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

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TITLE 4
OFFICE OF MANAGEMENT AND BUDGET

JULY 2014

CHAPTER 4-07-02

4-07-02-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 54-44.3, and sections 54-06-30 and 54-06-31, except:

1. "Appointing authority" has the same meaning as provided in North Dakota Century Code section 54-44.3-02.
- ~~4.~~ 2. "Class" or "classification" means a group of positions, regardless of location, which are enough alike in duties and responsibilities to be called by the same descriptive title, to be given the same pay range under similar conditions, and to require substantially the same qualifications.
- ~~2.~~ 3. "Classification plan" means the listing of all the classes that have been established, the description for those classes, and the process and procedures developed to maintain the plan.
- ~~3.~~ 4. "Equity increase" means a salary increase provided to a classified employee to mitigate either a serious internal agency inequity or a documented external market condition.
- ~~4.~~ 5. "General salary increase" means a salary increase provided to classified employees by specific legislative appropriation.
- ~~5.~~ 6. "Hiring rate" means the salary level assigned to an employee upon initial employment with an agency.
7. "Job evaluation committee" is the committee responsible to evaluate, maintain, and ensure the consistency of job evaluations of the North Dakota classification system. The job evaluation committee shall be made up of professional human resource staff from human resource management services and state agencies designated by the director of human resource management services.

- ~~6.~~ 8. "Pay grade" means the number assigned to a classification which corresponds with one specific range of pay rates.
- ~~7.~~ 9. "Performance increase" means a salary increase provided to a classified employee in recognition of documented performance which is consistently superior or which consistently exceeds performance standards.
- ~~8.~~ 10. "Probationary increase" means a salary increase provided to a classified employee upon the successful completion of their applicable probationary period.
- ~~9.~~ 11. "Promotional increase" means a salary increase provided to a classified employee when the employee is assigned to a position in a different class which has a higher pay grade than the employee's previous position, and the assignment is not a result of a reclassification of the employee's position.
- ~~10.~~ 12. "Reclassification adjustment" means a salary change applied to a classified employee when the employee's position is reallocated to a different classification that has a different pay grade.
- ~~11.~~ 13. "Responsibility level or workload increase" means a salary increase provided to a classified employee when either of the following conditions are met:
- a. The level of duties and responsibilities assigned to the employee is permanently changed, is documented, and is independent of any change in classification.
 - b. A substantial, documented, increase in workload is assigned to a position.
- ~~12.~~ 14. "Salary range" means the range of pay rates, from minimum to maximum that are assigned to a pay grade, and which are often divided into quartiles for reference.
- ~~13.~~ 15. "Temporary increase" means a salary increase provided to a classified employee when the employee is assigned temporarily to perform a higher level of responsibilities on an acting or interim basis.

History: Effective March 1, 1991; amended effective July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7)

4-07-02-08. Hiring rate. The hiring rate for a newly hired employee must be within the first half of the salary range. When establishing an entry salary, an appointing authority should consider the employee's job-related qualifications, the agency's ability to recruit qualified employees, the overall relationship of state

employees' salaries to market salaries, and internal equity with existing employees' salaries.

History: Effective March 1, 1991; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

CHAPTER 4-07-03 CLASSIFICATION PLAN

Section	
4-07-03-01	Scope of Chapter
4-07-03-02	Definitions
4-07-03-03	Official Class Title
4-07-03-04	Interpretation of Class Descriptions
4-07-03-05	Classification or Reclassification Request
4-07-03-06	Information and Forms Required
4-07-03-06.1	Certain Classification Decisions May Be Delegated
4-07-03-07	An Employee May Request a Review
4-07-03-08	An Appointing Authority Shall Consider an Employee's Request [Repealed]
4-07-03-09	A Request for a Classification Review Must Be Submitted for All Positions Affected by a Reassignment [Superseded]
4-07-03-09.1	Human Resource Management Services May Initiate a Classification Review
<u>4-07-03-09.2</u>	<u>Correcting Class Evaluation Interpretation Inconsistencies</u>
4-07-03-10	Human Resource Management Services Shall Notify the Appointing Authority and Employee <u>Classification Process and Notifications</u>
4-07-03-10.1	Effective Date of Classification Assignment
4-07-03-10.2	Employee in a Reclassified Position Shall Meet Minimum Qualifications
4-07-03-11	Request for Reconsideration of Classification Decision [Repealed]
4-07-03-12	Grandfathering

4-07-03-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, ~~except "classification plan" means the listing of all the classes that have been established; the descriptions for those classes, and the process and procedures developed to maintain the plan and section 4-07-02-01.~~

History: Effective September 1, 1992; amended effective July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-03. Official class title. The official class title must be used to designate positions or employees when entering such information on payroll and personnel records, or in other communications related to human resource administration processes. However, any suitable or ~~common~~ working title to designate persons or positions may be used ~~when communicating externally;~~

~~or when the purpose of the communication is not related to human resource administration.~~

History: Effective September 1, 1992; amended effective July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-04. Interpretation of class descriptions. Class descriptions represent the duties ~~and conditions~~ typical of the class. Neither an appointing authority nor an employee may interpret class descriptions as restrictive, except for the specified minimum qualification requirements. The inclusion of particular phrases in the descriptions that list the duties performed may not be interpreted to exclude other duties of a similar kind and quality. An appointing authority may, at any time, require an employee to perform any of the duties that are in the class descriptions or any other appropriate duties.

History: Effective September 1, 1992; amended effective July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-05. Classification or reclassification request. A request to have a position reviewed for classification or reclassification must be submitted by the appointing authority to human resource management services for review, if at least one of the following reasons apply:

1. A new position has been authorized.
2. A significant amount of responsibilities are newly assigned, reassigned, or changed for a position.
- ~~3. A position has not been reviewed for at least three years and different duties and responsibilities have been assigned to the position.~~
4. 3. A position is classified in a class or class series that has been revised and the duties and responsibilities assigned to the position are no longer appropriate to the assigned class or class series.
- ~~5. A position is vacant, has not been reviewed for at least seven years, and will be filled.~~

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-06. Information and forms required. A classification or reclassification request must include ~~all information specified by~~ be submitted

to human resource management services. The request must be submitted on the form specified by the division using the designated forms with all required information and supplemental documents attached.

History: Effective September 1, 1992; amended effective July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-07. An employee may request a review. An employee may request that an appointing authority submit the employee's position to human resource management services for review if the employee demonstrates that one of the reasons in section 4-07-03-05 applies to the employee's position. An appointing authority shall consider an employee's request to submit the employee's position to human resource management services for review. The appointing authority shall, within sixty calendar days, determine if any of the reasons in section 4-07-03-05 apply. If none of the reasons apply, the appointing authority shall notify the employee the request will not be submitted to human resource management services.

History: Effective September 1, 1992; amended effective July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-08. An appointing authority shall consider an employee's request. ~~An appointing authority shall consider an employee's request to submit the employee's position to human resource management services for review. The appointing authority shall, within sixty calendar days, determine if any of the reasons in section 4-07-03-05 apply. If any of the reasons apply, the appointing authority shall submit the request to human resource management services for review. If none of the reasons apply, the appointing authority shall respond to the employee.~~ Repealed effective July 1, 2014.

History: ~~Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.~~

General Authority: ~~NDCC 54-44.3-12~~

Law Implemented: ~~NDCC 54-44.3-12(1)~~

4-07-03-09.2. Correcting class evaluation interpretation in consistencies. Human resource management services may correct inconsistencies in class evaluations as related evaluation interpretations occur. If revisions result in grade changes, human resource management services shall notify affected employees and appointing authorities of the proposed change and provide an opportunity to submit related documentation. After review of any

documentation received, human resource management services shall provide notification as provided in section 4-07-04-09.

History: Effective July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

~~**4-07-03-10. Human resource management services shall notify the appointing authority and employee Classification process and notifications.** Within sixty calendar days of receiving a request to review a position, human resource management services shall notify in writing the agency appointing authority and the employee of the division's decision and the right to request reconsideration. The human resource management services director may extend the timeframe if: Upon receipt of a classification or reclassification request, human resource management services shall initiate a review of the position. If human resource management services concurs with the agency request, the classification or reclassification shall be implemented. If either human resource management services or the agency does not concur, human resource management services shall ensure that complete job information is gathered and prepared for presentation to the job evaluation committee for determination. If the review is not completed within sixty days, human resource management services shall notify the appointing authority of the reasons for an extension and the anticipated schedule for completion of the review. Human resource management services shall notify the appointing authority and employee in writing of the job evaluation committee's decision within fifteen working days. If either the employee or appointing authority disagrees with the job evaluation committee's decision, an appeal may be made as provided in chapter 59.5-03-02.~~

- ~~1. The request requires creating a new or revising an existing class description; or~~
- ~~2. The division is required to obtain additional information in order to properly process the request.~~

~~In cases of extended timeframes, human resource management services will notify the appointing authority.~~

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

~~**4-07-03-11. Request for reconsideration of classification decision.** An appointing authority or an employee may request reconsideration of a classification assigned to a position by submitting a written notice to human resource management services within fifteen working days from the date the initial classification decision was mailed by human resource management services. The request for reconsideration must state the specific issue and reasons for the request and the desired outcome. Human resource management services shall~~

~~review the information contained in the request and provide a decision in writing to the parties within sixty calendar days from the date the request for reconsideration was received by the division. Repealed effective July 1, 2014.~~

History: ~~Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004.~~

General Authority: ~~NDCC 54-44.3-12~~

Law Implemented: ~~NDCC 54-44.3-12(1)~~

**CHAPTER 4-07-04
COMPENSATION PLAN**

Section	
4-07-04-01	Scope of Chapter
4-07-04-02	Definitions
4-07-04-03	Class Evaluation Process
4-07-04-03.1	Correcting Class Evaluation Interpretation Inconsistencies <u>[Repealed]</u>
4-07-04-04	A Written Request to Review a Pay Grade
4-07-04-05	Additional Information Required
4-07-04-06	Information and Forms Required [Repealed]
4-07-04-07	An Employee May Request a Review
4-07-04-08	An Appointing Authority Shall Consider an Employee's Request <u>[Repealed]</u>
4-07-04-09	Human Resource Management Services Shall Notify Affected Appointing Authority and Employee <u>Pay Grade Review Process, Pay Grade Exceptions, and Notification</u>
4-07-04-09.1	Effective Date of Pay Grade Assignment
4-07-04-09.2	Request for Reconsideration of Pay Grade Assignment <u>[Repealed]</u>
4-07-04-10	Pay Grade Appeal to the Director [Superseded]
4-07-04-11	Pay Grade Exception <u>[Repealed]</u>
4-07-04-12	Periodic Review

4-07-04-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3 and section 4-07-02-01, except: "compensation plan" means the listing of all the pay grades used in the classified service and the pay ranges assigned to each grade.

1. ~~"Class" means job or job title representing a group of tasks, duties, and responsibilities.~~
2. ~~"Compensation plan" means the listing of all the pay grades used in the classified service and the pay ranges assigned to each grade.~~

History: Effective September 1, 1992; amended effective July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-03.1. Correcting class evaluation interpretation inconsistencies. ~~Human resource management services may correct inconsistencies in class evaluations as related evaluation interpretations occur. If revisions result in grade changes, human resource management services shall notify affected employees and appointing authorities of the proposed change and provide an opportunity to submit related documentation. After review of any~~

~~documentation received, human resource management services shall provide notification as provided in section 4-07-04-09. Repealed effective July 1, 2014.~~

~~History: Effective November 1, 1996; amended effective July 1, 2004.~~

~~General Authority: NDCC 54-44.3-12~~

~~Law Implemented: NDCC 54-44.3-12(1)~~

4-07-04-04. A written request to review a pay grade. A written request to review a pay grade may be submitted to human resource management services by the appointing authority only if one of the following reasons apply:

- ~~1.~~ ~~The duties and responsibilities of the class have changed.~~
- ~~2.~~ 1. The appointing authority is experiencing recruiting problems due to the assigned pay grade.
- ~~3.~~ 2. The appointing authority is experiencing retention problems due to the assigned pay grade.
- ~~4.~~ 3. The appointing authority can provide employment market data that shows an extreme variance between market pay and the classified salary range.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-05. Additional information required. An appointing authority requesting a pay grade review shall furnish additional information to human resource management services at the time the request is made. The additional information must include:

1. A statement of the problem.
2. Up-to-date job ~~descriptions/position information~~ description questionnaires.
3. Any available statistical data that relates to the problem encountered, i.e., turnover rate, recruiting costs, training costs, etc.
4. Details of efforts to resolve the problem through alternative methods.

5. Any available analysis of the current use of the salary range assigned to the existing pay grade.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-07. An employee may request a review. An employee may request that an appointing authority submit the pay grade assigned to the employee's class to human resource management services for review if the employee demonstrates that one of the reasons in section 4-07-04-04 applies to the employee's classification. An appointing authority shall consider an employee's request to submit the pay grade assigned to the employee's class to human resource management services for review. The appointing authority shall, within sixty calendar days, determine if any of the reasons in section 4-07-04-04 apply and if the information required in section 4-07-04-05 is available. If any of the reasons apply and if the information is available, the appointing authority shall submit the request to human resource management services for review. If none of the reasons apply, the appointing authority shall notify the employee the request will not be submitted to human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-08. An appointing authority shall consider an employee's request. ~~An appointing authority shall consider an employee's request to submit the pay grade assigned to the employee's class to human resource management services for review. The appointing authority shall, within sixty calendar days, determine if any of the reasons in section 4-07-04-04 apply and if the information required in section 4-07-04-05 is available. If any of the reasons apply and if the information is available, the appointing authority shall submit the request to human resource management services for review. If none of the reasons apply, the appointing authority shall respond to the employee.~~ Repealed effective July 1, 2014.

History: ~~Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.~~

General Authority: ~~NDCC 54-44.3-12~~

Law Implemented: ~~NDCC 54-44.3-12(1)~~

4-07-04-09. Human resource management services shall notify affected appointing authority and employee Pay grade review process, pay grade exceptions, and notifications. ~~Within sixty calendar days of receiving a request to review a pay grade, human resource management services shall notify in writing the affected agency appointing authority and the employee of the division's decision and the right to request reconsideration. The appointing~~

~~authority shall communicate pay grade assignments to the employees. The human resource management services director may extend the time when the nature of the request requires extensive review and a comment period in order to properly process the request. In cases of time extensions, human resource management services shall notify the appointing authority. Upon receipt of a pay grade review request, human resource management services will initiate review of the pay grade or classification as appropriate. Human resource management services will ensure that complete job and statistical information is gathered and prepared for presentation to the job evaluation committee for determination. Human resource management services and the job evaluation committee may assign a pay grade that is higher than that determined by the application of the class evaluation system. This may be done when the pay grade assigned to a class has not resolved significant problems in the recruiting or retention of qualified individuals for a class. When a pay grade exception is assigned to a class, the grade must be identified as such and the appointing authority and all employees in the class must be notified. If the review is not completed within sixty days, human resource management services will notify the appointing authority of the reasons for an extension and the anticipated schedule for completion of the review. If either the employee or appointing authority disagree with the job evaluation committee's decision, an appeal may be made as provided in chapter 59.5-03-02.1.~~

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-09.2. Request for reconsideration of pay grade assignment.

~~An appointing authority or an employee may request reconsideration of a pay grade assigned to a class by submitting a written request to human resource management services within fifteen working days from the date the initial pay grade decision was mailed by human resource management services. The request for reconsideration must state the specific issue, reason for the request, and desired outcome. Human resource management services shall review the information contained in the request, solicit other information and input as appropriate, and provide a written decision to the parties within sixty calendar days from the date of the request for reconsideration. The human resource management services director may extend the time when the nature of the request requires extensive review and a comment period in order to properly process the request. In cases of time extensions, human resource management services shall notify the appointing authority. Repealed effective July 1, 2014.~~

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

~~**4-07-04-11. Pay grade exception.** Upon receipt of a request to review a pay grade from an appointing authority or an employee the director, human resource management services, may assign a pay grade that is higher than that determined by the application of the class evaluation system. This may be done~~

~~when the pay grade assigned to a class has not resolved significant problems in the recruiting or retention of qualified individuals for a class. When a pay grade exception is assigned to a class, the grade must be identified as such and the appointing authority and all employees in the class must be notified. Repealed effective July 1, 2014.~~

History: ~~Effective May 1, 1994; amended effective July 1, 2004.~~

General Authority: ~~NDCC 54-44.3-12~~

Law Implemented: ~~NDCC 54-44.3-12(1)~~

CHAPTER 4-07-05

4-07-05-05.1. Internal recruiting. When an appointing authority proceeds to fill a vacant classified, nontemporary position by recruiting ~~an individual who is a current employee of the appointing authority~~ within its agency, the appointing authority shall ensure that all employees occupying classified positions of the appointing authority or within the specified work units have the opportunity to know of and apply for the position. An appointing authority may specify a work unit or work units within the agency from which applicants may be considered. However, there is no requirement for a vacancy announcement when the transfer of an employee to a vacant position is necessary to provide a reasonable accommodation for an employee under the Americans with Disabilities Act, or to avoid a reduction-in-force during a reorganization.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-06

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

History: Effective September 1, 1992; amended effective July 1, 1995; November 1, 1996; July 1, 2004; January 1, 2012; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1)

CHAPTER 4-07-07

4-07-07-03. The standard workweek. The standard workweek is a fixed and regularly recurring period of seven consecutive twenty-four-hour periods. A workweek may begin on any day of the week and at any hour and minute of the day. Due to the nature of the work, an agency may assign employees to work different workweeks or different workdays to carry out the mission of the agency. Employees must be made aware of their assigned workweek. An agency may establish different workweeks in accordance with requirements of the Fair Labor Standards Act of 1938 [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 201 et seq.]. In the absence of an established standard workweek, the period of ~~12:01~~ 12:00 a.m. Sunday through ~~12:00~~ 11:59 p.m. the following Saturday must be utilized.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

**CHAPTER 4-07-19
DISCIPLINARY ACTIONS**

Section	
4-07-19-01	Scope of Chapter
4-07-19-02	Definitions
4-07-19-03	Discipline Only for Cause
4-07-19-04	Use of Progressive Discipline
4-07-19-04.1	Suspension Without Pay
4-07-19-04.2	Suspension With Pay
4-07-19-05	Appointing Authority Shall Provide a Written Preaction Notice
4-07-19-06	Appointing Authority Shall Provide a Written Final Action Notice
<u>4-07-19-07</u>	<u>Agency Reconsideration of Prior Discipline</u>

4-07-19-07. Agency reconsideration of prior discipline. An appointing authority may reopen and reconsider previously imposed discipline in the event the appointing authority determines that new information or circumstances exist or that discipline imposed pursuant to delegated authority is inconsistent with established agency policy, standard, or practice or otherwise is inappropriate in light of the adequacy of any prior investigation or the obligations the agency has to take corrective action. An appointing authority must rescind previously imposed discipline and restore any lost pay and other benefits of employment as a condition of exercising authority under this section. An employee that is demoted, suspended, or dismissed under this section may appeal the basis for reopening and reconsidering the previously imposed discipline as well as the grounds for the discipline imposed in accordance with the provisions of chapter 4-07-20.1.

History: Effective July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-36

4-07-36-02. Payment of training and tuition. An appointing authority may adopt policies to provide training and educational opportunities to its employees to learn new required skills or to enhance their current skills, to increase the opportunity for advancement within the agency or state service, to increase proficiency and productivity, and to improve work performance.

Costs of training or educational courses, including tuition and fees, may be paid for, within budgetary constraints, by the agency or reimbursed to the employee in accordance with agency policy.

An employee who leaves employment with the state agency within two years of receiving the tuition must repay the tuition received on a prorated basis.

History: Effective July 1, 2008; amended effective July 1, 2010; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-33, 54-44.3-12

TITLE 4.5

BOARD OF ADDICTION COUNSELING EXAMINERS

JULY 2014

CHAPTER 4.5-02.1-01

4.5-02.1-01-03. Academic requirements. Academic requirements related to the licensing of addiction counselors must be completed at ~~an accredited a~~ college or university accredited by one of six regional institutional accreditors in the United States. ~~A bachelor's degree in addiction studies or a closely related social science or health care field is required. A minimum of thirty-two total credit hours in addiction studies is required. The thirty-two credit hours must include academic course content in all of the following areas:~~

An applicant for licensure shall have at least one of the following:

1. **Practice:** A bachelor's, master's, or doctorate degree in addiction studies from a program accredited by the national addiction studies accreditation committee, the international coalition for addiction studies and education accreditation, or counsel for accreditation of counseling and related educational programs for addiction counseling; or

~~a.~~ Curriculum content:

- ~~(1) Treatment methods and models.~~
- ~~(2) Interviewing process, skills, and techniques.~~
- ~~(3) Individual and group counseling.~~
- ~~(4) Assessment and diagnosis models, including current diagnostic manual of the American psychiatric association including substance-related disorders and cooccurring mental illness.~~
- ~~(5) Testing instruments.~~
- ~~(6) Intervention approaches for individuals, groups, and families.~~
- ~~(7) Documentation, report writing, and recordkeeping.~~

- ~~(8) Verbal communication skills.~~
- ~~(9) Counselor skill groups effective May 1, 2009.~~
- ~~(10) American society of addiction medicine patient placement criteria effective May 1, 2009.~~

b. ~~Examples of courses with such content:~~

- ~~(1) Introduction to individual counseling.~~
- ~~(2) Introduction to group counseling.~~
- ~~(3) Advanced counseling.~~
- ~~(4) Theories in practice of psychotherapy.~~

2. **Ethics:** A bachelor's, master's, or doctorate degree in addiction studies or a closely related social science or health care field and a minimum of thirty-two total credit-hours in addiction studies is required. The thirty-two credit-hours must include academic course content in all of the following areas:

a. Curriculum content: A minimum of three credits covering theory and techniques of treatment with all of the following content:

- ~~(1) Professional competence and standards: Evidence-based treatment methods and models, including those specific to addiction.~~
- ~~(2) Values and societal obligations: Assessment and diagnosis models based upon the current diagnostic and statistical manual of the American psychiatric association, including substance-related disorders.~~
- ~~(3) Ethics and codes of conduct for professionals: Most current American society of addiction medicine patient criteria.~~
- ~~(4) Ethical decisionmaking: Interviewing process, skills, and techniques.~~
- ~~(5) Malpractice and liability: Individual counseling skills.~~
- ~~(6) Legal aspects of practice: Testing instruments.~~
- ~~(7) Federal and state regulations: Documentation, report writing, and recordkeeping.~~
- ~~(8) Verbal communication skills.~~

- b. Examples of courses with such content include professional ethics. A minimum of three credits covering group counseling skills.
- c. A minimum of three credits covering psychopharmacology.
- d. A minimum of three credits covering dynamics of addiction with all the following content:
 - (1) Historical perspective of models of addiction.
 - (2) Community support and self-help for people with substance disorders.
 - (3) Contagious diseases related to substance abuse.
- e. A minimum of three credits covering co-occurring disorders with all the following content:
 - (1) Assessment and diagnosis models of substance-related disorders and co-occurring mental illnesses based upon the current diagnostic and statistical manual of the American psychiatric association.
 - (2) Psychopathology, mental health, and mental illness in childhood, adolescence, and adulthood.
- f. A minimum of two credits covering professional ethics with all the following content:
 - (1) Professional competence and standards.
 - (2) Values and societal obligations.
 - (3) Ethics and codes of conduct for professionals.
 - (4) Ethical decisionmaking.
 - (5) Malpractice and liability.
 - (6) Federal and state regulations governing addiction counseling.
- g. A minimum of three credits covering development through the entire lifespan.
- h. A minimum of three credits covering family systems with all the following content:
 - (1) Family functioning.

(2) Family types.

(3) Addiction in families.

i. A minimum of three credits covering multicultural diversity or cultural competence related to counseling.

3. **Theory:**

a. ~~Curriculum content:~~

~~(1) Human development, tasks, and issues across lifespan:~~

~~(2) Family functioning, family types, and addiction in families:~~

~~(3) Group dynamics and group process:~~

~~(4) Psychopathology, mental health, and mental illness in childhood, adolescence, and adulthood:~~

~~(5) Dynamics of addiction:~~

~~(6) Substance-related disorders:~~

~~(7) Pharmacology and human biology:~~

~~(8) Autoimmune deficiency syndrome and human immunodeficiency virus:~~

~~(9) Alcoholics anonymous, the twelve steps, and twelve steps support group:~~

~~(10) Social and cultural theory:~~

~~(11) Communication process and theory:~~

b. ~~Examples of courses with such content:~~

~~(1) Marriage and the family:~~

~~(2) Psychopathology:~~

~~(3) Pharmacology:~~

~~(4) Theories of personality:~~

~~(5) Dynamics of addiction:~~

~~(6) Child psychology and development:~~

~~(7) Adolescent psychology and development.~~

~~(8) Adult psychology and development.~~

~~(9) Cultural competence or cultural minorities.~~

History: Effective January 1, 2002; amended effective January 1, 2008; July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-05.1

4.5-02.1-01-04. Clinical training requirements. The completion of one thousand four hundred hours in a clinical training program approved by the board is required for licensure. The trainee's registration and successful completion of the clinical training program must be verified in writing with the board by the clinical ~~supervisor or clinical~~ training program director.

1. Qualifications. To be eligible for registration as a clinical trainee, the following must be met:
 - a. All core academic coursework must be completed, with the exception that two required curriculum addiction courses may be completed while registered as a clinical trainee.
 - b. Acceptance in a board-approved addiction counseling clinical training program or a board-approved individualized clinical training plan supervised by a board-approved clinical training program.
2. Registration. Clinical training program ~~operators~~ directors requesting to register their clinical trainees shall make formal application to the board documenting their clinical trainees above qualifications.
3. Expiration. An individual's clinical trainee registration expires after two years. The clinical training period may be extended due to clinical supervisors' recommendations, individual circumstance, health circumstances, or other personal matters. Extension of the clinical portion of training is the responsibility of the clinical ~~supervisor or~~ clinical training program director.
4. Applicants who complete clinical training not approved by the board must demonstrate that the clinical training completed was substantially equivalent to that required by North Dakota Century Code chapter 43-45 and article 4.5-02.1.
5. One year of direct clinical counseling experience as a licensed mental health professional or addiction counselor is equivalent to one hundred fifty hours of clinical training. If the applicant is a licensed mental health professional other than an addiction counselor, a maximum of

nine hundred hours of clinical training can be accepted for applicants with direct clinical counseling experience. The remaining five hundred hours of clinical training must include training in American society of addiction medicine; patient ~~placement~~ criteria, current diagnostic and statistical manual, and the counselor ~~skill groups~~ domains. The hours in each area will be determined by the clinical training program where the trainee is registered. For the purposes of this subsection, mental health professional is defined as in North Dakota Century Code section 25-03.1-02.

History: Effective January 1, 2002; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-01, 43-45-04, 43-45-05.1

4.5-02.1-01-05. Examination. The applicant must pass the written examination ~~offered as of June 2008, or as later revised by the international certification and reciprocity consortium~~ as approved by the board. The written examination may be taken when offered anytime after the completion of the required academic coursework.

History: Effective January 1, 2002; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-05.1

4.5-02.1-01-07. Fees. The board has adopted the following nonrefundable fee payment schedule:

1. Initial license fee:
 - a. Application for license received on or after January first of the even-numbered year and before July first of the even-numbered year

	\$250.00
	<u>\$300.00</u>
 - b. Application for license received on or after July first of the even-numbered year and before January first of the odd-numbered year

	\$200.00
	<u>\$250.00</u>
 - c. Application for license received on or after January first of the odd-numbered year and before July first of the odd-numbered year

	\$150.00
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 - d. Application for license received on or after July first of the odd-numbered year and before January first of the even-numbered year

	\$100.00
--	----------
2. Biennial renewal of license fee

	\$200.00
	<u>\$300.00</u>
3. Private practice initial fee

	\$100.00
	<u>\$150.00</u>
4. Late fee

	\$100.00
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5. Annual continuing education provider approval fee

	\$100.00
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6. Provider continuing education program approval fee \$35.00
7. Fee for mailing list \$20.00
8. Written examination fee is the national testing agency fee plus an additional board administrative fee of forty dollars.

History: Effective January 1, 2002; amended effective January 1, 2008; April 1, 2009; July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-07

CHAPTER 4.5-02.1-02

4.5-02.1-02-02. Continuing education.

1. Continuing education credit is an award given to a participant at a workshop or seminar. All licensed addiction counselors are required to complete forty hours of continuing education for the two-year licensing period to maintain licensure in North Dakota.
 - a. Twenty approved continuing education hours are required if an addiction counselor is initially licensed between January first and June thirtieth of the odd-numbered year.
 - b. No continuing education hours are required if an addiction counselor is initially licensed on or after July first of an odd-numbered year.
 - c. Continuing education hours cannot be earned until after the license effective date and only within the current licensing period ~~except hours earned after December 31, 2005, and before January 1, 2008, may be used to meet the continuing education requirement for the period ending December 31, 2009.~~
 - d. Continuing education hours may only be applied to one licensing period.
2. Any continuing education program to be used for addiction counseling or supervision of clinical practice continuing education units is subject to board approval, except continuing education programs sponsored or approved by the national association for alcoholism and drug abuse counselors, substance abuse and mental health services administration, the addiction technology transfer centers, the North Dakota addiction counselor's association, or any other scientific or professional organization whose continuing education program is clearly relevant to the practice of addiction counseling. Other programs may be approved at any time by the board by submission of an application.
- ~~2.~~ 3. All persons wishing approval must submit a request to the licensing board for approval of continuing education credits. Continuing education, workshops, webinars, and seminars must:
 - a. Be related to the practice of addiction counseling, behavioral mental health, or best practice techniques.
 - b. Have the potential to increase the licensee's proficiency in addiction counseling.

4. At the end of the two-year reporting cycle, each licensee or registrant shall submit a signed statement on a form provided by the board attesting to satisfaction of the continuing education requirement. The licensee or registrant shall list the activities submitted for continuing education credit and the amount of credit claimed for each one and the date for each session.
5. 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.
6. At each reporting period, the board will select a random sample 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.
3. 7. Ten of the forty continuing education hours for clinical supervisors must contain materials related to clinical supervision techniques and skills, with documentation verifying the content submitted to the board.
4. 8. An approved provider is an entity or an individual approved by the board to provide continuing education without the need for prior board review on a program by program basis. Requirements to obtain and maintain status as an approved provider are as follows:
 - a. Completed application.
 - b. Application fee.
 - c. Provider must ensure all programs offered contain a course outline, learning objectives, and an evaluation of the learning outcome of participants, and provide these documents to the board upon request.
 - d. Provider must ~~report the participants' completion of programs to the board within thirty days from the date of the program presentation~~ provide certificate of completion to participants. Failure to do so may result in the loss of approved provider status.
 - e. Complaints against providers may be investigated by the board and may result in removal of provider approval status.
 - f. Provider must renew the approval annually.
5. 9. An approved program is one specific program, with defined continuing education contact hours, approved by the board. Requirements to obtain and maintain program approval status are as follows:

- a. Completed application.
- b. Application fee.
- c. Program ~~sponsor~~ must ensure the program offered contains a course outline, learning objectives, and an evaluation of the learning outcome of participants and provide these documents to the board upon request.
- d. ~~Program sponsor must report participants' completion of the program to the board within thirty days from the date of the program presentation.~~
- e. d. Program approval must be approved annually.

History: Effective January 1, 2002; amended effective January 1, 2008; July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-07

4.5-02.1-02-03. Address and name changes. Any licensee must report a change of address or name to the board in writing within thirty days of change.

History: Effective January 1, 2002; amended effective July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-07

CHAPTER 4.5-02.1-03

4.5-02.1-03-01. Clinical training program. Each clinical training program for addiction counseling must be approved biennially by the board of addiction counseling examiners. ~~An approved clinical training program must file a designated application form by October first of even-numbered years with the board and must meet the following conditions:~~

1. Facility requirements:
 - a. Training experiences must occur in at least two separate licensed treatment facilities with a minimum of three months in each facility, unless specifically approved by the board.
 - b. Each program may establish the length of its clinical training program, with a one thousand four hundred-hour minimum requirement.
 - c. Documentation must include:
 - (1) Evidence of licensure of each addiction treatment facility.
 - (2) Training program manual which includes policies and procedures, including an organizational chart, which reflects clinical training program director, training facilities and facility supervisors, and admission policies.
 - (3) Training program goals and objectives for each clinical component of the training site.
 - (4) Trainee handbook ~~and guidelines, including,~~ which should include trainee grievance procedure.
 - (5) Evidence of clinical supervisor at each treatment facility.
 - (6) Must notify board of any substantial changes that impact the provision of adequate training, which includes the addition or loss of training facility sites or loss of clinical training program director.
2. Training requirements:
 - a. Each clinical training program shall conduct an oral examination using a performance-based case history and interview document successful passing of the examination by the trainee.
 - b. At the conclusion of a completed training program experience for a trainee, the training program must provide documentation of the provision of fifty hours of supervision with a minimum of

thirty hours of direct ~~supervision~~ visual observation by a clinical supervisor in each of the required clinical areas with the exception of documentation. Documentation must have thirty hours of reviewing the notes and discussing notes with the trainee. This will occur by each training program forwarding the trainee completion form, a copy of the trainee's final monthly performance review, and verification of completion of an oral examination. The required clinical areas are:

- (1) Screening, assessment, and treatment planning.
- (2) Counseling services.
- (3) Service coordination, case management, and referral services.
- (4) Documentation, reading through notes, and reviewing assessments.
- (5) Multicultural counseling, education, and professional ethics.

~~c.~~ ~~Direct supervision occurs in session with clients, viewing or listening to videotape or audiotape, or verbatim report of a session.~~

~~d.~~ c. Indirect supervision occurs when discussing process and procedure as it relates to the five required clinical areas. This may occur in education and ongoing supervision meetings with a clinical supervisor.

3. Clinical training supervision requirements:

- a. Clinical supervision must be provided by a board-registered clinical supervisor.
- b. Clinical training programs must have one clinical supervisor for each individual clinical trainee.

4. Individual clinical training ~~programs may~~ plans must be board-approved ~~when~~ after they are submitted by and under the auspices of an approved clinical training program prior to the plan being implemented. Each plan must:

- a. Designate the board-registered clinical supervisor responsible for clinical training.
- b. Provide additional information as requested by the board.

5. Should a clinical training program at any time not meet board standards or not be in compliance with ethical expectations, it may result in board revocation of clinical training program approval.
6. Training program documentation requirements. All files of trainees must show proof of the following:
 - a. Proof of registration.
 - b. Monthly evaluations which include verification of trainee hours, signed by clinical supervisor.
 - c. Self-evaluation of trainee at completion of training for each site, including evaluation of site and clinical supervisor.
 - d. Successful completion of a performance-based case history and evidence of oral examination.
 - e. Proof of completion of training.

History: Effective January 1, 2002; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-05.1

CHAPTER 4.5-02.1-04

4.5-02.1-04-02. Application for private practice registration.

1. **Qualifications.** To be eligible for registration to provide private practice, a licensed addiction counselor must have ~~five years~~ ten thousand hours of full-time clinical experience as a licensed addiction counselor or a master's degree in a closely related social science or health care field with ~~two years~~ four thousand hours of post-master's clinical experience as a licensed addiction counselor.
2. **Registration.** Individuals requesting to be registered for private practice shall make a formal application to the board. This application must include:
 - a. Documentation of ~~five years~~ ten thousand hours of full-time clinical experience as a licensed addiction counselor or a master's degree and ~~two years~~ four thousand hours of post-master's clinical experience as a licensed addiction counselor.
 - b. Registration fee.

History: Effective January 1, 2002; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-05.3

4.5-02.1-04-04. Application for clinical supervision registration.

1. **Qualifications.** To be eligible for registration to provide clinical supervision, the following must be met:
 - a. Licensure as an addiction counselor.
 - b. A minimum of three years and a total of six thousand hours supervised experience as a licensed addiction counselor.
 - c. Twenty hours of continuing education contact hours in clinical supervision completed.
 - d. Letters of reference and recommendation from two board-registered clinical supervisors.
2. **Registration.** Individuals requesting registration for clinical supervision shall make formal application to the board documenting their above qualifications.
3. Individuals choosing to continue their clinical supervisor registration must submit ~~the required documentation~~ a signed statement on a form provided by the board verifying ~~ten~~ eight hours of clinical

supervision-related coursework within the two-year continuing education cycle in order to maintain clinical supervisor status. If requested by the board, individuals must provide documentation of the continuing education coursework.

History: Effective January 1, 2002; amended effective January 1, 2008; July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-01, 43-45-04, 43-45-06

CHAPTER 4.5-02.1-05

4.5-02.1-05-01. Code of ethics. A licensed addiction counselor and anyone under licensed addiction counselor supervision shall conduct the person's professional practice in conformity with the national association of alcoholism and drug abuse counselors code of ethics, as revised ~~December 8, 2004~~ March 28, 2011.

History: Effective January 1, 2002; amended effective January 1, 2008; July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-07.1

4.5-02.1-05-02. Ethics subcommittee. An ethics subcommittee may be established to review and make recommendations to the board of examiners on whether to initiate a formal disciplinary action. Members of the ethics subcommittee shall ~~consist of three~~ be board members chosen by the chairperson and confirmed by the board.

History: Effective January 1, 2002; amended effective July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-07.3

4.5-02.1-05-03. Complaint procedure.

1. Upon filing of a written and signed complaint alleging a licensee engaged in conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-45-07.1, the board shall notify the licensee of the complaint and require a written response from the licensee.
2. The board may direct the ethics subcommittee or a board member to investigate the complaint. After completing the investigation, the ethics subcommittee or board member will recommend whether the board should take disciplinary action against the licensee.
3. The board shall determine if there is a reasonable basis to believe the licensee engaged in conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-45-07.1. If the board determines there is not a reasonable basis to believe, the board will notify the complainant and the licensee. If the board determines there is a reasonable basis to believe, the board will proceed with a disciplinary action in accordance with North Dakota Century Code chapter 28-32.
4. The board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.
5. The board may impose a fee on the licensee for all or part of the costs of an action resulting in discipline, including administrative costs.

investigation costs, attorney's fees, witness fees, the cost of the office of administrative hearings services, and court costs.

History: Effective January 1, 2002; amended effective July 1, 2014.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-07.3

TITLE 24
STATE ELECTRICAL BOARD

JULY 2014

CHAPTER 24-01-01

24-01-01-01. Organization of electrical board.

1. **History and functions.** In 1917 legislation was approved which created a state board of electricians. In 1949 the name of the board was changed to the state electrical board. The board is charged with the responsibility to examine applicants and issue licenses to those having the necessary qualifications and knowledge in the laws of electricity and electrical codes. The board has jurisdiction over all electrical installations. Electrical inspectors authorized by the board may condemn installations hazardous to life and property and order electric service to be discontinued.
2. **Board membership.** The board consists of five members appointed by the governor for terms of five years. Terms are arranged so that one term expires each year. To provide equal representation on the board, one member is selected from the master electricians, one from the journeymen electricians, another from the investor-owned utilities, the fourth shall be a consumer member of a rural electric cooperative, and the fifth member represents the public and cannot be directly associated with the electrical industry.
3. **Executive director.** The executive director has full responsibility for directing and supervising the operation of the department under the direction of the board.
4. **Director of inspections.** The director of inspections supervises electrical inspectors to carry out an effective inspection program. The director is responsible for reviewing plans and specifications that are submitted on various projects.
5. **Inspection districts.** The state is divided into ~~nine~~ districts. Each electrical inspector is assigned to a district. A map showing the ~~nine~~ districts is ~~attached as an appendix to this chapter~~ available on the

board's website at www.ndseb.com and by this reference is herein incorporated.

6. **Inquiries.** All inquiries and communication relating to licensing, electrical wiring, and inspections shall be directed to:

North Dakota State Electrical Board
P.O. Box 7335
Bismarck, ND 58507-7335
Phone (701)328-9522
Fax (701)328-9524
E-mail: electric@nd.gov

Inquiries or proposals for amendments to the rules and wiring standards shall be directed to the executive director.

History: Amended effective November 1, 1981; January 1, 1984; October 1, 1987; January 1, 1992; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

~~SEB Inspection Districts~~

~~The state is divided into nine districts. Each electrical inspector is assigned to a district.~~



EXECUTIVE DIRECTOR – DONALD OFFERDAHL
 BRAD STEIER – DIRECTOR OF INSPECTIONS

State District Inspectors

<p>District 1</p> <p>Josh Wilson P.O. Box 575 West Fargo, ND 58078 (701) 239-7388</p> <p>ndseb1@nd.gov</p>	<p>District 2</p> <p>Vernon Hertz P.O. Box 7335 Bismarck, ND 58507 (701)328-9520</p> <p>ndseb2@nd.gov</p>	<p>District 3</p> <p>Mitch Feininger P.O. Box 335 Dickinson, ND 8602 (701) 227-7405</p> <p>ndseb3@nd.gov</p>	<p>District 4</p> <p>Lyle Wergeland P.O. Box 1746 Minot, ND 58702 (701) 857-7713</p> <p>ndseb4@nd.gov</p>			
<p>District 5</p> <p>Unknown</p> <p>Grand Forks, ND 58206 (701) 795-3880</p> <p>ndseb5@nd.gov</p>	<p>District 6</p> <p>David Paul P.O. Box 1346 Jamestown, ND 58402 (701) 253-3908</p> <p>ndseb6@nd.gov</p>	<p>District 7</p> <p>Richard Krause P.O. Box 6603 Fargo, ND 58109 (701) 239-7388</p> <p>ndseb7@nd.gov</p>	<p>District 8</p> <p>Rich Wolfe P.O. Box 7335 Bismarck, ND 58507 (701) 328-9520</p> <p>ndseb8@nd.gov</p>			
<p>District 9</p> <p>Michael Lund P.O. Box 347 Williston, ND 58802</p> <p>ndseb9@nd.gov</p>	<p><u>City Inspectors:</u></p> <table border="0"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none">] Fargo - Commercial] Fargo - Residential] Bismarck] Minot] Grand Forks </td> <td style="vertical-align: top;"> <p>Dan Offerdahl Gary Larson Tom Dwyer Ross Rubbelke Robert Kvitne</p> </td> <td style="vertical-align: top;"> <p>(701) 241-1561 (701) 476-6626 (701) 355-1465 (701) 857-4102 (701) 746-2637</p> </td> </tr> </table>			<ul style="list-style-type: none">] Fargo - Commercial] Fargo - Residential] Bismarck] Minot] Grand Forks 	<p>Dan Offerdahl Gary Larson Tom Dwyer Ross Rubbelke Robert Kvitne</p>	<p>(701) 241-1561 (701) 476-6626 (701) 355-1465 (701) 857-4102 (701) 746-2637</p>
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CHAPTER 24-02-01

24-02-01-02. General statement of policy and interpretative rules.

There are three categories of licensed electricians recognized by the electrical board.

1. Licensed electricians and the qualifications required for each to apply for examination:
 - a. A master electrician shall have at least two thousand hours of experience working as a licensed journeyman electrician under the supervision of a contracting master electrician or master of record.

There are three categories of master electricians, which are defined as follows:

- (1) A contracting master is a person responsible to adhere to all rules and laws of the North Dakota wiring standards and has shown proof of liability insurance and contributed to the undertaking fund.
 - (2) A master of record is a person responsible to adhere to all rules and laws of the North Dakota wiring standards for the partnership, company, corporation, limited liability company, or association and has shown proof of liability insurance that the master of record is covered by the organization and has contributed to the undertaking fund. The master of record is not allowed to work on other property other than property owned or leased by the organization.
 - (3) A noncontracting master is a person responsible to adhere to all rules and laws of the North Dakota wiring standards and has the same responsibility as a journeyman electrician. Electrical work shall be done under the supervision of a contracting master or master of record.
- b. A journeyman electrician shall have completed eight thousand hours experience, which experience may not be obtained in less than three years, registered as an apprentice electrician (of which up to three thousand hours may apply under the qualifications of a class B electrician) under the supervision of a contracting master or master of record licensed electrician in an area where electrical construction work is done in the jurisdiction regulating similar licensing and inspection rules of the state of North Dakota, and successfully completed apprentice electrician training as described in subdivision a or b of subsection 2. Two thousand hours credit may be granted for a graduate of a two-year or more electrical school accepted by the state electrical board. Practical experience shall consist of a minimum of four thousand hours and a

maximum of eight thousand hours credit may be granted for wiring for and installing electrical wiring, apparatus, and equipment. Practical electrical experience gained through a contracting master electrician shall also consist of an apprentice completing an approved bureau of apprenticeship training program.

Credit allowed in other areas may include any combination of the following:

- (1) A maximum of one thousand hours credit for repairing electrical wiring, apparatus, and equipment and light, heat, and power;
- (2) A maximum of one thousand hours credit for wiring fire alarm technology circuits or systems;
- (3) A maximum of two thousand hours credit for wiring process control circuits or systems; and
- (4) A maximum of two thousand hours credit of electrical construction experience gained in the armed forces of the United States which the board has determined is equivalent to work performed under the supervision of a North Dakota licensed electrical contractor.

The person shall have the necessary qualifications, training, and technical knowledge to wire, install, and repair electrical apparatus and equipment in accordance with the standard rules and regulations of the National Electrical Code.

- C. A class B electrician shall have completed three thousand hours experience in farmstead or residential wiring, in one-family or two-family dwellings, under the supervision of a master or class B electrician.

Commercial wiring experience will not be credited for experience toward a class B license. One thousand hours credit will be granted for a graduate of a two-year electrical school approved by the state electrical board.

- d. Upon receiving an application packet for an electrician's license from an applicant, the state electrical board shall ~~forward an employment verification record to the appropriate parties listed in the application.~~ Upon receiving process and review the applicant's employment verification of electrical construction experience as outlined under this section ~~and upon.~~ Upon final approval of the application by the state electrical board, the applicant shall be sent an invitation to take the examination. The invitation shall outline the available testing dates ~~for three months.~~ Upon receiving the

invitation, the applicant shall contact the state electrical board and inform the board as to the date chosen to take the examination.

- e. The state electrical board issues an identification card to currently licensed and registered electricians. This identification card, along with a government-issued picture identification card, shall be in the possession of the electrician when doing electrical work. If the identification card is misplaced or destroyed, a replacement charge to cover board costs shall be imposed.
2. Apprentice electricians. There are two categories of apprentice electrician training.
 - a. Apprentice electricians who have successfully completed the United States department of labor training program recognized by the office of apprenticeship.
 - b. Apprentice electricians who have successfully completed at least two years of electrical school approved by the state electrical board or five hundred seventy-six hours of training classes recognized by the United States department of labor office of apprenticeship. An unlicensed electrician who has prior experience outside of the state of North Dakota may take a placement examination equal to the verification of practical experience obtained in order to apply credit toward the verification of hours. If the electrician fails the placement examination, the electrician is ineligible to retake the examination. An appeal would need to be submitted in writing to the state electrical board.
 - c. An apprentice electrician who has not successfully completed training as stated in subdivision a or b is required to be registered with the state electrical board, but is not eligible to take the journeyman or class B license examination. If the person receives a license from another state based on the verification that the majority of practical experience was obtained in the state of North Dakota the person will not be eligible for examination for licensure or a reciprocal license.

A licensed electrician shall supervise not more than three apprentices. Any person over sixteen years of age may work as an apprentice under a licensed master or class B electrician, but the master or class B electrician shall not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the worksite.

Electrical contractors shall maintain records of all employees who are or will be performing electrical work for that electrical contractor and shall permit the electrical board to examine and copy all such records as required by this section.

When an apprentice electrician is found to be doing electrical work not under the direct supervision of a licensed electrician, an investigative fee may be charged to cover the costs incurred by the board. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.

Any master or class B electrician who fails or refuses to comply with this section or who fails or refuses to comply or demonstrate compliance with this section at the request of the board or its representative shall subject that person's license to nonrenewal, suspension, or revocation by the board.

3. Master and class B electricians. A master or class B electrician may exercise that person's privileges as a licensed master or class B electrician for no more than one shop or business, and shall comply with provisions as required for contracting with the secretary of state's office as stated in North Dakota Century Code chapter 43-07. A master or class B electrician must be actively engaged in the supervision of every project certified under that electrician's license. A master or class B electrician shall notify the state electrical board office immediately upon changing from contracting status to noncontracting status for the shop or business ~~they represent~~ the individual represents.
4. Maintenance personnel regularly employed by the owner may maintain or make minor repairs to existing electrical wiring devices and appliances, but are precluded from extending or changing the characteristics of existing circuits, feeders, or other electrical apparatus.
5. Purpose and scope. The purpose of these standards is the practical safeguarding of persons and of buildings and building contents from electrical hazards arising from the use or control of electricity for light, heat, power, and control thereof and of the fire detection system. It covers the electrical conductors and equipment installed within or on public and private buildings and other premises, including yards, carnival and parking lots, railroad right of way and, also the conductors that supply streetlighting, with the associated equipment necessary to its safe operation.

These standards, based on the National Electrical Code, are the result of years of experience and research to meet the demand for uniform standards to govern electrical wiring in North Dakota, and provide basic rules for intelligent and uniform installation and inspection.

All requirements contained herein shall be given careful consideration to ensure greatest permanence, convenience, and safety. These standards do not constitute a design specification for any particular installation, nor an instruction manual for untrained persons. Skill and experience are necessary factors for a safe and adequate wiring

installation. In cases where these requirements differ or are in conflict with the requirements of the NFPA 70 ~~2011~~ 2014 edition National Electrical Code and NFPA 101 ~~2009~~ 2012 edition Life Safety Code, and applicable articles in currently adopted state building code pertaining to fire detection, fire alarms, fire communications, and smoke detectors, the more restrictive requirements shall be the minimum.

6. Administrative powers and duties. The executive director of the state electrical board, under the direction of the board, shall administer laws, rules, and wiring standards of this state, the electrical requirements of the NFPA 70 ~~2011~~ 2014 edition National Electrical Code and NFPA 101 ~~2009~~ 2012 edition Life Safety Code, and applicable articles in currently adopted state building code pertaining to fire detection, fire alarms, fire communications, and smoke detectors. Where it states in the ~~2011~~ 2014 edition of the National Electrical Code, "This requirement becomes effective January 1, 2014", the effective date shall be ~~April~~ September 1, 2014. In all cases when any action is taken by the executive director to enforce the provisions of any sections contained in these electrical regulations, the NFPA 70 ~~2011~~ 2014 edition National Electrical Code and NFPA 101 ~~2009~~ 2012 edition Life Safety Code, such acts shall be done in the name of and on behalf of the state.

The electrical regulations of these standards, the NFPA 70 ~~2011~~ 2014 edition National Electrical Code and NFPA 101 ~~2009~~ 2012 edition Life Safety Code, may be modified or waived by special permission in particular cases when such modification or waiver is specifically permitted or in particular cases when an advancement in the technology of electricity makes such modification or waiver advisable in the best interest of the people of North Dakota. Such "special permission" shall, in all cases, be obtained from the executive director in writing prior to the commencement of the work.

Whenever the board is authorized or mandated by law to inspect an electrical installation, the inspector has authority to enter upon land for the purpose of conducting the inspection. Except in emergency circumstances, the inspector shall request permission from the property owner or agent prior to entering a dwelling, other building, or other place so enclosed as manifestly to exclude intruders. If the landowner refuses to give permission, the board may request the district court of the district containing the property for an order authorizing the inspector to enter the property to conduct the inspection. Emergency circumstances include situations presenting imminent danger to health, safety, or property.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; July 1, 2013; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-03. General requirements. Electrical installations shall be planned to provide adequate capacity for the load.

1. Wiring systems shall have conductors of sufficient capacity to furnish each outlet without excessive line loss or voltage drop. The voltage drop shall not exceed five percent at the farthest outlet of power, heating and lighting loads, or combinations of such loads. (See appendix for example.)
2. All wiring materials and equipment shall be listed by nationally recognized testing laboratories to safeguard life and property. It is the duty of the electrical installer to secure permission from the executive director to use materials, devices, and methods of installation not specifically covered by these standards. Equipment not approved under a testing laboratory category shall be evaluated by a registered professional engineer and recorded on evaluation forms accepted by the board.

Exception: Manufacturing firms that install industrial machinery for use by the firm itself and employ professional engineers may evaluate the industrial machinery according to NFPA 79 or UL 508 standards. This evaluation shall be maintained with the equipment at all times and a copy submitted to the board.

3. All installations shall be made in a workmanlike manner with special attention paid to the mechanical execution of work. All conductors shall be rigidly supported and all fittings securely fastened.
4. When wiring public school buildings, approval shall be received from the department of public instruction and the state electrical board.
5. Overhead conductors shall not cross over water wells or known sites where water wells may be drilled. A minimum distance of twenty feet [6.10 meters] in all directions shall be maintained for overhead conductors.
6. Metal raceways or metal cable (MC) rated for the environment shall be installed in the following occupancies:
 - a. Hospitals;
 - b. Nursing homes;
 - c. Related patient care areas;
 - d. Places of assembly; and
 - e. Dormitories designed to house more than sixteen people.

Portable cleaning equipment receptacle outlets shall be installed in corridors and located so that no point in the corridor along the floorline, measured horizontally, is more than twenty-five feet [7.62 meters] from an outlet.

Metal raceways shall be used in fixed wiring methods, including fire alarms, along with metal boxes or nonmetallic raceways encased in not less than two inches of concrete.

Exception 1: As provided in article 640, ~~2011~~ 2014 edition, National Electrical Code, sound reproduction and similar equipment; in article 800, ~~2011~~ 2014 edition, National Electrical Code, communication circuits; and in article 725, ~~2011~~ 2014 edition, National Electrical Code, for class 2 and class 3 remote control and signaling circuits.

Exception 2: Listed two-hour fire-rated cables as permitted in article 695.6, article 700.9D, and article 760, ~~2011~~ 2014 edition, National Electrical Code.

Adjacent areas separated by a fire barrier shall be considered a separate building and may be wired in any approved wiring method in chapter 3 of the ~~2011~~ 2014 edition, National Electrical Code. For the purpose of this section, a fire barrier is defined as a continuous assembly, vertical or horizontal, in accordance with currently adopted state building code. ~~In no case shall it be less than two-hour fire-rated.~~

7. In the wiring of nursing homes and hospitals, reference shall be made to the state department of health for special requirements pertaining to operating rooms, delivery rooms, and emergency lighting.
8. Aluminum conductors in sizes smaller than no. 6 shall not be used. Aluminum conductors installed and all corresponding materials shall be approved by testing laboratories.
9. All new construction shall follow the energy-efficient related requirements for design and construction of buildings in accordance with the currently adopted state building code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-04. Places of assembly. This section covers all buildings, structures, or portions of buildings designed or intended for the assembly of one hundred or more persons.

Places of assembly include: assembly halls, auditoriums, including auditoriums in schools; mercantile, business, and other occupancies; exhibition halls; armories; dining facilities, including restaurants; church chapels; dancehalls; mortuary chapels; museums; skating rinks; gymnasiums and multipurpose rooms; bowling lanes; poolrooms; clubrooms; places of awaiting transportation; courtrooms; drinking establishments; and conference rooms.

Occupancy of any room or space for assembly purposes by less than one hundred persons in a building of other occupancy, and incidental to such other occupancy, shall be classed as part of the other occupancy and subject to the applicable provisions.

When such building structures or portions thereof contain a projection booth or stage platform or area for the presentation of theatrical or musical production, either fixed or portable, the wiring for that area shall comply with all applicable provisions of article 520, ~~2011~~ 2014 edition, National Electrical Code.

(For methods of determining population capacity, see occupant load value table, section 24-02-01-16.)

Wiring methods. Fixed wiring methods shall comply with the requirements of subsection 6 of section 24-02-01-03.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-05. Hazardous locations.

1. Hazardous locations shall be wired in accordance with articles 500-516. Classification of hazardous locations is required to be completed by owner, representative, or engineer that has the qualifications and shall provide documentation as required by the provisions of article 500.4, ~~2011~~ 2014 National Electrical Code, including the reference standards as listed in article 500.4, ~~2011~~ 2014 National Electrical Code. For classifications of oilfield installations refer to RP 500, Classification of Locations for Electrical Installations at Petroleum Facilities, second edition, November 1997.
2. Electrical wiring in grain elevators shall conform with code requirements, class II, division 1, under article 500, ~~2011~~ 2014 edition, National Electrical Code.
 - a. Surge arrestors shall be provided for all services in grain elevators.

- b. Hot bearing or other similar detection systems shall be installed in accordance with articles 500-516, ~~2011~~ 2014 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-06. Grounding and bonding. Grounding and bonding shall conform to article 250, ~~2011~~ 2014 edition, National Electrical Code.

1. At motor connections, a bonding jumper sized in accordance with table 250-122, ~~2011~~ 2014 edition, National Electrical Code, shall be provided around all flexible conduit in sizes one-half inch [12.70 millimeters] and larger. The bonding jumper is not required where a separate grounding conductor is included.
2. Grounding of metal outdoor lighting standards. Definition of lighting standard is a pole exceeding twelve feet [3.66 meters] in height measured from the bottom of the base or from the intended grade level of poles.
 - a. Circuits run in nonmetallic conduit or buried directly in the ground: the metal lighting standard shall be grounded by use of an equipment grounding conductor, not the neutral conductor. This equipment grounding conductor shall be run continuously throughout the system and properly bonded to each standard by use of lugs.
 - b. The metal lighting standard shall be connected to a one-half inch [12.70 millimeters] by ten-foot [3.05-meter] copperweld ground rod, or twenty feet [6.10 meters] of one or more bare or zinc galvanized or other electrically conductive coated steel reinforcing bars or rods (rebar) of not less than one-half inch [12.70 millimeters] in diameter, by the means of a bonding jumper. The ten-foot [3.05-meter] ground rod shall be driven in the center of the metal standard base and project slightly above the base. Both ground rod and equipment grounding conductor shall be connected to the metal standards. The bonding jumper shall be in accordance with ~~2011~~ 2014 edition, National Electrical Code, and in no case smaller than no. 8 copper or no. 6 aluminum.

3. The grounding electrode conductor shall be connected to the grounded service conductor in the enclosure for the service disconnect.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-07. Branch circuits and feeders. Branch circuits and feeders shall comply with articles 210 and 215, ~~2011~~ 2014 edition, National Electrical Code.

1. The total connected load shall be divided as evenly as practicable, between the two ungrounded conductors of a three-wire system and three conductors of a four-wire wye system.
2. A separate circuit with disconnect shall be provided for the purpose of operating or controlling electrical equipment on heating units. Wiring requirements for fixed electrical space heating equipment is provided under article 424, ~~2011~~ 2014 edition, National Electrical Code.
3. Dwelling occupancies having built-in baking or cooking units, including microwave ovens, installed separately shall have an individual disconnect and overcurrent protective device. Conductors supplying these units shall have a carrying capacity according to nameplate rating.
4. A minimum of six 20-amp small appliance branch circuits shall be installed for counter receptacles in kitchens that may be used to serve public gatherings at schools, churches, lodges, and similar buildings. Any island counter in public gatherings shall have at least one receptacle.
5. Dwelling occupancies. A minimum of three 20-amp small appliance branch circuits shall be installed to supply receptacle outlets in kitchen, pantry, dining room, and breakfast room. These circuits shall not supply other outlets and shall have conductors not smaller than no. 12. Two of these circuits shall supply receptacle outlets on or near work counter area and so arranged that adjacent receptacles are not on the same circuit. One 20-amp branch circuit shall be provided for no more than two bathrooms.
6. Fifteen and twenty ampere 125-volt receptacles ~~located outdoors or in unfinished basements~~ supplying sewer pumps and sump pumps shall not need arc fault circuit protection but shall be ground-fault protected or a single receptacle shall be installed in an enclosure that is lockable.
7. Fifteen and twenty ampere 125-volt receptacles supplying power for garage door openers located in attached or detached garages

associated with dwelling units shall be ground-fault protected or a single receptacle installed.

8. Where arc-fault circuit interrupter (AFCI) protection is required in article 210.12, ~~2011~~ 2014 edition, National Electrical Code, branch/feeder AFCIs shall be permitted to be used to meet the requirements.

Exception: 2014 edition, National Electrical Code, article 210.12: Minimum requirements for locating AFCIs may revert back to the 2011 edition, National Electrical Code, article 210.12.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-08. Services. Electrical services shall comply with article 230, ~~2011~~ 2014 edition, National Electrical Code.

1. Perpendicular mast used for support of a service shall not be less than two-inch [5.08-centimeter] galvanized rigid steel conduit or intermediate metal conduit, fitted with storm collar flashing.
2. To eliminate moisture condensation, a suitable compound shall be installed to prevent circulation of air from a warmer to a colder section of the raceway (see section 300-7, ~~2011~~ 2014 edition, National Electrical Code).
3. Outside switch location. In no case shall the equipment be mounted lower than two feet [.6096 meter] above grade level unless listed for such purpose. If installed outside, the service or services shall be installed on the structure or within ten feet of the structure.
4. All services in one-family dwellings shall be located in a single accessible location.

Exception: Special permission may be granted by the electrical inspector for a second service location to be added where there is no available space for the service equipment. The second service location shall be installed in accordance with article 230-2, ~~2011~~ 2014 edition, National Electrical Code.

5. Rating of service switch. Any new or old single-family dwelling where the main house panel or service is altered or repaired, the dwelling is moved, or where the dwelling is rewired, a minimum one hundred ampere service-rated panel shall be installed. Replacement of service mast or meter enclosure is an alteration of the service.

- a. A one hundred ampere main house panel shall be installed using ungrounded conductors rated at one hundred amperes. The panel shall contain provisions for a minimum of twenty full-sized branch circuit spaces.
 - b. A greater than one hundred ampere but less than two hundred ampere main house panel shall be installed using ungrounded conductors sized for the proper ampacity. The panel or panels shall contain provisions for a minimum of thirty full-sized branch circuit spaces.
 - c. A two hundred ampere or larger main house panel shall be installed using ungrounded conductors sized for the proper ampacity. The panel or panels shall contain provisions for a minimum of forty full-sized branch circuit spaces.
 - d. Service and feeder calculation for electric heating loads shall be sized to one hundred twenty-five percent of the full load rating.
6. Underground services. Underground service shall comply with article 230, part III, ~~2011~~ 2014 edition, National Electrical Code. Cables or individual conductors on outside of buildings or poles shall be protected where subject to mechanical damage. Where rigid metal conduit is used, a bushing shall be used on both ends. Sufficient slack conductor shall be left to allow for ground settling next to foundations. Past experience indicates that the ground next to a foundation has settled as much as three feet [.914 meter].

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-09. Overcurrent protection. Overcurrent protection shall comply with article 240, ~~2011~~ 2014 edition, National Electrical Code.

1. Exterior overcurrent devices shall be located at a height of no less than two feet [.6096 meter] above grade level to the bottom of the enclosure.

Exception: If raising the switch would exceed the height requirements of National Electrical Code article 240.24.

2. Switchboards and panel boards shall not be located in bathrooms, clothes closets, stairways, or crawl space.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-10. Wiring methods.

1. Agricultural buildings. This section covers all buildings housing livestock, poultry, and other areas of similar or like nature. All electrical panel boards, wiring devices, and equipment shall be installed in accordance with the provisions of article 547, ~~2011~~ 2014 edition, National Electrical Code.

A site-isolating device shall be permitted to be installed at the distribution point where two or more agricultural building structures are supplied from the distribution point.

2. Electric metallic tubing shall not be used in concrete below grade, in concrete slab or masonry in direct contact with earth. A vapor barrier, if used, will have no effect on the requirements of the section. Electric metallic tubing shall not be embedded in earth or fill.
3. Aluminum conduit shall not be installed in contact with earth or embedded in concrete.
4. The installation of rigid nonmetallic conduit shall comply with the provision of article 352, ~~2011~~ 2014 edition, National Electrical Code. Expansion fittings for rigid nonmetallic conduit shall be provided to compensate for thermal expansion and contraction in accordance with section 352.44, ~~2011~~ 2014 edition, National Electrical Code. When installed outdoors and above grade, one hundred forty degrees Fahrenheit [60 degrees Celsius] shall be considered the minimum change in degrees.
5. Fertilizer rooms, meatpacking plants, salt processing plants, and similar locations are judged to be occupancies where severe corrosive conditions are likely to be present. It is recommended that nonmetallic conduit with nonmetallic boxes and fittings be used as the wiring method for such occupancies. Ferrous and nonferrous metal raceways shall be used providing the raceway, boxes, and fittings are properly protected against corrosion.
6. In any room of an existing building where the sheetrock or wall covering has been removed from all walls, the electrical wiring requirements

shall comply with the provisions of ~~2011~~ 2014 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-10.1. Water-damaged electrical equipment. Electrical wiring and equipment exposed to water damage shall comply with the following:

1. All breaker panel boards, breakers, fuses, disconnect switches, controllers, receptacles, switches, light fixtures, and electric heaters that have been submerged or exposed to water damage shall be replaced or all electrical equipment, switchgear, motor control centers, boilers and boiler controls, electric motors, transformers, and other similar equipment such as appliances, water heaters, dishwashers, ovens, and ranges that have been submerged shall be reconditioned by the original manufacturer or by its approved representative or replaced.
2. Electrical wiring may require replacement depending on the type of wire or cable and what application it was listed for.
3. Splices and terminations shall be checked to make sure they comply with article 110-14, ~~2011~~ 2014 edition, National Electrical Code.
4. Energized electrical panels that have been submerged need to be de-energized to prevent loss of life and property.

Other recommendations can be found in "Guidelines for Handling Water Damaged Electrical Equipment" published by the national electrical manufacturers association (NEMA).

History: Effective January 1, 1999; amended effective April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-12. Boxes and fittings. Not more than one extension ring may be used on outlet boxes unless special permission has been obtained from the electrical inspector having jurisdiction. Boxes or conduit bodies shall be installed at

each opening, splice, or connection, except as provided in article 604, ~~2011~~ 2014 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-14.1. Mobile home parks and recreational vehicle parks.

Mobile homes, manufactured homes, and mobile home parks shall comply with articles 550 and 551; ~~2011~~ 2014 edition, of the National Electrical Code.

Service equipment may be installed on manufactured homes as required in article 550.32(b) if the following requirements are met:

1. The mobile home is located on property owned by homeowner and not in mobile home park.
2. The mobile home is secured to a permanent foundation that complies with currently adopted state building code.

History: Effective April 1, 2002; amended effective April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-16. Marking of means of egress, illumination of means of egress, and emergency lighting. The purpose of this section is to provide ~~exit and emergency lighting requirements~~ marking of means of egress, illumination of means of egress, and emergency lighting of means of egress requirements in accordance with Life Safety Code®, NFPA 101, ~~2009~~ 2012 edition, in simple and condensed form. For occupancies or items not covered in this condensed version, refer to NFPA 101, ~~2009~~ 2012 edition, for complete details. In the wiring of institutional occupancies, governmental agencies may use other codes, which may be more stringent, especially when federal funds are involved.

1. Marking of means of egress. All required exits and access to exits shall be marked by readily visible signs. For externally illuminated signs, letters shall be not less than six inches [150 millimeters] high. Internally illuminated signs shall be listed per ANSI/UL 924 which assures proper letter size. Chevron-shaped arrows are required to indicate direction to exits. Every sign shall be suitably illuminated. For externally illuminated signs see subsection 7.10.6, Life Safety Code®, NFPA 101, ~~2009~~ 2012 edition and for internally illuminated signs see subsection 7.10.7.
2. Illumination of means of egress. Illumination of means of egress shall provide continuous, dependable, illumination of not less than one foot-candle at floor level for all areas such as corridors, stairways, and

exit doorway, providing a lighted path of travel to the outside of the building and public way during all times that the means of egress is available for use. For new stairs, the required minimum illumination level is ten foot-candle during conditions of stair use. Illumination shall be from a source of reasonable assured reliability and may be supplied from normal lighting circuits or special circuits with switching controlled by authorized personnel. Illumination required for exit marking shall also serve for illumination of means of egress and shall be so arranged that failure of a single unit such as burning out of a single bulb will not leave any area in darkness.

3. Emergency lighting. Emergency lighting systems shall be so arranged to provide the required illumination automatically in event of any interruption or failure of the normal power supply. An acceptable alternate source of power may be an electric generator or approved battery. In occupancies where emergency lighting is required, the circuits supplying exit marking and illumination of means of egress shall be supplied by the emergency system. Other areas of the facilities only requiring exit marking and illumination of means of egress may be supplied by the normal source.
4. Classification of occupancy based on chapter 6, Life Safety Code®, NFPA 101, ~~2009~~ 2012 edition.

Note: Check with local building official to determine occupancy and occupant load.

Assembly. Assembly occupancies include all buildings or portions of buildings used for gathering together fifty or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement, or awaiting transportation. Assembly occupancies also include special amusement buildings regardless of occupant load.

Assembly occupancies include the following:

- | | |
|---|--|
| Armories | Libraries |
| Assembly halls | Mortuary chapels |
| Auditoriums | Motion picture theaters |
| Bowling lanes | Museums |
| Clubrooms | Passenger stations and terminals of air, surface, underground, and marine public transportation facilities |
| College and university classrooms, fifty persons and over | Places of religious worship |
| Conference rooms | Poolrooms |
| Courtrooms | Recreation piers |

Dancehalls	Restaurants
Drinking establishments	Skating rinks
Exhibition halls	Theaters
Gymnasiums	

Occupancy of any room or space for assembly purposes by fewer than fifty persons in a building or other occupancy and incidental to such other occupancy shall be classified as part of the other occupancy and shall be subject to the provisions applicable thereto.

Educational. Educational occupancies include all buildings or portions of buildings used for educational purposes through the twelfth grade by six or more persons for four or more hours per day or more than twelve hours per week.

Educational occupancies include the following:

Academies	Nursery schools
Kindergartens	Schools

Other occupancies associated with educational institutions shall be in accordance with the appropriate part of Life Safety Code®, NFPA 101, ~~2009~~ 2012 edition.

In cases when instruction is incidental to some other occupancy, the section of Life Safety Code®, NFPA 101, ~~2009~~ 2012 edition, governing such other occupancy applies. For example:

- Classrooms under fifty persons - business occupancy
- Classrooms fifty persons and over - assembly
- Instructional building - business occupancy
- Laboratories, instructional - business occupancy
- Laboratories, noninstructional - industrial

Day care. Day care occupancies include all buildings or portions of buildings in which four or more clients receive care, maintenance, and supervision, by other than their relatives or legal guardians, for less than twenty-four hours per day.

Day care occupancies include the following:

- Child day care occupancies
- Adult day care occupancies, except where part of a health care occupancy

Nursery schools

Day care homes

Kindergarten classes that are incidental to a child day care occupancy

In cases when public schools offer only half-day kindergarten programs, many child day care occupancies offer state-approved kindergarten classes for children who require full day care. As these classes are normally incidental to the day care occupancy, the requirements of the day care occupancy should be followed.

Health care. Health care occupancies are those used for purposes such as medical or other treatment or care of persons suffering from physical or mental illness, disease, or infirmity and for the care of infants, convalescents, or infirm aged persons. Health care occupancies provide sleeping facilities for four or more occupants and are occupied by persons who are mostly incapable of self-preservation because of age, physical or mental disability, or because of security measures not under the occupants' control.

Health care occupancies include the following:

Hospitals

Nursing homes

Limited care facilities

Ambulatory health care. Ambulatory health care occupancies are those used to provide services or treatment simultaneously to four or more patients on an outpatient basis. The patients are considered incapable of self-preservation due to the treatment rendered, the use of anesthesia, or the injury for which they are receiving emergency or urgent care.

Detention and correctional. Detention and correctional occupancies are used to house individuals under varied degrees of restraint or security and are occupied by persons who are mostly incapable of self-preservation because of security measures not under the occupants' control.

Detention and correctional occupancies include the following:

Adult and juvenile substance abuse centers

Adult and juvenile work camps

Adult community residential centers

Adult correctional institutions

Adult local detention facilities

- Juvenile community residential centers
- Juvenile detention facilities
- Juvenile training schools

Residential. Residential occupancies are those occupancies in which sleeping accommodations are provided for normal residential purposes and include all buildings designed to provide sleeping accommodations.

Exception. Those classified under health care or detention and correctional occupancies.

Residential occupancies are treated separately in Life Safety Code®, NFPA 101, ~~2009~~ 2012 edition, in the following groups:

- One-family and two-family dwellings
- Lodging or rooming houses
- Hotels, motels, and dormitories
- Apartment buildings
- Residential board and care facilities

Mercantile. Mercantile occupancies include stores, markets, and other rooms, buildings, or structures for the display and sale of merchandise.

Mercantile occupancies include the following:

- | | |
|-------------------|------------------|
| Auction rooms | Shopping centers |
| Department stores | Supermarkets |
| Drugstores | |

Office, storage, and service facilities incidental to the sale of merchandise and located in the same building are included with mercantile occupancy.

Business. Business occupancies are those used for the transaction of business other than those covered under mercantile, for the keeping of accounts and records, and for similar purposes.

Business occupancies include the following:

- | | |
|------------------------------------|------------------|
| Air traffic control towers (ATCTs) | Doctors' offices |
| City halls | General offices |

College and university instructional buildings, classrooms under fifty persons, and instructional laboratories	Outpatient clinics, ambulatory
Courthouses	Townhalls
Dentists' offices	

Doctors' and dentists' offices are included unless of such character as to be classified as ambulatory health care occupancies.

Industrial. Industrial occupancies include factories making products of all kinds and properties devoted to operations such as processing, assembling, mixing, packaging, finishing or decorating, and repairing.

Industrial occupancies include the following:

Drycleaning plants	Power plants
Factories of all kinds	Pumping stations
Food processing plants	Refineries
Gas plants	Sawmills
Hangars (for servicing or maintenance)	Telephone exchanges
Laundries	

In evaluating the appropriate classification of laboratories, the authority having jurisdiction should determine each case individually based on the extent and nature of the associated hazards. Some laboratories may be classified as occupancies other than industrial, for example, a physical therapy laboratory or a computer laboratory.

Storage. Storage occupancies include all buildings or structures utilized primarily for the storage or sheltering of goods, merchandise, products, vehicles, or animals.

Storage occupancies include the following:

Barns	Hangars (for storage only)
Bulk oil storage	Parking structures
Cold storage	Truck and marine terminals
Freight terminals	Warehouses
Grain elevators	

Storage occupancies are characterized by the presence of relatively small numbers of persons in proportion to the area. Any new use that increases the number of occupants to a figure comparable with other classes of occupancy changes the classification of the building to that of the new use.

~~Mixed occupancies. Where two or more classes of occupancy occur in the same building or structure and are intermingled so that separate safeguards are impracticable, means of egress facilities, construction, protection, and other safeguards shall comply with the most restrictive life safety requirements of the occupancies involved.~~
Multiple occupancies. A building or structure in which two or more classes of occupancy exists shall be classified as a multiple occupancy. Multiple occupancies shall be protected either as mixed occupancies or as separated occupancies, in accordance with subsection 6.1.14.3 or 6.1.14.4, respectively, of Life Safety Code®, NFPA 101, 2012 edition. Where exit access from an occupancy traverses another occupancy, the multiple occupancy shall be protected as a mixed occupancy. In implementing the mixed occupancies form of protection, the building shall comply with the most restrictive requirements of the occupancies involved, unless separate safeguards are approved.

5. Occupant load factor table.

Use	Square Feet Per Person
Assembly use	15 net*
Areas of concentrated use without fixed seating	7 net*
Waiting space	3 net*
Bleachers, pews, and similar bench-type seating	Note 1
Fixed seating	Note 2
Kitchens	100 gross**
Libraries	
In stack areas	100 gross**
In reading rooms	50 net*
Swimming pools	
Water surface	50 gross**
Pool decks	30 gross**
Stages	15 net*
Educational use	
Classroom area	20 net*

Shops, laboratories, and similar vocational areas	50 net*
Day care use	
Maximum number of persons intended to occupy that floor, but not less than	35 net*
Health care use	
Sleeping departments	120 gross**
Inpatient departments	240 gross**
Ambulatory health care	100 gross**
Detention and correctional use	
Maximum number of persons intended to occupy that floor, but not less than	120 gross**
Residential use	
Hotels, motels, dormitories, apartment buildings:	
Maximum probable population, but not less than	200 gross**
Lodging or roominghouses:	
Sleeping accommodations for a total of sixteen or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities or individual occupants	No requirements
One-family and two-family dwellings	No requirements
Residential board and care use	Note 3
Mercantile use (including malls)	
Street level and below (sales)	30 gross**
Upper floor (sales)	60 gross**
Office areas	100 gross**
Storage, receiving, or shipping (not open to the general public)	300 gross**
Assembly areas	See "Assembly"
Business use	
Business purposes	100 gross**
Air traffic control tower observation levels	40 gross**
Other purposes	Note 4
Industrial use	

Maximum number of persons intended to occupy that floor but not less than	100 gross**
Storage use	
In storage occupancies	N/A
In mercantile occupancies	300 gross**
In other than storage and mercantile occupancies	500 gross**

* Net floor area is the actual occupied area, not including accessory unoccupied areas or thickness of walls.

** Gross floor area is the floor area within the inside perimeter of the outside walls of the building under consideration with no deduction for hallways, stairs, closets, thickness of interior walls, columns, or other features.

Notes to occupant load table.

Note 1. Bleachers, pews, and similar bench-type seating: one person per eighteen linear inches [457.2 millimeters].

Note 2. Fixed seating. The occupant load of an area having fixed seats shall be determined by the number of fixed seats installed. Required aisle space serving the fixed seats shall not be used to increase the occupant load.

Note 3. Refer to chapters 32 and 33 of Life Safety Code®, NFPA 101, 2009 2012 edition.

Note 4. Occupant load factors associated with the use.

6. Building classification table.

x - indicates required
o - indicates not required

Occupancy	Marking of Means Egress	Illumination of Means Egress	Emergency Lighting
Assembly	x	x	x
Educational	x	x	x
Day care	x	x	x

Interior stairs and corridors	x	x	x	
Assembly use spaces	x	x	x	
Flexible and open plan buildings	x	x	x	
Interior or limited access portions of buildings	x	x	x	
Shops and laboratories	x	x	x	
Family day care homes (more than three but fewer than seven persons)	o	x	o	
Group day care homes (seven to twelve persons)	o	x	o	
Health care occupancies (Note 1) (for complete details see Article 517 of NEC and NFPA Standard 99)	x	x	x	
Detention and correctional	x	x	x	
Residential				
Hotels and dormitories	x	x	x	Note 2
Apartment buildings				
Twelve or less apartments	x	x	o	Note 3
More than twelve apartments or greater than three stories in height	x	x	x	Note 3
Residential board and care				
More than sixteen residents	x	x	x	Note 2
Mercantile				
Class A - over thirty thousand square feet [2787.09 square meters] or greater than three stories	x	x	x	
Class B - three thousand square feet to thirty thousand square feet [278.71 square meters to 2787.09 square meters] or three thousand square feet [278.71 square meters] or less and two or three stories	x	x	x	
Class C - under three thousand square feet [278.71 square meters] and one story	x	Note 6	x	o
Malls	x	x	x	
Business	x	x	o	
Three or more stories in height	x	x	x	
Fifty or more persons above or below level of exit discharge	x	x	x	
Three hundred or more persons	x	x	x	
All limited access and underground	x	x	x	
Industrial	x	x	Note 7	x Notes 7 & 8
Storage	x	x	Note 9	x Notes 9 & 10

Special structures (refer to chapter 11, Life Safety Code®, NFPA 101, ~~2009~~ 2012 edition).

Mixed occupancies (Note 5).

NOTES:

Note 1. Exception: Power supply for exit and emergency lighting shall conform to NFPA 110.

Note 2. Exception: Where each guest room, guest suite, or resident sleeping room has an exit direct to the outside of the building at street or ground level emergency lighting is not required.

Note 3. Exception: Buildings with only one exit need not be provided with exit signs.

Note 5. Exception: Where the same means of egress serve multiple-use or combined occupancies, exit lighting, exit signs, and emergency lighting shall be provided for the occupancy with the most stringent lighting requirements. The occupant load of each type of occupancy shall be added to arrive at the total occupant load.

Note 6. Exception: Where an exit is immediately apparent from all portions of the sales area, the exit marking is not required.

Note 7. Exception: Special purpose industrial occupancies without routine human habitation.

Note 8. Exception: Structures occupied only during daylight hours, with skylights or windows arranged to provide the required level of illumination on all portions of the means of egress during these hours.

Note 9. Exception: Storage occupancies do not require emergency lighting when not normally occupied.

Note 10. Exception: In structures occupied only during daylight hours, with skylights or windows arranged to provide the required level of illumination of all portions of the means of egress during these hours, emergency lighting is not required.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-16.1. Smoke detectors, fire alarm systems, and carbon monoxide alarms requirements for evacuation and life safety. Fire alarms shall be installed in accordance with the currently adopted state building code and state fire code.

1. **Smoke detectors.** Dwelling units, congregate residences, and hotel or lodging house guest rooms that are used for sleeping purposes

shall be provided with smoke detectors. Detectors shall be installed in accordance with the approved manufacturer's instructions.

- a. In new construction, smoke alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Smoke alarms shall be interconnected.
- b. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by twenty-four inches [60.96 centimeters] or more, smoke detectors shall be installed in the hallway and in the adjacent room. Smoke alarms must be installed in the following locations:
 - (1) In each sleeping room.
 - (2) Outside each separate sleeping area in the immediate vicinity of the bedrooms.
 - (3) On each additional story of the dwelling, including basements and habitable attics but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split-levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

When more than one smoke alarm is required to be installed within an individual dwelling unit, the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit.

- c. Household fire alarm systems installed in accordance with NFPA 72 that include smoke alarms, or a combination of smoke detectors and audible notification device installed as required by this section for smoke alarms, shall be permitted. The household fire alarm system shall provide the same level of smoke detection and alarm as required by this section for smoke alarms. Where a household fire warning system is installed using a combination of smoke detector and audible notification devices, it shall become a permanent fixture of the occupancy and owned by the homeowner. The system shall be monitored by an approved supervising station and be maintained in accordance with NFPA 72 upper level.
2. **Fire alarm systems.** Apartment houses and hotels shall be provided with a manual and automatic fire alarm system in apartment houses three or more stories in height or containing sixteen or more dwelling

units, in hotels three or more stories in height or containing twenty or more guest rooms, and in congregate residences three or more stories in height or having an occupant load of twenty or more.

3. **Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages.

A table in the appendix is offered as a condensed guide for convenience. For further information consult the currently adopted state building code and fire code.

History: Effective February 1, 1996; amended effective January 1, 1999; April 1, 2002; September 1, 2011.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-17. Carnivals. This section provides standards for temporary outdoor installations of portable electrical wiring and equipment for carnivals and celebrations consisting of overhead and underground installations for lighting and power to tents, stands, concessions, and amusement rides and shall comply with article 525, ~~2011~~ 2014 edition, National Electrical Code.

1. All temporary outdoor installations shall be approved by the electrical inspector before usage.
2. Inspection and fees for outdoor carnivals and concessions. Each outdoor amusement enterprise or carnival operating or intending to operate in North Dakota shall notify the North Dakota State Electrical Board, Box 7335, Bismarck, North Dakota 58507-7335, each year of its itinerary and make application for the initial inspection thirty days before the first engagement in the state. Failure to notify the state electrical board may result in the outdoor amusement enterprise or carnival being responsible for expenses incurred for excess time and travel to inspect these installations.
 - a. Fees - \$15.00 each ride or concession
\$15.00 reinspection fee on each unit, if required
\$50.00 each transformer or generator truck
 - b. The fee shall be paid to the inspector at the first engagement or inspection. Each ride or concession will be issued a certification of inspection so that "en route" inspection shall be recorded by each inspector.

- c. Each ride or concession wired properly will be issued a certification of compliance, serving for an entire carnival season, subject to subsequent inspections.
- d. Each ride or concession having minor code violations will be issued a correction order with instructions to correct the same, before a following engagement, which will require a reinspection with a fifteen dollar reinspection fee.
- e. The electrical inspector is empowered to write a correction order for immediate compliance should the inspector find a condition dangerous to life and property.

History: Amended effective October 1, 1987; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-19. Inspection fees.

1. All electrical installations, including new jobs and additional work on old installations, made in this state, shall have an electrical wiring certificate or e-cert properly executed by the master or class B electrician supervising the installation of electrical wiring. The state electrical board shall prescribe such form and shall have on hand a supply of such certificates for distribution to master and class B electricians. Such certificate shall consist of the original and five copies.
2. Before work commences on any electrical installation where a new entrance is installed, an existing entrance is altered or repaired, a building is moved, where a mobile home feeder is installed, or where the cost of the repair work or additional installation exceeds three hundred dollars, the master or class B electrician supervising such installation shall ~~execute~~ submit an electrical wiring certificate and distribute ~~the various copies~~ as follows:
 - a. ~~The A~~ startup copy of the certificate shall be ~~forwarded~~ submitted to the state electrical board and ~~the canary~~ a copy to the power company before work is commenced and before an electrical installation may be energized.
 - b. Within fifteen days of completion, use, or occupancy, whichever is foremost, the final paperwork shall be submitted to the office of the state electrical board, along with the proper fee. The wiring certificate shall be completed with the location and a proper description of work completed.

- c. ~~The pink~~ A copy shall be retained by the master or class B electrician.
- d. ~~The manila~~ A copy shall be left in or on the panel or given to the owner.

Certificates with job cost of ~~ten~~ twenty thousand dollars or less are valid twelve months from the original filing date. A new wiring certificate shall be filed on all unfinished work.

3. The electric wiring certificates are available from the state electrical board at Bismarck, North Dakota, upon request of any master or class B electrician holding a proper current license from the electrical board. The master or class B electrician shall be held responsible for all certificates issued to that person. A charge of twenty-five dollars to cover board costs shall be imposed on each lost wiring certificate.

~~4. A copy of an electrical wiring certificate shall be filed with the power supplier before an electrical installation may be energized.~~

~~5.~~ 4. Inspection fees shall be as follows:

Job Cost	Inspection Fee
Up to \$300.00	\$25.00 (minimum fee)
\$300.00 to \$3,000.00	\$25.00 for the first \$300.00 plus 2% on balance up to \$3,000.00
\$3,000.00 to \$10,000.00	\$79.00 for the first \$3,000.00 plus 1.5% on balance up to \$10,000.00
\$10,000.00 to \$15,000.00	\$184.00 for the first \$10,000.00 plus 1% on balance up to \$15,000.00
\$15,000.00 to \$100,000.00	\$234.00 for the first \$15,000.00 plus 1/2 of 1% on balance up to \$100,000.00
Over \$100,000.00	\$659.00 for the first \$100,000.00 plus 1/4 of 1% on balance

Inspection fees shall accompany the copies of wiring certificates which shall be forwarded to the State Electrical Board, Box 7335, Bismarck, North Dakota 58507-7335.

It shall be grounds for discipline of a master or class B electrician's license if it is discovered that the individual charged or collected from the customer an electrical inspection fee greater than the fee actually in effect.

~~6.~~ 5. Whenever an electrical installation made by or under the supervision of a master or class B electrician is commenced or in use without

submitting an electrical wiring certificate, as directed in subsection 2, the certificate may be considered late and the normal inspection fee, as required under this section, is increased in the amount of fifty dollars. In addition, when time and travel are expended by employees of the board to obtain a late certificate, an investigative fee may be charged to cover the costs incurred. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.

- ~~7.~~ 6. Corrections. Whenever a correction order is written and corrections are not completed within the allotted time, there shall be an administration charge of fifty dollars, which shall be paid to the board by the master or class B electrician.
- ~~8.~~ 7. All reinspections shall be paid for by the electrical contractors at a cost of fifty dollars per hour with a minimum charge of one hundred dollars.
- ~~9.~~ 8. The electrical inspection fee shall be based on the total amount of the electrical contract or total cost to the owner including extras.
- ~~10.~~ 9. The following items need not be included in the cost:
 - a. Appliances, including dishwashers, heat pumps, air-conditioners, disposals, and similar equipment.
 - b. Heating, ventilating, and air-conditioning (HVAC) units.
 - c. Electric motors, PLC, generators.
 - d. Industrial machines.
- ~~11.~~ 10. The electrical contractor is responsible to collect the proper inspection fee on each installation. When the owner furnishes the material and the electrical contractor furnishes the labor, the owner shall provide the electrical contractor with the total amount expended for electrical materials used in connection with the installation, and the electrical contractor shall then calculate and collect the necessary inspection fee from the owner. Whenever electrical materials are donated or removed from an existing installation and placed at another location or labor is donated to an installation, the electrical contractor shall estimate the cost of these materials and labor and include the amount in the job cost for the purpose of calculating the proper inspection fee.
- ~~12.~~ 11. The inspection fee for all electrically driven irrigation machines, motor-driven passenger or freight elevators and dumbwaiters, and out-of-state structures or skids installed in North Dakota shall be as follows:

Elevators and dumbwaiters having horsepower rating up to 5 horsepower - \$25.00

Elevators and dumbwaiters having horsepower rating 5 horsepower through 15 horsepower - \$40.00

Elevators and dumbwaiters having horsepower rating over 15 horsepower - \$60.00

Electrically driven irrigation machines - \$50.00

Out-of-state structures or skids - based on inspection fee schedule.

The companies having supervision of elevators, dumbwaiters, electrically driven irrigation machine, or out-of-state structures or skids installations shall submit reports to the state electrical board. The report shall be completed, signed by owner or manager, and forwarded to the state electrical board, Bismarck, North Dakota, with the inspection fee within fifteen days of completion or use, whichever is first.

~~13.~~ 12. Requested inspections. For inspections not covered in this section or special services, the fee shall be fifty dollars per hour, including travel time, plus mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile traveled.

~~14.~~ 13. ~~For self-wire inspections on wiring done by the owner, the owner is required to notify the state electrical board or authority having jurisdiction before work commences and receive approval to do the work by obtaining a self-wire permission number. The inspection fee shall be as stated in this section, except the minimum shall be fifty dollars. Owner wiring shall be done on residential and farmstead property occupied by the owner. Certification and inspection are required as stated in subsection 1. The owner is required to notify the state electrical board or authority having jurisdiction before work commences. Requests for inspection of owner-wired installations shall be in writing and shall be accompanied by a print or drawing depicting the wiring to be done. Property owners who are self-wiring or doing their own electrical work must comply with the following before any electrical work commences:~~

- a. Notify the state electrical board office of intent to self-wire.
- b. Must own and occupy the residential property or farmstead where the electrical work will be done.
- c. Review plans or drawings depicting wiring to be done with the local electrical inspector.

- d. Inspection fees will be calculated as stated in this subsection with the minimum of no less than fifty dollars.
- e. Certification and inspection are required as stated in this subsection.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; March 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-22. Continuing education requirements.

1. Each master, journeyman, and class B electrician license shall not be renewed unless proof of eight continuing education hours have been submitted, of which a minimum of fifty percent of the hours shall be based on the ~~2011~~ 2014 edition, National Electrical Code. The remaining credits shall be subjects related to the electrical industry. Approval of the course curriculum is at the discretion of the North Dakota state electrical board.
 - a. Electrical continuing education programs will be accepted from technical or trade schools or colleges, electrical trade associations, or individual commercial providers.
 - b. Courses, seminars, and instructors shall have prior approval by the North Dakota state electrical board to receive credit. Request for approval of courses, seminars, and instructors shall be made no later than ten days prior to the board meeting. Board approval of courses, seminars, and instructors accepted expires when the state electrical board adopts an updated edition of the National Electrical Code.
 - c. Application for approval of courses and instructors shall be on a form provided by the North Dakota state electrical board. A complete description (detailed curriculum outlining the subject matter along with the time and sequence of each item) or copies of all materials provided to the attendants shall be submitted.
 - d. Continuing education programs held in other states and not granted prior approval according to this section may be considered for credit if the board is provided with evidence that the educational programs meet the requirements of the state electrical board and are approved for required continuing education credits by the public authority for licensing electricians in that state.

- e. The board shall be notified in writing no later than fifteen days prior to the date, time, and location of the presentation. A representative of the North Dakota state electrical board shall be able to attend without charge and have the authority to audit or review continuing education presentations.
 - f. The board shall withdraw approval of any educational program not in compliance with this section.
 - g. The provider of the presentation shall forward an attendance list to the board on a form supplied by the board within fifteen days following the presentation but no later than March thirty-first of that year. A certificate of completion shall also be provided to each licensee in attendance. Each certificate of completion and attendance list shall include the name of the provider, the name of the instructor, the course identification number, the date and location of presentation, the number of code and noncode hours of instruction for continuing education units, the electrician's name, and the electrician's license number and the last four digits of the social security number. It is the responsibility of the licensee to have a copy of this certificate of completion. The certificates shall be sent to the board only if requested to do so by the board. The provider shall be responsible to keep accurate attendance by periodically checking attendees during the class. For providers that conduct continuing education classes in North Dakota, the attendance record shall be submitted electronically through the North Dakota state electrical board's website.
 - h. Continuing education credits are valid for a period up to two license renewal periods.
2. Instructors shall submit their qualifications to the state electrical board prior to the presentation of the course or seminar. Courses will not be approved unless the instructor has one or more of the following qualifications:
- a. A master electrician with at least one year's experience in electrical inspection.
 - b. A journeyman or master electrician who is certified as an instructor through a vocational education department.
 - c. A person with a valid teaching accreditation from a trade or technical school, college, or university teaching an electrical curriculum.
 - d. A registered or licensed electrical engineer with at least four years' experience in design of premise electrical wiring systems.

- e. A representative from the national fire prevention association, testing laboratories, international association of electrical inspectors, and other product manufacturer representatives with five years' practical experience in the subject taught.
- f. Instructor of an apprenticeship training program.

History: Effective January 1, 1999; amended effective April 1, 2005; April 1, 2008; September 1, 2011; September 1, 2014.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

APPENDIX
Short Cut
At 75° C

Voltage Drop Formulas 167° F

Voltage drop = $\frac{K \times L \text{ ft.} \times I}{C.M.A.}$

C.M.A.

or

C.M.A. = $\frac{K \times L \text{ ft.} \times I}{\% \text{ drop} \times \text{voltage}}$

% drop x voltage

L = length in feet, one way

I = load in amps

E = Volts

C.M.A. = circular-mil area

K-factor = 25.8 multiplying factor for copper, 42.4 multiplying factor for aluminum at 75° C.

Percent drop = permissible voltage drop times voltage of circuit as follows:

$$3\% \text{ of } 208 = 208 \times .03 = 6.24 \text{ volts}$$

$$3\% \text{ of } 120 = 120 \times .03 = 3.6 \text{ volts}$$

$$3\% \text{ of } 240 = 240 \times .03 = 7.2 \text{ volts}$$

$$5\% \text{ of } 240 = 240 \times .05 = 12.0 \text{ volts}$$

Example:

240 volts, 1,000 ft. distance, 10 ampere load, 5% drop

$$25.8 \times 1,000 = 25,800 \times 10 = 258,000$$

258,000 divided by 26,250 (C.M.A. of No. 6) = 9.8 volts (less than 5%)

258,000 divided by 16,510 (C.M.A. of No. 8) = 15.6 volts (more than 5%)

120 volts, 8 ampere load, 100 ft. distance, 3% drop

$$25.8 \times 100 = 2,580 \times 8 = 20,640$$

20,640 divided by 6,530 (C.M.A. of No. 12) = 3.16 volts (less than 3%)

20,640 divided by 4,107 (C.M.A. of No. 14) = 5.0 volts (more than 3%)

or

$$25.8 \times 8 \text{ amps} \times 100 \text{ ft.} = 20,640$$

20,640 divided by 3.6 (volts representing 3%) = 5,733 C.M.A. (No. 12)

For 3-phase circuits, use formula, then multiply the results by .86.

Fire Alarm System Condensed Guide
O - NOT required X - required

Occupancy	Manual Stations	Smoke Detector	Heat Detector	Flow Switch	Fire Station Alarm
Assembly under three hundred	0	0	0	0	0
Assembly over three hundred	X Note 1	0	0	0	0
Amusement buildings	X	X	0	X	X
Hotel-motel					
Nineteen rooms or less	0	X Note 2	0	0	0
Three or more story *	X	X	0	0	0
Hotel-motel					
Twenty rooms or more * and congregate residences	X	X Note 2	X	X	0
Commons area					
Hotels-motels-apartment houses	X	X	X Note 3	Note 5	
Educational					
North Dakota Century Code Section 18-12-16					
Institutional *	X	X	X	X	X
Office - High-rise	X	X	X	X	
Apartments (see #2 above)	0	X	0	0	0
Industrial - Check with the local fire authority or the state fire marshal					
Office building - Check with local jurisdiction					

* State Department of Health rules.

Note 1. Placement of devices shall be at exit on each level.

Note 2. Detectors required in each sleeping room and one detector for each seventy-five feet [22.86 meters] of hallway.

Note 3. When automatic sprinklers and flow detectors are installed, they shall be connected to the alarm system. Heat detectors are required in mechanical rooms, laundry rooms, and storerooms.

Note 4. Institutional includes hospitals, nursing homes, jails, and similar facilities, including any occupancy where movement is restricted.

Note 5. If equipped with sprinkler.

Note 6. Emergency voice alarm and signal.

Note 7. One hundred or more sprinkler heads.

All signaling devices for all occupancies shall meet Americans with Disabilities Act (ADA) requirements (check ADA requirements).

Smoke detectors in hotels, motels, and apartments are not to be tied to the central alarm system (alarm in room or apartment only).

Central alarm trouble indicator shall be located where it will be heard.

Systems with two or more zones shall have an annunciator panel located at an entrance approved by the local fire department.

Cities shall have additional or more stringent requirements.

Be aware the table is the minimum and the owner or designer shall ask for more.

TITLE 28

**STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND
LAND SURVEYORS**

JULY 2014

CHAPTER 28-02.1-02

28-02.1-02-01. Processing of applications.

1. All information received from references named by the applicant must be received at the board office. No member of the board or relative of the applicant may be named as a reference.
2. An applicant for registration as a professional engineer or professional land surveyor may not be admitted to the examination until the applicant's application has been received, processed, and approved by the board.
3. An applicant may not confer with any member of the board regarding an applicant's case while it is pending before the board. Any applicant may appear before the board at a scheduled meeting.
4. Applicants for registration as a professional engineer or professional land surveyor whose applications have been approved, but who fail to appear for examination four consecutive times, must be deemed to have withdrawn their applications. Further consideration must be based on reapplication.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010; July 1, 2014.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-08, 43-19.1-12

CHAPTER 28-02.1-04

28-02.1-04-01. General requirements. All applicants must:

1. Complete the applications on forms approved by the board.
2. Complete the application under oath. An affidavit is required.
3. Furnish references as required but may not include board members or relatives of the applicant as references.
4. ~~In the case of student applicants for the fundamentals of engineering and for the fundamentals of land surveying examinations, certification by the dean of the college or the dean's appropriate designee agreed upon by the board may be used in lieu of references.~~

History: Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004; October 1, 2010; July 1, 2014.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-12

CHAPTER 28-02.1-06

28-02.1-06-02. Qualifications and requirements - Professional land surveyor by examination. A person applying for registration as a professional land surveyor by examination must have a land surveyor intern certificate and the appropriate experience as required by North Dakota Century Code section 43-19.1-16. The experience must be ~~subsequent to graduation and~~ prior to writing the principles and practice of surveying examination.

Upon successful completion of the principles and practice of surveying examination, professional land surveyor applicants must pass an examination pertaining to land procedures and practices in North Dakota.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010; July 1, 2014.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-16, 43-19.1-16.1

CHAPTER 28-02.1-08

28-02.1-08-02. Seals.

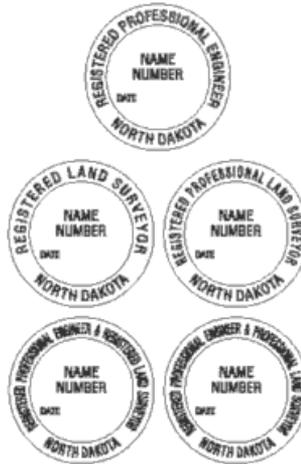
1. The board has adopted standard seals or stamps similar to those illustrated in this section for use by registered professional engineers and professional land surveyors as prescribed by law. The seal authorized by the state board of registration for professional engineers and land surveyors for registrants is of the crimp type or rubber stamp, or electronic. Seals prepared after July 1, 2005, shall be of a design so the seal consists of two concentric circles with the diameter of the outer circle being one and three-fourth inches [44.45 millimeters] and the diameter of the inner circle being one and one-fourth inches [31.75 millimeters]. The upper portion between the two circles shall bear whichever of the following phrases is applicable to the registrant: "Registered Professional Engineer", "Registered Professional Land Surveyor", or "Registered Professional Engineer & Land Surveyor". Professional land surveyors who purchased a seal with the phrase "Registered Land Surveyor" prior to January 1, 2011, are not required to purchase a new seal. At the bottom of the annular space between the two circles shall appear the inscription "North Dakota"; the inner circle shall contain the name of the registrant, registration number, and the word "Date". The registration number assigned should be centered in the inner area of the seal in the space occupied by the word "NUMBER" and the size of the numbers should not be larger than the word "NAME". The words and parentheses "(NUMBER)" and "(NAME)" should not appear on the seal.
2. Seals may be of rubber stamp, metal impression type, computer-generated, or electronically generated. Electronic seals may be used but an electronic seal may not be used in any document ~~that is being transmitted in an editable digital format~~ unless the document contains a signature that meets the requirements of a digital signature.
3. A registrant shall ~~superimpose the registrant's personal original signature~~ also apply the registrant's signature across the face of the seals for a nondigital signature. A digital signature is not required to be across the face of the seal. A rubber stamp or facsimile signature is not allowed. ~~The signature must be placed across the face and beyond the circumference of the seal.~~ The signature and seal must also be dated. No further certification need accompany the seal and signature.
4. The term "signature", as used herein, shall mean a handwritten identification containing the name of the person who applied it; or for electronic or digital documents shall mean a digital signature that shall include an electronic authentication process in a secure mode that is attached to or logically associated with the electronic document to which it is applied. The digital signature must be unique to, and under the sole control of, the person using it; it must also be capable of

verification and be linked to a document in such manner that the digital signature is invalidated if any data on the document is altered.

History: Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004; October 1, 2010; July 1, 2014.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-21



28-02.1-08-03. Use of seals.

1. The original copies of all drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product other than earthwork cross sections must receive a seal and ~~original~~ signature.
 - a. Studies, reports, and project specifications need the seal and ~~original~~ signature only on a single introductory sheet.
 - b. Every sheet or drawing in an original set of engineering plans must receive a seal and ~~original~~ signature.
2. Registrants may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering and land surveying documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers or land surveyors who prepared the segment.
3. Registrants shall not affix their signatures or seals to any engineering or land surveying plan or document dealing with subject matter for which the registrant lacks competence by virtue of education or experience, nor to any such plan or document not prepared under the registrant's direct supervisory control.

4. A registrant shall not contract with a nonlicensed individual to provide these professional services.
5. A registrant may affix the seal and signature to drawings and documents depicting the work of two or more professionals, either from the same or different disciplines, provided it is designated by a note under the seal the specific subject matter for which each is responsible.
6. Any changes made to the final plans, specifications, drawings, reports, or other documents after final revision and sealing by the registrant are prohibited by any person other than the registrant, or another registered individual who assumes responsible charge for the directly related documents, except as provided herein. A duly registered individual making changes to final sealed documents must assume responsible charge and reseal the directly related final documents unless the changes are construction phase revisions, including record drawings, which do not affect the functional design, and such revisions adequately reflect that changes have been made and the original plans are available for review.
7. Mere review of work prepared by another person, even if that person is the registrant's employee, does not constitute responsible charge.
8. A registrant may not affix the registrant's seal or signature to documents having titles or identities excluding the registrant's name unless:
 - a. Such documents were developed by the registrant or under the registrant's responsible charge and the registrant has exercised full authority to determine their development.
 - b. A registrant who is required to use the standard drawings of a sponsoring agency need not affix the registrant's seal and signature to said standard drawings.
 - c. The registrant is providing the registrant's opinion as to the compliance of the document with specific identified rules or statutes and it is clearly identified that the registrant only reviewed the document and had no technical control over the contents of the document.
9. Electronic reproductions of drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product that are distributed to reviewing agencies, owners, clients, contractors, suppliers, and others ~~shall be accompanied by the following statement~~ must either contain the electronic seal and digital signature as required by this chapter, or have a digital signed and electronic sealed statement from the registrant transmitting the same which shall read: "This document(s) was originally issued and sealed by (name), Registration Number (number) on (date) and the ".The statement shall

also include the statement that "The original documents are stored at (location)", or "The original documents have been destroyed and are no longer available", whichever is applicable. Sets of plans or drawings must have this statement attached to every sheet of the set. For specifications, reports, and studies, only the cover or introductory sheet need include this statement.

10. Paper or hard copy reproductions of drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product that are distributed to reviewing agencies, owners, clients, contractors, suppliers, and others shall contain a reproduction of the seal and signature. A new seal and original signature will not be required with such paper distribution.
11. Working drawings and unfinished documents must comply with North Dakota Century Code section 43-19.1-21.

History: Effective October 1, 2004; amended effective October 1, 2010; July 1, 2014.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-21

TITLE 69.5
NORTH DAKOTA RACING COMMISSION

JULY 2014

CHAPTER 69.5-01-08

69.5-01-08-04. Calculation and distribution of pools.

1. **General.** The only pari-mutuel wagering pools permitted are for win, place, show, daily double, exacta, quinella, trifecta, pick (n), superfecta, twin trifecta, tri-superfecta, twin superfecta, twin quinella, mad scramble, pick 1-2-3, pick 1-2-3-4-5, ~~and~~ 123racing Pick-n Wager©, and Tote-X® win. In each pool there must be a separate and independent calculation and distribution. From each pool there must be deducted by each association the commissions as provided by state law. The remainder of the moneys in the pool constitute the net pool for distribution as payoff to ticketholders as set out in subsections 2 through 18.
2. **Win pool.** The amount wagered on the horse or betting interest which finished first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the horse or betting interest finishing first, such quotient being the profit per dollar wagered to win; payoff includes return of amount wagered and profit thereon.
 - a. In the event of a dead heat for first involving horses of two different betting interests, the win pool is distributed as if a place pool; if involving horses of three different betting interests, the win pool is distributed as if a show pool.
 - b. In the event no win ticket is sold on the horse which finishes first, the net win pool is distributed to holders of win tickets on the horse finishing second.
3. **Place pool.** The amounts wagered to place on the first two horses to finish are deducted from the net pool to determine the profit; the profit is divided into two equal amounts; one-half of the profit is divided by the amount wagered to place on the first finisher, such quotient being the profit per dollar wagered to place on the first finisher; and one-half

of the profit is divided by the amount wagered to place on the second finisher, such quotient being the profit per dollar wagered to place on such second finisher; payoffs include return of amount wagered and profit thereon as to each of the first two finishers.

- a. In the event of a dead heat for first between horses representing the same betting interests, the place pool is distributed as if a win pool; if between horses representing two different betting interests, the place pools distributed as if one betting interest finished first and the other finished second; if between horses representing three different betting interests, the place pool is distributed as if a show pool.
 - b. In the event of a dead heat for second between horses representing the same betting interest, the place pool is distributed as if no dead heat occurred; if between horses representing two or more different betting interests, the profit is divided in half, with one-half allocated for wagers to place on the horse which finished first, and other half divided equally so as to allocate one-fourth of the profit on the net place pool for wagers to place on each of the two horses finishing in a dead heat for second, or one-sixth of the profit for wagers to place on each of three horses finishing in a dead heat for second.
 - c. In the event the first and second finishers comprise a single betting interest, the place pool is distributed as if a win pool.
 - d. In the event no place ticket is sold on a horse which finishes first or second, then the horse which finished third shall replace the horse in the distribution of wagers in the place pool.
4. **Show pool.** The amounts wagered to show on the first three horses to finish are deducted from the net pool to determine the profit. The profit is divided into three equal amounts; one-third of the profit is divided by the amount wagered to win on the first finisher, such quotient being the profit per dollar wagered to show on such first finisher; one-third of the profit is divided by the amount wagered to show on the second finisher, such quotient being the profit per dollar wagered to show on such second finisher; and one-third of the profit is divided by the amount wagered to show on the third finisher, such quotient being the profit per dollar wagered to show on such third finisher. Payoffs include return of amount wagered and profits thereon as to each of the first three finishers.
- a. In the event of a dead heat for first: between two horses involving different betting interests, or three horses involving three different betting interests, the show pool is distributed as if no dead heat occurred; if between two horses involving the same betting interest, two-thirds of the profit is allocated to wagers to show on the coupled betting interest, and one-third allocated to wagers to show on the other horse among the first three finishers; if between three horses

involving one betting interest, the show pool is distributed as if a win pool.

- b. In the event of a dead heat for second: between two horses involving two different betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving the same betting interest, two-thirds of the profit is allocated to wagers to show on the coupled betting interest, and one-third allocated to wagers to show on the horse finishing first; if between three horses involving one, two, or three betting interests, one-third of the profit is allocated to wagers to show on the horse finishing first, and the remaining two-thirds of the profit is divided equally by the number of betting interests finishing in a dead heat for second for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for second.
- c. In the event of a dead heat the third: between horses involving the same betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving two or more betting interests, two-thirds of the profit shall be allocated to wagers to show on the first two finishers, and the remaining one-third is divided equally by the number of betting interests finishing in a dead heat for third for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for third.
- d. In the event the first three horses to finish comprise one betting interest, the show pool must be distributed as a win pool. In the event two horses coupled as a single betting interest finish first and second, or first and third, or second and third, two-thirds of the profit must be allocated to wagers to show on the other horse among the first three finishers.
- e. In the event one horse coupled in the betting by reason of being in the mutuel field or part of a mutuel entry finishes first or second and another horse included in the same betting interest finishes in a dead heat for third: one-half of the profit in the show pool must be allocated to wagers on such field or entry, one-third of the profit in the show pool must be allocated to wagers on the horse finishing first or second, and the remaining one-sixth of such profit must be allocated to wagers on the horse finishing in a dead heat for third with such field or entry.
- f. In the event only two horses finish, the show pool, if any, must be distributed as if a place pool; if only one horse finishes, the place and show pools, if any, must be distributed as if a pool; if no horse finishes, all money wagered on such race must be refunded upon presentation and surrender of pari-mutuel tickets sold thereon. In the event no show ticket is sold on a horse which finishes first, or

second, or third, then, the horse which finished fourth shall replace that horse in the distribution of wager in the show pool.

5. **Daily double pool.** The amount wagered on the winning combination, such being the horse or betting interest which finishes first in the first daily double race, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning daily double combination; payoff includes the amount wagered and profit thereon.
 - a. In the event of a dead heat for first involving two different betting interests, in one of the two daily double races, the daily double pool is distributed as if a place pool, with half the profit allocated to wagers combining the single winner of one daily double race and of the betting interests involved in the dead heat in the other daily double race, with the other half of the profit allocated to wagers combining the single winner of one daily double race and the other betting interest involved in the dead heat in the other daily double race.
 - b. In the event of dead heats for first involving different betting interests in each of the daily double races, resulting in four, or six, or nine, winning combinations for proportionate allocation for each such winning daily double wager.
 - c. In the event no daily double ticket is sold combining the horse or betting interest which finishes first in one of the daily double races, the daily double pool is distributed as if a win pool with the profit allocated to the wagering combination which includes the horse or betting interest which finished first in one of the daily double races.
 - d. In the event no daily double ticket is sold combining the horses or betting interest which finished first in both the first and second race of the daily double, then the winning combination for distribution of the daily double profit must be that combining the horses or betting interests which finished second in each of the daily double races.
 - e. If after daily double wagering has commenced and a horse not coupled with another as a betting interest in the first race of the daily double is excused by the stewards or is prevented from racing because of failure of the starting gate to open properly, then daily double wagers combining such horse must be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.
 - f. If, prior, to closing of the daily double wagering, a scheduled starter in the second half on the daily double which is not coupled in the betting with another horse is excused by the stewards, then daily

double wagers combining such horse must be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.

- g. If after the first race of the daily double has been run, and a horse not coupled with another as a betting interest in the second race of the daily double is excused by the stewards or prevented from racing because of failure of the starting gate door to open properly, then daily double wagers combining the winner of the first daily double race with such horses prevented from racing in the second daily double race must be allocated consolation payoffs.
 - h. Consolation daily double payoffs must be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or betting interest scheduled to start in the second daily double race, such quotient being the consolation payoff per dollar wagered combining the winner of the first daily double with such horse prevented from riding in the second daily double race. Such consolation payoffs must be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.
 - i. If for any reason the first daily double race is canceled or declared "no race" by the stewards, then the entire daily double pool must be refunded upon presentation and surrender of daily double tickets thereon. If for any reason the second daily double race is canceled or declared "no race" by the stewards after the first daily double race is declared official, then the net daily double pool must be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.
 - j. If no daily double ticket is sold requiring distribution, then the entire daily double pool must be refunded upon presentation and surrender of daily double tickets thereon.
6. **Quinella pool.** The amount wagered on the winning combination, such being the first two finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning quinella combination; payoff includes the amount wagered and profit thereon.
- a. In the event of a dead heat for first: between horses involving two different betting interests, the net quinella pool is distributed as if no dead heat occurred; if between horses involving three different betting interests, the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the three horses finishing in a dead heat for first.

- b. In the event of a dead heat for second: between horse involving two different betting interests, the net quinella pool is distributed as if a place pool and is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second; if between horses involving three different betting interests, the net quinella pool is distributed as if a show pool, and allocated to wagers combining the first horse with each of the three horses finishing in a dead heat for second.
- c. In the event horses representing a single betting interest finish first and second, the net quinella pool must be allocated to wagers combining such single betting interest with the horse or betting interest which finishes third.
- d. In the event no quinella ticket is sold combining:
 - (1) The first finisher with one of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second.
 - (2) The second finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two horses which finished in the dead heat for second.
 - (3) The first finisher with either of the horses finishing in a dead heat for second or combining the two horses which finished in a dead heat for second, then the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the first three finishers with any other horses.
 - (4) The first two finishers, then the net quinella pool must be distributed as if a place pool and is allocated to wagers combining the first finisher with any other horses, and wagers combining the second finisher with any other horse.
 - (5) Horses or betting interest as would require distribution, then the entire quinella pool must be refunded upon presentation and surrender of quinella tickets thereon.
- 7. **Exacta pool.** The exacta pool is a contract by the purchaser of a ticket combining two horses in a single race, selecting the two horses that will subsequently finish first and second in that race. Payment of the ticket may be made only to the purchaser who has selected the same order of finish as officially posted.

- a. The exacta is not a parlay and has no connection with or relation to the win, place, and show betting and will be calculated as an entirely separate pool.
 - b. If no ticket is sold on the winning combination of an exacta pool, the net pool must be distributed equally between holders of tickets selecting the winning horse to finish first or holders of tickets selecting the second-place horse to finish second or both.
 - c. If no ticket is sold that would require distribution of an exacta pool to winners as above defined, the association shall make a complete and full refund of exacta pool.
 - d. In case of a dead heat between two horses for first place, the net exacta pool must be calculated and distributed as a place pool to holders of tickets of the winning combinations. In case of a dead heat between two horses for second place, the exacta pool must be figured as a place pool, the holders of tickets combining the winning horse and the two horses finishing second participating in the payoff.
 - e. In the event of a dead heat for second place, if no ticket is sold on one of the two winning combinations, the entire net pool must be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the exacta pool must be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.
 - f. In the event of an entry finishing first and second, the net exacta pool must be distributed to holders of tickets selecting the entry to win combined with the horse finishing third.
8. **Trifecta pool.** The trifecta pool is a contract by the purchaser of a ticket combining three horses in a single race that will subsequently finish first, second, and third in that race. Payment of the ticket may be made only to the purchaser who has selected the same order of finish as officially posted.
- a. The trifecta is not a parlay and has no connection with the relation to the win, place, and show betting and will be calculated as an entire separate pool.
 - b. If no ticket is sold on the winning combination of the trifecta pool, the net pool must be distributed in that order. If no ticket is sold combining the win and place finish then that pool must be distributed to the holders of tickets selecting the winner. If less than three horses finish the payoff will be made to holders of

tickets selecting the finishing horses in order, ignoring the balance of the selection.

- c. If no ticket is sold that would require distribution of the net trifecta pool to a winner as above defined, the association shall make a full refund of the trifecta pool.
- d. In the event of a dead heat or dead heats all trifecta tickets selecting the correct order of finish counting a horse in a dead heat as finishing in either position dead heated must be winning tickets. The payoff will be calculated as a place pool.
- e. In the event of a scratch in the trifecta, no exchanges will be made. All tickets which include the scratched horse are eliminated from further participation of the trifecta pool and will be refunded.

9. Pick (n) pools.

- a. The pick (n) requires selection of the first-place finisher in each of a designated number of contests. The association must obtain written approval from the commission concerning the scheduling of pick (n) contests, the designation of one of the methods prescribed in subdivision b, and the amount of any cap to be set on the carryover. Any changes to the approved pick (n) format require prior approval from the commission.
- b. The pick (n) pool shall be apportioned under one of the following methods:
 - (1) Method 1, pick (n) with carryover. The net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; and the remainder shall be added to the carryover.
 - (2) Method 2, pick (n) with minor pool and carryover. The major share of the net pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) contests, the minor who selected the first-place finisher in the greatest number of

pick (n) contests; and the major share shall be added to the carryover.

- (3) Method 3, pick (n) with no minor pool and no carryover. The net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests, based upon the official order of finish. If there are no winning wagers, the pool is refunded.
- (4) Method 4, pick (n) with minor pool and no carryover. The major share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the greatest number of pick (n) contests, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) contests, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool. If there are no winning wagers, the pool is refunded.
- (5) Method 5, pick (n) with minor pool and no carryover. The major share of net pick (n) pool shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all pick (n) contests, the entire net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests. If there are no wagers selecting the first-place finisher in a second greatest contest, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) contests. If there are no winning wagers, the pool is refunded.
- (6) Method 6, pick (n) with minor pool, jackpot pool, major carryover and jackpot carryover. Predetermined percentages of the net pick (n) pool shall be set aside as a major pool, minor pool, and jackpot pool. The major share of the net pick (n) pool and the major carryover, if any, shall be distributed to those who selected the first-place finisher of each of the pick (n) contests, based on the official order of finish. If there are no tickets selecting the first-place finisher in each of the pick (n) contests, the major net pool shall be added to the major carryover. If there is only one single ticket selecting

the first-place finisher of each of the pick (n) contests, based on the official order of finish, the jackpot share of the net pick (n) pool and the jackpot carryover, if any, shall be distributed to the holder of that single ticket, along with the major net pool and the major carryover, if any. If more than one ticket selects the first-place finisher of each of the pick (n) contests the jackpot net pool shall be added to the jackpot carryover. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher of the second greatest number of pick (n) contests, based on the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) contests, the minor net pool of the pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher of the greatest number of pick (n) contests.

- (7) Method 7, pick (n) with no minor pool and carryover. The net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) contests, based on the official order of finish. If there are no such wagers, the net pick (n) pool shall be added to the carryover.

c. If there is a dead heat for the first in any pick (n) contests involving:

- (1) Contestants representing the same betting interest, the pick (n) pool shall be distributed as if no dead heat occurred.
- (2) Contestants representing two or more betting interests, the pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

d. Should a betting interest in any of the pick (n) contests be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the host association for the contest as the close of wagering on that contest, shall be substituted for the scratch betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program combinations with substituted betting interests which became winners as a result to the substitution, in addition to the normal winning combination.

e. The pick (n) pool shall be canceled and all pick (n) wagers for the individual performance shall be refunded if:

- (1) All three contests included as part of a pick 3 are canceled or declared no contest.

- (2) At least three contests included as part of a pick 4, pick 5, or pick 6 are canceled or declared no contest.
 - (3) At least four contests included as part of a pick 7, pick 8, or pick 9 are canceled or declared no contest.
 - (4) At least five contests included as part of a pick 10 are canceled or declared no contest.
- f. If at least one contest included as part of a pick (n) is canceled or declared no contest, but not more than the number specified in subdivision e, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous performances.
- g. The pick (n) carryover may be capped as designated level approved by the commission so that if, at the close of any performance, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the pick (n) carryover is frozen, one hundred percent of the net pool, part of which ordinarily would be added to the pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of pick (n) contests for that performance.
- h. A written request for permission to distribute the pick (n) carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
- i. Should the pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests. The pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
- (1) Upon written approval from the commission as provided in subdivision h.
 - (2) Upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick (n) wagering to another or when the pick (n) is discontinued.

(3) On the closing performance of the meet or split meet.

- j. If for any reason, the pick (n) carryover must be held over to the corresponding pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick (n) carryover plus accrued interest shall then be added to the net pick (n) pool of the following meet on a date and performance so designated by the commission.
- k. With the written approval of the commission, the association may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.
- l. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.
- m. The association may suspend previously approved pick (n) wagering with the prior approval of the commission. Any carryover shall be held until the suspended pick (n) wagering is reinstated. An association may request approval of a pick (n) wager or separate wagering pool for specific performances.

10. Twin trifecta pools.

- a. The twin trifecta requires selection of the first three finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin trifecta contest must be exchanged for a free ticket on the second twin trifecta contest in order to remain eligible for the second-half twin trifecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin trifecta contest. Winning first-half twin trifecta wagers will receive both an exchange and a monetary payout. Both of the designated twin trifecta contests shall be included in only one twin trifecta pool.
- b. After wagering closes for the first half of the twin trifecta and commissions have been deducted from the pool, the net pool shall then be divided into separate pools: the first-half twin trifecta pool and the second-half twin trifecta pool.
- c. In the first twin trifecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin trifecta contest:

- (1) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers; then
 - (2) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers; then
 - (3) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers; then
 - (4) The entire twin trifecta pool shall be refunded on twin trifecta wagers for that contest and the second-half shall be canceled.
- d. If no first-half twin trifecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half twin trifecta pool. In such case, the second-half twin trifecta pool shall be retained and added to any existing twin trifecta carryover pool.
- e. Winning tickets from the first-half of the twin trifecta shall be exchanged for tickets selecting the first three finishers of the second-half of the twin trifecta. The second-half twin trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second twin trifecta contest:
- (1) As a single price pool, including any existing carryover moneys, to those whose combination finished in correct sequence as the first three betting interests; but if there are no such tickets; then
 - (2) The entire second-half twin trifecta pool for the contest shall be added to any existing carryover moneys and retained for the corresponding second-half twin trifecta pool of the next consecutive performance.
- f. If a winning first-half twin trifecta ticket is not presented for cashing and exchange prior to the second-half twin trifecta contest, the ticket holder may still collect the monetary value associated with the first-half twin trifecta pool but forfeits all rights to any distribution of the second-half twin trifecta pool, except where expressly provided in subdivision m.
- g. Coupled entries and mutual fields may be permitted in twin trifecta contests with the prior written approval of the commission.

- h. Should a betting interest in the first-half of the twin trifecta be scratched, those twin trifecta wagers including the scratched betting interest shall be refunded.
- i. Should a betting interest in the second-half of the twin trifecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.
- j. If, due to a late scratch, the number of betting interests in the second-half of the twin trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half twin trifecta pool for that contest as a single price pool, but not the twin trifecta carryover.
- k. If there is a dead heat or multiple dead heats in either the first-half or second-half of the twin trifecta, all twin trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:
 - (1) The first-half of the twin trifecta, the payout shall be calculated as a profit split.
 - (2) The second-half of the twin trifecta, the payout shall be calculated as a single price pool.
- l. If either of the twin trifecta contests are canceled prior to the first twin trifecta contest or the first twin trifecta contest is declared no contest, the entire twin trifecta pool shall be refunded on twin trifecta wagers for the contest and the second-half shall be canceled.
- m. If the second-half twin trifecta contest is canceled or declared no contest, all exchange tickets and outstanding first-half winning twin trifecta tickets shall be entitled to the net twin trifecta pool for that contest as a single price pool, but not twin trifecta carryover. If there are no such tickets, the net twin trifecta pool shall be distributed as described in subdivision c.
- n. The twin trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the twin trifecta carryover equals or exceeds the designated cap, the twin trifecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the twin trifecta carryover is frozen, one hundred percent of the net twin trifecta pool for each individual contest shall be distributed to winners of the first-half of the twin trifecta pool.

- O. A written request for permission to distribute the twin trifecta carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

- P. Should the twin trifecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the twin trifecta after completion of the first-half of the twin trifecta:
 - (1) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers; then
 - (2) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers; then
 - (3) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers; then
 - (4) As a single price pool to holders of valid exchange tickets.
 - (5) As a single price pool to holders of outstanding first-half winning tickets.

- Q. Contrary to subdivision d, during a performance designated to distribute the twin trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the twin trifecta. If there are no wagers correctly selecting the first-place, second-place, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place and second-place betting interests. If there are no wagers correctly selecting the first-place and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only in the first-half of the twin trifecta, all first-place tickets will become winners and will receive one hundred percent of that day's net twin trifecta pool and any existing twin trifecta carryover.

- R. The twin trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
 - (1) Upon written approval from the commission as provided in subdivision o.

- (2) Upon written approval from the commission when there is a change in the carryover cap or when the twin trifecta is discontinued.
 - (3) On the closing performance of the meet or split meet.
- s. If, for any reason, the twin trifecta carryover must be held over to the corresponding twin trifecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The twin trifecta carryover plus accrued interest shall then be added to the second-half twin trifecta pool of the following meet on a date and performance so designated by the commission.
- t. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.
- u. The association must obtain written approval from the commission concerning the scheduling of twin trifecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved twin trifecta format require prior approval from the commission.

11. **Tri-superfecta pools.**

- a. The tri-superfecta requires selection of the first three finishers, in the exact order, in the first of two designated contests and the first four finishers, in exact order, in the second of the two designated contests. Each winning ticket for the first tri-superfecta contest must be exchanged for a free ticket on the second tri-superfecta contest in order to remain eligible for the second-half tri-superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second tri-superfecta contest. Winning first-half tri-superfecta tickets will receive both an exchange and a monetary payout. Both of the designated tri-superfecta contests shall be included in only one tri-superfecta pool.
- b. After wagering closes for the first-half of the tri-superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools, the first-half tri-superfecta pool and the second-half tri-superfecta pool.

- c. In the first tri-superfecta contest only, winning tickets shall be determined using the following precedence, based upon the official order of finish for the first tri-superfecta contest:
 - (1) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers; then
 - (2) As a single price pool to those whose combination included, in correct sequence as the first two betting interests; but if there are no such wagers; then
 - (3) As a single price pool to those whose combination correctly selected the first-place betting interests, but if there are no such wagers; then
 - (4) The entire tri-superfecta pool shall be refunded on tri-superfecta wagers for that contest and the second-half shall be canceled.
- d. If no first-half tri-superfecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half tri-superfecta pool. In such case, the second-half tri-superfecta pool shall be retained and added to any existing tri-superfecta carryover pool.
- e. Winning tickets from the first-half of the tri-superfecta shall be exchanged for tickets selecting the first four finishers of the second-half of the tri-superfecta. The second-half tri-superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second tri-superfecta contest:
 - (1) As a single price pool, including any existing carryover moneys, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets; then
 - (2) The entire second-half tri-superfecta pool for that contest shall be added to any existing carryover moneys and retained for the corresponding second-half tri-superfecta pool of the next performance.
- f. If a winning first-half tri-superfecta ticket is not presented for cashing and exchange prior to the second-half tri-superfecta contest, the ticket holder may still collect the monetary value associated with the first-half tri-superfecta pool but forfeits all rights to any distribution of the second-half tri-superfecta pool, except where expressly provided in subdivision m.

- g. Couple entries and mutuel fields may be permitted in tri-superfecta contests with the prior written approval of the commission.
- h. Should a betting interest in the first-half of the tri-superfecta be scratched, those tri-superfecta tickets, including the scratched betting interest shall be refunded.
- i. Should a betting interest in the second-half of the tri-superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.
- j. If, due to a late scratch, the number of betting interests in the second-half of the tri-superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half tri-superfecta pool for that contest as a single price pool, but not the tri-superfecta carryover.
- k. If there is a dead heat or multiple dead heats in either the first-half or second-half of the tri-superfecta, all tri-superfecta tickets selecting the correct order of finish counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner, in the case of a dead heat occurring in:
 - (1) The first-half of the tri-superfecta, the payout shall be calculated as a profit split.
 - (2) The second-half of the tri-superfecta, the payout shall be calculated as a single price pool.
- l. If either of the tri-superfecta contests are canceled prior to the first tri-superfecta contest or the first tri-superfecta contest is declared no contest, the entire tri-superfecta pool shall be refunded on tri-superfecta wagers for that contest and the second-half shall be canceled.
- m. If the second-half of the tri-superfecta contest is canceled or declared no contest, all exchange tickets and outstanding first-half winning tri-superfecta tickets shall be entitled to the net tri-superfecta pool for that contest as a single price pool, but not the tri-superfecta carryover. If there are no such tickets, the net tri-superfecta pool shall be distributed as described in subdivision c.
- n. The tri-superfecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the tri-superfecta carryover equals or exceeds the designated cap, the tri-superfecta carryover will be

frozen until it is won or distributed under other provisions of this rule. After the second-half tri-superfecta carryover is frozen, one hundred percent of the net tri-superfecta pool for each individual contest shall be distributed to winners for the first-half of the tri-superfecta pool.

- O. A written request for permission to distribute the tri-superfecta carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
- P. Should the tri-superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the tri-superfecta after completion of the first-half of the tri-superfecta:
 - (1) As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers; then
 - (2) As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers; then
 - (3) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers; then
 - (4) As a single price pool to those whose combination included, in correct sequence, the first-place betting interests only; but if there are no such wagers; then
 - (5) As a single price pool to holders of valid exchange tickets.
 - (6) As a single price pool to holders of outstanding first-half winning tickets.
- Q. Contrary to subdivision d, during a performance designated to distribute the tri-superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the tri-superfecta. If there are no wagers correctly selecting the first-place, second-place, and third-place finishers, in their exact order, then exchange tickets shall be issued or combinations correctly selecting the first-place and second-place betting interests. If there are no wagers correctly selecting the first-place and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the

first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the tri-superfecta, all first-half tickets will become winners and will receive one hundred percent of that day's net tri-superfecta pool and any existing tri-superfecta carryover as a single price pool.

- r. The tri-superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
 - (1) Upon written approval from the commission as provided in subdivision o.
 - (2) Upon written approval from the commission when there is a change in the carryover cap or when the tri-superfecta is discontinued.
 - (3) On the closing performance of the meet or split meet.
- s. If, for any reason, the tri-superfecta carryover must be held over to the corresponding tri-superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The tri-superfecta carryover plus accrued interest shall then be added to the second-half tri-superfecta pool of the following meet on a date and performance so designated by the commission.
- t. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.
- u. The association must obtain written approval from the commission concerning the scheduling of tri-superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to be approved tri-superfecta format require prior approval from the commission.

12. **Twin superfecta pools.**

- a. The twin superfecta requires selection of the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin superfecta contest must be exchanged for a free ticket on the second twin superfecta contest in order to remain eligible for the second-half twin superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second

twin superfecta contest. Winning first-half twin superfecta tickets will receive both an exchange and a monetary payout. Both of the designated twin superfecta contests shall be included in only one twin superfecta pool.

- b. After wagering closes for the first-half of the twin superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools: the first-half twin superfecta pool and the second-half twin superfecta pool.

13. **Superfecta pools.**

- a. The superfecta requires selection of the first four finishers in their exact order for a single contest.
- b. The net superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
 - (1) As a single price pool to those whose combination finished in correct sequence as the first four betting interests, but if there are no such wagers; then
 - (2) As a single price pool to those whose combination included, in correct sequence, the first three betting interests, but if there are no such wagers; then
 - (3) As a single price pool to those whose combination included, in correct sequence, the first two betting interests, but if there are no such wagers; then
 - (4) As a single price pool to those whose combination correctly selected the first-place betting interest only, but if there are no such wagers; then
- c. If less than four betting interests finish and the contest is declared official, payouts will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.
- d. If there is a dead heat for first involving:
 - (1) Contestants representing the four or more betting interests, all of the wagering combinations selecting the four betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.
 - (2) Contestants representing three betting interests, all of the wagering combinations selecting the three dead-heated

betting interests, irrespective of order, along with the fourth-place betting interest shall share in a profit split.

- (3) Contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.

e. If there is a dead heat for second involving:

- (1) Contestants representing three or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three betting interests involved in the dead heat for second share in a profit split.

- (2) Contestants representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place betting interests shall share in a profit split.

f. If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence along with any two of the betting interests involved in the dead heat for third shall share in a profit split.

g. If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth shall share in a profit split.

h. Coupled entries and mutual fields shall be prohibited in superfecta contests.

14. **Twin quinella pools.**

a. The twin quinella requires selection of the first two finishers, irrespective of order, in each of two designated contests. Each winning ticket for the first twin quinella contest must be exchanged for a free ticket on the second twin quinella contest in order to remain eligible for the second-half twin quinella pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin quinella contest. Both of the designated twin quinella contests shall be included in only one twin quinella pool.

b. In the first twin quinella contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin quinella contest:

- (1) If coupled entry of mutual field finishes as the first two finishers, those who selected the coupled entry or mutual field combined with the next separate betting interest in the official order of finish shall be winners; otherwise
- (2) Those whose combination finished as the first two betting interests shall be winners, but if there are no such wagers; then
- (3) Those whose combination included either the first-place or second-place finisher shall be winners, but if there are no such wagers on one of those two finishers; then
- (4) Those whose combination included the one covered betting interest included within the first two finishers shall be winners, but if there are no such wagers; then
- (5) The entire pool shall be refunded on twin quinella wagers for that contest.

15. Mad scramble pool.

- a. The mad scramble pool requires selection of the official first six place finishers, in their exact positions, in designated contests. The service provider must obtain written approval from the commission and site operator concerning the scheduling of the mad scramble contests and designate the percentage of the amount of carryover. The mad scramble pool consists of a daily pool and jackpot carryover and must have predetermined percentages set aside for the daily pool designated to winners who selected the first six place finishers. The daily pool will be distributed to the winners who selected the first six place finishers, in their exact positions, and they will then be eligible for the random drawing of the numbers assigned to the wager's ticket to be drawn for the awarding of the jackpot pool. To be awarded the jackpot pool, the winner of the daily pool must have the matching number on the person's ticket that is drawn randomly from the group of sixty numbers. Any changes to the approved mad scramble format require prior approval from the commission and the site operator.
- b. Unless otherwise stated, the major share of the net mad scramble pool shall be distributed as a single price pool to those who selected all six finishers, in exact positions, based upon the official order of finish.
- c. The mad scramble pool shall be apportioned with no minor pool and carryover by choosing the first six horses in exact order of finish. The service provider must make a written request to the commission and the site operator for approval to offer consolation

and minor pools in the mad scramble pool, and be granted approval before implementation.

- (1) The net mad scramble pool shall be distributed in accordance with the method for distributing the major share to all winners who selected the first six place finishers, in exact positions.
 - (2) If there are no wagers qualifying for the major share, the net major share shall be added to the carryover.
- d. If there is a dead heat in the mad scramble pool involving:
- (1) Contestants representing the same betting interest, the daily pool will be distributed as if no dead heat occurred.
 - (2) Contestants representing two or more betting interests, the daily pool will be distributed as a single price pool with each winning wager receiving an equal share of the profit.
- e. The mad scramble pool shall be canceled and all mad scramble wagers for the individual performance shall be refunded under the following conditions:
- (1) If the mad scramble contests are canceled or declared no contest prior to the first mad scramble contest being declared official, the entire mad scramble pool shall be refunded on wagers for those contests.
 - (2) If all remaining mad scramble contests are canceled or declared no contests after the first mad scramble contest is declared official, the entire net mad scramble pool, but not the mad scramble carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the mad scramble contest. However, if there are no wagers selecting the winning combination in the mad scramble contest, the entire pool shall be refunded on wagers for those contests.
- f. Mandatory distribution.
- (1) The service provider must submit a written request to the commission and the site operator for permission to distribute the mad scramble carryover on a specific performance. The request to the commission and site operator shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance of the distribution. The service provider must notify the commission and site operator at least ten days prior to implementation. If the mad scramble pool cannot be

distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performance.

(2) If the mad scramble carryover is designated for distribution on a specific date and performance, and if there are no wagers qualifying for the major share, which is sixty-five percent of the pool, then the following precedence shall be followed in determining the winning wagers for the mad scramble pool and carryover pool:

(a) The major share and the mad scramble carryover shall be distributed as a single price pool to those who selected all six finishers, in exact positions, based upon the official order of finish, and who have received a matching random number selected through a drawing of one of sixty numbers, minus the service provider or racetrack take-out.

(b) The major share and the mad scramble carryover shall be distributed as a single price pool to those who correctly selected the most finishers, in their exact positions, based upon the official order of finish.

g. If for any reason, the mad scramble carryover must be held over to the corresponding mad scramble pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission and the site operator. The mad scramble carryover plus accrued interest shall then be added to the mad scramble pool of the following meet on a date and performance so designated by the commission and approved by the site operator.

h. With written approval of the commission and the site operator, the service provider may contribute to the mad scramble carryover a sum of money to be designated by the service provider or the racetrack. Moneys contributed to the pool may be withdrawn when the pool accumulation totals the moneys contributed.

i. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

j. The service provider may suspend previously approved mad scramble wagering with prior approval from the commission and upon notification to the site operator. Any carryover shall be

held until the suspended mad scramble wagering is reinstated. A service provider may request approval of the mad scramble wager or a separate mad scramble wagering pool for specific performances.

16. **Pick 1-2-3 pool.** The pick 1-2-3 pool requires selection of the first three finishers, irrespective of order, in each of three designated contests. Payment of the ticket may be made only to the purchaser who has selected the qualifying finishers in three designated races.
 - a. Pick 1-2-3 requires a selection of a combination of either nine, eight, seven, or six, first, second, and third place finishers, in any order, in three consecutive races that are designated as pick 1-2-3 races to qualify for a payout. There will be no monetary award for the winning combination for winning the first pick 1-2-3 race or any combination of five or less qualifiers in each of the three races.
 - b. The service provider must obtain written approval from the commission and site operator concerning the scheduling of the pick 1-2-3 contests, the designation of qualifying races, and the cap to be set on the carryover. Any changes to the pick 1-2-3 wager format requires prior approval from the commission and the site operator.
 - c. The pick 1-2-3 pool and carryover, if any, shall be distributed as a single price pool to those who selected the winning combination of the top three finishers in three races, or a decreasing scale of qualifiers eight of nine, seven of nine, or six of nine, in the following payout method:
 - (1) Fifty percent of net pool and accumulated jackpot divided between players selecting nine of nine.
 - (2) Thirty percent of net pool divided between players selecting eight of nine.
 - (3) Fifteen percent of net pool divided between players selecting seven of nine.
 - (4) Five percent of net pool divided between players selecting six of nine.
 - (5) If there are no winning wagers for the nine of nine winners, then fifty percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
 - (6) If there are no winning wagers for the eight of nine winners, then thirty percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.

- (7) If there are no winning wagers for the seven of nine winners, then fifteen percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
 - (8) If there are no winning wagers for the six of nine winners, then five percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
- d. Dead heats. In the event of a dead heat in any of the position pick 1-2-3 contests based upon the official order of finish for the purposes of determining whether a wager correctly selected the finishers in exact position, contestants in a dead heat are deemed to jointly occupy both or all positions in the dead heat. For example, if five and six finish in a dead heat for first, then a selection of five for either first or second is correct and a selection of six for either first or second is also correct.
- e. Scratches.
- (1) If, due to a late scratch, the number of betting interests in a contest of the pick 1-2-3 pool is reduced to fewer than six contestants, for the purposes of the pick 1-2-3 pool only, such contests shall be declared no contest and the pick 1-2-3 pool shall be declared a canceled contest.
 - (2) Should a betting interest in any contest of the pick 1-2-3 pool be scratched or excused from the contest, no more wagers shall be accepted selecting that scratched contestant.
 - (3) Scratch contestant losers:
 - (a) The scratch contestant is deemed to be a loser, for the purposes of the pick 1-2-3 pool only.
 - (b) Other correctly selected finishers in the pick 1-2-3 shall continue to count toward winning, as usual.
- f. Canceled contests.
- (1) If any of the pick 1-2-3 contests are canceled or declared no contest prior to the first pick 1-2-3 contest being declared official, the daily pick 1-2-3 pool shall be refunded on the pick 1-2-3 wagers for those contests.
 - (2) If all remaining pick 1-2-3 contests are canceled or declared no contest after the first pick 1-2-3 contest is declared official, the entire net pick 1-2-3 pool, but not the pick 1-2-3 carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the first pick

1-2-3 contest. However, if there are no wagers selecting the winning combination in the first pick 1-2-3 contest, the daily pick 1-2-3 pool shall be refunded on pick 1-2-3 wagers for those contests.

9. Mandatory distribution. The service provider must submit a written request for permission to distribute the pick 1-2-3 carryover on a specific performance to the commission and site operator. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. The service provider must notify the commission at least ten days prior to implementation. If the pick 1-2-3 pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performance.
17. **Pick 1-2-3-4-5 pool.** Pick 1-2-3-4-5 requires selection of the first five finishers, irrespective of order, in each of three designated contests. Payment of the ticket may be made only to the purchaser who has selected the qualifying finishers in three designated races.
- a. Pick 1-2-3-4-5 requires the selection of a combination of either fifteen, fourteen, thirteen, or twelve first, second, third, fourth, and fifth place finishers, in any order, in three consecutive races that are designed as pick 1-2-3-4-5 races to qualify for a payout. There will be no monetary award for the winning combination for winning the first pick 1-2-3-4-5 race or any combination of eleven or less qualifiers in each of the three races.
 - b. The service provider must obtain written approval from the commission and the site operator concerning the scheduling of the pick 1-2-3-4-5 contests, the designation of qualifying races and the cap to be set on the carryover. Any changes to the pick 1-2-3-4-5 wager format require prior approval from the commission and the site operator.
 - c. The pick 1-2-3-4-5 pool and carryover, if any, shall be distributed as a single price pool to those who selected the first five finishers in three races or a decreasing scale of qualifiers fifteen of fifteen, fourteen of fifteen, thirteen of fifteen, or twelve of fifteen in the following payout method:
 - (1) Fifty percent of net pool and accumulated jackpot divided between players selecting fifteen of fifteen.
 - (2) Thirty percent of net pool divided between players selecting fourteen of fifteen.

- (3) Fifteen percent of net pool divided between players selecting thirteen of fifteen.
 - (4) Five percent of net pool divided between players selecting twelve of fifteen.
 - (5) If there are no winning wagers for the fifteen of fifteen winners, then fifty percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
 - (6) If there are no winning wagers for the fourteen of fifteen winners, then thirty percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
 - (7) If there are no winning wagers for the thirteen of fifteen winners, then fifteen percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
 - (8) If there are no winning wagers for the twelve of fifteen winners, then five percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
- d. Dead heats. In the event of a dead heat in any of the position pick 1-2-3-4-5 contests based upon the official order of finish for the purposes of determining whether a wager correctly selected the finishers in exact position, contestants in a dead heat are deemed to jointly occupy both or all positions in the dead heat. For example, if five and six finish in a dead heat for first, then a selection of five for either first or second is correct and a selection of six for either first or second is also correct.
- e. Scratches.
- (1) If, due to a late scratch, the pick 1-2-3-4-5 pool is reduced to fewer than six contestants, for the purposes of the pick 1-2-3-4-5 pool only, such contests shall be declared no contest and the pick 1-2-3-4-5 pool shall be declared a canceled contest.
 - (2) Should a betting interest in any contest of the pick 1-2-3-4-5 pool be scratched or excused from the contest, no more wagers shall be accepted selecting that scratched contestant.
 - (3) Scratch contestant losers:

- (a) The scratch contestant is deemed to be a loser, for the purposes of the pick 1-2-3-4-5 pool only.
 - (b) Other correctly selected finishers in the pick 1-2-3-4-5 shall continue to count toward winning, as usual.
 - f. Canceled contests.
 - (1) If any of the pick 1-2-3-4-5 contests are canceled or declared no contest prior to the first pick 1-2-3-4-5 contest being declared official, the entire pick 1-2-3-4-5 pool shall be refunded on the pick 1-2-3-4-5 wagers for those contests.
 - (2) If all remaining pick 1-2-3-4-5 contests are canceled or declared no contest after the first pick 1-2-3-4-5 contest is declared official, the entire net pick 1-2-3-4-5 pool, but not the pick 1-2-3-4-5 carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the first pick 1-2-3-4-5 contest. However, if there are no wagers selecting the winning combination in the first pick 1-2-3-4-5 contest, the entire pick 1-2-3-4-5 pool shall be refunded on pick 1-2-3-4-5 wagers for those contests.
 - g. Mandatory distribution. The service provider must submit a written request for permission to distribute the pick 1-2-3-4-5 carryover on a specific performance to the commission and site operator. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. The service provider must notify the commission at least ten days prior to implementation. If the pick 1-2-3-4-5 pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performances.
 - h. Coupled entries and mutuel fields. Coupled entries and mutuel fields are not permitted in pick 1-2-3-4-5 contests.
18. **123racing Pick-n Wager©.**
- a. The 123racing Pick-n Wager is a separate pari-mutuel pool wager established by the association on a designated number of races. The gross pool consists of the total amount wagered for the multiple race bet. Winning wagers are determined by the highest points totals earned after all rounds have been completed, based on cumulative mythical two dollar win, place, show wagers (a fantasy two dollar across the board wager), on one betting interest per wagering race. It is not a parlay and has no connection with or relation to other pools conducted by the association other than the

utilization of live race payouts as a means of calculating players' fantasy points.

- b. A valid 123racing Pick-n Wager ticket shall be evidence of a binding contract between the holder of the ticket and the association, and shall constitute an acceptance of 123racing Pick-n Wager provisions and rules contained in this chapter.
- c. A 123racing bet may not be retracted once it has been purchased.
- d. A 123racing Pick-n Wager may be given a distinctive name by the association conducting the meeting, subject to commission approval, and existing license, copyrights, and patents.
- e. 123racing Pick-n Wagers shall be conducted as follows:
 - (1) Each player wagers two dollars into the gross pool and selects one betting interest per wagering race.
 - (2) The number of races that complete the wager varies depending on the specifics of "tournament", as determined by the host racing association, but shall include no less than four races.
 - (3) Each round of the "tournament" consists of a mythical two dollar win, place, show wager on one betting interest per race.
 - (4) Official program numbers must be used for all wagers. All players are responsible for ensuring each wager is placed correctly.
 - (5) Live race payouts are used to calculate players' fantasy points totals.
 - (6) As part of the announced tournament rules, and as approved by the commission, the host racing association may opt to cap the maximum odds on all fantasy payouts.
 - (7) Each player's fantasy points will be reflected in their cumulative fantasy points totals at the end of each race.
 - (8) Following a race being declared "official", the actual pari-mutuel pool payout for a fantasy two dollar across-the-board wager will be translated to points and added to a player's cumulative fantasy points totals, subject to any odds cap imposed under subdivision 7.
 - (9) Of the bettors, the players with the highest fantasy points totals after the last leg are the "winners".

- (10) The net pari-mutuel pool is distributed to the bettors scoring the top three highest scores of all players in the tournament in accordance with subdivision i.
 - (11) The net pari-mutuel pool shall be distributed in accordance with the distribution schedule as set forth in the regulation, or as otherwise approved by the commission, at the request of the host racing association.
- f. A fantasy wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field as determined by the rules of the live corresponding race.
 - g. If a selection in any race designates a betting interest that was scratched, excused, or determined by the stewards to be a nonstarter in the race, the fantasy wager will be on the tote favorite in that race.
 - h. Points for dead heats will be determined by the payouts of the live corresponding race.
 - i. The takeout and its distribution for the 123racing Pick-n Wager shall be set and approved by the host regulatory commission, but shall include the distribution of the negotiated proprietary fee.
 - j. All tickets shall be refunded if all races comprising the 123racing Pick-n Wager are canceled or declared as a no contest. The entire pool shall be refunded if less than four races are completed and if four or more races are completed the net pool shall be distributed pursuant to subdivision l.
 - k. After wagering closes on the first race comprising the 123racing Pick-n Wager, the tournament shall be deemed closed and no entry ticket shall be sold, exchanged, or canceled. No person shall be determined to hold a winning 123racing Pick-n Wager ticket until the last designated race has been declared official.
 - l. In accordance with the following provisions, the association shall distribute the net pool to the holders of valid tickets that correctly selected the combination of first-place, second-place, and third-place place finishers that generated the top three highest points totals through the designated races or rounds comprising the 123racing Pick-n Wager as follows:
 - (1) Sixty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holder of the pari-mutuel ticket with the wager which has the highest fantasy points totals after all races have been completed.

- (2) Thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holder of the pari-mutuel ticket with the wager which has the second-highest points totals after all races have been completed.
- (3) Ten percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holder of the pari-mutuel ticket with the wager which has the third-highest points totals after all races have been completed.
- (4) If there are two pari-mutuel wagers that equal the highest points totals after all races have been completed, ninety percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to those ticket holders. Ten percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets with wagers which have the third-highest points totals after all races have been completed.
- (5) If there are three pari-mutuel wagers that equal the highest points totals after all races have been completed, one hundred percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to those ticket holders.
- (6) If one pari-mutuel ticket wager scores the highest points totals, and two or more pari-mutuel tickets wagers equal the second-highest points totals after all races have been completed, sixty percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to the highest-scoring ticket holder, and forty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets which have the second-highest points totals after all races have been completed.
- (7) If one pari-mutuel ticket wager scores the highest points totals, one pari-mutuel ticket wager scores the second-highest points totals, and two or more pari-mutuel ticket wagers score the third-highest points totals after all races have been completed, then sixty percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to the highest-scoring ticket holder, thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the second-highest scoring ticket holder, and ten percent of

the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets which have the third-highest points totals.

- m. Should circumstances occur which are not addressed by these rules, questions arising thereby shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of the 123racing Pick-n Wager pool made by the stewards are final.

19. Tote-X win.

- a. The Tote-X wagering platform uses a conventional pari-mutuel betting system and a separate pari-mutuel pool to allow ticket holders to wager among themselves on the results of individual races. However, at the time the bet is placed on a selected race through the Tote-X platform, the customer is allocated a fixed number of redeemable units ("RUs") based upon the then-current odds of the horse being wagered upon using proprietary algorithms. The algorithms are applied uniformly to all wagers in the pool. These RUs are then held within the Tote-X platform specific to that bettor. When the odds of the horses in that race change after the initial wager is placed, the value of the issued RUs fluctuates in accordance with the change in odds. The customer may then choose to redeem all or part of their RUs for the current cash value of the RUs at any time prior to the close of wagering on the selected race. The Tote-X platform calculates the final pool by combining all bets made into the Tote-X win pool on a given event and then deducting commission, refunds, redemption payouts, and applicable taxes and fees.
- b. For each Tote-X win pool:
 - (1) All bets are placed into the Tote-X win pool for a specific race.
 - (2) A valid Tote-X ticket or unique electronic identifier shall be evidence of a binding contract between the holder of the ticket and the host association, and shall constitute an acceptance of Tote-X provisions and rules contained in this chapter.
 - (3) Official program numbers must be used for all Tote-X wagers. All players are responsible for ensuring each wager is placed correctly.
 - (4) The odds calculations for Tote-X are performed on the same basis as for a conventional pari-mutuel pool. In the Tote-X platform, the proprietary mathematical algorithms will then automatically recalculate the RU values for each horse after

each transaction or batch of transactions (bet or redemption), reflecting the change in the current Tote-X pool odds.

- (5) The Tote-X proprietary algorithms shall be applied uniformly to all wagers in the pool.
- (6) As approved by the commission, the host racing association may opt to cap the maximum odds on all Tote-X payouts.
- (7) A Tote-X wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field as determined by the rules of the live corresponding race.
- (8) The customer may choose to redeem all or part of their RUs for their then-current value at any time prior to the close of the relevant pool if a horse or combination of horses has not been excused by the stewards or declared a nonstarter and the pool operator has not otherwise suspended the capacity for ticket holders to redeem their wagers.
- (9) A Tote-X wager may not be rescinded once it has been purchased other than through proper redemption of RUs in accordance with these rules.
- (10) A redemption requires the customer to surrender all or part of the underlying wager. In the event of a redemption of all RUs issued for a specific wager, the original wager shall be surrendered in its entirety. In the event of a partial redemption of the RUs issued for a specific wager, the original wager will be surrendered in proportion to the percentage of RUs being redeemed:
- (11) Subsequent to the deduction from the pool of each redemption payout, the remainder of the funds in the pool shall constitute the new value of all RUs which are available for subsequent redemptions. Thereafter, those RUs which are not redeemed prior to the closure of the pool constitute the net pool for distribution as payoff to ticket holders of wagers following a race being declared "official".
- (12) Once the Tote-X win pool is closed prior to the race, ticket holders may no longer redeem any of their RUs.
- (13) Each customer holding a successful bet after the race is declared "official" is entitled to collect according to the relevant final odds.

- (14) From each redemption and final pool payout a commission shall be deducted by the host association in accordance with state law.
- (15) The commission and its distribution for the Tote-X wager shall be approved by the commission.
- c. Notwithstanding any language to the contrary, the funds remaining in the Tote-X win pool following the payment of redemptions prior to the closure of the pool constitute the net pool for the purpose of distribution as payoff to winning ticket holders.
- d. Any funds remaining after the closing of the Tote-X win pool will be distributed as payoff to the winning ticket holders in the same manner as a win pool pursuant to subsection 2.
- e. Notwithstanding subsection 20 or any language to the contrary contained in this chapter, if, after wagering has commenced on a race, a horse not coupled with another as a betting interest is excused by the stewards or declared a nonstarter, an amount based on the then-current odds as represented by the current value of the RUs on such horse shall be deducted from the pools and refunded upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager, then there may be no refund unless all of the horses representing such single betting interest as excused by the stewards or declared a nonstarter, or both.
- f. Notwithstanding subsection 21 or any language to the contrary contained in this chapter, if, after wagering has commenced on a race, the race is thereafter canceled or declared a "no race" by the stewards, and no redemptions have occurred prior to such, then all wagering thereon shall be refunded upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier. However, if one or more redemptions have occurred prior to the stewards canceling or declaring a "no race", then all wagering thereon shall be refunded at the then-current odds, as represented by the current value of the RUs, at the time of cancellation upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier.
- g. Notwithstanding subsection 22 or any language to the contrary contained in this chapter, in the event of an irreparable breakdown of the totalizator system during the wagering on a race, all Tote-X wagering thereon shall be refunded at the then-current odds, as represented by the current value of the RUs, at the time

of irreparable breakdown upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier.

- h. Notwithstanding section 69.5-01-08-05 or any language to the contrary contained in this chapter, there is no minimum payoff for a Tote-X redemption. However, any distribution made after closing of the Tote-X win pool shall be subject to the minimum payoff provisions of section 69.5-01-08-05.
- i. Should circumstances occur which are not addressed by these rules, questions arising therefrom shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of the Tote-X pool made by the stewards are final.

~~49.~~ 20. **Refunds.** Unless otherwise provided, after wagering has commenced, if a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate door to open properly, the wagers on such horse must be deducted from the pools, and refunded upon presentation and surrender thereof. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a combination then there may be no refund unless all of the horses representing such single betting interest are excused by the stewards or are prevented from racing because of failure of the starting gate doors to open properly, or both.

~~20.~~ 21. **Race canceled.** If for any reason a race is canceled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon must be refunded upon presentation and surrender of pari-mutuel tickets thereon; except as otherwise provided.

~~24.~~ 22. **Totalizator breakdown.** In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race must be declared closed and the payoff must be computed on the sums wagered in each pool up to the time of the breakdown.

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General Authority: NDCC 53-06.2-05

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TITLE 75
DEPARTMENT OF HUMAN SERVICES

JULY 2014

CHAPTER 75-02-02

75-02-02-08. Amount, duration, and scope of medical assistance.

1. Within any limitations which may be established by rule, regulation, or statute and within the limits of legislative appropriations, eligible recipients may obtain the medically necessary medical and remedial care and services which are described in the approved medicaid state plan in effect at the time the service is rendered by providers. Services may include:
 - a. (1) Inpatient hospital services. "Inpatient hospital services" means those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.
 - (2) Inpatient prospective payment system hospitals that are reimbursed by a diagnostic-related group will follow medicare guidelines for supplies and services included and excluded as outlined in 42 CFR 409.10.
 - b. Outpatient hospital services. "Outpatient hospital services" means those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is

qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation and emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act.

- c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction of, a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- d. Nursing facility services. "Nursing facility services" does not include services in an institution for mental diseases and means those items and services furnished by a licensed and otherwise eligible nursing facility or swing-bed hospital maintained primarily for the care and treatment which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for individuals who need or needed on a daily basis nursing care, provided directly or requiring the supervision of nursing personnel, or other rehabilitation services which, as a practical matter, may only be provided in a nursing facility on an inpatient basis.
- e. Intermediate care facility for individuals with intellectual disabilities services. "Intermediate care" means those items and services which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as provided in chapter 75-04-01.
- f. Early and periodic screening and diagnosis of individuals under twenty-one years of age and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and provide health care, treatment,

and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.

- g. Physician's services. "Physician's services" whether furnished in the office, the patient's home, a hospital, nursing facility, or elsewhere means those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care other than physician's services recognized under state law and furnished by licensed practitioners within the scope of their practice as defined by state law.
- i. Home health care services. "Home health care services", is in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in this section, means any of the following items and services when they are provided, based on certification of need and a written plan of care by a licensed physician, to a patient in the patient's place of residence, excluding a residence that is a hospital or a skilled nursing facility:
 - (1) Intermittent or part-time skilled nursing services furnished by a home health agency;
 - (2) Intermittent or part-time nursing services of a registered nurse, or a licensed practical nurse, or which are provided under the direction of a physician and under the supervision of a registered nurse, when a home health agency is not available to provide nursing services;
 - (3) Medical supplies, equipment, and appliances ordered or prescribed by the physician as required in the care of the patient and suitable for use in the home; and
 - (4) Services of a home health aide provided to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and in collaboration with the home health agency.

- j. Hospice care. "Hospice care" means the care described in 42 U.S.C. 1395x(dd)(1) furnished by a "hospice program", as that term is defined in 42 U.S.C. 1395x(dd)(2), to a terminally ill individual who has voluntarily elected to have hospice care. Hospice care may be provided to an individual while the individual is a resident of a nursing facility, but only the hospice care payment may be made. An individual's voluntary election must be made in accordance with procedures established by the department which are consistent with procedures established under 42 U.S.C. 1395d(d)(2), for such periods of time as the department may establish, and may be revoked at any time.
- k. Private duty nursing services. "Private duty nursing services" means nursing services provided, based on certification of need and a written plan of care which is provided under the direction of a physician, by a registered nurse or a licensed practical nurse under the supervision of a registered nurse to a patient in the patient's own home.
- l. Dental services. "Dental services" means any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession and not excluded from coverage. Dental services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. Dental services reimbursed under 42 C.F.R. 440.90 may only be reimbursed if provided through a public or private nonprofit entity that provides dental services.
- m. Physical therapy. "Physical therapy" means those services prescribed by a physician or other licensed practitioner of the healing arts within the scope of that person's practice under state law and provided to a patient by or under the supervision of a qualified physical therapist.
- n. Occupational therapy. "Occupational therapy" means those services prescribed by a physician or other licensed practitioner of the healing arts within the scope of that person's practice under state law and provided to a patient and given by or under the supervision of a qualified occupational therapist.
- o. Services for individuals with speech, hearing, and language disorders. "Services for individuals with speech, hearing, and language disorders" means those diagnostic, screening, preventive, or corrective services provided by or under the supervision of a speech pathologist or audiologist in the scope of practice of the speech pathologist's or audiologist's profession for which a patient is referred by a physician.

- p. Prescribed drugs. "Prescribed drugs" means any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law.
- q. Durable medical equipment and supplies. "Durable medical equipment and supplies" means those medically necessary items suitable for use in the home and used to treat disease, to promote healing, to restore bodily functioning to as near normal as possible, or to prevent further deterioration, debilitation, or injury which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. Durable medical equipment includes prosthetic and orthotic devices, eyeglasses, and hearing aids. For purposes of this subdivision:
- (1) "Eyeglasses" means lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision;
 - (2) "Hearing aid" means a specialized orthotic device individually prescribed and fitted to correct or ameliorate a hearing disorder; and
 - (3) "Prosthetic and orthotic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
- r. Other diagnostic, screening, preventive, and rehabilitative services.
- (1) "Diagnostic services", other than those for which provision is made elsewhere in these definitions, includes any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.

- (2) "Preventive services" means those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability, and other health deviations or their progression, prolong life, and promote physical and mental health and efficiency.
 - (3) "Rehabilitative services", in addition to those for which provision is made elsewhere in these definitions, includes any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
 - (4) "Screening services" consists of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.
- s. Inpatient psychiatric services for individuals under age twenty-one, as defined in 42 CFR 440.160, provided consistent with the requirements of 42 CFR part 441 and section 75-02-02-10.
 - t. Services provided to persons age sixty-five and older in an institution for mental diseases, as defined in 42 U.S.C. 1396d(i).
 - u. Personal care services. "Personal care services" means those services that assist an individual with activities of daily living and instrumental activities of daily living in order to maintain independence and self-reliance to the greatest degree possible.
 - v. Any other medical care and any other type of remedial care recognized under state law and specified by the secretary of the United States' department of health and human services, including:
 - (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the department to be medically necessary.
 - (2) Family planning services, including drugs, supplies, and devices, when such services are under the medical direction of a physician or licensed practitioner of the healing arts within the scope of their practices as defined by state law.

There must be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals may choose in accordance with the dictates of their consciences.

- (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician or licensed practitioner and when it is not available to the patient from other sources.
- w. An exercise program. "Exercise program" includes exercise regimens to achieve various improvements in physical fitness and health.
 - x. A weight loss program. "Weight loss program" includes programs designed for reduction in weight but does not include weight loss surgery.
2. The following limitations apply to medical and remedial care and services covered or provided under the medical assistance program:
 - a. Coverage may not be extended and payment may not be made for an exercise program or a weight loss program prescribed for eligible recipients.
 - b. Coverage may not be extended and payment may not be made for alcoholic beverages prescribed for eligible recipients.
 - c. Coverage may not be extended and payment may not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
 - d. Coverage may not be extended and payment may not be made for any service provided to increase fertility or to evaluate or treat fertility.
 - e. Coverage and payment for eye examinations and eyeglasses for eligible recipients are limited to, and payment will only be made for, examinations and eyeglass replacements necessitated because of visual impairment.
 - f. Coverage may not be extended to and payment may not be made for any physician-administered drugs in an outpatient setting if the drug does not meet the requirements for a covered outpatient drug as outlined in section 1927 of the Social Security Act [42 U.S.C. 1396r-8].

- 9. Coverage and payment for home health care services and private duty nursing services are limited to a monthly amount determined by taking the monthly charge, to the medical assistance program, for the most intensive level of nursing care in the most expensive nursing facility in the state and subtracting therefrom the cost, in that month, of all medical and remedial services furnished to the recipient (except physician services and prescribed drugs). For the purposes of determining this limit, remedial services include home and community-based services, service payments to the elderly and disabled, homemaker and home health aide services, and rehabilitative services, regardless of the source of payment for such services.
 - (1) This limit may be exceeded, in unusual and complex cases, if the provider has submitted and the department has approved a prior treatment authorization request.
 - (2) The prior authorization request must describe the medical necessity of the home health care services or private duty nursing services, and explain why less costly alternative treatment does not afford necessary medical care.
- h. Coverage may not be extended and payment may not be made for transportation services except as provided in sections 75-02-02-13.1 and 75-02-02-13.2.
- i. Coverage may not be extended and payment may not be made for any abortion except when necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.
- j. Coverage for ambulance services must be in response to a medical emergency and may not be extended and payment may not be made for ambulance services that are not medically necessary, as determined by the department.
- k. Coverage for an emergency room must be made in response to a medical emergency and may not be extended and payment may not be made for emergency room services that are not medically necessary, as determined by the department under section 75-02-02-12.
- l. Coverage may not be extended and payment may not be made for medically necessary chiropractic services exceeding twelve treatments for spinal manipulation services and two radiologic examinations per year, per recipient, unless the provider requests and receives prior authorization from the department.
- m. Coverage and payment for personal care services:

- (1) May not be made unless prior authorization is granted, and the recipient meets the criteria established in subsection 1 of section 75-02-02-09.5; and
- (2) May be approved for:
 - (a) Up to one hundred twenty hours per month, or at a daily rate;
 - (b) Up to two hundred forty hours per month if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; or
 - (c) Up to three hundred hours per month if the recipient is determined to be impaired in at least five of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; and none of the three hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.

n. Coverage and payment for pharmacy services are limited to:

- (1) The lower of the estimated acquisition costs plus reasonable dispensing fees established by the department;
- (2) The provider's usual and customary charges to the general public; or
- (3) The federal upper limit plus reasonable dispensing fees established by the department. For the department to meet the requirements of 42 CFR 447.331-447.333, pharmacy providers agree when enrolling as a provider to fully comply with any acquisition cost survey and any cost of dispensing survey completed for the department or centers for medicare and medicaid services. Pharmacy providers agree to provide all requested data to the department, centers for medicare and medicaid services, or their agents, to allow for calculation of estimated acquisition costs for drugs as well as estimated costs of dispensing. This data will include wholesaler invoices and pharmacy operational costs. Costs can include salaries, overhead, and primary wholesaler invoices if a wholesaler is partially or wholly owned by the

pharmacy or parent company or has any other relationship to the pharmacy provider.

3. a. Except as provided in subdivision b, remedial services are covered services.
- b. Remedial services provided by residential facilities such as licensed basic care facilities, licensed foster care homes or facilities, and specialized facilities are not covered services, but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility.
4. a. The department may refuse payment for any covered service or procedure for which a prior treatment authorization request is required but not secured.
- b. The department may consider making payment if the provider demonstrates good cause for the failure to secure the required prior treatment authorization request. Provider requests for good cause consideration must be received within twelve months of the date the services or procedures were furnished.
- c. The department may refuse payment for any covered service or procedure provided to an individual eligible for both medicaid and other insurance if the insurance denies payment because of the failure of the provider or recipient to comply with the requirements of the other insurance.
5. A provider of medical services who provides a covered service except for personal care services, but fails to receive payment due to the requirements of subsection 4, and who attempts to collect from the eligible recipient or the eligible recipient's responsible relatives any amounts which would have been paid by the department but for the requirements of subsection 4, has by so doing breached the agreement referred to in subsection 4 of section 75-02-02-10.

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July 1, 1993; January 1, 1994; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; November 8, 2002; September 1, 2003; July 1, 2006; January 1, 2010; July 1, 2012; October 1, 2012; July 1, 2014.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42 USC 1396n(b)(1); 42 CFR 431.53; 42 CFR 431.110; 42 CFR 435.1009; 42 CFR Part 440; 42 CFR Part 441, subparts A, B, D

75-02-02-10.2. Limitations on ambulatory behavioral health care.

1. For purposes of this section:
 - a. "Ambulatory behavioral health care" means ambulatory services provided to an individual with a significant impairment resulting from a psychiatric, emotional, behavioral, or addictive disorder which are provided by a multidisciplinary team of health care professionals and are designed to stabilize the health of the individual with the intent to avert inpatient hospitalization in place of inpatient ~~hospitalization~~ hospitalization or to reduce the length of a hospital stay. Ambulatory behavioral health care may be hospital-based or community-based.
 - b. "~~Level A~~ American Society of Addiction Medicine II.5 ambulatory behavioral health care" means an intense level of ambulatory behavioral health care which provides treatment for an individual by at least three licensed health care professionals under the supervision of a licensed physician for at least four hours and no more than eleven hours per day for at least three days per week.
 - c. "~~Level B~~ American Society of Addiction Medicine II.1 ambulatory behavioral health care" means an intermediate level of ambulatory behavioral health care that provides treatment for an individual by at least three licensed health care professionals under the supervision of a licensed physician for three hours per day for at least two days per week.
 - d. "~~Level C~~ American Society of Addiction Medicine I ambulatory behavioral health care" means a low level of ambulatory behavioral health care that provides chemical dependency treatment for an individual by at least one licensed health care professional under the supervision of a licensed physician for less than three hours per day and no more than three days per week.
2. No payment for ambulatory behavioral health care will be made unless the provider requests authorization from the department within three business days of providing such services and the department approves such request. A provider must submit a written request for authorization to the department on forms prescribed by the department.
3. Limitations.
 - a. Payment may not be made for ~~level A~~ American Society of Addiction Medicine II.5 ambulatory behavioral health care services exceeding ~~thirty~~ forty-five days per calendar year per individual.
 - b. Payment may not be made for ~~level B~~ American Society of Addiction Medicine II.1 ambulatory behavioral health care services exceeding ~~fifteen~~ thirty days per calendar year per individual.

- c. Payment may not be made for ~~level-G~~ American Society of Addiction Medicine I ambulatory behavioral health care services exceeding twenty days per calendar year per individual. The department may approve an additional ten days per calendar year per individual on a case-by-case basis.

History: Effective November 8, 2002; amended effective November 19, 2003; October 1, 2012; July 1, 2014.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42 CFR Part 431.54

75-02-02-13.1. Travel expenses for medical purposes - Limitations.

1. For purposes of this section:
 - a. "Family member" means spouse, sibling, parent, stepparent, child, stepchild, grandparent, stepgrandparent, grandchild, stepgrandchild, aunt, uncle, niece, or nephew, whether by half or whole blood, and whether by birth, marriage, or adoption; and
 - b. "Travel expenses" means fares, mileage, meals, lodging, and driver and attendant care.
2. General requirements.
 - a. A transportation service provider shall be enrolled as a provider in the medical assistance program and may be an individual, a taxi, a bus, a food service provider, a lodging provider, an airline service provider, a travel agency, or another commercial form of transportation.
 - b. The county agency may determine the most efficient, economical, and appropriate means of travel to meet the medical needs of the recipient. Upon approval, the county agency may approve travel and issue the necessary billing forms.
 - c. The cost of travel provided by a parent, spouse, or any other member of the recipient's medical assistance unit may be allowed as an expense of necessary medical or remedial care for recipient liability purposes. No parent, spouse, friend, household member, or family member of the recipient may be paid as an enrolled provider for transportation for that recipient. An individual who ~~is court-appointed for~~ provides foster care, kinship, or guardianship may enroll as a transportation provider and is eligible for reimbursement to transport a medicaid-eligible child ~~in the individual's court-appointed custody~~ to and from medicaid-covered medical appointments.

- d. Travel services may be provided by the county agency as an administrative activity.
 - e. Emergency transport by ambulance is a covered service when provided in response to a medical emergency.
 - f. Nonemergency transportation by ambulance is a covered service only when medically necessary and ordered by the attending licensed provider.
 - g. A recipient may choose to obtain medical services outside the recipient's community. If similar medical services are available within the community and the recipient chooses to seek medical services elsewhere, travel expenses are not covered services and are the responsibility of the recipient.
 - h. If a primary care provider refers a recipient to a facility or provider that is not located at the closest medical center, travel expenses are not covered services and are the responsibility of the recipient, unless special circumstances apply and prior authorization is secured.
3. Out-of-state travel expenses. Travel expenses for nonemergency out-of-state medical services, including followup visits, may be authorized if the out-of-state medical services are first approved by the department under section 75-02-02-13 or if prior approval is not required under that section.
4. Limitations.
- a. Private or noncommercial vehicle mileage compensation is limited to an amount set by the department based on the department's fee schedule. This limit applies even if more than one recipient is transported at the same time. Mileage is determined by map miles from the residence or community of the recipient to the medical facility. When necessary to ensure volunteer drivers continue to provide transportation services to a recipient, the county agency may request authorization from the department to make payment for additional mileage. Transportation services may be billed to medical assistance only upon completion of the service. Transportation services may be allowed if the recipient or a household member does not have a vehicle that is in operable condition or if the health of the recipient or household member does not permit safe operation of the vehicle. If free or low-cost transportation services are available, including transportation that could be provided by a friend, family member, or household member, the department will not pay transportation mileage.

- b. Meals compensation is allowed only when medical services or travel arrangements require a recipient to stay overnight. Compensation is limited to an amount set by the department based on the department's fee schedule.
- c. Lodging expense is allowed only when medical services or travel arrangements require a recipient to stay overnight. Lodging compensation is limited to an amount set by the department, based on the appropriate fee schedule. Lodging providers must be enrolled in medicaid and shall submit the proper forms for payment.
- d. Travel expenses may not be authorized for both a driver and an attendant unless the referring licensed practitioner determines that one individual cannot function both as driver and attendant. Travel expenses may not be allowed for a noncommercial driver or an attendant while the recipient is a patient in a medical facility unless it is more economical for the driver or attendant to remain in the service area, as determined by the department.
- e. Travel expenses may be authorized for one parent to travel with a child who is under eighteen years of age. No additional travel expenses may be authorized for another driver, attendant, or parent unless the referring licensed practitioner determines that person's presence is necessary for the physical or medical needs of the child.
- f. Compensation for attendant services, provided by an attendant who is not a family member, may be allowed at a rate determined by the department.

History: Effective July 1, 1996; amended effective May 1, 2000; September 1, 2003; October 1, 2012; July 1, 2014.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04

75-02-02-29. Primary care provider.

- 1. Payment may not be made, except as provided in this subsection, for otherwise covered services provided to otherwise eligible recipients:
 - a. Who are required by this subsection to select, but who have not selected, or have not had selected on their behalf, a primary care provider; or
 - b. By a provider who is not the primary care provider selected by or on behalf of the recipient or to whom the recipient has not been referred from the primary care provider.

2. A primary care provider must be selected by or on behalf of the members of a medical assistance unit which includes:
 - a. A person who is a member of the section 1931 group.
 - b. A family who was in the section 1931 group in at least three of the six months immediately preceding the month in which the family became ineligible as a result, in whole or in part, of the collection or increased collection of child or spousal support, and who continues to be eligible for medicaid for four calendar months following the last month of section 1931 group eligibility.
 - c. A family who was in the section 1931 group in at least three of the six months immediately preceding the month in which the family became ineligible solely because of hours of, or income from, employment of the caretaker relative; or who became ineligible because a member of the family lost the time-limited disregards which is the percentage disregard of earned income.
 - d. A child born to an eligible pregnant woman who has applied for and been found eligible for medicaid on or before the day of the child's birth, for sixty days after the day of the child's birth, and for the remaining days of the month in which the sixtieth day falls.
 - e. An eligible caretaker relative and an individual under the age of twenty-one but not including children in foster care, who qualify for and require medical services on the basis of insufficient income and assets, but who do not qualify as categorically needy.
 - f. A pregnant woman, whose pregnancy has been medically verified and who:
 - (1) Would be eligible as categorically needy except for income and assets;
 - (2) Qualify on the basis of financial eligibility; or
 - (3) Meet the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level.
 - g. An eligible woman, who applied for medicaid during pregnancy, for sixty days after the day the pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.
 - h. A child under the age of six who meets the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level.

- i. A child, age six through eighteen, who meets the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred percent of the poverty level.
3. A physician or nurse practitioner practicing in the following specialties, practices, or settings may be selected as a primary care provider:
 - a. Family practice;
 - b. Internal medicine;
 - c. Obstetrics;
 - d. Pediatrics;
 - e. Osteopathy;
 - f. General practice;
 - g. A rural health clinic;
 - h. A federally qualified health center; or
 - i. An Indian health service clinic.
4. A recipient identified in subsection 2 need not select, or have selected on the recipient's behalf, a primary care provider if:
 - a. The recipient is aged, blind, or disabled;
 - b. The period for which benefits are sought is prior to the date of application;
 - c. The recipient is receiving foster care or subsidized adoption benefits; or
 - d. The recipient is receiving home and community-based services.
5. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care provider:
 - a. Early and periodic screening, diagnosis, and treatment of recipients under age twenty-one;
 - b. Family planning services;
 - c. Certified nurse midwife services;

- d. Optometric services;
 - e. Chiropractic services;
 - f. Dental services;
 - g. Orthodontic services provided as the result of a referral through the early and periodic screening, diagnosis, and treatment program;
 - h. Services provided by an intermediate care facility for the intellectually disabled;
 - i. Emergency services;
 - j. Transportation services;
 - k. Targeted case management services;
 - l. Home and community-based services;
 - m. Nursing facility services;
 - n. Prescribed drugs except as otherwise specified in section 75-02-02-27;
 - o. Psychiatric services;
 - p. Ophthalmic services;
 - q. Obstetrical services;
 - r. Psychological services;
 - s. Ambulance services;
 - t. Immunizations;
 - u. Independent laboratory and radiology services;
 - v. Public health unit services; and
 - w. Personal care services.
6. Except as provided in subsection 4, or unless the department exempts the recipient, a primary care provider must be selected for each recipient.

7. A primary care provider may be changed during the ninety days after the recipient's initial enrollment with the primary care provider or the date the state sends the recipient notice of the enrollment, at redetermination of eligibility, once every six months during the open enrollment period, or with good cause. Good cause for changing a primary care provider less than six months after the previous selection of a primary care provider exists if:
 - a. The recipient relocates;
 - b. Significant changes in the recipient's health require the selection of a primary care provider with a different ~~speciality~~ specialty;
 - c. The primary care provider relocates or is reassigned;
 - d. The selected provider refuses to act as a primary care provider or refuses to continue to act as a primary care provider; or
 - e. The department, or its agents, determines that a change of primary care provider is necessary.

History: Effective October 1, 2012; amended effective July 1, 2014.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-32; 42 USC 1396u-2

**CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID**

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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. "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. "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. "Child" means a person, under twenty-one, or, if blind or disabled, under age eighteen, who is not living independently.
5. "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. "County agency" means the county social service board.
7. "Department" means the North Dakota department of human services.
8. "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. "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. "Disabled adult child" means a disabled or blind person over the age of twenty-one who became blind or disabled before age twenty-two.
11. "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. "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 coowner, 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.
14. "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.
15. "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.
16. "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.
17. "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. "MAGI-based methodology" means the method of determining eligibility for medicaid that generally follows modified adjusted gross income rules.

~~18.~~ 19. "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.].

~~19.~~ 20. "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.

~~20.~~ 21. "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.

~~21.~~ 22. "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.

- ~~22.~~ 23. "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).
- ~~23.~~ 24. "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.
- ~~24.~~ 25. "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.
- ~~25.~~ 26. "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.
- ~~26.~~ 27. "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.
- ~~27.~~ 28. "Residing in the home" refers to individuals who are physically present, individuals who are temporarily absent, or individuals attending educational facilities.
- ~~28.~~ 29. "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.

- ~~29~~. 30. "State agency" means the North Dakota department of human services.
- ~~30~~. 31. "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 who attends school on a schedule equal to a full curriculum.
- ~~31~~. 32. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
- ~~32~~. 33. "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.].
- ~~33~~. 34. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
- ~~34~~. 35. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
- ~~35~~. 36. "Title IV-E" means title IV-E of the Social Security Act [42 U.S.C. 670 et seq.].
- ~~36~~. 37. "Title XIX" means title XIX of the Social Security Act [42 U.S.C. 1396 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.

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)

75-02-02.1-05. 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 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, ~~pregnant women, and~~ of deprived children who meet the ~~family coverage~~ 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;
- ~~h.~~ 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;
- ~~h.~~ 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.

j. 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

k. 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 whose income is within the family coverage group levels, but who are not otherwise eligible under the family coverage group;~~

~~b. 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

~~e. b.~~ Uninsured women under age sixty-five, who are not otherwise eligible for medicaid, who have been screened for breast and 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.

~~d. 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.

- e. ~~d.~~ Individuals under age nineteen who are disabled, who meet medically needy nonfinancial criteria, who have income at or below two hundred percent of the poverty level, and who are not eligible for ~~Medicaid~~ 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.~~ ~~Eligible caretaker relatives and individuals under age twenty-one in families with deprived children who qualify for and require medical services on the basis of insufficient income, but who do not meet income or age family coverage group requirements, or who do not qualify under optional categorically needy or poverty level groups;~~
 - b. ~~a.~~ Individuals under the age of ~~twenty-one~~ nineteen 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; ~~or poverty level groups, including children in common in stepparent families who are ineligible under the family coverage group and foster care children who do not qualify as categorically needy or optional categorically needy;~~
 - e. ~~b.~~ Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility;
 - ~~d.~~ ~~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;
 - e. ~~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;
 - f. ~~e.~~ Aged, blind, or disabled individuals who are not in receipt of supplemental security income; and
 - ~~g.~~ ~~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.~~ ~~Pregnant women whose pregnancy has been medically verified and who meet the nonfinancial requirements of the medicaid~~

~~program and whose family income is at or below one hundred thirty-three percent of the poverty level;~~

- ~~b.~~ Eligible pregnant women who applied for and were poverty level eligible for medicaid during their pregnancy 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;
- ~~c.~~ Children under the age of six who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level;
- ~~d.~~ Children, age six to nineteen, who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred percent of the poverty level;
- e. 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;
- f. 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;
- g. 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
- h. 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.

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.

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.** 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.~~

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.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; January 1, 2014.

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)

75-02-02.1-08.1. Caretaker relatives.

1. A caretaker relative who is not a child's parent may be eligible for medicaid as a caretaker relative only if:
 - a. Age sixteen or older;
 - b. Actually living in the same home as the dependent child; and
 - ~~c. Unmarried, or married and not residing with the spouse; and~~
 - ~~d.~~ c. The dependent child is not only temporarily absent from the home of the child's parent.
2. An individual may be a caretaker relative only if the individual is the dependent child's parent, stepparent, grandparent, brother,

sister, stepbrother, stepsister, great-grandparent, aunt, uncle, niece, nephew, great-great-grandparent, great-aunt, great-uncle, first cousin, grandniece, grandnephew, great-great-great-grandparent, great-great-aunt, great-great-uncle, second cousin (a great-aunt's or great-uncle's child), first cousin once removed (an aunt's or uncle's grandchild), great-grandniece, or great-grandnephew, whether by birth or adoption, and whether by whole or half-blood.

3. A child is considered to be living with a caretaker relative when away at school or when otherwise temporarily absent from the home. A child is not considered to be living with a caretaker relative when either the child or the caretaker relative is residing in a nursing care facility, an intermediate care facility for individuals with intellectual disabilities, or a specialized facility on other than a temporary basis.
4. A child may not be considered to be living with more than one caretaker relative in more than one medicaid unit for the same time period.

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; July 1, 2012; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01, 50-24.1-37

75-02-02.1-12. Age and identity.

1. An eligible categorically or medically needy aged applicant or recipient is eligible for medicaid for the entire calendar month in which that individual reaches age sixty-five.
- ~~2. Except as provided in subsection 3, an individual who is eligible upon reaching age twenty-one remains eligible for medicaid through the month in which the individual reaches that age.~~
- ~~3.~~ 2. An individual who attains age twenty-one while receiving treatment and continues to receive treatment as an inpatient in an institution for mental diseases remains eligible through the month the individual reaches age twenty-two.
- ~~4.~~ 3. Blind individuals, disabled individuals, and caretaker relatives are not subject to any age requirements for purposes of medicaid eligibility.
- ~~5.~~ 4. The identity of each applicant must be established and documented.

- ~~6.~~ 5. Citizenship status of each applicant must be established and documented.

History: Effective December 1, 1991; amended effective July 1, 2003; June 1, 2004; January 1, 2010; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01, 50-24.1-37

75-02-02.1-14.1. Eligibility for medically frail medicaid expansion enrollees.

1. A medicaid expansion enrollee interested in applying for a medically frail determination shall complete a self-assessment and return the completed form to the department.
2. If the self-assessment meets a threshold score set by the department, the enrollee shall schedule an appointment with a primary care provider to review and validate the information on the self-assessment. After the enrollee attends a face-to-face appointment with the primary care provider, the enrollee shall ensure that the primary care provider provides documentation to the department that validates the diagnosis or medical condition and that includes a medication list.
3. Upon review of the information provided by the primary care provide, the department shall determine whether the enrollee meets medically frail eligibility requirements.
4. If the medicaid expansion enrollee is approved for eligibility as medically frail, the enrollee may choose coverage through a managed care organization or through the medicaid state plan services.
5. Coverage of an enrollee as medically frail will begin the first of the month following the month in which the determination is made.

History: Effective January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01, 50-24.1-37

75-02-02.1-16. State of residence. A resident of the state is an individual who is living in the state voluntarily and not for a temporary purpose. Temporary absences from the state with subsequent returns to the state, or intent to return when the purpose of the absence has been accomplished, do not interrupt continuity of residence. Residence is retained until abandoned or established in another state.

1. For individuals entering the state, the earliest date of eligibility is the date of entry. Residence may not be established for individuals who claim residence in another state.

2. Individuals under age twenty-one.

- a. For any individual under age twenty-one who is living independently from the individual's parents or who is married and capable of indicating intent, the state of residence is the state where the individual is living with the intention to remain there ~~permanently or for an indefinite period~~.
- b. For any individual who is receiving foster care or adoption assistance payments, under title IV-E, from another state and is living in North Dakota, North Dakota is the state of residence for medicaid purposes.
- c. For any individual under age twenty-one not residing in an institution, whose medicaid eligibility is based on blindness or disability, the state of residence is the state in which the individual is living.
- d. For any other noninstitutionalized individual under age twenty-one, the state of residence is the state in which the child is living with the child's parent or caretaker relative on other than a temporary basis. A child who comes to North Dakota to receive an education, special training, or services in a facility such as the Anne Carlsen facility, a maternity home, or a vocational training center is normally regarded as living temporarily in the state if the intent is to return to the child's home state upon completion of the education or service. A child placed by an out-of-state placement authority, including a court, into the home of relatives or foster parents in North Dakota on other than a permanent basis or for an indefinite period is living in the state for a temporary purpose and remains a legal resident of the state of origin. A resident of North Dakota who leaves the state temporarily to pursue educational goals (including any child participating in job corps) or other specialized services (including a child placed by a North Dakota placement authority, including a court, into the home of out-of-state relatives or foster parents) does not lose residence in the state.
- e. For any institutionalized individual, under age twenty-one, who is neither married nor living independently, residence is that of the parents or legal guardian at the time of placement or the state of residence of the parent or legal guardian at the time of medicaid application if the child is institutionalized in the same state. Only if the parental rights have been terminated, and a guardian or custodian appointed, may the residence of the guardian or custodian be used. If the individual has been abandoned by the individual's parents and does not have a guardian, the individual is a resident of the state in which the individual is institutionalized.

3. Individuals age twenty-one and over:

- a. For any individual not residing in an institution, the state of residence is the state where the individual is living with the intention to remain there ~~permanently or for an indefinite period~~ or is entering the state with a job commitment or seeking employment. The state of residence, for medicaid purposes, of a migrant or seasonal farm worker is the state in which the individual is employed or seeking employment.
 - b. Except as provided in subdivision c, the state of residence of an institutionalized individual is the state where the individual is living with the intention to remain there ~~permanently or for an indefinite period~~.
 - c. For an institutionalized individual who became incapable of indicating intent before age twenty-one, the state of residence is that of the parent or guardian making application, at the time of placement or, if the individual is institutionalized in that state, at the time of application. If the individual has no guardian, the application is not made by either parent, and the placement was not made by another state, the state of residence is the state in which the individual is physically present.
4. For purposes of this subsection:
- a. "Individual incapable of indicating intent" means one who:
 - (1) Has an intelligence quotient of forty-nine or less, or a mental age of seven or less, based upon tests acceptable to the division of mental health of the department of human services;
 - (2) Has been found by a court of competent jurisdiction to be an incapacitated person as defined in subsection 2 of North Dakota Century Code section 30.1-26-01;
 - (3) Has been found by a court of competent jurisdiction to be legally incompetent; or
 - (4) Is found incapable of indicating intent based on medical documentation obtained from a physician or surgeon, clinical psychologist, or other person licensed by the state in the field of mental retardation; and
 - b. "Institution" means an establishment that furnishes, in single or multiple facilities, food, shelter, and some treatment or services to four or more individuals unrelated to the proprietor.
5. Notwithstanding any other provision of this section except subsections 6 through 9, individuals placed in out-of-state institutions by a state retain

residence in that state regardless of the individual's indicated intent or ability to indicate intent. The application of this subsection ends when a person capable of indicating intent leaves an institution in which the person was placed by this state. Providing information about another state's medicaid program or about the availability of health care services and facilities in another state, or assisting an individual in locating an institution in another state, does not constitute a state placement.

6. For any individual receiving a state supplemental payment, the state of residence is the state making the payment.
7. For any individual on whose behalf payments for regular foster care or state adoption assistance are made, the state of residence is the state making the payment.
8. If an interstate reciprocal residency agreement has been entered into between this state and another state pursuant to 42 CFR 435.403(k), the state of residence of an affected individual is the state determined under that agreement.
9. When two or more states cannot agree which state is the individual's state of residence, the state of residence is the state in which the individual is physically present.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; January 1, 2010; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 CFR Part 435

75-02-02.1-18. Citizenship and alienage.

1. An applicant or recipient must be a United States citizen or an alien lawfully admitted for permanent residence. Acceptable documents to establish United States citizenship and naturalized citizen status are defined in 42 CFR 435.407.
2. For purposes of qualifying as a United States citizen, the United States includes the fifty states, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, and the Northern Mariana Islands. Nationals from American Samoa or Swain's Island are also regarded as United States citizens for purposes of medicaid.
3. American Indians born in Canada, who may freely enter and reside in the United States, are considered to be lawfully admitted for permanent residence if at least one-half American Indian blood. A spouse or child of such an Indian, or a noncitizen individual whose membership in an Indian tribe or family is created by adoption, may not be considered to be lawfully admitted under this subsection unless the individual is of at least one-half American Indian blood by birth.

4. The following categories of aliens, while lawfully admitted for a temporary or specified period of time, are not eligible for medicaid, ~~including~~ except for emergency services, because of the temporary nature of their admission status:
 - a. Foreign government representatives on official business and their families and servants;
 - b. Visitors for business or pleasure, including exchange visitors;
 - c. Aliens in travel status while traveling directly through the United States;
 - d. Crewmen on shore leave;
 - e. Treaty traders and investors and their families;
 - f. Foreign students;
 - g. International organization representatives and personnel and their families and servants;
 - h. Temporary workers, including agricultural contract workers; and
 - i. Members of foreign press, radio, film, or other information media and their families.
5. Except for aliens identified in subsection 4, aliens who are not lawfully admitted for permanent residence in the United States are not eligible for medicaid, except for emergency services.
6. Aliens from the Federated States of Micronesia, the Marshall Islands, or Palau are lawfully admitted as permanent nonimmigrants and are not eligible for medicaid, except for emergency services.
7. Aliens who lawfully entered the United States for permanent residence before August 22, 1996, and who meet all other medicaid criteria may be eligible for medicaid.
8. The following categories of aliens who entered the United States for permanent residence on or after August 22, 1996, and who meet all other medicaid criteria may be eligible for medicaid as qualified aliens:
 - a. Honorably discharged veterans, aliens on active duty in the United States armed forces, and the spouse or unmarried dependent children of such individuals;
 - b. Refugees and asylees;

- c. Aliens whose deportation was withheld under section 243(h) of the Immigration and Naturalization Act;
 - d. Cuban and Haitian entrants;
 - e. Aliens admitted as Amerasian immigrants;
 - f. Victims of a severe form of trafficking;
 - g. Iraqi and Afghan aliens and family members who are admitted under section 101(a)(27) of the Immigration and Naturalization Act;
 - h. For the period paroled, aliens paroled into the United States for at least one year under section 212(d)(5) of the Immigration and Nationality Act;
 - i. Aliens granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act in effect prior to April 1, 1980;
 - j. Aliens granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act or who have a pending application that sets forth a prima facie case for eligibility for that nonimmigrant status;
 - k. Certain battered aliens and their children who have been approved or have a petition pending which sets forth a prima facie case as identified in 8 U.S.C. 1641(c), but only if the department determines there is a substantial connection between the battery and the need for the benefits to be provided; and
 - l. All other aliens, other than for emergency services, only after five years from the date they entered the United States, and then only if the individual is a lawful permanent resident who has been credited with forty qualifying quarters of social security coverage.
9. An alien who is not eligible for medicaid because of the time limitations or lack of forty qualifying quarters of social security coverage may be eligible to receive emergency services that are not related to an organ transplant procedure if:
- a. The alien has a medical condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
 - (1) Placing health in serious jeopardy;
 - (2) Serious impairment to bodily functions; or

- (3) Serious dysfunction of any bodily organ or part;
- b. The alien meets all other eligibility requirements for medicaid except the requirements concerning furnishing social security numbers and verification of alien status; and
- c. The alien's need for the emergency service continues.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; January 1, 2010; January 1, 2011; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01, 50-24.1-37

75-02-02.1-19.1. Family coverage group.

- 1. ~~Caretakers, pregnant women, and children~~ Parents and caretaker relatives, and their spouses, who meet the medically needy technical requirements and the requirements of this section are eligible under the ~~family coverage parent and caretaker relative~~ group.
- 2. ~~Families~~ Parents and caretaker relatives eligible under the ~~family coverage parent and caretaker relative~~ group must ~~include~~ be living with a child, ~~who may be an unborn child,~~ who is deprived of a biological or adoptive parent's support or care. The child described in this subsection must be under age eighteen.
 - a. ~~The child described in this subsection must be:~~
 - (1) ~~Living with a caretaker relative; and~~
 - (2) ~~Under age eighteen, or age eighteen and a full-time or part-time student in high school or an equivalent level of vocational or technical training if the student can reasonably be expected to complete the high school, general equivalency diploma, or vocational curriculum prior to or during the month the student turns age nineteen. A child who does not meet this age requirement is not included in any eligibility determinations for the family coverage group.~~
 - b. ~~The parents of a caretaker who is at least age eighteen, or if under age eighteen is married or is not residing with the parents, may not be included in the same family unit as the caretaker.~~
 - c. ~~If the only deprived child, including a disabled child in receipt of supplemental security income benefits, is age eighteen and is a student anticipated to graduate prior to or during the month of the child's nineteenth birthday, the parent remains eligible under the family coverage group if all other criteria are met.~~

- d. ~~An individual in receipt of social security or supplemental security income disability or retirement benefits may choose to be eligible as a disabled or aged individual under the medically needy coverage group, or may choose to be considered a caretaker, or child, under the family coverage group. These individuals are included in the unit as follows:~~
- ~~(1) An individual in receipt of social security disability or retirement benefits is included in the family unit for determining income eligibility regardless of whether the disabled individual chooses medicaid eligibility under the medically needy coverage group or the family coverage group.~~
 - ~~(2) A supplemental security income recipient who chooses to be eligible as aged, blind, or disabled is not eligible for coverage under the family coverage group. The supplemental security income recipient is considered part of the family unit.~~
 - ~~(a) A caretaker receiving supplemental security income benefits is included in the family unit for budget purposes due to the caretaker's financial responsibility for spouse and children; and~~
 - ~~(b) A child receiving supplemental security income benefits is not included in the family unit for budget purposes.~~
 - ~~(3) A supplemental security income recipient who chooses to be eligible as a caretaker or child may be eligible under the family coverage group, and the individual's supplemental security income is considered other unearned income.~~
3. A family may establish deprivation, for purposes of the family coverage parent or caretaker relative group, if the family's countable income is within the family coverage parent or caretaker relative group income levels and at least one of the caretaker who is the primary wage earner relatives is:
- a. Employed less than one hundred hours per month; or
 - b. Employed more than one hundred hours in the current month, but was employed less than one hundred hours in the previous month and is expected to be employed less than one hundred hours in the following month.
4. ~~The primary wage earner is the caretaker with greater current income unless the family or the agency establishes that the other caretaker had the greater total earnings in the twenty-four-month period ending immediately before the month the family establishes eligibility for the~~

~~family coverage group. A primary wage earner, once established, remains the primary wage earner as long as the family remains eligible. This group shall follow a MAGI-based methodology.~~

- ~~5. Except as specifically provided in this section, sections 75-02-02.1-34, 75-02-02.1-37, 75-02-02.1-38, 75-02-02.1-38.2, 75-02-02.1-39, 75-02-02.1-40, and 75-02-02.1-41.2 apply to the family coverage group.~~
- ~~6. When a caretaker does not live with the caretaker's parents, the parents' income is not considered.~~
- ~~7. a. The following deductions are not allowed:
 - ~~(1) The work training allowance of thirty dollars provided under section 75-02-02.1-39; and~~
 - ~~(2) Any earned income deduction available to applicants or recipients who are not aged, blind, or disabled.~~~~
 - ~~b. The following disregards and deductions are allowed from earned income:
 - ~~(1) An employment expense allowance equal to one hundred twenty dollars of earned income is deducted from the gross earned income of each employed member of the medicaid unit.~~
 - ~~(2) For each employed member of the unit, a disregard equal to thirty-three and one-third percent of the balance of earned income, after deducting the employment expense allowance, is disregarded.~~~~
 - ~~c. The following deductions are allowed from earned or unearned income:
 - ~~(1) The cost of an essential service considered necessary for the well-being of a family is allowed as a deduction as needed. The service must be of such nature that the family, because of infirmity, illness, or other extenuating circumstance, may not perform independently. An essential service is intended to refer to such needs as housekeeping duties or child care during a parent's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family unit to a distant medical or rehabilitation facility.~~
 - ~~(2) When the family includes a stepparent who is not eligible, or when a caretaker who is under age eighteen lives at home with both parents and the parents are not eligible under the~~~~

~~family coverage group, a deduction is allowed for amounts actually being paid by the stepparent or parents to any other persons not living in the home who are, or could be, claimed by the stepparent or parents as dependents for federal income tax purposes.~~

History: Effective January 1, 2003; amended effective September 1, 2003; June 1, 2004; April 1, 2008; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: 50-24.1-37; 42 USC 1396a(e), 42 USC 1396u-1

75-02-02.1-20. Transitional and extended medicaid benefits. Families that cease to be eligible under the ~~family coverage~~ parent and caretaker relative group and who meet the requirements of this section may continue to be eligible for medicaid benefits without making further application for medicaid.

~~1. a. Families that include at least one individual who was 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 relative's earned income or because a member of the unit has a reduction in the time-limited earned income disregard, may continue to be eligible for transitional medicaid benefits for up to twelve months if:~~

~~(1) In the first six-month period:~~

~~(a) The family has a child living in the home who meets the family coverage group age requirements; and~~

~~(b) The caretaker relative remains a resident of the state;
or~~

~~(2) In the second six-month period:~~

~~(a) The family has a child living in the home who meets the family coverage group age requirements;~~

~~(b) The caretaker relative remains a resident of the state;~~

~~(c) The caretaker relative remains employed or shows good cause for not being employed if family coverage ineligibility resulted from the caretaker relative's earned income; and~~

~~(d) The gross earned income, less child care expenses the caretaker relative is responsible for, which, in either of the three-month periods consisting of the fourth, fifth, and sixth months or the seventh, eighth, and ninth months, when totaled and divided by three, does not~~

~~exceed one hundred eighty five percent of the poverty level.~~

~~b. Families eligible for transitional medicaid benefits include:~~

~~(1) Children who are born, adopted, or who enter the home of a caretaker relative during the first or second six-month period; and~~

~~(2) Parents who were absent from the family when the family became ineligible under the family coverage group, but who return during either period.~~

~~e. A recipient who seeks eligibility under this subsection must report and verify income and child care expenses for the fourth, fifth, and sixth months by the twenty-first day of the seventh month, and for the seventh, eighth, and ninth months by the twenty-first day of the tenth month. Failure to report income in the seventh month and the tenth month, or receipt of income in excess of one hundred eighty five percent of the poverty level, causes ineligibility effective on the last day, respectively, of the seventh month or the tenth month.~~

1. Families that include at least one individual who was 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 relative's earned income or because a member of the unit has a reduction in the time-limited earned income disregard, may continue to be eligible for transitional medicaid benefits for up to twelve months if:

a. The family has a child living in the home who meets the family coverage group age requirements; and

b. The caretaker relative remains a resident of the state; or

2. Families that include at least one individual who was eligible under the family coverage parent and caretaker relative group in at least three of the six months immediately preceding the month in which the family became ineligible wholly or partly as a result of the collection or increased collection of ~~child~~ or spousal support continue to be eligible for extended medicaid for four calendar months:

a. The family has a child living in the home who meets the ~~family coverage~~ parent and caretaker relative group age requirements; and

b. The caretaker relative remains a resident of the state.

3. A family that seeks to demonstrate eligibility in at least three of the six months immediately preceding the month in which the family became ineligible must have been eligible in this state in the month immediately preceding the month in which the family became ineligible.
4. Children who no longer meet the age requirements under the ~~family coverage~~ parent and caretaker relative group are not eligible for transitional or extended medicaid benefits.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01, 50-24.1-37

75-02-02.1-34. Income considerations.

1. All income that is actually available shall 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 for support, maintenance, or medical care; 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. Income shall be reasonably evaluated. This subsection does not supersede other provisions of this chapter which describe or require specific treatment of income, or which describe specific circumstances which require a particular treatment of income.
2. The financial responsibility of any individual for any applicant or recipient of medicaid will be limited to the responsibility of spouse for spouse and parents for a child under age twenty-one. Such responsibility is imposed as a condition of eligibility for medicaid. Except as otherwise provided in this section, the income of the spouse and parents is considered available to the applicant or recipient, even if that income is not actually contributed. Biological and adoptive parents, ~~but not~~ and stepparents, are treated as parents.
3. All spousal income is considered actually available unless:
 - a. A court order, entered following a contested case, determines the amounts of support that a spouse must pay to the applicant or recipient;
 - b. The spouse from whom support could ordinarily be sought, and the property of such spouse, is outside the jurisdiction of the courts of the United States or any of the United States; or
 - c. The applicant or recipient is subject to marital separation, with or without court order, and there has been no collusion between

the applicant or recipient and that person's spouse to render the applicant or family member eligible for medicaid.

4. All parental income is considered actually available to a child under age twenty-one unless the child is:
 - a. Disabled and at least age eighteen;
 - b. Living independently; ~~or~~
 - c. 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 medicaid benefits; or
 - d. Filing an income tax return and the parents are not claiming the child as a tax dependent.
5. Income may be received weekly, biweekly, monthly, intermittently, or annually. However income is received, a monthly income amount must be computed.
6. Payments from any source, which are or may be received as a result of a medical expense or increased medical need, are not income, but are considered to be medical payments which must be applied toward the recipient's medical costs. These payments include health or long-term care insurance payments, veterans administration aid and attendance, veterans administration reimbursements for unusual medical expenses, and veterans administration homebound benefits intended for medical expenses.
 - a. Health or long-term care insurance payments must be considered as payments received in the months the benefit was intended to cover and must be applied to medical expenses incurred in those months.
 - b. ~~Veterans~~ Except for individuals subject to a MAGI-based methodology, veterans administration aid and attendance benefits must be considered as payments received in the months the benefit was intended to cover and must be applied to the medical expense incurred in those months;
 - c. ~~Veterans~~ Except for individuals subject to a MAGI-based methodology, veterans administration reimbursements for unusual medical expenses must be considered as payments received in the months in which the increased medical expense occurred and must be applied to the medical expense incurred in those months; and

- d. ~~Veterans~~ Except for individuals subject to a MAGI-based methodology, veterans administration homebound benefits intended for medical expenses must be considered as payments received in the months the benefit was intended to cover and must be applied to the medical expenses incurred in those months. This does not apply to homebound benefits which are not intended for medical expenses.
7. a. 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:
- (1) If payment of income is made solely to one individual, the income shall be considered available only to that individual; and
 - (2) If payment of income is made to more than one individual, the income shall be considered available to each individual in proportion to the individual's interest.
- b. In the case of income available to a couple in which there is no document establishing ownership, one-half of the income shall be considered to be available to each spouse.
- c. Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent that the applicant or recipient can establish that the ownership interests are otherwise than as provided in those rules.
8. ~~Countable~~ Except for individuals not subject to a MAGI-based methodology, countable income from a business entity that employs anyone whose income is used to determine eligibility is:
- a. If the applicant or recipient and other members of the medicaid unit, in combination, own a controlling interest in the business entity, an amount determined as for a self-employed individual or family under section 75-02-02.1-38;
 - b. If the applicant or recipient and other members of the medicaid unit, in combination, own less than a controlling interest, but more than a nominal interest, in the business entity, an amount determined by:
 - (1) Subtracting any cost of goods for resale, repair, or replacement, and any wages, salaries, or guarantees (but not draws) paid to all owners of interests in the business entity who are actively engaged in the business to establish

the business entity's adjusted gross income, from the business entity's gross income;

- (2) Establishing the applicant or recipient's share of the business entity's adjusted gross income, based on the medicaid unit's proportionate share of ownership of the business entity;
- (3) Adding any wages, salary, or guarantee paid to the applicant's or recipient's share of the business entity's adjusted gross income; and
- (4) Applying the disregards appropriate to the type of business as described in section 75-02-02.1-38; or

c. If the applicant or recipient and other members of the medicaid unit, in combination, own a nominal interest in the business entity, and are not able to influence the nature or extent of employment by that business entity, the individual's earned income as an employee of that business entity, plus any unearned income gained from ownership of the interest in the business entity.

9. For an individual subject to a MAGI-based methodology, the individual's share of the net income plus any gross wages paid from the entity is countable income from the entity.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; June 1, 2004; January 1, 2014.

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)

75-02-02.1-34.1. MAGI-based methodology. Effective for the benefit month of January 2014, the following MAGI-based methodology will be used in determining income eligibility for medicaid.

1. Income is based on household composition.
2. Monthly income is used prospectively for new applications; annualized income is used for ongoing cases.
3. Current, point in time income is used; however, reasonable expected changes in income must be included.
4. A tax dependent child's income does not count in a taxpayer parent's or caretaker relative's household if the child is not required to file a tax return. The child's needs are included in the taxpayer's household.
 - a. If the taxpayer parent or taxpayer caretaker relative is in the child's medicaid household, the child's income does not count in the child's household, either.

- b. If the taxpayer parent or taxpayer caretaker relative is not in the child's medicaid household, the child's income counts in the child's household.
 - c. If the child is not required to file a tax return, however, files a return to get a refund of taxes withheld, the child's income is not counted.
 - d. If the child is required to file a tax return, the child's income is counted in all of the households in which the child is included.
5. If eligibility is determined by using an individual's federal tax return, modified adjusted gross income is as stated in the federal tax return:
- a. Plus:
 - (1) Any foreign earned income excluded from taxes.
 - (2) Tax-exempt interest.
 - (3) Tax-exempt social security income.
 - b. Less:
 - (1) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses if included in taxable income.
 - (2) Certain distributions, payments, and student financial assistance for American Indians and Alaska Natives if included in taxable income.
6. When available, the department shall use the most current information to reflect the income elements identified in subsection 5, regardless of whether they were the amounts used for the tax return.
7. If eligibility is determined without using an individual's federal tax return, the department shall determine modified adjusted gross income using internal revenue service rules combined with medicaid and children's health insurance program rules as follows:
- a. Add:
 - (1) Gross wages less pretax deductions;
 - (2) Gross interest income;
 - (3) Gross dividend income;

- (4) Taxable refunds of state or local income taxes (counted only in the month received);
- (5) Gross alimony received;
- (6) Net business income or loss from self-employment;
- (7) Capital gains or losses, if expected to recur;
- (8) Taxable amount of individual retirement account distributions;
- (9) Taxable amount of pensions and annuities;
- (10) Net rents, royalties, and partnership, S corporation, or trust income;
- (11) Net farm income or loss;
- (12) Gross unemployment compensation;
- (13) Gross social security income;
- (14) Gross foreign earned income; and
- (15) Other income determined to be reportable by the internal revenue service.

b. Subtract from that sum:

- (1) Educator expenses;
- (2) Business expenses of reservist, performing artist, and fee-basis government official;
- (3) Health savings account deduction;
- (4) Moving expenses;
- (5) Deductible portion of self-employment tax;
- (6) Contributions to self-employed SEP, SIMPLE, and qualified plans;
- (7) Self-employed health insurance deduction;
- (8) Penalty on early withdrawal of savings;
- (9) Alimony paid;

- (10) Contributions to an individual retirement account:
 - (11) Student loan interest deduction:
 - (12) Tuition and fees:
 - (13) Domestic production activities deduction:
 - (14) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses; and
 - (15) Certain distributions, payments, and student financial assistance for American Indians and Alaska Natives.
8. The following income types are not reported on internal revenue service form 1040 and are not countable income under a MAGI-based methodology:
- a. Child support income:
 - b. Veterans' benefits (aid and attendance, homebound benefits, and reimbursements for unusual medical expenses):
 - c. Supplemental security income:
 - d. Temporary assistance for needy families benefits:
 - e. Proceeds from life insurance, accident insurance, or health insurance:
 - f. Gifts and loans:
 - g. Inheritances; and
 - h. Workers' compensation payments.
9. Instead of itemized disregards and deductions, the department may apply a standard disregard equal to five percent of the federal poverty level as part of the MAGI-based methodology.

History: Effective January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

75-02-02.1-37. Unearned income. Unearned income is income that is not earned income. Unearned income received in a fixed amount each month shall be applied in the month in which it is normally received. The following income rules apply to individuals not subject to a MAGI-based methodology:

1. Recurring unearned lump sum payments received after application for medicaid shall be prorated over the number of months the payment is intended to cover. When a payment is received and prorated in an ongoing case, or after a period of medicaid eligibility or eligibility for the children's health insurance program as provided in chapter 75-02-02.2, and the case is closed and then reopened during the prorated period, or within the following proration period, the lump sum payment proration must continue. All other recurring unearned lump sum payments received before application for medicaid or for the children's health insurance program as provided in chapter 75-02-02.2 are considered income in the month received and are not prorated.
2. All nonrecurring unearned lump sum payments, except health or long-term care insurance payments, veterans administration aid and attendance, veterans administration reimbursements for unusual medical expenses, and veterans administration homebound benefits intended for medical expenses shall be considered as income in the month received and assets thereafter.
3. One-twelfth of annual conservation reserve program payments, less expenses, such as seeding and spraying, necessary to maintain the conservation reserve program land in accordance with that program's requirements, is unearned income in each month.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; June 1, 2004; August 1, 2005; January 1, 2011; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

75-02-02.1-37.1. Unearned income for individuals subject to a MAGI-based methodology. Unearned income is income that is not earned income. Unearned income received in a fixed amount each month shall be applied in the month in which it is normally received. Effective January 1, 2014, individuals subject to a MAGI-based methodology will have income treated as follows:

1. Recurring unearned lump sum payments received after application for medicaid shall be prorated over the number of months the payment is intended to cover. When a payment is received and prorated in an ongoing case, or after a period of medicaid eligibility or eligibility for the children's health insurance program as provided in chapter 75-02-02.2, and the case is closed and then reopened during the prorated period, or within the following proration period, the lump sum payment proration must continue. All other recurring unearned lump sum payments received before application for medicaid or for the children's health insurance program as provided in chapter 75-02-02.2 are considered income in the month received and are not prorated.
2. All nonrecurring unearned lump sum payments, except health or long-term care insurance payments, veterans administration aid and

attendance, veterans administration reimbursements for unusual medical expenses, and veterans administration homebound benefits intended for medical expenses shall be considered as income in the month received and assets thereafter.

3. Net taxable conservation reserve program (CRP) income is considered income and prorated over the year.

History: Effective January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

75-02-02.1-38. Earned income. Earned income is income that is currently received as wages, salaries, commissions, or profits from activities in which an individual or family is engaged through either employment or self-employment. Income is "earned" only if the individual or family contributes an appreciable amount of personal involvement and effort. Earned income shall be applied in the month in which it is normally received. The following income rules apply to individuals not subject to a MAGI-based methodology:

1. If earnings from more than one month are received in a single payment, the payment must be divided by the number of months in which the income was earned, and the resulting monthly amounts shall be attributed to each of the months with respect to which the earnings were received.
2. If a self-employed individual's business does not require the purchase of goods for sale or resale, net income from self-employment is seventy-five percent of gross earnings from self-employment.
3. If a self-employed individual's business requires the purchase of goods for sale or resale, net income from self-employment is seventy-five percent of the result determined by subtracting cost of goods purchased from gross receipts.
4. If a self-employed individual's business furnishes room and board, net income from self-employment is monthly gross receipts less one hundred dollars per room and board client.
5. If a self-employed individual is in a service business that requires the purchase of goods or parts for repair or replacement, net income from self-employment is twenty-five percent of the result determined by subtracting cost of goods or parts purchased from gross earnings from self-employment.
6. If a self-employed individual receives income other than monthly, and the most recently available federal income tax return accurately predicts income, net income from self-employment is twenty-five percent of gross annual income, plus any net gain resulting from the sale of capital

items, plus ordinary gains or minus ordinary losses, divided by twelve. If the most recent available federal income tax return does not accurately predict income because the business has been recently established, because the business has been terminated or subject to a severe change, such as a decrease or increase in the size of the operation, or an uninsured loss, net income from self-employment is an amount determined by the county agency to represent the best estimate of monthly net income from self-employment. A self-employed individual may be required to provide, on a monthly basis, the best information available on income and cost of goods. Income statements, when available, shall be used as a basis for computation. If the business is farming, or any other seasonal business, the annual net income, divided by twelve, is the monthly net income.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

75-02-02.1-38.2. Disregarded income. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, an intermediate care facility for individuals with intellectual disabilities, or receiving swing-bed care in a hospital. The following types of income shall be disregarded in determining medicaid eligibility for individuals not subject to a MAGI-based methodology:

1. Money payments made by the department in connection with foster care, subsidized guardianship, or the subsidized adoption program;
2. Occasional small gifts;
3. County general assistance that may be issued on an intermittent basis to cover emergency-type situations;
4. Income received as a housing allowance by a program sponsored by the United States department of housing and urban development or rent supplements or utility payments provided through a housing assistance program;
5. Income of an individual living in the parental home if the individual is not included in the medicaid unit;
6. Educational loans, scholarships, grants, awards, workers compensation, vocational rehabilitation payments, and work study received by a student, or any fellowship or gift, or portion of

a gift, used to pay the cost of tuition and fees at any educational institution;

7. In-kind income except in-kind income received in lieu of wages;
8. Per capita judgment funds paid to members of the Blackfeet Tribe and the Gros Ventre Tribe under Pub. L. 92-254, to any tribe to pay a judgment of the Indian claims commission or the court of claims under Pub. L. 93-134, or to the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe of Rocky Boy's Reservation, the Minnesota Chippewa Tribe, or the Little Shell Tribe of Chippewa Indians of Montana under Pub. L. 97-403;
9. Compensation received by volunteers participating in the action program as stipulated in the Domestic Volunteer Service Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4950 et seq.], including foster grandparents, older American community service program, retired senior volunteer program, service corps of retired executives, volunteers in service to America, and university year for action;
10. Benefits received through the low income home energy assistance program;
11. Training funds received from vocational rehabilitation;
12. Training allowances of up to thirty dollars per week provided through a tribal native employment works program, or the job opportunity and basic skills program;
13. Income tax refunds and earned income credits;
14. Needs-based payments, support services, and relocation expenses provided through programs established under the Workforce Investment Act [29 U.S.C. 2801 et seq.], and through the job opportunities and basic skills program;
15. Income derived from submarginal lands, conveyed to Indian tribes and held in trust by the United States, as required by section 6 of Pub. L. 94-114 [25 U.S.C. 459e];
16. Income earned by a child who is a full-time student or a part-time student who is not employed one hundred hours or more per month;
17. Payments from the family subsidy program;
18. The first fifty dollars per month of current child support, received on behalf of children in the medicaid unit, from each budget unit that is budgeted with a separate income level;

19. Payments made to recipients under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646, 42 U.S.C. 4621 et seq.];
20. Payments made tax exempt as a result of section 21 of the Alaska Native Claims Settlement Act [Pub. L. 92-203];
21. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [Pub. L. 100-383; 50 U.S.C. App. 1989 et seq.];
22. Agent orange payments;
23. A loan from any source that is subject to a written agreement requiring repayment by the recipient;
24. The medicare part B premium refunded by the social security administration;
25. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime;
26. Temporary assistance for needy families benefit and support service payments;
27. Lump sum supplemental security income benefits in the month in which the benefit is received;
28. German reparation payments made to survivors of the holocaust and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act;
29. Assistance received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288; 42 U.S.C. 5121 et seq.], or some other federal statute, because of a presidentially declared major disaster, and interest earned on that assistance;
30. Refugee cash assistance or grant payments;
31. Payments from the child and adult food program for meals and snacks to licensed families who provide day care in their home;
32. Extra checks consisting only of the third regular payroll check or unemployment benefit payment received in a month by an individual who is paid biweekly, and the fifth regular payroll check received in a month by an individual who is paid weekly;

33. All income, allowances, and bonuses received as a result of participation in the job corps program;
34. Payments received for the repair or replacement of lost, damaged, or stolen assets;
35. Homestead tax credit;
36. Training stipends provided to victims of domestic violence by private, charitable organizations for attending their educational programs;
37. Allowances paid to children of Vietnam veterans who are born with spina bifida, or to children of women Vietnam veterans who are born with certain covered birth defects, under 38 U.S.C. 1805 or 38 U.S.C. 1815;
38. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note];
39. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note];
40. Interest or dividend income from liquid assets;
41. Additional pay received by military personnel as a result of deployment to a combat zone; and
42. All wages paid by the census bureau for temporary employment related to census activities.

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012; July 1, 2012; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

75-02-02.1-38.3. Disregarded income for certain individuals subject to a MAGI-based methodology. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, an intermediate care facility for individuals with intellectual disabilities, or receiving swing-bed care in a hospital. Effective January 1, 2014, the above-identified individuals subject to a MAGI-based methodology are allowed the following income disregards:

1. Nontaxable income other than:
 - a. Nontaxable foreign earned income:
 - b. Nontaxable interest; and
 - c. The nontaxable portion of social security benefits.
2. Supplemental security income.
3. Veterans administration benefits other than retirement pensions.
4. Child support income.
5. Temporary assistance for needy families benefits.
6. Workers' compensation benefits.
7. Proceeds from life insurance, accident insurance, or health insurance.
8. Federal tax credits and federal tax refunds.
9. Gifts and loans
10. Inheritances.
11. Adjustments from gross income that are used in determining adjusted gross income for income tax purposes must be allowed.

History: Effective January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

75-02-02.1-38.4. Earned income for individuals subject to a MAGI-based methodology. Earned income is income that is currently received as wages, salaries, commissions, or profits from activities in which an individual or family is engaged through either employment or self-employment. Income is "earned" only if the individual or family contributes an appreciable amount of personal involvement and effort. Earned income shall be applied in the month in which it is normally received. Effective January 1, 2014, individuals subject to a MAGI-based methodology will have income treated as follows:

1. If earnings from more than one month are received in a single payment, the payment must be divided by the number of months in which the income was earned, and the resulting monthly amounts shall be attributed to each of the months with respect to which the earnings were received.

2. Net earnings or losses from self-employment as considered for income tax purposes are counted for modified adjusted gross income households.

History: Effective January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

75-02-02.1-39. Income deductions. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, an intermediate care facility for individuals with intellectual disabilities, or receiving swing-bed care in a hospital. No deduction not described in subsections 1 through 14 may be allowed in determining medicaid eligibility. For individuals not subject to a MAGI-based methodology, the following deductions apply:

1. Except in determining eligibility for the medicare savings programs, the cost of premiums for health insurance may be deducted from income in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage. In determining eligibility for the workers with disabilities coverage, the workers with disabilities enrollment fee and premiums are not deducted. In determining eligibility for the children with disabilities coverage, the children with disabilities premiums are not deducted. For purposes of this subsection, "premiums for health insurance" include payments made for insurance, health care plans, or nonprofit health service plan contracts which provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage which is:
 - a. Limited to disability or income protection coverage;
 - b. Automobile medical payment coverage;
 - c. Supplemental to liability insurance;
 - d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or
 - e. Credit accident and health insurance.
2. Except in determining eligibility for the medicare savings programs, medical expenses for necessary medical or remedial care may be deducted only if each is:

- a. Documented in a manner which describes the service, the date of the service, the amount of the cost incurred, and the name of the service provider;
 - b. Incurred by a member of a medicaid unit in the month for which eligibility is being determined, or was incurred in a prior month but was actually paid in the month for which eligibility is being determined and was not previously allowed as a deduction or offset of recipient liability, and was not previously applied to recipient liability;
 - c. Provided by a medical practitioner licensed to furnish the care;
 - d. Not subject to payment by any third party, including medicaid and medicare;
 - e. Not incurred for nursing facility services, swing-bed services, or home and community-based services during a period of ineligibility determined under section 75-02-02.1-33.1; and
 - f. Claimed.
3. Reasonable expenses such as food and veterinarian expenses necessary to maintain a service animal that is trained to detect seizures for a member of the medicaid unit.
 4. Except for a support payment withheld from an extra check that is disregarded, nonvoluntary child and spousal support payments may be deducted if actually paid by a member of the medicaid unit.
 5. The cost of premiums for long-term care insurance carried by an individual or the individual's spouse may be deducted from income in the month the premium is paid or prorated and deducted from income the months for which the premium affords coverage. No premium deduction may be made in determining eligibility for the medicare savings programs.
 6. Reasonable child care expenses, not otherwise reimbursed, may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training. Reasonable child care expenses do not include payments to parents to care for their own children.
 7. With respect to each individual in the medicaid unit who is employed or in training, but who is not aged, blind, or disabled, thirty dollars may be deducted as a work or training allowance, but only if the individual's income is counted in the eligibility determination.

8. Except in determining eligibility for the medicare savings programs, transportation expenses may be deducted if necessary to secure medical care provided for a member of the medicaid unit.
9. Except in determining eligibility for the medicare savings programs, the cost of remedial care for an individual residing in a specialized facility, limited to the difference between the recipient's cost of care at the facility and the regular medically needy income level, may be deducted.
10. A disregard of twenty dollars per month is deducted from any income, except income based on need, such as supplemental security income and need-based veterans' pensions. This deduction applies to all aged, blind, and disabled applicants or recipients, provided that:
 - a. When more than one aged, blind, or disabled person lives together, no more than a total of twenty dollars may be deducted;
 - b. When both earned and unearned income is available, this deduction must be made from unearned income; and
 - c. When only earned income is available, this deduction must be made before deduction of sixty-five dollars plus one-half of the remaining monthly gross income made under subdivision b of subsection 13.
11. Reasonable adult dependent care expenses for an incapacitated or disabled adult member of the medicaid unit may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training.
12. The cost to purchase or rent a car safety seat for a child through age ten is allowed as a deduction if a seat is not otherwise reasonably available.
13. The deductions described in this subsection may be allowed only on earned income.
 - a. For all individuals except aged, blind, or disabled applicants or recipients, deduct:
 - (1) Mandatory payroll deductions and union dues withheld, or ninety dollars, whichever is greater;
 - (2) Mandatory retirement plan deductions;
 - (3) Union dues actually paid; and
 - (4) Expenses of a nondisabled blind person, reasonably attributable to earning income.

- b. For all aged, blind, or disabled applicants or recipients, deduct sixty-five dollars plus one-half of the remaining monthly gross earned income, provided that, when more than one aged, blind, or disabled person lives together, no more than sixty-five dollars, plus one-half of the remaining combined earned income, may be deducted.
14. A deduction may be made for the cost of services of an applicant's or recipient's guardian or conservator, up to a maximum equal to five percent of countable gross monthly income excluding nonrecurring lump sum payments.

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; April 1, 2012; July 1, 2012; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

75-02-02.1-39.1 Income deductions for individuals subject to a MAGI-based methodology. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs. This section does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, an intermediate care facility for individuals with intellectual disabilities, or receiving swing-bed care in a hospital. 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 individual's medicaid unit.

History: Effective January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

75-02-02.1-40. Income levels.

1. Levels of income for maintenance shall be used as a basis for establishing financial eligibility for medicaid. The income levels applicable to individuals and units are:
 - a. Categorically needy income levels.
 - (1) Family coverage income levels established in the medicaid state plan are applied to the family coverage group. The family size is increased for each unborn child when determining the appropriate family size.
 - (2) Except for individuals subject to the nursing care income level, the income level for categorically needy aged, blind,

or disabled recipients is that which establishes supplemental security income eligibility.

b. Medically needy income levels.

- (1) Medically needy income levels established in the medicaid state plan are applied when a medicaid individual or unit resides in the individual's or the unit's own home or in a specialized facility, and when a medicaid individual has been screened as requiring nursing care, but elects to receive home and community-based services. The family size is increased for each unborn child when determining the appropriate family size.
- (2) The nursing care income levels established in the medicaid state plan are applied to residents receiving care in a nursing facility, an intermediate care facility for individuals with intellectual disabilities, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, or receiving swing-bed care in a hospital.
- (3) The community spouse income level for a medicaid eligible community spouse is subject to subdivision a, paragraph 1 of subdivision b, or subdivision c. The level for an ineligible community spouse is the greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under section 1924(d)(3)(c) of the Act [42 U.S.C. 1396r-5(d)(3)(C)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
- (4) The income level for each ineligible family member in a spousal impoverishment prevention case is equal to one-third of an amount determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member. For purposes of this paragraph, "family member" has the meaning given in subsection 1 of section 75-02-02.1-24.

c. Poverty income level.

- (1) The income level for pregnant women and children under age six is equal to one hundred ~~and thirty-three~~ 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) Qualified medicare beneficiaries. The income level for qualified medicare beneficiaries is equal to one hundred percent of the poverty level applicable to the family of the

size involved. The income level applies regardless of living arrangement.

- (3) The income level for children aged six to nineteen 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) The income level for transitional medicaid benefits is equal to one hundred and eighty-five percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (5) The income level for qualified working and disabled individuals is equal to two hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (6) The income level for specified low-income medicare beneficiaries is equal to one hundred twenty percent, of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (7) The income level for qualified individuals is equal to one hundred thirty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (8) The income level for workers with disabilities is two hundred twenty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (9) The income level for children with disabilities is two hundred percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

2. Determining the appropriate income level in special circumstances.

- a. ~~A child who is away at school is not treated as living independently, but shall be allowed the appropriate income level for one during all full calendar months. This is in addition to the income level applicable for the family unit remaining at home.~~
- b. ~~A child who is living outside of the parental home, but who is not living independently, or a spouse who is temporarily living outside of~~

~~the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse, shall be allowed a separate income level during all full calendar months during which the child or spouse lives outside the home. No separate income level is otherwise available.~~

- e. 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.
- d. 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.
- e. 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.
- f. 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.

- ~~g.~~ 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; ~~April 1, 2014~~ January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-37

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.

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:~~ The following deductions apply to individuals not subject to a MAGI-based methodology:
 - ~~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;~~
 - ~~b. The expense was not previously applied in determining eligibility for, or the amount of, medicaid benefits for any medicaid recipient;~~

- ~~e. The medical or remedial care was provided by a medical practitioner licensed to furnish the care;~~
 - ~~d. The expense is not subject to payment by any third party, including medicaid and medicare;~~
 - ~~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;~~
 - ~~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~~
 - ~~g. The medicaid unit is still obligated to pay the provider of the medical or remedial service.~~
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.~~
- a. 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) 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) The expense was not previously applied in determining eligibility for, or the amount of, medicaid benefits for any medicaid recipient;
 - (3) The medical or remedial care was provided by a medical practitioner licensed to furnish the care;

- (4) The expense is not subject to payment by any third party, including medicaid and medicare;
 - (5) 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) 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) The medicaid unit is still obligated to pay the provider of the medical or remedial service.
- b. 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.

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)

75-02-02.1-41.2. Budgeting.

1. **Definitions.** For purposes of this section:
 - a. "Base month" means the calendar month prior to the processing month.
 - b. "Benefit month" means the calendar month for which eligibility and recipient liability is being computed.
 - c. "Best estimate" means an income, expense, or circumstance prediction based on past amounts of income and expenses

and known factual information concerning future circumstances which affect eligibility, expenses to be incurred; or income to be received in the benefit month. Factual information concerning future circumstances must be based on information by which the applicant or recipient demonstrates known changes or highly probable changes to the income, expenses, or circumstances which offset eligibility, from the base month to the benefit month.

- d. "Processing month" means the month between the base month and the benefit month.
 - e. "Prospective budgeting" means computation of a household's eligibility and recipient liability based on the best estimate of income, expenses, and circumstances for a benefit month.
2. **Computing recipient liability for previous month.** Compute the amount of recipient liability by use of actual verified information, rather than best estimate, in each of the previous months for which eligibility is sought.
 3. **Computing recipient liability for the current month and next month at time of approval of the application.** Compute the amount of the recipient liability prospectively for the current month and the next month. The income received or best estimate of income to be received during the current month must be used to compute the recipient liability for the current month. The best estimates of income to be received during the next month must be used to compute the recipient liability for the next month.
 4. **Computing recipient liability for ongoing cases.**
 - a. For cases with fluctuating income, compute the recipient liability using verified income, expenses, and circumstances which existed during the base month, unless factual information concerning future circumstances is available. Recipients must report their income, expenses, and other circumstances on a monthly basis to determine continued eligibility.
 - b. For cases with stable income, compute the recipient liability using the best estimate of income, expenses, and circumstances. Recipients with stable income must report changes in income, expenses, and other circumstances within ten days of the day the recipients became aware of the change. A determination of continued eligibility, after a change is reported and demonstrated, is based on a revised best estimate which takes the changes into consideration.
 5. **Budgeting procedures used when adding individuals to an eligible unit.** Individuals may be added to an eligible unit up to one year prior

to the current month, provided the individual meets all eligibility criteria for medicaid, the eligible unit was eligible in all of the months in which eligibility for the individual is established, and the individual was in the unit in the months with respect to which eligibility for that individual is sought unless the individual would have been eligible under the adult group. Recipient liability will be based on the unit's actual income and circumstances when adding each individual for retroactive periods. Recipient liability must be based on the unit's income and circumstances from the base month, plus the best estimate of each individual's income and circumstances when adding each individual to the current or next month, unless the individual would have been eligible under the adult group.

6. **Budgeting procedures when deleting individuals from a case.** When a member of an existing unit is expected to leave the unit during the benefit month, that person may remain as a member of the unit until the end of the benefit month.

History: Effective December 1, 1991; amended effective May 1, 2006; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-37

**CHAPTER 75-02-02.2
CHILDREN'S HEALTH INSURANCE PROGRAM**

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75-02-02.2-01. Definitions. For purposes of this chapter:

1. "American Indian or Alaska Native" means a member of a federally recognized Indian tribe, band, or group or a descendant in the first or second degree, of any such member; an Eskimo or Aleut or other Alaska native enrolled by the secretary of the interior pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]; a person who is considered by the secretary of the interior to be an Indian for any purpose; or a person who is determined to be an Indian under regulations promulgated by the secretary.
2. "Applicant" means an individual seeking benefits under the healthy steps program on behalf of a child.
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.
4. "Children's health insurance program" means the North Dakota children's health insurance program, also known as the healthy steps program, which is a 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.].

5. "County agency" means the county social service board.
6. "Creditable health insurance coverage" means a health benefit plan which includes coverage for hospital or 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 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.
7. "Department" means the North Dakota department of human services.
8. "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 Social Security Act [42 U.S.C. 301 et seq.].
9. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which an individual or

household is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the individual or household, for income to be considered "earned".

10. "Employer" means an individual or entity who employs the services of an applicant or a member of the applicant's household and who pays the individual wages, salaries, or benefits.
11. "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. "Household member" means any individual ~~who shares the child's home a substantial amount of time. Children who are twenty-one years of age or older are not counted as household members. An individual who is temporarily absent from the household by reason of employment, school, training, or medical treatment, or who is expected to return to the household within thirty days of the date of the healthy steps program application, shall be considered a household member~~ whose needs or income or both must be included in determining the child's eligibility for the children's health insurance program using MAGI-based methodologies. This is based on tax filing status of the child and child's relationship with the person with whom the child is living.
13. "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 an individual who receives swing-bed care in a hospital.
14. "Insurance carrier" means the insurance company that underwrites the insurance coverage for the children's health insurance program.
15. "Living independently" means an individual under the age of twenty-one who:
 - a. Has served a tour of active duty with the armed services of the United States and lives separately and apart from either parent;
 - b. 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. Has lived separately and apart from both parents for at least three consecutive full calendar months after the date the individual left the 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. Providing health insurance coverage or paying court-ordered child support payments for a child is not considered to be providing support or assistance. For purposes of this subdivision, periods when an individual is attending an educational or training facility, is receiving care in a specialized facility, or is an institutionalized person are deemed to be periods when the individual was living with a parent unless the individual previously established that the individual was living independently;

- d. Has left foster care and established a living arrangement separate and apart from either parent and received no support or assistance from either parent. Providing health insurance coverage or paying court-ordered child support payments for a child is not considered to be providing support or assistance; or
 - e. Has lived separately and apart from both parents due to incest, continues to live separately and apart from both parents, and receives no support or assistance from either parent while living separately and apart. Providing health insurance coverage for a child is not considered to be providing support or assistance.
16. "Long-term care" means the services received by an institutionalized individual when the individual is screened or certified as requiring the services provided in a long-term care facility.
- ~~17.~~ 17. "MAGI-based methodology" means the method of determining eligibility for medicaid and the children's health insurance program that generally follows modified adjusted gross income rules.
- ~~17.~~ 18. "Medicaid" means a program implemented pursuant to North Dakota Century Code chapter 50-24.1 and 42 U.S.C. 1396 et seq. to furnish medical assistance, as defined in 42 U.S.C. 1396d(a), to individuals determined eligible for medically necessary covered medical and remedial services.
- ~~18.~~ 19. "Poverty line" means the official income poverty line as defined by the United States office of management and budget and revised annually in accordance with 42 U.S.C. 9902(2).
- ~~19.~~ 20. "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.
- ~~20.~~ 21. "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.

- ~~21-~~ 22. "Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general equivalency diploma classes, home school program recognized or supervised by the student's state or local school district, college, university, or vocational training, including summer vacation periods if the individual intends to return to school in the fall. A full-time student is a person who attends school on a schedule equal to a full curriculum.
- ~~22-~~ 23. "Supplemental security income" or "SSI" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
- ~~23-~~ 24. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].
- ~~24-~~ 25. "The plan" means the North Dakota children's health insurance program.
- ~~25-~~ 26. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
- ~~26-~~ 27. "Title XVI" means title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
- ~~27-~~ 28. "Title XXI" means title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.].

History: Effective October 1, 1999; amended effective August 1, 2005; January 1, 2011; July 1, 2012; January 1, 2014.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-01; 42 USC 1396a(e). 42 USC 1397aa et seq.

75-02-02.2-06.1. Children's health insurance program unit. This section 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 which may affect the unit. The financial responsibility of relatives must be considered with respect to all members of the assistance unit.

History: Effective August 1, 2005; amended effective January 1, 2014.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-24.1-37, 50-29; 42 USC 1397aa et seq.

75-02-02.2-06.2. Children's health insurance program MAGI-based methodology. The department shall use a MAGI-based methodology for determining eligibility for benefits under the children's health insurance program, including determination of a children's health insurance program household unit, for all applications filed and any eligibility reviews conducted on or after January 1, 2014. A children's health insurance program household unit is determined as follows:

1. If the child is a tax filer, and is not also claimed as a dependent by someone else, the child's medicaid unit consists of the child, the child's spouse, if living with the child, and anyone the child or the child's 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.
2. If the child is claimed as a tax dependent by another, even if the child files his or her own tax return, and does not meet any of the following exceptions, that child's medicaid unit is the same as the household that claims the child as a dependent, plus the child's spouse that lives with them and any unborn children of a pregnant woman who is included in the unit:
 - a. The child is claimed as a dependent by someone other than a spouse, or a natural, adopted, or stepparent;
 - b. The child is under nineteen years old and is living with both parents but the parents are not filing a joint return; or
 - c. The child is under nineteen years old and will be claimed as a dependent by a noncustodial parent.
3. If the child 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 subparagraphs a, b, or c of paragraph 2, the child is subject to the nonfiler rules. A nonfiler child's children's health insurance program household unit is the child, and, if living with the child, the child's spouse; natural, adopted, or stepchildren under nineteen years old; natural, adopted, or stepparents; or natural, adopted, or stepsiblings 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.

4. Individuals may not be opted out of the household, unless they choose to be covered under medicaid through the medically needy coverage instead of the children's health insurance program. They are still considered part of the child's children's health insurance program household if they meet the criteria in subsections 1 through 3.

History: Effective January 1, 2014.

General Authority: NDCC 50-29-02

Law Implemented: NDCC 50-29; 42 USC 1396a(e), 42 USC 1397aa et seq.

75-02-02.2-10. Eligibility criteria.

1. 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.
2. 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.
3. A child is not eligible for plan coverage if a family member voluntarily terminated either employer-sponsored or individual health insurance coverage of the child within ~~six months~~ ninety days of the date of application unless:
 - a. The health insurance coverage was terminated due to the involuntary loss of employment;
 - b. The health insurance coverage was terminated through no fault of the family member who had secured the coverage; ~~or~~
 - c. The health insurance coverage was terminated by a household member who is actively engaged in farming in a county which is declared a federal disaster area;
 - d. The child's parent is determined eligible for advance payment of the premium tax credit for enrollment in a qualified health plan because the employer-sponsored insurance in which the family was enrolled is determined unaffordable;
 - e. The premium paid by the family for coverage of the child under the group health plan exceeded five percent of gross household income;
 - f. The cost of family coverage that includes the child exceeds nine and one-half percent of the gross household income;

- g. The employer stopped offering coverage, including coverage of dependents, under an employer-sponsored health insurance plan;
 - h. The child has special health care needs; or
 - i. The health insurance coverage was terminated due to the death or divorce of a parent or parents.
- 4. Except as provided in subsection 6, the public institution provisions of section 75-02-02.1-19 apply to healthy steps applicants and recipients.
- 5. A child who meets current medicaid eligibility criteria in the month for which plan coverage is determined is not eligible for plan coverage unless the child would otherwise be eligible for the medically needy medicaid program with a recipient liability. Such child may be enrolled in either the healthy steps program or the medically needy medicaid program.
- 6. A child who resides in an institution for mental disease at the time an eligibility determination is made is not eligible for plan coverage. A child who enters an institution for mental disease while receiving plan coverage may remain eligible for coverage.
- 7. If the department estimates that 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.
- 8. A social security number must be furnished as a condition of eligibility for each child for whom benefits are sought except for:
 - a. A newborn child beginning on the date of birth and for the remaining days of the current eligibility period; and
 - b. Children who have applied for, but not yet received, social security numbers.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; January 1, 2010; January 1, 2014.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-24.1-37, 50-29; 42 USC 1397aa et seq.

75-02-02.2-12. Income considerations. This section applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014.

1. 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.
2. It is presumed that 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:
 - a. Living independently; or
 - b. 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.
3. 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.
 - a. 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.
 - b. 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.
4. The financial responsibility of any individual for any other member of the plan unit will be 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 section, 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.

5. 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.
 6. The following types of income must be disregarded in determining eligibility for plan coverage:
 - a. Supplemental security income benefits provided by the social security administration.
 - b. Income disregards in section 75-02-02.1-38.2.
 7. a. 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:
 - (1) Income shall be considered available only to the individual if payment of the income was made solely to that individual; and
 - (2) Income shall be considered available to each individual in proportion to the individual's interest if payment of income is made to more than one individual.
 - b. One-half of income shall be considered available to each spouse in the case of income available to a married couple in which there is no document establishing ownership otherwise.
 - c. Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent that the applicant or recipient can establish that the ownership interests are otherwise than as provided in subsection 6.
8. To determine the appropriate income level for a plan unit:
 - a. The size of the household is increased by one for each unborn child of a household member;
 - b. 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;
 - c. 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;

- d. 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;
 - e. An individual in a nursing facility is allowed a separate income level for one; and
 - f. A recipient of home and community-based services is allowed a separate income level for one.
9. 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.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; April 1, 2008; October 1, 2008; January 1, 2014.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-24.1-37, 50-29-02, 50-29-04; 42 USC 1397aa et seq.

75-02-02.2-12.1. Income considerations under a MAGI-based methodology. Effective for the benefit month of January 2014, the department shall use the following MAGI-based methodology to determine income eligibility for the children's health insurance program.

1. All taxable 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.
2. It is presumed that all taxable parental income is actually available to a child when the child lives with the parents and the child is claimed as a dependent on the parent's tax return. This presumption may be rebutted by a showing that the child is:
 - a. Living independently;

- b. 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. Not living with the parents; or
 - d. Living with the parents and files his or her own tax return, and is not claimed as a tax dependent by either parent.
- 3. 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.
 - a. 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.
 - b. Application for needs-based payments, such as social security supplemental security income benefits or temporary assistance for needy families benefits cannot be imposed as a condition of eligibility.
- 4. The financial responsibility of any individual for any other member of the plan unit will be limited to the responsibility of spouse for spouse, taxfilers for those they claim as tax dependents, and for nontaxfilers, their spouses, and, when living with them, their parents; siblings under age nineteen, and children under age nineteen, including half-siblings, stepparents, step-siblings, stepchildren, and adopted siblings, and children. This financial responsibility is imposed as a condition of plan eligibility. Except as otherwise provided in this section, the income of the spouse and parents is considered available even if that income is not actually contributed. Natural and adoptive parents and stepparents are treated as parents.
- 5. Income may be received weekly, biweekly, monthly, intermittently, or annually. The department or county agency shall convert income payments identified in this subsection into a monthly income amount regardless of how often the income is received.
- 6. The following types of income must be disregarded in determining eligibility for plan coverage:

- a. Supplemental security income benefits provided by the social security administration.
 - b. Veterans' benefits other than certain pensions.
 - c. Child support income.
7. a. 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:
- (1) Income shall be considered available only to the individual if payment of the income was made solely to that individual; and
 - (2) Income shall be considered available to each individual in proportion to the individual's interest if payment of income is made to more than one individual.
- b. One-half of income shall be considered available to each spouse in the case of income available to a married couple in which there is no document establishing ownership otherwise.
 - c. The department may consider evidence provided by an applicant or a recipient that refutes ownership of income set forth in subdivision a in determining an applicant's or a recipient's ownership of income.
8. To determine the appropriate income level for a plan unit:
- a. The size of the household is increased by one for each unborn child of a pregnant woman;
 - b. A child who is away at school is not treated as living independently, but is included in the children's health insurance program household as part of the family unit remaining at home depending on household composition rules at section 75-02-02.2-06.2;
 - c. 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 included in the children's health insurance program household as part of the family unit remaining at home depending on household composition rules at section 75-02-02.2-06.2. This does not

apply to situations in which an individual simply decides to live separately.

- d. An individual in a specialized facility is allowed a separate income level for a household of one during all full calendar months in which the individual resides in the facility;
 - e. An individual in a nursing facility is allowed a separate income level for a household of one; and
 - f. A recipient of home and community-based services is allowed a separate income level for a household of one.
9. 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.

History: Effective January 1, 2014.

General Authority: NDCC 50-29-02

Law Implemented: NDCC 50-29; 42 USC 1396a(e), 42 USC 1397aa et seq.

75-02-02.2-12.2. MAGI-based methodology. Effective for the benefit month of January 2014, the following MAGI-based methodology will be used in determining income eligibility for the children's health insurance program.

- 1. Income is based on household composition.
- 2. Monthly income is used prospectively for new applications; annualized income is used for ongoing cases.
- 3. Current, point in time income is used; however, reasonable expected changes in income must be included.
- 4. A tax dependent child's income does not count in a taxpayer parent's or caretaker relative's household if the child is not required to file a tax return. The child's needs are included in the taxpayer's household.
 - a. If the taxpayer parent or taxpayer caretaker relative is in the child's medicaid household, the child's income does not count in the child's household, either.
 - b. If the taxpayer parent or taxpayer caretaker relative is not in the child's medicaid household, the child's income counts in the child's household.

- c. If the child is not required to file a tax return, however, files a return to get a refund of taxes withheld, the child's income is not counted:
 - d. If the child is required to file a tax return; the child's income is counted in all of the households in which the child is included.
- 5. If eligibility is determined by using an individual's federal tax return, modified adjusted gross income is as stated in the federal tax return:
 - a. Plus:
 - (1) Any foreign earned income excluded from taxes.
 - (2) Tax-exempt interest.
 - (3) Tax-exempt social security income.
 - b. Less:
 - (1) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses if included in taxable income.
 - (2) Certain distributions, payments, and student financial assistance for American Indians and Alaskan natives if included in taxable income.
- 6. When available, the department shall use the most current information to reflect the income elements identified in subsection 5, regardless of whether they were the amounts used for the tax return.
- 7. If eligibility is determined without using an individual's federal tax return, the department shall determine modified adjusted gross income using internal revenue service rules combined with medicaid and children's health insurance program rules as follows:
 - a. Add:
 - (1) Gross wages less pretax deductions:
 - (2) Gross interest income:
 - (3) Gross dividend income:
 - (4) Taxable refunds of state or local income taxes (counted only in the month received):
 - (5) Gross alimony received:

- (6) Net business income or loss from self-employment;
- (7) Capital gains or losses, if expected to recur;
- (8) Taxable amount of individual retirement account distributions;
- (9) Taxable amount of individual retirement account distributions;
- (10) Net rents, royalties, and partnership, S corporation, or trust income;
- (11) Net farm income or loss;
- (12) Gross unemployment compensation;
- (13) Gross social security income;
- (14) Gross foreign earned income; and
- (15) Other income determined to be reportable by the internal revenue service.

b. Subtract from that sum:

- (1) Educator expenses;
- (2) Business expenses of reservists, performing artist, and fee-basis government official;
- (3) Health savings account deduction;
- (4) Moving expenses;
- (5) Deductible portion of self-employment tax;
- (6) Contributions to self-employed SEP, SIMPLE, and qualified plans;
- (7) Self-employed health insurance deduction;
- (8) Penalty on early withdrawal of savings;
- (9) Taxable amount of pensions and annuities;
- (10) Contributions to an individual retirement account;
- (11) Student loan interest deduction;
- (12) Tuition and fees;

- (13) Domestic production activities deduction;
 - (14) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses; and
 - (15) Certain distributions, payments, and student financial assistance for American Indians and Alaska natives.
8. The following income types are not reported on internal revenue service form 1040 and are not countable income under a MAGI-based methodology:
- a. Child support income;
 - b. Veterans' benefits (aid and attendance, homebound benefits, and reimbursements for unusual medical expenses);
 - c. Supplemental security income;
 - d. Temporary assistance for needy families benefits;
 - e. Proceeds from life insurance, accident insurance, or health insurance;
 - f. Gifts and loans;
 - g. Inheritances; and
 - h. Workers' compensation payments.
9. Instead of itemized disregards and deductions, the department may apply a standard disregard equal to five percent of the federal poverty level as part of the MAGI-based methodology.

History: Effective January 1, 2014.

General Authority: NDCC 50-29-02

Law Implemented: NDCC 50-29; 42 USC 1396a(e), 42 USC 1397aa et seq.

75-02-02.2-13. Determining household income.

1. Unearned income is income that is not earned income. Unearned income received in a fixed amount each month shall be applied in the month in which it is normally received.
 - a. Recurring unearned lump sum payments received after application for medicaid under chapter 75-02-02.1 or the children's health insurance program shall be prorated over the number of months the payment is intended to cover. When a payment is received

and prorated in an ongoing case, or after a period of medicaid or children's health insurance program eligibility, and the case is closed and then reopened during the prorated period, or within the following proration period, the lump sum payment proration must continue.

- b. All nonrecurring unearned lump sum payments, except health or long-term care insurance payments, veterans administration aid and attendance, veterans administration reimbursements for unusual medical expenses, and veterans administration homebound benefits intended for medical expenses shall be considered as income in the month received and assets thereafter.
 - c. One-twelfth of the annual amount of lease payments not otherwise required to be disregarded under section 75-02-02.1-38.2 deposited in individual Indian moneys accounts by the bureau of Indian affairs is income in each month and shall be determined:
 - (1) By totaling all payments in the most recent full calendar year and dividing by twelve;
 - (2) By totaling all payments in the twelve-month period ending with the previous month and dividing by twelve; or
 - (3) If the applicant or recipient demonstrates, by furnishing lease documents or reports, that the deposit amount will be substantially different than the annual amount which would be determined under subdivision a or b, by totaling all payments likely to be made in the twelve-month period beginning with the month in which the lease arrangement changed and dividing by twelve.
2. Earned income is income that is currently received as wages, salaries, commissions, or profits from activities in which an individual or family is engaged through either employment or self-employment. Income is earned only if the individual or family contributes an appreciable amount of personal involvement and effort to the production of that income. Earned income shall be applied in the month in which it is normally received. If earnings from more than one month are received in a single payment, the payment must be divided by the number of months in which the income was earned and the resulting monthly amounts shall be attributed to each of the months with respect to which the earnings were received.
3. Self-employment income must be calculated as follows:
- a. ~~Self-employment income must be calculated based on the previous year of self-employment taken from the federal income tax return. If the previous year's tax return has not been filed, the year prior~~

~~to that year's tax return must be used. If the plan unit fails to qualify for plan eligibility, the self-employment income must be calculated based on the average of the previous three years of self-employment from that business. If the previous year's tax return has not been filed or the business has been in operation for less than three consecutive years, use the income tax returns from the previous three years that have been filed to calculate the average yearly income.~~

- ~~b.~~ a. Monthly self-employment income is one-twelfth of the business income or loss calculated from an individual's income tax form 1040 and capital gains or losses related to self-employment business, less one-twelfth of the adjusted gross income deduction from page one of the individual's income tax form 1040. If a unit has more than one self-employment business, only one adjusted gross income deduction is allowed.

- ~~e.~~ b. For a business that has been operating for less than a full tax year, monthly self-employment income is the business income or loss from the individual's income tax form 1040 and capital gains and losses related to the self-employment business, divided by the number of months the business has been in operation and less one-twelfth of the adjusted gross income deductions from page one of the individual's income tax form 1040. If a plan unit has more than one self-employment business, only one adjusted gross income deduction is allowed.

- ~~d.~~ c. For a business that is not included on a tax return or if the most recently available federal income tax return does not accurately predict income because the business has been recently established, has been terminated, has been subjected to a severe change such as an uninsured loss, or a decrease or increase in the size of the operation, income statements, business records and ledgers reflecting income and expenses, or any other reliable information may be used to compute self-employment income.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; April 1, 2008; January 1, 2014.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-24.1-37, 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-13.1. Income deductions. This section 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:

1. For household members with countable earned income:

- a. Actual mandatory payroll deductions, including federal, state, or social security taxes or ninety dollars per month, whichever is greater;
 - b. Mandatory retirement plan deductions;
 - c. Union dues actually paid; and
 - d. Expenses of a nondisabled blind person, reasonably attributable to earning income;
2. 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;
 3. 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;
 4. 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;
 5. 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
 6. 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 August 1, 2005; amended effective April 1, 2008; April 1, 2012; January 1, 2014.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-24.1-37, 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-13.2. Budgeting.

1. For purposes of this section:
 - a. "Base month" means the calendar month prior to the processing month.

- b. "Benefit month" means the calendar month for which eligibility is being computed.
 - c. "Best estimate" means an income, expense, or circumstance prediction based on past amounts of income and expenses and known factual information concerning future circumstances which affect eligibility; expenses to be incurred; or income to be received in the benefit month. Factual information concerning future circumstances must be based on information by which the applicant or recipient demonstrates known changes or highly probable changes to the income, expense, or circumstances which offset eligibility, from the base month to the benefit month.
 - d. "Processing month" means the month between the base month and the benefit month.
 - e. "Prospective budgeting" means computation of a household's eligibility based on the best estimate of income, expenses, and circumstances for a benefit month.
2. For applications and redeterminations, the department and county agency must use prospective budgeting to determine financial eligibility for the benefit month.
 3. A child who is eligible for the benefit month remains eligible for the rest of the period and no further monthly budget will be calculated until the next redetermination of eligibility is due.
 4. The same budgeting applies regardless of whether an individual lives in the individual's own home, a specialized facility, or a nursing facility.
 5. ~~Excess income of a spouse or parent may be deemed to a spouse or child who is in the plan unit but who has a separate income level to increase that spouse's or child's income to the children's health insurance program income level. Excess income is the amount of net income remaining after allowing the appropriate disregards, deductions, and income level.~~

History: Effective August 1, 2005; amended effective January 1, 2014.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-24.1-37, 50-29-02; 42 USC 1397aa et seq.

CHAPTER 75-02-07.1

75-02-07.1-01. Definitions.

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 basic care 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. "Aid to vulnerable aged, blind, and disabled persons" means a program that supplements the income of an eligible beneficiary who resides in a facility.
6. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by basic care regulations.
7. "Alzheimer's and related dementia facility" means a licensed basic care facility which primarily provides services specifically for individuals with Alzheimer's disease or related dementia.
8. "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 4 of section 75-02-07.1-13;
 - b. A sale and leaseback to the same licensee;
 - c. A transfer of an interest to a trust;
 - d. Gifts or other transfer for nominal or no consideration;
 - e. A change in the legal form of doing business;
 - f. The addition or deletion of a partner, owner, or shareholder; or
 - g. A sale, merger, reorganization, or any other transfer of interest between related organizations.

9. "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 if used directly for resident care.
10. "Capital assets" 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.
11. "Chain organization" means a group of two or more basic care or 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 basic care or health care.
12. "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.
13. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
14. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, determination of cost limitations, and determination of rates.
15. "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.
16. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information of the facility.
17. "Department" means the department of human services.
18. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
19. "Depreciation" means an allocation of the cost of a depreciable asset over its estimated useful life.
20. "Depreciation guidelines" means the American hospital association's depreciation guidelines as published by American hospital publishing,

inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised ~~2008~~ 2013 edition.

21. "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.
22. "Direct care costs" means the cost category for allowable resident care, activities, social services, and laundry costs.
23. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
24. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the facility premises.
25. "Eligible beneficiary" means a facility resident who is eligible for aid to vulnerable aged, blind, and disabled persons.
26. "Employment benefits" means fringe benefits and other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
27. "Facility" means a provider licensed as a basic care facility, not owned or administered by state government, which does not meet the definition of an Alzheimer's and related dementia facility, traumatic brain injury facility, or institution for mental disease, which is enrolled with the department as a basic care assistance program provider.
28. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
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. "Food and plant costs" means the cost category for allowable food, utilities, and maintenance and repair costs.
32. "Freestanding facility" means a facility that does not share basic services with a hospital-based provider or a nursing facility.

33. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits, uniform allowances, and medical services furnished at facility expense.
34. "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.
35. "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.
36. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
37. "In-house resident day" for basic care, swing bed, and nursing facilities means a day that a resident was actually residing in the facility. "In-house resident day" for hospitals means an inpatient day.
38. "Institution for mental disease" means a facility with a licensed capacity of seventeen or more beds which provides treatment or services primarily to individuals with a primary diagnosis of mental disease.
39. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
40. "Limit rate" means the rate established as the maximum allowable rate for direct care and indirect care.
41. "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.
42. "Medical care leave day" means any day that a resident is not in the facility but is in a licensed health care facility, including a hospital, swing bed, nursing facility, or transitional care unit, and is expected to return to the facility.
43. "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.

44. "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.
45. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
46. "Personal care rate" means the sum of the rates established for direct personal care costs, indirect personal care costs, and the operating margin for personal care.
47. "Private-pay resident" means a resident on whose behalf the facility is not receiving any aid to vulnerable aged, blind, and disabled persons program payments and whose payment rate is not established by any governmental entity with ratesetting authority.
48. "Private room" means a room equipped for use by only one resident.
49. "Property costs" means the cost category for allowable real property costs and passthrough costs.
50. "Provider" means the organization or individual who has executed a provider agreement with the department.
51. "Rate year" means the year from July first through June thirtieth.
52. "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 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.
53. "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 when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.
54. "Report year" means the provider's fiscal year ending during the calendar year immediately preceding the rate year.
55. "Resident" means a person who has been admitted to the facility but not discharged.

56. "Resident day" in a facility means any day for which service is provided or for which payment in any amount is ordinarily sought, including medical care leave 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. The amount of remuneration has no bearing on whether a day should be counted as a resident day. "Resident day" for assisted living or any other residential services provided means a day for which payment is sought by the provider regardless of remuneration.
57. "Room and board rate" means the sum of the rates established for property costs, direct room and board costs, indirect room and board costs, the operating margin for room and board and food and plant costs.
58. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
59. "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. It does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds. It does not mean an increase in a facility's capacity resulting from converting beds formerly licensed as nursing facility beds.
60. "Specialized facility for individuals with mental disease" means a licensed basic care facility with a licensed capacity of less than seventeen which provides diagnosis, treatment, or services primarily to individuals with mental disease.
61. "Therapeutic leave day" means any day that a resident is not in the facility or in a licensed health care facility.
62. "Top management personnel" means corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
63. "Traumatic brain injury facility" means a licensed basic care facility which primarily provides services to individuals with traumatic brain injuries.
64. "Working capital debt" means debt incurred to finance 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 July 1, 1996; amended effective July 1, 1998; January 1, 2000; July 1, 2001; February 1, 2007; October 1, 2011; July 1, 2014.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-22. Rate limitations. Historical costs, as adjusted, for all facilities for which a rate is established excluding specialized facilities for individuals with mental disease, must be used in the establishment of a limit rate for the direct care and indirect care cost categories. The actual rate for each cost category for each facility must be determined in accordance with this chapter. When establishing a facility's rate:

1. ~~Historical costs, as adjusted, for all facilities for which a rate is established excluding specialized facilities for individuals with mental disease, must be used in the establishment of a limit rate for the direct care and indirect care cost categories. The actual rate for each cost category for each facility must be determined in accordance with this chapter. The department shall, for each cost category, rank licensed beds in all facilities reporting historical costs, excluding specialized facilities for individuals with mental disease, by the actual rate and determine the position in the ranking below which lie eighty percent of the ranked beds. For each cost category, the rate associated with the position ranked at eighty percent of the ranked beds is the limit rate for that cost category. When establishing a facility's rate: Except for a specialized facility for individuals with mental disease, a facility with an actual rate that exceeds the limit rate for direct care cost category shall receive the limit rate for that cost category:~~
2. A specialized facility for individuals with mental disease with an actual rate that exceeds two times the limit rate for the direct care cost category shall receive the limit rate times two for that cost category; and
3. A facility with an actual rate that exceeds the limit rate for the indirect care cost category shall receive the limit rate for that cost category. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care rate, exclusive of the adjustment factor, or the direct care limit rate, exclusive of the adjustment factor, established for the rate year. For purposes of this subsection, the adjustment factor does not include the factor necessary to adjust reported costs to December thirty-first.
4. The July 1, 2014, direct care limit rate may not be less than forty-three dollars and fifty cents.
5. The July 1, 2014, indirect care limit rate may not be less than thirty-nine dollars and ninety-eight cents.

6. The department may use an adjustment factor to calculate the July 1, 2015, direct care and indirect care limits.

- a. ~~Except for a specialized facility for individuals with mental disease, a facility with an actual rate that exceeds the limit rate for direct care cost category shall receive the limit rate for that cost category;~~
- b. ~~A specialized facility for individuals with mental disease with an actual rate that exceeds two times the limit rate for the direct care cost category shall receive the limit rate times two for that cost category; and~~
- c. ~~A facility with an actual rate that exceeds the limit rate for the indirect care cost category shall receive the limit rate for that cost category. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care rate, exclusive of the adjustment factor, or the direct care limit rate, exclusive of the adjustment factor, established for the rate year. For purposes of this subsection, the adjustment factor does not include the factor necessary to adjust reported costs to December thirty-first.~~

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 1999; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; amended July 1, 2001; February 1, 2007; October 1, 2011; July 1, 2014.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-23. Rates.

1. Desk audit rate.

- a. The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by telephone 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 may not be made. The department shall review the information and make any appropriate adjustments.
- b. The desk audit rate must be effective July 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.
- c. The desk rate may be adjusted for special rates or one-time adjustments provided for in section 75-02-07.1-25 or 75-02-07.1-26.

- d. The desk rate may be adjusted to reflect errors, omissions, or adjustments for the report year that results in a change of at least twenty-five cents per day.

2. Final rate.

- a. 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 July first of each rate year unless the department specifically identifies an alternative effective date.
- b. The final rate must include any adjustments for nonallowable costs, errors, or omissions found during a field audit or reported by the facility and that result in a change from the desk audit rate of at least twenty-five cents per day.
- c. The final rate may be revised at any time for special rates or one-time adjustments provided for in section 75-02-07.1-25 or 75-02-07.1-26.
- d. If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
 - (1) Adjustments, errors, or omissions found within twelve months of the date of notification of the final rate not including subsequent revisions, and resulting in a change of at least twenty-five cents per day, must result in a change to the final rate. The change must be applied retroactively as provided for in this section.
 - (2) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate not including subsequent revisions, and that would have resulted in a change of at least twenty-five cents per day had they been included, must be included as an adjustment on the latest filed cost report.
 - (3) Adjustments resulting from an audit of home office costs, and that result in a change of at least twenty-five cents per day, must be included as an adjustment in the report year in which the costs were incurred.
 - (4) 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.

3. **Adjustment of the total payment rate.** The final rate as established must be retroactive to the effective date of the desk rate.

History: Effective July 1, 1996; amended effective July 1, 1998; January 1, 2002; July 1, 2014.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-26. One-time adjustments.

1. Adjustments to meet licensure standards.

- a. The department may provide for an increase in the established rate for additional costs incurred to meet licensure 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 or other costs increased to correct the deficiencies cited in the survey process.
- b. The facility shall submit a written request to the department within thirty days of submitting the plan of correction to the state department of health. The request must:
 - (1) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's licensure survey;
 - (2) Identify the number of new staff or additional staff hours and the associated costs required to meet the licensure standards;
 - (3) Provide a detailed list of any other costs necessary to meet licensure standards;
 - (4) Describe how the facility shall meet licensure standards if the adjustment is received, including the number and type of staff to be added to the current staff and the projected salary and fringe benefit cost for the additional staff; and
 - (5) Document that all available resources, including efficiency incentives, if used to increase staffing, are not sufficient to meet licensure standards.
- c. The department shall review the submitted information and may request additional documentation or conduct onsite visits.
- d. If an increase in costs is approved, the adjustment must be calculated based on the costs necessary to meet licensure

standards less any incentives included when calculating the established rate. The net increase must be divided by resident days and the amount calculated must be added to the established rate. This rate must then be subject to any rate limitations that may apply.

- e. 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 that the funds were not used for the intended purpose, an adjustment must be made in accordance with section 75-02-07.1-23.
- f. If the actual cost of implementation exceeds the amount included in the adjustment, no retroactive settlement may be made.

2. Adjustments for unforeseeable expenses.

- a. 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 beyond the control of those responsible for the management of the facility.
- b. Within sixty days after first incurring the unforeseeable expense, the facility shall submit to the department a written request containing:
 - (1) An explanation as to why the facility believes the expense was unforeseeable;
 - (2) An explanation as to why the facility believes the expense was beyond the managerial control of the owner or administrator of the facility; and
 - (3) A detailed breakdown of the unforeseeable expenses by expense line item.
- c. 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 their background and knowledge of basic care industry and business trends.
- d. 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.

- e. 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 section 75-02-07.1-23.

3. **Adjustments for salary and benefit enhancements.**

- a. ~~The department may provide for a salary and benefit enhancement rate.~~
- b. ~~The salary and benefit enhancement rate shall be added to the personal care and room and board rates otherwise established under this chapter for the rate years beginning July 1, 2009, and July 1, 2010. The enhancement rate may not be effective before the implementation date of the enhancement by the facility.~~
- c. ~~For the rate year beginning July 1, 2010, the salary and benefit enhancement rate effective July 1, 2009, shall be reduced by one twelfth for each month the costs related to the implementation of the enhancement are included in the cost report used to establish the facility's July 1, 2010, rate and then increased by the adjustment factor set forth in section 75-02-07.1-21.~~
- d. ~~Any additional funds provided must be used to provide salary and benefit enhancements 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 section 75-02-07.1-23.~~

4. 3. ~~The department shall increase rates otherwise established by this chapter for supplemental payments or one-time adjustments to historical costs approved by the legislative assembly.~~ **One-time adjustments for cost increases approved by the legislative assembly.**

- a. The department shall increase rates otherwise established by this chapter for supplemental payments or one-time adjustments to historical costs approved by the legislative assembly.
- b. Any additional funds made available by the supplemental payments or one-time adjustments must be used for the legislatively prescribed purpose and are subject to audit. If the department determines that the funds were not used for the legislatively

prescribed purpose, an adjustment must be made in accordance with section 75-02-07.1-23.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001; July 1, 2009; October 1, 2011; July 1, 2014.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

CHAPTER 75-03-15
RATESETTING FOR PROVIDERS OF SERVICES TO FOSTER CHILDREN -
GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES

Section	
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75-03-15-01. Definitions.

1. "Accrual basis" means the recording of revenue in the period revenue is earned, regardless of when revenue is collected, and the recording of expenses in the period expenses are incurred regardless of when expenses are paid.
2. "Administration" means the cost of activities performed by the facility ~~staff~~ employees in which the direct recipient of the activity is the organization itself. These include fiscal activities, statistical reporting, recruiting, and general office management which are indirectly related to services for which a rate is set.
3. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by this chapter.
4. "Chain organization" means a group of two or more program entities which are owned, leased, or, through any other device, controlled by one business entity.
5. "Department" means the North Dakota department of human services.
6. "Facility" means a residential child care facility or group home.

- ~~6.~~ 7. "Historical cost" means those costs reported on the cost statement which were incurred and recorded in the facility's accounting records.
8. "Home office" means the single business entity that controls a group of two or more facilities owned, leased, or through any other device, including proprietary chains and chains operated by various religious or other charitable organizations. A chain organization may also include business organizations engaged in activities not directly related to child care.
- ~~7.~~ 9. "Interest" means the cost incurred with the use of borrowed funds.
10. "Professional social services" means case management and therapeutic services offered by an employee directly to the children in placement in the facility.
- ~~8.~~ 11. "Rate year" means the twelve-month period beginning the seventh month after the end of a facility's fiscal year.
- ~~9.~~ 12. "Reasonable cost" means the cost of providing food, clothing, shelter, daily supervision, school supplies, and personal incidentals for children in care placement, staff employee liability insurance with respect to children in care placement, travel of ~~the~~ a child in placement to the child's home for visitation, and operation of the facility which must be incurred by an efficient and economically operated facility to provide services in conformity with applicable federal and state laws, regulations, rules, and quality and safety standards. Reasonable cost takes into account that the facility seeks to minimize costs and that actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or service.
- ~~10.~~ 13. "Related organization" means an organization which a facility is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the facility. Control exists if an individual or organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or facility.
- ~~11.~~ 14. "Report year" means the facility's fiscal year.
- ~~12.~~ 15. "Usable square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described for that cost category.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-02. Financial reporting requirements.

1. Records.

- a. The facility shall maintain on the premises the required child census records and financial information sufficient to provide a proper audit or review. For any cost being claimed on the cost report, adequate data must be available and provided to the department in the form and manner requested by the department as of the audit date, to fully support the report item.
- b. If several programs are associated with a group and the group's accounting and reports are centrally prepared, added information, for items known to be lacking support at the facility, must be submitted with the cost report or provided to the local program prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.
- c. The facility shall maintain, for a period of not less than three years following the submission date of the cost report to the department, financial and statistical records of the period covered by the cost report, which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit must be retained until final resolution. Each facility shall make the records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

2. Accounting and reporting requirements.

- a. The accrual basis of accounting, in accordance with generally accepted accounting principles, must be used for cost reporting purposes. However, if conflicts occur between ratesetting procedures and generally accepted accounting principles, ratesetting procedures must prevail. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported.
- b. To properly facilitate auditing, the accounting system must be maintained in a manner that ensures cost accounts are grouped by cost category and are readily traceable to the cost account.
- c. The facility shall submit the cost report ~~must be submitted~~ on or before the last day of the third month following the facility's report year. The report must contain all costs of the facility, adjustments for nonallowable costs, and ~~client~~ child census days.

- d. Upon request, the following information must be made available:
 - (1) A statement of ownership including the name, address, and proportion of ownership of each owner.
 - (2) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the facility, or a certification that the content of any of these documents remain unchanged since the most recent statement given pursuant to this subsection.
 - (3) Supplemental information reconciling the costs on the financial statements with costs on the cost report.
 - (4) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services that are claimed as allowable costs.
 - e. If the facility fails to file the cost report on or before the due date, or any extension granted by the department in writing, whichever is later, the department may impose a nonrefundable penalty of ten percent of any amount claimed for payment. The penalty may be imposed after the last day of the first month following the later of the due date or the end of any written extension and, once imposed, continues through the month in which the statement or report is received.
 - f. The facility shall make all adjustments and allocations necessary to arrive at allowable costs. The department may reject any cost report if the information filed is incomplete or inaccurate. In the event that a cost report is rejected, the department may impose the penalties described in subdivision e.
 - g. The department may grant an extension of the reporting deadline to a facility. To receive an extension, a facility shall submit a written request to the division of children and family services.
3. The department shall perform an audit of the latest available report year of each facility as necessary and shall retain for at least three years all audit-related documents, including cost reports, working papers, and internal reports on rate calculations which are utilized and generated by audit staff in performing audits and in establishing rates. Audits must meet generally accepted governmental auditing standards.
4. Penalties for false reports.
- a. A false report is one wherein a facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received, the department may:

- (1) Immediately adjust the facility's payment rate to recover the entire overpayment within the rate year;
 - (2) Terminate the department's agreement with the facility;
 - (3) Prosecute under applicable state or federal law; or
 - (4) Use any combination of the foregoing actions.
- b. If a facility claims costs that have been previously adjusted as a nonallowable cost, the department may determine that the report is a false report. Previously adjusted costs that are the subject of a request for reconsideration or appeal must be identified as unallowable costs. The facility may indicate that the costs are not claimed, under protest, to perfect a claim if the request for reconsideration or appeal is successful.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-03. ~~Client~~ Child census.

1. ~~A facility shall maintain a daily child census record must be maintained by the facility. Any~~ The facility shall count any day for which services are provided or payment is ordinarily sought for an available bed ~~must be counted, including the day of discharge,~~ as a client one day for the child census. The day of admission or death must be counted. ~~The day of discharge must be counted if payment is sought for that day.~~
2. ~~Adequate~~ A facility shall prepare and maintain child census records ~~must be prepared and maintained on a daily basis by the facility~~ to allow for proper audit of the child census data. The daily child census records must include:
 - a. Identification of the ~~client~~ child in placement;
 - b. Entries for all days. ~~Entries cannot be made solely by exception a~~ child is in placement;
 - c. Identification of type of day, ~~i.e.,~~ general facility programming, shelter care, outbased day, regular or out-based program; and

- d. Monthly totals by ~~resident~~ child in placement and by type of day.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-04. Ratesetting.

1. The ~~department shall base the~~ established rate ~~is based~~ on prospective ratesetting procedures. The establishment of a rate begins with historical costs. Adjustments are then made for claimed costs which are not includable in allowable costs. Adjustment factors are then applied to allowable costs. ~~No~~ The department may not make retroactive settlements for actual costs incurred during the rate year which exceed the final rate will be made unless specifically provided for authorized in this chapter.
2. Desk audit rate.
 - a. The department ~~will~~ shall establish desk audit rates for maintenance ~~and rehabilitation~~, based on the cost report, which will be effective the first day of the seventh month following the facility's fiscal yearend.
 - b. The desk rates will continue in effect until final rates are established.
 - c. The ~~department shall review the~~ cost report ~~will be reviewed~~ taking into consideration the prior year's adjustments. ~~Facilities will be notified~~ The department shall notify a facility by telephone, electronic mail, or mail of any desk adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why a desk adjustment should not be made. The department will review the submitted information, make appropriate adjustments, including adjustment factors, and issue the desk rates.
 - d. ~~No reconsideration will be given by the department for~~ The department may not reconsider the desk rates unless the facility has been notified that the desk rates are the final rates.
3. Final rate.
 - a. The ~~department may perform a field audit of the cost report may be field-audited~~ to establish final rates. If no field audit is performed, the desk rates will become the final rates upon notification to the facility from the department.

- b. ~~The final rate for rehabilitation will be effective beginning the first day of the seventh month following the facility's fiscal yearend.~~
 - e. b. The final rate for maintenance will be effective beginning the first day of the month in which notification of the rate is given to the facility.
 - d. c. The final rate will include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk rate of at least five cents per day.
 - e. d. Adjustments, errors, or omissions which are found after a final rate has been established will be included as an adjustment in the report year that the adjustments, errors, or omissions are found.
4. Special rates.
- a. Facilities providing services for the first time.
 - (1) ~~Rates~~ The department shall establish rates for a facility which is providing services which are purchased by the department ~~will be established~~ using the following methodology for the first two fiscal years of the facility if such period is less than twenty-four months.
 - (a) The facility ~~must~~ shall submit a budget for the first twelve months of operation. ~~A~~ The department shall establish a final rate ~~will be established~~ for a rate period which begins on the first of the month in which the facility begins operation. This rate will remain in effect for eighteen months. No adjustment factors will be included in the first-year final rate.
 - (b) Upon completion of the first twelve months of operation, the facility ~~must~~ shall submit a cost report for the twelve-month period regardless of the fiscal yearend of the facility.
 - [1] The twelve-month cost report is due on or before the last day of the third month following the end of the twelve-month period.
 - [2] The department shall use a twelve-month cost report ~~will be used~~ to establish a rate for the remainder of the second rate year. ~~Appropriate~~ The department shall use appropriate adjustment factors ~~will be used~~ to establish the rate.

(2) The facility ~~must~~ shall submit a cost report ~~which that the department will be used~~ use to establish rates in accordance with subsections 2 and 3 after the facility has been in operation for the entire twelve months of the ~~center's~~ facility's fiscal year.

b. Facilities changing ownership.

(1) For facilities changing ownership, the rate established for the previous owner will be retained until the end of the rate year in which the change occurred.

(2) The department shall establish the rate for the second rate year after a change in ownership occurs ~~will be established~~ as follows:

(a) For a facility with four or more months of operation under the new ownership during the report year, the department shall use a cost report for the period since the ownership change occurred ~~will be used~~ to establish the rate for the next rate year.

(b) For a facility with less than four months of operation under the new ownership in the reporting year, the department shall index forward the prior report year's costs as adjusted for the previous owner ~~will be indexed forward~~ using appropriate adjustments.

c. Facilities having a capacity increase or major renovation or construction.

(1) For facilities which increase licensed capacity by twenty percent or more or have renovation or construction projects in excess of fifty thousand dollars, the department may adjust the rate established for the rate year in which the licensed increase occurs or the construction or renovation is complete ~~may be adjusted~~ to include projected property costs. The department shall calculate the adjusted rate ~~will be calculated~~ based on a rate for historical costs, exclusive of property costs, as adjusted, divided by historical child census, plus a rate for property costs based on projected property costs divided by projected child census. ~~The established rate for rehabilitation, including projected property costs, will be effective on the first day of the month in which the renovation or construction is complete or when the capacity increase is approved if no construction or renovation is necessary.~~ The established rate for maintenance, including projected property costs, will be effective on the first day of the month in which notification

of the rate is given to the facility after the renovation or construction is complete or the licensed capacity increased.

- (2) For the rate year immediately following the rate year in which the capacity increase occurred or construction and renovation was completed, the department shall establish a rate ~~will be established~~ based on historical costs, exclusive of property costs, as adjusted for the report year, divided by reported child census, plus a rate for property costs, based on projected property costs, divided by projected child census.

d. Facilities that have changes in services or staff employees.

- (1) The department may provide for an increase in the established rate for additional costs that are necessary to add services or staff employees to the existing program.
- (2) The facility ~~must~~ shall submit information to the ~~division of children and family services~~ department supporting the request for the increase in the rate. Information must include a detailed listing of new or additional staff employees or costs associated with the increase in services.
- (3) The department will review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the department shall adjust the established rate ~~will be adjusted~~. The effective date of the rate increase will be on the first of the month following approval by the department. The adjustment will not be retroactive to the beginning of the rate year.
- (4) For the rate year immediately following a rate year in which a rate was adjusted under paragraph 3, the facility may request that consideration be given to additional costs. The facility must demonstrate to the department's satisfaction that historical costs do not reflect twelve months of actual costs of the additional staff employees or added services in order to adjust the rate for the second rate year. The additional costs would be based on a projection of costs for the remainder of a twelve-month period.

5. The final rate must be considered as payment for all accommodations which include items identified in section 75-03-15-07. For any client child in placement whose rate is paid in whole or in part by the department, ~~no~~ the facility may not solicit or receive payment ~~may be solicited or received~~ from the client child in placement or any other person to supplement the rate as established.

6. For a facility terminating its participation in the program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until ~~clients~~ all children in placement can be relocated.
7. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. ~~Rate~~ A facility may request any adjustments to provide appropriate compensation ~~may be requested~~ if major unforeseeable expenses are incurred. A facility shall make any request for rate adjustment ~~may be made~~ to the department, which shall determine if the expense is ~~resident-related~~ child-related.
8. Limitations.
 - a. The department may accumulate and analyze statistics on costs incurred by the facilities. ~~These~~ The department may use these statistics ~~may be used~~ to establish cost ceilings and incentives for efficiency and economy, based on a reasonable determination of the standards of operations necessary for efficient delivery of needed services. ~~These~~ The department may establish these limitations and incentives ~~may be established~~ on the basis of the cost of comparable facilities and services and the department may be applied apply these limitations and incentives as ceilings on the overall costs of providing services or on specific areas of operations.
 - b. When federal regulations establish a ceiling on foster care rates for these facilities, that ceiling must also be considered the maximum payment under title IV-E of the Social Security Act, [42 U.S.C. 670 et seq.].
 - c. A facility ~~is expected to~~ shall maintain an average annual occupancy rate of seventy-five percent. Shelter care beds designated by the facility and approved by the department are exempt from the occupancy rate percentage requirement. The computed ~~resident~~ child census days apply only to the following areas:
 - (1) Administrative costs;
 - (2) Plant operation costs; and
 - (3) Property costs.

A reserved paid bed is counted as an occupied bed. ~~A waiver of~~ The department may waive the minimum bed occupancy allowance ~~may be made for new facilities or existing facilities at the discretion of the department~~ a facility. A facility requesting

a waiver shall include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility also shall provide a rationale for the proposed allocation method. Based on the information provided, the department shall determine the allocation method used to report costs.

- d. Administrative ~~cost~~ costs must be limited to the percent of total allowable costs exclusive of administrative costs, authorized by the department.

9. Rate adjustments.

- a. ~~Adjustment~~ The department may apply adjustment factors ~~may be applied~~ to adjust historical costs. The department shall annually determine an appropriate adjustment factor to be applied to allowable costs exclusive of property costs.
- b. ~~Rate~~ The department may make rate adjustments ~~may be made~~ to correct departmental errors subsequently ~~determined~~ identified.
- c. ~~An~~ The department shall make an adjustment ~~must be made~~ for those facilities which have terminated participation in the program, disposed of depreciable assets, or changed ownership.

History: Effective November 1, 1985; amended effective July 1, 1993; March 1, 1999; August 1, 2002; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-06. Private pay rates.

1. The department's foster care maintenance rate ~~and rehabilitation rate,~~ ~~combined,~~ must may not exceed the ~~usual and customary~~ rate charged to private pay or other public pay ~~residents~~ children in placement.
2. If the established rate exceeds the rate charged to nondepartmental or private pay ~~clients~~ children in placement for a service, 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 from the department at the higher rate, the facility shall refund the overpayment within thirty days. The refund must be the difference between the established rate and the lowest rate charged to nondepartment or private pay ~~clients~~ children in placement times the number of department ~~client~~ child census days paid during the period in which the established rate exceeded the nondepartmental or private rate, plus interest calculated at two percent over the Bank of

North Dakota prime rate on any amount not refunded within thirty days.
Interest charges on these refunds are not allowable costs.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-07. Allowable costs for maintenance and administration.

1. **Maintenance rate.** Costs includable in the rate for room and board include those described in this subsection, unless limited by section 75-03-15-09.
 - a. Salary and fringe benefits for direct care ~~personnel~~ employees, which must be limited to:
 - (1) The child care workers' supervisor;
 - (2) Child care workers;
 - (3) Relief child care workers;
 - (4) Cooks;
 - (5) Janitors and housekeepers; ~~and~~
 - (6) Laundry; and
 - (7) Nurses when performing daily supervision, children in placement physical examinations, and medical care treatment. If the nurse is providing daily supervision, children in placement physical examinations, medical care treatment and other services, a time study will need to be completed. The portion that is daily supervision, children in placement physical examinations, and medical care treatment may be included in the calculation of the daily rate for maintenance.
 - b. Food. Actual food costs. The value of donated food may not be included in food costs.
 - c. Operating supplies. The cost of supplies necessary to maintain the household for the ~~residents~~ children in placement. Costs include cleaning supplies, paper products, and hardware supplies.
 - d. Personal supplies and allowances. The cost of supplies used by an individual ~~resident~~ child in placement, including medicine chest supplies, personal hygiene items, sanitary needs, and moneys given periodically to ~~residents~~ children in placement for personal

- use. Personal supplies and ~~allowance~~ does allowances do not include payment, whether in cash or in kind, for work performed by the resident children in placement or for bonuses or rewards paid based on behavior.
- e. School supplies. The cost of school supplies, books, activity fees, class dues, and transportation to school.
 - f. Clothing. The cost of clothing to maintain a resident's wardrobe for any child in placement.
 - g. Recreation. Costs incurred for providing recreation to the residents children in placement, including magazine and newspaper subscriptions, sports equipment, games, dues for clubs, and admission fees to sporting, recreation, and social events.
 - h. Utilities. The cost of heat, lights, water, sewage, garbage, and common area cable or satellite TV.
 - i. Telephone. The cost of local service to the living quarters. Long distance calls are allowable only if specifically identified as being related to maintenance and are not service or administrative in nature. ~~Vehicular telephone costs are not allowable~~ Cellular telephones or electronic communication systems, including associated monthly service fees which are less than the capitalization threshold, and are purchased by the facility for use by direct care employees to communicate for the purpose of child safety, programming, transportation, and supervision while on shift are allowable telephone costs.
 - j. Repairs. The cost of routine repairs and upkeep of property and equipment used for the residents children in placement. ~~At~~ The facility shall capitalize and depreciate 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 or over one-half of the original estimated useful life, whichever is greater.
 - k. Travel. All costs related to transporting residents children in placement, exclusive of transportation for evaluations and social service activities. Transportation costs may include actual vehicle expenses or actual costs not to exceed the amount established by the internal revenue service.
 - l. Leases and rentals. The cost of leasing assets from a nonrelated organization. If the lease cost cannot be directly associated with a function, ~~an allocation must be made~~ the department shall allocate the cost in accordance with section 75-03-15-05.

- m. Depreciation expense. Depreciation expense on all capitalized equipment and property which was not purchased with funds made available through other government programs or grants is allowable.
 - n. Insurance. The cost of insuring property and equipment used in the maintenance of residents children in placement and liability insurance for direct care ~~staff~~ employees.
 - o. Medical. Costs for necessary medical-related items for ~~residents~~ children in placement which are not covered by insurance or governmental medical care programs, provided that facility records demonstrate that the facility has made reasonable attempts ~~have been made~~ to secure insurance or program benefits. Costs may include ~~resident~~ physical examinations, drugs, dental work, corrective appliances, and required medical care and treatment for children in placement.
 - p. Administration. Costs of administration which do not exceed limitations, provided that the department, in its discretion, may exclude costs of administration based upon a lack of appropriated funds.
2. **Administration costs.** Unless limited by section 75-03-15-09, administration costs are allocated in accordance with section 75-03-15-04, subsection 4 of section 75-03-15-05, and this subsection. Costs for administration include only those allowable costs for administering the overall activities of the facility identified as follows:
- a. Compensation for employees, such as administrators, accounting ~~personnel~~ employees, clerical ~~personnel~~ employees, secretaries, receptionists, data processing ~~personnel~~ employees, purchasing ~~personnel~~ employees, and security ~~personnel~~ employees;
 - b. Office supplies and forms;
 - c. Insurance, except property insurance directly identified to other cost categories, and insurance included as a fringe benefit;
 - d. The cost of telephone service not specifically included in other cost categories;
 - e. Postage and freight;
 - f. Professional fees for legal, accounting, and data processing;
 - g. Computer software costs, except costs that must be capitalized, and computer maintenance contracts;

- ~~g~~. h. Central or home office costs;
- ~~h~~. i. ~~Personnel~~ Employee recruitment costs;
- ~~i~~. j. Management consultants and fees;
- ~~j~~. k. Dues, license fees, and subscriptions;
- ~~k~~. l. Travel and training not specifically included in other costs categories;
- ~~l~~. m. The cost of heating and cooling, electricity, and water, sewer, and garbage for space used to provide administration;
- ~~m~~. n. The cost of routine repairs and maintenance of property and equipment used to provide administration;
- ~~n~~. o. The cost of plant operation and housekeeping salaries and fringe benefits associated with the space used to provide administration;
- ~~o~~. p. Property costs. Depreciation, interest, taxes, and lease costs on equipment and buildings for space used to provide administration;
- ~~p~~. q. Startup costs; or
- ~~q~~. r. Any costs that cannot be specifically classified or assigned as a direct cost to other cost categories.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-08. Rehabilitation rate costs.

1. ~~A rehabilitation rate for the facility must be established based on census and allowable social service costs. Costs which may be included in the rehabilitation rate determination are~~ include the following costs for rehabilitation:
 - a. Salaries and fringe benefits for social workers, psychologists, psychiatrists, nursing costs not covered under the maintenance rate, and other professional social service ~~staff~~ employees;
 - b. ~~Staff~~ Professional development for the professional social service ~~staff~~ employees; and

- c. Travel and telephone costs related to evaluations and social service activities.
2. ~~The established rate must be the lesser of the actual costs of providing the social services in the facility or the monthly amount authorized by the department~~ shall use these costs in determining a facility's administration limit.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-09. Nonallowable costs. Nonallowable costs include:

1. Administrative costs not identified in section 75-03-15-07, overhead, and other expenses paid on behalf of employees who are not direct care ~~personnel~~ employees;
2. Advertising, except for reasonable advertising costs for employee recruitment, and public relations expenses;
3. Any cost which has not actually been incurred by the facility, including the value of donated goods and services;
4. Bad debt expenses;
5. Costs incurred solely to enhance income from investments;
6. Costs of securing contributions or donations;
7. Costs related to income-producing activities, including farms, rodeos, grass cutting services, or gaming, whether or not the activity is profitable;
8. Depreciation costs for idle facilities except when the facilities are necessary to meet caseload fluctuations;
9. Dues and subscriptions for employees;
10. Fines and penalties resulting from failure to comply with federal, state, and local laws;
11. Interest expense on borrowed funds or finance and late charges;
12. Recreational costs for activities, including ~~staff~~ employees only;
13. Religious salaries, space, and supplies;

14. Research and development costs;
15. Taxes, including federal and state income taxes, special assessments which must be capitalized, taxes from which exemptions are available, self-employment taxes, and taxes on property not used in providing maintenance for the ~~resident~~ child in placement;
16. Any telephone costs, including ~~mobile telephone, car telephone,~~ cellular telephone, and beeper costs attributable to personal usage by ~~residents~~ and employees;
17. Costs related to facility-operated schools or to correspondence courses; and
18. Any costs unrelated to providing services to ~~residents~~ children in placement.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-10. Revenue offsets. Facilities shall identify income to offset costs, where applicable, so that state financial participation does not supplant or duplicate other funding sources. Any income, whether in cash or in any other form which is received by the facility, with the exception of the established rate and income from payment made under the Job Training Partnership Act, must be offset up to the total of the appropriate actual costs. If actual costs are not identifiable, income must be offset in total to the appropriate cost category. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Treatment appropriate to some sources of income is provided in this section:

1. **Clothing.** Facilities receiving initial clothing allowances separately from the state or other sources shall reduce costs by the amount of the reimbursement.
2. **Food income.** Facilities receiving revenue for food and related costs from other programs, including the United States department of agriculture or the department of public instruction or amounts from or paid on behalf of employees, guests, or ~~other nonclients~~ children not in placement for meals or snacks shall reduce allowable food costs by the revenue received.
3. **Insurance recovery.** ~~Any~~ A facility shall offset any amount received from insurance for a loss incurred ~~must be offset~~ against the appropriate cost category, regardless of when the cost was incurred, if the facility did not adjust the basis for depreciable assets.

4. **Refunds and rebates.** ~~Any~~ A facility shall offset any refund or rebate received for a reported cost ~~must be offset against to~~ the appropriate cost.
5. **Transportation income.** ~~Any~~ A facility shall offset any amount received for use of the facility's vehicles ~~must be offset~~ to transportation costs.
6. **Vending income.** ~~Income~~ A facility shall offset income from the sale of beverages, candy, or other items ~~must be offset~~ to the cost of the vending items or, if the cost is not identified, the facility shall offset all vending income ~~must be offset~~ to maintenance costs.
7. **Gain on the sale of assets.** ~~Gain~~ A facility shall offset gain from the sale of an asset ~~must be offset~~ against depreciation expenses.
8. **Rental income.** ~~Revenue~~ A facility shall offset revenue received from outside sources for the use of facility buildings or equipment ~~must be offset~~ to property expenses.
9. **Grant income.** ~~Grants~~ A facility shall offset grants, gifts, and awards from the federal, state, or local agencies ~~must be offset~~ to the costs which are allowed under the grant.
10. **Other cost-related income.** ~~Miscellaneous~~ A facility shall offset miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, ~~must be offset~~ to the cost category where the item was expensed.
11. **Other income from government sources.** ~~Other~~ The department may determine that other income to the facility from local, state, or federal units of government ~~may be determined by the department to be~~ is an offset to costs.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-11. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a facility by a related organization may not exceed the lower of the costs to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. The facility shall identify such related organizations and costs, and shall submit allocations ~~must be submitted~~ with the cost report.
2. A facility may lease buildings or equipment from a related organization. In that case, the rent or lease expense paid to the lessor is allowable

in an amount not to exceed the actual costs associated with the asset if the rental of the buildings or equipment is necessary to provide programs and services to ~~clients~~ children in placement. The actual costs associated with the asset are limited to depreciation, real estate taxes, property insurance, and plant operation expenses incurred by the lessor.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-12. Home office costs.

1. Home offices of chain organizations vary greatly in size, number of locations, ~~staff~~ employees, mode of operations, and services furnished to member facilities. Although the home office of a chain is normally not a facility in itself, the home office may furnish to the individual facility central administration or other services, including centralized accounting, purchasing, ~~personnel~~ employees, or management services. Only the home office's actual costs of providing these services are includable in the facility's allowable costs under the program.
2. Costs that are not allowed in the facility may not be allowed as home office costs that are allocated to the facility.
3. Any service provided by the home office which is included in costs as payments by the facility to an outside vendor or which duplicates costs for services provided by the facility is considered a duplication of costs and is not allowed.
4. If ~~the~~ a home office makes a loan to or borrows money from one of the components of ~~a~~ its chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-12.1. Startup costs. In the first stages of operation, a new facility incurs certain costs in developing the ability to care for ~~clients~~ children prior to admission. ~~Staff is~~ Employees are obtained and organized, and other operating costs are incurred during this time of preparation which cannot be allocated to ~~client~~ facility direct care during that period because there are no ~~clients~~ children in placement receiving services. These costs are commonly referred to as startup costs. The startup costs are to be capitalized and must be recognized as allowable

administration costs amortized over sixty consecutive months starting with the month in which the first ~~client~~ child is admitted.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-13.1. Depreciation.

1. **General principles.** Ratesetting principles require that payment for services must include depreciation on all depreciable type assets that are used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the facility, but are in use at the time the facility enters the program. The useful lives of these assets are considered to be ongoing and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. 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~~ the facility shall include it as a gain or loss on the cost report.

2. **Depreciation methods.**
 - a. ~~The~~ A facility shall use 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, are unacceptable. The facility shall apply the method and procedure for computing depreciation ~~must be applied~~ on a basis consistent from year to year, and shall maintain detailed schedules of individual assets ~~must be maintained~~. If the books of account reflect depreciation different from that submitted on the cost report, the facility shall prepare a reconciliation ~~must be prepared by the facility~~.

 - b. ~~Facilities~~ A facility shall use a composite useful life of ten years for all equipment and land improvements and four years for vehicles. ~~Buildings~~ A facility shall depreciate buildings and improvements to buildings ~~are to be depreciated~~ over the length of the mortgage or a minimum of twenty-five years, whichever is greater.

3. **Acquisitions.**
 - a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least ~~one~~ five thousand dollars for each item, the facility shall capitalize and depreciate the cost ~~must be capitalized and depreciated~~ over the estimated useful life of the asset, except as

provided for in subsection 3 of section 75-03-15-13. ~~Costs~~ A facility shall capitalize costs, including architectural, consulting ~~and~~, legal fees, and interest, incurred during the construction of an asset, ~~must be capitalized~~ as a part of the cost of the asset.

- ~~All~~ A facility shall capitalize and depreciate 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 or one-half of the original estimated useful life, whichever is greater.
4. **Recordkeeping.** Proper records must provide accountability for the fixed assets and must also provide adequate means by which depreciation may be computed and established as an allowable ~~client-related~~ child-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.** For purposes of this chapter, a facility may record and depreciate donated assets ~~may be recorded and depreciated~~ based on their fair market value. If the facility's records do not contain the fair market value of the donated asset as of the date of the donation, ~~an appraisal must be made~~ the donated item must be appraised. The appraisal must be ~~made~~ performed by a recognized appraisal expert and must be accepted for depreciation purposes. The facility may elect to forego depreciation on donated assets, ~~thereby~~ negating the need for a fair market value determination.
6. **Basis for depreciation.**
 - a. Determination of the cost basis of a facility and its depreciable assets, which have not been involved in any programs which are funded in whole or in part by the department, depends on whether or not the transaction is a bona fide sale. If the issue arises, 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.
 - (1) If the sale is bona fide, the cost basis must be the cost to the buyer.
 - (2) If the sale is not bona fide, the cost basis must be the seller's cost basis less accumulated depreciation.
 - b. The cost basis of a facility, including depreciable assets which are purchased as an ongoing operation, must be the seller's cost basis less accumulated depreciation.

- c. The cost basis of a facility, including depreciable assets which have been used in any programs which are funded in whole or in part by the department, must be the cost basis used by the other program less accumulated depreciation.
- d. Sale and leaseback transactions must be considered a related party transaction. The cost basis of a facility, including depreciable assets purchased and subsequently leased to a provider who operates the facility, must be the seller's cost basis less accumulated depreciation.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-14. Cost allowability and limitations. Any questions regarding cost allowability and limitations are governed by title IV-E of the Social Security Act [42 U.S.C. 670 et seq.] and 45 CFR part 74, unless further limited by this chapter. The department sets rates under this chapter for not-for-profit organizations only and purchases ~~group home and residential child care~~ facility services for children in foster care only from facilities in North Dakota for which rates have been set under this chapter.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

75-03-15-15. Variance. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from the provisions of this chapter upon terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of ~~the residents of a facility~~ children in placement and no variance may be granted except at the discretion of the department. A refusal to grant a variance is not subject to a request for reconsideration or an appeal.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

CHAPTER 75-03-16

LICENSING OF GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES

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75-03-16-01. Definitions. As used in this chapter:

1. "Custodian" means a person, other than a parent or guardian, who stands in loco parentis to a child in placement or a person to whom legal custody of the child has been given by order.
- ~~4.~~ 2. "Department" means the North Dakota department of human services.
- ~~2.~~ 3. "Employee" means an individual compensated by the facility to work in a part-time, full-time, intermittent, or seasonal capacity for the facility. This definition is not inclusive to contracted service providers who come onsite to conduct trainings, treatment groups, individual therapy, or other program services.
- ~~3.~~ 4. "Facility" means a residential child care facility or group home.
- ~~4.~~ 5. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern.
- ~~5.~~ 6. "Out-based program" means a sequence of planned activities designed to provide therapeutic outdoor physical, environmental educational, athletic, or other activities which:
 - a. Involve physical and psychological challenges;
 - b. Are designed to:
 - (1) Stimulate competence and personal growth;
 - (2) Expand individual capabilities;
 - (3) Develop self-confidence and insight; or
 - (4) Improve interpersonal skills and relationships; and
 - c. Take place in a setting of twenty-four-hour participant supervision.
- ~~6.~~ 7. "Overnight hours" means from eleven p.m. until seven a.m.
- ~~7.~~ 8. "Participant" means a child participating in an out-based program.
- ~~8.~~ 9. "Solo activity" means an experience in which an individual cares for himself or herself in a solitary setting away from others, but under employee supervision.

9. 10. "Utilization review" means a process that applies established criteria to evaluate the services provided in terms of cost-effectiveness, necessity, and effective use of resources.

History: Effective July 1, 1987; amended effective January 1, 1995; March 1, 1999; April 1, 2014; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-02. Effect of license.

1. A facility license is in force and effect for the period stated thereon, not to exceed two years, is nontransferable, and is valid only on the premises and for the number of children indicated on the license.
2. For ~~a facility not licensed to provide foster care services on July 31, 1998,~~ a licensed facility that changes its programming philosophy or ownership, or a provisionally licensed facility upon issuance of an unrestricted license:
 - a. The initial period of licensure is one year;
 - b. The license may be renewed for a second one-year period if the facility successfully completes a program review and certifies compliance with all other licensing rules and requirements;
 - c. The license may be renewed for a third one-year period if the facility successfully completes a licensing study; and
 - d. Thereafter, the facility or home may be eligible for a two-year license.
3. The department may, in its sole discretion, issue a license without inspecting a facility's buildings, grounds, and equipment, if the department finds that:
 - a. The facility was inspected and complied with the provisions of this chapter and of North Dakota Century Code chapter 50-11 regarding buildings, grounds, and equipment in the preceding year; and
 - b. The facility is otherwise eligible to receive a license.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02

75-03-16-02.3. Correction orders.

1. The following time periods are allowed for correction of violations of North Dakota Century Code chapter 50-11 or this chapter:
 - a. For a violation that requires an inspection by a state fire marshal or local fire department authorized pursuant to section ~~75-03-16-40~~ 75-03-16-29, five days;
 - b. For a violation that requires substantial remodeling, construction, or change to a building, sixty days; and
 - c. For all other violations, twenty days.
2. The department may require immediate correction of a violation that threatens the life or safety of a ~~resident~~ child in placement.
3. All time periods under this section commence on the third day after the department mails notice of the correction order to the facility.
4. Upon written request by the facility and upon showing need for an extension created by circumstances beyond the control of the facility and that the facility has diligently pursued correction of the violation, the department may grant extensions of time to correct violations.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-02.4. Fiscal sanctions.

1. The department shall assess the following fiscal sanctions for each day that a facility remains out of compliance with a correction order after expiration of the time for correction of deficiencies:
 - a. For violations that endanger the health or safety of ~~residents~~ children in placement, a maximum of twenty-five dollars per day;
 - b. For violations of minimum ~~staff~~ employee requirements, a maximum of twenty-five dollars per day;
 - c. For violations of the prohibitions contained in section 75-03-16-26, a maximum of twenty-five dollars per day; and
 - d. For all other violations, a maximum of ten dollars per day.

2. The levy of a fiscal sanction does not preclude the department's pursuit of other actions, including provisional licensure, injunction, and license revocation.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-03. Organization and administration.

1. Each facility ~~shall~~ must have a governing body that is responsible for the operation, policies, activities, and practice of the facility. For purposes of this chapter:
 - a. If the facility is owned by a corporation, the board of directors of the corporation is the governing body;
 - b. If the facility is owned by a partnership, the partners are the governing body;
 - c. If the facility is owned by a sole proprietor, the proprietor is the governing body; ~~and~~
 - d. If the facility is owned by a limited liability company, the board of governors is the governing body; and
 - e. If the facility is owned by a tribe or the department of public instruction, the facility shall appoint a governing body.
2. All partnerships and sole proprietorships must have an advisory committee consisting of no less than five members who are not relatives of the proprietor or any partner. The advisory committee shall meet at least once a year.
3. Each facility shall provide the department with an updated list of all the names and addresses of the members of the governing body and any advisory committee within thirty days ~~after the member's selection of~~ any membership change.
4. The governing body shall:
 - a. Adopt a written statement of the purpose and philosophy of the facility.
 - b. Adopt written policies for the facility regarding administration, personnel, nondiscrimination, admission and discharge, discipline buildings and grounds, and program services, ~~and smoking.~~

- C. Adopt written policies for the facility regarding the procedures to be followed in the event the facility closes. The policies must indicate that the governing body will:
- (1) Provide the department with at least sixty days' written notice that the facility will be closing.
 - (2) Provide ~~each child's~~ the custodian, parent, or guardian of the children in placement with at least thirty days' written notice that the facility will be closing.
 - (3) Provide for an appropriate North Dakota depository to maintain the facility's case, fiscal, ~~and personnel~~ employee and nonemployee records.
 - (4) Provide for the retention of all fiscal records for a period of seven years following account settlement.
5. The facility shall submit copies of all required policies to the department with the application for license and shall maintain all required policies ~~on file~~ at the facility or other designated location within the state of North Dakota.
6. All statements and policies required by this chapter must be in writing.
7. Each facility shall identify to the department all employee and nonemployee positions, using the titles and duties described in this chapter. For purposes of internal operations, a facility may use any definition or title for its positions. All employees and nonemployees must be capable of performing assigned duties.
8. Each facility shall carry general comprehensive liability insurance.
9. Representatives of the facility shall meet ~~on~~ with the department at least ~~an annual basis with the appropriate personnel of the department~~ annually to discuss the facility operations, its programs programming, and any other pertinent issues that concern the needs of ~~the children cared for in the facility~~ in placement.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-04. Financial records and reports.

1. If a facility is owned by a corporation, the certificate of incorporation must be ~~on file~~ available for viewing at the facility or other designated location within the state of North Dakota.

2. The facility shall maintain complete financial records regarding the facility. The financial books must be audited annually by a certified or licensed public accountant. ~~A~~ The facility shall submit a copy of the accountant's most recent annual report ~~must be submitted~~ with the facility's license application. The facility shall make the annual audit report ~~must be kept on file~~ available for viewing at the facility or other designated location within the state of North Dakota.
3. A facility shall submit a projected twelve-month budget based on predictable funds for the forthcoming year of operation. A new facility ~~shall~~ must have funds or documentation of available credit sufficient to meet the operating costs for the first twelve months. If a facility applies for a change in licensed capacity, it shall submit a projected budget reflecting the changed capacity.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-05. ~~Personnel records~~ Employee and nonemployee files.

1. The facility shall maintain an individual ~~personnel~~ file on each employee. The ~~personnel~~ file must include:
 - a. The application for employment including a record of previous employment and the applicant's statement in answer to the question, "Have you been convicted of a crime?";
 - b. Annual performance evaluations;
 - ~~c. First-aid training record;~~
 - ~~d. Cardiopulmonary resuscitation training record;~~
 - ~~e. c.~~ c. Annual staff professional development and training record records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation;
 - d. The following required training certificates:
 - (1) First-aid training;
 - (2) Cardiopulmonary resuscitation and automated external defibrillator; and
 - (3) Behavior management, crisis management, and nonviolent crisis intervention;

- e. Evidence of the employee having read the law requiring the reporting of suspected child abuse and neglect. North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures;
 - f. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - g. Any other evaluation or background check deemed necessary by the administrator of the facility; and
 - h. Documentation of the status of any required license or qualification for the position or tasks assigned to the employee.
2. ~~For purposes of subsection 1, "record" means documentation, including, with respect to development or training presentations, name of presenter, date of presentation, topic of presentation, and length of presentation.~~
3. 2. The facility shall maintain an individual ~~personnel~~ file on each ~~volunteer, student, or intern~~ nonemployee. The ~~personnel~~ file must include:
- a. Personal identification information; and
 - b. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record.
 - c. Description of duties;
 - d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation; and
 - e. Evidence of the nonemployee having read the law requiring the reporting of suspected child abuse and neglect. North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.
4. 3. The facility shall adopt a policy regarding the retention of ~~personnel records~~ employee and nonemployee files.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-06. Facility administrator. The governing body of the facility shall designate an administrator for the facility.

1. The ~~governing body of the facility shall clearly define, in writing, the~~ responsibilities of the facility administrator ~~must be clearly defined in writing by the governing body of the facility.~~ If the facility is licensed for ten or more children, it shall employ a full-time administrator onsite or in close proximity. A facility may not employ an administrator less than half time.
2. The administrator ~~shall~~ must have a bachelor's degree in business administration, social work, or a related behavior field, from an accredited college or university.
3. The administrator shall assure that ~~the facility provides~~ adequate supervision is provided to all ~~staff members who are employees and nonemployees~~ working with residents in the facility.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-07. Program director. The ~~administrator~~ facility shall hire or designate a program director for the facility.

1. The facility shall clearly define, in writing, the responsibilities of the program director ~~must be clearly defined in writing by the administrator.~~ The duties of the program director must be devoted to the provision of social services. If supervisory duties are assigned, the program director may only supervise ~~personnel~~ employees involved in treatment activities.
2. The program director must meet at least one of the following standards:
 - a. A licensed, certified social worker (MSW) with at least one year of clinical experience;
 - b. A doctor of philosophy or master of science degreed psychologist with at least one year of clinical experience;
 - c. A licensed addiction counselor who has a bachelor of arts degree in a social or behavioral science with at least three years of clinical experience;
 - d. An individual possessing a master's degree in a clinical discipline, such as a behavioral science with a clinical focus, with at least two years of supervised clinical experience; or

- e. An individual possessing a bachelor's degree in social work with at least three years' clinical experience in a licensed facility; ~~or,~~
- f. ~~An individual otherwise qualified and serving as that facility's program director prior to August 1, 1998.~~

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-08. Social service ~~staff~~ employees. The facility shall hire or designate social service ~~staff~~ employees.

1. A facility ~~shall~~ must have sufficient social service ~~staff~~ employees to meet minimum ~~staff-to-child~~ employee-to-child ratios required by this chapter.
2. The ~~facility shall clearly define, in writing, the~~ duties and responsibilities of the social service ~~staff must be clearly defined in writing~~ employees.
3. ~~Social~~ A social service ~~staff~~ employee responsible for the supervision of other employees, volunteers, or students on field placement or ~~internship~~ or nonemployees must be allowed sufficient time to perform supervision tasks.
4. ~~Each~~ A social service ~~staff person shall~~ employee must have, ~~as at~~ a minimum, a bachelor's degree in social work or a related field and must be licensed as required by that field of practice.
5. ~~Social~~ A social service ~~staff~~ employee's time must be devoted to the provision of social services.
6. If the facility holds itself out as furnishing or using a specific treatment method, the ~~staff~~ professional development and training records must document that the ~~staff~~ employee has had appropriate training ~~in~~ to provide the specific training method.
7. ~~Social service staff beginning employment in the facility will be on probation for a specified time to be determined by the facility.~~
- 8: 7. ~~Social~~ A social service ~~staff~~ employee must have achieved the competencies necessary to implement any item of care or service which ~~they are~~ the employee is designated to perform in any child's the individualized plan of care of a child in placement.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-09. Social service staff employee supervision.

1. The program director or assigned social service supervisor shall provide and ~~shall document the provision of~~ a minimum of one hour of individual supervision per week for each staff member who is under the program director's supervision social service employee.
2. Each full-time social service ~~staff~~ supervisor may not supervise ~~no~~ more than six social service ~~staff holding positions as social service staff employees,~~ treatment ~~personnel employees,~~ or child direct care supervisor supervisors. Social service ~~staff~~ supervisors may not supervise other positions.
3. The facility shall ~~establish and implement a written plan for inservice document annual~~ training for ~~the program director calculated supervisors~~ to maintain and improve competence in the supervisory role and in facility social service practice practices.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-10. Child Direct care staff employees.

1. A facility ~~shall~~ must have on duty at all times sufficient ~~child care staff direct care employees~~ to meet the minimum ~~staff-to-child employee-to-child~~ ratios required by this chapter.
2. The facility shall clearly define, in writing, the duties and responsibilities of the ~~child care staff must be clearly defined in writing~~ direct care employees.
3. All ~~child care staff~~ direct care employees must be twenty-one years of age or older.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-11. Volunteers, student field placements, and internships Nonemployees.

1. A facility which uses ~~volunteers, student field placements, or interns who work directly with children on a regular basis~~ nonemployees shall:
 - a. Develop and provide a copy of a description of duties and specified responsibilities ~~for volunteer, student field placement, or internship positions to be provided to the volunteer, the student, and the student's school;~~

- b. Designate ~~appropriate staff members~~ an employee to supervise and evaluate ~~volunteers, student field placements, or interns~~ nonemployees; and
 - c. Develop a plan for the orientation and training of ~~volunteers, student field placements, or interns~~ in nonemployees to include the philosophy of the facility; and the needs of the children in ~~care~~; placement and ~~the needs of their families~~.
2. ~~Volunteers, student field placements, or interns~~ Nonemployees may provide services in support of, but not in substitution for, ~~paid staff members~~ employees. ~~Volunteers, student field placements, and interns~~ Nonemployees may not be counted as ~~staff~~ an employee for purposes of ~~staff-to-child~~ employee-to-child ratio requirements imposed by this chapter.
 3. ~~Volunteers, student field placements, and interns~~ Nonemployees shall create records of incidents that occur during their presence at the facility to the same extent that employees are required to create such records.
 4. Nonemployees shall follow subsections 2 and 4 of section 75-03-16-12.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-12. Personnel Employment policies. A facility ~~shall~~ must have clearly written ~~personnel employment~~ policies. ~~These~~ The facility shall make the policies ~~must be made~~ available to each employee ~~and~~. The policies must include:

1. ~~A staff~~ An annual professional training and development plan for all employee positions;
2. Procedures for reporting suspected child abuse and neglect;
3. Procedures for ~~staff~~ employee evaluation, disciplinary actions, and terminations;
4. ~~A prohibition of sexual contact between staff and children~~ Zero tolerance policies, which must include zero tolerance for sexual abuse and sexual harassment by employees to others in the facility;
5. Procedures for employee grievances;
6. Evaluation procedures which include a written evaluation following the probationary period for new ~~staff~~ employees and at least annually thereafter; and

7. A plan for review of the personnel policies and practices with ~~staff~~ employee participation at least once every three years, or more often as necessary. The facility shall document policy reviews, revisions, and employee participants in writing.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-12.2. Employee and nonemployee background checks.

1. A facility shall make an offer of employment to a prospective employee or an offer of placement to a nonemployee conditional upon the ~~prospective employee's~~ individual's consent to and the results of background checks concerning:
 - a. Criminal conviction record; and
 - b. Child abuse or neglect record.
2. ~~Where a position involves transporting children by motor vehicle the facility shall also make an offer of employment conditional upon the prospective employee's consent to and the results of a background report concerning the status of any motor vehicle operator's license issued to the prospective employee~~ While background check results are in pending status, a facility may choose to provide training and orientation to a prospective employee or nonemployee while waiting for the results. However, until the approved background check results are placed in the employee's or nonemployee's file, the prospective employee or nonemployee may not have contact with children in placement at any time.
3. If a prospective employee or nonemployee is in a position requiring the transportation of children in placement or the need to drive an approved facility vehicle, the facility shall complete an initial department of transportation driving record check for that employee or nonemployee. A facility shall develop a policy to determine how often a driving record check will be required. In addition, the facility shall identify procedures to follow if an employee or nonemployee approved to transport children in placement subsequently commits a driving violation.
- ~~3.~~ 4. If a prospective employee has previously been employed by one or more facilities, the facility shall request a reference from all previous facility employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.

4. ~~5.~~ The A facility shall submit proper paperwork to the department may perform a background check for reports of suspected child abuse or neglect each year on each facility employee year for the department to perform an annual child abuse and neglect index check on every facility employee and nonemployee. The facility shall place a copy of the results in each employee or nonemployee file.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-12.3. ~~Staff~~ Employee and nonemployee health requirements.

1. ~~All personnel, including volunteers and interns, shall~~ employees and nonemployees must be physically and mentally capable of performing assigned tasks.
2. ~~Except as specified in subsection 3, the good physical health of each employee shall be verified by a health screening, including a test for tuberculosis;~~ All employees shall undergo an initial health screening performed by or under the supervision of a physician not more than one year prior to or thirty days after employment to verify good physical health to work in the facility. The ~~individual~~ professional performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to ~~residents of the facility or other staff members~~ others in the facility.
3. All employees and nonemployees shall undergo an initial test for tuberculosis.
- ~~3.~~ 4. ~~Unless effective measures are taken to prevent transmission, each facility shall develop a policy addressing that an employee or nonemployee suffering from a serious communicable disease must be isolated from other employees, nonemployees, and residents of the facility children in placement who have not been infected.~~
4. ~~5.~~ The facility shall collect and maintain information obtained under this section regarding the medical condition or history of any employee or nonemployee on forms and in medical files which are kept separate from any other forms and the employee or nonemployee files and. Medical information of employees and nonemployees must be treated as a confidential medical record available only to the employee, the nonemployee, the facility, and or official regulating authorities, including the department.
- ~~5.~~ 6. The facility shall develop a policy regarding health requirements for ~~volunteers, interns, and student placements which addresses tuberculin testing~~ employees and nonemployee, including how often

health screenings and tuberculosis testing will be required by the facility.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-14. Staff Employee professional development.

1. ~~Each facility shall ensure that the administrator, program director, social service staff, child care workers, educational staff, and all other staff working directly~~ all employees in contact with children shall in placement receive at least twenty hours of annual training ~~during each year of employment to assist in the overall quality of care provided to children in placement.~~
2. ~~Training must~~ Required training to prepare the staff employees to meet the needs of the children served ~~and shall include the following subject areas includes:~~
 - a. ~~Children's emotional needs and problems~~ First aid;
 - b. ~~Reporting of child~~ Child abuse and neglect mandated reporting training;
 - c. ~~Behavior management techniques, including crisis management and techniques of nonviolent crisis intervention; and~~ Cardiopulmonary resuscitation and automated external defibrillator training;
 - d. ~~Emergency and safety procedures, including first aid and cardiopulmonary resuscitation.~~ Behavior management, crisis management, and nonviolent crisis intervention training;
 - e. Training addressing children's emotional needs; and
 - f. Suicide prevention training.
3. ~~Training in~~ A certified instructor shall provide nonviolent crisis intervention, first aid, and cardiopulmonary resuscitation ~~must be given by a certified instructor, and automated external defibrillator. The facility shall place training completion certificates in the employee file.~~

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-15. Child abuse and neglect.

1. All facility employees, ~~volunteers, student placements, interns, and other~~ and nonemployees ~~who have or may have regular contact with children~~ shall certify having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.
2. Each facility shall adopt written policies and procedures requiring ~~any employee~~ employees and nonemployees to report cases of suspected child abuse or neglect. The procedures must include the following statement:

All ~~employers~~ facility employees and nonemployees will comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this facility that if any employee or nonemployee who knows or reasonably suspects that a child in ~~residence~~ placement whose health or welfare has been, or appears to have been, harmed as a result of abuse, neglect, or sexual molestation, that employee or nonemployee shall immediately report this information to the ~~regional human service center in the region in which the facility is located~~ department.

Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment and referral of the employee or nonemployee to the office of the state's attorney for investigation of possible criminal violation.

3. The facility's ~~procedure~~ policies and procedures must describe:
 - a. To whom a report is made;
 - b. When a report must be made;
 - c. The contents of the report;
 - d. The responsibility of each individual in the reporting chain;
 - e. The status of an employee or nonemployee who is an alleged perpetrator subject of a report pending assessment, administrative proceeding, or criminal proceeding;
 - f. The discipline of an employee or nonemployee who is the perpetrator subject of a decision that services are required or a determination that institutional child abuse or neglect is indicated, up to and including termination; and
 - g. The status and discipline of an employee or nonemployee who fails to report suspected child abuse or neglect.

4. The facility shall cooperate fully with the department throughout the course of any investigation of any allegation of child abuse or neglect made concerning care furnished to a child ~~residing at the facility in placement~~. The facility shall, at a minimum, provide the investigators or reviewers with all documents and records available to the facility and reasonably relevant to the investigation and permit confidential interviews with ~~both staff employees, nonemployees,~~ and children in placement. Internal facility interviews and investigations are not permitted to occur concurrent with a department or law enforcement investigation.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-25.1-03

75-03-16-16. Intake and discharge.

1. A facility shall adopt written intake, admission, and discharge policies including age, sex, and characteristics of children eligible for admission.
2. A facility ~~shall~~ must have an intake committee and a discharge committee. The committees may have the same members.
 - a. The intake and discharge committees may include the program director, a social service ~~representative~~ employee, a ~~child care staff representative~~ direct care employee, and such additional members as the facility determines appropriate.
 - b. The program director or a social service ~~staff representative~~ employee shall chair each committee.
3. No child may be denied admission on the basis of race, color, creed, religion, or national origin.
4. Intake procedures.
 - a. The intake committee shall screen applications and decide which children are admitted to the facility for care. ~~These~~ The intake committee shall make admissions decisions must be made within thirty days of the receipt of sufficient information or a completed application.
 - b. ~~In order to~~ To determine if it is appropriate to admit a child, the facility shall ~~have~~ develop a policy requiring:
 - (1) The child's social and family history;

- (2) The child's educational records including a copy of the school district notification, previous and current individual education plans, if any, and the name of the responsible school district;
 - (3) A psychiatric or psychological history, if indicated;
 - (4) A medical history, physical, and examination records;
 - (5) The terms and methods of payment for the child's maintenance, clothing, personal allowance, medical care, and other expenses;
 - (6) The name, address, and telephone number of the ~~legal custodian,~~ parent, or guardian, if any, and copies of the documents which establish the authority of the legal custodian or ~~guardian guardianship;~~ and
 - (7) The ~~legal custodian's or guardian's~~ written authorization from the custodian, parent, or guardian to obtain necessary medical treatment.
- c. A facility may admit a child without first securing all required information if:
- (1) The facility has secured substantially all required information, has documented diligent efforts to secure all required information, and the facility's intake committee has determined that admission is appropriate; or
 - (2) The child's circumstances require immediate placement and the facility's intake committee has preliminarily determined that admission is appropriate.
- d. A child admitted under paragraph 2 of subdivision c may be admitted only on condition that the referring agency provides, or arranges for provision of, substantially all required information within thirty days of the child's admission.
- e. The facility shall request documentation of the services the ~~parents or custodian~~ family of a child in placement will receive in the home community while the child is receiving services in the facility.
- f. The facility shall request quarterly child and family team meeting progress reports from the referring agency ~~providing services to the parents or custodian.~~
- g. ~~In any direct placement by a parent or guardian~~ If a private placement is made by a parent or guardian, rather than a

court-appointed custodian, the individual parent or guardian making the placement is the referring agency.

- h. If a child is not admitted, the facility shall indicate to the referring agency the reason the child was not admitted.
5. Prior to discharging a child in placement, the facility and the referring agency shall plan for the needs of the child, including preparation of a discharge report. The discharge report must include:
- a. A facility progress report concerning of the child, including an outline of appropriate steps the child and family, if appropriate, can engage in to maintain placement out of facility care;
 - b. The reason for discharge;
 - c. ~~Future~~ The immediate and future services recommended for the child and the child's family, if appropriate, to remain successful;
~~and~~
 - d. ~~The~~ A statement regarding the potential need for the child to return to the facility-, if needed in the future; and
 - e. The facility's reason for not involving the family in discharge planning, if the family has not been included under subdivisions a and c.
6. The facility shall adopt a policy addressing the circumstances under which a child in placement may be discharged on an emergency basis. If a child in placement is discharged on an emergency basis, the facility shall immediately inform the child's custodian, parent, or guardian, or legal custodian of a child in placement.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-17. Case plan.

1. ~~Social~~ A social service ~~staff employee~~ shall develop a written, individualized plan of care for each child in placement within thirty days of admission to the facility. The case plan must ~~demonstrate that the facility has made reasonable efforts to gather information from staff within the facility, parents, the referring agency, courts, schools, or any other appropriate individuals or agencies. The plan must be based on a thorough assessment of the situation and circumstances of the child and the family's needs, strengths, and weaknesses. If a plan was developed by another agency prior to admission, it must be reviewed to determine the relevancy to the current needs of the child~~

~~and the child's family. The plan must delineate the individual or entity responsible for providing any item of care or service required. The plan of care must be reviewed for appropriateness and effectiveness at least every thirty days by the responsible social service staff with changes and modifications made and documented in writing. The plan must state an estimated projected length of stay.;~~

- a. Be reviewed by the facility, if a plan was developed by another agency prior to admission, to determine the relevancy to the current needs of the child and the child's family;
 - b. Document that the facility has made reasonable efforts to gather information from employees within the facility, the referring agency, custodian, parents, or guardians, courts, schools, or any other appropriate individuals or agencies;
 - c. Be based on a thorough assessment of the situation and circumstances of the child and the child's family's needs, strengths, and weaknesses;
 - d. Delineate the individual or entity responsible for providing any item of care or service required;
 - e. Document an estimated projected length of stay; and
 - f. Be reviewed for appropriateness and effectiveness at least every thirty days by the responsible social service employee. Changes and modifications must be made and documented in writing as needed, but no less than quarterly.
2. The written, individualized plan of care ~~for a child in placement~~ must include a description of the services that will be provided ~~for the family in the family's home community, plans for visitation by the child's parents, legal custodian, or guardian to the facility or for the child's home visits, an indication of who will provide primary case management and service, and the child's signature or the signed statement of a member of the facility's social service staff that the plan of care was explained to the child and the child refused to sign the plan of care.~~ by:
- a. The facility to the child;
 - b. The facility to the child's family;
 - c. Community providers to the child;
 - d. Community providers to the family in the family's home community; and

- e. The facility as a formal plan for visitation from the custodian, parent, or guardian to the facility and opportunities for the child to engage in home visits.
- 3. The written, individualized plan of care must include an indication of the services the child's family may receive from the facility or outside agencies who will provide primary case management and service, and the child in placement's signature or the signed statement of the facility's social service employee that the plan of care was explained to the child and the child refused to sign the plan of care.
- 4. If a facility engages in electronic data entry and case filing, the facility shall develop policy to manage this process. The policy must include the electronic medical records process, procedures for internal network security, employee access, and management of facility data, backup systems, and how the facility will engage in electronic file sharing with custodians, parents, and guardians.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-16-19. Law enforcement notification. A facility shall notify law enforcement officials immediately after it is confirmed that the ~~resident child's~~ whereabouts of the child in placement are unknown. The facility shall notify the child's ~~parents~~ custodian, parent, or guardian, or legal custodian within twelve hours after the child's whereabouts become unknown. When the child is found, the facility shall report the child's return immediately to the law enforcement officials and the child's ~~parents~~ custodian, parent, or guardian, or legal custodian.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.
General Authority: NDCC 50-11-01
Law Implemented: NDCC 50-11-02

75-03-16-20. Programs and services.

- 1. The facility shall adopt a written program plan which must:
 - a. Include a description of the facility's plan for the provision of services required in this chapter, as well as assessment and evaluation procedures to be used in program planning and delivery; and
 - b. Clearly state which services are provided directly by the facility and which services must be provided in cooperation with community resources such as public or private schools, and other appropriate agencies.

2. The facility shall provide information to referral sources, upon written request, which must include:
 - a. Identification of what the facility provides to ~~the resident~~ a child in placement;
 - b. Characteristics of ~~individuals~~ children appropriate for referral and admission to the facility;
 - c. The process by which the facility intends to achieve its goals;
 - d. Treatment orientation of the facility; and
 - e. Information required with the referral.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-21. Case file. Within thirty days after placement, the facility shall establish and ~~shall thereafter~~ maintain a case file for each child in placement receiving care in the facility. This file must include:

1. The child's full name, birthdate, and other identifying information;
2. A ~~signed care agreement, contract, or current court order~~ establishing the facility's authority to accept and care for ~~the~~ any child welfare placement. If a private placement is made, the facility shall include a signed care agreement or contract in the child's case file;
3. An explanation of custody and legal responsibility for consent to any medical ~~or surgical~~ care;
4. An explanation of responsibility for payments for care and services;
5. An explanation of ongoing services;
- ~~6.~~ 6. An explanation of services provided to the family by the facility as well as services the family is receiving in their home community in accordance with section 75-03-16-17;
- ~~7.~~ 7. Projected planning plan for discharge;
- ~~8.~~ 8. A permanency planning report Child and family team meeting quarterly reports or equivalent ~~documents~~ documentation created by the custodian of the child in placement, if applicable;
- ~~9.~~ 9. A copy of the appropriate interstate compact forms, if applicable;

- 9- ~~10.~~ A copy of the written individualized plan of care prepared by the facility;
- 40- ~~11.~~ Copies of periodic, but not less than quarterly, written reports to the ~~child's parent~~ custodian, parent, or guardian, or legal custodian, of children in placement, developed by the facility's social service staff employee; and
- 44- ~~12.~~ Documentation that the program director, administrator, or utilization review committee has reviewed each case file every thirty days.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-24. Food and nutrition.

- 1. Food must be in wholesome condition, free from spoilage, filth, or contamination and ~~shall~~ must be safe for human consumption. Food in damaged containers or with expired freshness dating is not considered safe for human consumption.
- 2. The facility shall ensure that the nutritional requirements of the children in care placement are met. The facility shall serve nutritionally balanced meals each day. Special diets must be prepared for those children medically requiring them.
- 3. Except for garden produce, all homegrown food, poultry, meat, eggs, and milk must be from an approved source as determined by the state or local health authorities. The facility shall document the approval of state or local health authorities.
- 4. No home-canned foods may be served.
- 5. Frozen homegrown food products may be served if maintained in compliance with standards prescribed by the state department of health for food and beverage establishments.
- 6. ~~Refrigeration~~ The facility shall provide refrigeration for perishable food ~~must be provided and maintained~~ shall maintain perishable food in accordance with standards prescribed by the state department of health for food and beverage establishments.
- 7. ~~Personnel preparing~~ Employees, nonemployees, and children in placement helping to prepare food shall wash their hands before handling food, and as often as necessary to keep them clean, and shall

use effective hair restraints to prevent contamination of food and food contact surfaces.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-25. Children's needs.

1. A facility shall arrange for children in placement to have a personal supply of clean, well-fitting clothing and shoes for both indoor and outdoor wear and appropriate for the season.
2. ~~Jobs~~ A facility shall assign jobs and household responsibility for children ~~must be assigned~~ in placement in a manner that does not conflict with the educational schedule or physical health of the children or preclude the children's opportunity for socialization activities.
3. Participation in recreational and social activities must be on the basis of the individualized needs and goals of each child in placement.
4. The facility shall advise all children in placement and their custodians, parents, or guardians, in writing, of the day-to-day rules of the facility. The facility shall adopt day-to-day rules which create the least restrictive environment, consistent with the needs of children in ~~care~~ placement.
5. The facility shall advise children in placement and their custodians, parents, or guardians, in writing, of the process used by facility employees to complete a search of children or their belongings when returning to the facility from offsite outings, events, school, or home visits. The facility shall inform children in placement of the reason searches will be conducted, the protocol for conducting searches, and any disciplinary action a facility will take if contraband items are identified during a search.
5. ~~6.~~ Each child must be provided The facility shall provide children in placement a bed with a clean mattress and clean bedding. ~~Blankets must be available~~ The facility shall provide blankets to each child as temperatures make necessary. Sheets and bedding must be changed when soiled, and no less often than weekly. In addition, the facility shall make room assignments to best meet the needs and vulnerabilities of children in placement. The facility shall assess room assignments on an ongoing basis to minimize potential risk to children in placement.
6. ~~7.~~ Each child must be provided The facility shall provide children in placement personal hygiene and toilet articles, including washcloths and towels which must be changed when soiled, and no less often than weekly.

7. ~~8.~~ A facility shall ensure that privacy is assured when ~~a family member visits a child.~~ Any custodians, guardians, or family members visit children in placement. The facility shall record any reason for restricting communications or visits between a child and the child's custodians, guardians, or family members ~~must be recorded~~ in the child's case file.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-26. Discipline. Discipline must be constructive or educational in nature. Discipline may include diversion, separation from a problem situation, discussion with the child in placement about the situation, praise for appropriate behavior, and gentle, physical restraint such as holding. A facility shall adopt and implement written policies for discipline and behavior management which include:

1. Only ~~adult staff members~~ employees of the facility may prescribe, administer, or supervise the discipline of children in placement.
2. ~~No child~~ Children in placement may not be slapped, punched, spanked, shaken, pinched, roughly handled, struck with an object, or otherwise receive any inappropriate physical treatment.
3. Authority to discipline may not be delegated to or be accomplished by other children.
4. ~~A child~~ Children in placement may not be locked in any room or other enclosure.
5. Physical restraint or ~~isolation~~ separation from the general facility population may be used only:
 - a. As a necessary complement to positive programming designed to strengthen desirable and adaptive behavior; and
 - b. To prevent immediate harm to ~~the child or to another individual children in placement and others.~~
6. ~~Isolation~~ Separation from the general facility population means that a child is removed from peers or programming to regroup when the child's behavior is escalated, when used as discipline, must be brief and appropriate. The child must be within hearing of an adult in a safe, lighted, well-ventilated room. A child who is isolated from peers for disciplinary reasons must be observed by the staff at least every fifteen minutes.
 - a. Separation from the general facility population, when used as discipline, must be brief and appropriate. The child must be in a

safe, lighted, well-ventilated room and be observed continuously by an employee. When a child's behavior has deescalated, but the child needs additional separation, an employee shall observe the child and document the observation at least every fifteen minutes until the child is ready to return to the general facility population.

- b. The isolation of a child in a locked area for the purpose of modifying behavior is not permitted at any time.
7. Verbal abuse or derogatory remarks about ~~the child~~ children in placement, the child's family, religion, or cultural background may not be used or permitted.
 8. Neither physical restraints nor ~~isolation~~ separation from the general facility population may be used for punishment, for ~~the~~ convenience of ~~staff~~, or as a substitute for programming. Except as permitted under section 75-03-16-26.2, mechanical forms of physical restraints may not be used.
 9. Cruel and unusual punishments are prohibited, ~~including the following:~~
 - a. ~~Physically strenuous work or exercise, when used solely as a means of punishment; and~~
 - b. ~~Forcing a child to maintain an uncomfortable position or to continuously repeat physical movements, when used solely as a means of punishment.~~
 10. ~~A child~~ Children in placement may not be deprived of any of the following as a means of discipline:
 - a. A place to sleep with a pillow and bedclothes;
 - b. Meals;
 - c. Clean clothes;
 - d. Personal or telephone visits with ~~parents~~ the child's custodian, parent, or guardian, or legal representative;
 - e. Time necessary for personal hygiene;
 - f. Minimum exercise;
 - g. Receipt and sending of mail;
 - h. Access to toilet and water facilities, as needed;

- i. Voluntary attendance at a religious service or religious counseling;
- j. Clean and sanitary living conditions;
- k. Medication; and
- l. Sleep.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-26.1. Use of ~~isolation~~ separation from general facility population or physical restraint. Each ~~use of isolation~~ time a child in placement is separated from the general facility population or physical restraint physically restrained, the event must be documented, filed in the ~~child's case file~~ of the child in placement within twenty-four hours, and entered in the central record maintained by the facility within seventy-two hours. Documentation must include:

1. The date and time of use;
2. The number of times ~~isolation~~ separation or restraint was used and the duration of each use;
3. A complete description of the type of ~~isolation~~ separation or restraint used;
4. The names of ~~staff~~ employees who applied the restraint;
5. A complete description of the injuries sustained by children or ~~staff~~ employees involved and the medical treatment provided; and
6. Documentation that information concerning the incident was communicated to the child's custodian, parent, or guardian, ~~legal custodian, or placing agency.~~

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-26.2. Use of mechanical restraints - Limitations. Notwithstanding the provisions of section 75-03-16-26, a facility may use permissible mechanical restraints to contain the behavior of ~~a child~~ children in placement in transit from the facility if ~~the child has~~ children in placement have clearly indicated the intent to inflict serious physical injury upon ~~that child themselves~~ or others and the facility is unable to get assistance from law enforcement.

1. Permissible mechanical restraints consist solely of handcuffs and foot cuffs which may be used only when ~~a child is~~ children in placement are transported from the facility by vehicle.
2. The term "mechanical restraint" does not include seatbelts, shoulder harnesses, or wheelchair locks used in vehicular transportation.
3. The facility shall provide the department with a list of ~~staff members~~ employees trained to use mechanical restraints prior to the institution of a transportation mechanical restraint program. Training for use of mechanical restraint devices must be documented in the ~~staff~~ professional development and training record.
4. ~~Placing entities shall be informed~~ A facility shall inform referring agencies that the facility may use mechanical restraints as a behavior containment measure in transporting ~~a child~~ children in placement from the facility.
5. A facility shall report each incident of any use of mechanical restraints to the ~~regional supervisor~~ department within three days. The report must include the affidavit of the ~~individual~~ employee applying the mechanical restraint that sets forth:
 - a. A statement that the use of mechanical restraints was a last resort measure and all less restrictive measures failed;
 - b. The less restrictive restraint measures tried as alternatives to mechanical restraints;
 - c. The name of the law enforcement unit called, the time that law enforcement was called and was unable to respond, and the time ~~that the child was transported~~ of transport; and
 - d. The name of the ~~staff member~~ employee applying the mechanical restraints and a statement that the ~~staff member~~ employee using the mechanical restraints has been properly trained ~~in the use of mechanical restraints~~.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-27. Confidentiality.

1. For purposes of this section, "persons who have a definite interest in the well-being of children in placement" include:

- a. The ~~parents and legal guardian or~~ child's custodian, ~~if any, of a child, parent, or guardian,~~ except to the extent the parental rights have been removed or limited by court order;
 - b. The ~~individual or entity~~ referring agency that placed a child in the facility; and
 - c. An individual or entity identified ~~in a child's written individualized plan of care~~ as a provider of services, located in the home community of the ~~child's~~ family of the child in placement, for the purposes of reunification ~~of the child and the child's family.~~
2. Except as otherwise provided in this section, facility records concerning children in placement that have received, are receiving, or seek to receive facility services must be safeguarded and may be made available only:
- a. To ~~staff~~ employees and nonemployees of the facility, to the extent reasonably necessary for the performance of their duties;
 - b. To persons authorized by a custodian, parent, or guardian, ~~or custodian~~ who may lawfully review a child's records, to review or receive copies of that child's records;
 - c. In a judicial proceeding;
 - d. To officers of the law or other legally constituted boards and agencies; or
 - e. To persons who have a definite interest in the well-being of the children in placement concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure ~~the children's~~ their well-being and interests.
3. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any child in placement or member of ~~a child's~~ the immediate family of a child in placement, without first securing the written consent of the ~~child's~~ custodian, parent, or guardian, ~~or legal custodian~~ of the child in placement, or the written consent of an adult who was a former resident of the facility ~~as a child.~~
- a. Written consent must be ~~informed~~ informative, including full disclosure of how the image or information will be used, including any future use, and must specifically identify the image or information which may be disclosed by reference to dates, locations, and other event-specific information. Consent

documents which do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes;

- b. The facility must inform the person signing that the individual is free to either grant or refuse to grant consent;
- c. The facility must provide a seven-day waiting period during which the consent can be withdrawn by the signing party; and
- d. The consent must be time-limited. Open-ended consents are not valid. The written consent must apply to an event that occurs no later than one year from the date the consent was signed.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-06-15, 50-11-02, 50-11-05

CHAPTER 75-03-38
AUTISM SPECTRUM DISORDER VOUCHER PROGRAM

Section

75-03-38-01

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Appeals

75-03-38-01. Definitions.

1. "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.
2. "Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.
3. "Department" means the department of human services.
4. "Qualified professional" means an individual who holds a doctor of philosophy degree in the medical or health care industry who uses the diagnostic guidelines of the American academy of pediatrics.
5. "Sensory equipment" means an item that lessens or amplifies the intensity of various forms of sensory stimulation and helps to desensitize individuals to sensory stimuli.
6. "Unit" means the autism services unit of the department.

History: Effective July 1, 2014.

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

75-03-38-02. Eligibility - Financial - Functional.

1. A parent, custodian, or legal guardian may apply to the unit to participate in the voucher program for needs identified for a child with an autism diagnosis, whose age is from three years through seventeen years, and whose family has an income below two hundred percent of the federal poverty level for the child's family size. The child may not be served under the department's developmental disability medicaid waiver or the department's autism spectrum disorder birth through seven medicaid waiver, and the need for voucher support must be established through the completion of the voucher program application provided by the unit.

2. A child aged three years through seventeen years may be eligible if all of the following conditions are met:
 - a. The child has been recommended for voucher support by a qualified professional:
 - b. The child's support need cannot be obtained through insurance or through other service systems, including educational and behavioral health systems:
 - c. The item or support requested is cost-effective in meeting the child's needs; and
 - d. The child's needs cannot be met by a generic service or support.
3. Voucher support approved for a child with an autism diagnosis under this chapter may not exceed twelve thousand five hundred dollars per year.

History: Effective July 1, 2014.

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1; S.L. 2013, ch. 206, § 8

75-03-38-03. Application. A parent, custodian, or legal guardian of a child diagnosed with an autism disorder shall provide the following information on an application form provided by the unit:

1. Verification from a qualified professional of a diagnosis of the autism disorder based on the criteria identified in edition five of the Diagnostic and Statistical Manual of Mental Disorders published by the American psychiatric association.
2. Verification of North Dakota residency for at least six months.
3. Verification of family income below two hundred percent of the federal poverty level for the appropriate family size.
4. Copy of the child's most recent individualized service plan, or other evaluation, assessment, or treatment plan.
5. Signed releases of information to the child's service providers and school.
6. Description of how the funding will be used.

History: Effective July 1, 2014.

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

75-03-38-04. Review of application - Approval - Denial - Effect of inactivity of voucher. The unit shall review the application for completeness and will determine the child's eligibility for voucher supports. Upon written approval of the voucher application, the unit shall enter an agreement with the parent, custodian, or legal guardian of the eligible child. The unit shall enter an agreement with the parent, custodian, or legal guardian of the eligible child. The unit shall issue a voucher to the parent, custodian, or legal guardian of the eligible child indicating the specific approved supports or services. The unit may approve a voucher request for a one-time purchase or for multiple purchases over time. The unit may alter or deny a request for practices or supports that may put the health and safety of the child at risk. If a voucher is approved for multiple purchases over time, the unit will monitor the voucher for activity. If the voucher is not used for one hundred eighty consecutive calendar days, the eligible child's parent, custodian, or legal guardian will be informed that the voucher will be terminated if an additional thirty calendar days pass without a voucher purchase or request for voucher reimbursement. Any funds approved for a terminated voucher that are unspent will be returned to the voucher program and the unit may distribute the funds to another applicant. The unit shall issue a written notice to a parent, custodian, or legal guardian whose voucher application has been denied or if the voucher is terminated for inactivity. The unit shall include the reason for the denial or termination and shall inform the parent, custodian, or legal guardian of the right to appeal the denial or termination; provided, however, that a parent, custodian, or legal guardian may not appeal a termination resulting from the parent, custodian, or legal guardian exhausting the funding awarded under the voucher.

History: Effective July 1, 2014.

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

75-03-38-05. Appeals. A parent, custodian, or legal guardian may appeal a denial or termination of a voucher under this chapter. An appeal under this section must be made in writing on a form developed and provided by the department within thirty days of the date of the notice issued under section 75-03-38-04. The parent, custodian, or legal guardian shall submit the written request for an appeal and hearing under North Dakota Century Code chapter 28-32 to the appeals supervisor for the department of human services.

History: Effective July 1, 2014.

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

CHAPTER 75-03-39
AUTISM SERVICES WAIVER

Section

75-03-39-01

Definitions

75-03-39-02

Eligibility for Services Under the Autism Spectrum Disorder
Birth Through Seven Medicaid Waiver

75-03-39-01. Definitions.

1. "Department" means the department of human services.
2. "Unit" means the autism services unit of the department.

History: Effective July 1, 2014.

General Authority: S.L. 2013, ch. 206, § 3

Law Implemented: S.L. 2013, ch. 206, § 3

75-03-39-02. Eligibility for services under the autism spectrum disorder birth through seven medicaid waiver.

1. A child is eligible for autism services under the department's autism spectrum disorder birth through seven medicaid waiver if the following conditions are met:
 - a. The age of the child is birth through seven years of age;
 - b. The child has an autism spectrum disorder diagnosis confirmed by an autism spectrum disorder waiver evaluation and diagnostic team approved by the unit; and
 - c. An autism spectrum disorder waiver slot is available.
2. Annual redetermination is required to ascertain if the child meets the institutional level of care required by the centers for medicare and medicaid services and can continue to receive services on the autism waiver.

History: Effective July 1, 2014.

General Authority: S.L. 2013, ch. 206, § 3

Law Implemented: S.L. 2013, ch. 206, § 3

CHAPTER 75-04-06
ELIGIBILITY FOR INTELLECTUAL DISABILITIES-DEVELOPMENTAL
DISABILITIES CASE MANAGEMENT SERVICES

Section	
75-04-06-01	Principles of Eligibility
75-04-06-02	Criteria for Service Eligibility - Class Member [Repealed]
75-04-06-02.1	Criteria for Service Eligibility
75-04-06-03	Criteria for Service Eligibility - Applicants Who Are Not Members of the Plaintiff Class [Repealed]
75-04-06-04	Criteria for Service Eligibility - Children Birth Through Age Two
75-04-06-05	Service Availability
75-04-06-06	Developmental Disabilities Program Management Eligibility for Three-Year-Old and Four-Year-Old Children [Repealed]

75-04-06-06. Developmental disabilities program management eligibility for three-year-old and four-year-old children. Repealed effective July 1, 2014.

- ~~1. A child is eligible for developmental disabilities program management if all of the following conditions are met:
 - ~~a. The child is three or four years of age;~~
 - ~~b. The child has an autism spectrum disorder diagnosis confirmed by the autism spectrum disorder waiver evaluation and diagnostic team;~~
 - ~~c. An autism spectrum disorder waiver slot is available; and~~
 - ~~d. The child is or will be receiving a service through the autism spectrum disorder waiver.~~~~
- ~~2. If all of the above conditions are met, the child will be eligible for developmental disabilities program management until the child's fifth birthday, at which time developmental disabilities program management adult eligibility criteria will apply.~~

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

General Authority: ~~NDCC 25-01.2-18, 50-06-16~~

Law Implemented: ~~NDCC 25-01.2-02, 50-06-05.3~~

TITLE 89
STATE WATER COMMISSION

JULY 2014

CHAPTER 89-03-01 WATER PERMITS

Section	
89-03-01-01	Submission of Application for Conditional Water Permit
89-03-01-01.1	Priority Date
89-03-01-01.2	Land, Property, or Other Interest Requirement for Conditional Water Permit
89-03-01-01.3	When a Water Permit for Stored Water May <u>Must</u> Be Obtained
89-03-01-01.4	Amount of Water That May Be Held in Storage Pursuant to <u>Under</u> a Water Permit
89-03-01-01.5	Sale of Excess Water by an Incorporated Municipality or Rural Water System
89-03-01-02	Correction of Unsatisfactory Application
89-03-01-03	Amendment of Application
89-03-01-03.1	Transfer of an Application to Another Parcel
89-03-01-03.2	Assignment of an Application to Another Person
89-03-01-03.3	Evaporative Losses
89-03-01-04	Notice of Application
89-03-01-05	Publication of Notice of Water Permit Applications
89-03-01-05.1	Notice of Decision on Water Permit Application [Repealed]
89-03-01-06	Filing Proof of Publication and Mailing [Repealed]
89-03-01-06.1	Consideration of Evidence Not Contained in the State Engineer's Record [Repealed]
89-03-01-06.2	Notice of Continuance - Responsibility [<u>Repealed</u>]
89-03-01-06.3	Record - Official Notice
89-03-01-07	Necessity of Works and Construction of Works for a Conditional Water Permit
89-03-01-08	Point of Diversion
89-03-01-09	Appropriation Not Requiring Water Permit
89-03-01-10	Emergency or Temporary Authorization
89-03-01-10.1	Temporary Water Transfer for Irrigation
<u>89-03-01-10.2</u>	<u>Temporary Permit Fees</u>
89-03-01-11	Competing Applications
89-03-01-12	Extensions and Cancellations
89-03-01-13	Report of Water Usage

89-03-01-13.1

Fines - Water Use Reporting

89-03-01-14

Notice

89-03-01-01. Submission of application for conditional water permit.

~~Application~~ An application for a conditional water permit must be submitted to the state engineer on the form provided by the state engineer. A map containing the information prescribed by the state engineer must accompany the application. ~~The~~ Unless the state engineer first approves another type of map, the map must be prepared from a survey, aerial photograph, or topographic map, and must be certified by a licensed surveyor ~~unless another type of map is first approved by the state engineer.~~ Application forms are available at the office of the state engineer in Bismarck. A fee schedule and instructions for completion of the form are enclosed with it. Information licensed in the state of North Dakota. The state engineer may require information not requested in the application ~~may nonetheless be required by the state engineer.~~

History: Amended effective April 1, 1989; February 1, 1994; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-06(4)(f)

89-03-01-01.1. Priority date. The date of receipt by the state engineer of a properly completed application must be ~~endorsed thereon~~ noted on the application. Except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses where a water permit is not required, this date of filing establishes the original priority date of an application, subject to final acceptance of the application and issuance of a perfected water permit by the state engineer. For water applied to domestic, livestock, or fish, wildlife, and other recreational uses; where a water permit is not required, the priority date is the date the quantity of water was first used.

History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-06.3

89-03-01-01.2. Land, property, or other interest requirement for conditional water permit. An applicant for a conditional water permit must have an interest or intent and ability to acquire an interest in the land ~~on which~~ where the point of diversion and conveyance system will be located ~~or.~~ The applicant must demonstrate to the satisfaction of the state engineer that the applicant has the capability to put the water to beneficial use. If the applicant is seeking a permit for irrigation, the applicant must also have an interest or intent and ability to acquire an interest in the land to be irrigated. If the applicant is seeking a permit to impound water, the applicant must have an interest or intent and ability to acquire an interest in the land or other property inundated by the impounded water. The state engineer may require the applicant to submit evidence of such an interest. At any time the state engineer may require additional verification of land or property

interest or other interest demonstrating the capability to put the water to beneficial use.

History: Effective April 1, 1989; amended effective August 1, 1994; April 1, 2004; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-03

89-03-01-01.3. When a water permit for stored water ~~may~~ must be obtained. A water permit for stored water ~~may~~ must be obtained when the stored water will be put to a beneficial use. A water permit may also authorize the storage of water for flood control or other reasons deemed necessary by the state engineer. However, authorization to store water for flood control or other reasons does not create a water right.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-01.1, 61-04-01.2, 61-04-02

89-03-01-01.4. Amount of water that may be held in storage ~~pursuant to~~ under a water permit. Unless otherwise authorized by the state engineer, any person authorized to store water ~~for a nonconsumptive beneficial use, a consumptive beneficial use, or other reasons,~~ except for flood control, may only fill the reservoir to the amount authorized in the permit once each year. The reservoir will be filled during the first runoff following February first of each year. A consumptive use authorized in the water permit must be taken from the stored water. Unless otherwise authorized by the state engineer and with the exception of water stored for flood control, any inflows to the reservoir after the reservoir has been filled for the year must be allowed to pass through the reservoir and downstream.

History: Effective November 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-01.2, 61-04-02

89-03-01-01.5. Sale of excess water by an incorporated municipality or rural water system. Any incorporated municipality or rural water system that appropriates water in excess of its current needs ~~pursuant to~~ under North Dakota Century Code section 61-04-06.2 may sell the excess water provided:

1. The municipality or rural water system is supplying all the demands of its ~~inhabitants~~ residents or members;
2. The agreement for sale of water is terminable by the incorporated municipality or rural water system upon six months' notice to the purchasing entity; and
3. The agreement for sale is approved by the state engineer.

The excess water may not be sold for any use other than that stated in the conditional or perfected water permit. This section does not apply to agreements for the sale of water entered into ~~prior to~~ before November 1, 1989.

History: Effective November 1, 1989; amended effective June 1, 1998; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-06.2, 61-02-27

89-03-01-02. Correction of unsatisfactory application. If an unsatisfactory application is refiled within sixty days from the date the request for corrections is mailed, and if it meets the required corrections and is accepted, it ~~shall~~ will take the priority date of its original filing.

History: Amended effective April 1, 1989; August 1, 1994; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04

89-03-01-03. Amendment of application.

1. An applicant may amend an application. If the state engineer determines the amendment is likely to adversely affect another applicant whose application was submitted after the application sought to be amended and before the proposed amendment, the state engineer ~~shall~~ must change the priority date of the amended application to the date the request for the amendment was received.
2. A request to amend an application may be by letter or by the submission of an amended application form for a conditional water permit.
3. If, ~~prior to the request to amend,~~ any notices notice of the water permit application ~~have~~ has been mailed before the request to amend, the applicant ~~shall~~ must mail corrected notices notice of the application to all persons who were sent the original notice and must submit an affidavit of service of corrected notice to the state engineer. If the notice of the ~~water permit~~ application has been published, the state engineer ~~shall~~ must publish a corrected notice. The state engineer may determine that corrected notices notice need not be mailed or published if the state engineer determines the amendment is insubstantial. ~~Costs of~~ The applicant must pay publication must be paid by the applicant costs.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04

89-03-01-03.1. Transfer of an application to another parcel. Requests A request by the applicant to transfer an application for a water permit to another

parcel of land owned or leased by the applicant must be submitted to the state engineer on the form provided by the state engineer.

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-04, 61-04-15

89-03-01-03.2. Assignment of an application to another person.

~~Requests for the assignment of~~ A request to assign an application for a water permit to another person must be submitted to the state engineer in writing. When title of land for which there is a pending application is transferred, either the transferee or the applicant may apply for assignment of the application. The ~~application request for assignment~~ request for assignment must describe the transferee's interest in the application for a water permit. The state engineer may request additional documentation of the transferee's interest.

History: Effective April 1, 1989; amended effective April 1, 2000; July 1, 2014.

General Authority: NDCC 28-32-03, 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-04

89-03-01-03.3. Evaporative losses. When an application involves water stored in a reservoir, a volume of water equal to the mean net evaporative loss over the surface area of the impoundment at the principal spillway elevation must be requested as an annual use ~~which~~ that will come out of the stored water.

History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014.

General Authority: NDCC 28-32-03, 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-06.2

89-03-01-04. Notice of application.

1. When a proper application is filed, the state engineer shall forward the appropriate number of completed notice of application forms to the applicant. The notice must include the following essential facts: ~~the places and use of appropriation, the amount of and purpose for which the water is to be used, the applicant's name and address, and the newspaper in which the notice of the water permit application will be published. The notice must also state that the notice published in the newspaper will contain a date by which any person having an interest in the application may file written comments regarding the proposed appropriation with the state engineer and that anyone who files written comments will be mailed a copy of the state engineer's recommended decision on the application.~~

a. Places and use of appropriation:

b. Amount of and purpose for which the water is to be used:

c. Applicant's name and address; and

- d. Newspaper in which the notice of the water permit application will be published.

The notice must also state that the notice published in the newspaper will contain a date by which any person having an interest in the application may file written comments regarding the proposed appropriation with the state engineer and that anyone who files written comments will be mailed a copy of the state engineer's recommended decision on the application.

2. Upon receipt of the completed notice of application forms, the applicant ~~shall~~ must send a notice of application ~~by certified mail to the following:~~ form as provided in North Dakota Century Code section 61-04-05. The determination of title owners at the time of the application must be based on title records on file with the appropriate county recorder. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.
- a. ~~To the governing body of each city located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.~~
 - b. ~~To the governing body of the township or other governing authority of each rural subdivision located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion. A rural subdivision is a subdivision which has lots of ten acres [4.05 hectares] or less and is geographically located outside of a city.~~
 - c. ~~To the governing body of the township or other governing authority for each rural tract of land which is owned by more than ten individuals and is located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.~~
 - d. ~~Except for record title owners whose land falls within subdivision a, b, or c, each record title owner of real estate within a one-mile [1.6-kilometer] radius of the proposed point of diversion. The determination of title owners must be based on title records on file with the register of deeds of the appropriate county. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.~~
 - e. ~~To each person holding a water permit for the appropriation of water from an appropriation site located within a radius of one mile [1.61 kilometers] of the location of the proposed water appropriation site. The state engineer shall provide the applicant a list of all persons who must be notified under this subdivision.~~
 - f. ~~To each municipal or public use water facility within a twelve-mile [19.31-kilometer] radius of the proposed water appropriation site is located. The state engineer shall provide the applicant a list of all~~

~~municipal or public use water facilities that must be notified under this subdivision.~~

3. After notice of application ~~has forms have~~ been mailed to those required by ~~this~~ North Dakota Century Code section 61-04-05, the applicant ~~shall~~ must properly complete an affidavit of notice and return it to the state engineer ~~by certified mail~~. The affidavit of notice must state how the applicant determined the record title owners and must list the names and addresses of those who were sent notices ~~by certified mail~~. ~~This affidavit must be mailed to the state engineer within sixty days from the date the state engineer sent the notices of application to the applicant. If a properly completed affidavit of notice is not submitted within sixty days, the priority date of the conditional water permit application will be amended to the date on which the state engineer receives the affidavit of notice. If a properly completed affidavit of notice is not submitted within one hundred twenty days, the application must be considered to have been withdrawn by the applicant.~~

History: Amended effective April 1, 1989; November 1, 1989; February 1, 1994; April 1, 2000; April 1, 2004; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-05

89-03-01-05. Publication of notice of water permit applications. In addition to the requirements in North Dakota Century Code section 61-04-05, a copy of the notice of the water permit application to be published must be sent to the applicant.

1. ~~Upon receipt of an applicant's properly completed affidavit of notice by certified mail, the state engineer shall publish a notice of the water permit application.~~
2. ~~The state engineer shall provide a notice of the water permit application to the official newspaper of the county in which the proposed point of diversion is located and instruct the newspaper to publish the notice once a week for two consecutive weeks. The notice must specify a date by which any person having an interest in the application may submit written comments to the state engineer and must state that anyone who files written comments with the state engineer will be mailed a copy of the state engineer's recommended decision on the application.~~
3. ~~A copy of the notice of the water permit application must be sent to the applicant.~~

~~4. The applicant shall pay costs of publication.~~

History: Amended effective April 1, 1989; November 1, 1989; February 1, 1994; August 1, 1994; April 1, 2000; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-05, 61-04-05

~~**89-03-01-06.2. Notice of continuance - Responsibility.** If any party to a water permit hearing requests and receives a continuance of a water permit hearing, that party shall serve notice of the continuance upon any person who was served with notice of the original hearing. Service of notice of the continuance must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure. The cost of the notice must be borne by the party requesting the continuance. Repealed effective July 1, 2014.~~

~~**History:** Effective April 1, 1989; amended effective April 1, 2000.~~

~~**General Authority:** NDCC 28-32-02, 61-03-13~~

~~**Law Implemented:** NDCC 61-04-04, 61-04-05.1~~

89-03-01-06.3. Record - Official notice. Unless specifically excluded by the state engineer or the hearing officer, the record in each water permit application proceeding includes, when available, the following reports or records, or portions thereof, relevant to the proposed appropriation:

1. United States department of agriculture natural resources conservation service reports including the North Dakota hydrology manual, North Dakota irrigation guide, and county soil survey reports.
2. United States geological survey and state water commission streamflow records.
3. United States geological survey and state water commission water quality data.
4. National oceanic and atmospheric administration climatological data.
5. United States geological survey topographic maps.
6. State water commission engineer water permit files.
7. State water commission engineer annual water use reports.
8. State water commission and United States geological survey ground water level data.
9. North Dakota board of water well contractors well completion reports.
10. State water commission engineer test hole records.

11. State water commission water resource investigations reports and ground water study reports.
12. State water commission and United States geological survey county ground water study reports.
13. Information in state engineer and state water commission files ~~and~~, records, and other published reports.

History: Effective February 1, 1994; amended effective April 1, 2000; July 1, 2014.

General Authority: NDCC 28-32-06

Law Implemented: NDCC 28-32-06

89-03-01-07. Necessity of works and construction of works for a conditional water permit. A permit application may only be considered if works are associated with the proposed appropriation. For any water appropriation that involves the construction of ~~the kind of~~ works that require a construction permit from the state engineer, the water permit may be issued ~~prior to~~ before receipt of the construction permit. However, ~~if this is done~~, the water permit is not valid ~~and has no effect~~ until the construction permit is issued.

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02

89-03-01-08. Point of diversion. ~~Application may not be made for and the~~ The state engineer may not issue a water permit that allows for the appropriation of water from more than one water source. An appropriation from the main channel of a river and from a tributary of the river is an example of an appropriation from more than one water source. The state engineer may issue a water permit that allows for points of diversion from different locations ~~on~~ from the same water source, provided the state engineer finds good cause for doing so.

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-04-06.2

89-03-01-09. Appropriation not requiring water permit. ~~Applications~~ An application for appropriations appropriation of water for which a that does not require a water permit ~~is not required~~ may be obtained from the state engineer to clearly establish a priority date. ~~A fee schedule and instructions for completion are attached to the form.~~

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02

89-03-01-10. Emergency or temporary authorization. Application for a temporary appropriation must be made on the form provided by the state engineer.

In that request, the applicant must indicate the ~~reason for the permit~~ purpose for which water will be used, quantity of water needed, proposed point of diversion, type of use, place of use, rate of withdrawal, source of water, dates of proposed use, and applicant's address. The state engineer will evaluate the request and, if it is granted, the state engineer will list on the temporary authorization conditions that govern the appropriation.

An applicant for emergency use of water, if the situation warrants, may ~~telephone~~ call the office of the state engineer requesting immediate use of water. Following an oral request and oral approval by the state engineer for authorization, ~~the above procedures~~ a temporary application form must be ~~completed~~ submitted.

The applicant for temporary or emergency appropriations is responsible for all damages that may be caused to other appropriators ~~and~~ or any other individual ~~as a result~~ because of an the emergency or temporary use of water.

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02.1

89-03-01-10.2. Temporary permit fees. The following filing fee schedule will be used for temporary water permit applications. The fee must be included with the application. The state engineer may waive the fees for certain emergency uses of a temporary water permit, including firefighting.

Volume of Water Requested:

<u>Less than one acre-foot</u>	<u>\$75</u>
<u>One to ten acre-feet</u>	<u>\$125</u>
<u>More than ten acre-feet</u>	<u>\$200</u>

Filing fees are not required for requests made under section 89-03-01-10.1.

History: Effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02.1, 61-04-06.2

89-03-01-12. Extensions and cancellation. Where the time has expired to put all or any portion of the water of a conditional water permit to the beneficial use named in the permit, the state engineer will notify the permittee ~~of this fact~~. The state engineer will provide the permittee with a form ~~upon which the permittee may~~ to request an extension for applying the water to the beneficial use and to explain why an extension should be granted. Except in overriding circumstances no extension will be granted when other conditional water permit applications are pending from a limited source of supply.

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-14

89-03-01-13. Report of water usage. The form for reporting water usage pursuant to under North Dakota Century Code section 61-04-27 must include the permit number, ~~name of water source~~, amount of water usage, pumping rate, if applicable, and ~~such any~~ other information ~~as~~ the state engineer ~~shall~~ may require. One form must be filed for each water permit held ~~within the timeframe set by North Dakota Century Code section 61-04-27.~~

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-27

89-03-01-13.1. Fines - Water use reporting.

1. A holder of a municipal, rural water, irrigation, or industrial water permit who fails to timely submit a complete and accurate water use report under North Dakota Century Code section 61-04-27 will be assessed a fine of two hundred fifty dollars for each water permit.
2. If the permit holder submits both the complete and the accurate water use report and payment of the fine before June first, the fine per water permit will be reduced to fifty dollars.

History: Effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-23, 61-04-27

89-03-01-14. Notice. When a statute or rule requires the state engineer or water commission to serve an order personally or by certified mail, ~~in circumstances requiring it~~, the order may be served by regular mail provided with an affidavit of service ~~by mail is filed~~ indicating upon whom the order was served.

History: Effective February 1, 1997; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 28-32-13

Law Implemented: NDCC 28-32-13

**CHAPTER 89-03-02
MODIFICATION OF A WATER PERMIT**

Section	
89-03-02-01	Submission of <u>an</u> Application for a Change in Point of Diversion and <u>or</u> Change in Purpose of Use
89-03-02-02	Return of Unsatisfactory Application
89-03-02-03	Amendment of Application
89-03-02-04	Fee [Repealed]
89-03-02-05	Notice of Application
89-03-02-06	Publication of Notice of an Application for a Change in the Purpose of Use or Point of Diversion
89-03-02-07	Filing Proof of Publication and Mailing [Repealed]
89-03-02-08	Assignment of a Water Permit to Another Person
89-03-02-09	Transfer of a Water Permit to Another Parcel
89-03-02-10	Change in Location of Use
89-03-02-11	Increase in Pumping Rate
89-03-02-12	Water Permit for Irrigation - Limitation

89-03-02-01. Submission of an application for a change in point of diversion ~~and~~ or change in purpose of use. ~~Application~~ An application for a change in point of diversion ~~and~~ or a change in purpose of use must be submitted to the state engineer on the form provided by the state engineer. ~~Application forms are available at the office of the state engineer in Bismarck. A fee schedule and instructions for completion of the forms are provided with the form.~~ Information ~~The state engineer may require information not provided for requested in the applications may be required by the state engineer~~ application. A change in purpose of use may only be granted for a use that has a higher priority than the use from which a change is sought, as specified in North Dakota Century Code section 61-04-06.1.

History: Amended effective April 1, 1989; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-06.1, 61-04-15.1

89-03-02-02. Return of unsatisfactory application. If the change in purpose of use or change in point of diversion application is not submitted on the proper form or if the form is improperly completed, it ~~shall~~ will be returned within thirty days, along with a statement of the required corrections.

History: Amended effective April 1, 1989; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-15.1

89-03-02-03. Amendment of application. An applicant for a change in purpose of use or a change in point of diversion, ~~prior to~~ before being instructed to give notice as provided in section 89-03-01-04, may amend an application. An amendment request may be made by letter or by submission of an amended application.

~~If, prior to the request to amend, any notices~~ notice of an application for a change in the purpose of use or a change in the point of diversion ~~have has~~ been mailed before the request to amend, the applicant ~~shall must~~ mail corrected ~~notices~~ notice of the application to all persons who were sent the original notice and ~~shall must~~ submit an affidavit of service of corrected notice to the state engineer. If the notice of application has been published, the state engineer ~~shall must~~ publish a corrected notice. The state engineer may determine that corrected notices need not be mailed or published if the state engineer determines the amendment is insubstantial. ~~Costs of~~ The applicant must pay publication ~~must be paid by the applicant~~ costs.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-15.1

89-03-02-05. Notice of application. Notification of an application for change in purpose of use or change in point of diversion ~~shall must~~ be handled in ~~the manner outlined in subsections 1 through 3 of~~ accordance with section 89-03-01-04.

History: Amended effective April 1, 1989; August 1, 1994; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-05, 61-04-15.1

89-03-02-06. Publication of notice of an application for a change in the purpose of use or point of diversion. Notice of an application or an amendment to an application for a change in the purpose of use or a change in the point of diversion must be published in ~~the same manner as provided for in chapter 89-03-01 for water permit applications or amendments to water permit applications~~ accordance with section 89-03-01-05.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-05, 61-04-15.1

89-03-02-08. Assignment of a water permit to another person. ~~Applications for the assignment of~~ A request to assign a water permit to another person must be submitted to the state engineer in writing. ~~When title of land on which there is a water permit for irrigation is transferred, either~~ Either the transferee or the holder of the permit may apply for assignment of the water right permit. The application must describe the transferee's interest in the water permit. The state engineer may request additional documentation of the transferee's interest.

History: Effective April 1, 1989; amended effective February 1, 1997; April 1, 2000; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-15

89-03-02-09. Transfer of a water permit to another parcel. Applications ~~for the~~ A request to transfer of a water permit to another parcel of land owned or leased by the permittee must be submitted to the state engineer on the form provided by the state engineer.

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-15

89-03-02-10. Change in location of use. No change in location of use of a conditional or perfected water permit will be granted if other appropriators that rely upon the return flows from the permittee's beneficial use of water would be adversely affected. "Return flow" is residual water that is returned to its source or some other source after beneficial use by a permittee.

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-01-01(3), 61-04-15

89-03-02-11. Increase in pumping rate. ~~Requests~~ A request to increase a permittee's pumping rate must be made in writing to the state engineer. The state engineer, ~~prior to~~ before making a decision on the request, will consider what effect the increase has on other appropriators from the water source.

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-06.2

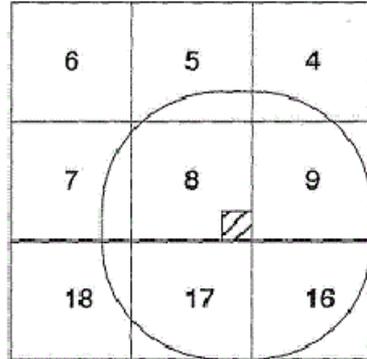
89-03-02-12. Water permit for irrigation - Limitation. The state engineer may, ~~to allow for more efficient operation of an irrigation system,~~ increase the number of acres that may be irrigated on the tracts of land specified in ~~the~~ a water permit to allow for more efficient operation of an irrigation system. A request for an increase in the number of acres must be evaluated in accordance with subsections 1 through 3 of North Dakota Century Code section 61-04-06. Any increase in acreage cannot exceed ten percent of the originally approved acreage.

History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

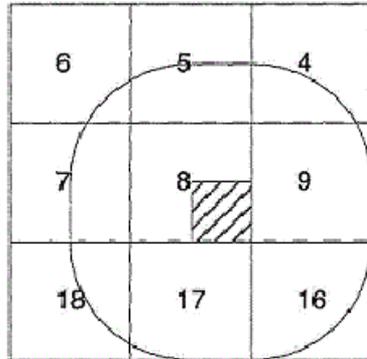
Law Implemented: NDCC 61-04-06.2

APPENDIX A
ARTICLE 89-03



Proposed point of diversion

SE1/4 SE1/4 of Section 8, Township 150 North, Range 83 West. All landowners within a one-mile (1.6 kilometer) radius of the exterior boundaries of the 40-acre (16-hectare) tract must be notified.



Proposed point of diversion

SE1/4 of Section 8, Township 150 North, Range 83 West. All landowners within a one-mile (1.6 kilometer) radius of the exterior boundaries of the 160-acre (65-hectare) tract must be notified.

CHAPTER 89-03-03 DEFINITIONS

Section	
89-03-03-01	Definitions
89-03-03-02	Definition of Domestic Rural Use <u>[Repealed]</u>
89-03-03-03	Definition of Aquaculture <u>[Repealed]</u>
89-03-03-04	Definition of Reasonably Necessary for the Future Water Requirements of a Municipality or Rural Water System <u>[Repealed]</u>
89-03-03-05	Definition of Stored Water <u>[Repealed]</u>

89-03-03-01. Definitions. The following definitions apply to this title:

1. "Domestic rural use" means two or more family units or households obtaining water from the same system for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for each family unit or household for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use.
2. "Measuring device" is a flow meter or water meter measuring the quantity and rate of water flowing through a pipe and complying with the flow meter specifications issued by the state engineer.
4. ~~3.~~ "One-mile radius" means the distance of one mile [4.6 1.61 kilometers] from a specific point of diversion as listed in a water permit application. Where the point of diversion is listed as a parcel, the one mile [4.6 1.61 kilometers] is measured from the exterior boundary of the area contained in the legal description.
2. ~~4.~~ "Point of diversion" is the geographical location from which water is appropriated for beneficial use. A point of diversion may be described as a tract of land, that is, a forty, one hundred sixty, or six hundred forty acre tract of land, or it may be as described as a specific point using a metes and bounds description in the public land survey system (PLSS).
5. "Reasonably be necessary for the future water requirements of the municipality or the rural water system" means the amount of water estimated to be required thirty years in the future. The total quantity of water a municipality or rural water system may hold under all permits for municipal use may not exceed the quantity the municipality or rural water system can reasonably expect to use thirty years in the future.
6. "Stored water" means water temporarily or permanently retained by or in a dam, dike, excavation, or other constructed works.

- ~~3. 7.~~ "Works" include canals, ditches, pipelines, and other conveyance systems, irrigation facilities, wells, pumps, dams, dikes, reservoirs, and other devices used for the appropriation ~~or~~, storage, and beneficial use of water ~~and land improved for irrigation.~~

History: Effective April 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02, 61-04-05

~~**89-03-03-02. Definition of domestic rural use.** For the purpose of North Dakota Century Code section 61-04-01.1, "domestic rural use" means two or more family units or households obtaining water from the same system for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for each family unit or household for gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use. Repealed effective July 1, 2014.~~

~~**History:** Effective November 1, 1989; amended effective January 1, 2010; October 1, 2011.~~

~~**General Authority:** NDCC 28-32-02, 61-03-13~~

~~**Law Implemented:** NDCC 61-04-01.1~~

~~**89-03-03-03. Definition of aquaculture.** "Aquaculture" means the cultivation of the natural produce of water. Aquaculture must be considered an industrial use. Repealed effective July 1, 2014.~~

~~**History:** Effective November 1, 1989.~~

~~**General Authority:** NDCC 28-32-02, 61-03-13~~

~~**Law Implemented:** NDCC 61-04-01.1~~

~~**89-03-03-04. Definition of reasonably necessary for the future water requirements of a municipality or rural water system.** "Reasonably necessary for the future water requirements of a municipality or rural water system" means the amount of water estimated to be required thirty years in the future. The total quantity of water a municipality or rural water system may hold under all permits for municipal use may not exceed the quantity the municipality or rural water system can reasonably expect to use thirty years in the future. Repealed effective July 1, 2014.~~

~~**History:** Effective November 1, 1989; amended effective August 1, 1994; June 1, 1998.~~

~~**General Authority:** NDCC 28-32-02, 61-03-13~~

~~**Law Implemented:** NDCC 61-04-06.2, 61-04-23, 61-04-24, 61-04-25~~

89-03-03-05. Definition of stored water. ~~"Stored water" means water temporarily or permanently retained by or in a dam, dike, excavation, or other constructed works. Repealed effective July 1, 2014.~~

History: ~~Effective November 1, 1989.~~

General Authority: ~~NDCC 28-32-02, 61-03-13~~

Law Implemented: ~~NDCC 61-04-01.2, 61-04-02, 61-04-17~~

ARTICLE 89-06

FUNDING FROM THE RESOURCES TRUST FUND

Chapter 89-06-01 Rules ~~Governing the State Water Commission's Analysis of a Proposed Water Project or Study Seeking Financial Assistance from~~ Funding From the Resources Trust Fund

CHAPTER 89-06-01
~~RULES GOVERNING THE STATE WATER COMMISSION'S ANALYSIS OF A PROPOSED WATER PROJECT OR STUDY SEEKING FINANCIAL ASSISTANCE~~ FUNDING FROM THE RESOURCES TRUST FUND

Section 89-06-01-01 Definitions
89-06-01-02 Initial Review
89-06-01-03 Study of the Proposal [Repealed]

89-06-01-01. Definitions. The following definitions apply to this article:

1. "Applicant" means the party submitting a proposal.
4. ~~2.~~ "Commission" means the North Dakota state water commission.
2. ~~"Resources trust fund" means that fund established by North Dakota Century Code section 57-51-07.1.~~
3. "Proposal" means an application for a water-related project or a water-related project submitted to the commission for financial assistance from the resources trust fund ~~either for a water-related study or a water-related project.~~
4. ~~"Applicant" means the party submitting a proposal.~~

History: Effective June 1, 1987; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 57-51.1-07.1

89-06-01-02. Initial review. The commission will make an initial review of a proposal to decide whether the ~~proposal project or study~~ project or study is eligible for funding from the resources trust fund ~~and to decide whether it merits a study.~~

1. **Information required for the initial review of the project or study.** An applicant must submit the following information, as applicable:
 - a. ~~Information explaining the need for the proposal, including its objectives and benefits~~ A description of the purpose and goals.

- b. ~~Either the~~ The area in ~~which~~ where the proposed water-related project is to be physically located or, ~~if the proposal concerns a water-related study, the area in which the study is?~~ to be undertaken.
 - c. The area to be served ~~by the proposal~~.
 - d. Maps, diagrams, and ~~other illustrated documentation should be submitted if these will make the proposal more understandable~~ any engineering plans or specifications already completed.
 - e. The approximate cost of carrying out the proposal.
 - f. An estimate of any revenue the project is expected to generate.
 - ~~f.~~ g. The amount of funding sought from the resources trust fund and the amount the applicant intends to contribute to ~~carrying~~ carry out the proposal.
 - ~~g.~~ h. ~~Efforts made, and the~~ The results; of all efforts made to secure funds from sources other than the resources trust fund.
 - ~~h.~~ i. An explanation why assistance from the resources trust fund is necessary.
 - ~~i.~~ An explanation how the proposal relates to the commission's comprehensive state water plan.
 - ~~j.~~ An explanation how the project or study relates to the any master plans of water resource districts affected ~~by the proposal, if such districts have master plans~~.
 - k. A preliminary report on the engineering feasibility of the ~~proposal if it is for a water-related project~~.
 - l. A general discussion of any objections to the proposal ~~made by any person~~.
 - m. ~~Any other~~ Other information the applicant believes pertinent or ~~that the commission may request~~ requests.
 - n. A general explanation of all alternatives considered and whether an alternative project or study can satisfy the objectives.
2. **Alternatives.** ~~The applicant must consider whether an alternative project or study can satisfy the objectives of the proposal. In its application to the commission for review the applicant must set forth a general explanation of all alternatives considered.~~

- ~~3. **Time.** To ensure review of an application at a regularly scheduled meeting of the commission, an applicant must submit the information required by these rules thirty days prior to such meeting.~~
4. 2. **The commission's decision upon initial review.** After initial review the commission may decide:
- ~~a. To provide cost-share assistance in consideration of the commission's cost-share policy.~~
 - a. b. The information provided is inadequate to review the proposal and may ~~order the applicant to provide more information; request additional information from the applicant~~ or may obtain more information itself.
 - ~~b. The proposal is not eligible for support from the resources trust fund, and upon such a decision the commission shall prepare a report setting forth its reasons.~~
 - c. A study of the proposal should be undertaken and may order the applicant to conduct the study or may conduct the study itself.

History: Effective June 1, 1987; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 57-51.1-07.1

89-06-01-03. Study of the proposal. A study of a proposal is to provide the commission with the information necessary for it to make an informed decision whether to recommend that the legislative assembly support the proposal with money from the resources trust fund. Repealed effective July 1, 2014.

1. ~~**Study contents.** A study of a proposal must include all the following information:~~
- ~~a. All the information required by subdivisions a, f, g, h, i, and j of subsection 1 of section 89-06-01-02 and subsection 2 of section 89-06-01-02. This information, however, must be updated and submitted in more detail and clarity. The reason for these latter requirements is that the study provides the basis of the commission's final decision, rather than its initial review, and it must, therefore, be comprehensive.~~
 - ~~b. If the proposal is for a water-related project, an explicit explanation of the area where the project is to be physically located and the area and interests to be served by it.~~
 - ~~c. If the proposal is for a water-related study, an explicit explanation of the area in which the study is to be conducted.~~

- d. ~~Compliance with subdivisions b and c requires submission of maps.~~
 - e. ~~An itemization of the proposal's cost.~~
 - f. ~~A complete examination of the engineering feasibility of the proposal if it is for a water-related project.~~
 - g. ~~A general statement of all objections to the proposal or to funding it from the resources trust fund. The identity of persons and entities making the objections. This subsection only applies to written objections made to the applicant and to oral objections made at any meeting of the applicant.~~
 - h. ~~Any other information the applicant believes pertinent or that the commission may request.~~
2. ~~**Study undertaken by the commission.** If the commission decides to conduct the study of a proposal itself, it may require the applicant to assist in the study.~~
 3. ~~**Time.** To ensure that a study of a proposal is reviewed at a regularly scheduled meeting, an applicant, if he has been ordered to carry out the study, must submit the results of the study thirty days prior to such meeting.~~
 4. ~~**The commission's decision upon the study.** After its consideration of a study of the proposal the commission may decide:~~
 - a. ~~The information provided is inadequate to make a final decision on the proposal and may order the applicant to provide more information, or may obtain more information itself; a means by which the commission may obtain more information is by exercising its discretion to hold a public hearing.~~
 - b. ~~The proposal is not eligible for support from the resources trust fund, and upon such a decision shall prepare a report setting forth its reasons.~~
 - c. ~~The proposal is eligible for support from the resources trust fund and whether it merits such support, and upon such a decision shall prepare a report setting forth its reasons and recommendation to the legislative assembly.~~

History: Effective June 1, 1987.

General Authority: ~~NDCC 28-32-02, 61-02-14~~

Law Implemented: ~~NDCC 57-51.1-07.1~~

**CHAPTER 89-07-02
WEATHER MODIFICATION OPERATIONS**

Section	
89-07-02-01	General Provisions
89-07-02-02	Definitions
89-07-02-03	Administration
89-07-02-04	Exempt Activities
89-07-02-05	Approval of Exempt Activities
89-07-02-06	Field Presence Required
89-07-02-07	Criteria for Issuance of License
89-07-02-08	Application Procedure
89-07-02-09	Procedure for Issuance
89-07-02-10	Renewal of License
89-07-02-11	Responsibility of Controller
89-07-02-12	Suspension, Revocation, Refusal to Renew a License
89-07-02-13	Restoration of License
89-07-02-14	Application for Permit
89-07-02-15	Procedure for Issuance
89-07-02-16	Permit Form
89-07-02-17	Permit Conditions
89-07-02-18	Permit Expiration
89-07-02-19	Suspension - Revocation - Modification
89-07-02-20	Automatic Suspension of Permit
89-07-02-21	Restoration of Permit
89-07-02-22	Proof of Financial Responsibility
89-07-02-23	Records
89-07-02-24	Reports
89-07-02-25	Bid Procedure <u>[Repealed]</u>
89-07-02-26	Award of Contracts

89-07-02-01. General provisions. This chapter applies to any weather modification ~~operation operations~~ conducted ~~wholly or partially within~~ in North Dakota. This chapter must be applied in conjunction with North Dakota Century Code chapter 61-04.1.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-02, 61-04.1-08(3)

89-07-02-02. Definitions. ~~As used in this chapter, the~~ The following words have the meaning given to them below unless otherwise made inappropriate by use or context. ~~Words not defined in this section have the meaning given to them in definitions apply to this chapter and~~ North Dakota Century Code ~~section 61-04.1-03.~~ chapter 61-04.1:

1. "Applicant" means any person who applies for a professional weather modification license or permit.

2. ~~"Board" means the atmospheric resource board.~~
3. ~~2.~~ "Director" means the executive director of the atmospheric resource board.
4. ~~3.~~ "License" means a weather modification license.
5. ~~4.~~ "Licensee" means a person to whom a license has been issued.
5. "Operations area" means a geographic area where weather modification operations are conducted.
6. "Permit" means a weather modification permit.
7. "Permittee" means a person to whom a permit has been issued.
8. ~~"Operations area" means an area in which weather modification operations are conducted.~~
9. ~~8.~~ "Target area" means an area ~~in which~~ where the effects of weather modification are desired.
10. ~~9.~~ "Weather modification apparatus" means any device used to dispense any chemical material used to modify any weather condition.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-03

89-07-02-03. Administration. Except as otherwise provided ~~in subsection 4 of section 89-07-02-15 and subsection 3 of section 89-07-02-26,~~ the powers and duties of the board must be exercised by the director ~~and such other persons as~~ or the director may direct director's designee.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-04. Exempt activities. Any person intending to conduct any exempt activities under ~~the provisions of~~ North Dakota Century Code section 61-04.1-12 ~~shall~~ must furnish notice of such intention to the board at least thirty days ~~prior to~~ before the time such activities are to begin. Notice must consist of the following information and such other information as the board deems necessary:

1. The name and address of the person giving notice.
2. The name and address of the person who will conduct the activity.

3. A description of the procedures to be used in the operation or the research and development.
4. A description of the object of the activity.
5. The legal description of, and a map showing the area of, the operations area and target area, if any.
6. The approximate starting date upon which of the activity ~~is to commence~~ and its ~~approximate~~ anticipated duration.
7. A description of the equipment to be used in conducting the activity.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-12

Law Implemented: NDCC 61-04.1-12

89-07-02-05. Approval of exempt activities. No weather modification activity intended to be conducted ~~pursuant to the provisions of~~ under North Dakota Century Code section 61-04.1-12 ~~must be commenced~~ may begin without prior approval of the board if such activity is to be conducted ~~in the out-of-doors~~ outside with weather modification apparatus. The board may only approve ~~only~~ those activities ~~which that~~ that provide for the protection of the health, safety, and welfare of those ~~persons~~ people who may be affected by such activities; and ~~which that~~ that otherwise comply with ~~the provisions of~~ North Dakota Century Code section 61-04.1-12.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-12, 61-04.1-16

89-07-02-06. Field presence required. Every person intending to conduct operations in this state ~~shall~~ must designate to the board, on forms furnished by the board, at least one natural person who ~~shall~~ must at all times be physically present during all operations for which a permit is required and who will be the contractor's immediate point of contact in the field. The designated individual ~~so designated~~ will be fully ~~appraised~~ apprised of the status of the contractor's project equipment and personnel at all times; and will coordinate the contractor's field activities.

History: Effective November 1, 1988; amended effective February 1, 1999; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-11, 61-04.1-14

89-07-02-07. Criteria for issuance of license. The competence of any applicant to engage in weather modification operations must be demonstrated to the board ~~pursuant to~~ under North Dakota Century Code section 61-04.1-14 ~~upon the showing.~~ Applicants must show that any natural person ~~or persons~~ designated by the applicant; who will be in the full-time employment solely of the applicant

during the project period; and who will oversee the applicant's actions during the project has ~~or have~~:

1. A minimum of one year of field experience in the management and control of weather modification operations or research; and
2. One of the following requirements:
 - a. Four additional years' experience in weather modification operations or research;
 - b. A degree in mathematics, engineering, or the physical sciences, plus two years' additional experience in weather modification operations or research; ~~or~~
 - c. A degree in meteorology; ~~or a degree in engineering, mathematics, or the physical sciences which includes at least twenty-five semester hours of coursework in meteorology.~~
 - d. A degree in mathematics, engineering, or the physical sciences that includes at least twenty-five semester hours of coursework in meteorology.

In determining competency, the board may also consider any other items set forth in a license application under section 89-07-02-08.

At least one such natural person designated by the applicant and licensed by the board ~~at all times and days during which the project is ongoing shall~~ must be available for immediate consultation by the board, at a location made known to the board by the contractor, at all times while the project is ongoing.

~~In determining competency, the board may also consider any other items to be set forth in a license application pursuant to section 89-07-02-08.~~

History: Effective November 1, 1988; amended effective February 1, 1999; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-08. Application procedure. An applicant for a license ~~shall~~ must apply to the board on forms ~~supplied~~ furnished by the board. The forms may require relevant information about the knowledge and experience of the applicant and the natural person designated under section 89-07-02-06; and must include the following:

1. Educational background, at the college and graduate level, of both the natural person designated by the applicant and the other employees of the applicant. This includes the dates of attendance and ~~of~~ graduation; the major and minor subjects studied, including the number of semester

hours of meteorological coursework; the degrees received; and the titles of any thesis or dissertation.

2. Experience in weather modification or related activities of both the natural person designated by the applicant and the other employees of the applicant. Attention should be given to experience with reference to meteorological conditions typical of North Dakota. The applicant should list the dates of each position held by the natural person designated ~~pursuant to~~ under section 89-07-02-06, the title of position (indicate whether it was of subprofessional or professional level), the name and address of the employer, a description of the work done (indicate both the magnitude and complexity of the work and the duties and degree of responsibility for the work), and the name and address of the supervisor.
3. Scientific or engineering society affiliations of the natural person designated by the applicant and the grade of membership in and certification by each society.
4. Publications, patents, and reports of the natural person designated by the applicant.
5. Three references who will attest to ~~such~~ the natural person's character, knowledge, and experience.
6. A list of all jurisdictions ~~in which~~ where the applicant has previously filed an application for a professional weather modification license. The result of the applications should be indicated.
7. Indication whether a professional weather modification license issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew such a license by any jurisdiction. ~~If the answer is yes, the~~ Such circumstances must be explained in detail.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-09. Procedure for issuance. The board ~~shall~~ must evaluate the applications, including responses from any references given by the applicant. On the basis of all such information the board, within thirty days of receipt of an application, ~~shall~~ must determine whether the natural person designated by the license applicant under section 89-07-02-06 meets the education and experience criteria established by ~~subsections 1 and 2 of~~ section 89-07-02-07 and whether ~~such~~ the natural person and the applicant possess the knowledge and experience necessary to engage in weather modification operations. The board ~~shall~~ must issue a license to the applicant who satisfies the requirements of this chapter and North Dakota Century Code section 61-04.1-14. If an applicant for a license or

the natural person designated by the applicant ~~do~~ does not satisfy ~~any of such the~~ requirements, the board ~~shall~~ must deny the license.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-10. Renewal of license. Forty-five days before expiration of licenses, the board ~~shall mail~~ must provide license application forms to all licensees and request each licensee to complete the form and file the original with the board. The board ~~shall~~ must evaluate the available data about the licensee and the natural person, designated by the license applicant under section 89-07-02-06, and ~~shall~~ must issue a renewal license within thirty days of receipt of the application to each applicant who pays the license fee established by subsection 1 of North Dakota Century Code section 61-04.1-14 and who has the qualifications necessary for issuance of an original license. The board ~~shall~~ must deny a renewal license within thirty days of receipt of the application of each applicant who does not pay the renewal fee ~~or~~, who does not possess the qualifications necessary for issuance of an original license, or who does not designate a natural person, ~~pursuant to~~ under section 89-07-02-06, who satisfies the requirements of section 89-07-02-07.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-11. Responsibility of controller. The natural person designated by the license applicant under section 89-07-02-06 is deemed by the board to be in control of and primarily responsible for operations conducted under the terms of any permit. However, nothing in this section may be construed to prevent appropriate enforcement of any regulation, limitation, permit condition, or order against either the permittee; or licensee, whether or not such licensee is a natural person.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-18, 61-04.1-37

89-07-02-12. Suspension, revocation, refusal to renew a license. In addition to the reasons cited in North Dakota Century Code section 61-04.1-15, the board may suspend, revoke, or refuse to renew a license for violation of any permit ~~or permit condition.~~

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-14, 61-04.1-15

89-07-02-13. Restoration of license. At any time after the suspension or revocation of a license or after refusal to renew a license, the board may restore it

the license to the licensee or renew it upon a finding that the licensee has met the requirements for issuance of an original license ~~have been met by the licensee.~~

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-14

89-07-02-14. Application for permit. Application for a weather modification permit must be made on forms furnished by the board. A Every applicant must submit a properly executed application ~~must be submitted to the board by every applicant.~~ The application may contain such information as the board deems necessary, and must include the following information:

1. Name and address of the applicant.
2. Whether a weather modification operational permit issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew ~~such~~ a permit by any jurisdiction. ~~If the answer is yes, the~~ Such circumstances must be explained in detail.
3. If the applicant is a corporation, whether it is licensed to do business in North Dakota.
4. Whether a license has been issued under North Dakota Century Code section 61-04.1-14, and if so, the names, addresses, and professional license numbers of the ~~controller or~~ controllers.
5. Whether professional weather modification licenses issued to ~~such licensee or licensees~~ the license applicant in any jurisdiction have ever been suspended or revoked or whether there has been refusal to renew ~~such a license or licenses~~ by any jurisdiction. ~~If the answer is yes, the~~ Such circumstances must be explained in detail.
6. Whether proof of financial responsibility has been furnished ~~in accordance with~~ under section 89-07-02-22 and North Dakota Century Code section 61-04.1-19.
7. If the operation will be conducted under a contract, the value of the contract.
8. If the operation will not be conducted under a contract, an estimate of the costs of the operation and information as to how the estimate was made.
9. Whether the applicant has paid the application fee.
10. Whether the applicant has North Dakota workforce safety and insurance coverage.

11. A copy of any promotional and advertising material used in connection with negotiations for the contract, if any.
12. Whether the applicant has furnished a performance bond, as required by subsection ~~4~~ 3 of section 89-07-02-26.
13. Whether the applicant has furnished the bid bond, as required by North Dakota Century Code section 61-04.1-35.
14. Whether the applicant has registered with the North Dakota aeronautics commission all ~~pilots and~~ aircraft to be used in the operation for which the permit is sought ~~with the North Dakota aeronautics commission~~.
15. A complete and detailed operational plan for the operation ~~which~~ that includes:
 - a. The nature and object of the operation.
 - b. The legal ~~descriptions of,~~ description and a map showing the operations area, and the target area.
 - c. The approximate starting date of the operation and its anticipated duration.
 - d. The kind of seeding ~~agent or~~ agents intended for use and the anticipated rate of their use.
 - e. A list of equipment ~~which~~ that will be used and the ~~method or~~ methods of seeding for which they will be used.
 - f. An emergency shutdown procedure ~~which~~ that states conditions under which operations will be suspended because of possible danger to the public health, safety, and welfare or to the environment.
 - g. The means by which the operation plans will be implemented and carried out; such as ~~the location of the main operational office and any other offices used in connection with the operation, the location of such ground equipment as seeding generators, radar and evaluation instrumentation, the number and kinds of aircraft which will be used and the extent to which weather data will be made available to the licensees; and other personnel carrying out the project.;~~
 - (1) The location of the main operational office and any other offices used in connection with the operation;
 - (2) The location of such ground equipment as seeding generators, radar, and evaluation instrumentation;

- (3) The number and kinds of aircraft that will be used;
 - (4) The extent to which weather data will be made available to the licensees; and
 - (5) Other other personnel carrying out the project.
- h. How conduct of the operation will interact with or affect other weather modification operations.
16. Such additional information ~~as~~ that will assist the board in deciding whether ~~or not~~ to issue the permit.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-15. Procedure for issuance.

1. **Notice.** The board ~~shall~~ must give notice of its consideration of an application ~~in accordance with~~ under North Dakota Century Code section 61-04.1-17. Notice must be given once a week for two consecutive weeks. The notice must:
 - a. Describe the primary target area.
 - b. Describe the operations area.
 - c. Specify the period of operation, including starting and ending dates.
 - d. Describe the general method of operation.
 - e. Describe the intended effect of the operation.
 - f. State the name of the proposed permittee.
2. **Hearings.** The board ~~shall~~ must allow twenty days for public comment, ~~in accordance with~~ under North Dakota Century Code section 61-04.1-17, from the date of the last publication of the notice. Any hearing held upon objection received by the board or any hearing held upon the board's own motion must be held upon at least ten days' notice in the county newspaper ~~in which~~ where notice of consideration of the application was published. At ~~any such~~ the hearing, the board ~~shall~~ must make a brief record of testimony received, and ~~shall~~ must consider all such testimony in its decision on the permit application.
3. **Director's recommendation.** At the close of the public comment period provided for in North Dakota Century Code section 61-04.1-17, the director of the ~~atmospheric resource~~ board ~~shall~~ must review all

applications for permits ~~which that~~ have been received and ~~shall must~~ recommend approval or disapproval of such applications and the reasons therefor.

4. **Final action by board.** The board ~~shall must~~ take final action on all applications for permits for which notice of consideration was published, ~~pursuant to under~~ North Dakota Century Code section 61-04.1-17, within forty-five days of the close of the public comment period. Approval of applications considered must be by majority vote. In acting on any such applications, the board ~~shall must~~ consider any recommendations made by the director of the board and all testimony received at any hearing ~~pursuant to under~~ North Dakota Century Code section 61-04.1-17. The board may issue a permit only if it determines that the requirements of subsection 2 of North Dakota Century Code section 61-04.1-16 have been met.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-17

89-07-02-16. Permit form. Each permit ~~shall must~~ set forth the permit number, effective period of the permit, name of the permittee, ~~the~~ name of the licensee and the license number, ~~the~~ location of the operation, and such other information, terms, or conditions as the board ~~shall deem~~ deems appropriate.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-17. Permit conditions. The board may attach ~~to any permit~~ such conditions to any permit as it ~~may deem~~ deems appropriate, including any conditions concerning method and time of operation, target and operation areas, safety precautions, and recordkeeping. ~~The Operations Manual for Hail Decrease and Precipitation Increase is hereby made a condition of all permits issued and all permits are subject thereto.~~ Permittee must submit an operations plan that includes the types of seeding agents to be used, the methods and equipment to be employed in seeding operations, and the emergency shutdown procedures, including the conditions under which operations will be suspended. Violation of any permit ~~or any permit condition~~ may result in permit revocation ~~or~~ suspension, or other appropriate enforcement action by the board.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16(2)

89-07-02-18. Permit expiration. All permits ~~which~~ that have expired ~~pursuant to~~ under North Dakota Century Code section 61-04.1-16 are nonrenewable.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-19. Suspension - Revocation - Modification. In addition to the reasons cited in North Dakota Century Code section 61-04.1-18, the board may suspend, revoke, or modify any permit or any provision or condition of a permit if it appears to the board that the permittee has violated ~~any of the provisions of the~~ North Dakota Century Code or the terms or conditions of any permit held by the permittee.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-20. Automatic suspension of permit. Any permit issued ~~to any person~~ under this chapter is ~~suspended~~ automatically if ~~such~~ the person's weather modification license expires or is suspended, revoked, or not renewed by the board. ~~Automatic suspension shall result in~~ In the case of a permit issued to a corporation, partnership, or other business association, if the natural person designated as being in control of the operation in such business association's application for a weather modification license becomes incapacitated, leaves the ~~person's~~ business association's employment, or is in any way unable to continue in control of the operation, automatic suspension of the permit will result. A permit of a business association suspended under such circumstances may be reinstated by the nomination of replacement personnel ~~in accordance with~~ under section ~~89-07-02-06~~ 89-07-02-08.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-21. Restoration of permit. At any time after the suspension, revocation, or modification of a permit, the board may restore it to the permittee; or delete any modification thereof; upon a finding that the requirements for issuance of an original permit have been met by the permittee; or that the conditions requiring modification no longer exist.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-22. Proof of financial responsibility. Proof of financial responsibility is made by showing to the satisfaction of the board that the permittee has the ability to respond ~~in damage~~ to liability ~~which~~ that might reasonably

result from the operation for which the permit is sought. Such proof of financial responsibility may be shown by any of the following:

1. Presentation to the board ~~of,~~ or proof of purchase of, a prepaid noncancelable insurance policy or a corporate surety bond, issued by a company against whom service of legal process may be made in North Dakota, against ~~such~~ liabilities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.
2. Depositing with the board cash or negotiable securities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.
3. Any other manner approved by the board.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-19

89-07-02-23. Records.

1. **Daily log.** Each permittee ~~shall fill in and~~ must retain a daily log of weather modification activities for each unit of weather modification apparatus used during an operation. ~~Such log must include a record of the following information for each day of weather modification operations~~ that includes:
 - a. Date of the weather modification activity.
 - b. Each aircraft flight track and location of each radar unit during each modification mission. Maps may be used.
 - c. Local time when modification activity began and ended. For intermittent operations, the beginning and ending time of the total sequence are acceptable.
 - d. Duration of operation of each unit of weather modification apparatus, in hours and minutes.
 - e. Description of type of modification ~~agent or~~ agents used.
 - f. Rate of dispersal of agent during the period of actual operation of weather modification apparatus, by hour or other appropriate time period.
 - g. Total amount of modification agent used. If more than one agent was used, report total for each type separately.

- h. Local time when any radar monitoring operations were turned on and turned off.
 - i. Type of clouds modified, that is, whether they were stratiform, isolated cumuliform, organized cumuliform, or other types of clouds.
 - j. Remarks indicating ~~such~~ operational problems as, including equipment failure, weather conditions not conducive to successful performance of the operation, or personnel problems, ~~and the like~~.
2. **Monthly totals.** Monthly totals must be kept on the basis of the daily logs, listing the total:
- a. Days during month in which operation conducted.
 - b. Time of operation.
 - c. Amount of each kind of agent used.
 - d. Average rate of dispersal of each kind of agent used.
 - e. Days of each type of ~~cloud-treated~~ operation.
 - f. Duration of operation of each unit of weather modification apparatus, in hours and minutes.
3. **Addresses of participants.** Each permittee ~~shall~~ must keep a roster of the names and North Dakota addresses of all employees participating in the state on an operation ~~for which a permit has been issued~~.
4. **Inspection.** Duly authorized agents of the board have the authority to enter and inspect any equipment and to inspect or copy any records required by this section ~~and to make copies thereof~~.
5. **Exempted weather modification activities.** All ~~persons~~ people conducting weather modification activities exempted by the board under the provisions of North Dakota Century Code section 61-04.1-12 ~~shall~~ must record and maintain all of the records required of any permittee by this section.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-24. Reports.

1. ~~Monthly.~~ Within ten days after the conclusion of each calendar month, each permittee shall submit a written report to the board which must include:
 - a. ~~A copy of the summary record prepared under subsection 2 of section 89-07-02-23.~~
 - b. ~~A copy of the roster of the names and North Dakota addresses of all employees participating in state operations which were prepared under subsection 2 of section 89-07-02-23.~~
 - c. ~~A narrative account of the manner in which operations during the month did not conform to the operational plan filed in accordance with subsection 15 of section 89-07-02-14.~~

2. 1. **Final.** Within ~~thirty~~ sixty days after final completion of any operation, each permittee ~~shall~~ must file with the board a final report on the operation ~~which~~ that must include:
 - a. Copies of the daily logs prepared ~~in accordance with~~ under subsection 1 of section 89-07-02-23, copies of the monthly totals for the entire operational period from the monthly summary records prepared under subsection 2 of section 89-07-02-23, and a narrative summary of permittee activities during the operational period.
 - b. A copy of the federal final activity report form filed with the national oceanic and atmospheric administration ~~in accordance with~~ under the rules adopted under the authority of Public Law 92-205 [85 Stat. 735].
 - c. A narrative account of the manner in which the operation did not conform to the operational plan filed ~~in accordance with~~ under subsections 1 through ~~15~~ 16 of section 89-07-02-14.

3. 2. **Exempted weather modification activities.** The board may, ~~in its discretion,~~ require ~~persons~~ people operating weather modification activities exempted under sections 89-07-02-04 and 89-07-02-05, but who have been required to keep records ~~pursuant to this~~ under subsection 5 of section 89-07-02-23, to file ~~all of~~ any part of such records with the board.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-25. Bid procedure. Repealed effective July 1, 2014.

4. ~~**Advertisement and request for bid.**~~

- ~~a. In all cases where the board shall undertake to contract for services, supplies, or materials, the estimated cost of which shall exceed ten thousand dollars for any one contract, the board shall advertise for bids for such services, supplies, or materials. Such advertisement must be placed for three consecutive weeks in the official newspaper of the county in which the board's offices are located and in at least one official newspaper in general circulation in the state. In the case of contracts for weather modification operations, such advertisement must also be placed in some trade publication of general circulation among those groups most likely to bid on the contract. The advertisement must state:~~
- ~~(1) That any prospective bidders may secure such contract specifications and requirements as may be available by applying in writing to the offices of the board.~~
 - ~~(2) The place where and the day and hour when the bids will be opened.~~
 - ~~(3) That the right of the board to reject any and all bids is reserved.~~
 - ~~(4) Each bid must be accompanied by a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety company authorized to do business within this state, conditioned that if the bid be accepted and the contract awarded to the bidder, the bidder, within ten days' notice of award, will execute and effect a contract in accordance with the terms of the bidder's bid and a contractor's bond in the manner specified by subsection 4 of section 89-07-02-26.~~
 - ~~(5) No bid will be read or considered which does not fully comply with the above provisions concerning bonding and no contract will be awarded to any person who has not complied with any applicable licensing requirements of the board.~~
- ~~b. In the case of contracts for weather modification operations, the board may, in addition to the requirements of subdivision a, prepare a request for bid in which it shall describe the minimum requirements for aircraft, radar, communications, and other equipment, operational and such other requirements as it may deem necessary. Such request for bid must include those items of information specified in paragraphs 2 through 5 of subdivision a. The request may be sent by the board to those persons having a recognized interest in operations contracts.~~

- 2- ~~**Opening of bids.** At the time and place designated in the request for bids, the board shall conduct a public hearing at which it shall open all bids received. After opening each bid, the board shall determine whether such bid meets the minimum requirements set forth in North Dakota Century Code chapter 61-04.1, this chapter, and the request for bid, and then read aloud each bid meeting such minimum requirements. Bids which do not meet such minimum requirements may not be read or considered.~~

History: Effective November 1, 1988.

General Authority: ~~NDCC 28-32-02, 61-04.1-08(3)~~

Law Implemented: ~~NDCC 61-04.1-33, 61-04.1-35~~

89-07-02-26. Award of contracts.

1. **Deviation from technical requirements.** Any or all bids may be rejected by the board on the basis of technical inadequacy or other failure to comply with the specifications included in the request for bids.
- 2- ~~**Point scoring system to be used.** Bidders for weather modification operations contracts must be evaluated on the basis of the amount of the bid submitted and a system of points allotted to each bidder for evaluation criteria established by the board. Sole authority for establishment of point values and scoring shall rest with the director. Point scores assigned are final and nonnegotiable. Previous experience and performance must be a criteria to be considered in scoring each bidder. The bidder scoring the lowest cost per point must be awarded the contract in accordance with subsection 3.~~
- 3- ~~**Low bid preference for North Dakota bidders.** In awarding any contract, the board shall award it to the lowest and best bidder, and shall, if all other factors are equal, give that preference for North Dakota bidders established by North Dakota Century Code section 44-08-01.~~
4. 2. **Contractor's bond.** Before the board shall award awards any contract, it shall must require the contractor to furnish a surety bond for the faithful performance of the contract in an amount up to twenty-five percent of the contract price, conditioned that the contractor and the contractor's agents will, in all respects, faithfully perform all weather modification contracts undertaken with the board and will comply with all provisions of North Dakota Century Code chapter 61-04.1, this chapter, and the contract entered into by between the board and the contractor. ~~Should~~ If the contract involve involves the erection, repair, or alteration of any public improvement, the surety bond must be in the full amount of the contract price.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 44-08-01, 61-04.1-33, 61-04.1-34, 61-04.1-35

**CHAPTER 89-10-01
SOVEREIGN LANDS**

Section	
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89-10-01-01. Authority. These rules are adopted and promulgated by the state engineer pursuant to under North Dakota Century Code chapter 61-33 to provide consistency in the administration and management of sovereign lands.

These rules do not apply to the ~~interests of the state of North Dakota~~ Dakota's interests in oil, gas, and related hydrocarbons on sovereign lands.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-02. Prohibition on permanent relinquishment. Sovereign lands may not be permanently relinquished, but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota. All structures permitted or otherwise allowed for private use on sovereign lands are subordinate to public use and values.

History: Effective November 1, 1989; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-03. Definitions. The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the state engineer after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.
2. "Boardwalk" means a walk constructed of planking.
3. "Domestic use" means the use of water ~~for household purposes and irrigation of gardens, lawns, and shrubbery surrounding a house.~~ "Domestic use" does not include the use of water for irrigation of more than five acres [2.0 hectares] and the use of water for carrying on a business as defined by subsection 4 of North Dakota Century Code section 61-04-01.1.
4. "Grantee" means the person, including that person's assigns, successors, and agents who ~~are authorized pursuant to an~~ has authorization.
5. "Livestock" means bison, cattle, horses, mules, goats, sheep, and swine.
5. 6. "Navigable waters" means any waters which that were in fact navigable at the time of statehood, that is, were used or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water, ~~including the Missouri River, the Yellowstone River, the Red River of the North from Wahpeton to the Canadian border, the Bois De Sioux River from Wahpeton to the South Dakota~~

~~border, the James River, the Upper Des Lacs Lake, Devils Lake, Painted Woods Lake, and Sweetwater Lake.~~

- ~~6.~~ 7. "Ordinary high watermark" means that line below which the action of the water is frequent enough either to prevent the growth of vegetation or to restrict its growth to predominantly wetland species. Islands in navigable waters are considered to be below the ordinary high watermark in their entirety.
- ~~7.~~ 8. "Project" means any activity ~~which~~ that occurs either partially or wholly on sovereign lands.
- ~~8.~~ 9. "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.
- ~~9.~~ 9. ~~"State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.~~
10. "Snagging and clearing" means the removal and disposal of fallen trees and associated debris encountered within and along the channel.
- ~~10.~~ 11. "Structure" means something that is formed from parts, ~~and includes including equipment,~~ boat docks, boat ramps, and water intakes.
12. "Watercraft" means any device capable of being used as a means of transportation on waters.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-04. Authorization. Each project requires an authorization from the state engineer ~~prior to~~ before construction or operation, except as otherwise provided by these rules.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-05. Application for permit, easement, lease, or management agreement. Applications for ~~an~~ authorization must be on forms prescribed by the state engineer and contain the information required by the state engineer.

Applications must be submitted to the North Dakota State Engineer, State Office Building, 900 East Boulevard, Bismarck, North Dakota 58505-0850.

History: Effective November 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-06. Application review. Upon receipt of a completed application, the state engineer ~~shall~~ must initiate a review as follows:

1. Comments must be requested from the following entities:
 - a. The state game and fish department;
 - b. The state department of health;
 - c. The state historical society;
 - d. The state ~~land~~ department of trust lands;
 - e. The state parks and recreation department;
 - f. The United States fish and wildlife service;
 - g. The park district and planning commission of any city or county, ~~if any part of the project is within the boundaries of the city or county where the proposed project will be located;~~
 - h. Any water resource district ~~in which~~ where the proposed project will be ~~wholly or partially~~ located; and
 - i. Other agencies, private entities, ~~and~~ or landowner associations as appropriate or required by law.
2. Each entity ~~shall~~ must submit all comments in writing to the state engineer ~~within thirty days of the date requests for comments were mailed.~~ The state engineer is not bound by any comment submitted. The state engineer must receive comments within thirty days of the date requests for comments were mailed.
3. Upon completion of the review and any public meeting held ~~pursuant to~~ under section 89-10-01-07, the state engineer may grant, deny, or condition the application.
4. ~~The state engineer shall provide written notice of the decision on the application by certified mail or by regular mail provided the state~~

~~engineer files an affidavit of service by mail indicating upon whom the decision was served.~~

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-06.1. Record - Official notice. Unless specifically excluded by the state engineer or the hearing officer, the record in each sovereign land permit application proceeding or adjudicative proceeding under North Dakota Century Code chapter 28-32 includes the following:

1. United States department of agriculture natural resources conservation service reports, including the North Dakota hydrology manual, North Dakota irrigation guide, and county soil survey reports.
2. United States geological survey and state water commission streamflow records.
3. National oceanic and atmospheric administration climatological data.
4. Topographic maps.
5. State engineer sovereign land permit files.
6. Information in state engineer and state water commission files, records, and other published reports.
7. North Dakota sovereign land management plan.
8. Ordinary high watermark delineation guidelines.
9. Aerial photos.

History: Effective July 1, 2014.

General Authority: NDCC 28-32-06

Law Implemented: NDCC 28-32-06

89-10-01-07. Public meeting. An information-gathering public meeting may be held by the state engineer ~~prior to~~ before final action on a project. The procedure for notice and meeting must be as follows:

1. The state engineer ~~shall cause~~ must publish a notice of meeting ~~to be published~~ in the official newspaper for each county ~~in which~~ where the project is located. The notice must be published once each week for two consecutive weeks.

2. The meeting date must be at least twenty days after the date of last publication.
3. The meeting must be conducted by the state engineer and the meeting may be held in Bismarck.
4. The meeting is not an ~~adversary~~ adjudicative proceeding ~~nor a contested case~~ hearing under North Dakota Century Code chapter 28-32.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-08. General permit standards. The state engineer may approve, modify, or deny any permit application. In deciding what action to take on a permit application, the state engineer ~~shall~~ must consider the potential effects of the proposed project on the following:

1. Riparian owner's rights;
2. Recreation;
3. Navigation;
4. Aesthetics;
5. Environment;
6. Erosion;
7. Maintenance of existing water flows;
8. Fish and wildlife;
9. Water quality;
10. Cultural and historical resources; and
11. Alternative uses.

History: Effective November 1, 1989; amended effective April 1, 2008; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-09. Specific project requirements. Repealed effective July 1, 2014.

- ~~1. In addition to the considerations set forth in section 89-10-01-08, the following conditions apply when a permit application involves the mining of gravel, sand, or other resources other than oil, gas, and related hydrocarbons:
 - ~~a. Mining must be completed in the shortest practicable period of time and during the season which will minimize the effects on the waterway and biotic life in the waterway.~~
 - ~~b. Mining may be prohibited or restricted when it would, in the judgment of the state engineer, adversely affect the maintenance or reproduction of fish or other wildlife populations.~~
 - ~~c. If the state engineer determines mining will have a significant adverse impact on downstream riparian owners, the grantee must obtain the riparian owner's written consent.~~~~
- ~~2. In addition to the considerations set forth in section 89-10-01-08, the following considerations apply when a permit application involves dredging or filling:
 - ~~a. Unless there is no reasonable alternative or the public need exceeds other values, dredging or filling will not be permitted.~~
 - ~~b. Dredged material must be removed to a site above the ordinary high watermark unless otherwise authorized by the state engineer.~~
 - ~~c. Approved fill must be clean, nonpolluting material free of waste metal, organic material, and unsightly debris.~~~~

History: Effective November 1, 1989; amended effective August 1, 1994.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-10. Projects not requiring a permit. The following projects do not require a permit:

1. Boat docks, if all of the following conditions are satisfied:
 - a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;
 - b. The dock is used only for embarkation, debarkation, moorage of ~~boats~~ watercraft, water intakes, or recreation;
 - c. Only clean, nonpolluting materials are used;

- d. The total length of the dock over the surface of the water does not exceed twenty-five feet [7.6 meters] on a river ~~and~~ or fifty feet [15.24 meters] on a lake, and there is no unreasonable interference with navigation or access to an adjacent riparian owner's property;
 - e. The dock is connected to a point above the ordinary high watermark by a boardwalk that does not exceed twenty-five feet [7.6 meters] in length; and is removed from below the ordinary high watermark each fall; and
 - f. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.
2. Water intakes if all of the following conditions are satisfied:
- a. They are constructed, operated, and maintained by the riparian owner ~~or the riparian owner's lessee~~ for ~~riparian owner's or lessee's~~ domestic use; and
 - b. The intake is removed from ~~sovereign lands~~ below the ordinary high watermark each fall.
3. ~~Boats~~ Watercraft that are temporarily moored.
4. Snagging and clearing, when performed by a federal or state entity or political subdivision.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; April 1, 2010; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-10.1. Boat docks and water intakes. Boat docks and water intakes not meeting the criteria in section 89-10-01-10 require a permit from the state engineer. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a two hundred fifty dollar fee per day. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2009; amended effective April 1, 2010; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-10.2. Boat dock registration. Boat docks that do not require a permit under this chapter and that are located on the Missouri River between the Oliver and Morton County line (river mile 1328.28) and Lake Oahe wildlife management area (river mile 1303.5) ~~south of Bismarck~~ must be registered with the state engineer prior to before placement of any such dock. The state engineer ~~shall~~ must provide registration forms. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a two hundred fifty dollar fee ~~and the~~

per occurrence. The dock ~~may~~ will be subject to removal at the dock owner's expense.

History: Effective April 1, 2010; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-11. Structures. Except as otherwise provided in this chapter, the construction or moorage of a structure is prohibited on sovereign lands. If a structure is prohibited, the state engineer ~~shall~~ must:

1. Issue an order to the structure owner identifying the action required to modify; or remove; ~~or otherwise eliminate~~ the structure and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken ~~shall~~ must be at least twenty days after the order is issued.
2. If the ordered action is not taken by the date specified in the order, the state engineer may modify; or remove; ~~or otherwise eliminate~~ the structure at the owner's expense.
3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer modifies; or removes; ~~or eliminates~~ the structure, the state engineer may assess the ~~fees and~~ costs of such action against any property of the ~~person responsible for the structure;~~ structure's owner or may commence a civil proceeding to recover the costs incurred in such action. If the state engineer chooses to recover costs by assessing the ~~cost~~ costs against property of the ~~person responsible for the structure~~ structure's owner and the property is insufficient to pay for the costs incurred, the state engineer may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.
4. ~~Within ten days of the date the order is issued, a~~ A person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The state engineer must receive the request within ten days of the date the order issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer ~~shall~~ must set a hearing date without undue delay.
5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county ~~in which~~ where the sovereign lands at issue are located ~~in accordance with~~ under North

Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33, 61-03-21.3, 61-03-22

89-10-01-13. Vehicular access. The use of motorized vehicles on sovereign lands is prohibited, except:

1. When on government-established trails that have been permitted by the state engineer;
2. When on sovereign lands immediately adjacent to the Kimball Bottoms off-road riding area located in the south half of sections 23 and 24 and the north half of sections 25 and 26, all in township 137 north, range 80 west, Burleigh County;
3. When on state-designated off-road use areas, provided the area is managed and supervised by a government entity, the government entity has developed a management plan for the off-road area that ~~must be~~ has been submitted to the state engineer, and the managing government entity has obtained a sovereign lands permit for off-road use in the designated area;
4. To cross a stream by use of a ford, bridge, culvert, or similar structure provided the crossing is in the most direct manner possible;
5. To launch or load ~~a boat, canoe, or other~~ watercraft in the most direct manner possible;
6. To access and operate on the frozen surfaces of any navigable water, provided the crossing of sovereign lands is in the most direct manner possible;
7. To access private land that has no other reasonable access point, provided that access across sovereign lands is in the most direct manner possible;
8. By disabled ~~persons~~ people who possess a ~~totally or permanently disabled person's fishing license~~ mobility-impaired parking permit under North Dakota Century Code section 39-01-15 or shoot from a stationary motor vehicle permit under subsection 10 of North Dakota Century Code section 20.1-02-05;
9. When operation is necessary as part of a permitted activity or project;

10. By the riparian owner ~~or the riparian owner's lessee~~ on sovereign lands that are adjacent to the riparian owner's property when moving or tending to livestock; installing or maintaining a livestock fence; installing, maintaining, or moving an authorized agricultural irrigation structure; or when engaged in other ordinary agricultural practices, provided it does the listed activities do not negatively affect public use or values; and or
11. When being used by government personnel in the performance of their duties.

~~This section does not authorize use of property above the ordinary high watermark. Any person who violates this section is guilty of a noncriminal offense and shall must pay a one hundred dollar fee per occurrence.~~

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-14. Cancellation by the state engineer. The state engineer may cancel any authorization granted ~~pursuant to~~ under these rules. Cancellation does not release the grantee from any liability. If an applicant is named in an active enforcement action ordered by the state engineer, the state engineer may hold any application submitted by the applicant in abeyance until the order has been satisfied.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-15. Termination by applicant. The grantee may terminate ~~or surrender~~ any authorization by notifying the state engineer in writing, paying all fees or ~~royalties~~ or other money owed to the state, and reclaiming the site ~~pursuant to~~ under section 89-10-01-18.

History: Effective November 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-16. Assignments. Any authorization granted ~~pursuant to~~ under these regulations may only be assigned with the written consent of the state engineer.

History: Effective November 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-18. Reclamation. After cancellation, termination, abandonment, or expiration of an authorization, grantee must reclaim the project location. ~~The time allowed for reclamation shall be within~~ one hundred twenty days, ~~unless~~ If the permit is for mining which shall be reclaimed, reclamation must be within sixty days after the lease expires or the mining is complete. ~~The~~ Upon written request, the state engineer may extend the time period if good cause is shown. If grantee fails to reclaim the site to the specifications in the authorization within the required timeframe, the state engineer may enter and restore the project location. The grantee is liable for all reclamation costs.

History: Effective November 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-19. Maintenance and repair. Maintenance or repair of authorized projects ~~do~~ does not require additional authorization provided the work is in conformance with the original authorization, standards, and specifications provided in this article, and the work does not alter the use or size of the project.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-20. Areas of special interest. The state engineer may enter agreements for management of areas of high public value. Examples include, ~~but are not limited to,~~ parks, beaches, public access points, nondevelopment areas, and wildlife management areas.

History: Effective November 1, 1989; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-21. Organized group activities. Organized group activities that are publicly advertised or are attended by more than twenty-five ~~persons~~ people are prohibited on sovereign lands without a permit ~~issued by the state engineer.~~ Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-22. Pets. Pets are not allowed to run unattended on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-23. Camping. Camping for longer than ten consecutive days within a thirty-day period in the same vicinity or leaving a campsite unattended for more than twenty-four hours is prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-24. Hunting, fishing, and trapping. All sovereign lands are open for public hunting, fishing, and trapping, except as provided in other rules ~~and~~ regulations, or laws; or as posted at public entry points. Posting sovereign lands with signage by anyone other than the state engineer is prohibited without a sovereign lands permit. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-25. Unattended watercraft. Watercraft may not be left unattended on or moored to sovereign lands for more than twenty-four hours except:

1. When moored to ~~privately owned~~ authorized docks; or
2. When moored to private property above the ordinary high watermark with a ~~rope, chain, or other type of~~ restraint that does not cause unreasonable interference with navigation or the public's use of land below the ordinary high watermark; ~~or~~
- ~~3. By riparian owners on land below the ordinary high watermark.~~

Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a fifty dollar fee per day.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-26. Removal of public property. ~~Trees~~ Public property including trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, water, firewood, posts, or poles, or other public property may not be removed from sovereign lands without a permit ~~issued by the state engineer, except that firewood.~~ Firewood may be removed under certain stated conditions from designated firewood cutting plots; ~~and the riparian owner or the riparian owner's lessee may hay or graze sovereign lands adjacent to the riparian owner's property, unless prohibited in writing by the state engineer.~~ Commercial cutting of firewood is prohibited on sovereign lands. Gathering of downed wood for campfires is allowed. ~~Removal of property from sovereign lands by permit shall only be in a manner, limit, and condition specified by the permit.~~ A riparian owner may hay or graze sovereign lands adjacent to the riparian owner's property, unless prohibited in writing by the state engineer. Berries and fruit may be picked for noncommercial use, unless prohibited by posted notice. Property may not be destroyed or defaced. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-27. Cultural or historical resources. Artifacts, or any other cultural or historical resources, ~~occurring~~ found on sovereign lands may not be disturbed or destroyed without formal written approval from the state historical society and a permit from the state engineer.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-28. Disposal of waste. The disposal of refuse, rubbish, bottles, cans, or other waste materials is prohibited on sovereign lands except in garbage containers where provided. Holding tanks of campers or ~~boats~~ watercraft may not be dumped on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-29. Glass containers. Glass containers are prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-31. Firearms. Use of firearms on sovereign lands is allowed except in a reckless and indiscriminate manner ~~and~~ or as otherwise posted at public entry points. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-32. Tree stands. Construction of a permanent tree stand or permanent steps to a tree stand is prohibited on sovereign lands. Portable tree stands ~~and~~, portable steps, screw-in steps, and natural tree stands may be used. Portable tree stands and portable steps are defined as those that are held to the tree with ropes, straps, cables, chains, or bars. Screw-in steps are those that are screwed into the tree by hand without the aid of tools. Ladder-type stands that lean against the tree are portable stands. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. Tree stands do not preempt hunting rights of others in the vicinity of the tree stand. Tree stands and steps may not be put up before August twentieth ~~of the year~~ and ~~shall~~ must be removed within three days of the close of the archery deer season. Stands and steps not removed within three days of the close of the archery deer season are considered abandoned property and are subject to removal and confiscation by the state engineer. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a one hundred dollar fee per tree stand.

History: Effective April 1, 2009; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-33. Baiting. Except as otherwise provided in this chapter, placing or using bait to attract, lure, feed, or habituate wildlife to a bait location for any purpose is prohibited on sovereign lands. Bait includes grains, 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 or management activities conducted by the state engineer. Bait may be used to lure and take furbearers when engaged in ~~trapping in~~ lawful trapping activities. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-34. Dredging or filling. Unless permitted by the state engineer, dredging or filling on sovereign lands is prohibited. If prohibited dredging or filling occurs, the state engineer ~~shall~~ must:

1. Issue an order to the violator identifying the action required to restore the sovereign lands and a date by which the ordered action must be taken.

Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.

2. If the ordered action is not taken by the date specified in the order, the state engineer may take any action to restore the sovereign lands at the violator's expense.
3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer takes action to restore sovereign lands, the state engineer may assess the costs of such action against the riparian owner's property where the dredging or filling occurred; or may commence a civil proceeding to recover the costs incurred in such action. If the state engineer chooses to recover costs by assessing the costs against the riparian owner's property where the dredging ~~and~~ or filling occurred and the property is insufficient to pay for the costs incurred, or if the riparian owner was not the party responsible for the dredging or filling, the state engineer may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.
4. ~~Within ten days of the date the order is issued, a~~ A person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The state engineer must receive the request within ten days of the date the order is issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and points of law to be presented are well-founded and not frivolous; and the request for a hearing was not made merely to interpose delay, the state engineer ~~shall~~ must set a hearing date without undue delay.
5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county ~~in which~~ where the sovereign lands at issue are located ~~in accordance with~~ under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective April 1, 2010; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-21.3, 61-03-22, 61-33

CHAPTER 89-11-01

89-11-01-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Livestock producer" means an individual who ~~produces~~ breeds or raises livestock or operates a dairy farm, who normally devotes the major portion of the individual's time to the activities of farming or ranching, and who normally receives ~~not less than~~ at least fifty percent of the individual's annual gross income from farming or ranching.
2. "Water supply project" includes the ~~necessary~~ components; and ~~the~~ installation; necessary to transfer water from ~~the~~ a water source to the drought-affected livestock.

History: Effective July 1, 1992; amended effective April 1, 2008; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-02. Drought declaration required. ~~No funds may~~ Funds will only be disbursed for ~~any~~ water supply project ~~unless the county in which the water supply project is to be located is a county or is adjacent to a county that has been declared by the governor to be a drought disaster area for purposes of this program, or a drought disaster area under a drought declaration that has not been rescinded. The state water commission will determine a beginning and end date of the program:~~ projects in:

1. Counties that have been declared by the governor to be a drought disaster area for purposes of this program;
2. Counties adjacent to the counties in subsection 1; or
3. A drought disaster area under a drought declaration that has not been rescinded.

The state water commission will determine a beginning and end date of the program.

History: Effective July 1, 1992; amended effective April 1, 2008; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-04. Funding - Priority - Eligible items.

1. The state water commission ~~shall~~ must provide funds for the program to the extent funding is available. Priority will be based on earliest date of application.

2. Cost-share assistance may only be used for water supply projects ~~which~~ that will provide a solution to a drought-related water supply shortage.
3. All wells drilled with funds provided ~~pursuant to~~ under this program must be drilled by a North Dakota certified water well contractor.
4. Eligible items include new water wells, rural water system connections, pipeline extensions, pasture taps, pumps, generators, electrical and solar hookups, ~~and~~ stock water tanks, and labor, materials, and equipment rentals for work completed by the producer.
5. The applicant may receive up to fifty percent of the eligible costs, ~~but no more than~~ not to exceed three thousand five hundred dollars per project, with a limit of three projects ~~per~~ on any land owned by an applicant.

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002; April 1, 2008; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-05. Noneligible items. The following projects are not eligible for funding from the drought disaster livestock water supply project assistance program.

1. ~~A rehabilitation~~ Rehabilitation of an existing well.
2. A water supply project on federal land, state land, or land outside North Dakota.
3. A dry hole drilled in an attempt to construct a water well or to locate a water source.
4. The construction of stock dams or dugouts dependent upon runoff.
5. Projects that require repair due to damage or failure to provide maintenance to an existing water source.

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002; July 21, 2006; April 1, 2008; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-06. Application procedure.

1. Requests for assistance must be on a form provided by the state water commission and must include:
 - a. Written proof the applicant applied for cost-share assistance from the United States department of agriculture farm service agency

and was denied such assistance, including the reason for the denial.

- b. An area map indicating the location of the proposed water supply project.
 - c. An estimate of the costs of the proposed water supply project.
 - d. Verification by the applicant that the applicant is a livestock producer.
2. The ~~state chief~~ engineer ~~shall~~ must review applications and acknowledge their receipt. The ~~state chief~~ engineer ~~shall~~ must, within the limits of available funding, provide assistance to those persons whose applications are approved. The applicant must agree to:
- a. Complete the project within one hundred eighty days of receiving notification of approval of funding of the water supply project. The ~~state chief~~ engineer may grant an extension of time if a written request is submitted and just cause for an extension is provided.
 - b. Provide receipt of actual expenditures ~~or~~, an affidavit of work completed if work is done by the applicant, or both, if applicable.
 - c. Grant to the state water commission or anyone authorized by the state water commission the right to enter upon the land to inspect the completed water supply project after giving reasonable notice to the applicant.
 - d. Indemnify and hold harmless the state of North Dakota and the state water commission, its officers, agents, employees, and members, from all claims, suits, or actions ~~of whatsoever nature~~ resulting from or arising out of the activities of the applicant or applicant's agents or employees ~~under this agreement~~.
3. Application forms may be obtained by contacting:

North Dakota State Water Commission
900 East Boulevard
Bismarck, ND 58505
(701) 328-2750

www.swc.nd.gov

History: Effective July 1, 1992; amended effective August 27, 2002; July 21, 2006; April 1, 2008; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

TITLE 97
BOARD OF COUNSELOR EXAMINERS

JULY 2014

**CHAPTER 97-02-01
LICENSING REQUIREMENTS**

Section	
97-02-01-01	Requirements to Become a Licensed Professional Counselor
97-02-01-01.1	Fees
97-02-01-02	Academic Programs
97-02-01-03	Requirements to Become a Licensed Associate Professional Counselor
97-02-01-03.1	Fees
97-02-01-04	Waiving Formal Examination
97-02-01-05	Renewal of License
97-02-01-05.1	Late Renewal <u>[Repealed]</u>
97-02-01-06	Continued Professional Growth <u>Education</u>
97-02-01-07	Grandfather Provisions <u>[Repealed]</u>
<u>97-02-01-08</u>	<u>Certification of Supervisors</u>

97-02-01-01. Requirements to become a licensed professional counselor. In order for an applicant to become a licensed professional counselor, an individual must make application to the board, supplying, at a minimum, the following information:

1. A copy of a master's degree transcript from an accredited school or college that meets the academic standards set forth in section 97-02-01-02.
2. Three recommendations as follows:
 - a. One from the counselor educator who provided direct supervision in the applicant's counseling practicum or internship;
 - b. One from an employer who provided general supervision of the applicant's work since receipt of the master's degree; and
 - c. One from the professional who provided direct supervision of the applicant's counseling experience.

3. Certification that the individual has a minimum of two years of supervised experience under a licensed professional counselor or ~~its equivalent. Equivalency has been determined to be a duly credentialed human service professional or other individual approved by the board for supervision~~ licensed professional clinical counselor certified as a supervisor under section 97-02-01-08. The supervision must include individual, face-to-face meetings that occur at regular intervals over a two-year period. Supervision in a group setting may also be provided, such as in the case of a conference among members of a professional staff or other arrangement. A total of one hundred hours over the two-year period of supervision through individual and group methods must be documented. At least sixty hours must be individual face-to-face supervision. The supervised experience may not be in a practice in which the applicant holds an ownership interest. Face to face includes web supervision.
4. Provides a statement of intent to practice, describing proposed use of the license, the intended client population, and the counseling procedures that the applicant intends to use in serving the client population.
5. Showing successful completion of the national counselor examination as distributed and administered under the auspices of the national board of certified counselors.

History: Effective June 1, 1991; amended effective February 1, 1995; February 1, 1998; July 1, 2014.

General Authority: NDCC 28-32-02, 43-47-03

Law Implemented: NDCC 43-47-03, 43-47-06

97-02-01-01.1. Fees. The following fees have been established by the board for the licensed professional counselor:

1. Application fee, one hundred fifty dollars.
2. Renewal fee, one hundred fifty dollars.

History: Effective February 1, 1998; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 43-47-03

Law Implemented: NDCC 43-47-03, 43-47-06

97-02-01-02. Academic programs. Academic programs are programs identified specifically as counseling programs in the graduate bulletin of the accredited school or college. These programs include counseling, counselor education, counseling and guidance, ~~and~~ counseling and development, and counseling psychology. In addition to the master's degree in counseling, ~~the applicant's graduate transcript must indicate coursework in the following areas: counseling methods, group counseling, counseling theories, counseling practicum, individual appraisal or testing, and statistics or research methods.~~ Effective July 1,

~~1995, in addition to the master's degree, the applicant's graduate transcript must indicate a minimum of forty-eight semester credits (or seventy-two quarter hours) credits, including coursework in the following areas: counseling theories, counseling methods, group counseling, individual appraisal or testing, statistics or research methods, human growth and development, social and cultural foundations, career and lifestyle development, professional orientation and ethics, and counseling practicum or internship. The practica of internships must consist of seven hundred hours of training in supervised practica and internships in settings relevant to the practice of counseling. These hours may be within the required graduate semester hours. The research methods coursework must include content on statistical analysis of data sets pertaining to topics in counseling. The professional orientation and ethics coursework must be at least three semester credits or five quarter credits, and include content on the profession of counseling and the American counseling association code of ethics. Effective July 1, 2017, the applicant's graduate transcript must indicate a minimum of sixty semester credits or ninety quarter credits, including the same coursework.~~

~~Graduates from master's degree programs in other human services fields may also meet the academic and training standards for licensure. In addition to the master's degree, the applicant's transfer must indicate coursework that is equivalent to the coursework in the following areas: counseling methods, group counseling, counseling theories, counseling practicum, individual appraisal or testing, and statistics or research methods. Effective July 1, 1995, in addition to the master's degree, the applicant's graduate transcripts must indicate a minimum of forty-eight semester credits (or seventy-two quarter hours), including coursework in the following areas: counseling theories, counseling methods, group counseling, individual appraisal or testing, statistics or research methods, human growth and development, social and cultural foundations, career and lifestyle developments, professional orientation and ethics, and counseling practicum or internship.~~

History: Effective June 1, 1991; amended effective February 1, 1995; February 1, 1998; July 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-06

97-02-01-03. Requirements to become a licensed associate professional counselor. In order for an applicant to become a licensed associate professional counselor, an individual must make application to the board, supplying, at a minimum, the following information:

1. A copy of a master's degree from an accredited school or college that meets the academic standards set forth in section 97-02-01-02.
2. Three recommendations as follows:
 - a. One from the practicum agency contact person;
 - b. One from the applicant's master's degree program advisor; and

- c. One from an additional counselor educator.
3. A written plan which at a minimum must include an estimated number of client contact hours per week and must specify the supervision received. The supervision must include individual, face-to-face meetings that occur at regular intervals over the two-year period. Supervision in a group setting may also be provided such as in case conference among members of a professional staff or other arrangement. A total of one hundred hours over the two-year period of supervision through individual and group methods must be documented. At least sixty hours must be individual face-to-face supervision. The supervised experience may not be in a practice in which the applicant holds an ownership interest. The supervisor shall be a licensed professional counselor or licensed professional clinical counselor certified as a supervisor under section 97-02-01-08. Face to face includes electronic means that are secure and Health Insurance Portability and Accountability Act compliant on a secure server.
4. Showing successful completion of the national counselor examination as distributed and administered under the auspices of the national board of certified counselors.

History: Effective June 1, 1991; amended effective February 1, 1995; February 1, 1998; July 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-03, 43-47-06

~~**97-02-01-05. Renewal of license.** A professional counselor may renew his license every two years by use of the prescribed form and documentation of thirty hours of continuing education requirements for a two-year period. One continuing education hour will be based upon a fifty-minute hour. Notification of renewals will be made in the month prior to the anniversary date of each license and each applicant will be given thirty days to respond.~~

1. Counselor licenses expire two years after originally granted or last renewed.
2. At least two months before expiration, the board will notify the counselor of the requirement for renewal. The notice will be made to the address last provided to the board by the counselor.
3. A license shall be renewed if the counselor meets all of the following requirements:
 - a. The counselor shall file the complete application for renewal form prescribed by the board.
 - b. The counselor shall pay the renewal fee required by section 97-02-01-01.1 or 97-02-01-03.1.

- c. The counselor shall provide proof of completion of the continued professional education required by section 97-02-01-06.
 - d. Grounds for denial of the application under North Dakota Century Code section 43-47-07 do not exist.
4. If the completed application for renewal, renewal fee, and proof of completion of continued professional education is not filed at least thirty days before the expiration of the license, the counselor shall pay a late fee of one hundred dollars.
 5. If the completed application for renewal, renewal fee, proof of completion of continued professional education and late fee is not filed before the expiration of the license, the license expires and the individual may not practice counseling.
 6. If the completed application for renewal, renewal fee, proof of completion of continued professional education, and late fee is not filed within one year of the expiration, the license shall not be renewed. The individual must apply and meet the license requirements to be granted a license.
 7. The board may extend the expiration date and the deadlines for filing the application for renewal, renewal fee, proof of completion of continued professional education, and late fee upon proof of medical or other hardship preventing the individual from meeting the deadlines.

History: Effective June 1, 1991; amended effective February 1, 1998; July 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-03, 43-47-06, 43-47-06.2

97-02-01-05.1. Late renewal. A license that has not been renewed because of the failure to pay the annual license fee must be reinstated and the license renewed if within one year from the date of nonrenewal the licenseholder pays the amount of annual license fee in default and a late fee of one hundred dollars. If a license is not renewed within one year from the date of nonrenewal, the applicant must apply for a new license. Repealed effective July 1, 2014.

History: Effective February 1, 1998.

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

Law Implemented: NDCC ~~43-47-06, 43-47-06.2~~

97-02-01-06. Continued professional education. A licensed professional counselor shall complete at least thirty hours of continued professional education in the two years preceding the date of expiration of the license. At least three of the hours shall primarily focus on counselor ethics. A continued professional education hour is fifty minutes. Examples of items meeting continuing professional educational requirements include attending professional meetings, conferences,

and workshops or taking graduate courses in counseling or ~~human service~~ other mental health fields.

History: Effective June 1, 1991; amended effective July 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-03, 43-47-06

97-02-01-08. Certification of supervisors.

1. To be certified as a supervisor an applicant shall meet all of the following requirements:
 - a. The applicant shall be a licensed professional counselor or licensed professional clinical counselor.
 - b. The applicant shall have five years of experience as a licensed counselor.
 - c. For applications received after July 1, 2016, the applicant shall have completed thirty hours of continuing education concerning supervision in the five years preceding the application.
 - d. The applicant shall pay an application fee of one hundred dollars.
 - e. Grounds for denial of the application under North Dakota Century Code section 43-47-07 do not exist.

2. Supervisor certifications expire five years after originally granted or last renewed. Certifications shall be renewed if the certified supervisor meets all of the following requirements:
 - a. The certified supervisor shall complete at least thirty hours of continuing education primarily focused on clinical supervision in the five years preceding the expiration date of the certification.
 - b. The certified supervisor shall pay a renewal fee of one hundred dollars.
 - c. Grounds for denial of renewal under North Dakota Century Code section 43-47-07 do not exist.

History: Effective July 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-01, 43-47-03, 43-47-06, 43-47-06.1, 43-47-07

CHAPTER 97-02-01.1
LICENSED PROFESSIONAL CLINICAL COUNSELOR

Section	
97-02-01.1-01	Requirements to Become a Licensed Professional Clinical Counselor
97-02-01.1-02	Renewal of a Licensed Professional Clinical Counselor License
97-02-01.1-03	Reciprocity
97-02-01.1-04	Fees
97-02-01.1-05	Grandparenting Provisions [Repealed]
97-02-01.1-06	Definitions
97-02-01.1-07	Representation to the Public
<u>97-02-01.1-08</u>	<u>Continued Professional Education for Licensed Professional Clinical Counselors</u>

97-02-01.1-01. Requirements to become a licensed professional clinical counselor. For an applicant to become a licensed professional clinical counselor, the individual must be a licensed professional counselor under North Dakota Century Code chapter 43-47 and:

1. Have at least a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
2. Have sixty semester graduate hours, twelve of which may be obtained in documented training or clinical experience or courses consistent with national board for certified counselors guidelines for the clinical mental health counselor certification. A minimum of fifteen contact hours in each of the following three coursework categories must be included within the sixty semester credits required for the licensed professional clinical counselor. The three categories are:
 - a. ~~Abnormal~~ Review of current classification methods that includes abnormal psychology and psychopathology;
 - b. ~~Appraisal~~ Review of current classification methods that includes appraisal and diagnostic evaluation; and
 - c. Clinical counseling skills;
3. Have two years of post-master's clinical experience, including:
 - a. ~~Eight~~ Seven hundred hours of clinical training in supervised practica and internships in settings relevant to the practice of clinical counseling. These hours may be within the required sixty graduate semester hours.

- b. Two years (three thousand hours) of post-master's clinical experience in a clinical setting. This must include one hundred hours of face-to-face supervision (a minimum of sixty hours of individual supervision) by a ~~board-approved~~ supervisor certified under section 97-02-01-08. The certified supervisor must be a licensed professional clinical counselor, ~~psychiatrist, clinical psychologist, or other qualified professional~~. Face to face includes electronic means that are secure and Health Insurance Portability and Accountability Act compliant on a secure server.
4. Provide three professional letters of reference. One must be from the post-master's clinical supervisor. The other two must be from professionals familiar with the applicant's clinical experience;
5. Have passed the clinical mental health counseling examination as offered by the national board for certified counseling; and
6. Provide a demonstration of clinical skills in a videotaped counseling session of no less than thirty minutes duration. This tape may involve either individual or group settings.

History: Effective August 1, 1996; amended effective July 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-03, 43-47-06.1

97-02-01.1-02. Renewal of a licensed professional clinical counselor license. ~~The licensed professional clinical counselor license must be renewed every two years on the expiration date of the individual's licensed professional counselor license. In addition to the thirty contact hours required for renewal of the licensed professional counselor license, ten additional hours of clinical professional development are required. These contact hours must be related to the person's intent to practice and must be preapproved by the board.~~

1. Licensed professional clinical counselor licenses expire on the date the licensed professional clinical counselor's licensed professional counselor license expires.
2. At least two months before expiration, the board will notify the licensed professional clinical counselor of the requirement for renewal. The notice will be made to the address last provided to the board by the licensed professional clinical counselor.
3. A license shall be renewed if the licensed professional clinical counselor meets all of the following requirements
 - a. The licensed professional clinical counselor shall file the complete application for renewal form prescribed by the board.

- b. The licensed professional clinical counselor shall pay the renewal fee of seventy-five dollars.
 - c. The licensed professional clinical counselor shall provide proof of completion of the continued professional education required by section 97-02-01.1-08.
 - d. Grounds for denial of the application under North Dakota Century Code section 43-47-07 do not exist.
4. If the completed application for renewal, renewal fee, and proof of completion of continued professional education is not filed at least thirty days before the expiration of the license, the licensed professional clinical counselor shall pay a late fee of one hundred dollars.
 5. If the completed application for renewal, renewal fee, proof of completion of continued professional education, and late fee is not filed before the expiration of the license, the license expires and the individual may not practice clinical counseling.
 6. If the completed application for renewal, renewal fee, proof of completion of continued professional education, and late fee is not filed within one year of the expiration, the license shall not be renewed. The individual must apply and meet the license requirements to be granted a license.
 7. The board may extend the expiration date and the deadlines for filing the application for renewal, renewal fee, proof of completion of continued professional education, and late fee upon proof of medical or other hardship preventing the individual from meeting the deadlines.

History: Effective August 1, 1996; amended effective July 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-03, 43-47-06.1, 43-47-06.2

97-02-01.1-04. Fees. The following fees have been established by the board for the licensed professional clinical counselor license:

1. Application fee, one hundred fifty dollars.
2. Renewal fee, fifty seventy-five dollars.

History: Effective August 1, 1996; amended effective December 1, 2001; July 1, 2014.

General Authority: NDCC 28-32-02(1), 43-47-03(3)

Law Implemented: NDCC 43-47-03(3)

97-02-01.1-05. Grandparenting provisions. ~~The board shall issue, upon the application submitted prior to December 31, 1997, a license as a~~

~~licensed professional clinical counselor, if the applicant satisfies subsection 1 or 2:
Repealed effective July 1, 2014.~~

- ~~1. The applicant is currently licensed in this state as a licensed professional counselor; and
 - ~~a. Provides documentation of at least two thousand clinical contact hours within four of the last seven years. Supervision of counselors or counseling students may be included in contact hours provided the supervisor has written documented past clinical experience;~~
 - ~~b. Provides written verification of clinical practice by a supervisor or other clinical mental health professional; and~~
 - ~~c. Provides documentation of at least one hundred hours of clinical supervision. The clinical supervision may be obtained within any two-year post-master's period, as collegial documented supervision within the last seven years, or a combination thereof.~~~~
- ~~2. The applicant is currently licensed in this state as a licensed professional counselor and provides proof of clinical mental health certification by the national board for certified counselors.~~

~~History: Effective August 1, 1996.~~

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

~~Law Implemented: NDCC 43-47-06.1~~

97-02-01.1-08. Continued professional education for licensed professional clinical counselors. In addition to the thirty hours required for renewal of the licensed professional counselor license, a licensed professional clinical counselor shall complete at least ten hours of continued professional education primarily focused on clinical counseling in the two years preceding the date of expiration of the license. The continued professional education shall relate to the licensed professional clinical counselor's intent to practice, and be preapproved by the board. A continued professional education hour is fifty minutes. Examples of items meeting continuing professional educational requirements include attending professional meetings, conferences, and workshops or taking graduate courses in clinical counseling.

History: Effective July 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-03, 43-47-06.1

**CHAPTER 97-02-02
DISCIPLINARY PROCEDURES**

Section	
97-02-02-01	Disciplinary Actions
97-02-02-02	Reinstatement Following Disciplinary Action
<u>97-02-02-03</u>	<u>Reporting Convictions and Discipline</u>

97-02-02-01. Disciplinary actions. All actions for disciplinary procedures must be in accordance with North Dakota Century Code chapter 28-32.

1. Action may be taken by the board to ~~revoke, suspend, or decline to renew a license must be taken in accord with the following procedures for the situation to which they apply upon finding that the applicant or licenseholder has engaged in unprofessional conduct. Unprofessional conduct includes:~~
 - a. Conviction of ~~a felony~~ an offense determined by the board to have a direct bearing on the individual's ability to practice counseling.
 - ~~(1) Maximum action: Revocation.~~
 - ~~(2) Minimum action: Stayed revocation with two years probation under approved supervision. The board may condition the probation based upon the nature of the conviction and tailor it to educate the offender to avoid a recurrence. The conditions imposed may include a rehabilitation program tailored to the violation. In appropriate cases, treatment by a qualified professional and approved by the board may be required.~~
 - b. Procuring of license by fraud or misrepresentation.
 - ~~(1) Action: Revocation.~~
 - c. Misuse of drugs or alcohol.
 - ~~(1) Maximum action: Revocation.~~
 - ~~(2) Minimum action: Stayed revocation with two years probation under approved supervision.~~
 - ~~(3) Conditions of probation:~~
 - ~~(a) Misuse of drugs or alcohol:~~
 - ~~[1] An evaluation by qualified professionals as approved by the board.~~
 - ~~[2] Abstention from use of drugs or alcohol.~~

~~{3} Treatment as recommended by a qualified professional approved by the board and a statement from the professional that the licensee is ready to resume professional responsibility.~~

~~{4} Successful completion of an oral examination administered by the board or its designees.~~

d. Negligence in professional conduct or nonconformance with the code of ethics as adopted by the board.

~~(1) Maximum action: Revocation.~~

~~(2) Minimum action: One year suspension, stayed, with two years probation with approved supervision.~~

~~(3) Conditions of probation:~~

~~(a) Successful completion of a continuing education program related to the worker-client relationship and approved by the board.~~

~~(b) Successful completion of an oral examination administered by the board or its designees.~~

~~(c) If deemed appropriate by the trier of fact, practice only in a supervised, structured environment that is approved by the board.~~

e. Performance of functions outside the demonstrable areas of competency.

~~(1) Maximum action: One year suspension with two years probation with approved supervision.~~

~~(2) Minimum action: One year suspension, stayed, with three years probation.~~

~~(3) Conditions of probation:~~

~~(a) Successful completion of a continuing education program approved by the board which bears a meaningful relationship to the violation.~~

~~(b) If deemed appropriate by the trier of fact practice only in a supervised, structured environment that is approved by the board.~~

- ~~(e) Successful completion of an oral examination administered by the board or its designees.~~
 - f. Mental, emotional, or physical incompetence to practice the profession.
 - ~~(1) Maximum action: Revocation.~~
 - ~~(2) Minimum action: Suspension. Application for reinstatement may be made after:

 - ~~(a) Proof of termination of disability to the satisfaction of the board.~~
 - ~~(b) Successful completion of an oral examination administered by the board or its designees.~~~~
 - ~~(3) Upon reinstatement, if deemed appropriate by the board, practice only in a supervised, structured environment that is approved by the board.~~
 - 9. Violation of or aid to another in violating any provision of North Dakota Century Code chapter 43-47, any other statute applicable to the practice of professional counseling, or any provision of this title.
 - ~~(1) Maximum action: Revocation.~~
 - ~~(2) Minimum action: One year suspension, stayed, with two years probation with approved supervision.~~
2. Petition for rehearing. A petition may be made to the board for reinstatement upon good cause or as a result of additional evidence being obtained that would alter the determination reached in subsection 1.

History: Effective June 1, 1991; amended effective July 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-14, 43-47-07

97-02-02-03. Reporting convictions and discipline. A licensee, convicted of an offense, except a minor traffic offense, or disciplined in another jurisdiction, shall report the conviction or discipline to the board within thirty days of the conviction or discipline.

History: Effective July 1, 2014.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-47-07