when the department receives the application form, application fee, shut-in royalty payment, and any additional information requested by the department.

4. Within fifteen days of receipt of an application, the commissioner shall notify the applicant in writing, as follows:

a. The application is approved and the terms of the shut-in approval;

b. The application is denied;

c. An additional fifteen day period is necessary to consider the application; or

d. The application requires board approval.

5. If an application is denied, a lessee may file with the department a written request for commissioner review, specifying the grounds for the request.

6. A shut-in approval is effective for one year from the date of approval unless the commissioner determines a shorter amount of time is appropriate.

7. The commissioner may revoke a shut-in approval if the commissioner determines the action is in the best interests of the trusts. If a shut-in approval is revoked prior to its expiration, the department shall provide notice to the lessee by certified mail. Within sixty days from the date of receipt of the notice, the lessee shall re-establish production. If the lessee fails to re-establish production, the oil and gas lease is subject to cancellation under section 85-06-01-10.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

## CHAPTER 85-06-02

### COAL

#### Section

<u>85-06-02-01</u>	<u>Prospecting Permits</u>
<u>85-06-02-02</u>	<u>Lands Subject to Coal Lease</u>
<u>85-06-02-03</u>	<u>Application for Coal Lease</u>
<u>85-06-02-04</u>	<u>Notice of Coal Leasing</u>
<u>85-06-02-05</u>	<u>Negotiation of Coal Lease</u>
<u>85-06-02-06</u>	<u>Testing</u>
<u>85-06-02-07</u>	<u>Voluntary Release</u>
<u>85-06-02-08</u>	<u>Breach of Coal Lease</u>
<u>85-06-02-09</u>	<u>Board Review</u>
<u>85-06-02-10</u>	<u>Minimum Delay Rentals</u>
<u>85-06-02-11</u>	<u>Royalty</u>
<u>85-06-02-12</u>	<u>Assignments</u>
<u>85-06-02-13</u>	<u>Surface Owner Protection</u>
<u>85-06-02-14</u>	<u>Financial Obligation to Reclaim</u>
<u>85-06-02-15</u>	<u>Reports of Lessee - Delinquency Penalty</u>
<u>85-06-02-16</u>	<u>Audit and Examination</u>

#### 85-06-02-01. Prospecting permits.

A request for a prospecting permit is issued in accordance with chapter 85-04-04.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-08, 15-05-09

#### 85-06-02-02. Lands subject to coal lease.

A coal lease may be issued upon acreage not already under a coal lease as reflected in department records. A coal lease is limited to a maximum of one quarter section, unless otherwise authorized by the board.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-08, 15-05-09

#### 85-06-02-03. Application for coal lease.

A written application for a coal lease must include:

1. Legal description of the lands to be leased;
2. Proposed terms for the coal lease, including the bonus, length, delay rental, and royalty;
3. Documentation showing that the bonus, term, delay rental, and royalty being offered are consistent with market rates; and
4. Nonrefundable application fee in an amount set by the board.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-08, 15-05-09

#### **85-06-02-04. Notice of coal leasing.**

1. Upon receipt of an application for a coal lease and a determination by the board that the application covers a tract the board is willing to lease, the department shall post on the department's website a notice of the application for coal lease, any supporting documentation, and instructions for submitting public comments. Comments must be received by the department no later than five p.m. central standard time fourteen days after posting the notice of the application for a coal lease to be considered. All comments must be in writing and contain the following:
  - a. Name and address of the interested person;
  - b. Applicant's name and address;
  - c. The legal description of the proposed coal leased premises as shown on the posted notice; and
  - d. A detailed statement as to whether the interested person supports or opposes the issuance of the coal lease.
2. Those comments must be brought to the board along with the department's recommendations.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

#### **85-06-02-05. Negotiation of coal lease.**

The department may negotiate with the applicant the terms and conditions of a coal lease the department deems to be in the best interests of the trusts. If the board owns the surface estate of a coal leased premises, compensation for the surface damage must be negotiated separately. The applicant may propose modifications to the bonus, delay rental, royalty, or other terms of the coal lease application. The board may refuse to enter a coal lease for any reason. The board may not issue the coal lease until receipt of full payment of at least one year of delay rental, bonus payment, and any applicable fees.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-04, 15-05-09, 15-05-10, 15-05-13

#### **85-06-02-06. Testing.**

The department may require a lessee to conduct drilling tests on the coal leased premises prior to the coal mining operations. If required, sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the coal deposit and estimate the quality, quantity, and type of coal located on the coal leased premises. The lessee shall provide the department a map of the coal leased premises showing the boundaries of the coal deposit and a written report estimating the thickness, depth, quality, quantity, and type of coal. All test holes must be reclaimed to the satisfaction of the department at the conclusion of testing. Failure to conduct drilling tests when required or failure to provide the required documentation, may result in termination of the coal lease under section 85-06-02-08.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

### 85-06-02-07. Voluntary release.

To request a voluntary release of a coal lease, or portion of a coal leased premises, a lessee shall submit a written request to the department utilizing the form available on the department's website and all other documents requested by the department. Approval of a voluntary release is at the discretion of the commissioner and the department shall notify the lessee in writing whether or not the voluntary release is approved. All coal lease obligations must be current at the time the voluntary release is approved. The lessee remains bound by the terms and conditions of the coal lease, board rules and policies, and applicable laws, until the voluntary release is approved by the commissioner.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

### 85-06-02-08. Breach of coal lease.

1. A coal lease may be canceled for:
  - a. Nonpayment of any sum due under the coal lease;
  - b. Breach of any of the coal lease terms or conditions provided the cancellation does not release lessee from liability for any sum due lessor or from any damages due to the breach; or
  - c. Violation of the board rules and policies, and applicable laws.
2. Prior to cancellation of a coal lease, the department shall mail a notice of intention to cancel the coal lease specifying the reason for cancellation to the lessee by mail requiring a signed receipt at the address of the lessee as shown in the records of the department. If the notice of intention to cancel is returned undeliverable or refused, the notice must be published in the official newspaper of the county in which the coal leased premises is located.
3. A lessee may file with the commissioner a request for a waiver or a request for the commissioner to review the notice of intention to cancel the coal lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the commissioner within twenty days after the date of notice of intention to cancel the coal lease is received or the date of publication. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The commissioner may waive any breach except a breach of coal lease terms required under North Dakota Century Code, or the commissioner may allow the lessee time to cure the breach. Any waiver is limited to the particular breach waived and may not limit the board's right to cancel the coal lease for any other breach.
4. If the lessee has not remedied the default within twenty days after receipt of a notice of intention to cancel or the date of publication, the commissioner shall cancel the coal lease.
5. Cancellation of the coal lease does not release the lessee from liability for any sum due to the board or from any damages from a breach of the coal lease.
6. Upon cancellation of the coal lease, the department shall file a satisfaction of coal lease with the register of deeds' office in the county where the coal leased premises is located.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

### **85-06-02-09. Board review.**

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

### **85-06-02-10. Minimum delay rentals.**

1. The minimum delay rental is five dollars per acre per year payable for as long as the coal lease is in full force and effect.
2. The first year of delay rental must be paid upon the issuance of a coal lease. The delay rental for each subsequent year of the coal lease is due and payable before the anniversary date of the coal lease.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10

### **85-06-02-11. Royalty.**

Royalties are due to the lessor for coal mined or saved from the coal leased premises. If any other valuable substance is found or discovered during exploration or coal mining operations, the operator must notify the department prior to extraction.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10

### **85-06-02-12. Assignments.**

A lessee shall submit a written request to the department for an assignment of coal lease utilizing the form available on the department's website. A request for assignment must include any documents requested by the department. The lessee shall submit a coal lease assignment fee, in an amount set by the board, to the department with the request. Approval of an assignment is at the discretion of the commissioner and the department shall notify the lessee in writing whether or not the assignment is approved. All coal lease obligations must be current at the time the assignment is approved. The lessee remains bound by the terms and conditions of the coal lease, board rules and policies, and applicable laws, until the assignment is approved by the commissioner. Upon approval of the assignment, the assignee is bound by all the terms and conditions of the coal lease, board rules and policies, and applicable laws. The assignor shall provide the department with a copy of the fully executed assignment within thirty days from the approval.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-15

### **85-06-02-13. Surface owner protection.**

For a coal lease or prospecting permit for which the board is leasing or granting the right to explore for coal and has no interest in the surface estate, the lessee or permittee shall comply with North Dakota Century Code chapter 38-18.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

### **85-06-02-14. Financial obligation to reclaim.**

The lessee shall pay the entire cost of reclamation necessitated by the coal mining operation.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

### **85-06-02-15. Reports of lessee - Delinquency penalty.**

A statement and payment of royalty must be received by the department on or before the last day of the month following the mining and removal of coal from the premises.

1. The royalty payment and reporting deadline may be extended by the commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.
2. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty-day period of delinquency or fraction of delinquency period, unless a waiver is granted by the commissioner.
3. A lessee has thirty days from the date of the receipt of a notice of a penalty assessment to pay the penalty or request a waiver.
  - a. A request for a waiver of the penalty must be in writing and provide the grounds for the request.
  - b. The following factors may be considered when deciding to waive the penalty: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.
  - c. The commissioner, for good cause, may waive up to twenty-five thousand dollars of the penalty initially sought. A request for penalty waiver in excess of twenty-five thousand dollars must be presented to the board, with the commissioner's recommendation, for review and decision.
  - d. A waiver of penalty does not constitute a waiver of the right to seek the full amount of the penalty if the initial claim for royalty payment is not paid. If a claim for unpaid royalties and penalties is settled and payment received, the amount of penalties not collected is deemed waived.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10

### **85-06-02-16. Audit and examination.**

1. The department may audit and examine any records, including:

- a. Cuttings, cores, logs, mine plans, and estimated tonnage in place from any coal leased premises;
  - b. Books, accounts, sales invoices, and receipts;
  - c. Contracts and other records pertaining to the production, transportation, sale, and marketing of the coal produced from the coal leased premises; and
  - d. Documents supporting the cost of the coal mining operation used for calculating the price per ton royalty.
2. The department shall serve by certified mail, a written request to the payor specifying the documents requested.
  3. After audit and examination of the records set forth in subsection 1, the department shall notify the payor of the results, including the audit findings, any additional royalties due, the basis for that determination, and the date by which a response to the findings is due. If an exact amount of any delinquent royalties cannot be determined from the documents provided, the department shall request the payor make appropriate adjustments.
  4. A payor has sixty days from the date of the receipt of the audit findings to comply, respond to the findings, or request commissioner review. A request for commissioner review must be made in writing and include a statement of the reasons for disagreement with the audit findings. If a payor fails to comply with the audit findings, respond to the findings, or request commissioner review within sixty days, the coal lease is subject to cancellation under section 85-06-02-08.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-05, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10