

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 389

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

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TITLE 25
STATE BOARD OF FUNERAL SERVICE

JULY 2023

CHAPTER 25-02-02

25-02-02-02. Qualifications for licensure.

To qualify for a license to practice funeral service, the applicant shall meet all of the following requirements:

1. Be of good moral character.
2. Furnish evidence of successful completion of an accredited four-year high school course of study.
3. One of the following:
 - a. Furnish evidence of satisfactory completion of at least two years of accredited college or university course of study in addition to the education required by subsection 4. For purposes of this subsection, two years means a minimum of sixty semester hours or a minimum of ninety quarter hours; or
 - b. Furnish evidence of licensure in good standing in another state and five or more years of active licensed experience in another state.
4. Show evidence of graduation from an accredited college of mortuary science.
5. Have successfully completed all required examinations.
6. Demonstrate completion of an approved internship.
7. Demonstrate to a funeral practitioner proficiency in the art of embalming. Final embalming report to indicate by affidavit signed by a funeral practitioner that the applicant is proficient in embalming.

History: Amended effective April 1, 1979; July 1, 1983; March 1, 1985; May 1, 1993; May 1, 1998; January 1, 2015; July 1, 2023.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-11, 43-10-12, 43-10-13

CHAPTER 25-05-01

25-05-01-10. Prohibitions.

1. Crematoriums are forbidden to cremate fetuses, limbs, and body parts from private or public health agencies or medical schools or medical doctors unless appropriate releases are given to the crematoriums by those agencies. Copies of releases must remain with the cremation authority and the parties contracting for cremations mentioned in this section.
2. Cremation of animals and pets of any type is strictly forbidden in a ~~crematorium-designed~~retort utilized for cremation of human remains.
3. Except for the items listed in subsection 1, ~~crematoriums~~retorts are forbidden to perform any multiple cremations of any type of human remains.

History: Effective May 1, 1993; amended effective May 1, 1998; July 1, 2023.

General Authority: NDCC 43-10-05, 43-10-25

Law Implemented: NDCC 43-10-05

TITLE 33
STATE DEPARTMENT OF HEALTH

JULY 2023

**ARTICLE 33-03
STATE DEPARTMENT OF HEALTH**

Chapter	
33-03-01	Free Standing Outpatient Facility - Including Surgical Facilities - Excluding Physicians Clinic [Repealed]
33-03-02	Abortion
33-03-03	Maintenance and Operation of Public Waterworks Systems, Swimming Pools, and Sewerage Systems [Repealed]
33-03-04	Quality of Water [Repealed]
33-03-05	School Water and Sewerage Systems [Repealed]
33-03-06	Sale of Bulk and Bottled Water Supplies Intended for Domestic Purposes [Repealed]
33-03-07	Care and Disposal of Refuse and Garbage [Repealed]
33-03-08	Approval of Plans and Specifications Prior to Construction of Water Works and Sewerage Systems [Repealed]
33-03-09	Health Maintenance Organizations [Repealed]
33-03-10	Home Health Agencies [Repealed]
33-03-10.1	Home Health Agencies
33-03-11	Electronic Hair Removal Technician
33-03-11.1	Electrolysis
33-03-12	Hemophilia
33-03-13	Construction Standards for Residential Facilities for the Physically Disabled
33-03-14	Construction Standards for Small Intermediate Care Facilities for the Mentally Retarded
33-03-15	Hospice Programs
33-03-16	Construction and Location of Toilets [Repealed]
33-03-17	Temporary Work Camps [Repealed]
33-03-18	Milk Sanitation [Repealed]
33-03-19	Food and Drink Sanitation [Repealed]
33-03-20	Minimum Requirements for Sanitation in Places of Employment [Repealed]
33-03-21	Minimum Requirements for Sanitation in Camps [Repealed]
33-03-22	Migrant Labor Housing [Repealed]
33-03-23	Health Care Claims Data
33-03-24	Basic Care Facilities [Repealed]
33-03-24.1	Basic Care Facilities
33-03-24.2	General Standard for Construction and Equipment for Basic Care Facilities
33-03-25	Alternative Health Care Services Projects
33-03-26	Organ Transplant Support Fund
33-03-27	State Community Matching Physician Loan Repayment Program [Repealed]
33-03-28	District Health Units

33-03-29	Residential Care Facilities for Children With Autism
33-03-30	Construction Standards for Residential Care Facilities for Children With Autism
33-03-31	Certificate of Public Advantage [Repealed]
33-03-32	State Community Matching Loan Repayment Program For Nurse Practitioners, Physicians Assistants, and Certified Nurse Midwives [Repealed]
33-03-33	Long-Term Care Nursing Scholarship and Loan Repayment Grant Program
33-03-34	Autism Spectrum Disorder Database
33-03-35	Residential End-of-Life Facility Regulation
33-03-36	<u>Extended Stay Center Registration</u>

CHAPTER 33-03-36
EXTENDED STAY CENTER REGISTRATION

Section

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33-03-36-16	<u>Data and Metrics Reporting</u>

33-03-36-01. Definitions.

1. "Ambulatory surgical center" means a facility that is certified as an ambulatory surgical center by the centers for Medicare and Medicaid services.
2. "Facility" means an extended stay center.
3. "License" means a certificate of registration.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-02. Issuance of license and fees.

A facility shall obtain a license from the department in order to operate in this state.

1. Application to operate a facility must be made to the department prior to opening a facility upon determination by the department that the facility meets the definition of a facility.
2. A facility shall apply to the department for a license in the form and manner prescribed by the department.

3. Upon receipt of an application for an initial license, the department may schedule an inspection. Upon completion of the inspection and consideration of the findings, the department may issue an initial or provisional license, or deny the application.
4. An initial license is valid for a period not to exceed one year and shall expire on December thirty-first of the year issued.
5. Licenses must be issued on a calendar year basis and expire on December thirty-first of each year. An application for licensure renewal must be received by the department thirty days prior to the beginning of the licensure period to process.
6. A provisional license may be issued to a facility that does not comply with this chapter if practices in the facility do not pose a danger to the health and safety of the patients, as determined by the department.
 - a. A provisional license must be accompanied by a written statement of the specific rules or statutes the facility is in noncompliance of and the expiration date of the license, which is not to exceed three months from the date of issuance.
 - b. If compliance with the requirements has been determined by the department prior to the expiration of the provisional license, an annual license may be issued. If an acceptable plan of correction has been approved by the department but compliance has not yet been achieved, the provisional license may be renewed no more than one time for an additional period up to three months at the discretion of the department.
7. The facility shall display the current license in a conspicuous place.
8. A facility shall notify the department and reapply for licensure upon any change in ownership of the facility.
9. A license is not subject to sale, assignment, or other transfer, voluntary or involuntary. A license is not valid for any premises other than those for which originally issued.
10. The department may, at any time, inspect a facility that the department determines meets the definition of an extended stay center as described in North Dakota Century Code chapter 23-17.6 and this chapter, to determine compliance with licensure requirements and standards.
11. The department may deny, suspend, or revoke the license of a facility for noncompliance with North Dakota Century Code chapter 23-17.6 or this chapter.
12. The facility shall provide the department access to any materials and information necessary, as determined by the department, for determining compliance with licensure requirements and standards.
13. The facility shall submit floor plans directly or through an architect or engineer for new construction or a renovation project to be reviewed by the department. The estimated cost of the project is to accompany the submission of the project. Based on the estimated cost of the project, a letter is sent from the department to the facility administrator or designee indicating the plan review fee that needs to be submitted. The plan review fee schedule based on size and project costs is:
 - a. Small project: A fee of five hundred dollars for a project cost between zero and fifty thousand dollars.
 - b. Medium project: A fee of one percent of the project costs for a project cost between fifty thousand and one dollar and four million dollars.

c. Large project: A fee of forty thousand dollars plus twenty-five hundredths of one percent of the project cost after four million dollars is subtracted for a project with project cost greater than four million dollars.

14. An application for a license for facilities not owned by the state or its political subdivisions must be accompanied by the following fees:

a. Ten thousand dollars for each initial application.

b. Two thousand five hundred dollars for each renewal application.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-03. Waiver provision.

The department may waive licensure requirements for specified periods of time provided compliance with the requirement would result in an unreasonable hardship upon the facility and lack of compliance does not adversely affect the health or safety of the patients.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-04. Governing body.

1. The facility shall have a clearly defined, organized governing body that assumes full legal responsibility for the overall conduct and operation of the facility.

2. The governing body is responsible for approval and implementation of effective patient care and administrative policies and procedures for the operation of the facility. These policies and procedures must be in writing, signed, dated, reviewed annually, and revised as necessary.

3. The governing body shall appoint an administrator to be in charge of the general administration of the facility. Provisions must be made in writing for an identified staff member to be responsible for the onsite operation of the facility in the absence of the administrator.

4. The governing body shall ensure sufficient trained and competent staff are available to provide twenty-four hour extended stay services whenever there are patients admitted.

5. The governing body shall ensure training and competency evaluation is completed for all staff and volunteers specific to the care and services provided and necessary to meet the needs of the patients.

6. The governing body shall ensure the facility has a written agreement with one or more affiliated ambulatory surgery centers who have been certified for more than twenty-four consecutive months. The agreement must clearly detail the responsibility of the parties involved.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-05. Codes and standards.

1. A facility must be designed, constructed, equipped, maintained, and operated in compliance with:

- a. North Dakota Century Code section 54-21.3-04.1, relating to accessibility standards;
 - b. The requirements for food and beverage establishments issued by the department;
 - c. Article 62-03.1 relating to plumbing standards;
 - d. Article 24.1-06 relating to electrical wiring standards; and
 - e. Article 45-12 relating to boiler rules and regulations.
2. A facility shall comply with all applicable building codes, ordinances, and rules of city, county, or state jurisdictions. The most stringent requirement must be applied.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-06. Plans and specifications.

1. A facility shall submit plans and specifications to the department for approval for all construction, remodeling, and installations subject to review. The plans and specifications must be prepared by an architect or engineer licensed in North Dakota, unless otherwise determined by the department.
2. A facility shall contact the department prior to any substantial changes in or alterations to any portion of the structure to determine to what extent it is subject to review. A substantial change includes alterations affecting the fire safety or structural integrity of the building, changes in service areas or services provided within a service area, changes in bed capacity, or any other change governed by the standards of this chapter. The department may request plans, specifications, or other information as may be required and shall make the final determination on those areas subject to review.
3. Start of construction prior to approval by the department of the final plans and specifications is not permitted.
4. All construction, remodeling, and installations must be in accordance with the final plans and specifications approved by the department. Modifications or deviations from the approved plans and specifications must be submitted to and approved by the department.
5. The department may make inspections of construction, remodeling, or installations and arrange conferences with the facility to ensure conformance with approved plans and specifications.
6. The construction specifications must require the contractor to perform tests to ensure all systems conform to the approved plans and specifications.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-07. General building requirements.

1. The facility shall design and equip areas for the comfort and privacy of each patient. Each patient room must have:
 - a. A bed, a mattress, appropriate bedding, a bedside stand, and a chair appropriate to the needs and comfort of the patient. All furniture and furnishings must be well-constructed, comfortable, in good repair, kept clean and maintained in a serviceable condition.

- b. Physical space for private visiting.
 - c. Physical space to ensure visual privacy for personal care.
 - d. If a hardwired communication system is used in patient rooms, each patient must be provided with a call device. Calls must be initiated by a patient activating a device that sends a call signal to the staff call station or a hand-held mobile device carried by a staff member.
 - e. A window with a shade.
 - f. Patient toilet room with a handwashing station. Each patient shall have access to a toilet room without having to enter a corridor. Toilets used by patients must allow sufficient clearance on both sides to enable physical access and maneuvering by caregivers who may have to assist patients in wheelchair-to-toilet transfers and returns.
2. The facility shall provide space for storage of clean linen, clean supplies, patient care equipment, housekeeping, and cleaning supplies.
 3. Grab bars must be installed in all patient toilet rooms, showers, and bathing facilities. Grab bars must comply with all local, state, and federal requirements.
 4. Ground fault circuit interrupters must be provided for outlets within six feet [1.83 meters] of the outside edge of a sink.
 5. A convenience portable space heater, portable halogen lamp, household-type electric blanket, or household-type heating pad may not be used in a facility.
 6. The storage and transfilling of oxygen cylinders or containers must meet the requirements of the National Fire Protection Association 99, Standard for Health Care Occupancies, 2012 edition.
 7. Electrically powered exhaust ventilation must be provided in all soiled areas, wet areas, toilet rooms, and storage rooms. Clean storage rooms may also be ventilated by supplying and returning air from the building's air-handling system. The facility shall provide for adequate ventilation to assure an odor-free, comfortable environment.
 8. Office space and other areas must be furnished with desks, chairs, lamps, cabinets, benches, worktables, or other furnishings essential to the proper use of the area.
 9. The facility shall provide a dedicated staff toilet room.
 10. An essential electrical source must provide lighting for at least a ninety-minute duration during an interruption of the normal electrical supply. Illumination must be automatic and is permitted to be met by means such as:
 - a. Two separate electric lighting systems with independent wiring. One system is permitted to be supplied from an outside source, such as a public utility service, and the other from an electric generator on the premises driven by an independent source of power, or
 - b. An electric circuit, or circuits, used only for means of egress illumination, with two independent electric sources arranged so that, on the failure of one, the other will automatically and immediately operate. One such source is permitted to be a connection from a public utility, or similar outside power source, and the other an approved storage battery with suitable provisions to keep it automatically charged.
 11. Emergency lighting for safe egress and access shall be evaluated for all facilities. Each patient room must have general lighting and night lighting.

12. Functional testing shall be conducted monthly for not less than thirty minutes for generators and not less than thirty seconds for battery-powered lighting. Functional testing shall also be conducted annually for a minimum of ninety minutes.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-08. Fire safety.

1. Each facility must be a maximum of two stories in height with a minimum construction type rating of one hour, that is arranged, equipped, maintained, and operated to ensure the safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time necessary for escape from the structure in case of fire or other emergency. Walls and ceilings separating each patient room must have a one-hour fire rating. Patient room doors must be substantial doors, such as those of one and three-fourths inch [4.45 centimeters] thick, solid bonded wood-core construction or of other construction of equal or greater stability and fire integrity. These doors must be self-closing or automatic closing and must be provided with latches or other mechanisms suitable for keeping the doors closed.
2. Every patient room must have access to a primary and secondary means of escape located to provide a safe path of travel to the outside. Designated means of escape must be continuously maintained free of all obstructions.
3. No doors in any means of escape may be locked against egress when the building is occupied.
4. The facility shall provide an automatic fire alarm system with a means for manual activation. Occupant notification must be provided automatically and without delay. Private operating mode must be permitted to be used. This allows staff and other personnel required to evacuate patients to be notified. The notification must include means to readily identify the area or building in need of evacuation. Each sleeping room must be provided with an approved smoke alarm that is interconnected to the fire alarm system. The fire alarm system must be installed and tested in accordance with National Fire Protection Association 72, National Fire Alarm and Signaling Code, 2010 edition.
5. The facility must be protected throughout by an approved automatic sprinkler system using quick-response, residential sprinklers or domestic sprinklers and must initiate the fire alarm system. All habitable areas, closets, roofed porches, roofed decks, and roofed balconies must be protected by the sprinkler system. An automatic sprinkler system with a minimum of a thirty-minute water supply must be permitted. The sprinkler system supervision must be in accordance with the type of sprinkler system that is installed and the testing for the system must be in accordance with National Fire Protection Association 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2011 edition. Attics used for storage or fuel-fired equipment must be protected with automatic sprinklers. Attics not used for storage or fuel-fired equipment must be provided with one of the following:
 - a. Protected throughout by a heat detection system arranged to activate the building fire alarm system;
 - b. Protected with automatic sprinkler system;
 - c. Must be noncombustible construction; or
 - d. Constructed of fire-retardant-treated wood.

6. Any space where there is a storage or activity having fuel conditions exceeding those of a one or two-family dwelling and that possesses the potential for a fully involved fire must have a one-hour fire resistance rating. These spaces must also be provided with an automatic fire detection system connected to the fire alarm system and the area must have automatic sprinkler protection.
7. Interior wall and ceiling finish materials must be class A, class B, or class C.
8. The facility shall maintain a written plan that specifies action and procedures for responding to emergency situations such as fire, severe weather, loss of utility services such as heat, water, sewer, or electricity, communicable disease outbreaks, or a missing individual. The plan must be developed with the assistance and advice of the local fire or rescue authority or any other appropriate resource. An accident or incident report must be maintained for at least one year. A copy of the plan must be readily available at all times.
9. The emergency plan must be clearly communicated to all staff during orientation. Each staff must be knowledgeable of and must implement the emergency plan. The duties and responsibilities under the emergency plan must be reviewed by the staff not less than every twelve months. The emergency plan must include:
 - a. Assignment of staff to specific tasks and responsibilities in case of an emergency situation;
 - b. Instructions relating to the use of alarm systems and signals;
 - c. Systems for notification of appropriate entities outside of the facility;
 - d. Information on the location of emergency equipment in the facility;
 - e. Specification of evacuation routes and procedures; and
 - f. A requirement that emergency egress drills must be conducted not less than six times per year on a bimonthly basis, with not less than two drills conducted during the night when patients may be sleeping. These records must include dates, times, duration, names of staff participating, and a brief description of the drill, including the escape path used and evidence of simulation of a call to the fire department. The emergency drills must be permitted to be announced to the patients in advance. These emergency drills must be conducted without disturbing patients by choosing the location of the simulated emergency in advance and by closing the doors in the vicinity prior to initiation of the drill. The purpose of an emergency drill is to test the efficiency, knowledge, and response of staff in implementing the emergency plan. Its purpose is not to disturb or excite patients. Patients and families are not required to actively participate in the drill.
10. Portable fire extinguishers must be maintained in a fully charged and operable condition and must be kept in their designated locations at all times when they are not being used. Fire extinguishers must be installed so the maximum travel distance to an extinguisher is seventy-five feet [22.86 meters] and must be located along normal paths of travel, including exits from areas.
11. A facility may be directed to remove or correct other hazardous conditions not covered in this chapter if the department considers the conditions to have the potential to cause injury or illness to the patients or staff.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-09. Patient records.

1. The facility shall keep accurate, current, and confidential records of all patients.
2. The facility shall provide for secure maintenance and storage of all patient records.
3. Patient records must include:
 - a. Complete identification of each patient, including information on the patient's next of kin and responsible person.
 - b. Initial and subsequent assessments of each patient.
 - c. The current person-centered care plan.
 - d. Complete documentation of all services rendered.
 - e. An admission note.
 - f. A medication administration record documenting medication administration consistent with applicable state laws, rules, and practice acts.
 - g. Consent and authorization forms.
 - h. A discharge note, including disposition of the patient's personal effects, money, or valuables deposited with the facility.
4. The facility shall maintain patient records for a period of not less than five years from the date of discharge.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-10. Pharmacy and medication administration services.

1. The facility shall provide assistance to the patient in obtaining necessary medications and medical supplies.
2. Drugs and biologicals must be administered by an individual certified or licensed to administer medications or the patient.
3. The facility shall provide a secure area for medication storage and shall have policies and procedures for the control, storage, handling, administration, recordkeeping, and disposal of medication, including medications the patient brought from home.
4. All medications used by patients which are administered or supervised by staff must be:
 - a. Properly recorded by staff at the time of administration.
 - b. Kept and stored in original containers labeled consistently with state laws.
 - c. Properly administered.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-11. Dietary services.

The facility shall meet the dietary needs of the patients, provide dietary services, and the sanitary requirements for food establishments in compliance with chapter 33-33-04.1.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-12. Housekeeping and laundry services.

The facility shall provide housekeeping and maintenance services necessary to maintain the interior and exterior of the facility in a safe, clean, orderly, and comfortable manner and provide sanitary laundry services.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-13. Admission and discharge criteria.

Admission and discharge criteria must be specified in writing.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-14. Staffing.

1. The facility shall employ or contract with a registered nurse to supervise patient care to meet the needs of the patients at all times.

2. The facility shall maintain a sufficient number of qualified staff who are trained and competent to provide the care and services necessary to meet the needs.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-15. Patient rights.

The facility shall develop, adopt, and implement a statement of the rights and responsibilities of patients. This statement must be provided to the patient or the patient representative prior to or at the time of admission to the facility. The statement must include provisions assuring each patient the following minimum rights:

1. The right to be clearly informed of the responsibilities of the facility for care of the patient, including services to be provided.

2. The right to be fully informed, at the time of admission, of the materials and equipment available to the patient, any financial policies, and estimated cost.

3. The right to privacy in treatment and in caring for personal needs, and confidentiality in the treatment of personal and service records.

4. The right to be informed of any change in patient status.

5. The right to be treated courteously, fairly, and with the fullest measure of dignity.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

33-03-36-16. Data and metrics reporting.

The facility shall provide data and metrics to the department as determined by the department.

History: Effective July 1, 2023.

General Authority: NDCC 23-17.6-02

Law Implemented: NDCC 23-17.6-02

TITLE 75
DEPARTMENT OF HUMAN SERVICES

JULY 2023

CHAPTER 75-02-01.2

75-02-01.2-79. Sanctions for noncompliance with temporary assistance for needy families program requirements.

1. Temporary assistance for needy families participants who fail or refuse to comply with program requirements, without good cause, may be sanctioned. Actions or failures to comply that may result in sanctions include:
 - a. Failure or refusal to participate in the job opportunities and basic skills or tribal native employment works programs;
 - b. Failure or refusal to cooperate in obtaining child support or establishing paternity; and
 - c. Quit a job or refused an offer of employment without good cause.
2. All sanctions are first imposed against the responsible individual and will result in removal of the individual's financial needs from the household's temporary assistance for needy families grant, for a period of one month in an ongoing case, ~~or in the case of a new application subject to a job opportunity and basic skills program sanction, for a period of up to four months.~~
3. If the sanctioned individual does not cure the sanction prior to the end of the sanction penalty month, the sanction may progress to closure of the entire temporary assistance for needy families case.
 - a. A sanction penalty month runs from the effective date of a sanction through the last day of that month.
 - b. If a sanction, based on noncooperation with the job opportunities and basic skills program leads to closure of the entire temporary assistance for needy families case, the household shall, at a minimum, be ineligible for assistance in the month following the sanction penalty month, and until the responsible individual cures the sanction.
 - c. If a sanction, based on noncooperation with the child support agency leads to closure of the entire temporary assistance for needy families case, the household shall be ineligible for assistance in the month following the sanction penalty month.
4. Sanctions under temporary assistance for needy families follow a noncooperating individual.
5. A job opportunities and basic skills program sanction, or a tribal native employment works program sanction, is cured only when the responsible individual demonstrates, to the

satisfaction of the human service zone, that the failure to cooperate or participate, as required, has been corrected for at least ten consecutive days.

6. A child support sanction may only be considered cured upon notification from the child support agency to the eligibility worker that the sanctioned individual is cooperating in obtaining child support and, if necessary, establishing paternity.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011; [July 1, 2023](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-80. Good cause determination.

1. Except with respect to a sanction imposed for failure to obtain child support, or establish paternity, an individual shall be provided an opportunity to present the good cause reason for a failure or refusal to cooperate prior to the imposition of a sanction.
2. The eligibility worker or the individual's job opportunities and basic skills employment contractor may oversee the good cause determination process. If the individual is not cooperating with the job opportunities and basic skills program, the employment contractor is responsible to oversee the good cause determination process and must inform both the individual and the eligibility worker of the outcome of the good cause determination process.
3. Within two days after the employment contractor learns of a failure or a refusal to comply, the eligibility worker or employment contractor, as appropriate, shall send written notice to the individual to offer an opportunity to show good cause. A good cause determination must state that:
 - a. The individual is responsible to call or meet with the employment contractor within seven [business](#) days, from the print date of the notice, to show good cause; and
 - b. A sanction will be imposed if the individual does not contact the employment contractor or eligibility worker, as appropriate, within the required time or does not show good cause for the individual's failure or refusal to comply.
4. If an individual fails or refuses to participate in the good cause determination process, or if it is determined that the individual did not show good cause for the initial failure or refusal to participate as required in the temporary assistance for needy families program, the eligibility worker shall notify the individual of the sanction.
5. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

History: Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2009; January 1, 2011; [July 1, 2023](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-88. Job opportunities and basic skills program - Referral.

1. Any individual not exempt from the job opportunities and basic skills program and anyone who volunteers must be referred to the program. Referrals may be made only after the individual is determined otherwise eligible for assistance.
2. The referred individual shall contact the job opportunities and basic skills program within seven ~~calendar~~[business](#) days from the print date of the referral to set up an appointment for

program orientation, assessment, and employability planning and shall make a good-faith effort to complete program orientation, initial assessment, and employability planning within thirty days of the application date.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011; [July 1, 2023](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-102. Job opportunities and basic skills program - Failure or refusal to participate.

A failure or refusal to participate in the job opportunities and basic skills program occurs any time the participant:

1. Misses a scheduled appointment for any program or approved work activity;
2. Is absent from a program or approved work activity when scheduled to be there;
3. States an unwillingness to participate in any program or approved work activity;
4. Fails to contact the employment contractor, within seven ~~calendar~~[business](#) days from the print date of the referral, to set up an appointment to begin involvement in the program;
5. Refuses, despite apparent ability, to maintain satisfactory progress in any program or approved work activity; or
6. Fails to comply with the requirements of the participant's employability plan.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2009; [July 1, 2023](#).

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

CHAPTER 75-02-04.1

75-02-04.1-01. Definitions.

1. "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.
2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.
3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from public assistance programs that are means tested or provided in the form of subsidy payments made to adoptive parents.
4. a. "Gross income" means income from any source, in any form, but does not mean:
 - (1) Benefits received from public assistance programs that are means tested such as the temporary assistance for needy families, supplemental security income, and supplemental nutrition assistance programs, or that are provided in the form of subsidy payments made to adoptive parents;
 - (2) Employee benefits over which the employee does not have significant influence or control over the nature or amount unless:
 - (a) That benefit may be liquidated; and
 - (b) Liquidation of that benefit does not result in the employee incurring an income tax penalty;
 - (3) Child support payments;
 - (4) Atypical overtime wages or nonrecurring bonuses over which the employee does not have significant influence or control;
 - (5) Overseas housing-related allowances paid to an obligor who is in the military to the extent those housing-related allowances exceed the housing allowance in effect at the Minot air force base; ~~or~~
 - (6) Nonrecurring capital gains; or
 - (7) Early withdrawals from retirement accounts.
- b. Examples of gross income include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income to the extent not previously considered in determining a child support obligation for the child whose support is under consideration, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent they annually exceed one thousand dollars in value, spousal support payments received, refundable tax credits, value of in-kind income received on a regular basis, children's benefits, income imputed based upon earning capacity, military subsistence payments, and net income from self-employment.
- c. For purposes of this subsection, income tax due or paid is not an income tax penalty.

5. "In-kind income" means the receipt from employment or income-producing activity of any valuable right, property or property interest, other than money or money's worth, including forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the customary charge, and the use of consumable property or services at no charge or less than the customary charge.
6. "Net income" means total gross annual income less:
 - a. A hypothetical federal income tax obligation based on the obligor's gross income, reduced by that part of the obligor's gross income that is not subject to federal income tax and reduced by deductions allowed in arriving at adjusted gross income under the Internal Revenue Code, and applying:
 - (1) The standard deduction for the tax filing status of single; and
 - (2) Tax tables for a single individual for the most recent year published by the internal revenue service;
 - b. A hypothetical state income tax obligation equal to eleven percent of the amount determined under subdivision a;
 - c. A hypothetical obligation for Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA) tier I and tier II, Medicare, and self-employment tax obligations based on that part of the obligor's gross income that is subject to FICA, RRTA, Medicare, or self-employment tax under the Internal Revenue Code;
 - d. A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, including coverage for dental and vision care, intended to afford coverage for the child or children for whom support is being sought, determined by:
 - (1) If the cost of single coverage for the obligor and the number of persons associated with the premium payment are known:
 - (a) Reducing the premium payment by the cost for single coverage for the obligor;
 - (b) Dividing the difference by the total number of persons, exclusive of the obligor, associated with the premium payment; and
 - (c) Multiplying the result times the number of insured children for whom support is being sought; or
 - (2) If the cost of single coverage for the obligor is not known:
 - (a) Dividing the payment by the total number of persons covered; and
 - (b) Multiplying the result times the number of insured children for whom support is being sought;
 - e. Payments made on actual medical expenses of the child or children for whom support is sought to the extent it is reasonably likely similar expenses will continue;
 - f. Union dues and occupational license fees if required as a condition of employment;
 - g. Employee retirement contributions, deducted from the employee's compensation and not otherwise deducted under this subsection, to the extent required as a condition of employment;

- h. Subject to documentation, unreimbursed employee expenses for:
 - (1) Special equipment or clothing required as a condition of employment;
 - (2) Lodging expenses, not exceeding ~~ninety-three~~ninety-six dollars per night, incurred when engaged in travel required as a condition of employment; or
 - (3) Noncommuting mileage incurred for driving a personal vehicle between work locations when required as a condition of employment, computed at the rate of ~~fifty-six~~sixty-five and one-half cents per mile, less any actual mileage reimbursement from the employer; and
 - i. Employer reimbursed out-of-pocket expenses of employment, if included in gross income, but excluded from adjusted gross income on the obligor's federal income tax return.
7. "Obligee" includes, for purposes of this chapter, an obligee as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support on behalf of a child.
 8. "Obligor" includes, for purposes of this chapter, an obligor as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.
 9. "Parent with primary residential responsibility" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of descriptions such as "shared" or "joint" parental rights and responsibilities given in relevant judgments, decrees, or orders.
 10. "Self-employment" means employment in one or more related activities that results in an obligor earning income from any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control. For purposes of this chapter, it also includes any activity that generates income from rental property, royalties, business gains, partnerships, trusts, corporations, and any other organization or entity regardless of form and regardless of whether such activity would be considered self-employment activity under the Internal Revenue Code.
 11. "Split parental rights and responsibilities" means a situation where the parents have more than one child in common, and where each parent has primary residential responsibility for at least one child.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; April 1, 2010; July 1, 2011; September 1, 2015; January 1, 2019; July 1, 2023.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-02. Determination of support amount - General instructions.

1. Except as provided in section 75-02-04.1-08.2, calculations of child support obligations provided for under this chapter consider and assume that one parent acts as a primary caregiver and the other parent contributes a payment of child support to the child's care. Calculation of a child support obligation under section 75-02-04.1-08.2 does not preclude a court from apportioning specific expenses related to the care of the child, such as child care expenses and school activity fees, between the parents. An apportionment under this subsection is in addition to the child support amount determined by application of this chapter.

2. Calculations assume that the care given to the child during temporary periods when the child resides with the obligor or the obligor's relatives do not substitute for the child support obligation.
3. Net income received by an obligor from all sources must be considered in the determination of available money for child support.
4. The result of all calculations which determine a monetary amount ending in fifty cents or more must be rounded up to the nearest whole dollar, and must otherwise be rounded down to the nearest whole dollar.
5. In applying the child support guidelines, an obligor's monthly net income amount ending in fifty dollars or more must be rounded up to the nearest one hundred dollars, and must otherwise be rounded down to the nearest one hundred dollars.
6. The annual total of all income considered in determining a child support obligation must be determined and then divided by twelve in order to determine the obligor's monthly net income.
7. Income must be sufficiently documented through the use of tax returns, current wage statements, and other information to fully apprise the court of all gross income. Where gross income is subject to fluctuation, regardless of whether the obligor is employed or self-employed, information reflecting and covering a period of time sufficient to reveal the likely extent of fluctuations, not to exceed five years, must be provided.
8. Calculations made under this chapter are ordinarily based upon recent past circumstances because past circumstances are typically a reliable indicator of future circumstances, particularly circumstances concerning income. If circumstances that materially affect the child support obligation have changed in the recent past or are very likely to change in the near future, consideration may be given to the new or likely future circumstances.
9. Each child support order must include a statement of the net income of the obligor used to determine the child support obligation, and how that net income was determined. ~~If a child support order includes an adjustment for extended parenting time under section 75-02-04.1-08.1, the order must specify the number of parenting time overnights.~~
10. A payment of children's benefits made to or on behalf of a child who is not living with the obligor must be credited as a payment toward the obligor's child support obligation in the month (or other period) the payment is intended to cover, but may not be credited as a payment toward the child support obligation for any other month or period. The court may order the obligee to reimburse the obligor for any overpayment that results from the credit provided in this subsection.
11. No amount may be deducted to determine net income unless that amount is included in gross income.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011; January 1, 2019; July 1, 2023.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-07. Imputing income based on earning capacity.

1. For purposes of this section:
 - a. "Earnings" includes in-kind income and amounts received in lieu of actual earnings, such as social security benefits, workers' compensation wage replacement benefits, unemployment insurance benefits, veterans' benefits, and earned income tax credits; and

- b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than this state's statewide average earnings for persons with similar work history and occupational qualifications.
2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than the greater of:
 - a. ~~Six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications~~A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage; or
 - b. ~~A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage~~Six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications.
 3. Except as provided in subsections 4, 5, 6, and 7, gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.
 - a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.
 - b. An amount equal to six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications.
 - c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years ~~before commencement of the proceeding before the court~~, for which reliable evidence is provided.
 4. Monthly gross income based on earning capacity may not be imputed under subsection 3 if:
 - a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child:
 - (1) For whom the obligor has primary residential responsibility;
 - (2) Who is under the age of thirteen; and
 - (3) For whom there is no other adult caretaker in the obligor's home available to meet the child's needs during absence due to employment.
 - b. ~~Current~~A current medical ~~records confirm~~statement confirms the obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to at least one hundred sixty-seven times the hourly federal minimum wage.
 - c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
 - d. The obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and ~~is not underemployed~~those earnings are similar to or greater than the statewide average earnings for persons with similar work history and occupational qualifications.

- e. The obligor is under eighteen years of age or is under nineteen years of age and enrolled in and attending high school.
 - f. The obligor is receiving:
 - (1) Supplemental security income payments;
 - (2) Social security disability payments;
 - (3) Workers' compensation wage replacement benefits;
 - (4) Total and permanent disability benefits paid by the railroad retirement board;
 - (5) Pension benefits, as defined in subsection 9, paid by the veterans benefits administration; or
 - (6) Disability compensation paid by the veterans benefits administration based on an overall disability rating of ~~one hundred~~ eighty percent.
 - g. It has been less than one hundred eighty days since the obligor was released from incarceration under a sentence of at least one hundred eighty days.
 - h. The obligor is incarcerated under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing.
5. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable within one hundred miles [160.93 kilometers] of the obligor's actual place of residence, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.
6. If the obligor fails, upon reasonable request made in any proceeding to establish or review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, and if that information cannot be reasonably obtained from sources other than the obligor, income must be imputed based on the greatest of:
- a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.
 - b. An amount equal to one hundred percent of this state's statewide average earnings for persons with similar work history and occupational qualifications.
 - c. An amount equal to one hundred percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years ~~before commencement of the proceeding before the court,~~ for which reliable evidence is provided.
7. Notwithstanding subsections 4, 5, and 6, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years ~~before commencement of the proceeding before the court,~~ for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed. For purposes of this subsection, a voluntary change in employment is a change made for the purpose of reducing the obligor's child support obligation and may include becoming unemployed, taking into consideration the obligor's

standard of living, work history, education, literacy, health, age, criminal record, barriers to employment, record of seeking employment, stated reason for change in employment, likely employment status if the family before the court were intact, and any other relevant factors. The burden of proof is on the obligor to show that the change in employment was not made for the purpose of reducing the obligor's child support obligation.

8. Imputed income based on earning capacity is an example of gross income and is subject to the deductions from gross income set forth in subsection 6 of section 75-02-04.1-01.
9. For purposes of paragraph 5 of subdivision f of subsection 4, "pension benefits" means only needs-based payments made by the veterans benefits administration to war-time veterans whose income is below a yearly limit set by Congress and who are age sixty-five or older or have a total and permanent disability.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011; September 1, 2015; January 1, 2018; [July 1, 2023](#).

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-08.1. Adjustment for extended parenting time.

1. For purposes of this section, "extended parenting time" means parenting time between an obligor and a child living with an obligee scheduled by court order to exceed an annual total of one hundred overnights. If a child support order includes an adjustment for extended parenting time under this section, the order must specify the number of parenting time overnights.
2. Notwithstanding any other provision of this chapter and as limited by subsection 3, if a court order provides for extended parenting time between an obligor and a child living with an obligee, the support obligation presumed to be the correct child support amount due on behalf of all children of the obligor living with the obligee must be determined under this subsection.
 - a. Determine the amount otherwise due under this chapter from the obligor for those children.
 - b. Divide the amount determined under subdivision a by the number of those children.
 - c. For each child, multiply the number of that child's parenting time overnights times .32 and subtract the resulting amount from three hundred sixty-five.
 - d. Divide the result determined under subdivision c by three hundred sixty-five.
 - e. Multiply the amount determined under subdivision b times each decimal fraction determined under subdivision d.
 - f. Total all amounts determined under subdivision e.
3. An adjustment for extended parenting time is not authorized if the parents of a child for whom support is being determined have equal residential responsibility according to section 75-02-04.1-08.2.

History: Effective August 1, 1999; amended effective July 1, 2011; September 1, 2015; January 1, 2019; [July 1, 2023](#).

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-09. Criteria for rebuttal of guideline amount.

1. The child support amount provided for under this chapter, except for subsection 2, is presumed to be the correct amount of child support. No rebuttal of the guidelines may be based upon evidence of factors described or applied in this chapter, except in subsection 2, or upon:
 - a. Except as provided in subdivision m of subsection 2, the subsistence needs, work expenses, and daily living expenses of the obligor; or
 - b. Except as provided for in subdivision ~~np~~ of subsection 2, the income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a parent with primary residential responsibility.
2. The presumption that the amount of child support that would result from the application of this chapter, except for this subsection, is the correct amount of child support is rebutted only if a preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the supported children and:
 - a. The increased need if support for more than six children is sought in the matter before the court;
 - b. The increased ability of an obligor, with a monthly net income which exceeds twenty-five thousand dollars, to provide additional child support based on demonstrated needs of the child, including, if applicable, needs arising from activities in which a child participated while the child's family was intact;
 - c. The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;
 - d. The increased needs of children with disabling conditions or chronic illness;
 - e. The increased needs of children age twelve and older;
 - f. The increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;
 - g. The increased ability of an obligor, whose net income has been substantially reduced as a result of depreciation and to whom income has been imputed under section 75-02-04.1-07, to provide child support;
 - h. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;
 - i. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;
 - j. The reduced ability of an obligor who is responsible for all parenting-time expenses to provide support due to travel expenses incurred predominantly for the purpose of visiting a child who is the subject of the order taking into consideration the amount of court-ordered parenting time and, when such history is available, actual expenses and practices of the parties;
 - k. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed

expense for other than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection;

- I. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:
 - (1) Exceed ten percent of the obligor's gross income;
 - (2) Have been incurred and are reasonably certain to continue to be incurred by the obligor;
 - (3) Are not subject to payment or reimbursement from any source except the obligor's income; and
 - (4) Are necessary to prevent or delay the death of the obligor or to avoid a significant loss of income to the obligor.
 - m. The reduced ability of the obligor to provide support when the obligor is in the military, is on a temporary duty assignment, and must maintain two households as a result of the assignment;
 - n. The reduced ~~needs of the child to support from the~~ability of an obligor ~~in situations where the net income of the obligee is at least three times higher than the net income of the obligor~~who is responsible for educational costs for the supported children that are incurred at private schools;
 - ~~o. The reduced ability of an obligor who is responsible for child care costs for the supported children;~~
 - ~~p. The reduced needs of the child to support from the obligor in situations where the net income of the obligee is at least three times higher than the net income of the obligor;~~
 - ~~q. The reduced needs of the child to support from the obligor in situations where the child is residing outside the family home at government expense and the obligation is not assigned to a government agency; or~~
 - ~~e.r.~~ The improved convenience to the parents, and negligible impact to the child, of a nominal increase in the child support obligation of the parent with the smaller obligation as determined under section 75-02-04.1-03 or 75-02-04.1-08.2, not to exceed seventy-five dollars per month, in order for the obligation of each parent to be equal prior to application of the payment offset provided in that section and eliminate any net amount being due except during months when the obligation is assigned to a government agency.
3. Assets may not be considered under subdivisions h and i of subsection 2, to the extent they:
 - a. Are exempt under North Dakota Century Code section 47-18-01;
 - b. Consist of necessary household goods and furnishings; or
 - c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.
 4. For purposes of subdivision i of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:
 - a. The transaction occurred after the birth of a child entitled to support;

- b. The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and
 - c. The obligor's income is less than it likely would have been if the transaction had not taken place.
5. For purposes of subdivision k of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of spousal support payments, discretionary purchases, or illegal activity.
 6. For purposes of subdivisions a through f and ~~subdivision e~~ subdivisions q through r of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter. When section 75-02-04.1-03 or 75-02-04.1-08.2 applies, the adjustment must be made to the parent's obligation before the lesser obligation is subtracted from the greater obligation.
 7. For purposes of subdivisions g through ~~m~~ o of subsection 2, any adjustment shall be made to the obligor's net income.
 8. For purposes of subdivision ~~n~~ p of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter after taking into consideration the proportion by which the obligee's net income exceeds the obligor's net income. When section 75-02-04.1-03 or 75-02-04.1-08.2 applies, the adjustment must be made to the parent's obligation before the lesser obligation is subtracted from the greater obligation.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; July 1, 2008; April 1, 2010; July 1, 2011; September 1, 2015; January 1, 2019; July 1, 2023.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-11. Parental responsibility for children in foster care or guardianship care.

It is important that parents maintain a tie to and responsibility for their child when that child is in foster care. Financial responsibility for the support of that child is one component of the maintenance of the relationship of parent and child. Parents of a child subject to a guardianship order under North Dakota Century Code chapter ~~27-20~~ 27-20.1 or 30.1-27 remain financially responsible for the support of that child.

1. In order to determine monthly net income, it is first necessary to identify the parent or parents who have financial responsibility for any child entering foster care or guardianship care, and to determine the net income of those financially responsible parents. If the parents of a child in foster care or guardianship care reside together, and neither parent has a duty to support any child who is not also a child of the other parent, the income of the parents, including imputed income of each parent, if applicable, must be combined and treated as the income of the obligor. In all other cases, each parent is treated as an obligor, and each parent's support obligation must be separately determined.
2. Unless subsection 3 applies to the obligor, the net income and the total number of children are applied to section 75-02-04.1-10 to determine the child support amount. That child support amount is then divided by the total number of children to determine the child support obligation for each child in foster care or guardianship care. For purposes of this subsection, the "total number of children" means:
 - a. If a child entering foster care or guardianship care resides in the obligor's home, the total number of children residing in the obligor's home to whom the obligor owes a duty of support, including the child or children entering foster care or guardianship care, plus any

other full siblings of the child or children entering foster care or guardianship care to whom the obligor owes a duty of support who are not residing in the obligor's home; or

- b. If no child entering foster care or guardianship care resides in the obligor's home, the child or children entering foster care or guardianship care plus the full siblings of the child or children entering foster care or guardianship care to whom the obligor owes a duty of support.
3. If an obligor owes a duty of support to any child other than the child or children described in subdivision a or b of subsection 2, as applicable to that obligor, the support obligation must be determined through application of section 75-02-04.1-06.1 such that:
 - a. The total number of children, as described in subdivision a or b of subsection 2, as applicable to that obligor, are treated as one obligee; and
 - b. The amount resulting from the application of section 75-02-04.1-06.1 for the children described in subdivision a or b of subsection 2, as applicable to that obligor, is divided by the total number of such children to determine the child support obligation for each child in foster care or guardianship care.
 4. For purposes of subsection 2, a full sibling of the child or children entering foster care or guardianship care is a brother or sister who has both parents in common with the child or children entering foster care or guardianship care.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; July 1, 2011; [July 1, 2023](#).

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667