

NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 271 through 273

January 2002
February 2002
March 2002

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



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TITLE 4
Management and Budget, Department of

MARCH 2002

STAFF COMMENT: Chapter 4-11-02 contains all new material and is not underscored so as to improve readability.

**CHAPTER 4-11-02
RISK MANAGEMENT WORKERS' COMPENSATION PROGRAM**

Section	
4-11-02-01	History and Purpose
4-11-02-02	Definitions
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4-11-02-07	Failure by Employing Authority to Participate in the Transitional Duty Program
4-11-02-08	Transitional Duty - Effect of Family and Medical Leave Act
4-11-02-09	Permanency
4-11-02-10	Eligibility for Reassignment

4-11-02-01. History and purpose. The fifty-seventh North Dakota legislative assembly directed the risk management division of the office of management and budget to administer a single workers' compensation account for the state. The purpose is to reduce the cost of workplace injuries while enhancing the recovery of injured employees.

History: Effective March 1, 2002.
General Authority: NDCC 28-32-02

Law Implemented: NDCC 65-04-03.1

4-11-02-02. Definitions. Terms used in this chapter are as defined in North Dakota Century Code title 65, except that "employee" is limited to an employee who is employed by the state at the time the employee sustains a compensable work injury. Additionally:

1. "Employing authority" means the state entity that is the employer at the time the alleged injury occurred to the employee.
2. "First aid" means any one-time treatment of minor bruises, scratches, cuts, burns, splinters, and other incidents, which do not ordinarily require medical care. Treatment is considered first aid even when provided by registered professional personnel employed by the employing authority.
3. "Receiving authority" means a state entity other than the employing authority that provides the transitional duty to an injured employee who is temporarily unable to return to the preinjury position.
4. "State" means any agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, instrumentality, or office of the state.
5. "Transitional duty" means employment that includes only short-term duties that can be taught to the employee quickly and which fall within the employee's restrictions and physical limitations.

History: Effective March 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 65-04-03.1

4-11-02-03. Reporting a work-related injury.

1. The risk management workers' compensation program contact for the employing authority shall file a completed incident report which includes details of the employee's alleged injury, the cause, the contributing factors, and the action taken to prevent further occurrences. The contact shall fax the report to the office of management and budget risk management division within forty-eight hours of the occurrence or first report of the alleged injury unless the employing authority has an approved data management system to furnish monthly reports to the risk management division. All employing authorities must meet the forty-eight hour filing requirement for suspected time loss claims.

2. For injuries requiring treatment other than first aid, the employee or the employing authority, or both, shall complete a North Dakota workers' compensation claim for injury form (SFN 2828) and shall file both parts C1 and C2 of the SFN 2828 electronically with the bureau as soon as possible and no more than forty-eight hours after the employee seeks medical treatment from the preferred provider or the provider selected by the employee prior to the alleged injury.

History: Effective March 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 65-04-03.1

4-11-02-04. Medical treatment.

1. Immediately following an injury, the employing authority shall:
 - a. Assist the employee onsite; or
 - b. Arrange for the transport of the employee for treatment to the preferred provider or the provider selected by the employee prior to the alleged injury.
2. An employing authority may not render medical care beyond first aid except for emergency response by qualified personnel unless the employer has chosen an onsite provider as its designated medical provider. The designated medical provider must be staffed by licensed physicians and x-ray and laboratory personnel whose job description and qualifications include treatment of employees.
3. An employee with an alleged compensable injury may request to change medical providers by submitting a letter to the bureau and the risk management division indicating the employee's request and the name, address, and telephone number of the proposed new medical provider.
4. After each visit to a treating medical provider, an employee with an alleged compensable injury shall submit to the employee's supervisor the provider's assessment of the alleged compensable injury with any restrictions and recommendations noted. Each physical assessment must be reported on the North Dakota workers' compensation claim for injury form (SFN 2828) part C3 and be submitted to the employee's supervisor as soon as possible and no more than forty-eight hours after the employee's visit to the treating medical provider.
5. If an employee is on family and medical leave because of an alleged compensable injury, the employee must submit certification from a licensed provider of health care substantiating the need for family medical leave.

History: Effective March 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 65-04-03.1

4-11-02-05. Transitional duty - Conditions for offer - Termination - Additional transitional duty.

1. The state shall offer an employee with an alleged compensable injury transitional duty meeting the limitations or restrictions imposed on the employee's ability to work due to the alleged compensable injury. Priority must be given to offering transitional duty within the jurisdiction of the employing authority. If transitional duty is not available, the employing authority shall determine if transitional duty is available elsewhere with the state. Transitional duty is determined to be appropriate if:
 - a. The employee is unable to perform the duties of the employee's preinjury position;
 - b. The employee files, in a timely manner:
 - (1) A notice of the alleged compensable injury; and
 - (2) A claim for workers' compensation;
 - c. Appropriate transitional duty is available;
 - d. The employee's treating medical provider approves the transitional duty;
 - e. The transitional duty is not prohibited by the source that funds the employee's preinjury position; and
 - f. The employee would otherwise be employed by the employing authority if the employee had not incurred the alleged compensable injury.
2. Transitional duty offered pursuant to this section must be terminated by whichever of the following occurs earliest:
 - a. When ninety days have passed since the date the employee began the assignment;
 - b. When the employee's treating medical provider verifies that the employee has permanent restrictions preventing the employee from returning to the employee's preinjury position;
 - c. When the transitional duty is no longer available;

- d. When the employee's treating medical provider verifies that the employee is capable of performing the duties of the employee's preinjury position;
 - e. When the employee's entire claim or claim for disability benefits is denied by the bureau; or
 - f. When the employee retires or otherwise terminates employment.
3. The state may extend the original transitional duty or offer an employee who has an alleged compensable injury additional transitional duty if:
- a. The employee has returned to work at the employee's preinjury position and is temporarily unable to perform the duties of that position due to the alleged compensable injury; and
 - b. The additional transitional duty is recommended by the risk management division and the bureau.
4. If the employing authority is unable initially to provide transitional duty and transitional duty is found with a receiving authority, the transitional duty with the receiving authority must end if transitional duty meeting the restrictions and limitations of the employee becomes available with the employing authority.
5. Transitional duty offered to an employee must be located twenty-five miles or less from the location of the employee's preinjury position, unless the employee agrees to accept transitional duty which is greater than twenty-five miles away from the location of the employee's preinjury position.
6. An employee must accept or decline transitional duty within twenty-four hours of receipt of the offer, when possible, and not later than two days. Failure by an employee to accept transitional duty that is approved by the employee's medical provider that is within twenty-five miles of the employee's preinjury position may jeopardize the employee's receipt of workers' compensation benefits.
6. If the employee is offered transitional duty with a receiving authority:
- a. The transitional duty does not constitute a transfer to the position;
 - b. The employee shall be deemed to remain in the employee's preinjury position; and

- c. The employing authority is responsible for the payment of the employee's salary and benefits.
7. An employing authority shall:
- a. Coordinate with the receiving authority a description of the transitional duty to be offered to an employee with an alleged compensable injury; and
 - b. Review with the bureau and the office of management and budget risk management workers' compensation manager, after each physical assessment, the limitations placed on the injured employee by the medical provider to determine required adjustments to the transitional duty, if needed.

History: Effective March 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 65-04-03.1

4-11-02-06. Transitional duty - Compensation - Effect of duties assigned.

- 1. An employee who accepts transitional duty is entitled to receive the preinjury wage and the benefits of the employee's preinjury position for the number of hours the employee works or is on paid leave during the transitional duty.
- 2. For the duration of the transitional duty, the duties assigned to the employee may not be used to reclassify the employee's regular position or to reallocate the class in which the employee is employed.

History: Effective March 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 65-04-03.1

4-11-02-07. Failure by employing authority to participate in the transitional duty program.

- 1. The risk management division of the office of management and budget may impose a surcharge of twenty-five dollars per day upon an employing authority for each calendar day the employing authority fails to provide transitional duty to an employee with an alleged compensable injury if:
 - a. The employee has been off work for at least five consecutive calendar days;
 - b. A position is available to meet the employee's limitations and restrictions; and

- c. The employee has been cleared for transitional duty by the treating medical provider.
2. The risk management division of the office of management and budget shall deposit any funds collected pursuant to this section in the risk management workers' compensation fund.

History: Effective March 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 65-04-03.1

4-11-02-08. Transitional duty - Effect of Family and Medical Leave Act. An employee who is placed on family and medical leave by the employing authority because of an alleged compensable injury may not be required to accept transitional duty offered in lieu of continuing on family and medical leave. If, however, an employee accepts transitional duty while on family and medical leave, the employee retains the right to be returned to the employee's preinjury position or an equivalent position upon expiration of the employee's family and medical leave.

History: Effective March 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 65-04-03.1

4-11-02-09. Permanency. An employee shall be deemed permanently unable to return to the employee's preinjury position due to a disability arising from a compensable injury on the date on which the employee's treating medical provider has informed the bureau that the employee has permanent physical restrictions as a result of the work injury and the employing authority has notified the bureau that it cannot accommodate those restrictions.

History: Effective March 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 65-04-03.1

4-11-02-10. Eligibility for reassignment.

1. An employee is eligible for reassignment with the employing agency under this section if:
 - a. The employee was a regular employee;
 - b. The employee would otherwise have continued in the regular position;
 - c. The employee is unable to perform the essential functions of the regular position, even with reasonable accommodations, because the employee is permanently unable

- to return to the preinjury position pursuant to section 4-11-02-09;
- d. The bureau determines that the employee has a medical condition which results in the employee being unable to return to the preinjury position;
 - e. The bureau determines that the employee has permanent physical restrictions due to the compensable injury and that the employee may be eligible for vocational rehabilitation benefits;
 - f. The bureau determines that the employee's claim is not being contested; and
 - g. If an employee must be completely retrained into a different capacity from the employee's employment at the time of the compensable injury, the employee, upon completion of training, may compete as an internal candidate for a position through regular procedures.
2. An employee is eligible for reassignment under this section in a full-time position if the employee's preinjury position was on a full-time basis. An employee whose preinjury position was part time, seasonal, or temporary is eligible for reassignment on the same basis as the employee's preinjury position. An employee who is eligible for reassignment on a full-time basis may be reassigned on either a full-time or part-time basis, as appropriate, based on the employee's permanent physical restrictions.
 3. The employee, the employee's employing authority, and the bureau shall provide any necessary information for job development and reassignment to the personnel or administrative officer.

History: Effective March 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 65-04-03.1

TITLE 4.5
Addiction Counseling Examiners, Board of

JANUARY 2002

CHAPTER 4.5-01-01

4.5-01-01-01. Organization of board of addiction counseling examiners.

1. **History.** The 1987 legislative assembly passed legislation establishing the state board of addiction counseling examiners, codified as North Dakota Century Code chapter 43-45. The board of addiction counseling examiners license addiction counselors.
2. **Board membership.** The board consists of nine members appointed by the governor. Six members are licensed practicing addiction counselors, two members are laypersons, and one member is a licensed addiction counselor in private practice. The governor shall appoint board members for three-year terms, but no person may be appointed to serve for more than two consecutive terms.
3. **Board officers.** The board annually elects from its membership ~~each person~~ a chairperson, a vice chairperson, and a treasurer at the fourth quarter meeting. The board may hire a secretary at its discretion.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

Board of Addiction Counseling Examiners
1120-College-Drive-Suite-205
P.O. Box 975
Bismarck, ND 58501 58502

History: Effective August 1, 1988; amended effective August 1, 1991; April 1, 1994; November 1, 1994; January 1, 2002.

General Authority: NDCC 28-32-02.1, 43-45-04

Law Implemented: NDCC 28-32-02.1, 43-45-02, 43-45-03, 43-45-04

ARTICLE 4.5-02
ADDICTION COUNSELING EXAMINERS LICENSURE

[Repealed January 1, 2002]

STAFF COMMENT: Article 4.5-02.1 contains all new material and is not underscored so as to improve readability.

ARTICLE 4.5-02.1

ADDICTION COUNSELING EXAMINERS LICENSURE

Chapter

- 4.5-02.1-01 Initial Licensure and Fees
- 4.5-02.1-02 Licensure Renewal and Continuing Education
- 4.5-02.1-03 Clinical Training
- 4.5-02.1-04 Specialized Registration
- 4.5-02.1-05 Professional Conduct

**CHAPTER 4.5-02.1-01
INITIAL LICENSURE AND FEES**

Section

- 4.5-02.1-01-01 Definitions
- 4.5-02.1-01-02 Licensure Application
- 4.5-02.1-01-03 Academic Requirements
- 4.5-02.1-01-04 Clinical Training Requirements
- 4.5-02.1-01-05 Examinations
- 4.5-02.1-01-06 Reciprocity
- 4.5-02.1-01-07 Fees

4.5-02.1-01-01. Definitions. For the purposes of this title, "clinical training" means practicum.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-01

4.5-02.1-01-02. Licensure application. An application for a license to practice addiction counseling must be made to the state board of addiction counseling examiners on forms approved by the board. Each application for license must be accompanied by all of the following:

1. The required fee.
2. An official transcript verifying academic requirements and degree.
3. An official document verifying clinical training completion.

4. Documentation verifying a passing score on board-approved examinations.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

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

4.5-02.1-01-03. Academic requirements. Academic requirements related to the licensing of addiction counselors must be completed at an accredited college or university. A bachelor's degree is required for applications made before January 1, 2005. A bachelor's degree in addiction studies or a closely related social science or health care field is required for applications made after December 31, 2004. A minimum of thirty-two total credit hours in addiction studies is required. The thirty-two credit hours must include academic course content in the following areas:

1. **Practice.**

- 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;
- (5) Testing instruments;
- (6) Intervention approaches for individuals, groups, and families;
- (7) Documentation, report writing, and recordkeeping; and
- (8) Verbal communication skills.

- b. Examples of courses with such content:

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

2. **Ethics.**

- a. Curriculum 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) Legal aspects of practice; and
 - (7) Federal and state regulations.
- b. Examples of courses with such content include professional ethics.

3. Theory.

- a. Curriculum content.
 - (1) Human development, tasks, and issues across life span;
 - (2) Family functioning, family types, and addiction in families;
 - (3) Group dynamics and group process;
 - (4) Psychopathology, mental health, and mental illness;
 - (5) Dynamics of addiction;
 - (6) Substance abuse and alcoholism;
 - (7) Pharmacology and human biology;
 - (8) AIDS and HIV;
 - (9) Alcoholics anonymous, the twelve steps, and twelve steps support group;
 - (10) Social and cultural theory; and
 - (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; and
- (8) Adult psychology and development.

History: Effective January 1, 2002.

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 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.
2. **Registration.** Clinical training program operators 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

History: Effective January 1, 2002.

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. Examinations. Two levels of examination may occur in the licensing process:

1. A written examination consisting of a knowledge-based objective test. The written examination may be taken when offered any time after the completion of the required academic coursework.
2. An oral examination using a performance-based case history and interview. Only individuals who have completed their clinical training will be considered eligible for the oral examination.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

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

4.5-02.1-01-06. Reciprocity. An applicant licensed by another state, territory of the United States, or province of Canada or certified by a national addiction counselor certifying organization may be licensed by the board if:

1. The applicant's license or certification is in good standing.
2. The applicant demonstrates that the academic, clinical training, and examination requirements required for the license or certification is substantially the same as required under North Dakota Century Code chapter 43-45 and article 4.5-02.1

History: Effective January 1, 2002.

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 fee payment schedule:

- | | |
|----------------------------------|----------|
| 1. Initial license fee | \$150.00 |
| 2. Annual renewal of license fee | \$100.00 |
| 3. Private practice initial fee | \$ 50.00 |

- | | |
|--|----------|
| 4. Private practice annual renewal fee | \$ 25.00 |
| 5. Late fee | \$100.00 |

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

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

**CHAPTER 4.5-02.1-02
LICENSURE RENEWAL AND CONTINUING EDUCATION**

Section

4.5-02.1-02-01	Licensure Renewal
4.5-02.1-02-02	Continuing Education
4.5-02.1-02-03	Address and Name Changes

4.5-02.1-02-01. Licensure renewal. Licenses are renewable annually providing each of the following conditions has been met:

1. The renewal application form is completed, submitted, and postmarked on or before December first of each year.
2. The license renewal fee is submitted with the renewal application.
3. Verification of required continuing education has been submitted and postmarked on or before December first, at the end of the three-year continuing education cycle.
4. The license is not in suspension or revocation.

A late charge will be assessed if the renewal application and renewal license fee or three-year continuing education documentation are submitted and postmarked after the applicable date and before July first of the new year.

If the application for renewal does not meet the above conditions within six months of the date of expiration of the license, the board may revoke the license. Any person seeking to be relicensed must apply for licensing and must satisfy all current licensure requirements.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

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

4.5-02.1-02-02. Continuing education. Continuing education credit is an award given to a participant at a workshop or seminar. All licensed addiction counselors are required to complete sixty hours of continuing education in a three-year period beginning January first of the year following the counselor's original licensure.

All persons wishing approval must submit a request to the licensing board for approval of continuing education credits. Continuing education, workshops, and seminars must:

1. Be related to the practice of addiction counseling.

2. Have the potential to increase the licensee's proficiency in addiction counseling.

Ten of the sixty continuing education hours for clinical supervisors must be obtained in a clinical supervision-related course and documented to the board.

History: Effective January 1, 2002.

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.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

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

**CHAPTER 4.5-02.1-03
CLINICAL TRAINING**

Section

- 4.5-02.1-03-01 Clinical Training Program
- 4.5-02.1-03-02 Internship Registration

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. Licensed facilities must consist of at least one public provider of addiction treatment and may be at either an inpatient or outpatient treatment setting.
- c. Each program may establish the length of its clinical training program, with a one thousand four hundred-hour minimum requirement.
- d. Documentation must include:
 - (1) Evidence of licensure of each addiction treatment facility.
 - (2) Evidence of accreditation of each academic facility.
 - (3) Institutional training program policies and procedures, including an organizational chart and admission policies.
 - (4) Goals and objectives for each clinical component of the training site.
 - (5) Trainee handbook and guidelines, including trainee grievance procedure.

2. Curriculum requirements:

- a. Documentation must be provided of syllabi of academic courses or other evidence of coursework quality.

- b. Documentation must be provided of provision of thirty hours of direct supervision and twenty hours of indirect supervision in each of the following clinical areas:
 - (1) Individual therapy.
 - (2) Intake and assessment.
 - (3) Group therapy.
 - (4) Family counseling.
 - c. Direct supervision occurs in session with clients, viewing or listening to videotape or audiotape, or verbatim report of a session.
 - d. Indirect supervision occurs when discussing process and in educational, ongoing meetings with a supervisor.
3. Academic and clinical staff requirements:
- a. Academic instruction requirements:
 - (1) Instruction must be provided by an instructor with an appropriate academic degree, qualified in the specific field of instruction.
 - (2) Instructors must be academic staff members of a college or university.
 - (3) Instructors must be board-approved, so must submit:
 - (a) A letter of introduction to the board.
 - (b) A resume, with education and experience in the field of addiction preferred.
 - (c) A syllabus for each core academic course taught.
 - b. Clinical training supervision requirements:
 - (1) Clinical supervision must be provided by a board-registered clinical supervisor.
 - (2) Clinical training programs must have one clinical supervisor for each individual clinical trainee.
4. A training program may submit an application without a specific academic site designated, but trainees accepted into the training program must meet board-approved academic coursework.

5. Individual clinical training programs may be board-approved when they are submitted by and under the auspices of an approved clinical training program. Each plan must:
 - a. Designate the board-registered clinical supervisor responsible for clinical training.
 - b. Provide additional information as requested by the board.
6. 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.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

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

4.5-02.1-03-02. Internship registration. The internship is the practice of addiction counseling, under the supervision of a board-registered clinical supervisor, after the academic and clinical training program requirements are met. An intern will become licensed when application criteria are met and examinations are passed. The intern's supervision must be verified in writing to the board by signature of the onsite clinical supervisor.

1. **Qualifications.** To be eligible for registration as an intern, the following must be met:
 - a. All core academic coursework has been completed.
 - b. All clinical training program requirements have been board-approved.
2. **Registration.** An individual requesting to be registered as an intern shall make formal application to the board documenting the applicant's qualifications as required by this section.
3. **Expiration.** An individual may remain an intern for a maximum of two years before completion of all examinations is required. Upon showing of good cause the board, by special provision, may extend internship status for longer than two years. Request for extension of the internship registration period is the responsibility of the clinical supervisor.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

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

**CHAPTER 4.5-02.1-04
SPECIALIZED REGISTRATION**

Section	
4.5-02.1-04-01	Activities Constituting the Private Practice of Addiction Counseling
4.5-02.1-04-02	Application for Private Practice Registration
4.5-02.1-04-03	Application for Private Practice Registration Renewal
4.5-02.1-04-04	Application for Clinical Supervision Registration

4.5-02.1-04-01. Activities constituting the private practice of addiction counseling.

1. A private practitioner of addiction counseling is one who, on either a full-time or part-time basis, is responsible for that person's own practice, exercises sole responsibility for the client, establishes payment of fees with clients, and identifies that the person is an addiction counselor in offering service.
2. Services that are provided by all addiction counselors are not considered to constitute private practice unless those services are provided independent of any supervising or sponsoring organization, or are provided within a private agency framework in which the addiction counselor is a partner or shareholder, and a fee is collected from or on behalf of the client. Consultative or educational services provided to an organization, agency, classroom, or workshop are not considered to be the private practice of addiction counseling.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-01, 43-45-04, 43-45-05.3

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

1. **Qualifications.** To be eligible for registration to provide private practice, the following must be met:
 - a. Licensure as a licensed addiction counselor.
 - b. An applicant must have a master's degree in one of the social or behavioral sciences.
2. **Registration.** Individuals requesting to be registered for private practice shall make a formal application to the board. This application must include:

- a. A description of the types of services or programs that will be provided in private practice;
 - b. A description of the method established to provide for a system of peer review of cases; and
 - c. The registration fee.
3. **Peer review process.**
- a. The peer review process consists of the quarterly presentation and discussion of cases with members of a predetermined peer review committee in order to ensure quality of care, obtain input in reference to problem cases, and assist in case management.
 - b. The peer review committee must consist of individuals with expertise in the field of addiction counseling. At least one member of the committee in addition to the practitioner must be a licensed addiction counselor.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

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

4.5-02.1-04-03. Application for private practice registration renewal. Registration is renewable annually provided each of the following conditions has been met prior to December first of each year:

- 1. A registration renewal application form is completed, submitted, and postmarked prior to December first of each year.
- 2. A registration renewal fee is submitted with the registration renewal application.
- 3. Documentation is submitted with the registration renewal application that peer review process continues to meet requirements of quarterly presentation and discussion.
- 4. Registration is not suspended or revoked.

A late fee will be assessed if the renewal application, registration renewal fee, and peer review process documentation are submitted and postmarked after the above date and before January first of the new year. If the application for private practice registration renewal does not meet the above conditions by December thirty-first of the new year, the registration will expire.

The board may extend the registration renewal deadline for any applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

History: Effective January 1, 2002.
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 a licensed 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 verifying ten hours of clinical supervision-related coursework within the three-year continuing education cycle in order to maintain clinical supervisor status.

History: Effective January 1, 2002.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-01, 43-45-04, 43-45-06

**CHAPTER 4.5-02.1-05
PROFESSIONAL CONDUCT**

Section

4.5-02.1-05-01	Code of Ethics
4.5-02.1-05-02	Ethics Subcommittee
4.5-02.1-05-03	Complaint Procedure
4.5-02.1-05-04	Notification of Action Against License

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 May 20, 1995.

History: Effective January 1, 2002.

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 board members chosen by the chairperson and confirmed by the board.

History: Effective January 1, 2002.

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.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

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

4.5-02.1-05-04. Notification of action against license. When the board revokes a license, the board shall provide a public notice of such action in order to further the cause of consumer protection. Such public notice shall specify the name of the licensee, action taken, and the violations. Public notice must include publication in the newsletter of the board, notification of the known licensee's employers, and a news release issued to a regional newspaper chosen by the board.

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

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

TITLE 32
Cosmetology, Board of

JANUARY 2002

CHAPTER 32-02-01

32-02-01-02. Space dimensions and requirements.

1. **Cosmetology salon.** To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology salon shall have adequate workspace to maintain a safe and sanitary condition for a cosmetology salon. In addition to such workspace, the cosmetology salon shall have a reception room, supply room, toilet facilities, facilities to maintain sanitary conditions, and hallways. There shall be adequate workspace for each additional operator or manager-operator in the salon.
 - a. Separate entrance. All public entrances and exits must meet the local or state building codes.
 - b. Cosmetology salon separate. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
 - c. Resident salons. Each cosmetology salon in a residential building shall maintain an entrance separate from the entrance to living quarters. No cosmetology services shall be conducted in any room used as living or sleeping quarters. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
 - d. Mobile home salons. Mobile homes, motor homes, trailers, or any type of recreational vehicles containing a cosmetology salon shall be permanently set on a

foundation. Each cosmetology salon in such mobile home, motor home, trailer, or any type of recreational vehicle shall maintain an entrance separate from the living quarters. No cosmetology services shall be conducted in any room used as living or sleeping quarters. A cosmetology salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

2. **Cosmetology schools.** To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology school shall have adequate square feet of floor space to maintain a safe and sanitary condition for a cosmetology school. Such floor space must include a business office, reception room, clinic laboratory practice room, dispensary, student lounge, ~~two~~ lavatories, hallways, and classrooms sufficient for training a--minimum--of--forty students the number of students enrolled. Two lavatories must be in the same building as the school and immediately and easily accessible from the school. In addition, for the manicurist and esthetician courses, floor space must include separate classrooms with adequate space to teach students enrolled.
3. **Cosmetology school separate.** Each cosmetology school shall be separated from living quarters and any other business, except an affiliated school, by a solid nontransparent wall from floor to ceiling containing no openings or doors.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2002.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-04. Sanitary premises.

1. Walls, floors, and fixtures must be kept clean and in good repair at all times.
2. All floors must be cleaned and made free of hair and other debris after each client and must be in good repair. Carpeting is not permitted in the working area, except in cosmetology establishments with carpeting in the working area on July 1, 2000, and which have not changed ownership since July 1, 2000. Carpeting will only be permitted in the reception, drying, and facial treatment areas.
3. Windows and mirrors should be clean.
4. Shampoo bowls and implements must be free from all hair and debris and cleansed prior to each use.

5. The dispensing area must be neat and clean. The supply area may not be accessible to the public.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; January 1, 2002.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

CHAPTER 32-03-01

32-03-01-01. Salon applications. All persons, firms, associations, corporations, partnerships, and other entities desiring to operate a cosmetology salon shall make application to the board for a certificate of registration ~~not less than six weeks~~ prior to commencing business. The application shall be made on a form provided by the board and shall be accompanied by the fee of seventy-five dollars. All renewal applications of cosmetology salons shall be made to the board before December thirty-first in each year. Renewal applications shall be accompanied by the fee of twenty-five dollars. ~~Six weeks prior~~ Prior to any change of ownership, name, location, or address, a cosmetology salon shall apply for reregistration with the board. For rural salons, owners shall supply a detailed map indicating the salon's exact location and directions for driving to that salon.

History: Amended effective July 1, 1988; January 1, 2002.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-17, 43-11-28

CHAPTER 32-04-01

32-04-01-13. Equipment and library. Each cosmetology school shall have the following minimum equipment and library for each of the following courses of training and instruction provided by the school:

1. Cosmetology minimum equipment:

First 25 students	26-50	51-75	76-100
1-Chart of anatomy			
a. Bones			
b. Muscles			
c. Nerves			
d. Circulatory system			
e. Skin			
1-Blackboard four feet by six feet [1.22 meters by 1.83 meters] for each theory room			
2-Master dry sterilizers or electric sterilizers			
2-Large wet sterilizers	3	4	6
4-Shampoo basins	6	8	10
6-Facial chairs	8	10	12
12-Hair dryers	15	25	30
6-Manicure tables	8	10	10
12-Work stations with mirrors	25	35	45
1-Therapeutic lamp two-colored bulbs			
300-Permanent cold wave rods and other permanent cold wave supplies			
6-Waste containers	10	14	20
1-Full length mirror			
2-Soiled towel closed containers	4	8	10
2-Closed towel cabinets			
2-Closed supply cabinets			
1-Bulletin board - conspicuously located			
Solution dispensers adequate for enrollment			
Fireproof cabinet for school and student records			
Adequate supply of facial supplies			

2. Esthetician minimum equipment:

a. Sufficient chalkboards.

- b. One lavatory bowl for enrollment for up to fifteen students.
- c. One work station or position per two students, must include a facial chair or cushioned massage table.
- d. One set of facial equipment per two work stations or positions to include manual, mechanical, or electrical apparatus (at least one of the following): electrical heating mask, steamer, brushing, vacuum ionization, glass electrode or high frequency galvanic or cathodic current (prohibited faradic) decrustation machine, spray or mister, one magnification lamp.
- e. Sufficient trays for facial supplies.
- f. One dry sterilizer per each work station.
- g. One properly lighted makeup area.
- h. One head form or chart per class.
- i. Audiovisual aids.

3. Manicurist minimum equipment:

- a. Sufficient chalkboards.
- b. A minimum of one handwashing sink separate from restrooms for enrollment up to fifteen, and one additional sink for each fifteen students or fraction thereof.
- c. Advanced department will have adequate chairs for clients, also adequate ventilation for work areas.
- d. One work space with adequate light must be provided for every student.
- e. Sufficient trays for manicuring supplies.
- f. One set of mannequin hands per student.
- g. Manicuring kit for each student containing proper implements for manicuring and pedicuring.
- h. Implements for artificial nails, nail wraps, and tipping.
- i. One pedicure setup station.
- j. Audiovisual aids.

4. Minimum school library:

- a. Standard dictionary.
- b. Dictionary of medical words.
- c. Standard textbook.
- d. References on iron curling.
- e. References on hair straightening.
- f. References on hair coloring.
- g. Copy of cosmetology law.
- h. Copy of sanitary rules and regulations.
- i. Copy of minimum prices.
- j. Trade magazines.
- k. Slides and films pertaining to cosmetology.

History: Amended effective July 1, 1990; March 1, 1998; January 1, 2002.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-16

32-04-01-14. Tools and supplies. The cosmetology school shall provide each student with the tools and supplies listed in the student contract.

1. **Mannequin.** Each cosmetology school shall furnish a mannequin to each cosmetology student with-a-mannequin, except a student provided training and instruction limited to esthetics or manicure.
2. **Removing tools and supplies.** Registered students shall not remove any tools, supplies, or equipment from the school premises without permission of the school management.

History: Amended effective July 1, 1988; July 1, 1990; January 1, 2002.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

CHAPTER 32-05-01

32-05-01-01. Operators. Every person desiring to be licensed by the board as an operator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to operators and the educational qualifications set forth in section 32-04-01-26.1 and shall make application to the board for a certificate prior to commencing any activity as an operator.

1. **Fee and proof.** The application shall be accompanied by the required proof of qualification applicable to the applicant and the examination fee of twenty dollars.
2. **Renewal.** Every operator shall renew the operator's certificate by annually making written application to the board before December thirty-first each year, and such renewal application shall be accompanied by the ten dollar fee.
3. **Penalty fee.** If the licensee fails to renew the operator's license following the expiration date, a penalty fee of ten dollars is required.
4. **Change of name or address.** Every operator shall notify the board in writing of any change of name or change of residence address.
5. **Certificates displayed.** Every operator shall conspicuously display the operator's certificate of registration in the reception or work area of the cosmetology salon.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2002.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-28

32-05-01-06. Esthetician. Every person desiring to be licensed by the board as an esthetician shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to estheticians and the educational qualifications set forth in section 32-04-01-27 and shall make written application to the board to register for the esthetician's examination:

1. **Fee and proof.** The application must be by the required proof of qualification applicable to the applicant and the examination fee of twenty dollars.
2. **Renewal.** Every esthetician shall renew the esthetician's certificate by annually making written application to the board office before December thirty-first each year, and such

renewal application must be accompanied by the fifteen dollar fee.

3. **Penalty fee.** If the licensee fails to renew the esthetician's license following the expiration date, a penalty fee of ten dollars is required.
4. **Change of name or address.** Every esthetician shall notify the board in writing of any change of name or residence.
5. **Certificates displayed.** Every esthetician shall conspicuously display the esthetician's certificate of registration in the reception or work area of the cosmetology salon.

History: Effective July 1, 1990; amended effective March 1, 1998; January 1, 2002.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

32-05-01-07. Manicurist. Every person desiring to be licensed by the board as a manicurist shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to manicurists and the educational qualifications set forth in section 32-04-01-28 and shall make written application to the board to register for the manicurist's examination.

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant and the examination fee of twenty dollars.
2. **Renewal.** Every manicurist shall renew the manicurist's certificate by annually making written application to the board before December thirty-first each year, and such renewal application must be accompanied by the fifteen dollar fee.
3. **Penalty fee.** If the licensee fails to renew the manicurist's license following the expiration date, a penalty of ten dollars is required.
4. **Change of name or address.** Every manicurist shall notify the board in writing of any change of name or any change of residence.
5. **Certificates displayed.** Every manicurist shall conspicuously display the manicurist's certificate of registration in the reception or work area of the cosmetology salon.

History: Effective July 1, 1990; amended effective March 1, 1998; January 1, 2002.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-27, 43-11-27.1, 43-11-28

TITLE 33

State Department of Health

MARCH 2002

STAFF COMMENT: Chapter 33-03-33 contains all new material and is not underscored so as to improve readability.

**CHAPTER 33-03-33
LONG-TERM CARE NURSING SCHOLARSHIP
AND LOAN REPAYMENT GRANT PROGRAM**

Section	
33-03-33-01	Definitions
33-03-33-02	Responsibilities and Process
33-03-33-03	Eligibility and Priority

33-03-33-01. Definitions.

1. "Acceptable loan" means an educational loan to a nurse or an individual training to become a nurse under the long-term care nursing scholarship and loan repayment grant program which is made by a bank, credit union, savings and loan association, insurance company, accredited school, government, or other fiscal or credit institution in its capacity as lender and in which the lender is subject to examination and supervision by an agency of the United States or the state in which the lender has its principal place of business.
2. "Applicant" means a licensed nursing facility seeking a grant for nursing education scholarships or loan repayments to nurses and other nursing facility staff employed or recruited by and employed or under contract with the applicant.
3. "Council" means the state health council.
4. "Department" means the state department of health.

5. "Eligible nurse loan repayment applicant" means a nurse who is licensed or registered to practice by the North Dakota board of nursing and is employed or recruited by and under contract with a nursing facility.
6. "Eligible scholarship applicant" means an individual enrolled in an accredited school of nursing approved by the North Dakota board of nursing, pursuing a nursing degree, and who is employed or recruited by and under contract with a nursing facility.
7. "Nurse" has the meaning set forth in North Dakota Century Code section 43-12.1-02.
8. "Nursing facility" has the meaning set forth in North Dakota Century Code section 50-30-01.

History: Effective March 1, 2002.

General Authority: NDCC 23-01-03.3

Law Implemented: NDCC 23-01-03.3

33-03-33-02. Responsibilities and process.

1. A nursing facility wishing to be designated as eligible for participation in the program shall complete an application form developed by the department. This application form will be available upon request from the department. Completed forms must be submitted to the department. In addition to the criteria stated in North Dakota Century Code section 23-01-03.3, the application must include assurances the nursing facility:
 - a. Is licensed by the department;
 - b. Has matching funds equal to the amount of the grant request;
 - c. Will use grant and matching dollars under this program for loan repayment or scholarship purposes; and
 - d. Will not use any money received under section 24 of chapter 431 of the 2001 Session Laws for the purpose of providing the facility's matching share of a long-term care nursing scholarship and loan repayment grant.
2. If a nursing facility files an application for a grant after June 30, 2002, the application must include a statement of nursing personnel needs and a plan to retain nurses that is acceptable to the council.
3. A nurse may apply to a nursing facility for a grant to repay an acceptable loan and an individual may apply to the nursing

facility for a nursing education scholarship on an application form provided by the nursing facility.

4. Prior to July first each year, each nursing facility that receives a long-term care nursing scholarship and loan repayment grant shall submit an annual report to the department on a form supplied by the department.
5. The department will review each application for compliance with the law and rule. The council, at its next regularly scheduled meeting, will consider the applications recommended by the department and will approve or deny the applications.

History: Effective March 1, 2002.
General Authority: NDCC 23-01-03.3
Law Implemented: NDCC 23-01-03.3

33-03-33-03. Eligibility and priority. If the council determines, with respect to grants awarded after June 30, 2002, that there are insufficient funds to give awards in the amount requested to all qualified nursing facilities, then the council in awarding grants may consider any factors that the council considers important to retain current nursing staff or recruit additional nurses at nursing facilities in this state.

History: Effective March 1, 2002.
General Authority: NDCC 23-01-03.3
Law Implemented: NDCC 23-01-03.3

TITLE 62
Plumbing, Board of

MARCH 2002

CHAPTER 62-03.1-02

62-03.1-02-02. Uniform Plumbing Code - Exceptions and modifications. The following chapters and appendices of the Uniform Plumbing Code are modified as follows:

1. **Permits and inspections 103.0.** The following subsections do not apply: 103.1 through 103.4; 103.5.1.2, 103.5.3.1, 103.5.6, and table 1-1.
2. **Definition of terms 202.0.** Add to 211.0-I-: "Inspection report" means a notice, written by a plumbing inspector to the person responsible for the plumbing installation, describing work inspected and stating violations and noncompliance of rules and regulations as listed, which must be corrected within a designated time.

Add to 218.0-P-: "Plumbing installation certificate" means a document consisting of one or more copies certifying that certain plumbing installations, plumbing fixtures, plumbing appliances, and other appurtenances were installed in conformity with the rules and regulations of the plumbing board. "Permit" as used in the Uniform Plumbing Code has the same meaning as plumbing installation certificate.

"Plumbing" add to definition: Maintenance does not include making repairs to faucets, valves, appliances, and fixtures, or removal of stoppages in waste or drainage pipes. See also North Dakota Century Code section 43-18-01.

"Plumbing system": Not included in this definition are medical gas and vacuum systems, fuel gas piping, and vents for water heaters.

3. **Protection of piping materials and structures 313.0.** Add to 313.6: Water service piping must be installed with a minimum earth cover of seven feet [2.13 meters] or below record frostlines. Minimum earth cover for building sewers must be four feet [1.22 meters].
4. **Metered faucets 402.6.** Add: Mixing-type hand-closing faucets may be installed on lavatories for public use. Lavatories must have waste outlets not less than one and one-fourth inches [31.75 millimeters] in diameter, with open strainers.

Prohibited urinal 406.2. Add: Urinals with nonintegral traps shall be prohibited.

Water closets 409.1. Add: Water closets in private rooms of hotels, motels, dormitories, and boarding houses must be of the elongated bowl type.

~~Table--4-1--minimum-plumbing-facilities--Add-to-the-following building-occupancies:~~

Type-of-Building	Water-Closets	Urinals
or-Occupancy		
Assembly-Places	Female	Male
Theaters,-Auditoriums,-	1:-1-15	0:-1-25
Convention-Halls,-etc.,	3:-16-50	1:-26-100
for-public-use		
Office-or-Public	Female	Male
Buildings	1:-1-15	0:-1-25
	2:-16-30	1:-26-100
	3:-31-50	
Restaurants,-Pubs,-and		Male
Lounges		0:-1-50
		1:51-150

Fixture count 413.1. Table 4-1 does not apply. Add: Plumbing fixture requirements shall be according to the 2000 International Building Code, Table 2902.1, Minimum Number of Plumbing Facilities, with the following modifications:

Occupancy	Water Closets (h)		Lavatories (i)	Drinking Fountains (g)
	Male	Female		

Nightclubs				None
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Restaurants (j)	1 per 60	1 per 60	1 per 120	None
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Mercantile	1 per 300	1 per 300	1 per 600	
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Business	1 per 40	1 per 40		
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See section 2902.2, 2902.4, 2902.4.1, 2902.5, 2902.6, does not apply.

See section 410.1, 411 of the International Plumbing Code, does not apply.

Add to Note a:

1. Types of occupancies not shown on this table shall be considered individually by the administrative authority.
2. The occupant load shall be composed of fifty percent of each sex.

Add the following notes:

g. There shall be a minimum of one drinking fountain per occupied floor in schools, theaters, auditoriums, dormitories, and businesses.

(1) Where food is consumed indoors, water stations may be substituted for drinking fountains. Where bottled water coolers are provided, drinking fountains shall not be required.

(2) Drinking fountains shall not be required in occupancies with less than thirty persons.

(3) Drinking fountains shall not be installed in toilet rooms.

h. (1) The provision of urinals may offset water closets otherwise required but the number of water closets required may not be reduced in this manner by more than fifty percent.

(2) Walls and floors within two feet [609.6 millimeters] of the sides and front of urinals must be finished with a smooth, hard, nonabsorbent finish of a material approved by the administrative authority.

i. Where circular or similar handwashing appliances are provided, twenty-four lineal inches [609.6 millimeters] of

wash sink or eighteen inches [457.2 millimeters] of a circular basin, when provided with water outlets for such space, shall be considered equivalent to one lavatory.

j. (1) For the purpose of this table, a restaurant is defined as a business that sells food to be consumed on premises. The number of occupants for a drive-in restaurant shall be considered as equal to the number of parking stalls.

(2) A hand sink is required to be available to employees in a restaurant or other food preparation occupancy.

5. **Permit 503.0.** Does not apply.

6. **Exception 604.2.** Add: Type M copper shall not be used underground outside of structures.

Valves 605.0. Add to 605.2: Each building water supply shall be provided with a fullway valve installed on the inlet side of each water meter. Valves up to and including two inches [50.8 millimeters] in size must be a ball valve.

Add to 605.3: In single and multidwelling units with two or more bathroom groups, one or more shutoff valves must be provided so that each group may be isolated from the other. In multidwelling units, wall hydrants must be separately controlled within eight feet [2.438 meters] by an accessible valve inside the building.

Add to 605.5: All water closets and kitchen sinks must have individual fixture valves installed.

7. **Molded rubber coupling joints 705.1.6.** Add: For aboveground installations an approved shielded coupling must be used to prevent outward expansion.

8. **Food and beverage handling establishments 801.2.** Add to 801.2.3: Food preparation sinks must be directly connected to the building drain on a line to the sewer side of a floor drain trap located adjacent to the sink.

Bar and fountain sink traps 801.3. Add: Where the fixture cannot be vented, a special island sink vent or a combination waste and vent system must be used.

9. **Vertical wet venting 908.0.** Add to 908.1: Special horizontal wet venting shall be permitted according to appendix L 6.0 special venting of fixtures.

Special venting for island fixtures 909.0. Add: A combination waste and vent system may also be used for island sinks. The vertical waste pipe must be the same size as

required for the combination waste and vent. The fixture trap size must be as required by chapter 7.

Combination waste and vent system 910.0. 910.2 does not apply.

10. **Traps and interceptors.** Chapter 10 no change.
11. **Storm drainage.** Chapter 11 no change.
12. **Fuel piping.** Chapter 12 does not apply.
13. **Medical gas systems.** Chapter 13 does not apply.
14. **Mandatory referenced standards.** Chapter 14 no change.
15. **Firestop protection for DMV and stormwater applications.** Chapter 15 does not apply.
16. **Appendix E, manufactured or mobile home parks and recreational vehicle parks.** Add to E5: The department having jurisdiction shall be the division of food and lodging of the state department of health. See also North Dakota Century Code chapter 23-16 and North Dakota Administrative Code section 33-33-01-02.

History: Effective March 1, 2000; amended effective March 1, 2002.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

TITLE 66
Psychologist Examiners, Board of

FEBRUARY 2002

CHAPTER 66-02-01

66-02-01-09. Number of examinations. The written licensing examination will be administered by computer at designated testing sites throughout the calendar year. The written--and oral licensing examinations will be administered by the board at least twice each calendar year.

History: Amended effective September 1, 2000; February 1, 2002.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-22

66-02-01-09.1. Written examination. The written examination is the examination for the professional practice of psychology. The passing score is one-fourth-standard-deviation-below-the-mean-for-Ph-D-first-time-candidates a scaled score of 500.

History: Effective September 1, 2000; amended effective February 1, 2002.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-23

TITLE 69
Public Service Commission

JANUARY 2002

CHAPTER 69-09-01

69-09-01-18.1. Discontinuance of gas service.

1. A utility may disconnect service if the customer is delinquent in payment for services rendered. However, no utility shall discontinue service to a customer for failure to pay for such service until the utility shall first have given the customer notice of its intention to discontinue such service on account of delinquency. The notice shall:
 - a. Be sent by first-class mail addressed to the customer at the place where service is rendered, except that in the case of residential customers sixty-five years of age or older, or for handicapped customers, personal notice by delivery is required. A copy of each notice must also be mailed to the nearest social service office and to any other appropriate financial assistance agency, providing that prior approval has been given by the customer pursuant to subsection 2.
 - b. Show the amount of the delinquency.
 - c. Include the telephone number of the public service commission.
 - d. Advise the customer of the customer's rights and remedies, including ~~but not limited to~~ the right of the customer to stay termination for up to thirty days if the customer advises the utility within the ten-day notice period that dangerous health conditions exist or that the customer is sixty-five years of age or older or that the customer is

handicapped. In addition, the notice shall advise the customer of the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts and of the opportunity to enter into equal monthly payment plans for future service.

- e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill.

If the customer elects to enter into a deferred installment agreement for delinquent accounts, service may not be terminated; however, the utility may discontinue service without further notice if the customer fails to pay the delinquent account on or before the date specified in the notice, or in accordance with the deferred installment agreement. The customer shall have the privilege of paying the delinquent account at any time prior to the actual disconnection of service, and the person directed by the utility to make the disconnection shall be deemed authorized and shall accept payment of the delinquent account if tendered to the person by the customer before actual disconnection of service is made.

- 2. It shall be the responsibility of all residential customers sixty-five years of age or older, handicapped, or having an emergency medical problem in the household, including life-sustaining appliances, such as kidney dialysis, to notify the utility of such status. To assist in such notification, all utilities shall annually include a preaddressed postage-paid postcard in the monthly billing mailed to all residential customers during the billing period ending October first. Such notice shall also be provided to all new customers in that service area when they are first provided service by the utility.

The postcard shall include the following questions:

	YES	NO
1. Is any member of your household 65 years of age or older, or handicapped?	—	—
2. Do you have any emergency medical problem in your household?	—	—
3. Do you desire that the area social service office or other appropriate financial assistance agency be notified in the event of a proposed disconnect?	—	—
4. Do you desire that some other third party		

be contacted in the event of a disconnect?
If so, name and address of person _____

5. If you are having difficulty paying your utility bill, please contact our local service representative or business office so that we can work with you on your problem.
Utility Telephone Number _____
Office Address _____

Date _____ Name _____
Address _____
Signature _____

3. Service shall not be disconnected under this section on weekends, Fridays, state holidays, the day before a state holiday, or after twelve noon on any day. A report describing the total number of actual disconnects, date and time, type of customer, and amount of delinquency for each disconnected customer shall be filed monthly with the commission within ten days after the last day of each month.
4. Whenever service has been disconnected for nonpayment of a bill, before reconnection is made the customer shall pay the reconnection fee established in the utility's rate schedules; make a deposit pursuant to section 69-09-02-04 if all or a part of the previous deposit was used in settlement of the delinquent bill; and make a satisfactory settlement for the delinquent bill and for service rendered between the last meter reading date and the date service was disconnected.
5. In the event the customer disputes the amount of a bill for service, the customer may, to prevent disconnection for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility shall not disconnect service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.
6. A utility may not disconnect service to a customer for failure of the customer: to pay for merchandise purchased from the utility; to pay for a different class of service furnished by the utility; to pay for service rendered to a previous occupant of the premises; or to pay the bill of another customer as guarantor thereof.

7. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and operation of utilization equipment, or for use of equipment which interferes with, or adversely affects, the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.
8. A utility may discontinue service to a customer upon ten days' written notice if ~~it is determined that~~ the meter or other equipment installed by the utility has been tampered with, or if there has been a diversion of service, or if the customer is utilizing gas before the energy has passed through a meter installed by the utility, ~~or if a condition dangerous to life and property exists on the customer's premises.~~
9. ~~Where~~ When a customer who has tenants is including the cost of utility services in the rent charged and the utility bill becomes delinquent, the utility before disconnecting service must also notify the tenants in writing at least ten days prior to the proposed termination date. The utility must allow each tenant to apply to become the customer of the utility in the tenant's own name, to have the service to the rental facility continued or resumed, and to pay the pro rata share of future bills. Such tenant-customer shall be subject to all the provisions of this chapter.
10. A utility may not discontinue service to a customer for nonpayment of a deposit.

History: Effective October 1, 1980; amended effective May 1, 1996; July 1, 1997; April 1, 2001; January 1, 2002.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

CHAPTER 69-09-02

69-09-02-05.1. Discontinuance of electric service.

1. A utility may disconnect service if the customer is delinquent in payment for services rendered. However, no utility shall discontinue service to a customer for failure to pay for such service until the utility shall first have given the customer notice of its intention to discontinue such service on account of delinquency. The notice shall:
 - a. Be sent by first-class mail addressed to the customer at the place where service is rendered, except that in the case of residential customers sixty-five years of age or older, or for handicapped customers, personal notice by delivery is required. A copy of each notice must also be mailed to the nearest social service office and to any other appropriate financial assistance agency, providing that prior approval has been given by the customer pursuant to subsection 2.
 - b. Show the amount of the delinquency.
 - c. Include the telephone number of the public service commission.
 - d. Advise the customer of the customer's rights and remedies, including, but not limited to, the right of the customer to stay termination for up to thirty days if the customer advises the utility within the ten-day notice period that dangerous health conditions exist or that the customer is sixty-five years of age or older or that the customer is handicapped. In addition, the notice shall advise the customer of the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts and of the opportunity to enter into equal monthly payment plans for future service.
 - e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill.

If the customer elects to enter into a deferred installment agreement for delinquent accounts, service may not be terminated; however, the utility may discontinue service without further notice if the customer fails to pay the delinquent account on or before the date specified in the notice, or in accordance with the deferred installment agreement. The customer shall have the privilege of paying

the delinquent account at any time prior to the actual disconnection of service, and the person directed by the utility to make the disconnection shall be deemed authorized and shall accept payment of the delinquent account if tendered to the person by the customer before actual disconnection of service is made.

2. It shall be the responsibility of all residential customers sixty-five years of age or older, handicapped, or having an emergency medical problem in the household, including life-sustaining appliances, such as kidney dialysis, to notify the utility of such status. To assist in such notification, all utilities shall annually include a preaddressed postage-paid postcard in the monthly billing mailed to all residential customers during the billing period ending October first. Such notice shall also be provided to all new customers in that service area when they are first provided service by the utility.

The postcard shall include the following questions:

	YES	NO
1. Is any member of your household 65 years of age or older, or handicapped?	—	—
2. Do you have any emergency medical problem in your household?	—	—
3. Do you desire that the area social service office or other appropriate financial assistance agency be notified in the event of a proposed disconnect?	—	—
4. Do you desire that some other third party be contacted in the event of a disconnect? If so, name and address of person _____	—	—

5. If you are having difficulty paying your utility bill, please contact our local service representative or business office so that we can work with you on your problem.		

Utility Telephone Number _____
Office Address _____

Date _____ Name _____
Address _____

Signature

3. Service shall not be disconnected under this section on weekends, Fridays, state holidays, the day before a state holiday, or after twelve noon on any day. A report describing the total number of actual disconnects, date and time, type of customer, and amount of delinquency for each disconnected customer shall be filed monthly with the commission within ten days after the last day of each month.
4. Whenever service has been disconnected for nonpayment of a bill, before reconnection is made the customer shall pay the reconnection fee established in the utility's rate schedules; make a deposit pursuant to section 69-09-02-04 if all or a part of the previous deposit was used in settlement of the delinquent bill; and make a satisfactory settlement for the delinquent bill and for service rendered between the last meter reading date and the date service was disconnected.
5. In the event the customer disputes the amount of a bill for service, the customer may, to prevent disconnection for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility shall not disconnect service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute, and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.
6. A utility may not disconnect service to a customer for failure of the customer: to pay for merchandise purchased from the utility; to pay for a different class of service furnished by the utility; to pay for service rendered to a previous occupant of the premises; or to pay the bill of another customer as guarantor thereof.
7. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and operation of utilization equipment, or for use of equipment which interferes with, or adversely affects, the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.
8. A utility may discontinue service to a customer upon ten days' written notice if ~~it is determined that~~ the meter or other equipment installed by the utility has been tampered with, or if there has been a diversion of service, or if the customer is utilizing electricity before the energy has passed through a meter installed by the utility, ~~or if a condition--dangerous to life and property exists on the customer's premises.~~

9. Where When a customer who has tenants is including the cost of utility services in the rent charged and the utility bill becomes delinquent, the utility before disconnecting service must also notify the tenants in writing at least ten days prior to the proposed termination date. The utility must allow each tenant to apply to become the customer of the utility in the tenant's own name, to have the service to the rental facility continued or resumed, and to pay the pro rata share of future bills. Such tenant-customer shall be subject to all the provisions of this chapter.
10. A utility may not discontinue service to a customer for nonpayment of a deposit.

History: Effective October 1, 1980; amended effective May 1, 1996; July 1, 1997; April 1, 2001; January 1, 2002.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-19. Voltmeters Voltage measurement and voltage records.

1. Each utility shall ~~provide-itself-with~~ employ at least one or more portable indicating voltmeters voltmeter, and each utility ~~--serving--more--than--one--hundred--fifty--customers--shall~~ also have at least one or more--graphic--recording--voltmeters device capable of producing recorded voltage measurements in continuous service at the plant, office, or on a customer's premises. Each utility shall make a sufficient number of voltage measurements to indicate the character of the service furnished to its customers and to satisfy the commission, upon request, of its compliance with established voltage requirements. ~~Utilities--required--to--have--graphic--voltmeters shall--keep--at--least--one--instrument--in--continuous--service--at the--plant--office--or--on--a--customer's--premises.~~ All voltmeter voltage measurement records shall be available for inspection by the commission for a period of one year.
2. Each graphic recording voltmeter shall be checked with an indicating voltmeter when it is placed in operation and when it is removed, or periodically if the instrument is in a permanent location. ~~Notations--on--each--chart--shall--indicate when--the--registration--began--(time--and--date)--and--when--the--chart was--removed--and--also--the--point--where--the--voltage--was--taken.~~

History: Amended effective January 1, 2002.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of January 1, 2000 2001, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

CHAPTER 69-10-01

69-10-01-01. Definitions. As used in this chapter article 69-10:

1. "Automatic bulk weighing system" means a weighing system which weighs grain in successive drafts, automatically records the no-load and loaded weight values, and accumulates the net weight of each draft.
2. "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.
3. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
4. "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.
5. "Equipment repair notice tag" means a tag that allows a device to be operated for thirty days from its inspection date while repairs are being made to that device. The tag may be used only when the tolerance is less than 0.5 percent for a measuring device or one scale division for a weighing device. The tag becomes a rejection tag if the device is not repaired and placed into service within thirty days.
6. "Liquid or LPG computing pump" means a device that provides fuel or LPG to a consumer.
7. "NIST" means the United States department of commerce, national institute of standards and technology.
8. "Not sealed" means a sticker or seal applied to a device which has not been inspected and tested, does not meet applicable design or tolerance requirements, or is no longer being used commercially. A device that is not sealed shall not be used in commerce.
9. "Random testing" means the random retesting and recertification by a weights and measures inspector of any weighing or measuring device being tested under the self-certification rules.
10. "Registered service person" means a person or agency authorized by the commission to remove an official rejection seal placed on a weighing or measuring device or to repair and certify weighing and measuring devices described in North Dakota Century Code section 64-02-13.

11. "Rejected for repair" means a sticker or seal applied to a device which has been inspected and tested and does not meet applicable design or tolerance requirements. A device that is rejected for repair shall be modified or repaired by a registered service person within thirty days of the date it was rejected and may not be used in commerce until placed into service.
12. "Retail fuel device" means a commercial, indicating fuel pump used to deliver fuel to individual highway vehicles in quantities of one hundred gallons [378.54 liters] or less per transaction.
13. "Seal" means marking a weighing or measuring device to show certification or rejection.
14. "Security seal" means either a lead and wire pressure-sensitive seal, a plastic and wire pressure-sensitive seal, or a sealing sticker, permanently attached to a weighing or measuring device to prevent unauthorized access to the tolerance-adjusting mechanisms of that device.
15. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
16. "Split-weighing" means determining the weight of a vehicle, combination vehicle, or a commodity by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combinations.
17. "Standard" means test equipment used for certifying weighing or measuring devices.
18. "Variance" means a temporary or permanent suspension of a particular rule granted to an owner or operator of a commercial weighing or measuring device because of an economic hardship, a site restriction requiring modification to the design or installation of a device, or a special installation or operational condition, to be determined by the commission on a case-by-case basis.
19. "Weights and measures inspector" means a commission employee in the testing and safety division performing duties set by the commission.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; August 1, 2000; January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-01-03. Sealing. A weighing or measuring device used in commerce must be certified and sealed. A security seal must be installed where applicable, to prevent adjustments to the calibration of the device. An adhesive sticker that is of sufficient quality that it remains readable and unaffected by the elements must be installed externally to show visual proof of certification. It is unlawful to remove, or allow to be removed, an official tag or seal without commission approval. Effective January 1, 1995, an adhesive sticker must contain the following information: name, address, and telephone number of the commission or registered service company certifying the device, the words "tested and approved", and the month and year of certification.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997; July 1, 1998; January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03.1. Registration of a new or moved commercial device. A written report must be filed with the commission by the owner or operator of any new commercial weighing or measuring device; or, one and any commercial weighing or measuring device that has been moved from its original location of certification; must be reported to the commission, in writing, at least within seven working days prior to its use of installation or relocation.

History: Effective July 1, 1997; amended effective July 1, 1998; January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-02

69-10-02-17. Coal belt conveyor scales jurisdictional - Exemption. Coal belt conveyor scales not used for coal sales to the general public, or not used for the sale of coal on behalf of leasehold interests, are exempt from the provisions of this chapter article.

History: Effective September 1, 1994; amended effective January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-03-07

69-10-02-18.1. Exemptions from testing. Grain moisture testing meters, jewelers' scales, prescription scales, and postal scales used by the United States postal service are exempt from the provisions of this article.

History: Effective January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-23. Stored tare weight. A stored tare weight across a motor truck or motor truck dump scale may not be used for more than one commercial transaction.

History: Effective January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-02-24. Electronic scale data storage and retrieval. Computer programming installed after January 1, 2002, enabling the electronic recording or storage of scale weight must conform to the following:

1. If more than one scale is interfaced, the system must store the identity of the scale which originated the weight and all printed data must identify the scale which originated the weight;
2. Any weight which is manually entered must be identified manually entered on all recorded weights;
3. All recorded weights must match actual scale-weight indications;
4. All recalled weights must match stored weights;

5. Stored weight must have a recorded audit on a dedicated line printer in a continuous format which includes an "S" indicating that it is a stored weight; a sequential reference number; a scale identifier number; a unique reference number to enable the recall of that stored weight; and the stored weight;
6. Any stored weight which is recalled must be immediately printed on a scale ticket with the following information: an "R" indicating that it is a recalled weight; the unique reference number identified in subsection 5; and the recalled weight;
7. After the transaction is completed, the recalled weight must be automatically deleted from the recall weights data file;
8. Any printed ticket from a system used for storing tare weights must include an "STW" to identify that weight as a stored tare weight;
9. Computer computations such as rounding off and truncation must be programmed so that the computations do not result in the degradation of the accuracy of the scale tolerance by more than one-half of one scale division; and
10. Programming must ensure all essential data is properly entered and stored before issuing a weight ticket.

History: Effective January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

CHAPTER 69-10-03

69-10-03-01. National institute of standards and technology (NIST) Handbook No. 44. Except as modified in this article, the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices in North Dakota shall conform to the following sections and subsections of the 1999 edition of the United States department of commerce, NIST Handbook No. 44, which is adopted by reference: all of section 1, all of section 2, subsections (except subsection 2.24), all of subsection 3.30, subsection 3.31 (except UR.2.2. and UR.2.3.), subsection 3.32 (except UR.2.5. and UR.2.6.), and all of subsections 3.33, 3.35, and 3.37 of section 3, subsections 5.50, 5.51, and 5.52 of section 5, and all of appendices A, B, C, and D. In the event of a conflict between the NIST Handbook No. 44 and North Dakota laws and rules, North Dakota laws and rules shall prevail. Copies of the handbook may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Amended effective October 1, 1988; December 1, 1990; February 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; October 1, 1999; August 1, 2000; January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-07

69-10-03-01.1. National institute of standards and technology (NIST) Handbook No. 44 - NTEP - Exceptions. North Dakota may consider the requirements of the national type evaluation program (NTEP) referenced within any edition of NIST Handbook No. 44 adopted by this state, but shall not require NTEP certification as a prerequisite for the design, sale, installation, operation, and certification of a commercial device.

History: Effective January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-03-05. Weight carts. Effective January 1, 2002, weight carts not already in service in North Dakota and seeking metrology certification must meet the following design specifications: wheelbase must not exceed sixty inches [152.4 centimeters], motors must be electric or powered by gel core batteries, gross weight must not exceed five thousand pounds [2267.95 kilograms], tires must be of solid rubber with smooth tread, and sealing cavities must be capable of containing twenty pounds [9.072 kilograms] of lead adjustment.

History: Effective January 1, 2002.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

CHAPTER 69-10-04

69-10-04-02. Application for registration of a service person. ~~It is the policy of the commission to accept an annual~~ Annual application for registration as a registered service person must be submitted to the commission under the following requirements:

1. First-time applicants must:
 - a. Provide acceptable evidence that they are fully qualified to repair, test, and certify a commercial weighing or measuring device;
 - b. (1) Provide a legible copy of an applicable certificate of training issued by the national institute of standards and technology; or
(2) Score seventy-five percent or more on commission testing taken from applicable sections of the adopted edition of the NIST Handbook No. 44;
 - c. Score seventy-five percent or more on commission testing taken from applicable weights and measures sections of the North Dakota Century Code and North Dakota Administrative Code; and
 - d. Have in their possession adequate standards.
2. Repeat applicants must:
 - a. Complete and submit an application; and
 - b. Have in their possession adequate standards.

Upon acceptance and approval of an application, the commission will issue a placing in service permit to the applicant. All permits issued under this section remain the property of the commission and must be surrendered upon demand.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997; January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-02.1. Self-certification. ~~A person or company may~~ Self-certification to repair, test, and certify the person's or company's an operator's own commercial weighing and measuring devices with written permission from the commission and subject to commission approval of the following conditions is permitted only as provided in this section:

1. Only hazardous liquid pipeline operators, natural gas pipeline operators, and manufacturing-processing operators may self-certify;
2. Applications must be submitted to the commission in writing;
3. Commission approval is required annually; and
4. Applications must address the following conditions:
 - 1: a. The person doing the self-certification must be registered with the commission under section 69-10-04-02. However, persons or companies who make written application to the commission describing their weighing or measuring devices, operating and maintenance procedures, testing processes including a list of testing technicians and their expertise, and reporting requirements, subject to commission approval, are exempt from the provisions of section 69-10-04-02, except for subdivision d of subsection 1 and subdivision b of subsection 2 of that section 69-10-04-02.
 - 2: b. Upon testing, the device must be within commission-approved tolerance.
 - 3: c. Whenever a weighing or measuring device is recertified, the person or company must, within seven working days, report the recertification to the commission. The report must clearly identify each device, the initial test results recorded during self-certification, and the test results upon recertification.
 - 4: d. Weights and measures inspectors may randomly recertify any self-certified weighing or measuring device either by actual testing or by witnessing a test.

History: Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; July 1, 1997; January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

TITLE 69.5
North Dakota Racing Commission

MARCH 2002

CHAPTER 69.5-01-09

69.5-01-09-01. Definition---of---accredited--North--Dakota-bred
Definitions. As used in this chapter:

1. "Accredited North Dakota-bred race horse" means a horse qualifying for and duly registered in the North Dakota breeders' fund program. For purposes of awards and purse supplements, such accreditation for horses racing shall continue through the age of six years. Awards for breeding mares and stallions shall continue indefinitely.
2. "Breeder" means the owner or lessee or the respective breed-registering organization of the dam at the time of foaling in North Dakota.
2. ~~---"North-Dakota-foaled" means a horse foaled in North Dakota.~~
3. "North Dakota-bred" means:
 - a. ~~---A~~ a foal born in North Dakota out of a mare registered with a the North Dakota racing commission that which mare was in North Dakota:
 - {1} a. On or before ~~January~~ February first of the year foaled; or
 - {2} ~~---Within six months after her last breeding date; or~~
 - {3} b. Within ~~twenty-one~~ thirty days after the date of a bona fide purchase or lease transaction, whichever of those dates is the latest, and ~~providing~~ provided, in either

case, that mare remained physically within the boundaries of North Dakota until foaling; ~~or.~~

~~b. A foal born within the boundaries of North Dakota out of a mare registered with the North Dakota racing commission that is bred back to a North Dakota-based sire.~~

4. "North Dakota-foaled" means a horse foaled in North Dakota.
5. "Race horse owner" means the owner or lessee of record with the respective breed-registering organization at the time the horse participates in a race qualifying the horse for breeders' fund awards or purse supplements under the provisions of this chapter.
6. "Stallion owner" means the owner of a stallion registered as a breeding stallion in the North Dakota breeders' fund program. North Dakota breeders' fund awards accruing to the owner of a stallion as a result of qualifying race performances by North Dakota-breds sired by a stallion shall be awarded to the owner of the stallion at the time of conception of such progeny.
4. In a case involving extraordinary circumstances, the North Dakota racing commission or designated registering agency retains the right to allow or disallow the registration of a foal as North Dakota-bred at ~~their~~ its sole discretion.
5. The requirements of subsections 1 through 4 this section apply to all breeds. ~~The breeder of an accredited North Dakota-bred foal is the owner or lessee of the dam at the time of foaling. The owner of an accredited North Dakota-bred stallion, for the purpose of qualifying for stallion awards, is the owner or lessee of record at the time the offspring is conceived.~~

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-02. Registration of and requirements for North Dakota-bred horse eligibility.

1. The breeder or owner of a North Dakota-bred horse shall register such horse with the North Dakota racing commission. The commission may contract with and designate an official registering agency to implement the registration of North Dakota-bred horses.
2. ~~Any foal born prior to January 1, 1991, may be registered with the North Dakota racing commission and be eligible for North Dakota-bred fund awards if the breed registry papers of the foal show North Dakota as the birth state of said foal. All foals born after January 1, 1991, will have to comply with the~~

complete-body-of-administrative-rules--for--the--North--Dakota breeders--fund: Broodmare registration. A broodmare must meet the qualifications as outlined in subsection 4 of section 69.5-01-09-01 to be eligible for broodmare award payments based on a percentage of the North Dakota breeders' fund program awards earned by accredited North Dakota-bred horses foaled by the mare. In addition, the broodmare must meet the following conditions:

- a. The North Dakota racing commission or the designated agency must receive the broodmare's original breed registration certificate for embossing, a completed North Dakota breeders' fund program registration application as furnished by the North Dakota racing commission, and a registration fee of ten dollars.
 - b. Failure to properly register the broodmare, as outlined in section 69.5-01-09-01 and in this section, will disqualify any subsequent claims for North Dakota breeders' fund award payments.
 - c. A broodmare may be registered at any time.
3. Stallion registration. To be eligible to receive stallion award payments, the following requirements must be met:
- a. Stallions must physically be in North Dakota and registered or the registration renewed with the North Dakota racing commission or official registering agency by February first of the current breeding year. The stallion's original breed registration certification must be received by the North Dakota racing commission or official registering agency for embossing, with a completed North Dakota breeders' fund program registration application and a registration fee of twenty dollars. If the stallion is leased, a copy of the lease must accompany the registration application. The lease must include a statement that the lessee is authorized to sign the breeding certificate.
 - b. When a stallion is purchased after February first of the current breeding season, the new owner must register the stallion within thirty days after the date of a bona fide purchase with the North Dakota racing commission or official registering agency to be eligible for the North Dakota breeders' fund program.
 - c. Stallions must remain in North Dakota for the entire current breeding season from February first to July thirty-first. Stallions registered pursuant to subdivision b must be in North Dakota as of the date of registration and remain in North Dakota through July thirty-first.

4. Foal registration and certification. For a horse foaled in North Dakota to be registered and subsequently certified as a North Dakota-bred, the following requirements must be met:
- a. Any time from foaling through December thirty-first of the foaling year that the horse was foaled in North Dakota, the foal must be registered with the North Dakota racing commission or official registering agency. The registration form must be provided by the commission and must contain the date, name, registration number, owner's name of the foaling dam, date the foal was born, and foal owner's statement that the foal was born in North Dakota. The application to register a foal in the North Dakota breeders' fund program as a North Dakota-bred must be accompanied by a ten dollar registration fee.
 - b. Registration applications that meet all other requirements provided in this section, but are received after the December thirty-first deadline, may be processed and approved provided that applications and registration fees received after December thirty-first of the foaling year but prior to December thirty-first of the yearling year are accompanied by a late fee of one thousand dollars.
 - c. An investigator appointed by the commission shall have access to the premises on which qualified mares, North Dakota-registered stallions, and North Dakota-bred foals or horses are kept. The investigator may perform random inspections of North Dakota-registered foals as required by the commission.
 - d. The original breed registration certificate must be embossed by the commission or official registering agency prior to the entry into any restricted race.
 - e. Failure to have the breed registration certificate embossed shall disqualify a horse from entry in a race restricted to, or with preference given to, accredited North Dakota-bred horses, and shall prohibit an award or payment from the North Dakota breeders' fund.
 - f. The owner of the dam of a foal submitted to the registering agent or the North Dakota racing commission for registration in the North Dakota breeders' fund program must notify the North Dakota racing commission ten days prior to shipping if the dam is to be leaving the state prior to ninety days after foaling.
 - g. The foal of a mare registered in the North Dakota breeders' fund program, but owned by an out-of-state individual or corporation, will be required to be inspected by a state-licensed veterinarian at the expense of the owner.

History: Effective January 1, 1990; amended effective March 1, 2002.
General Authority: NDCC 53-06.2-04, 53-06.2-05
Law Implemented: NDCC 53-06.2-11

69.5-01-09-03. Administration of North Dakota-bred Dakota breeders' fund program.

1. The North Dakota racing commission shall deduct one-half of one percent from each parimutuel pool resulting from a licensed race meet or simulcast display for the purpose of providing a North Dakota breeders' fund as provided for by North Dakota Century Code section 53-06.2-11. ~~All moneys held in the fund must be separately invested and reinvested in government obligations, certificates of deposit, or bank deposit accounts or trust companies organized under the laws of the United States of America or state thereof, or any combination thereof, provided that such certificates of deposit must be insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation.~~ All moneys held in the fund must be deposited with the North Dakota state treasurer in accordance with North Dakota law. All moneys shall remain in the control of the state treasurer until, upon action of the North Dakota racing commission, funds are transferred to the account of the fund administrator. The executive director of racing of the racing commission is responsible for the timely deposit of all revenue derived from the breeders' fund take-out take-out and shall keep accurate records of deposits and disbursements.
2. The management ~~procedure~~ procedures, rules, fee schedules, registration forms, publications, and all other instruments necessary to the operation of the North Dakota-bred Dakota breeders' fund program by the official registering agency are subject to the review and approval of the commission. The commission must be provided copies of the completed registration forms for all horses entered in the North Dakota-bred Dakota breeders' fund program, or the North Dakota stallion or broodmare registry. The official registering agency shall provide the commission with a financial accounting of the North Dakota-bred Dakota breeders' fund program by a ~~certified public~~ an independent accountant within ~~thirty~~ ninety days of the end of the ~~commission's fiscal~~ calendar year. Costs of administering this program will be funded by a deduction of no more than five percent of the yearly accumulated North Dakota breeders' fund.
3. ~~There is hereby created an advisory committee of seven persons to advise the commission relative to the North Dakota breeders' fund. The committee must be composed of members of the North Dakota horse breed associations, the North Dakota licensed racetracks, and one member of the betting public. Committee members shall serve without compensation. Appointments must~~

be--made--by--the--commission--and--terms--of--office--must--be--for--three--years;--with--the--initial--appointments--to--be--made--so--that--three--members--serve--for--three--years;--two--members--serve--two--years;--and--two--members--serve--for--one--year;---Vacancies;--when--occurring;--must--be--filled--by--the--commission--for--the--remainder--of--the--term--of--any--said--vacancy. The racing industry advisory committee shall be the officially recognized advisory body to the North Dakota racing commission on all matters pertaining to the North Dakota breeders' fund program. The actions of the racing industry advisory committee shall be advisory only and shall not be binding upon the North Dakota racing commission. Establishment and membership of the racing industry advisory committee as to number and representative affiliation shall be at the discretion of the North Dakota racing commission.

4. Any person who desires to contest the accuracy of the commission's records or accounting of the breed North Dakota breeders' fund distribution in any one year shall file a written claim with the commission prior to the end of the calendar year. The written claim must state the basis for the claim.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-04. Registration required for North Dakota-bred eligibility.

1. Broodmare--registration;---A--broodmare--must--meet--the--qualifications--as--outlined--in--section--69.5-01-09-01;---In--addition;--the--broodmare--must--meet--the--following--conditions:
 - a. The--broodmare--must--be--in--North--Dakota--and--registered--by--January--first--of--the--year--foaled;--or--within--twenty--one--days--after--the--date--of--a--bona--fide--purchase--or--lease--transaction;
 - b. A--broodmare--brought--in--to--foal--and--to--be--bred--back--to--a--North--Dakota--based--stallion--will--be--required--to--be--registered--prior--to--foaling;
 - c. The--broodmare's--original--registration--certificate--must--be--received--by--the--North--Dakota--racing--commission--or--designated--official--registering--agency;
 - d. Failure--to--properly--register--the--broodmare;--as--outlined--in--section--69.5-01-09-01;--will--disqualify--any--subsequent--claims--for--breeder--award--payments;--or--for--the--foal--to--be--registered--as--North--Dakota--bred;

e.--Should--it--be--impossible--to--breed--a--mare--due--to--injury--or--disease;--her--foal--will--be--registered--as--North--Dakota--bred--provided--the--mare--resides--in--North--Dakota--for--four--consecutive--months--from--the--time--of--entering--North--Dakota--for--foaling--purposes:

f.--Should--it--be--impossible--to--breed--a--mare--to--the--contracted--North--Dakota--based--stallion--due--to--death;--injury;--disease;--or--impotency--of--said--stallion;--her--foal--will--be--registered--as--North--Dakota--bred--provided--a--copy--of--the--stallion--contract--is--filed--with--the--North--Dakota--racing--commission--on--designated--official--registering--agency:

2.--Stallion--registration.--To--be--eligible--to--receive--any--stallion--award--payments;--the--following--requirements--must--be--met:

a.--Stallions--must--be--in--North--Dakota--and--registered--or--the--registration--renewed--with--the--North--Dakota--racing--commission--or--official--registering--agency--by--January--first--of--the--current--breeding--year.--The--stallion's--original--registration--certificate--must--be--received--by--the--North--Dakota--racing--commission--or--official--registering--agency.--If--the--stallion--is--leased;--a--copy--of--the--lease--must--accompany--the--registration--application.--The--lease--must--include--a--statement--that--the--lessee--is--authorized--to--sign--the--breeding--certificate:

b.--Stallions--must--remain--in--North--Dakota--for--the--entire--breeding--season--from--January--first--to--July--thirty--first:

c.--A--newly--acquired--stallion--which--has--not--been--in--North--Dakota--for--breeding--purposes--before--January--first--of--the--current--breeding--season--may--be--eligible--for--stallion--awards--if--the--stallion--has--been--properly--registered--with--the--commission--prior--to--servicing--any--mare--and--the--stallion--has--not--serviced--any--mare--after--December--thirty--first--of--the--preceding--year:

3.--Foal--registration--and--certification.--For--a--horse--foaled--in--North--Dakota--to--be--registered--and--subsequently--certified--as--a--North--Dakota--bred;--the--following--requirements--must--be--met:

a.--Within--thirty--days--of--the--date--the--horse--has--foaled--in--North--Dakota;--the--foal--must--be--registered--with--the--North--Dakota--racing--commission--or--official--registering--agency.--The--registration--form--must--be--provided--by--the--commission--and--must--contain--the--following--information:--The--date;--the--name--and--registration--number--and--owner's--name--of--the--foaling--dam;--the--date--that--the--foal--was--born;--an--owner's--statement--that--the--foal--was--born--in--North--Dakota;--four--photographs--clearly--showing--front;--back;--and--both--sides--of--the--registered--foal;--and--any--other--information--the--commission--may--require:

- b.--Failure--to--properly--register--the--foal--with--the--North Dakota racing commission within--thirty--days--of--foaling will--disqualify--any--subsequent--claim--to--register--the--foal as--North--Dakota--bred.
- e.--An--investigator--appointed--by--the--commission--shall--have access--to--the--premises--on--which--qualified--mares,--North Dakota--registered--stallions,--and--North--Dakota--bred--foals or--horses--are--kept.--The--investigator--shall--perform--random inspections--of--North--Dakota--registered--foals--as--required by--the--commission.
- d.--The--original--foal--certificate--must--be--embossed--by--the commission--or--official--registering--agency--prior--to--entry into--any--restricted--race.
- e.--Failure--to--have--foal--certificate--embossed--shall--disqualify any--claim--to--enter--the--horse--in--a--restricted--race--or--to earn--any--breeder's--fund--payments.
- f.--The--owner--of--a--North--Dakota--registered--mare--leaving--the state--prior--to--ninety--days--after--foaling--must--notify--the registering--agency--ten--days--before--shipping.
- g.--The--foal--of--a--mare--registered--with--the--North--Dakota registry,--but--owned--by--an--out--of--state--individual--or corporation,--will--be--required--to--be--inspected--by--an investigator--appointed--by--the--commission--at--the--expense--of the--owner. Repealed effective March 1, 2002.

History: Effective January 1, 1990.

General Authority: NDCC-53-06:2-04, -53-06:2-05

Law Implemented: NDCC-53-06:2-11

69.5-01-09-05. Decision as to eligibility of North Dakota-bred. Questions as to the registration, eligibility for registration, or breeding of a North Dakota-bred horse must be decided by the North Dakota racing commission or official registering agency. The North Dakota racing commission or the official registering agency may demand and inspect any breed registration certificate or record of a North Dakota breeder and may require affidavits in support of any claim for North Dakota-bred registration. Concerning questions as to parentage, the official registering agency may require blood-typing testing of the horse in question, as well as its sire and dam. Such blood--typing testing must be done by an organization approved by the official registering agency. The results of this test may be taken into consideration by the official registering agency in its determination of the horse's parentage. A decision of the official registering agency is shall be subject to review by the commission, which retains the right to make the final decision as to any right or liability under this article.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05
Law Implemented: NDCC 53-06.2-11

69.5-01-09-06. False statement concerning North Dakota-bred registration. Any person who fails to disclose, or states falsely any information required in the registration process of the North Dakota-bred Dakota breeders' fund program, may be subject to penalties at the discretion of the commission. Owners and breeders of certified North Dakota-breds who shall receive an owner's bonus, or breeder's breeders' award, shall refund to the North Dakota breeders' fund any amount so received in the event it is later determined that any information provided to the association North Dakota racing commission during the certification process which formed the basis for certification as a North Dakota-bred was incorrect or untrue. Such penalties may also include disqualification and exclusion from the North Dakota-bred Dakota breeders' fund program of both the horses and persons involved in the dispute.

History: Effective January 1, 1990; amended effective March 1, 2002.
General Authority: NDCC 53-06.2-04, 53-06.2-05
Law Implemented: NDCC 53-06.2-11

69.5-01-09-07. North Dakota-bred racing program. Any organization licensed by the commission to conduct a race meeting with parimutuel wagering shall provide a North Dakota-bred program and publish such conditions in the condition book prior to the commencement of the race meeting. Prior to publication and distribution of the condition book, the commission shall review and approve the North Dakota-bred racing program. Any changes thereto must be filed with the commission and none may substantially deviate from the conditions previously published, unless approved by the commission.

The racing secretary at each racetrack shall be required to write and offer no less than an-average-of one race each day for accredited North Dakota-bred horses. If the race meeting being conducted is a mixed race meeting, there shall be offered no less than an--average--of one race each day per major breed racing (thoroughbred thoroughbreds, American quarter horses, or standard---breeds standardbreds) for accredited North Dakota-bred horses. In the event a race does not fill, a race may be opened up with North Dakota-bred horses preferred. For the purposes of this clause, a full gate shall consist of six or more horses. All entries must be publicly posted in the race office whether the race fills or not.

History: Effective January 1, 1990; amended effective March 1, 2002.
General Authority: NDCC 53-06.2-04, 53-06.2-05
Law Implemented: NDCC 53-06.2-11

69.5-01-09-08. Change of ownership. Upon transfer of ownership of a North Dakota-bred horse, it is the responsibility of the current

owner (purchaser) to notify the North Dakota-bred Dakota breeders' fund program registering agency or the North Dakota racing commission of any change by providing a copy of the breed certificate showing record of ownership transfer.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-09. Establishment of North Dakota-bred added money and award payments at a race meeting. The North Dakota racing commission shall establish North Dakota-bred Dakota breeders' fund program added money and award payment levels for accredited North Dakota-bred maiden, claiming, allowance, and stakes races at commission-licensed race meetings and authorize increases and decreases in those levels as the racing commission deems appropriate with respect to funds available in the North Dakota breeders' fund.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-10. Distribution of funds for North Dakota-bred parimutuel races.

1.--The--distribution--of--the--North--Dakota--breeders--fund--must--be--as follows:

a.--Sixty--five--percent--as--purse--supplements--to--owners--of winning--accredited--North--Dakota--bred--horses--in--certain races--established--in--section--69.5-01-09-09;

b.--Thirty--percent--to--the--breeders--of--winning--accredited--North Dakota--bred--horses--for--broodmare--awards;--and

c.--Five--percent--to--the--owner--of--the--sires--of--winning accredited--North--Dakota--bred--horses--for--stallion--awards.

2.--The--official--order--of--finish--distribution--amounts--accredited must--be--as--follows:

a.--Fifty--percent--total--to--the--winning--accredited--North Dakota--bred--horse--and--the--accredited--North--Dakota--bred broodmare--and--sire--of--such--horse;--if--any;

b.--Thirty--percent--of--the--place--accredited--North--Dakota--bred horse--and--the--accredited--North--Dakota--bred--horse--broodmare and--sire--of--such--horse;--if--any;

c.--Twenty--percent--of--the--show--accredited--North--Dakota--bred horse--and--the--accredited--North--Dakota--bred--broodmare--and sire--of--such--horse;--if--any;--and

d.--Classification--of--races--for--distribution--as--provided--in this--section--will--be:

Class-1---Futurities;--derbies;--allowance; handicaps;--and--stakes.

Class-2---All--claiming--races--over--five thousand--dollars--claiming.

Class-3---Claiming--races--up--to--and--including five--thousand--dollars--claiming.

Class-4---All--trials;--maiden;--and--maiden/claiming races.

Percentages---to---be---allotted---to---each---class---will---be determined--by--the--North--Dakota--racing--commission--which shall--seek--the--advice--of--and--consult--with--the--industry.

Suggested--starting--percentages--are--as--follows:

Class-1---Twenty--percent.

Class-2---Forty--three--percent.

Class-3---Twenty--seven--percent.

Class-4---Ten--percent.

3.--Award--checks--must--have--imprinted--on--them--"This--check--is--void if--not--cash--within--sixty--days--after--date--of--issuance".--This statement--is--binding--and--checks--not--cash--within--sixty--days of--issuance--shall--revert--to--the--commission--to--be--held--over--and added--to--the--total--amount--of--award--to--be--distributed--to--that breed--the--following--year--with--the--following--exception:--In--the event--the--commission--is--unable--to--locate--an--award--recipient--by United--States--first--class--mail;--the--commission--shall--be--given an--additional--six--months--beyond--the--void--date--of--the--award check--to--attempt--to--locate--the--payee;--if--unable--to--locate--the payee--within--six--months;--the--commission--shall--revert--that money--back--to--the--breed--fund--to--be--held--over--and--added--to--the next--year's--award--moneys--to--be--distributed--to--that--respective breed.

4.--The---money---in---the---North---Dakota---breeders---fund---must---be distributed--to--the--breeder--or--owner;--or--both;--awards--using--the following--formula:

The--total--parimutuel--handle--on--live--and--simulcast--races pursuant--to--North--Dakota--Century--Code--chapter--53--06.2--will--be divided--by--the--actual--handle--generated--by--each--horse--breed--in order--to--determine--the--percentage--of--handle--that--each--breed generated;--These--percentages--will--be--used--to--determine--that amount--of--money--in--the--fund--to--be--distributed--to--each--breed--as breeder--or--owner;--or--both;--awards;--In--mixed--races--the--breed

that-is-the-race-winner-will-be-awarded-the-money-earned-by-the-fund-in-that-race:

5.--The--commission--may--not--make-disbursements-to-any-breed-not-generating-a-minimum-pro-rata-share-of-at-least--one--thousand-dollars--in--any-one-year.--That-amount-which-is-less-than-one-thousand-dollars-allocated-to-a-single-breed-at-the-end-of-the-year--shall--revert--to--a-special-racing-incentive-fund-to-be-distributed-by-the-commission:

6.--In--no--event--may--North-Dakota-breeder-fund-money-be-used-to-subsidize-restricted-races;-other--than--those--restricted--to-North-Dakota-breds:

7.--All--broodmare--and--stallion-awards-must-be-calculated-at-the-end-of-the-year-for-distribution:

8.--All--owner's-awards-may-be-distributed-with-purse-distribution-or-until-such-time-as-sufficient-criteria-is--established--may-be-calculated-at-year-end-for-distribution:

1. Sixty percent of the moneys accruing to the North Dakota breeders' fund shall be awarded to accredited North Dakota-bred horses who qualify for awards at licensed races outside the state and forty percent shall be awarded to accredited North Dakota-bred horses who win awards at licensed races within the state. Any race considered in this category must have a minimum purse of one thousand dollars and, if a claiming race, must have a minimum claiming price of two thousand five hundred dollars. All amount minimums will be determined in United States currency.

2. The official order-of-finish distribution amounts accredited must be as follows:

a. Fifty percent of the total scheduled award payment to a winning accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any;

b. Thirty percent of the total scheduled award payment to the placing accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any; and

c. Twenty percent of the total scheduled award payment to the showing accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any.

3. The North Dakota racing commission shall establish a point system assigning monetary values for each win, place, or show by North Dakota-bred horses at licensed race meets within the

state and outside the state. The point system will assign values based on the relative moneys available for distribution inside the state and outside the state, and the number of horses that qualify for such awards inside the state and outside the state. The North Dakota racing commission shall award additional points within the system it establishes for qualifying performances by accredited North Dakota-bred horses who win, place, or show in a race at a licensed race meet outside the state where the purse is ten thousand dollars or more as follows:

- a. Purse of ten thousand dollars or more but less than twenty-five thousand dollars is worth double points.
 - b. Purse of twenty-five thousand dollars or more but less than fifty thousand dollars is worth triple points.
 - c. Purse of fifty thousand dollars or more is worth quadruple points.
4. Distribution points for win, place, or show shall be established by the North Dakota racing commission for such performances by North Dakota-bred horses. Separate pools shall be established for moneys to be awarded to North Dakota-bred horses that earn awards at licensed races outside the state and for North Dakota-bred horses who earn awards at licensed races within the state.
5. The distribution of North Dakota breeders' fund award payments must be as follows:
- a. Sixty percent of the scheduled award payment to owners of accredited North Dakota-breds who earn such awards, provided however, that if either the dam or sire, or both, are not duly registered in the program as broodmares or stallions, that the award percentages that would have accrued to them, had they been in the program, be paid to the owner of the accredited foal up to one hundred percent of the scheduled award.
 - b. Thirty percent of the scheduled award payment to the owner of the dam of an accredited North Dakota-bred who earns awards, provided that the dam was registered in the North Dakota breeders' fund program as a broodmare at the time the accredited North Dakota-bred was foaled.
 - c. Ten percent of the scheduled award payment to the owner of the sire at the time of conception of an accredited North Dakota-bred who earns awards provided that the sire was registered in the North Dakota breeders' fund program as a breeding stallion at the time the foal was conceived.

6. No more than a total of ten race awards per horse will be permitted. The owner may select the ten races (win, place, or show) for breeders' fund awards. Applications for breeders' fund awards of the preceding year's races must be received in the North Dakota racing commission office on approved forms by January fifteenth of the year, following those races.
7. Award checks must have imprinted on them "This check is void if not cashed within sixty days after date of issuance". This statement is binding and checks not cashed within sixty days of issuance shall revert to the commission to be redeposited in the breeders' fund for future distribution awards with the exception that in the event the commission is unable to locate and award the recipient by United States first-class mail, the commission shall be given an additional sixty days beyond the void date of the award check to attempt to locate the payee. If unable to locate the payee within the additional sixty days, any such award shall revert back to the commission to be held in the breeders' fund for future distribution. Any subsequent claims for such awards by the person or entities not cashing award checks as prescribed or not located as defined by this section shall not be allowed.
8. In no event may North Dakota breeders' fund moneys be used to subsidize restricted races, other than those restricted to North Dakota-breds.
9. All broodmare and stallion awards must be calculated at the end of the year for distribution.
10. All owner's awards may be distributed with purse distribution or, until such time as sufficient criteria is established, may be calculated at yearend for distribution.
11. No breeders' fund moneys will be payable to the owner or owners of the sire or dam unless the owner or owners of the runner makes application for and receives an award.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-11. Open company wins awards. Accredited North Dakota-bred horses which that win open races at a North Dakota parimutuel track will be eligible to receive owner, breeder, and stallion awards authorized by the commission.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-12. Special interim clause. Until such time as there exists a major racing facility in the state as described in section 69.5-01-09-13, ~~all or a part of the money accumulated via simulcasting may be held by the commission in an interest drawing account for distribution at that time. All money generated via live racing must be distributed at each year's end~~ the provisions of this chapter regarding the division of available breeders' fund moneys between races inside the state and races outside the state shall pertain. When such a racing facility exists, or is granted race dates or is licensed by the North Dakota racing commission prior to actual physical completion, the North Dakota racing commission may redefine the allocation of breeders' fund moneys for in-state races and out-of-state races. Regardless of the designation of a major racing facility, all moneys generated via simulcasting may be held by the commission and the percentage of distribution for any one year out of the total in the fund shall remain at the discretion of the commission.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-13. Guidelines of a major racing facility. In addition to any other requirements or conditions required by the commission, a major racing facility must:

1. Be recognized annually by the North Dakota racing commission as a major racing facility.
2. ~~Offer a race meeting of no less than thirty racing days.~~
3. Offer minimum purses of no less than twelve one thousand two hundred dollars for major breeds racing at this track.
4. 3. Have at least a five-furlong track with properly designed turns and chutes.
5. ~~Have adequate stalling to sustain a thirty-day race meet.~~

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

STAFF COMMENT: Chapter 69.5-01-12 contains all new material and is not underscored so as to improve readability.

**CHAPTER 69.5-01-12
NORTH DAKOTA PROMOTION FUND**

Section	Definition
69.5-01-12-01	Definition
69.5-01-12-02	Deduction From Exotic Wagers, Unclaimed Tickets, and Breakage
69.5-01-12-03	Administration of the North Dakota Promotion Fund
69.5-01-12-04	Application Deadline Dates
69.5-01-12-05	Deposit of Revenue

69.5-01-12-01. Definition. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 53-06.2, except "promotion fund" means a special fund administered by the commission, established to assist in improving and upgrading racetracks in the state, for the promotion of live and simulcast horse racing within the state, and for developing new racetracks in the state as necessary and approved by the commission.

History: Effective March 1, 2002.
General Authority: NDCC 53-06.2-04, 53-06.2-05
Law Implemented: NDCC 53-06.2-11

69.5-01-12-02. Deduction from exotic wagers, unclaimed tickets, and breakage. The North Dakota racing commission shall deduct one-half of one percent from exotic wagers and in addition shall receive all amounts from unclaimed tickets and breakage resulting from a licensed race meet or simulcast display for the purpose of providing a North Dakota promotion fund as provided for by North Dakota Century Code section 53-06.1-11.

History: Effective March 1, 2002.
General Authority: NDCC 53-06.2-04, 53-06.2-05
Law Implemented: NDCC 53-06.2-11

69.5-01-12-03. Administration of the North Dakota promotion fund. The North Dakota promotion fund must be administered by the commission and will be used only for assisting in improving and upgrading racetracks in the state, for the promotion of live and simulcast horse racing within the state, and in developing, promoting, and assisting in the operation of new racetracks in the state as necessary and approved by the commission.

History: Effective March 1, 2002.
General Authority: NDCC 53-06.2-04, 53-06.2-05
Law Implemented: NDCC 53-06.2-11

69.5-01-12-04. Application deadline dates. Application for promotion fund awards must be received in the North Dakota racing commission office by October first of each year.

History: Effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-12-05. Deposit of revenue. The director of racing of the racing commission is responsible for the timely deposit of all revenue derived from the promotion fund take-out and shall keep accurate records of deposits and disbursements.

History: Effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

TITLE 70
Real Estate Commission

FEBRUARY 2002

STAFF COMMENT: Chapter 70-02-05 contains all new material and is not underscored so as to improve readability.

**CHAPTER 70-02-05
ERRORS AND OMISSIONS INSURANCE**

Section	
70-02-05-01	Definitions
70-02-05-02	Insurance Required
70-02-05-03	Minimum Standards
70-02-05-04	Exceptions to Coverage
70-02-05-05	Group Policy Approval Requirements
70-02-05-06	Equivalent Optional Coverage
70-02-05-07	Standards for Equivalent Optional Coverage
70-02-05-08	Time for Filing Certification of Optional Coverage
70-02-05-09	Nonpayment of Premium
70-02-05-10	Surrender of License for Failure to Provide Proof of Insurance
70-02-05-11	Notification Required for Cancellation
70-02-05-12	Proof of Insurance Required to Activate License
70-02-05-13	Authenticity of Coverage

70-02-05-01. Definitions. When used in this chapter, unless the context otherwise requires:

1. "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period, such as the policy term.
2. "Equivalent coverage" means coverage obtained independently of the group plan available from the commission and subject to the terms and conditions as set forth in this chapter.

3. "Extended reporting period" means a designated period of time after a claims-made policy has expired during which a claim may be made and coverage triggered as if the claim has been made during the policy period.
4. "Licensee" means any active individual broker, broker associate, or salesperson.
5. "Prior acts coverage" means claims that are made during a current policy period, but the act or acts causing the claim or injuries for which the claim is made occurred prior to the inception of the current policy period.
6. "Proof of coverage" means a certificate of insurance.
7. "Qualified insurance carrier" means an insurance carrier:
 - a. Which for the entire term of its contract shall provide the group plan of errors and omissions insurance contemplated by these rules, maintains an A.M. Best financial size category of class VI or higher;
 - b. Which shall remain for the policy term authorized by the North Dakota department of insurance to do business in North Dakota as an insurance carrier;
 - c. Which is and will remain for the policy term qualified and authorized by the North Dakota department of insurance to write policies of errors and omissions insurance in North Dakota of the type contemplated by these rules;
 - d. Which, after competitive bidding, has been notified by the commission that it is the successful bidder for the group plan to provide the errors and omissions insurance contemplated by these rules; and
 - e. Which has entered into a contract to provide said group errors and omissions plan in conformity with said contract, these rules, and the North Dakota license law.

The insurance carrier will collect premiums, maintain records, and report names of those insured and a record of claims to the commission on a timely basis and at no cost to the state.
8. "Retroactive date" means the date when the first real estate errors and omissions coverage was effective insuring the named insured on a claims-made basis and since which time the insured has been continuously insured.
9. "Single-limit liability" means the maximum limit payable, per licensee, for damages arising out of the same error, omission, or wrongful act.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-02. Insurance required. An applicant for issuance of a license on active status, a licensee renewing a license, or an inactive licensee activating a license must submit proof of insurance coverage through the group plan or through certification of equivalent coverage.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-03. Minimum standards. The group policy obtained by the commission shall provide to each individual licensee, at a minimum, the following terms of coverage:

1. Not less than one hundred thousand dollars single-limit liability coverage for each licensee per occurrence or claim made, not including costs for investigation or defense;
2. An annual aggregate limit of not less than five hundred thousand dollars per licensee;
3. A deductible amount for each occurrence of not more than one thousand dollars for single-limit liability coverage and one thousand dollars maximum additional deductible for defense and investigation;
4. An extended reporting provision of ninety days and an option to purchase an additional three years extended reporting provision for a premium not to exceed two hundred percent of the premium charged for the last year of the terminating coverage;
5. Coverage under this section for covered acts in any state, United States territory, or Canada in which a covered individual, domiciled in North Dakota, holds a license;
6. Stacking of benefits;
7. Proration of premiums for coverage that is purchased during the course of a calendar year but with no provision for refunds of unearned premiums;
8. The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverages from the group carrier as may be determined by the carrier;

9. That coverage is individual and license-specific and will cover the licensee regardless of changes in employing broker; and
10. Prior acts coverage shall be offered to licensees with continuous past coverage.

History: Effective February 1, 2002.

General Authority: NDCC 43-23-19

Law Implemented: NDCC 43-23-19

70-02-05-04. Exceptions to coverage. Except as provided in this section, coverage may not exclude claims brought against the insured licensee arising out of an act or failure to act by the licensee when performing a professional service for which a real estate license is required. Coverage may limit or exclude claims brought against a licensee which arise as follows:

1. Out of claims or suits made or brought by any insured person against any other insured person within the same firm or from compensation disputes between licensees;
2. Out of loss assumed under contract or agreement, except for liability the insured would have had in the absence of such agreements;
3. From any criminal, dishonest, actual fraud, or willful act or omission. This exclusion does not apply to any insured person who did not personally participate in committing such an act or omission and who, upon having knowledge of the act or omission, reported it;
4. From unlawful discrimination committed by or for the insured person;
5. From fines or penalties imposed by law;
6. From failure to maintain any type or amount of insurance for managed property;
7. From bodily injury, personal injury, advertising injury, or property damage;
8. From related business activities for which a license is not required under this chapter;
9. From involvement in any real estate investment contract or syndication as a partner, joint venturer, or underwriter;
10. From hazardous materials, nuclear materials, or pollutants;
11. From prior wrongful acts;

12. From management or sale of property in which the insured or spouse has more than a ten percent financial or ownership interest. This exclusion does not apply for one year from the date a property is acquired under a guaranteed sale listing contract if the property is listed for sale during that entire period;
13. From any violation of the Securities Act of 1933, as amended through July 1, 1993, or the Securities Exchange Act of 1934, as amended through July 1, 1993, or any state blue sky or securities law or similar state or federal statutes; or
14. Other standard exclusions that are typical in the professional liability insurance industry may be permitted, subject to the approval of the North Dakota real estate commission.

History: Effective February 1, 2002.

General Authority: NDCC 43-23-19

Law Implemented: NDCC 43-23-19

70-02-05-05. Group policy approval requirements. Any group policy to be issued must conform to the standards and practices of the insurance industry and be approved by the North Dakota department of insurance.

History: Effective February 1, 2002.

General Authority: NDCC 43-23-19

Law Implemented: NDCC 43-23-19

70-02-05-06. Equivalent coverage. An active licensee who chooses the option of obtaining errors and omissions insurance independently from a carrier other than the group carrier under contract with the commission must show evidence of coverage by providing certification of coverage on a form prescribed by the commission. The form must show proof that the licensee has coverage in compliance with the minimum standards established by section 70-02-05-07. The form must be signed by an authorized representative of the insurance company and must contain a cancellation notification clause as required by section 70-02-05-09.

History: Effective February 1, 2002.

General Authority: NDCC 43-23-19

Law Implemented: NDCC 43-23-19

70-02-05-07. Standards for equivalent coverage. A carrier issuing insurance coverage pursuant to North Dakota Century Code section 43-23-22 must be an admitted carrier in North Dakota or an approved surplus lines carrier in the state in which the licensee being certified resides. All activities contemplated under North Dakota Century Code sections 43-23-19 through 43-23-23 must be covered.

The insurance must provide a minimum, not less than one hundred thousand dollars single-limit liability coverage for each licensee for each occurrence or claim made, not including the cost of investigation or defense, and an annual aggregate of five hundred thousand dollars for each licensee, not including the cost of investigation and defense. A responsible broker may comply with this requirement by certifying coverages of a minimum of five hundred thousand dollars/one million dollars, if all licensees associated with the broker are covered.

A person who resides in and is licensed in a state that has a mandated program of errors and omissions insurance and who is also licensed in North Dakota meets the requirements for errors and omissions insurance in North Dakota upon providing proof that the person meets the requirements of the person's state of residence.

History: Effective February 1, 2002.

General Authority: NDCC 43-23-19

Law Implemented: NDCC 43-23-19

70-02-05-08. Time for filing certification of equivalent coverage. Certification of equivalent coverage must be filed with the commission by five p.m. on the date of expiration of coverage. If the certification is not filed on time, the commission shall place the license on inactive status on that date.

History: Effective February 1, 2002.

General Authority: NDCC 43-23-19

Law Implemented: NDCC 43-23-19

70-02-05-09. Nonpayment of premium. If a certifying insurance company that submitted certification of equivalent coverage or group plan notifies the commission that a licensee has not paid a premium, the commission shall place that licensee's license on inactive status as of the date of termination of coverage.

History: Effective February 1, 2002.

General Authority: NDCC 43-23-19

Law Implemented: NDCC 43-23-19

70-02-05-10. Surrender of license for failure to provide proof of insurance. When a licensee receives notice of being placed on inactive status for failure to provide proof of insurance, the licensee shall immediately surrender the license and the licensee's identification card to the commission.

History: Effective February 1, 2002.

General Authority: NDCC 43-23-19

Law Implemented: NDCC 43-23-19

70-02-05-11. Notification required for cancellation. If insurance under equivalent coverage is to lapse or be nonrenewed, the providing company must notify the North Dakota real estate commission of its intent to lapse or nonrenew a minimum of thirty days before the expiration date of the term.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-12. Proof of insurance required to activate license. A licensee whose license has been placed on inactive status for failure to provide proof of insurance may not conduct any activities for which a license is required until proof of insurance has been provided to the commission and the license has been activated. The license shall be considered active as of the effective date of the insurance.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-13. Authenticity of coverage. A licensee may not willfully or knowingly cause or allow a certificate of coverage to be filed with the commission that is false, fraudulent, or misleading.

History: Effective February 1, 2002.
General Authority: NDCC 43-23-19
Law Implemented: NDCC 43-23-19

MARCH 2002

CHAPTER 70-02-03

70-02-03-11. Negotiate listings. A real estate broker licensee shall not negotiate a sale, exchange, lease, or listing contract of real property directly with an owner for compensation from the owner or a purchase, exchange, lease, or exclusive right to buy contract with a buyer, if the broker licensee knows that the owner or the buyer has a written unexpired contract in connection with the property which grants an exclusive right to sell to another broker, or which grants an exclusive agency, or an exclusive right to buy, to another broker. This section does not preclude a licensee from entering into an agency contract with an owner or a buyer who is a party to an existing agency contract when the contact culminating in such a contract is initiated by the owner or buyer, and not by the licensee, and provided that such agency contract does not become effective until after the expiration or release of any existing agency contract.

History: Amended effective March 1, 2002.

General Authority: NDCC 43-23-11.1(1)

Law Implemented: NDCC 43-23-11.1(1)

TITLE 74
Seed Commission

FEBRUARY 2002

CHAPTER 74-04-01

74-04-01-07. Seed classification and limited generation.

1. All seed potatoes must be limited to seven years of reproduction in the field. Seed lots may be reproduced beyond this limit with prior approval of the state seed department providing the seed lot has been winter tested and eligible for recertification.
2. Prenuclear seed stocks must originate from tissue-culture derived plantlets, minitubers, microtubers, or pathogen-tested stem cuttings. Experimental breeding selections may originate from disease-tested material. The first year of reproduction of these stocks will be regarded as nuclear seed stock (generation zero). Nuclear seed (first field year) is the progeny of pre-nuclear seed, generation 1 (second field year) is the progeny of nuclear seed, generation 2 (third field year) is the progeny of generation 1 seed, generation 3 (fourth field year) is the progeny of generation 2 seed, generation 4 (fifth field year) is the progeny of generation 3 seed, generation 5 (sixth field year) is the progeny of generation 4 seed, and certified generation (seventh field year) is the progeny of generation 5 seed. The certified designation will be granted to lots meeting the minimum standards outlined in section 74-04-01-08 and by approval of the commissioner.
3. Prenuclear seed stocks intended to be grown in the field as nuclear (G0) seed potatoes must be laboratory tested, be demonstrated to be free of the following pathogens, and meet the following standards:

- a. *Clavibacter michiganensis* subsp. *sepedonicus* (ring rot).
 - b. *Erwinia carotovora* (blackleg and soft rot).
 - c. Potato virus A.
 - d. Potato virus M.
 - e. Potato virus X.
 - f. Potato virus Y.
 - g. Potato leafroll virus.
 - h. Potato spindle tuber viroid.
 - i. All micropropagation production must be approved by a certification agency.
 - j. Good records must be maintained on all tests and submitted with the application for field inspection.
 - k. A minimum of one percent of the plantlets must have been tested for the above pathogens using the most reliable testing techniques.
4. Basic seed must originate from sources described above and developed in seed plots grown in tuber-units and have met specific field inspection and winter test standards established by the state seed department. Seed stocks will be grown a limited number of generations.
5. Foundation seed must be seed meeting standards for recertification.
- a. Foundation seed will be produced on farms found to be free of bacterial ring rot for three years. All seed stocks must be replaced on a farm in which bacterial ring rot has been found.
 - b. Excessive blackleg symptoms will be cause for rejection as foundation stock.
6. The certified class must meet the minimum field tolerances described in section 74-04-01-08. The classification serves as a quality standard for commercial planting purposes only and must meet all the requirements and responsibilities of this chapter.
7. Generation numbers increase with years of field reproduction from the original seed source. Generation five will be the final generation of seed eligible for recertification. The certified seed class is not eligible for recertification. If

seed availability is low for a specific potato variety, seed lots with more advanced generation numbers may be eligible for recertification providing the seed lot has passed a winter test and prior approval of the state seed department has been obtained.

- 7- 8. Except for varietal mixtures, seed lots may be downgraded or advanced in generation if they do not meet the disease tolerances for that generation or they may be placed in the certified class and sold by their generation number as certified seed providing they meet the specifications for that class. Disease tolerances for each generation of seed are outlined in the section on field inspection standards.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-08. Field inspection standards.

1. Each seed potato field will be visibly inspected based on sample inspection. The method of inspection and sample size will be at the discretion of the state seed department but a minimum of one hundred plants per acre [.40 hectare] will be inspected. For varieties that do not express readily visible symptoms of a disease, laboratory testing may be done for the pathogen.
2. The field tolerance established will be based on visible symptoms in the samples inspected. Diseases which cannot be observed visibly may be present.

First Inspection Tolerances (%) Generation

	0	1	2	3	4	5	Certified
Varietal mixture	0.1	0.2	0.3	0.5	0.5	0.5	0.5
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.1	0.1	0.1
Severe mosaics (PVY)	0.2	0.3	0.4	0.5	0.5	0.5	0.7 <u>0.0-1.0</u>
Leaf roll (PLRV)	0.2	0.3	0.4	0.5	0.5	0.5	0.7 <u>0.0-1.0</u>
Total serious virus	0.2	0.3	0.4	0.5	0.5	0.5	0.7 <u>1.0</u>
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Second and All Subsequent Inspections Tolerances (%) Generation

	0	1	2	3	4	5	Certified
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Varietal mixture	0.1	0.1	0.2	0.3	0.3	0.3	0.3	
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Severe mosaics (PVY)	0.0	0.1	0.2	0.3	0.3	0.3	0.5	0.0-1.0
Leaf roll (PLRV)	0.0	0.1	0.2	0.3	0.3	0.3	0.5	0.0-1.0
Total serious virus	0.0	0.1	0.2	0.3	0.3	0.3	0.5	1.0
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0	

Late blight found during field inspection and must be confirmed by symptoms or laboratory diagnosis may be before being reported on the inspection report.

* The zero tolerance means that no amount is permissible when inspected. It does not mean that the seed is absolutely free of disease or disease-causing agents, but that none was found during inspection.

Varieties that do not express visible disease symptoms. Potato varieties that do not express visible disease symptoms of a specific pathogen may be subjected to a laboratory test to determine the levels of the pathogen in a seed lot. This testing may occur during the growing season or during the winter test, or both, and may affect eligibility of the seed lot.

Blackleg. Since the blackleg disease may be latent, the inspector will record only the percentage observed during the first and second inspection, and no tolerance will be established. However, any excessive amount can be cause for rejection. Blackleg observations shall be based upon sample plants exhibiting the characteristic black, inky, soft, slimy, decomposed tissue of the stem.

Wilt. Only the percentage noted will be recorded on the first and second inspection, and may include other factors such as maturity, drought, or alkali problems but any excessive amount may be cause for rejection.

There will be zero tolerance for potato wart, powdery-seab, corky ring spot, gangrene, golden nematode, root knot nematode, tuber moths, or other such injurious pests that have never been found and confirmed in North Dakota seed potato fields.

Tolerances for potato virus x tested seed. All of the above tolerances will apply, including a requirement that bacterial ring rot must not have been found on the farm during the season. Seed lots with no more than two percent potato virus x infection may be identified as virus x tested on certification tags.

3. Field conditions.

- a. Insect control must be maintained early and until the vines are killed or matured. Fields suffering undue insect injury may be disqualified for certification. A grower will notify the inspector of the date of spraying and spray material applied.
 - b. Vine killing. If a field has not received final inspection, the grower must obtain approval from the inspector before killing the vines. Furthermore, if the inspector deems it appropriate, strips of unkilld vines must be left in the seed fields to facilitate final inspections. When strips are left for inspection, the first twelve rows (if a six-row planter was used, eight rows if a four-row planter was used) must not be vine-killed. It will be the responsibility of the seed producer to identify where seed planting began. Approximately ten percent of the seed field acreage must be left in strips.
 - c. Any condition such as excess weeds, hail injury, foreign plants, chemical damage, soil conditions, or insect damage that interferes with proper inspection may disqualify the seed for certification.
 - d. Roguing is permitted and recommended in many cases but must be done before the inspector arrives in the field.
 - e. Presence of disease or conditions not mentioned heretofore which may impair seed quality shall constitute cause for rejection or additional testing before final certification. Stocks which show an excessive percentage of total serious virus in official southern sample tests shall be considered ineligible for certification tags.
4. Appeal inspection of rejected fields will be considered, provided application is made within three days after rejection, the field is in good condition for inspection, and no additional roguing is done previous to reinspection.
 5. Bacterial ring rot control.
 - a. All seed produced by a farming operation in which bacterial ring rot has been found will be ineligible for recertification the following year.
 - b. If the farming operation is found to be infected, all equipment and storages must be cleaned and disinfected.
 - c. A farming operation found to be infected on three consecutive years is required to repurchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before being eligible to enter any seed for certification.

- d. A farming operation found to be infected on three consecutive years shall be required to purchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before entering any seed for certification.

History: Effective December 1, 1981; amended effective June 1, 1992; September 1, 1997; July 16, 2001.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-11. Official North Dakota seed potato grades. Final grade determination shall be made based on physical defects, size, shape, and cleanliness. Two grades, first or blue tag, and second or yellow tag, are available for shipment outside the state. A white tag is available but restricted to shipments within the state. The potatoes will be packed in new burlap sacks or clean, disinfected containers identified by official tags attached as to variety, crop year, and grower and accompanied by an official state or federal grade certificate. United States department of agriculture revised standards, effective March 1987, for seed potatoes shall be the official guide for applying and interpreting all definitions and terms used in North Dakota seed potato grades. Grade inspection will be made on a sample basis.

1. First grade blue tag seed potatoes shall consist of unwashed potatoes of one variety which must meet the following requirements:

- a. Shape:

- ~~(1)~~ Fairly well-shaped except for long varieties.

- ~~(a)~~ (1) Dryland type (see definitions section 74-04-01-01).

- ~~(b)~~ (2) Except for shape (see definitions section 74-04-01-01).

- b. Free from:

- (1) Freezing injury.

- (2) Blackheart.

- (3) Soft rot and wet breakdown.

- (4) Late blight tuber rot.

- (5) Bacterial ring rot.

- (6) Nematode or tuber moth injury.

- (7) Fresh cuts or fresh broken-off second growth.

- c. Free from serious damage caused by:
 - (1) Hollow heart.
 - (2) Vascular ring discoloration.
 - (3) Wireworm.
 - (4) Growth cracks.
- d. Free from damage by soil and other causes (see definitions section 74-04-01-01 and classification of defects, section 6, tables I and II of section 74-04-01-11).
- e. Size:
 - (1) Minimum size, unless otherwise specified, must be one and one-half inches [38.1 millimeters] in diameter.
 - (2) Maximum size may not exceed twelve ounces [340.2 grams] for round or intermediate shaped varieties and fourteen ounces [396.9 grams] for long varieties.
 - (3) For all varieties, size B must be from one and one-half inches [38.1 millimeters] to not more than two and one-quarter inches [57.1 millimeters] in diameter.
- f. Tolerances. In order to allow for variations incident to proper grading and handling in the foregoing grade, the following tolerances, by weight, are provided as specified:
 - (1) For defects:
 - (a) Ten percent for potatoes in any lot which are seriously damaged by hollow heart.
 - (b) Ten percent for potatoes in any lot which are damaged by soil. (see definitions section 74-04-01-01).
 - (c) Five percent for potatoes in any lot which are seriously damaged by vascular ring discoloration.
 - (d) Potatoes affected by silver scurf are not grade factors.
 - (e) Not more than ten percent of the potatoes seriously damaged by wireworm.

(f) Eleven percent for potatoes which fail to meet the remaining requirements of grade, including therein not more than six percent for external defects and not more than five percent for internal defects; provided that included in these tolerances not more than the following percentages shall be allowed for the defects listed:

	Percent
Bacterial ring rot	0.00
Late blight tuber rot	1.00
Damage by dry-type or moist-type fusarium tuber rot	2.00
Nematode or tuber moth injury	0.00
Frozen, soft rot, or wet breakdown	0.50
Varietal mixture	0.50

(2) For off-size:

- (a) Undersize. Five percent for potatoes in any lot which fail to meet the required or specified minimum size.
- (b) Oversize. Ten percent for potatoes in any lot which fail to meet the required or specified maximum size.

2. Second grade yellow tag potatoes shall consist of unwashed potatoes that meet the requirements for blue tag grade except for defects caused by hollow heart, wireworm, internal discoloration, firmness, sprouts, and sunken, flattened, or depressed areas with or without underlying flesh discolored, and are not seriously damaged by soil and for increase in maximum size, and for increased tolerance for defects listed below:

a. Tolerances.

{1} a. For defects:

- {a} (1) Twenty percent for potatoes seriously damaged by hollow heart.
- {b} (2) Firmness, sprouts, wireworm, internal discoloration, sunken, flattened, or depressed areas with or without underlying flesh discolored and growth cracks are not grade factors.
- {e} (3) Twenty percent for potatoes which fail to meet the remaining requirements of the grade; provided, that

included in this amount not more than six percent shall be seriously damaged and included therein not more than one-half of one percent shall be allowed for potatoes which are frozen or affected by soft rot or wet breakdown.

- {2} b. Size. Maximum size, unless otherwise specified may not exceed fourteen ounces [396.90 grams] for round or intermediate shaped varieties and sixteen ounces [453.60 grams] for long varieties.
3. White tag. Official white identification tags will be furnished on request for potatoes which passed field inspection requirements and are being transferred for seed purposes, within the state of North Dakota only. Such stock shall meet United States number two grade requirements, except for defects caused by firmness, sunburn, hollow heart, wireworm, and sunken, flattened, or depressed areas with or without underlying flesh discolored. Not more than two percent shall be damaged by dry-type or moist-type fusarium tuber rot. Unless otherwise specified, the maximum size shall be fourteen ounces [396.60 grams] and one and one-half inches [38.1 millimeters] minimum. State seed department grade inspection on white tag lots is not compulsory, but may be obtained upon request.
4. Application of tolerances. Individual samples may not have more than double the tolerances specified, except that at least one defective and one off-size potato may be permitted in any sample; provided that en route or at destination, one-tenth of the samples may contain three times the tolerance permitted for potatoes which are frozen or affected by soft rot or wet breakdown; and provided, further, that the averages for the entire lot are within the tolerances specified for the grade.
5. Samples for grade and size determination. Individual samples shall consist of at least twenty pounds [9.06 kilograms]. The number of such individual samples drawn for grade and size determination will vary with the size of the lot.
6. Classification of defects.
- a. Brown discoloration following skinning, dried stems, flattened depressed areas (showing no underlying flesh discoloration), greening, skin checks, and sunburn do not affect seed quality and may not be scored against the grade.
- b. Table I - External defects.
-

DAMAGE

Defect	When materially detracting from the appearance of the potato	OR	When removal causes a loss of more than 5 percent of the total weight of the potato
Air cracks			x
Bruises			x
Cuts and broken-off second growth (healed)	x		x
Elephant hide (scaling)	x		
Enlarged, discolored, or sunken lenticels	x		
Folded ends	x		
Second growth	x		
Shriveling	When more than moderately shriveled, spongy, or flabby.		
Sprouts	When more than 20 percent of the potatoes in any lot have any sprout more than 1 inch [25.4 mm millimeters] in length.		
Surface cracking	x		x
Flea beetle injury	x		x
Grub damage	x		x
Rodent and/or bird damage	x		x
Wireworm or grass damage	Any hole more than 3/4 inch [19.1 mm millimeters] long or when the aggregate length of all holes is more than 1 1/4 inches [31.8 mm millimeters] ¹ .		
Dry-type or moist-type <u>type-fusarium fusarium</u> rot		x	
Rhizoctonia	x		
Scab, pitted	x		x
Scab, russet	When affecting more than 1/3 of the surface.		
Scab, <u>all</u> surface	When affecting more than 5 percent of the surface.		
Growth cracks	When seriously detracting from the appearance.		
Pressure bruises and			

sunken areas - with
 underlying flesh
 discolored When removal causes
 a loss of more
 than 10 percent
 of the total
 weight.

¹Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 ~~mm~~ millimeters] in diameter or six ounces [170.10 g grams] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

c. Table II - Internal defects.

DAMAGE		
Defect	When materially detracting from the appearance of the potato	OR When removal causes a loss of more than 5 percent of the total weight of the potato
Ingrown sprouts		x
Internal discoloration occurring interior to the vascular ring (such as, internal brown spot, mahogany browning, and heat necrosis).	When more than the equivalent of three scattered light brown spots 1/8 inch [3.2 mm millimeters] in diameter ¹ .	
All other internal discoloration excluding discoloration confined to the vascular ring.		x

SERIOUS DAMAGE		
Defect	When seriously detracting from the appearance of the potato	OR When removal causes a loss of more than 10 percent of the total weight of

Internal
 discoloration
 confined to the
 vascular ring. x
 Hollow heart or When affected area exceeds
 hollow heart with that of a circle 3/4 inch
 discoloration. [19.1 ~~mm~~ millimeters] in
 diameter¹.

¹Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 ~~mm~~ millimeters] in diameter or six ounces [170.10 g grams] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

- 7. Classification and serological tested stocks.
 - a. Foundation seed classification may be indicated on the tag provided the lot meets foundation standards.
 - b. Serologically tested stocks for potato virus x, potato virus s, or potato virus m may be so indicated on the tag if within the specified tolerance during the current growing season.

Blue and yellow tag shipments must be inspected and meet respective grade requirements.

History: Effective December 1, 1981; amended effective June 1, 1985; December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

TITLE 75
Department of Human Services

JANUARY 2002

CHAPTER 75-03-33

75-03-33-01. Definitions.

1. "Advisory committee" means a committee established by the department to review loan and grant applications.
2. "Alternative to nursing facility care" means services described in the department's home and community-based service waiver for aged and disabled individuals eligible for medical assistance.
3. "Assisted living facility" has the meaning provided in North Dakota Century Code section 50-24.5-01.
4. "Basic care facility" has the meaning provided in North Dakota Century Code section 23-09.3-01.
5. "Construction"--means-the-building-of-new-space-to-accommodate basic-care-services;--assisted-living--services;--or--other alternative-to-nursing-facility-care.
- 6.--"Conversion"--means:
 - a.--The--remodeling--of--existing-space-and;--if-necessary;--the construction-of-additional-space-required--to--accommodate basic-care-facility-services;--assisted-living-facility services;--or--other-alternative-to-nursing-facility-care; or
 - b.--Construction--of--a--basic-care-facility;--assisted-living facility;--or--other-alternative-to-nursing-facility-care-if

~~existing--nursing-facility-beds-are-no-longer-licensed-and
the--department--determines--that--construction--is---more
cost-effective-than-the-remodeling-of-existing-space.~~

- 7- "Department" means the North Dakota department of human services.
- 8- 6. "Entity" means a corporation, unincorporated association, business, trust, estate, partnership, state, or two or more individuals having a joint or common economic interest.
- 9- 7. "Individual eligible for assistance" means an individual who meets the qualifying criteria for participation in programs funded by the department, including the medical assistance program, Medicaid waiver for the aged and disabled, service payments for the elderly and disabled, expanded services service payments for the elderly and disabled, and the basic care assistance program.
- 10- 8. "Medical assistance" means a program established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and North Dakota Century Code chapter 50-24.1.
- 11- 9. "Nursing facility" has the same meaning as provided in North Dakota Century Code section 50-24.4-01 for the term "nursing home".
- 12- 10. "Project" means a plan or proposal to ~~develop-the-ability-to~~ provide-a renovate a nursing facility, basic care ~~level--of~~ care facility, or assisted living ~~level-of-care,-or-other~~ alternative--to---nursing facility ~~care;---including---the~~ construction-of-a-new-facility-or-the-conversion-or-remodeling of-an-existing-building.
- 13- 11. "Qualified service provider" means a county agency or independent contractor who has met standards for services and operations established by the department.
- 14- 12. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable cost takes into account that the entity 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.
- 15- 13. "Related organization" means a close relative or individual or an organization which an entity is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the entity. Control exists when an individual or an organization has the power, directly or indirectly, to

significantly influence or direct the policies of an organization or entity.

14. "Renovate" means to restore to an earlier condition as by repairing or remodeling.

16. ~~"Underserved areas" means those areas where the current or projected number of elderly and individuals with disabilities requiring services exceeds or is projected to exceed services available.~~

17: 15. "Unit" means a residential living space for one or more individuals within an assisted living facility.

History: Effective May 31, 2000; amended effective July 1, 2001.

General Authority: NDCC 50-30-05 28-32-02

Law Implemented: NDCC 50-30-01

75-03-33-02. General.

1. ~~The department shall award grants or approve loans to the extent funds are available based on the criteria set forth in this chapter. The department's denial of an application for a grant or loan in one year does not preclude an entity from making future applications. The denial of an application or other adverse action is not appealable.~~

2. ~~A nursing facility or other entity is eligible for a grant or loan to develop a basic care facility, assisted living facility, or other alternative to nursing facility care only to the extent that such services or facilities are developed or located in an underserved area.~~

3. ~~The department may consider information gathered through its own research or submitted by the applicant in making a final determination that an area is underserved. This information may include:~~

a. ~~The number of elderly and individuals with disabilities in the area and the projected number of those individuals;~~

b. ~~The current number of elderly and individuals with disabilities requiring services in the area and the projected number of those individuals;~~

c. ~~The current and projected availability in the area of alternative to nursing facility care in the area; or~~

d. ~~The availability of access to alternative to nursing facility care in the area by individuals eligible for assistance.~~

4. ~~No grant or loan application shall be approved by the department unless the applicant can demonstrate that:~~

a. ~~The basic care services, assisted living services, or other alternative to nursing facility care are affordable to individuals eligible for assistance;~~

b. ~~The basic care services, assisted living services, or other alternative to nursing facility care are unlikely to be available in the area for individuals eligible for assistance; and~~

c. ~~The resulting reduction in the availability of nursing facility service is not expected to cause undue hardship on those individuals requiring nursing facility services.~~
Repealed effective July 1, 2001.

History: Effective May 31, 2000;

General Authority: NDCC 50-30-05

Law Implemented: NDCC 50-30-04

75-03-33-03. Application approval process.

1. At least annually, the department shall request applications from nursing facilities, basic care facilities, and assisted living facilities for grants and loans to develop alternative long-term care services for renovation projects. The department shall establish a calendar for receiving and evaluating proposals. Applicants shall submit documents outlined in the request for applications by the dates indicated by the calendar.

2. For each stage of the application process, the advisory committee shall review the documents submitted by the applicants and make a recommendation to the department regarding the proposed projects.

3. The Bank of North Dakota shall review all loan applications prior to final approval by the department. The Bank of North Dakota may request any financial information it deems necessary for its review of a loan application.

History: Effective May 31, 2000; amended effective July 1, 2001.

General Authority: NDCC 50-30-05 28-32-02

Law Implemented: NDCC 50-30-04, 50-30-05

75-03-33-04. Eligible applicants. The department may approve loans or award grants to the following entities developing a renovating an existing nursing facility, basic care level-of-care facility, or assisted living level-of-care; or other alternatives to nursing facility care:

1. A nursing facility located in North Dakota which has been is enrolled for at least the last three years, as of the date of the application, as a provider under the medical assistance program;
2. An entity licensed enrolled, as of the date of the application, as a basic care provider in this--state North Dakota; or
3. An entity enrolled registered, as of the date of application, as a qualified service provider with the state of an assisted living facility in North Dakota and providing alternatives to nursing facility care;
4. An entity providing, as of the date of application, assisted living services in this state; or
5. An entity considered by the department as appropriate to develop a basic care level of care, assisted living level of care, or other alternative to nursing facility care.

History: Effective May 31, 2000; amended effective July 1, 2001.

General Authority: NDCC 50-30-05 28-32-02

Law Implemented: NDCC 50-30-04

75-03-33-05. Grants and loans Loans.

1. Subject to limitations in this chapter, the department may award grants for:
 - a. Professional fees such as architectural, research, financial, and legal fees that are directly associated with determining the structural and financial viability of a project;
 - b. Startup costs related to a project developing and providing a basic care level of care, assisted living level of care, or other alternative to nursing facility care level of care;
 - c. First-year operating losses associated with a project developing and providing a basic care level of care, assisted living level of care, or other alternative to nursing facility care level of care;
 - d. Training and community education costs associated with a project developing and providing a basic care level of care, assisted living level of care, or other alternative to nursing facility care level of care; or

e. ~~A portion of construction, remodeling, or conversion costs when the interest rate for loan funds exceeds four percent per annum.~~

2. ~~The maximum amount of grant funds that the department may award for construction, remodeling, or conversion costs is limited to the amount needed to reduce loan funds to a level where the monthly payment would be equivalent to the monthly payment had all money requested for construction, remodeling, or conversion been financed with loan funds at an interest rate of four percent per annum.~~
3. Subject to limitations in this chapter, the department may approve loans for construction, remodeling, or conversion costs related to the renovation of a nursing facility, basic care services facility, or assisted living services, or other alternative to nursing facility care.
4. 2. The interest rate for loans distributed from the trust long-term care facility loan fund shall be the thirty-year treasury bill rate effective on the date of notification of initial approval of an entity's application is two percent of the outstanding principal balance of the loan.
3. The department shall approve loans to the extent funds are available based on the criteria set forth in this chapter. The department's denial of an application for a loan does not preclude an entity from making future applications.
4. Effective July 1, 2001, projects converting nursing facility bed capacity to basic care bed capacity shall be given preference for a loan.
5. The department shall not approve loans to renovate an assisted living facility unless the facility can demonstrate that accommodations or housing costs are affordable to individuals eligible for assistance.
6. Loan funds may not be awarded for costs that are payable through other state, local, or federal programs.
7. Loan funds may not be awarded to refinance debt.
8. Loan funds may not be awarded for new construction whether attached or detached from an existing building.

History: Effective May 31, 2000; amended effective July 1, 2001.

General Authority: NDCC 50-30-05 28-32-02

Law Implemented: NDCC 50-30-04

75-03-33-06. Limits.

1. ~~Distribution from the trust fund, whether a grant, loan, or a combination thereof, may not exceed the lesser of one million dollars or the actual cost of the project.~~
2. To be eligible for a grant or loan for construction or remodeling to renovate a nursing facility, basic care facility, or assisted living facility, an entity shall provide at least twenty ten percent of the total cost of the construction or remodeling renovation. Grant or loan Loan funds available for construction or remodeling renovation are limited to the lesser of one million dollars or eighty ninety percent of the actual cost of the construction or remodeling renovation.
3. ~~Grants for architectural, research, financial, and legal fees that are directly associated with determining the financial and structural viability of a project may be paid by the department up to a maximum of twenty thousand dollars, not to exceed actual costs. Grants awarded for these fees shall be considered as part of the total cost of a project subject to any limitations set forth in this chapter.~~
4. ~~Grant or loan funds may not be awarded for costs that are payable through other state, local, or federal programs.~~
5. ~~Grant or loan funds may not be awarded to refinance nursing facility debt or to construct or remodel nursing facility space that will continue to be used to provide nursing facility care.~~
6. 2. Grant funds are payable upon receipt of a claim or submission of a cost report identifying expenses incurred. An entity shall request grant funds within six months after incurring the cost, except when requesting grant funds for operating losses. Grant funds awarded for operating losses are payable on a quarterly or yearly basis upon submission of a cost report. If reimbursement is requested on a quarterly basis, the amount reimbursed for the first three quarters cannot may not exceed ninety percent of the total amount of the grant awarded for the first-year operating loss. A final cost report must be filed no later than eighteen months following the start of operation for final reimbursement. Grant funds reimbursed in excess of the allowable first-year operating loss must be refunded to the department within thirty days of notification by the department to the entity. In addition to other remedies provided by law, the department may deduct the amount of any refund due from an entity from any money owed by the department to the entity or the entity's successor in interest.
7. 3. The department may not award grants pay grant funds or approve loans for costs incurred by an entity for services or items furnished by a related organization that exceed the lower of:

- a. The cost to the related organization;
- b. The amount charged the entity by the related organization;
or
- c. The price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market.

History: Effective May 31, 2000; amended effective July 1, 2001.

General Authority: NDCC 50-30-05 28-32-02

Law Implemented: NDCC 50-30-04

75-03-33-07. Participation requirements.

- 1. The department may not disburse grant funds if the entity discontinues services on or before the date the entity submits a claim requesting payment.
- 2. The entity shall expend grant or loan funds for costs that are directly attributable to the project, in accordance with the application approved by the department.
- 3. The entity shall separately identify related party costs included in any amounts requested from the department.
- 4. The entity may not give preferential treatment to individuals who are not eligible for assistance over individuals eligible for assistance when determining admission or to whom services will be provided.
- 5. An entity accepting loan or grant funds to develop a particular service must enroll or have a provider agreement with the department to provide those services.
- 6. The entity shall make available a minimum of thirty percent of licensed capacity or units constructed, ~~remodeled~~ renovated, or converted, to individuals eligible for assistance, except when the entity can demonstrate that the minimum occupancy cannot be met because of a lack of individuals eligible for assistance requiring accommodations.
- 7. The entity shall comply with all applicable rules, regulations, policies, or procedures established by the department pertaining to the department's assistance programs from which the entity is receiving payment.
- 8. The entity shall comply with all local, state, and national laws and regulations pertaining to construction.
- 9. ~~The--entity--shall--relinquish--the--nursing--facility--bed--license--on--facility--space--converted--to--assisted--living--basic--care--or--other--alternative--to--nursing--facility--care--~~

- ~~10~~. The entity shall be responsible for all incidental costs related to project completion.
- ~~11~~. 10. The entity shall refund to the North Dakota health care trust fund any grant awarded for construction, remodeling renovation, or conversion if the entity or its successor in interest ceases to operate a basic care facility, assisted living facility, or facility providing other alternatives to nursing facility care or does not meet the minimum occupancy requirements during the ten-year period following the date grant funds were awarded. The amount of the grant to be refunded shall be reduced by ten percent per year for each year the entity operated a basic care facility, assisted living facility, or provided other alternatives to nursing facility care.
- ~~12~~. 11. All loans become immediately due and payable if the entity or its successor in interest ceases to operate a nursing facility, basic care facility, assisted living facility, or provide other alternatives to nursing facility care or does not meet the minimum occupancy requirements during the ten-year period following the date the loan was awarded.
- ~~13~~. 12. In addition to other remedies provided by law, the department may deduct the amount of any refund due from an entity from any money owed by the department to the entity or the entity's successor in interest.

History: Effective May 31, 2000; amended effective July 1, 2001.

General Authority: NDCC 50-30-05 28-32-02

Law Implemented: NDCC 50-30-03, 50-30-04

75-03-33-08. Startup costs. Grant awards for startup costs are limited to approved applications submitted prior to July 1, 2001.

1. ~~The--department--may--award--grant--funds--for--startup--costs--~~ Startup costs are those costs incurred by an entity prior to providing services and while developing the ability to provide services. Startup costs generally include the costs of obtaining staff, training and education, and other operating costs incurred while developing the ability to provide services. Startup costs must be reasonable, necessary, and related to assisted living, basic care, or other alternative to nursing facility care.
2. An entity awarded a grant for startup costs must request payment of grant funds no later than six months following the date the entity begins providing services.

History: Effective May 31, 2000; amended effective July 1, 2001.

General Authority: NDCC 50-30-05 28-32-02

Law Implemented: NDCC 50-30-04

75-03-33-09. Operating loss. Grant awards for operating losses are limited to approved applications submitted prior to July 1, 2001.

1. ~~The--department-may-award-grant-funds-for~~ First-year operating losses are operating losses incurred by an entity after July 1, 1999, for the first twelve months of operation following the date an entity begins providing basic care services, assisted living services, or other alternative to nursing facility care. Grants for operating losses shall not exceed the difference between expenses and revenues related to providing the services.
2. Operating expenses shall include only necessary, reasonable, and actual expenses related to the project and incurred while providing services.
3. Operating expenses shall not include costs that are not appropriate, necessary, or proper for the development or operation of the project. These costs include personal expenses of the owners or employees, good will, donations, startup costs, political contributions, fines, or penalties, bad debt, fundraising costs, loss contingencies, or extraordinary losses.
4. Principal and interest rather than depreciation and interest shall be used when determining the operating loss.
5. Operating revenue shall include all revenue received for providing services, but does not include donation income.
6. An entity awarded a grant for operating losses may request payment of grant funds on a quarterly or yearly basis by submitting a cost report on forms prescribed by the department. The entity shall submit a final cost report no later than eighteen months following the start of operation.

History: Effective May 31, 2000; amended effective July 1, 2001.

General Authority: NDCC ~~50-30-05~~ 28-32-02

Law Implemented: NDCC 50-30-04

75-03-33-10. Records and reporting.

1. An entity that receives loan funds shall annually submit to the department cost reports, on forms prescribed by the department, for a period of ten years after following the date the entity begins--providing--basic--care--services;--assisted living--services;--or--other--alternatives-to-nursing-facility care closes the loan.
2. When services are provided in a facility sharing services with a licensed nursing facility or basic care facility, the

allocation methods set forth in chapter 75-02-06 or 75-02-07 shall apply.

3. The entity shall maintain, for a period of not less than three years following the date of submission of the cost report to the department, accurate financial and statistical records of the period covered by the cost report in sufficient detail to substantiate the cost data reported. The entity shall make such records available to the department upon demand.
4. The entity shall maintain complete and separate records regarding loan and grant expenditures.
5. The entity shall maintain occupancy or use statistics that separately identify individuals who are not eligible for assistance from individuals eligible for assistance.
6. The entity shall request payment of grant funds on forms prescribed by the department.

History: Effective May 31, 2000; amended effective July 1, 2001.

General Authority: NDCC 50-30-05 28-32-02

Law Implemented: NDCC 50-30-07

75-03-33-11. Nursing facility licensed bed capacity reduction incentive payments. The department shall make an incentive payment, to the extent funds are available, to a nursing facility that offers to delicense beds based on criteria set forth in this chapter.

1. The department may pay an incentive:
 - a. Up to fifteen thousand dollars per licensed nursing facility bed to a nursing facility that reduces all of its licensed bed capacity;
 - b. Up to twelve thousand dollars per licensed nursing facility bed to a nursing facility that reduces its licensed nursing facility bed capacity by at least eight beds; or
 - c. Up to eight thousand dollars per licensed nursing facility bed to a nursing facility that reduces its licensed nursing facility capacity by seven or fewer beds.
2. The department shall give priority for payment of incentives to facilities offering to reduce their entire licensed bed capacity. If offers exceed funds available, the department shall make a counteroffer to each facility.
3. If, after payment of incentives under subsection 2, funds are available, the department shall make incentive payments to facilities offering to delicense a portion of their licensed

bed capacity. If offers exceed funds available, the department shall give priority to the lowest per bed offer. The department may have facilities resubmit offers if there are two or more offers for the same per bed amount.

4. The department shall request offers on a quarterly basis from nursing facilities to delicense nursing facility bed capacity to the extent funds are available.
5. To be eligible for an incentive payment, a nursing facility's offer to reduce bed capacity must be received by the department by the first day of the quarter for which incentives shall be approved. The effective date of all bed delicensing may not be later than the last day of the quarter following the quarter for which the incentive shall be approved.
6. Incentive payments may only be made for the delicensing of nursing facility bed capacity that is medicaid-certified.
7. The department shall not pay incentives to nursing facilities for nursing facility beds that were delicensed prior to the first day of the quarter for which incentives shall be approved.
8. Incentive payments may not be paid until after the effective date of the reduction in licensed capacity.
9. An incentive may not be paid for nursing facility licensed bed capacity that is converted to basic care bed capacity.
10. No later than the first day of the second month of a quarter, the department shall inform all facilities that have submitted an offer by the first day of the quarter of the department's approval or disapproval of the offer.
11. The department's denial of an offer does not preclude a nursing facility from making future offers.

History: Effective July 1, 2001.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 50-30-07

FEBRUARY 2002

CHAPTER 75-02-06

75-02-06-02. Financial reporting requirements.

1. Records.

- a. The facility shall maintain on the premises the required census records and financial information in a manner sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.
- b. ~~Where~~ When several facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted, for those items known to be lacking support at the reporting facility, with the cost report or must be provided to the local facility prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost. Home office cost reporting and cost allocation must be in conformance with this chapter and HCFA-15 paragraphs 2150 and 2153.
- c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, accurate financial and statistical records of the period covered by such cost report in sufficient detail to substantiate the cost data reported. Each provider shall make such records available upon reasonable demand to representatives of the

department or to the secretary of health and human services or representatives of the secretary.

- d. Except for motor vehicles used exclusively for resident-related activities, the provider shall maintain a mileage log for all motor vehicles which identifies mileage and purpose of each trip. Vehicle mileage for nonresident-related activities must be documented.

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. 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. Ratesetting procedures must prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.
- b. To properly facilitate auditing, the accounting system must be maintained in a manner that allows cost accounts to be grouped by cost center and readily traceable to the cost report.
- c. No later than October first of each year, each facility shall provide to the department:
 - (1) A cost report for the report year ended June thirtieth, on forms prescribed by the department.
 - (2) A Except for state-owned facilities, a copy of an audited report of the facility's financial records from an independent certified public accountant which must include an audited statement of the rates charged to private-pay residents. The examination must be conducted in accordance with generally accepted auditing standards. For provider organizations that operate more than one nursing facility, a consolidated audit report may be provided. The information must be reconciled to each facility's cost report.
 - (3) A complete statement of fees and charges for private-pay residents for the report year.
 - (4) A statement of ownership for the facility, including the name, address, and proportion of ownership of each owner.
 - (a) If a privately held or closely held corporation or partnership has an ownership interest in the

facility, the facility shall report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed in the facility's cost report must be identified regardless of the proportion of ownership interest.

- (b) If a publicly held corporation has an ownership interest of fifteen percent or more in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of ten percent or more.
- (5) 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 the document remains unchanged since the most recent statement given pursuant to this subsection.
- (6) Supplemental information reconciling the costs on the financial statements with costs on the cost report.
- (7) The following information upon request by the department:
 - (a) Access to certified public accountant's audit workpapers that support the audited financial statements.
 - (b) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs.
 - (c) ~~Separate--audited~~ Audited financial statements for any organization, excluding individual nursing facilities of a chain organization owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year.
 - (d) ~~Separate--audited~~ Audited financial statements for every organization with which the facility conducts business and is owned in whole or in part by an individual or entity that has an ownership interest in the facility, together

with supplemental information that reconciles costs on the financial statements to costs for the report year.

- d. In the event a facility fails to file the required cost report on or before the due date, the department may reduce the current payment rate to eighty percent of the rate in effect on October first. Reinstatement of the rate must occur on the first of the month beginning after receipt of the required information, but is not retroactive.
 - e. The facility shall make all adjustments, allocations, and projections necessary to arrive at allowable costs. The department may reject any cost report when the information filed is incomplete or inaccurate. If a cost report is rejected, the department may reduce the current payment rate to eighty percent of its most recently established rate until the information is completely and accurately filed.
 - f. Costs reported must include total costs and be adjusted to allowable costs. Adjustments required by the provider audit unit, to attain allowable cost, though not meeting the medicaid state agency or the state medicaid investigative group criteria of fraud or abuse on their initial identification, may, if repeated on future cost filings, be considered as possible fraud or abuse. The provider audit unit may forward all such items identified to the appropriate medicaid investigative group.
 - g. The department may grant an extension of the reporting deadline to a facility for good cause.
3. The department may perform an audit of the latest available report year of each facility at least once every six years and retain for at least three years all audit-related documents, including cost reports, working papers, and internal reports on rate calculations used and generated by audit staff in performance of audits and in the establishment of rates. Audits must meet generally accepted governmental auditing standards.
 4. Penalties for false reports.
 - a. A false report is one where 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 provider;
 - (3) Prosecute under applicable state or federal law; or
 - (4) Use any combination of the foregoing actions.
- b. The department may determine a report is a false report if a facility claims previously adjusted costs as allowable costs. Previously adjusted costs being appealed must be identified as nonallowable costs. The provider may indicate that the costs are under appeal and not claimed under protest to perfect a claim if the appeal is successful.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990; November 22, 1993; January 1, 1996; January 1, 2002.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-12. Offsets to cost.

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income in any form received by the facility, with the exception of an established rate, income from payments made under the Job--Training-Partnership-Act Workforce Investment Act, bed reduction incentive payments, donations, the deferred portion of patronage dividends credited to the facility and not previously offset, and income from charges for private rooms, special services, or bed holds must be offset up to the total of the appropriate actual allowable cost. If actual costs are not identifiable, income must be offset up to the total of costs described in this section. 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 cost category. Sources of income include:
 - a. "Activities income". Income from the activities department and the gift shop must be offset to activity costs.
 - b. "Dietary income". Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks must be offset to dietary and food costs.
 - c. "Drugs or supplies income". Amounts received from employees, doctors, or others not admitted as residents must be offset to nursing supplies. Medicare part B income for drugs and supplies must be offset to nursing supplies.

- d. "Insurance recoveries income". Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when or if the cost is incurred, if the facility did not adjust the basis for depreciable assets.
 - e. "Interest or investment income". Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, must be offset to interest expense.
 - f. "Laundry income". All amounts received for laundry services rendered to or on behalf of employees, doctors, or others must be offset to laundry costs.
 - g. "Private duty nurse income". Income received for the providing of a private duty nurse must be offset to nursing salaries.
 - h. "Rentals of facility space income". Income received from outside sources for the use of facility space and equipment must be offset to property costs.
 - i. "Telegraph and telephone income". Income received from residents, guests, or employees must be offset to administration costs. Income from emergency answering services need not be offset.
 - j. "Therapy income". Except for income from medicare part A, income from therapy services, including medicare part B income, must be offset to therapy costs unless the provider has elected to make therapy costs nonallowable under subsection 40 of section 75-02-06-12.1.
 - k. "Vending income". 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, all vending income must be offset to the cost category where vending costs are recorded.
 - l. "Bad debt recovery". Income for bad debts previously claimed must be offset to administrative costs in total in the year of recovery.
 - m. "Other cost-related income". Miscellaneous income, including amounts generated through the sale of a previously expensed or depreciated item, e.g., supplies or equipment, must be offset, in total, to the cost category where the item was expensed or depreciated.
2. Payments to a provider by its vendor must ordinarily be treated as purchase discounts, allowances, refunds, or rebates, even though these payments may be treated as

"contributions" or "unrestricted grants" by the provider and the vendor. Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider shall provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.

3. ~~Where~~ When an owner, agent, or employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's, agent's, or employee's own personal use as a result of the provider's purchases from the vendor, the value of the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
4. ~~Where~~ When the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the provider and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.
5. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.
6. For purposes of this section, "medicare part B income" means the interim payment made by medicare during the report year plus any cost settlement payments made to the provider or due from the provider for previous periods which are made during the report year and which have not been reported to the department prior to June 30, 1997.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; June 1, 1988; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 2002.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-16. Rate determinations.

1. For each cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident days for the direct care cost category and resident days for

other direct care, indirect care, and property cost categories. The actual rate as calculated is compared to the limit rate for each cost category to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification. The lesser of the actual rate or the limit rate for other direct care, indirect care, and property costs, and the adjustments provided for in subsections 2 and 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.

2. a. For a facility with an actual rate below the limit rate for indirect care costs, an incentive amount equal to seventy percent times the difference between the actual rate, exclusive of the adjustment factor, and the limit rate in effect at the end of the year immediately preceding the rate year, up to a maximum of two dollars and sixty cents or the difference between the actual rate, inclusive of the adjustment factor and the limit rate for indirect care costs, whichever is less, must be included as part of the indirect care cost rate.
- b. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care and other direct care rates, exclusive of the adjustment factor, or the limit rate in effect at the end of the year immediately preceding the rate year. The three percent operating margin must be added to the rate for the direct care and other direct care cost categories.
3. Limitations.
 - a. The department shall accumulate and analyze statistics on costs incurred by facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.
 - b. The department shall review, on an ongoing basis, aggregate payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If aggregate payments to

facilities exceed estimated payments under medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under medicare payment principles.

- c. All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, ~~1996~~ 1999. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.
- d. The limit rate for each of the cost categories must be established as follows:
 - (1) Historical costs for the report year ended June 30, ~~1996~~ 1999, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.
 - (2) For the rate years year beginning on ~~or~~ after January 1, ~~2000~~ 2002, the limit rate for each cost category is calculated based on:
 - (a) For the direct care cost category, ~~the rate for the facility at the ninety-ninth percentile ranking from paragraph 1, multiplied times a factor of 1.72119, and then~~ seventy-six dollars and seventy-six cents multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4;
 - (b) For the other direct care cost category, ~~the rate for the facility at the eighty-fifth percentile ranking from paragraph 1, multiplied times a factor of 1.05776, and then~~ thirteen dollars and thirty-three cents multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4; and
 - (c) For the indirect care cost category, ~~the rate for the facility at the seventy-fifth percentile ranking from paragraph 1, multiplied times a factor of 1.05776, and then~~ thirty-two dollars

multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4.

(3) For rate years beginning on or after January 1, 2003, the limit rate for each cost category is calculated based on:

(a) For the direct care cost category, eighty-three dollars and thirty-two cents multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4;

(b) For the other direct care cost category, fourteen dollars and fifteen cents multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4; and

(c) For the indirect care cost category, thirty-four dollars and seventy-two cents multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4.

e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.

f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:

(1) Actual census for the report year; or

(2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:

(a) Multiplied times three hundred sixty-five; and

(b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.

g. The department may waive or reduce the application of subdivision f if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:

(1) The facility has reduced licensed capacity; or

- (2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision f.
4. Adjustment factors for direct care, other direct care, and indirect care costs.
 - a. An appropriate composite economic change index may be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care under subsection 1 and for purposes of adjusting limitations of direct care costs, other direct care costs, and indirect care costs under subsection 3, but may not be used to adjust property costs under either subsection 1 or subsection 3.
 - b. For purposes of this section:
 - (1) "Appropriate composite economic change index" means one-half of the increase, if any, in the consumer price index, plus one-half of the increase, if any, in the data resources, incorporated, North Dakota specific nursing home input price index.
 - (2) The "consumer price index increase" means the percentage (rounded to the nearest one-tenth of one percent) by which consumer price index for urban wage earners and clerical workers (CPI-W), all items, United States city average for the quarter ending September thirtieth of the year immediately preceding the rate year (as prepared by the United States department of labor) exceeds that index for the quarter ending September thirtieth of the second year preceding the rate year.
 - (3) "Data resources, incorporated, North Dakota specific nursing home input price index" means:
 - (a) For purposes of determining the adjustment factor applicable to historical costs under subsection 1, for direct care, other direct care, and indirect care, the composite index for the eighteen-month period beginning immediately after the report year ends; and
 - (b) For purposes of determining the adjustment factor applicable to the limit rates for direct care, other direct care, and indirect care under subsection 3, the composite index for the period beginning January 1, 2000 2002, and ending at the end of the rate year.

5. Rate adjustments.

a. Desk audit rate.

- (1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by telephone or mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department shall review the information and make appropriate adjustments.
- (2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.
- (3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b of ~~this~~ subsection, private-pay rates may not exceed the desk audit rate except as provided for in section 75-02-06-22 or subdivision c.
- (4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. No decision on the request for reconsideration of the desk rate may be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.
- (5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.
- (6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year that result in a change of at least ten cents per day for the rate weight of one.

b. Final rate.

- (1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is

effective January first of each rate year unless the department specifically identifies an alternative effective date.

- (2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least ten cents per day for the rate weight of one that are found during a field audit or are reported by the facility within twelve months of the rate yearend.
- (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c.
- (4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.
- (5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
 - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least ten cents per day for the rate weight of one must result in a change to the final rate. The change must be applied retroactively as provided for in this section.
 - (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least ten cents per day for the rate weight of one had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.
 - (c) Adjustments resulting from an audit of home office costs, that result in a change of at least ten cents per day for the rate weight of one, must be included as an adjustment in the report year in which the costs were incurred.
 - (d) The two report years immediately preceding the report year to which the adjustments, errors, or

omissions apply may also be reviewed for similar adjustments, errors, or omissions.

- c. Pending decision rates for private-pay residents.
- (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.
 - (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to ~~private-paying~~ private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.
 - (3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each ~~private-paying~~ private-pay resident from the date the facility charges a ~~private-paying~~ private-pay resident the pending decision rate.
 - (4) If the pending decision rate paid by a ~~private-paying~~ private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully

administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.

- d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by ~~private-paying~~ private-pay residents. A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least twenty-five cents per day, except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

6. Rate payments.

- a. The rate as established must be considered as payment for all accommodations and includes all items designated as routinely provided. No payments may be solicited or received from the resident or any other person to supplement the rate as established.
- b. The rate as established must be paid by the department only if the rate charged to private-pay residents for semiprivate accommodations equals the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to the department for the same bed type, i.e., hospital or leave days.
- c. If the established rate exceeds the rate charged to a private-pay resident, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund must be the difference between the established rate and the rate charged the private-pay resident times the number of medical assistance resident days paid during the period in which the established rate exceeded the rate charged to private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.
- d. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments may not be used to change such peer groupings,

limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

- e. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year that exceed the established rate may be made unless specifically provided for in this section.

7. Partial year.

- a. Rates for a facility changing ownership during the rate period are set under this subdivision.

- (1) The rates established for direct care, other direct care, indirect care, operating margins, and incentives for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:

- (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and

- (b) For a facility with less than four months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 4; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.

- (2) Unless a facility elects to have a property rate established under paragraph 3, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:

- (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and

- (b) For a facility with less than four months of operation under the new ownership during the report year, by using the rate established for

the previous owner for the previous rate year; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.

- (3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
- b. For a new facility, the department shall establish an interim rate equal to the limit rates for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the property rate. The property rate must be calculated using projected property costs and projected census. The interim rate must be in effect for no less than ten months and no more than eighteen months. Costs for the period in which the interim rate is effective must be used to establish a final rate. If the final rates for direct care, other direct care, and indirect care costs are less than the interim rates for those costs, a retroactive adjustment as provided for in subsection 5 must be made. A retroactive adjustment to the property rate must be made to adjust projected property costs to actual property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs must be the greater of actual census, projected census, or census imputed at ninety-five percent of licensed beds.
- (1) If the effective date of the interim rate is on or after March first and on or before June thirtieth, the interim rate must be effective for the remainder of that rate year and must continue through June thirtieth of the subsequent rate year. The facility shall file by March first an interim cost report for the period ending December thirty-first of the year

in which the facility first provides services. The interim cost report is used to establish the actual rate effective July first of the subsequent rate year. The partial year rate established based on the interim cost report must include applicable incentives, margins, phase-ins, and adjustment factors and may not be subject to any cost settle-up. The cost reports for the report year ending June thirtieth of the current and subsequent rate years must be used to determine the final rate for the periods that the interim rate was in effect.

- (2) If the effective date of the interim rate is on or after July first and on or before December thirty-first, the interim rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report year ending June thirtieth of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the subsequent rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the periods the interim rate was in effect.
 - (3) If the effective date of the interim rate is on or after January first and on or before February twenty-ninth, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. The facility shall file a cost report for the period ending June thirtieth of the current rate year. This cost report must be used to establish the rate for the subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the current rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the period that the interim rate was in effect.
 - (4) The final rate for direct care, other direct care, and indirect care costs established under this subdivision must be limited to the lesser of the limit rate for the current rate year or the actual rate.
- c. For a facility with renovations or replacements in excess of one hundred thousand dollars, and without a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, plus a property

rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first day of the month beginning after the date the project is completed and placed into service or the first day of the month beginning after the date the request for a projected property rate is received by the department, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

- d. For a facility with a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, must be applied to all licensed beds. An interim property rate must be established based on projected property costs and projected census. The interim property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health or the first day of the month beginning after the date when the request for a projected property rate is made to the department, whichever is later, through the end of the rate year. The facility shall file by March first an interim property cost report following the rate year. The interim cost report is used to determine the final rate for property and to establish the amount for a retroactive cost settle-up. The final rate for property is limited to the lesser of the interim property rate or a rate based upon actual property costs. The property rate for the subsequent rate year must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on property costs actually incurred during the report year; and may not be subject to retroactive cost settle-up. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

- e. For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.
 - f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.
 - g. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subdivision c or d and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subdivision c or d may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
8. One-time adjustments.
- a. Adjustments to meet certification standards.
 - (1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.
 - (2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:
 - (a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;
 - (b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and

- (c) Provide a detailed list of any other costs necessary to meet survey standards.
 - (3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the limit rate.
 - (4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.
- b. Adjustments for unforeseeable expenses.
- (1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.
 - (2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:
 - (a) An explanation as to why the facility believes the expense was unforeseeable;
 - (b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and
 - (c) A detailed breakdown of the unforeseeable expenses by expense line item.
 - (3) The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on ~~their~~ its background and knowledge of nursing care industry and business trends.
 - (4) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.

- (5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

c. Adjustment to historical operating costs.

- (1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.
- (2) The following conditions must be met before a facility can receive the adjustment:
 - (a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;
 - (b) The facility shall document all available resources, including efficiency incentives, if used to increase nursing hours, are not sufficient to meet the minimum standards; and
 - (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.
- (3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any rate limitations that may apply.
- (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 5.

- (5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.
- d. Adjustments for disaster recovery costs when evacuation of residents occurs.
- (1) A facility may incur certain ~~cost~~ costs when recovering from a disaster such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.
 - (2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.
 - (3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.
 - (4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for the first six months following the month the facility readmits the first resident.
 - (5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.
9. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds ten cents per day for the rate weight of one.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002.

General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-16.1. Adjustments for salary and benefit enhancements.

1. The department shall provide for a salary and benefit enhancement rate for July 1, 2001, and January 1, 2002. A facility must submit a plan detailing enhancements for employee salary and benefits at least forty-five days prior to the implementation of the enhancement by the facility.
2. The salary and benefit enhancement rate shall be added to the rate otherwise established under this chapter on or after July 1, 2001. The enhancement rate may not be effective before the implementation date of the enhancement.
3. The salary and benefit enhancement rate may not exceed ten dollars and ten cents for the rate year beginning January 1, 2001. For the rate year beginning January 1, 2002, the salary and benefit enhancement rate established for the prior year shall be increased by one-half of the adjustment factor set forth in subparagraph a of paragraph 3 of subdivision b of subsection 4 of section 75-02-06-16.
4. Any additional funds provided by the salary and benefit enhancement rate must be used to provide the enhancements outlined in the facility's plan and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5 of section 75-02-06-16.

History: Effective July 1, 2001.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

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 factors" means indices used to adjust reported costs for inflation or deflation based on forecasts for the 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. "Alzheimers 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.

- 8- 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.
- 9- 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.
- 10- 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.
- 11- 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.
- 12- 13. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
- 13- 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.
- 14- 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 decided for purposes of cost assignment and allocations.
- 15- 16. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information of the facility.
- 16- 17. "Department" means the department of human services.
- 17- 18. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
- 18- 19. "Depreciation" means an allocation of the cost of a depreciable asset over its estimated useful life.

- 19- 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 1998 edition.
- 20- 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.
- 21- 22. "Direct care costs" means the cost category for allowable resident care, activities, social services, and laundry;--and food costs.
- 22- 23. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
- 23- 24. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the facility premises.
- 24- 25. "Eligible beneficiary" means a facility resident who is eligible for aid to vulnerable aged, blind, and disabled persons.
- 25- 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.
- 26--"~~Established rate~~"--~~means the rate paid for services.~~
27. "Facility" means a licensed basic care facility not owned or administered by state government and which does not meet the definition of an alzheimers and related dementia facility or traumatic brain injury facility.
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.
- ~~32:~~ 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.
- ~~33:~~ 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.
- ~~34:~~ 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.
- ~~35:~~ 36. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
- ~~36:~~ 37. "In-house resident day" for basic care 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.
- ~~37:~~ 38. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
- ~~38:~~ 39. "Limit rate" means the rate established as the maximum allowable rate.
- ~~39:~~ 40. "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.
- ~~40:~~ 41. "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.
- ~~41:~~ 42. "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.

- 42- 43. "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.
- 43- 44. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
45. "Personal care rate" means the sum of the rates established for direct care costs, indirect care costs, and the operating margin.
- 44- 46. "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.
- 45- 47. "Private room" means a room equipped for use by only one resident.
- 46- 48. "Property costs" means the cost category for allowable real property costs and passthrough costs.
- 47- 49. "Provider" means the organization or individual who has executed a provider agreement with the department.
- 48- 50. "Rate year" means the year from July first through June thirtieth.
- 49- 51. "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.
- 50- 52. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.
- 51- 53. "Report year" means the provider's fiscal year ending during the calendar year immediately preceding the rate year.

- 52- 54. "Resident" means a person who has been admitted to the facility but not discharged.
- 53- 55. "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.
56. "Room and board rate" means the sum of the rates established for property costs and food and plant costs.
- 54- 57. "Routine hair care" means hair hygiene which includes grooming and shampooing.
- 55- 58. "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.
59. "Statewide minimum room and board rate" means a rate calculated based on the sum of the maximum amount of supplemental security income an eligible individual can receive as of the beginning of the rate year less sixty dollars multiplied by twelve and then divided by three hundred sixty-five.
- 56- 60. "Therapeutic leave day" means any day that a resident is not in the facility or in a licensed health care facility.
- 57- 61. "Top management personnel" means corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
62. "Traumatic brain injury facility" means a licensed basic care facility which primarily provides services to individuals with traumatic brain injuries.
- 58- 63. "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.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-04. Participation requirement. Beginning--July-1, 1995, a facility may not receive aid to vulnerable aged, blind, and disabled persons assistance payments unless it complies with all provisions of this section.

1. A facility shall have an effective provider agreement with the department.
2. A facility may charge to hold a bed for a period in excess of the periods covered under subsection 2 or 3 of section 75-02-07.1-05 if:
 - a. The resident, or a person acting on behalf of the resident, has requested the bed be held and the facility informs the person making the request, at the time of the request, of the amount of the charge; and
 - b. For an eligible beneficiary, the payment comes from sources other than from the beneficiary's monthly income.
3. A facility may not violate any resident rights as set forth in North Dakota Century Code section 50-10.2-02. Collection and use by a facility of financial information of any applicant pursuant to a screening process does not raise an inference that the facility is using that information for any purpose prohibited by North Dakota Century Code section 50-10.2-02 or this section.
4. A facility may not require any vendor of medical care, who is paid by medical assistance under a separate fee schedule, to pay any portion of the vendor's fee to the facility except as payment for the fair market value of renting or leasing space or equipment of the facility or purchasing support services, if those agreements are disclosed to the department.
5. A facility shall file on behalf of each resident or assist each resident in filing requests for any third-party benefits to which the resident may be entitled.
6. If a facility does not comply with provisions of this section, the department, if extreme hardship to the residents would otherwise result, may continue to make aid to vulnerable aged, blind, and disabled persons program payments to the facility for a period not to exceed ninety days from the date of mailing a written notice of a violation of this section. The facility may seek reconsideration of or appeal the department's action.
7. A facility may charge a higher rate for a private room used by an eligible beneficiary if:

- a. The private room is not necessary to meet the eligible beneficiary's care needs;
- b. The eligible beneficiary, or a person acting on behalf of the eligible beneficiary, has requested the private room;
- c. The facility informs the individual making the request, at the time of the request, of the amount of payment and that the payment must come from sources other than the eligible beneficiary's monthly income;
- d. The payment does not exceed the amount charged to private-pay individuals for use of a private room; and
- e. Effective January 1, 2002, appropriate semiprivate accommodations are available at the time the first charges for a private room apply.

History: Effective July 1, 1996; amended effective July 1, 2001.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-05. Resident census.

1. Adequate census records must be prepared and maintained on a daily basis by the facility to allow for proper audit of the census data. The daily census records must include:
 - a. Identification of the resident;
 - b. Entries for all days, and not just by exception;
 - c. Identification of type of day, i.e., medical care, in-house; and
 - d. Monthly totals by resident and by type of day.
- 2.. A maximum of fifteen days per occurrence may be allowed for payment of the room and board rate for medical care leave. Medical care leave days in excess of fifteen consecutive days not billable to the aid to vulnerable aged, blind, and disabled persons program are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-07.1-04.
3. A maximum of twenty-eight therapeutic leave days per rate year may be allowed for payment of the room and board rate. Nonbillable therapeutic leave days in excess of twenty-eight are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-07.1-04.

4. Residents admitted to the facility through a hospice program, or electing hospice benefits while in a facility, must be identified as hospice residents for census purposes.
5. Payment may not be sought for payment of the personal care rate for any day in which an eligible beneficiary is not in the facility or for the day of discharge. Payment of the personal care rate may be sought for the day of death.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-06. Direct care costs. Direct care costs include only those costs identified in this section.

1. Resident care.

- a. Salary and employment benefits for the director of resident care, resident care supervisors, inservice trainers for resident care staff, registered nurses, licensed practical nurses, quality assurance personnel, resident care aides, medication aides, speech, occupational, and physical therapists.
- b. Routine personal hygiene items and services necessary to meet the needs of residents, including hair hygiene supplies, combs, brushes, soap, razors, shaving cream, toothbrush, toothpaste, denture adhesive, dental floss, moisturizing lotion, tissues, deodorant, sanitary napkins, towels, washcloths, nail hygiene services, bathing, and personal laundry.
- c. The cost of supplies used to provide therapy, or noncapitalized therapy or resident care equipment.
- d. Medically necessary items, services, and durable medical equipment if the facility chooses to provide them.

2. ~~Food:---The---cost---of---consumable---food---products---and---dietary supplements:~~

3- ~~Laundry.~~

- a. Salary and employment benefits for a director of laundry, laundry aides, seamstresses, and other personnel who gather, transport, sort, and clean linen and clothing.
- b. The cost of laundry supplies including detergents, softeners, and linens.

- c. Contracted services for laundry.
- 4- 3. **Social services.** Salary and employment benefits or consultant fees for social workers or social worker designees.
- 5- 4. **Activities.**
 - a. Salary and employment benefits for activities director, activities aides, and other personnel who directly provide for leisure and recreational activities.
 - b. The cost of leisure and recreational activities and supplies including games, ceramics, pets, out-of-house activities, and noncapitalized exercise equipment.

History: Effective July 1, 1996; amended effective July 1, 2001.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-07. Indirect care costs. Indirect care costs include all costs specifically identified in this section. Indirect care costs must be included in total, without direct or indirect allocation to other cost categories unless specifically provided for elsewhere.

- 1. **Administration.** Costs for administering the overall activities of the facility include:
 - a. Salary and employment benefits for administrators, except that part of an administrator's salary may be allocated to other cost categories provided adequate records identifying the hours and services provided are maintained by the facility.
 - b. Salary and employment benefits for assistant administrators, top management personnel, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing, receiving and store personnel, and salary and employment benefits of all personnel not designated in other cost categories.
 - c. Board of directors' fees and related travel expenses.
 - d. Security personnel or services.
 - e. Supplies except as specifically provided for in the direct care and other cost centers of the indirect care cost category.
 - f. Insurance, except insurance included as a fringe benefit and insurance included as part of related party lease costs.

- g. Telephone.
 - h. Postage and freight.
 - i. Membership dues and subscriptions.
 - j. Professional fees for services such as legal, accounting, and data processing.
 - k. Central or home office costs including property costs, but not including costs that may be allocated to other cost centers under subsection 4 of section 75-02-07.1-12.
 - l. Advertising and personnel recruitment costs.
 - m. Management consultants and fees.
 - n. Business meetings, conventions, association meetings, and seminars.
 - o. Travel.
 - p. Training, including inservice training.
 - q. Business office functions.
 - r. Computer software costs, except costs that must be capitalized, and computer maintenance contracts.
 - s. Working capital interest.
 - t. Any costs that cannot be specifically classified to other cost categories.
2. **Chaplain.**
- a. Salary and employment benefits for all personnel assigned to meet the spiritual needs of the residents.
 - b. Supplies and other expenses related to meeting the spiritual needs of the residents.
3. **Pharmacy.** Compensation for pharmacy consultants.
4. **Plant operations.**
- a. Salary and employment benefits for a director of plant operations, engineers, carpenters, electricians, plumbers, caretakers, vehicle drivers, and all other personnel performing tasks related to maintenance or general plant operations.

b. ~~The cost of heating and cooling, electricity, water, sewer and garbage, and cable television.~~

e. ~~Repairs and maintenance contracts and purchased services.~~

d. ~~Supplies necessary for repairs and maintenance of the facility, including hardware, building materials and tools, other maintenance-related supplies, and noncapitalized equipment not included elsewhere.~~

e. Motor vehicle operating and resident transportation expenses.

5. Housekeeping.

a. Salary and employment benefits for a director of housekeeping, housekeepers, and other cleaning personnel.

b. Cost of cleaning supplies including soaps, waxes, polishes, household paper products such as hand towels and toilet paper, and noncapitalized cleaning equipment.

c. Contracted services for housekeeping.

6. Dietary.

a. Salary and employment benefits for a director of dietary, nutritionists, dieticians, cooks, and kitchen personnel involved in the preparation and delivery of food.

b. The cost of dietary supplies and utensils including dietary paper products, silverware, and noncapitalized kitchen and dining equipment.

7. Medical records. Salary and employment benefits for personnel performing medical records maintenance.

History: Effective July 1, 1996; amended effective July 1, 2001.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-08.1. Food and plant costs. Food and plant costs include only those costs identified in this section.

1. The cost of consumable food products and dietary supplements.

2. The cost of heating and cooling, electricity, water, sewer and garbage, and cable television.

3. Repairs and maintenance contracts and purchased services.

4. Supplies necessary for repairs and maintenance of the facility, including hardware, building materials and tools, other maintenance-related supplies, and noncapitalized equipment not included elsewhere.

History: Effective July 1, 2001.

General Authority: NDCC 50-06-15

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-20. Rate calculation.

1. For each cost category, the actual rate is calculated using allowable historical operating costs plus adjustment factors provided for in section 75-02-07.1-21 for the direct care and indirect care, and food and plant cost categories, divided by actual in-house resident census days for the direct care and indirect care cost category categories and resident days as provided--for--in--section-75-02-07.1-22 for the indirect-care food and plant and property cost categories. The actual rate as calculated for direct care and indirect care is compared to the limit rate for each category to determine the lesser of the actual rate or the limit rate. The lesser of the actual rates or the limit rates for direct care and indirect care costs, ~~the actual rate for property~~, and the operating margin provided for in section 75-02-07.1-22 are then added to establish the facility's personal care rate. The rates for property costs and food and plant costs are added to establish the facility's room and board rate. The sum of the personal care rate and the actual room and board rate is the facility's established rate.
2. The established rate for a licensed nursing facility providing services to an eligible beneficiary is:
 - a. For a nursing facility that shares basic services with a licensed basic care facility, the rate established for the licensed basic care facility as provided for in subsection 1; and
 - b. For a nursing facility that does not share basic services with a licensed basic care facility, the sum of the limit rates for direct care and indirect care costs, the maximum three percent operating margin calculated in section 75-02-07.1-21, and a room and board rate calculated using allowable food and plant property costs and census used in establishing the nursing facility's property--rate component-established current rate under chapter 75-02-06.
3. If the actual room and board rate component of an established rate calculated using the provisions of subsection 1 or 2 is less than the statewide minimum room and board rate, the actual room and board rate component of the established rate

shall be increased to the statewide minimum room and board rate and the personal care rate component of the established rate shall be decreased by the same amount.

History: Effective July 1, 1996; amended effective July 1, 1999; July 1, 2001.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-21. Adjustment factors for direct care and indirect care, and food and plant costs. The increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average, must be used to adjust historical allowable costs. The increase in the consumer price index means the percentage by which that consumer price index for the month of March, as prepared by the United States department of labor, exceeds that index for the month of March of the preceding year. The increase in consumer price index must be used to adjust direct care and indirect care, and food and plant costs. Costs reported for a period other than twelve months ended December thirty-first of a report year must be adjusted to December thirty-first of a report year using the increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average, over the period ending December thirty-first of the report year, and beginning at the end of the month within which the report period ends.

History: Effective July 1, 1996; amended effective July 1, 2001.

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.

1. Historical costs, as adjusted, for all facilities for which a rate is established, 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 by the actual rate and determine the position in the ranking below which lie eighty percent of the ranked beds. This rate is the limit rate. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate for that cost category.
2. If at any time the total number of licensed basic care beds in North Dakota exceeds one thousand three hundred eighty-two, before the beginning of each quarter beginning thereafter, the department shall review the sufficiency of appropriations provided to pay the estimated cost of supplements. If the appropriations appear insufficient, the department shall

determine reduced rates for all facilities with substantial capacity increases and for all new facilities.

3. The reduced rate for each facility subject to a reduced rate is determined by:
 - a. Establishing the total appropriation available for supplements during that reduced rate quarter;
 - b. Projecting the number of beds, in all facilities with substantial capacity increases and all new facilities, that will likely be occupied by persons eligible for a supplement during the reduced rate quarter;
 - c. Projecting expenditures for supplements, for that reduced rate quarter, in all facilities not subject to reduced rates;
 - d. Projecting expenditures for supplements, during a reduced rate quarter, that would be made in all facilities with substantial capacity increases and in all new facilities, if those facilities were not subject to limits;
 - e. Subtracting the amount projected under subdivision c from the amount determined under subdivision a;
 - f. Subtracting the amount determined under subdivision e from the amount projected under subdivision d;
 - g. Dividing the amount determined under subdivision f by the number projected under subdivision b; and
 - h. Reducing the established rate set for that facility by the amount determined under subdivision g.
4. A facility is not subject to reduced rates if it is not a new facility or if it has not been subject to a substantial capacity increase. All new facilities and all facilities subject to a substantial capacity increase are subject to reduced rates.
5. A reduced rate is effective during the reduced rate quarter for which it is established.
6. A facility subject to a reduced rate must be informed of the reduced rate no later than the usual date supplement payment is made to the facility for services furnished during the first month of the reduced rate quarter.
7. 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.

8. ~~Resident--days--used--to--calculate--the--actual--rate--for--the--indirect--care--and--property--cost--categories--is--the--actual--census--for--the--report--year.~~
9. For purposes of this section:
 - a. "New facility" means a facility for which no rate was set, under this chapter, for any period before July 1, 1995.
 - b. "Quarter" means one of the four periods occurring in each calendar year, beginning January first and ending March thirtieth, beginning April first and ending June thirtieth, beginning July first and ending September thirtieth, or beginning October first and ending December thirty-first.
 - c. "Substantial capacity increase" means a capacity increase to a licensed capacity six or more licensed beds greater than a facility's licensed capacity on July 1, 1995, or a capacity increase to a licensed capacity equal to or greater than one and one-tenth times that facility's licensed capacity on July 1, 1995, whichever is less.
 - d. "Supplement" means payments provided or the provision of payments under North Dakota Century Code chapter 50-24.5.

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; July 1, 2001.

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 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 five 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 five 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 five 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 five 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 five 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.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-24. Rate payments.

1. The established rate must be considered as payment for all accommodations and includes all items includable as allowable under this chapter for ~~individuals-whose-rate-is-paid-in-whole-or-in-part-by-the--department~~ an eligible beneficiary. No payment may be solicited or received from the ~~resident~~ eligible beneficiary or any other person to supplement the rate as established, unless otherwise provided for in this chapter.
2. The department may supplement the income of an eligible beneficiary receiving necessary basic care services only if the rate charged to private-pay residents for semiprivate accommodations equals or exceeds the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to an eligible beneficiary for the same bed type, including medical leave or therapeutic leave days.
3. If the established rate exceeds the rate charged to a private-pay resident on any given date, the facility shall immediately report that fact to the department and charge an eligible beneficiary at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment to the department. The refund must be the difference between the established rate and the rate charged the private-pay residents times the number of resident days paid for eligible beneficiaries during the period in which the established rate exceeded the rate charged to the private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.

4. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year that exceed the established rate may be made unless specifically identified in other sections of this chapter.
5. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments may not be used to change the peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

History: Effective July 1, 1996; amended effective July 1, 2001.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-25. Special rates.

1. For a new facility, the department shall establish an interim rate equal to the lesser of the limit rate rates for direct and indirect care for the rate year in which the facility begins operation, plus the maximum operating margin, plus a room and board rate equal to the average food and plant rate, of all facilities for which a rate was established for the rate year, plus a projected property rate calculated based on projected property costs and imputed census, or a rate established based on an annual budget submitted by the facility. The interim rate may be in effect for no more than eighteen months. No retroactive adjustment may be made to the rate.
 - a. If the effective date of the interim rate is on or after September first and on or before December thirty-first, the interim rate must be effective for the remainder of that rate year and must continue through December thirty-first of the subsequent rate year. The facility shall file an interim cost report by August thirty-first for the period ending June thirtieth of the period in which the facility first provides services. The interim cost report is used to establish the actual rate to be effective January first of the subsequent rate year.
 - b. If the effective date of the interim rate is on or after January first and on or before June thirtieth, the interim rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report year ending December thirty-first of the subsequent rate year. This cost

report must be used to establish the rate for the next subsequent rate year.

- c. If the effective date of the interim rate is on or after July first and on or before August thirty-first, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. The facility shall file a cost report for the period ending December thirty-first of the current rate year. This cost report must be used to establish the rate for the subsequent rate year.
2. For a facility with renovations or replacements in excess of fifty thousand dollars, and without a significant capacity increase, the rate established for direct care and, indirect care, food and plant, and the operating margin, based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first of the month following the time the project is completed and placed into service or on the first of the month following submission of a request for a projected property rate, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year. ~~The direct care, indirect care, and property rates must be added and, if in excess of the limit rate, must be limited to the limit rate.~~
3. For a facility with a significant capacity increase, the rate established for direct care and, indirect care, food and plant, and the operating margin, based on the last report year, must be applied to all licensed beds. A property rate must be established based on projected property costs and projected census. The property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health through the end of the rate year. ~~The direct care, indirect care, and projected property rates must be added and, if in excess of the limited rate, must be limited to the limit rate.~~

4. For a facility with no significant capacity increase and no renovations or replacements in excess of fifty thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.
5. Rates for a facility changing ownership during the rate period are set under this subsection. The total rate established by adding the components of the rate may not exceed the limit rate established under subsection 1 of section 75-02-07.1-22.
 - a. The rates established for direct care and, indirect care, food and plant, and the operating margin for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:
 - (1) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; or
 - (2) For a facility with less than four months of operations under the new ownership during the report year:
 - (a) By indexing the rate established for the previous owner forward using the adjustment factors as set forth in section 75-02-07.1-21; or
 - (b) If the previous owner submits a cost report and allows the audit of that cost report, and if the change of ownership occurred after the report year end but prior to the beginning of the next rate year, by establishing a rate based on the previous owner's cost report.
 - b. Unless a facility elects to have a property rate established under subdivision c, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:
 - (1) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
 - (2) For a facility with less than four months of operation under the new ownership during the report year:
 - (a) By using the rate established for the previous owner for the previous rate year; or

- (b) If the previous owner submits a cost report and allows the audit of that cost report, and if the change of ownership occurred after the report year end but prior to the beginning of the next rate year, by establishing a rate based on the previous owner's cost report.
 - c. A facility may choose to have a property rate established during the remainder of the rate year and the subsequent rate year based on interest and principal payments on the allowable portion of debt expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on subdivision b, multiplied by actual census for the period, must be determined. The property rate established in each of the twelve years, beginning with the first rate year following the use of a property rate established using this subdivision, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
- 6. For a facility terminating its participation in the aid to vulnerable aged, blind, and disabled persons program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until eligible beneficiaries can be relocated.
- 7. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subsection 2 or 3 and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subsection 2 or 3 may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
- 8. For purposes of this section, "new facility" means a facility operated in a premises for which no costs were claimed and no rate was set under this chapter for any period prior to July 1, 1995, but does not mean a facility with:
 - a. Renovations or replacements;
 - b. A capacity increase; or
 - c. A change of ownership.
- 9. When a nursing facility converts licensed bed capacity to basic care bed capacity and the nursing facility does not

share basic services with a licensed basic care facility prior to the conversion:

- a. For the rate year in which the conversion occurs, the personal care rate shall be the sum of the limit rates for the direct and indirect cost category, the maximum operating margin, and the room and board rate shall be calculated using the nursing facility's food and plant and property costs and census applicable to the rate year;
 - b. For the first rate year following the rate year in which the conversion occurs, the personal care rate shall be the sum of the limit rates for the direct and indirect cost category, the maximum operating margin, and the room and board rate shall be calculated using the nursing facility's food and plant and property costs and census applicable to the rate year; and
 - c. A cost report must be used to establish the rates for all subsequent rate years.
10. When a nursing facility converts licensed bed capacity to basic care bed capacity and the nursing facility shares basic services with a licensed basic care facility prior to the conversion, the rates established for the licensed basic care facility shall apply to the converted bed capacity.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001.

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. A facility must submit a plan detailing enhancements for employee salary and benefits at least forty-five days prior to the implementation of the enhancement by the facility.
- b. The salary and benefit enhancement rate shall be added to the personal care rate otherwise established under this chapter for the rate years beginning July 1, 2001, and July 1, 2002. The enhancement rate may not be effective before the implementation date of the enhancement by the facility.
- c. The salary and benefit enhancement rate may not exceed one dollar and eighty-two cents for the rate year beginning July 1, 2001. For the rate year beginning July 1, 2002, the salary and benefit enhancement rate effective July 1,

2001, 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, 2002, 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 the enhancements outlined in the facility's plan 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.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-27. No rate adjustments of less than five twenty-five cents per day. Under no circumstances, including an appeal or judicial decision to the effect that a rate was erroneously established, may a rate adjustment be made unless the cumulative impact of adjustments equals or exceeds five twenty-five cents per day.

History: Effective July 1, 1996; amended effective January 1, 2002.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)