NORTH DAKOTA ADMINISTRATIVE CODE

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Prepared by the Legislative Council staff
for the
Administrative Rules Committee

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TITLE 4

MANAGEMENT AND BUDGET, OFFICE OF

JULY 2022

ARTICLE 4-07
ORGANIZATION OF HUMAN RESOURCE MANAGEMENT SERVICES

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CHAPTER 4-07-02

4-07-02-01. Definitions.

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

1. "Appointing authority" has the same meaning as provided in North Dakota Century Code section 54-44.3-02.

2. "Class" or "classification" means a group of positions, regardless of location, which are enough alike in duties and responsibilities to be called by the same descriptive title, to be given the same pay range under similar conditions, and to require substantially the same qualifications.

3. "Classification plan" means the listing of all the classes that have been established, the description for those classes, and the process and procedures developed to maintain the plan.

4. "Equity increase" means a salary increase provided to a classified employee to mitigate either a serious internal agency inequity or a documented external market condition.

5. "General salary increase" means a salary increase provided to classified employees by specific legislative appropriation.

6. "Hiring rate" means the salary level assigned to an employee upon initial employment with an agency.

7. "Job evaluation committee" is the committee responsible to evaluate, maintain, and ensure the consistency of job evaluations of the North Dakota classification system. The job evaluation committee shall be made up of professional human resource staff from human resource management services and state agencies designated by the director of human resource management services.

8. "Pay grade" means the number assigned to a classification which corresponds with one specific range of pay rates.

9. "Performance increase" means a salary increase provided to a classified employee in recognition of documented performance which is consistently superior or which consistently exceeds performance standards.

10. "Probationary increase" means a salary increase provided to a classified employee upon the successful completion of their applicable probationary period.

11. "Promotional increase" means a salary increase provided to a classified employee when the employee is assigned to a position in a different class which has a higher pay grade or which reflects a substantially higher level of responsibility than the employee's previous position, and the assignment is not a result of a reclassification of the employee's position.

12. "Reclassification adjustment" means a salary change applied to a classified employee when the employee's position is reallocated to a different classification that has a different pay grade.

13. "Responsibility level or workload increase" means a salary increase provided to a classified employee when either of the following conditions are met:

    a. The level of duties and responsibilities assigned to the employee is permanently changed, is documented, and is independent of any change in classification.

    b. A substantial, documented, increase in workload is assigned to a position.

14. "Salary range" means the range of pay rates, from minimum to maximum that are assigned to a pay grade, and which are often divided into quartiles for reference.

15. "Temporary increase" means a salary increase provided to a classified employee when the employee is assigned temporarily to perform a higher level of responsibilities on an acting or interim basis.

History: Effective March 1, 1991; amended effective July 1, 2004; July 1, 2014; July 1, 2022.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7)

CHAPTER 4-07-05

4-07-05-01.1. Definitions.

The terms used throughout this chapter have the same meaning as those in North Dakota Century Code chapter 54-44.3, except:

1. "Closing date" means a date by which applications must be received ~~or postmarked~~ as specified.

2. "External recruiting" means that applications for filling a vacant position under an appointing authority shall be accepted from current employees of the appointing authority and persons not employed by the appointing authority.

3. "Internal recruiting" means that applications for filling a vacant position under an appointing authority shall only be accepted from current employees of the appointing authority and employees eligible for reinstatement by the appointing authority.

4. "Promotion" means a personnel action that results in the advancement of an employee to a position in a different class that has a higher pay grade than the employee's previous position.

5. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by human resource management services at the time the personnel action occurs.

6. "Reinstatement" means a personnel action that involves the reemployment of a previous employee of the appointing authority, who resigned or was separated while in good standing in a classified position.

7. "Transfer" means a personnel action that results in the reassignment of an employee from one position to a different position that has the same pay grade as the employee's previous position and that does not result in a break in service.

8. "Vacancy announcement" means an announcement that a particular position is vacant and that the appointing authority intends to recruit to fill it.

History: Effective July 1, 1995; amended effective November 1, 1996; July 1, 2004; April 1, 2020; July 1, 2022.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

4-07-05-04. Notifying human resource management services.

An appointing authority shall notify human resource management services of each vacant classified, nontemporary position that the appointing authority intends to fill through external recruitment. The notification must be submitted prior to beginning the recruiting effort ~~and may be~~ in the form of a completed vacancy announcement~~, letter, or memo and~~ transmitted electronically ~~or by mail~~. ~~An~~The appointing authority ~~that lists~~also must list vacancies for external recruitment with job service North Dakota ~~need not provide notification to human resource management services~~.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2022.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

4-07-05-08. Vacancy announcement contents.

Each vacancy announcement must include the following information:

1. Class or working title, full-time or part-time status, regular or temporary status.
2. Position number for internal use only.
3. Salary or projected hiring range.
4. Closing date.
5. Duty location of position (city) and optional statement on the feasibility of remote work.
6. Procedures for applying.
7. Summary of work.
8. Minimum qualifications and special requirements.
9. Whether recruitment is internal or external.
10. ~~Status:~~
    a. ~~Full time or part time; and~~
    b. ~~Regular or temporary.~~
11. If a position is exempt from veterans' preference, the advertisement must state that veterans' preference does not apply to the position being advertised.

Additional preferred qualifications may be listed on the vacancy announcement at the discretion of the appointing authority, or a reference to the position description may be made.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008; January 1, 2012; April 1, 2020; July 1, 2022.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 37-19.1-02(4), 54-44.3-12

CHAPTER 4-07-08

4-07-08-02. Reporting to work.

During inclement weather conditions unless otherwise notified by an authorized official, each employee shall report to work as scheduled at the appointed time. Employees who are authorized and able to work remotely are expected to follow a normal work schedule.

History: Effective September 1, 1992; amended effective July 1, 2022.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-34.1
LOCAL COUNTY SOCIAL SERVICE MERIT SYSTEMS

[Repealed effective July 1, 2022.]

~~Section~~

~~4-07-34.1-01 Scope of Chapter~~
~~4-07-34.1-02 Procedures for Establishing a Local County Social Service Agency Merit System~~
~~4-07-34.1-03 Plan Approval~~
~~4-07-34.1-04 Merit Principles Requirements~~
~~4-07-34.1-05 Oversight and Audit Procedures~~
~~4-07-34.1-06 Noncompliance~~
~~4-07-34.1-07 Opt-Back-In Procedures~~

CHAPTER 4-07-37
SHARED LEAVE

Section
4-07-37-01 Scope of Chapter
4-07-37-02 Definitions
4-07-37-03 Administration of Statewide Leave Sharing Program
4-07-37-04 Policy on Qualifying Medical Conditions

4-07-37-01. Scope of chapter.

This chapter applies to all permanent state employees. Independent programs consistent with the human resource management services division program may be administered for state judiciary, legislative, and North Dakota university system employees.

History: Effective July 1, 2022.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-06-14.7

4-07-37-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-06, 54-44.3, and 54-52.4, except:

1. "Eligible employee" means a permanent state employee with over six months continuous service with the state. It does not include employees in probationary status or employees on temporary or other limited term appointments.

2. "Annual leave" means an approved absence from work with pay, as defined in section 4-07-12-02.

3. "Sick leave" means an approved absence from work with pay, for use in accordance with section 4-07-13-07.

4. "Eligible family member" means the employee's spouse, parent (natural, adoptive, foster, and stepparent), child (natural, adoptive, foster, and stepchild), or any other family or household member who is financially or legally dependent upon the employee or who resides with the employee for the purpose of the employee providing care to the family member.

5. "Serious" or "extraordinary" means severe, extreme, or life threatening. These terms do not include conditions associated with normal pregnancy.

History: Effective July 1, 2022.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-06-14.7

4-07-37-03. Administration of statewide leave sharing program.

The human resource management services division of the office of management and budget shall administer a state leave sharing program for permanent state employees. The program provides a mechanism for eligible employees to donate accrued annual and sick leave to an eligible employee who does not have available leave who is suffering from a serious or extraordinary illness, injury, impairment, or physical or mental condition. State employees also may donate accrued annual leave to another eligible employee who does not have available leave and who is caring for an eligible family member who is suffering from a serious or extraordinary illness, injury, impairment, or physical or mental condition.

The human resource management services division shall approve or disapprove each request for donated leave after consultation with the requesting eligible employee's agency administrator. The division shall track the amount of leave taken by eligible employees under the program.

All forms of leave available for use by the recipient must be used before using shared leave. Donated leave must be credited to the eligible employee in increments that may not exceed one month. An eligible employee may not use more than four months donated leave in any twelve-month period, and an eligible employee may not retain leave beyond the occurrence necessitating the leave. Leave that has been donated but remains unused beyond the qualifying occurrence must be returned to the donating employee.

All donated leave must be given voluntarily. An eligible employee may not donate more than five percent of the eligible employee's accrued sick leave hours per month. An eligible employee's donation of annual leave may not reduce their annual leave balance to less than forty hours. All leave must be donated in full-hour increments.

An eligible employee may request and use donated annual leave or sick leave for the purpose of donating an organ or bone marrow.

An employee who has received a documented verbal or written warning for inappropriate use of annual or sick leave will not be eligible to receive donated leave without specific approval from the director of the human resource management services division.

History: Effective July 1, 2022.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-06-14.7

4-07-37-04. Policy on qualifying medical conditions.

The human resource management services division shall maintain and consistently administer criteria for qualifying serious or extraordinary conditions based on best practices. For each shared leave request, the division shall require medical certification from a physician, physician assistant, psychologist, or advanced practice nurse practitioner verifying the severe or extraordinary nature of the medical condition and the expected duration of the condition. Requests for donated leave may not be considered without this specific documentation.

History: Effective July 1, 2022.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-06-14.7

TITLE 6

AERONAUTICS COMMISSION

JULY 2022

CHAPTER 6-02-02
AERIAL APPLICATORS

Section	
6-02-02-01	General Provisions
6-02-02-01.1	Definitions
6-02-02-02	Application for Aerial Applicator License - Fees
6-02-02-03	Inspection and Duration of Aerial Applicator's License
6-02-02-04	Commercial Pilot Safety Standards for Manned Aircraft
6-02-02-04.1	Aerial Applicator Safety Instruction
6-02-02-04.2	Safety Standards for Unmanned Aircraft
6-02-02-05	Private Pilot Aerial Sprayer Who Obtains a Commercial Federal Aviation Administration License [Repealed]
6-02-02-06	Private Pilot's Safety Standards for Aerial Application on One's Own Property or Land Farmed Under a Bona Fide Lease
6-02-02-07	Grandfather Rights [Repealed]
6-02-02-08	Registration as Certified Agricultural Chemical Applicator Requirements [Repealed]
6-02-02-09	Registration and License of Aircraft and Equipment Standards
6-02-02-10	Application Knowledge and Procedures [Repealed]
6-02-02-11	Aerial Application in Vicinity of Turkey Farms
6-02-02-12	Reports Available to Aeronautics Commission
6-02-02-13	Unsettled Claims and Court Judgments
6-02-02-14	License Reciprocity Between States - Nonresidents [Repealed]
6-02-02-15	Shoulder Harness Must Be Installed and in Use by Pilot [Repealed]
6-02-02-16	Airworthiness Certificate Required [Repealed]
6-02-02-17	Crash Helmet Required for Safety of Pilots [Repealed]
6-02-02-18	Revocation of Aerial Applicator License - Refusal of License
6-02-02-19	Penalty for Violation of the Rules and Regulations

6-02-02-01.1. Definitions.

As used in this chapter, unless otherwise required:

1. "Bona fide lease" means a lease whereby the lessee has a reasonable interest in the land under lease for a period not less than the current growing, grazing, or harvesting season.

2. "Chief pilot" means an individual, who meets the qualifications of this chapter, that operates an aircraft used for aerial application who is identified on the aerial applicator's license and is responsible for the supervision of other pilots listed on an aerial applicator's license.

3. "Operator" means a person that obtains an aerial applicator's license from the North Dakota aeronautics commission.

4. "Pilot" means an individual, who meets the qualifications of this chapter, who operates an aircraft used for aerial application who is identified on an aerial applicator's license.

History: Effective July 1, 2022.
General Authority: NDCC 2-05-18
Law Implemented: NDCC 2-05-18

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

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

History: Amended effective April 1, 2016; July 1, 2022.
General Authority: NDCC 2-05-18
Law Implemented: NDCC 2-05-18

6-02-02-04. Commercial pilot safety standards for manned aircraft.

The following qualifications and requirements are applicable to aerial application using a manned aircraft:

1. **General.** The following rules and regulations relating to pilot experiences and skill have been adopted in the interest of the pilot and public safety and the general public interest.

2. **Chief pilot.** All operators or contractors employing one or more commercial pilots for the purpose of conducting aerial application by aircraft in this state shall employ at least one chief pilot who shall have the qualifications set forth in this section.

3. **Chief pilot qualifications.** A chief pilot must produce evidence of a commercial federal aviation administration license with a minimum of seven hundred fifty flight hours as pilot in command, of which a minimum of two hundred fifty flight hours as pilot in command must be in the class of aircraft in which the sprayer or duster equipment will be installed and used for aerial application. In addition, the chief pilot must have at least two years apprentice commercial aerial application experience as pilot in command and has accumulated at least two hundred hours total aerial application flying time as an employee, supervised by a North Dakota chief pilot who holds a federal aviation administration part 137 certificate, who may recommend the applicant and certify the applicant's qualifications for the operational level sought, or certified to by an affidavit of the applicant, subject to investigation by the aeronautics commission, which may approve or deny the application.

4. **Pilot employees of contractor.** An operator or aerial applicator or contractor in the business of aerial application that employs a chief pilot, meeting the qualifications of this section, may employ pilots for aerial application with a minimum of a valid federal aviation administration commercial license, except that a license will be revoked or denied to an operator or contractor who employs an unqualified aerial application pilot who has been designated as unqualified to conduct aerial application in North Dakota, for just cause, by the aeronautics commission. Pilots supervised and employed under the supervision of the chief pilot, who have never aerial application before, must be given a minimum of ten hours of simulated application time under supervision of the chief pilot before they are permitted to conduct aerial

application as pilot in command, and in addition, must be given ten hours of direct ground-supervised solo flight at operational loads while conducting aerial application. The chief pilot shall document and maintain written records verifying the pilot has fulfilled the flight requirements.

5. **Chief pilot based within the state of North Dakota required.** It is the responsibility of the chief pilot to determine the amount of supervision a pilot requires. The chief pilot must be familiar with the area in which the supervised pilot or pilots are flying and be able to contact each pilot daily as needed. Pilots with less than two years' experience and less than two hundred fifty hours of actual aerial application must be under the direct, personal supervision of a chief pilot and must be based out of the same airport as the airport in which the chief pilot is operating. The chief pilot or the chief pilot's designated representative of every aerial application operation licensed by the aeronautics commission must be located within North Dakota during the time of actual aerial application operations and the chief pilot shall be responsible for the actions of all pilots under the chief pilot's supervision.

6. **Commercial-rated pilots who graduate from an agricultural flying school**. Commercial-rated pilots who graduate from a qualified agricultural flying and ground school shall be supervised by the chief pilot for ten hours of direct ground-supervised solo flight at operational loads while conducting aerial application. The chief pilot shall document and maintain written records verifying the pilot has fulfilled the requirements of this chapter.

7. **Pesticide certification.** A pilot who is identified on the aerial applicator's license must hold an air/ground core pesticide certification from the North Dakota state university extension pesticide certification and training program.

History: Amended effective July 1, 1998; April 1, 2016; July 1, 2022.
General Authority: NDCC 2-05-18
Law Implemented: NDCC 2-05-18

6-02-02-04.2. Safety standards for unmanned aircraft.

The following qualifications and requirements are applicable to aerial application using an unmanned aircraft:

1. **General.** The following rules and regulations relating to the use of unmanned aircraft for aerial application have been adopted in the interest of public safety and public interest.

2. **Maximum weight.** The maximum operating weight of an unmanned aircraft while conducting aerial application is five hundred pounds.

3. **Operator.** An operator of an unmanned aircraft used for aerial application must hold a federal aviation administration remote pilot certificate and have acquired the federal aviation administration exemptions required to perform the specified aerial application services.

4. **Chief pilot.** All operators or contractors employing one or more unmanned aircraft pilots for the purpose of conducting aerial application by an unmanned aircraft in this state shall employ at least one chief pilot. A chief pilot must meet the pilot qualifications of this subsection.

5. **Chief pilot responsibilities.** It is the responsibility of the chief pilot to determine the amount of supervision a pilot requires and ensure each pilot is able to contact the chief pilot during aerial application operations.

6. **Pilot qualifications.** A pilot who is identified on the aerial applicator's license must hold a federal aviation administration remote pilot certificate. Before conducting solo flights, pilots must have attended an approved training program or have received at least ten hours of direct ground-supervised solo flight at operational loads while conducting aerial application.

Supervision must be provided by a pilot who has conducted a minimum of twenty-five hours of solo flight at operational loads while conducting aerial application. The operator shall document and maintain written records verifying the pilot has fulfilled the flight requirements.

7. **Pesticide certification.** A pilot who is identified on the aerial applicator's license must hold an air/ground core pesticide certification from the North Dakota state university extension pesticide certification and training program.

History: Effective July 1, 2022.
General Authority: NDCC 2-05-18
Law Implemented: NDCC 2-05-18

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

A private pilot operating a manned aircraft with a valid federal aviation administration private pilot's rating, federal aviation administration part 137 certificate, and an air/ground core pesticide certification from the North Dakota state university extension pesticide certification and training program may aerial crop spray, dust, seed, fertilize, or insecticide the pilot's own land or land farmed by the pilot under a bona fide lease, provided:

1. That the applicant submits satisfactory evidence that the applicant has a minimum of seven hundred fifty hours flying experience as pilot in command, of which a minimum of two hundred fifty flying hours must be in the class of aircraft in which the sprayer or duster will be installed for agricultural aerial application and has produced acceptable evidence of a minimum of ten hours simulated spraying time under the supervision of a chief pilot before such pilot is permitted to conduct aerial application as pilot in command, and in addition, such private pilot must obtain ten hours of direct ground-supervised solo flight at operational loads while aerial applying given by a chief pilot, with a commercial federal aviation administration license, who has at least two hundred hours of logged aerial applying time as pilot in command.

2. That the applicant sets forth, in writing, upon the application the legal description of the land owned or land farmed under a bona fide lease, including range, township, section, and quarter, or parts and apportionments pertaining thereto, or both.

3. That the applicant's services are not offered to others for hire, compensation, remuneration, or trade for other services.

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

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

History: Amended effective April 1, 2016; July 1, 2022.
General Authority: NDCC 2-05-18
Law Implemented: NDCC 2-05-18

6-02-02-07. Grandfather rights.

Repealed effective July 1, 2022.

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

~~**History:** Amended effective April 1, 2016.~~
~~**General Authority:** NDCC 2-05-18~~
~~**Law Implemented:** NDCC 2-05-18~~

TITLE 10

ATTORNEY GENERAL

JULY 2022

CHAPTER 10-16-12

10-16-12-01. Game description.

To play LOTTO AMERICA®, a player selects five different red/white numbers, between one and fifty-two, and one additional blue/white number (star ball) between one and ten. The additional number may be the same as one of the first five numbers selected. The price of a play is one dollar. A grand prize is paid, at the election of a winning player or by a default election made according to these rules, either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for the prize pool on a pari-mutuel basis. A set prize (cash prize of twenty thousand dollars or less) is paid on a single-payment cash basis. Draws are held every Monday, Wednesday, and Saturday.

History: Effective November 12, 2017; amended effective July 1, 2019; July 18, 2022.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

TITLE 20

STATE BOARD OF DENTAL EXAMINERS

JULY 2022

CHAPTER 20-01-01

20-01-01-01. Organization and functions of board of dental examiners.

1. **History and functions.** In 1895 a five-member board of dental examiners was created to examine dentists as to their qualifications and to license and register qualified dentists.

2. **Board membership.** The board consists of ~~seven~~nine members appointed by the governor. ~~Five~~Six members must be licensed dentists, one member must be a licensed hygienist, ~~and~~ one member must be a registered dental assistant, and one member must be ~~a~~an independent consumer member. Members of the board serve five-year terms. No member may serve more than ten years or two 5-year terms of office.

3. **Board members.** Members of the board are elected by the board to fill the individual positions of president, president-elect, and secretary-treasurer. The position of executive director has been created to assist the secretary-treasurer.

4. **Per diem.** Each member of the board shall receive as compensation for each day actually engaged in the duties of the office per diem in the amount of two hundred dollars.

5. **Inquiries.** Inquiries regarding the board may be addressed to the executive director of the board:

   Rita M. Sommers, RDH, MBA
   North Dakota Board of Dental Examiners
   Box 7246
   Bismarck, ND 58507-7246
   www.nddentalboard.org
   701-258-8600

History: Amended effective October 1, 1988; November 1, 1988; July 1, 1993; May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011; July 1, 2022.
General Authority: NDCC ~~28-32-02,~~ 43-28-06
Law Implemented: NDCC ~~28-32-02~~43-28-03, 43-28-05

CHAPTER 20-01-02

20-01-02-01. Definitions.

Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Advertising" means any public communication, made in any form or manner, about a licensee's professional service or qualifications, for the purpose of soliciting business.

2. ~~"Anxiolysis" means diminution or elimination of anxiety.~~"Aldrete score" means a measurement of recovery after anesthesia that includes gauging consciousness, activity, respiration, and blood pressure.

Aldrete Scoring Guidelines									
Activity		Respiration		Circulation		Consciousness		Oxygenation	
2	Able to move four extremities voluntarily on command and/or returned to preprocedure level	2	Patient can cough and deep breathe on command and/or respirations unlabored, oxygen saturation at preprocedure level	2	Blood pressure and heart rate +/- 20 percent of presedation level and/or asymptomatic alteration	2	Fully awake (able to answer questions) or at preprocedure level	2	Able to maintain oxygen saturation greater than 92 percent or at preprocedure level Pink or normal skin color
1	Able to move two extremities voluntarily on command and/or moves weakly, unable to stand	1	Dyspnea or limited breathing or requires oxygen greater than baseline level to maintain adequate saturation	1	Blood pressure and heart rate +/- 20 to 50 percent of pre-anesthetic level or mildly symptomatic alteration that requires fluid bolus intervention or dopamine at less than ten micrograms per kilogram per minute for heart failure patients	1	Arousable on calling (arousable only to calling)	1	Needs oxygen to maintain adequate oxygenation Pale, dusky, blotchy, jaundiced, or other
0	Unable to move	0	Apneic or requires airway support	0	Blood pressure and heart rate greater than 50 percent =/- presedation levels and/or requires pharmacological intervention, or dopamine at greater than ten micrograms per kilogram per minute for heart failure patients	0	Unresponsive	0	Oxygen saturation less than 90 percent adult, less than 92 percent peds even with oxygen support. Cyanotic
Target 2		Target 2		Target 1-2		Target 1-2		Target 2	
A score of less than 8, re-evaluate q 15 minutes, greater than 8 discharge to recovery, or greater than or equal to discharge home									

3. "Analgesia" means the diminution or elimination of pain.

4. "Anesthesia" means the art and science of managing anxiety, pain, and awareness. It includes analgesia, local anesthesia, minimal sedation, moderate sedation, deep sedation, and general anesthesia.

5. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.

~~4.~~6. "Board certified" means the dentist has been certified in a specialty area in which there is a certifying body approved by ~~the commission on dental accreditation of the American dental association~~an agency recognized by the United States department of education and is a diplomate of a nationally recognized certifying board that meets the criteria as provided by section 20-02-01-01.

~~5.~~7. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice in which there is a certifying body approved by ~~the commission on dental accreditation of the American dental association~~an agency recognized by the United States department of education and is a diplomate of a nationally recognized certifying board that meets the criteria as provided by section 20-02-01-01.

~~6.~~8. "Bona fide specialties" means ~~the~~those specialties ~~of dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, and prosthodontics~~meeting the qualification as set forth in section 20-02-01-01.

~~7.~~9. "Capnography" means a process to determine the presence and percent of carbon dioxide in a patient's breath through the use of a carbon dioxide monitor, the noninvasive measurement of the partial pressure of carbon dioxide in exhaled breath expressed as carbon dioxide concentration over time and is graphically represented. Carbon dioxide measured at the airway can be displayed as a function of time (carbon dioxide concentration over time) or exhaled tidal volume (carbon dioxide concentration over volume).

10. "Cardiopulmonary resuscitation course" means the American heart association's health care provider course, the American red cross professional rescuer course, or an equivalent course.

~~8.~~11. "Certified dental assistant" means a dental assistant who meets the education or experience prerequisites, or both, established by the dental assisting national board and passes the dental assisting national board's certified dental assistant examination, is currently cardiopulmonary resuscitation-certified, and continues to maintain the credential by meeting the dental assisting national board requirements. A certified dental assistant must be registered by the board as a qualified dental assistant or registered dental assistant to provide any expanded duties.

~~9.~~12. "Code of ethics" means the ~~January 2009~~November 2020 version of the American dental association's principles of ethics and code of professional conduct.

~~10. "Combination inhalation - enteral conscious sedation" (combined conscious sedation) means conscious sedation using inhalation and enteral agents.~~

~~When the intent is anxiolysis only, and the appropriate dosage of agents is administered, then the definition of enteral or combined inhalation-enteral conscious sedation (combined conscious sedation), or both, does not apply.~~

~~Nitrous oxide/oxygen when used in combination or with sedative agents may produce anxiolysis, conscious or deep sedation, or general anesthesia.~~

~~11.~~13. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.

~~12. "Conscious sedation" means depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or a combination thereof. The drugs or technique, or both, should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.~~

~~13.~~14. "Contiguous supervision" means that the dentist whose patient is being treated and has personally authorized the procedures to be performed. The supervising dentist is continuously onsite and physically present in the treatment facility while the procedures are performed by the qualified dental ~~anesthesia auxiliary~~staff member and capable of responding immediately in the event of an emergency. The term does not require a supervising dentist to be physically present in the operatory.

~~14.~~15. "Clinical continuing education" means information that relates to the assessment, diagnosis, or treatment of patients.

16. "Coronal polishing" is the mechanical polishing of clinical crowns using a rubber cup or brush only and not to include any instrumentation.

~~15.~~17. "Deep sedation" ~~is an induced state of depressed~~means a drug-induced depression of consciousness ~~accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently or to~~during which patients cannot be easily aroused but respond purposefully ~~to physical~~following repeated or painful stimulation~~ or verbal command, and is produced by pharmacological or nonpharmacological method, or combination thereof~~. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

~~16.~~18. "Dental anesthesia assistant" means an individual who possesses the expertise to provide supportive anesthesia care in a safe and effective manner. The anesthesia assistant is educated in the perioperative and emergent care management of patients undergoing dental office sedation and anesthesia.

19. "Direct supervision" means the dentist is physically present in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.

~~17.~~20. "Direct visual supervision" means ~~supervision by a~~the dentist ~~by~~is physically present to issue a verbal command and under direct line of sight.

~~18.~~21. "Evaluation" means the act or process by a dentist of assessing and determining the patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.

~~19.~~22. "General anesthesia" means ~~an induced state~~a drug-induced loss of ~~unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or nonpharmacological method, or a combination thereof~~consciousness during which patients are not arousable, even by painful stimulation. The ability to maintain ventilatory function is often impaired. Patients often require assistance in maintaining patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

~~20.~~23. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis, if necessary, and treatment plan. The dentist is not required to be in the treatment facility. A new patient who has not been examined by the authorizing dentist may be seen by a dental hygienist authorized to provide duties under general supervision. Limitations are contained in North Dakota Century Code section 43-20-03.

~~21.~~24. "Host dentist" is a dentist authorized by permit who may provide a qualified dentist or independently practicing qualified anesthesia health care provider administration of moderate, or deep sedation, or general anesthesia. The host dentist is subject to site evaluations for the level of sedation provided as per subsection 5 or 6 of section 20-02-01-05.

25. "Inactive status" means the licensee shall not engage in the practice of dentistry or dental hygiene in the state of North Dakota. The license that is placed on inactive status remains on that status until such time as the license is reinstated.

~~22.~~26. "Incremental dosing" means administration of multiple doses of a single drug until a desired effect is reached, but not to exceed the maximum recommended dose at the recommended interval.

27. "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.

~~23.~~28. "Local anesthesia" means the elimination of sensations in one part of the body by regional injection of drugs without causing the loss of consciousness.

~~24.~~29. "Maximum recommended dose" means the maximum recommended dose of a drug as printed in the United States food and drug administration's approved labeling for unmonitored home use.

30. "Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes and ventilatory and cardiovascular are unaffected. Minimal sedation may be achieved by the administration of a single drug administered in a single or divided dose not to exceed the maximum recommended dose for unmonitored home use during a single appointment. A permit is not required for minimal sedation.

31. "Moderate sedation" means a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous

ventilation is adequate. Cardiovascular function is usually maintained. Administration of sedative drugs exceeding the maximum recommended dose for unmonitored home use during a single appointment or use of more than one enteral drug administered, with or without concomitant use of nitrous oxide is considered moderate sedation.

32. "Nitrous oxide inhalation analgesia" means a technique in which the inhalation of nitrous oxide enables treatment to be carried out and in which purposeful verbal contact with the patient can be maintained or the patient responds appropriately to light tactile stimulation throughout the administration of nitrous oxide inhalation analgesia, and the drugs and techniques used have a margin of safety wide enough to render unintended loss of consciousness extremely unlikely.

33. "Oral assessment" means the evaluation of data pertaining to the patient's condition to help identify dental problems leading to a professional treatment plan. The final diagnosis of disease or treatment plan is the sole responsibility of the supervising or collaborative dentist.

~~25.~~34. "Oral hygiene treatment planning" is a component of a comprehensive treatment plan developed by the hygienist or dentist to provide the hygienist a framework for addressing the preventative, educational, and clinical treatment needs of the patient.

~~26.~~35. "Parenteral moderate sedation" means the intravenous, intramuscular, intranasal, subcutaneous, sublingual, submucosal, transdermal, or rectal administration of pharmacological agents with the intent to obtain a depressed level of consciousness that meets the definition of moderate sedation.

36. "Patient of record" means a patient who has undergone a complete dental evaluation ~~performed~~, has had a medical and dental history completed and evaluated by a ~~licensed~~ dentist, or a patient who has been examined, and has had oral conditions diagnosed and a written plan developed by the dentist or dental hygiene treatment authorized by a dentist, and the patient has compensated the dentist or dental facility for a procedure.

37. "Pediatric patient" means a dental patient ten years of age or younger.

~~27.~~38. "Primary practice site" means the office location that is to be considered the main location of the dental practice. This office location would be listed first on the biennial registration.

~~28.~~39. "Qualified dental assistant" means a dental assistant who has been employed and trained as a dental assistant and has received at least ~~six~~three hundred ~~fifty~~ hours of on-the-job training, has successfully completed ~~a board-approved infection control seminar and passed the x-ray and infection control portions of~~the national entry level dental assistant certification administered by the dental assisting national board ~~examination~~or a board-approved course, and has applied to the board and paid the certificate fee and met any other requirements of section 20-03-01-05.

~~29.~~40. "Qualified dental staff member" means an individual trained and competent in the use of monitoring and emergency equipment, capable of assisting with procedures and emergency incidents that may occur as a result of the sedation or secondary to the unexpected medical complication, and who has received documented training acquired directly by an employer-dentist or by a planned sequence of instruction in an educational institution and holds a current basic life support registration.

41. "Registered dental assistant" means a dental assistant who is a graduate of a dental assistant program accredited by the commission on dental accreditation of the American dental association or a substantially equivalent curriculum approved by the board or has been certified by the dental assistant national board, and has applied to the board and paid the registration fee and met any other requirements of section 20-03-01-05.

~~30.~~42. "Remedial education" means an educational intervention prescribed by the board that is designed to restore an identified practice deficiency of a licensee. Remediation may include successful demonstration by the licensee that the learned knowledge and skills have been incorporated into the licensee's practice.

43. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on the dentist's biennial registration certificate.

44. "Screening" means an inspection used for the early identification of individuals at potentially high risk for a specific condition or disorder and can indicate a need for further evaluation or preliminary intervention. A screening is neither diagnostic nor a definitive indication of a specific condition and does not involve making diagnoses that lead to treatment plans.

45. "Self-study", for the purposes of continuing education requirements, means the licensee engages in obtaining education without direct supervision, without attendance in a classroom setting, or without a proctor during online education. A certificate of completion must be obtained as proof of education.

46. "Time-oriented anesthesia record" means documentation at appropriate intervals of drugs, doses, and physiologic data obtained during patient monitoring.

47. "Titration" means administration of incremental doses of an intravenous or inhalation drug until a desired effect is reached.

48. "Topical anesthesia" means the elimination of sensation, especially pain, in one part of the body by skin or mucous membrane surface application of a drug.

49. "Webinar", for the purposes of continuing education requirements, means the licensee engages in a live web-based seminar or presentation using video conferencing software. A webinar is interactive and has the ability to give, receive, and discuss information in real-time. A certificate of completion indicating "webinar" or other evidence of attendance must be maintained as proof of continuing education.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022.
General Authority: NDCC 43-20-10, 43-28-06
Law Implemented: NDCC ~~43-20, 43-28~~43-20-01.1, 43-20-03, 43-20-10, 43-20-12, 43-20-13, 43-28-06

CHAPTER 20-02-01
GENERAL REQUIREMENTS

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20-02-01-01. Advertising.

1. Advertising by dentists is permitted to disseminate information for the purpose of providing the public a sufficient basis upon which to make an informed selection of dentists. In the interest of protecting the public health, safety, and welfare, advertising which is false, deceptive, or misleading is prohibited.

2. All advertising must contain the legal name of the dentist, or a reasonable variation thereof. In the case of a partnership or corporation, the name used in the advertisement may be the true name of the partnership or corporation. The advertisement must also contain the location, or locations, of the dentist, partnership, or corporation. It is false or misleading for a dentist to hold themselves out to the public as a specialist, or any variation of that term, in a practice area unless the dentist meets the criteria of subsection 3.

3. A dentist engaged in general practice who wishes to announce the services available in the dentist's practice is permitted to announce the availability of those services as long as the dentist avoids using language that expresses or implies that the dentist is a specialist. If a dentist, other than a specialist, wishes to advertise a limitation of practice, such advertisement must state that the limited practice is being conducted by a general dentist. A dentist who is a specialist may announce the dentist's bona fide specialty provided that the dentist has successfully completed ~~an~~a qualifying postdoctoral educational program accredited by ~~the commission on accreditation of dental and dental auxiliary educational programs~~an agency recognized by the United States department of education, of full-time study two or more years in length, ~~as specified by the commission on dental accreditation of the American dental association~~resulting in a master of science degree or certificate from an accredited program or be a diplomate of a nationally recognized certifying board approved by this board. Such a dentist may announce that the dentist's practice is limited to the special area of dental practice in which the dentist has or wishes to announce. In determining whether an organization is a qualifying specialty board or organization, the board shall consider the following standards:

a. Whether the organization requires completion of an educational program with didactic, clinical, and experiential requirements appropriate for the specialty or subspecialty field of dentistry in which the dentist seeks certification, and the collective didactic, clinical, and experiential requirements are similar in scope and complexity to a qualifying postdoctoral educational program. Programs that require solely experiential training, continuing education classes, on-the-job training, or payment to the specialty board shall not constitute a qualifying specialty board or organization;

b. Whether the organization requires all dentists seeking certification to pass a written or oral examination, or both, that tests the applicant's knowledge and skill in the specialty or subspecialty area of dentistry and includes a psychometric evaluation for validation;

c. Whether the organization has written rules on maintenance of certification and requires periodic recertification;

d. Whether the organization has written bylaws and a code of ethics to guide the practice of its members;

e. Whether the organization has staff to respond to consumer and regulatory inquiries; and

f. Whether the organization is recognized by another entity whose primary purpose is to evaluate and assess dental specialty boards and organizations.

4. A dentist who advertises on radio or television must retain a recorded copy of such advertising for a period of one year following the termination of the use of such advertising, and is responsible to make recorded copies of such advertising available to the North Dakota state board of dental examiners within thirty days following a request from the board for such copies.

5. No dentist may advertise the dentist, the dentist's staff, the dentist's services, or the dentist's method or methods of delivery of dental services to be superior to those of any other licensed dentist, unless such claim or claims can be substantiated by the advertiser, upon whom rests the burden of proof.

6. This section may not be construed to prohibit a dentist who does not qualify to hold themself out to the public as a specialist under subsection 3 from restricting the dental practice to one or more specific areas of dentistry or from advertising the availability of dental services, provided that such advertisements do not include the term "specialist", or any variation of that term, and must state that the services advertised are to be provided by a general dentist. No advertising by a dentist may contain representations or other information contrary to the provisions of North Dakota Century Code section 43-28-18 or North Dakota Administrative Code title 20.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; April 1, 2015; July 1, 2022.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06, 43-28-10, 43-28-10.1, 43-28-18

20-02-01-03. Nitrous oxide.

Repealed effective July 1, 2022.

~~A duly licensed dentist may use nitrous oxide for treating patients only when the following conditions are met:~~

~~1. Documentation has been provided by the dentist to the board that verifies completion of fourteen hours of instruction or continuing professional education dealing specifically with the~~

~~use of nitrous oxide. In the absence of documentation of classroom training, the dentist must provide proof acceptable to the board that demonstrates three years of practical experience in the use of nitrous oxide.~~

~~2. A dentist who induces a patient into a state of psychosedation or relative analgesia using nitrous oxide shall ensure that the patient will be continually and personally monitored by a dentist. A dentist may delegate the monitoring tasks to a licensed dental hygienist or a registered dental assistant utilizing indirect supervision only after the patient has been stabilized at the desired level of conscious sedation or relative analgesia by the action of the dentist. The licensed dental hygienist or registered dental assistant who is assigned the monitoring task shall remain in the treatment room with the patient at all times. A dental hygienist or a dental assistant may not initiate the administration of nitrous oxide to a patient. A dental hygienist or a registered dental assistant may terminate or reduce the amount of nitrous oxide previously administered by the dentist.~~

~~3. The dentist must provide and document training for the dental hygienist or registered dental assistant in the proper and safe operation of the analgesia machine being used prior to the registered dental hygienist or registered dental assistant monitoring the patient. Training shall include emergency procedures to be employed if required.~~

~~**History:** Effective February 1, 1992; amended effective May 1, 1996; April 1, 2000; October 1, 2007; January 1, 2011; April 1, 2015.~~
~~**General Authority:** NDCC 43-20-10, 43-28-06~~
~~**Law Implemented:** NDCC 43-20-03, 43-20-10, 43-20-12, 43-20-13, 43-28-06~~

20-02-01-04.2. Volunteer license to practice dentistry.

A patient who is seen by a dentist who holds a volunteer license to practice dentistry shall not be considered a patient of record of the volunteer dentist. The dentist is not obligated to treat the patient outside of the volunteer practice setting. Between meetings of the board, the executive director of the board may review the volunteer license application and grant a provisional license if all the requirements are met. A volunteer license to practice dentistry in North Dakota, renewable annually by application to the board, may be granted when the following conditions are met:

1. The applicant was formerly licensed and actively practicing in the state of North Dakota or another jurisdiction for at least three of the five years immediately preceding application, where the requirements are at least substantially equivalent to those of this state; or

   a. The applicant is the resident of a board-approved specialty program; or

   b. The board determines that the applicant is qualified and satisfies the criteria specified under North Dakota Century Code section 43-28-10.1.

2. The applicant agrees to provide primary health services without remuneration directly or indirectly in a board-approved setting.

3. The applicant holds a current cardiopulmonary resuscitation course certification.

4. The applicant has completed continuing education requirements of the board.

5. The applicant has made application for a volunteer dental license in a manner prescribed by the board.

6. The board may collect from the applicant the nonrefundable application and license fee prescribed by the board.

7. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the volunteer license.

History: Effective April 1, 2000; amended effective January 1, 2011; April 1, 2015; July 1, 2022.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-02-01-04.3. Inactive status - License reinstatement.

A dentist may, upon payment of the fee determined by the board, place the dentist's license on inactive status. A dentist on inactive status shall be excused from the payment of renewal fees, except inactive status renewal fees, and continuing education. A dentist on inactive status shall not practice in North Dakota. To reinstate a license on inactive status, the dentist shall apply on the form as prescribed by the board, pay a reinstatement fee, and meet all of the following requirements:

1. The applicant has passed a clinical competency examination administered by a regional dental testing service, approved by the board in section 20-02-01-03.1, within five years of application or provides evidence of the clinical practice of dentistry within the previous five years. The board may, within the board's discretion, waive this requirement.

2. The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.

3. The applicant has completed thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.

4. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

5. Grounds for denial of the application under North Dakota Century Code section 43-28-18 do not exist.

History: Effective April 1, 2006; amended effective January 1, 2011; July 1, 2017; July 1, 2022.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-17

20-02-01-05. ~~Permit for anesthesia use~~Anesthesia and sedation permit requirements.

~~1.~~ The rules in this chapter are adopted for the purpose of defining standards for the administration of anesthesia and sedation by dentists or a dentist who collaborates with a qualified and licensed anesthesia or sedation provider. ~~The standards specified in this chapter shall apply equally to general anesthesia, deep sedation, moderate (conscious) sedation, or a combination of any of these with inhalation, but do not apply to sedation administered through inhalation alone.~~ A dentist ~~licensed under North Dakota Century Code chapter 43-28 and practicing in North Dakota~~ may not use any form of sedation if the intent is beyond ~~anxiolysis~~minimal sedation on any patient unless such dentist has a permit, currently in effect, issued by the board, and renewable biennially thereafter, authorizing the use of such general anesthesia, deep sedation, or moderate ~~(conscious)~~ sedation~~, or minimal sedation when used in combination with inhalation.~~

~~2. An applicant may not be issued a permit initially as required in subsection 1 unless:~~

~~a. The board of dental examiners approves the applicant's facility and any other facility, clinic, or mobile dental clinic where anesthesia services are provided after an inspection conducted by an individual or individuals designated by the dental examiners;~~

~~b. The board of dental examiners is satisfied that the applicant is in compliance with the American dental association's most recent policy statement: the use of sedation and general anesthesia by dentists;~~

~~c. The initial application includes payment of a fee in the amount determined by the dental examiners; and~~

~~d. If the application appears to be in order, the board may issue a temporary permit prior to the site evaluation. The temporary permit may be revoked if the applicant fails the site inspection or if the applicant fails to cooperate with the timely scheduling of the site inspection.~~

~~3. The board of dental examiners may renew such permit biennially, provided:~~

~~a. Requirements of the permit application have been met;~~

~~b. Application for renewal and renewal fee is received by the dental examiners before the date of expiration of such permit. If the renewal application and renewal fee have not been received by the expiration of the permit, late fees as determined by the board shall apply; and~~

~~c. An onsite evaluation of the dentist's facility may be conducted by an individual designated by the board of dental examiners, and the board of dental examiners must approve the results of each such evaluation. Each facility where anesthesia is administered must be evaluated.~~

~~4. A North Dakota licensed anesthesia or sedation provider authorized by the board shall reevaluate the credentials, facilities, equipment, personnel, and procedures of a permitholder within every five years following a successful initial application or renewal.~~ With the administration of anesthesia, the qualified dentist must have the training, skills, drugs, and equipment immediately available in order to rapidly identify and manage an adverse occurrence until either emergency medical assistance arrives or the patient returns to the intended level of sedation or full recovery without airway, respiratory, or cardiovascular complications.

1. Administration of nitrous oxide inhalation analgesia - Requirements. The following standards apply to the administration of nitrous oxide inhalation analgesia:

a. Inhalation equipment must have a fail-safe system that is appropriately checked and calibrated. The equipment also must have either a functioning device that prohibits the delivery of less than thirty percent oxygen or an appropriately calibrated and functioning in-line oxygen analyzer with audible alarm. A scavenging system must be available if gases other than oxygen or air are used.

b. Patient dental records must include the concentration administered and duration of administration.

c. A dentist may not delegate monitoring of nitrous oxide inhalation analgesia once the patient has ingested an enteral drug for the purpose of minimal sedation.

d. Before authorizing a dental hygienist or registered dental assistant to administer nitrous oxide inhalation analgesia, the dentist must have provided and documented training in the proper and safe operation of the nitrous oxide inhalation analgesia equipment.

e. A patient receiving nitrous oxide inhalation analgesia must be continually monitored by authorized dental staff. A dental hygienist or a registered dental assistant may terminate

or reduce the amount of nitrous oxide previously administered by the authorized nitrous oxide inhalation analgesia provider.

f. The board may issue a permit authorizing the administration of nitrous oxide inhalation to a dentist or dental hygienist or registered dental assistant if the following requirements are met:

(1) Evidence of successful completion of a twelve-hour, board-approved course of training or course provided by a program accredited by an accrediting body recognized by the United States department of education, and either:

(a) Completed the course within thirteen months before application; or

(b) Completed the course more than thirteen months before application, has legally administered nitrous oxide inhalation analgesia for a period of time during the three years preceding application, and provides written documentation from a dentist that has employed or supervised the applicant, attesting to the current clinical proficiency of the applicant to administer nitrous oxide inhalation analgesia.

(2) Evidence of current certification in basic life support by the American heart association for the health care provider, or an equivalent program approved by the board.

2. Administration of minimal sedation. A dentist administering minimal sedation shall maintain basic life support certification and comply with the following standards:

a. An appropriate sedative record must be maintained and must contain the names and time of all drugs administered, including local anesthetics and nitrous oxide. The time and condition of the patient at discharge from the treatment area and facility requires documentation.

b. Medications used to produce minimal sedation are limited to a single enteral drug, administered either singly or in divided doses, by the enteral route to achieve the desired clinical effect, not to exceed the maximum recommended dose for unmonitored home use in a single appointment. The administration of enteral drugs exceeding the maximum recommended dose during a single appointment is considered to be moderate sedation.

c. Drugs and techniques used must carry a margin of safety wide enough to render the unintended loss of consciousness unlikely for minimal sedation, factoring in titration and the patient's age, comorbidities, weight, body mass index, and ability to metabolize drugs.

d. Combining two or more enteral drugs, excluding nitrous oxide, prescribing or administering drugs that are not recommended for unmonitored home use, or administering any parenteral drug constitutes moderate sedation and requires that the dentist must hold a moderate sedation permit.

e. Facilities and equipment must include:

(1) Suction equipment capable of aspirating gastric contents from the mouth and pharynx;

(2) Portable oxygen delivery system, including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivering positive pressure, oxygen enriched ventilation to the patient;

(3) Blood pressure cuff (or sphygmomanometer) of appropriate size;

(4) Automated external defibrillator (AED) or defibrillator;

(5) Stethoscope or equivalent monitoring device; and

(6) The following emergency drugs must be available and maintained:

(a) Bronchodilator;

(b) Anti-hypoglycemic agent;

(c) Aspirin;

(d) Antihistaminic;

(e) Coronary artery vasodilator; and

(f) Anti-anaphylactic agent.

f. A dentist or qualified dental staff member responsible for patient monitoring must be continuously in the presence of the patient in the office, operatory, and recovery area before administration or if the patient self-administered the sedative agent immediately upon arrival, and throughout recovery until the patient is discharged by the dentist.

g. A dentist shall ensure any advertisements related to the availability of antianxiety premedication, or minimal sedation clearly reflect the level of sedation provided and are not misleading.

3. Administration of moderate sedation. Before administering moderate sedation, a dentist licensed under North Dakota Century Code chapter 43-28 must have a permit issued by the board, renewable biennially thereafter. An applicant for an initial permit must submit a completed application and application fee on a form provided by the board and meet the following requirements:

a. An applicant for an initial moderate sedation permit must meet the following educational requirements. This section does not apply to a dentist who has maintained a parenteral sedation permit in North Dakota and has been administering parenteral sedation in a dental office before July 1, 2022.

(1) Successfully completed a comprehensive sixty-hour predoctoral dental school, postgraduate education or continuing education in moderate sedation with a participant-faculty ratio of not more than four-to-one. The course must include courses in enteral and parenteral moderate sedation plus individual management of twenty live patient clinical case experiences by the intravenous route and provide certification of competence in rescuing patients from a deeper level of sedation than intended, including managing the airway, intravascular or intraosseous access, and reversal medications. The formal training program must be sponsored by or affiliated with a university, teaching hospital, or other facility approved by the board or provided by a curriculum of an accredited dental school and have a provision by course director or faculty of additional clinical experience if participant competency has not been achieved in allotted time.

(2) The course must be directed by a dentist or physician qualified by experience and training with a minimum of three years of experience, including formal postdoctoral training in anxiety and pain control. The course director must possess a current

permit or license to administer moderate or deep sedation and general anesthesia in at least one state.

b. A dentist utilizing moderate sedation must maintain current certification in basic life support and advanced cardiac life support if treating adult patients or pediatric advanced life support if treating pediatric patients and have present a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one qualified dental staff member as specified in subsection 40 of section 20-01-02-01.

c. A permitholder may not administer or employ any agents that have a narrow margin for maintaining consciousness, including ultra-short acting barbiturates, propofol, ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that likely would render a patient deeply sedated, generally anesthetized, or otherwise not meeting the conditions of moderate sedation.

d. During moderate sedation the adequacy of ventilation must be evaluated by continual observation of qualitative clinical signs and monitoring for the presence of exhaled carbon dioxide unless precluded or invalidated by the nature of the patient, procedure, or equipment.

e. Successfully completed the moderate site evaluation required by this chapter. An initial site evaluation must be completed within sixty days of the approval of the initial permit application.

f. Administering intranasal versed or fentanyl, or both, is considered deep sedation. Rules for deep sedation and general anesthesia site evaluations apply for administration of intranasal versed or fentanyl, or both.

4. Administration of deep sedation and general anesthesia. Before administering deep sedation or general anesthesia, a dentist licensed under North Dakota Century Code chapter 43-28 must have a permit issued by the board and renewable biennially thereafter. An applicant for an initial permit must submit a completed application and application fee on a form provided by the board and meet the following educational requirements:

a. Within the three years before submitting the permit application, provide evidence the applicant successfully has completed an advanced education program accredited by the commission on dental accreditation that provides training in deep sedation and general anesthesia and formal training in airway management, and completed a minimum of five months of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board; or

b. Be, within the three years before submitting the permit application, a diplomate of the American board of oral and maxillofacial surgeons or eligible for examination by the American board of oral and maxillofacial surgeons, a fellow of the American association of oral and maxillofacial surgeons, a fellow of the American dental society of anesthesiology, a diplomate of the national dental board of anesthesiology, or a diplomate of the American dental board of anesthesiology or eligible for examination by the American dental board of anesthesiology; or

c. For an applicant who completed the requirements of subdivision a or b more than three years before submitting the permit application, provide on a form provided by the board, a written affidavit affirming the applicant has administered general anesthesia to a minimum of twenty-five patients within the year before submitting the permit application or seventy-five patients within the last five years before submitting the permit application and the following documentation:

(1) A copy of the deep sedation and general anesthesia permit in effect in another jurisdiction or certification of military training in general anesthesia from the applicant's commanding officer; and

(2) On a form provided by the board, a written affidavit affirming the completion of thirty-two hours of continuing education pertaining to oral and maxillofacial surgery or general anesthesia taken within three years before application.

d. Successfully completed the general anesthesia and deep sedation site evaluation required by this chapter. An initial site evaluation must be completed within sixty days of the approval of the initial permit application.

e. A dentist utilizing deep sedation or general anesthesia must maintain current certification in basic life support and advanced cardiac life support if treating adult patients or pediatric advanced life support if treating pediatric patients.

f. A dentist authorized to provide deep sedation and general anesthesia shall utilize and have present a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least two qualified dental staff members as specified in subsection 40 of section 20-01-02-01.

5. Site evaluations for moderate sedation, deep sedation, and general anesthesia. A licensed and permitted dentist or host dentist utilizing moderate sedation, deep sedation, or general anesthesia is required to have an evaluation of the location where sedation or anesthesia services are rendered initially and every three years thereafter and shall maintain a properly equipped facility. A North Dakota licensed anesthesia or sedation provider authorized by the board shall re-evaluate the credentials, facilities, equipment, personnel, and procedures of a permitholder within every three years following a successful initial application or renewal. The purpose of the evaluation is to assess the patient's anesthetic risk and assess a site's ability to provide emergency care; therefore, the site evaluation emphasizes recognition and management of emergencies and complications associated with office administration of sedation and recordkeeping. Requirements of the site evaluation are as follows:

a. The applicant is responsible for scheduling a site evaluation with a board-appointed anesthesia site evaluator. The host dentist must be present during the site evaluation and submit the site evaluation form to the site evaluator no less than two weeks before the scheduled site evaluation and must include the following:

(1) Life support credentials of any qualified dental staff or medical staff and anesthesia provider or host dentist;

(2) Copy of license of qualified dental staff or other attending medical staff, or both;

(3) Copy of current permit to prescribe and administer controlled substances in this state issued by the United States drug enforcement administration;

(4) Copy of patient consent agreement and health history forms;

(5) Copy of a blank sedation monitoring form;

(6) Preanesthesia sedation instructions; and

(7) Post care instructions.

b. The site evaluator shall submit a completed site evaluation form and documentation to the board. The dentist's facility where anesthesia and sedation are provided must meet the requirements of this chapter and maintain the following properly operating equipment

and supplies appropriate for the age and relative size of the patient during the provision of anesthesia and sedation by the permitholder or physician anesthesiologist or certified registered nurse anesthetist or other qualified sedation provider;

(1) Emergency drugs as required by the board, including:

(a) Vasopressor;

(b) Corticosteroid;

(c) Bronchodilator;

(d) Muscle relaxant;

(e) Intravenous medication for treatment of cardiopulmonary arrest;

(f) Narcotic antagonist;

(g) Benzodiazepine antagonist;

(h) Antihistamine;

(i) Antiarrhythmic;

(j) Anticholinergic;

(k) Coronary artery vasodilator;

(l) Antihypertensive;

(m) Antihypoglycemic agent;

(n) Antiemetic;

(o) Adenosine, for general anesthesia and deep sedation sites;

(p) Dantrolene, for general anesthesia and deep sedation sites, if volatile gases are used; and

(q) Anticonvulsant;

(2) Positive pressure oxygen and supplemental oxygen delivery system;

(3) Stethoscope;

(4) Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;

(5) Oropharyngeal or nasopharyngeal airways, or both;

(6) Pulse oximeter;

(7) Auxiliary lighting;

(8) Blood pressure monitor with an automated time determined capability and method for recording the data;

(9) Cardiac defibrillator or automated external defibrillator (AED);

(10) End-tidal carbon dioxide monitor;

(11) Electrocardiograph monitor;

(12) Laryngoscope multiple blades, backup batteries, and backup bulbs;

(13) Endotracheal tubes and appropriate connectors;

(14) Magill forceps;

(15) Appropriate intravenous setup, including appropriate supplies and fluids;

(16) Cricothyrotomy equipment;

(17) Thermometer; and

(18) Scale.

c. The operatory where moderate sedation, deep sedation, or general anesthesia is to be administered must:

(1) Be of adequate size and design to permit physical access of emergency equipment and personnel and to permit effective emergency management;

(2) Be equipped with a chair or table adequate for emergency treatment, including a chair or cardiopulmonary resuscitation board suitable to administer cardiopulmonary resuscitation;

(3) Be equipped with a lighting system to permit the evaluation of the patient's skin and mucosal color with a backup system to permit the completion of any operation underway at the time of a general power failure;

(4) Be equipped with suction and backup suction equipment also including suction catheters and tonsil suction; and

(5) Be equipped with an oxygen delivery system and backup system complete with full-face masks and appropriate connectors, capable of delivering oxygen to the patient under positive pressure.

d. An operatory may double as a recovery location. A recovery room must be equipped with the following:

(1) Suction and backup suction equipment;

(2) Positive pressure oxygen;

(3) Sufficient light to provide emergency treatment;

(4) Be of adequate size and design to allow emergency access and management; and

(5) Be situated to allow the patient to be observed by the dentist or a qualified staff member at all times.

e. The applicant or permitholder shall provide written emergency protocol and written documentation of quarterly mock codes to the site evaluator and provide training to familiarize office staff in patient monitoring and the treatment of the following clinical emergencies:

(1) Laryngospasm;

(2) Bronchospasm;

(3) Emesis and aspiration;

(4) Airway blockage by foreign body;

(5) Angina pectoris;

(6) Myocardial infarction;

(7) Hypertension/hypotension;

(8) Hypertensive crisis;

(9) Hematoma;

(10) Extravasation;

(11) Phlebitis;

(12) Intra-arterial injection;

(13) Syncope;

(14) Hyperventilation/hypoventilation;

(15) Seizures;

(16) Allergic and toxicity reactions; and

(17) Malignant hypothermia, deep sedation and general anesthesia only.

f. Failure to successfully complete the anesthesia inspection must result in an automatic suspension of anesthesia and sedation privileges. The applicant shall have thirty days from the date of inspection to correct documented deficiencies. Once the deficiencies are corrected and approved by the site evaluator, the permit authorizing sedation and anesthesia privileges may be reinstated.

g. Effective January 1, 2026, completion of a board-approved anesthesia simulation course and the completion of anesthesia simulation training successfully every five years thereafter as required by section 20-02-01-06.

6. Other anesthesia providers. A host dentist who intends to use the services of a certified registered nurse anesthetist, anesthesiologist, or another dentist authorized by permit to administer moderate sedation, deep sedation, or general anesthesia, shall notify the board before sedation services are provided and arrange a site evaluation with the board appointed anesthesia professional. The sedation provider is responsible for discharge assessment. The host dentist shall run a mock code quarterly with the sedation team and maintain a record of the mock code schedule and attendance. The anesthesia provider and the host dentist shall remain at the facility until the sedated patient is discharged.

7. Renewal of permit and site evaluation. All sedation and anesthesia permits must be renewed biennially, concurrent with the dentist's license renewal. The board of dental examiners may renew such permit biennially provided:

a. Requirements of the permit have been met;

b. Application for renewal and renewal fee is received by the board before the date of expiration of the permit. If the renewal application and renewal fee have not been received by the expiration of the permit, late fees as determined by the board must apply; and

c. The anesthesia site inspection is in good standing with the board of dental examiners.

8. Documentation. Dentists administering sedation or anesthesia shall maintain adequate documentation.

a. For the administration of local anesthesia, minimal sedation, and analgesia, the following documentation is required:

(1) Pertinent medical history, including weight and height;

(2) Medication administered and dosage; and

(3) Vital signs include heart rate and blood pressure.

b. For administration of moderate sedation, deep sedation, or general anesthesia the following documentation is required:

(1) A current and comprehensive medical history, to include current medications;

(2) Informed consent of the patient for the administration of anesthesia;

(3) An anesthesia record, which includes documentation of the following:

(a) Height and weight of the patient to allow for the calculation of body mass index and dosage of emergency medications;

(b) American society of anesthesiologist's physical status classification;

(c) Fasting or nothing by mouth status;

(d) Dental procedure performed on the patient;

(e) Time anesthesia commenced and ended;

(f) Parenteral access site and method, if utilized;

(g) Medication administered, including oxygen, dosage, route, and time given;

(h) Vital signs before and after anesthesia is utilized, to include heart rate, blood pressure, respiratory rate, and oxygen saturation for all patients;

(i) Intravenous fluids, if utilized;

(j) Response to anesthesia, including any complications;

(k) Condition and Aldrete score of patient at discharge;

(l) Records showing continuous monitoring of blood pressure, heart rate, and respiration using electrocardiographic monitoring and pulse oximetry recorded every five minutes, if utilized;

(m) Emergency protocols followed in the instance of an adverse event; and

(n) Staff participating in the administration of anesthesia, treatment, and monitoring.

9. Personnel.

a. During the administration of minimal sedation, the supervising dentist and at least one other individual who is experienced in patient monitoring and documentation must be present.

b. During the administration of moderate sedation, the anesthesia permit provider and at least one other individual who is experienced in patient monitoring and documentation must be present.

c. During the administration of deep sedation or general anesthesia, the anesthesia permit provider and at least two other individuals meeting the following requirements must be present:

(1) One individual to assist the host dentist as necessary.

(2) One qualified dental staff member solely responsible to assist with observation and monitoring of the patient.

d. During any sedation or anesthesia procedure, the anesthesia permit provider retains full accountability, but delegation to trained dental personnel may occur under:

(1) Direct, continuous, and visual supervision by the anesthesia permitholder if medication, excluding local anesthetic, is being administered to a patient in the intraoperative phase of surgery. A patient under general anesthesia, deep sedation, and moderate sedation is in the intraoperative phase of surgery from the first administration of anesthetic medication to:

(a) End of the surgical procedure;

(b) No additional anesthetic medication will be administered;

(c) Peak effect of the anesthesia medication has been reached; or

(d) The patient has regained consciousness with a full return of protective reflexes, including the ability to respond purposely to physical and verbal commands; or

(2) Direct supervision by the dentist and anesthesia permitholder if a patient is being monitored in the postoperative phase of surgery.

e. All individuals assisting the anesthesia permitholder during sedation or anesthesia shall maintain current basic life support, advanced cardiovascular life support, or pediatric advanced life support and shall be appropriately trained in emergency procedures through updates or drills that must be held at least quarterly and documented.

10. Standards for patient monitoring.

a. For the administration of local anesthesia and analgesia, patient monitoring must include the general state of the patient.

b. For the administration of minimal sedation, patient monitoring must include the following:

(1) Pre- and post-procedure heart rate and respiratory rate;

(2) Pre- and post-procedure blood pressure; and

(3) Level of anesthesia or sedation.

c. For the administration of moderate sedation, patient monitoring must include the following:

(1) Continuous heart rate, respiratory rate, and oxygen saturation;

(2) Intermittent blood pressure every five minutes or more frequently;

(3) Continuous electrocardiograph, if clinically indicated by patient history, medical condition, or age;

(4) End-tidal carbon dioxide monitoring (capnography); and

(5) Level of anesthesia or sedation.

d. For the administration of deep sedation or general anesthesia, patient monitoring must include the following:

(1) Continuous heart rate, respiratory rate, and oxygen saturation;

(2) Continuous ventilatory status (spontaneous, assisted, controlled) for the administration of general anesthesia to a patient with an advanced airway in place (e.g. endotracheal tube or laryngeal mask airway);

(3) Intermittent blood pressure every five minutes or more frequently;

(4) Continuous electrocardiograph;

(5) Continuous temperature for the administration of volatile anesthesia gases or medications which are known triggers of malignant hyperthermia, otherwise the ability to measure temperature should be readily available;

(6) End-tidal carbon dioxide monitoring; and

(7) Level of anesthesia or sedation.

e. Monitoring equipment must be checked and calibrated in accordance with the manufacturer's recommendations and documented on an annual basis.

11. Patient evaluation required. The decision to administer controlled drugs for dental treatment must be based on a documented evaluation of the health history and current medical condition of the patient in accordance with the class I through V risk category classifications of the American society of anesthesiologists. The findings of the evaluation, the American society of anesthesiologists risk assessment class assigned, and any special considerations must be recorded in the patient's record.

12. Informed written consent. Before administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits, and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

13. Pediatric patients. Sedating medication may not be prescribed for or administered to a patient eight years of age or younger before the patient's arrival at the dentist office or treatment facility.

14. Emergency management. The licensed dentist authorized by permit to administer sedation or anesthesia and staff with patient care duties shall be trained in emergency preparedness. Written protocols must include training requirements and procedures specific to the

permitholder's equipment and drugs for responding to emergency situations involving sedation or anesthesia, including information specific to respiratory emergencies. The permitholder shall document this review of office training or mock codes. Protocols must include the American heart association's basic life support or cardiopulmonary resuscitation and advanced cardiac life support, or pediatric advanced life support for any practitioner administering moderate sedation, deep sedation, or general anesthesia.

a. If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

b. Quarterly mock codes to simulate office medical emergencies must be documented and available during a site evaluation.

c. Authorization of duties. A dentist who authorizes the administration of general anesthesia, deep sedation, or moderate sedation in the dentist's dental office is responsible for assuring that:

(1) The equipment for administration and monitoring is readily available and in good working order before performing dental treatment with anesthesia or sedation. The equipment either must be maintained by the dentist in the dentist's office or provided by the anesthesia or sedation provider;

(2) The person administering the anesthesia or sedation is appropriately licensed;

(3) The individual authorized to monitor the patient is qualified;

(4) A physical evaluation and medical history is taken before administration of general anesthesia or sedation. A dentist holding a permit shall maintain records of the physical evaluation, medical history, and general anesthesia or sedation procedures; and

(5) Administration of sedation by another qualified provider requires the operating dentist to maintain advanced cardiac life support if the patient is nine years of age or older and pediatric advanced life support if the patient is eight years old or younger.

d. Reporting. All licensed dentists in the practice of dentistry in this state shall submit a report within a period of seven days to the board office of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of, minimal sedation, nitrous oxide inhalation analgesia, moderate sedation, deep sedation, or general anesthesia.

(1) The report must include responses to at least the following:

(a) Description of dental procedure;

(b) Description of preoperative physical condition of patient;

(c) List of drugs and dosage administered;

(d) Description, in detail, of techniques utilized in administering the drugs utilized;

(e) Description of adverse occurrence:

[1] Description, in detail, of symptoms of any complications, to include onset and type of symptoms in patient.

[2] Treatment instituted on the patient.

[3] Response of the patient to the treatment.

(f) Description of the patient's condition on termination of any procedures undertaken; and

(g) The unique reporting identification issued by the dental anesthesia incident reporting system, indicating a report has been submitted to the national database.

(2) Violations. A violation of any provision of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, license, or both, or the dentist may be reprimanded or placed on probation.

15. Controlled pharmaceuticals.

a. A dentist must secure and maintain controlled pharmaceuticals in accordance with the state and federal guidelines.

b. Used controlled pharmaceuticals or medications must be discarded immediately with documentation of disposal in conformance with drug enforcement administration guidelines.

History: Effective October 1, 1993; amended effective May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-01, 43-28-06, 43-28-15, 43-28-18.1

20-02-01-06. Continuing dental education for dentists.

Each dentist shall ~~provide evidence on forms supplied by the board that the dentist has attended or participated~~maintain documentation of attendance or participation in continuing clinical dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle for dentists is thirty-two. Of these hours, a dentist may earn no more than sixteen hours from self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor. A qualified professional may act as a proctor who oversees a clinical continuing education course which may be used for classroom style continuing education credits. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from online education. The continuing education must include:

   a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

   b. Two hours of infection control.

   c. A cardiopulmonary resuscitation course.

   d. For sedation and anesthesia permitholders~~, four~~ :

(1) Six hours related to sedation or anesthesia; and

(2) Two hours of closed claim anesthesia continuing education courses.

e. For anesthesia and sedation permitholders effective January 1, 2026, and every five years thereafter, successful completion of a board-approved anesthesia simulation course and the completion of anesthesia simulation training.

4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement. Certificates awarded for continuing education must indicate the name of the continuing education provider, date, and number of hours of continuing education. Certificates obtained from webinar courses must indicate the course was a webinar. For continuing education courses utilizing a proctor, the certificate of attendance must be signed by the proctor.

5. All dentists must hold a current cardiopulmonary resuscitation certificate. ~~Anesthesia permitholders are required to maintain current advanced cardiac life support certification or pediatric advanced life support as specified by permit.~~General anesthesia, deep sedation, and moderate sedation providers shall maintain current advanced cardiac life support or pediatric advanced life support certification as determined by the age of the patients treated. A dentist who utilizes minimal sedation shall maintain basic life support certification.

6. Effective January 1, 2026, all dentists who administer general anesthesia, deep sedation, and moderate sedation shall successfully complete an approved anesthesia simulation training course and complete anesthesia simulation training successfully every five years thereafter. Proof of completion of this requirement must be submitted to the anesthesia inspector as required in subsection 5 of section 20-02-01-05.

7. The board may audit the continuing education credits of a dentist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities ~~listed on the licensee's continuing education form~~. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

~~7.~~8. A dentist who maintains a license on inactive status is not subject to continuing education requirements.

History: Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998; June 1, 2002; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 23-12-09, 43-28-06, 43-28-16.2

20-02-01-08. Discontinuance of practice - Retirement - Discontinuance of treatment.

These rules are adopted for the purpose of avoiding practice abandonment. A licensed dentist shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's legal guardian, the dentist shall furnish the dental records or copies of the records, including dental radiographs or copies of the radiographs. The dentist may charge a nominal fee for duplication of records as provided by North Dakota Century Code section 23-12-14, but may not refuse to transfer records for nonpayment of any fees.

1. A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon moving from a community, shall notify all active patients in writing and by publication once a week for three consecutive weeks in a newspaper of general circulation in the community that the licensee intends to discontinue the practice of dentistry. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies

thereof, to the succeeding licensee. In the event of a transfer of patient records to another licensee assuming the practice, written notice must be furnished to all patients as hereinbefore specified. ~~"Active~~For the purpose of this section, "active patient" is defined as a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to the discontinuation of the practice of dentistry by the licensee. In the event of a nontransfer of records, a licensee shall have the ongoing obligation of ~~not less than~~at least two years to afford the licensee's prior patients access to those records not previously provided to the patient.

2. In the event of termination of a dentist-patient relationship by a licensee, notice of the termination must be provided to the patient. A dentist-patient relationship exists if a dentist has provided treatment to a patient on at least one occasion within the preceding year. The dentist who is the owner or custodian of the patient's dental records shall mail notice of the termination of the dentist's relationship to the patient, which shall provide the following:

   a. The date that the termination becomes effective, and the date on which the dentist and patient relationship may resume, if applicable;

   b. A location at which the patient may receive emergency dental care for at least thirty days following the termination of the dentist and patient relationship;

   c. A statement of further dental treatment required, if any; and

   d. The dentist shall respond to a written request to examine or copy a patient's record within ten working days after receipt. A dentist shall comply with North Dakota Century Code section 23-12-14 for all patient record requests.

3. If a licensee dies or becomes unable to practice dentistry due to disability, for the purpose of selling or otherwise disposing of the deceased or disabled licensee's dental practice, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice for a period not to exceed twenty-four months.

4. If a dentist agrees to provide dental care without remuneration to underserved patients in the absence of a public health setting, the patient may not be considered a patient of record of the dentist providing the donated dental service.

5. If a licensee retires from a group practice and continuity of patient dental care will not be interrupted, the dentist is exempt from notifying active patients in writing. The licensee shall notify patients by publication once a week for three consecutive weeks in a newspaper of general circulation in the community that the licensee intends to discontinue the practice of dentistry.

History: Effective April 1, 2006; amended effective April 1, 2015; July 1, 2022.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06, 43-28-18

20-02-01-09. ~~Retention of~~Patient records.

~~A~~Dental records must be legible and include a chronology of the patient's progress throughout the course of all treatment and postoperative visits. All entries in the patient record must be dated, initialed, and handwritten in ink or computer printed. Digital radiographs must be transferred by compact or optical disc, electronic communication, or printing on high quality photographic paper. All transferred film or digital radiographs must reveal images of diagnostic quality using proper exposure settings and processing procedures. For purposes of this section:

1. "Patient" means an individual who has received dental care services from a provider for treatment of a dental condition.

2. "Dental record" or "patient's chart" means the detailed history of the physical examination, diagnosis, treatment, patient-related communications, and management of a patient documented in chronological order. The dental record must contain the following components:

   a. Personal date to include name, address, date of birth, name of patient's parent or guardian, name and telephone number of a person to contact in case of an emergency, and patient's insurance information.

   b. Patient's reason for visit or chief complaint.

   c. Dental and physical health history.

   d. Clinical examination must include record of existing oral health status, radiographs used, and any other diagnostic aids used.

   e. Diagnosis.

   f. Dated treatment plan except for routine dental care, such as preventive services.

   g. Informed consent must include notation of treatment options discussed with the patient, including prognosis of the treatment plan, benefits and risks of each treatment, and documentation of the treatment the patient has chosen.

   h. Corrections of records must be legible, unless electronic and written in ink, and contain no erasures or use of "white-outs". If incorrect information is placed in the record, it must be crossed out with one single line and initialed by the dental health care worker.

   i. Progress notes must include a chronology of the patient's progress throughout the course of all treatment and postoperative visits of treatment provided; medications used and materials placed; the treatment provider by name or initials; name of collaborating dentist; administration information of nitrous oxide inhalation or any medication dispensed before, during, or after discharge, and patient status at discharge.

   j. Each patient shall have access to health provider information as it pertains to their treating doctor or potential doctors. Any entity utilizing telehealth shall provide upon request of a patient the name of the dentist, telephone number, practice address, and state license number of any dentist who was involved with the provision of services to a patient before or during the rendering of dental services.

3. "Retention of records" means a dentist shall retain a patient's dental record for a minimum of six years after the patient's last examination, prescription, or treatment. Records for minors shall be retained for a minimum of either one year after the patient reaches the age of eighteen or six years after the patient's last examination, prescription, or treatment, whichever is longer. Proper safeguards shall be maintained to ensure safety of records from destructive elements. The requirements of this rule apply to electronic records as well as to records kept by any other means.

History: Effective April 1, 2006; amended effective January 1, 2011; July 1, 2022.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06, 43-28-18

20-02-01-11. Permit for the use of dermal fillers and botulinum toxin for dental use.

~~1.~~ The rules in this chapter are adopted for the purpose of defining standards for the administration of dermal fillers and botulinum toxin by a dentist if the use is limited to the practice of dentistry as defined in subsection 7 of North Dakota Century Code section ~~43-28-01(7)~~43-28-01. Notwithstanding a dentist who specializes in oral and maxillofacial surgery, the board may issue a permit to a dentist who applies on forms prescribed by the board and pays the initial fee or biennial renewal fee as required by subsection 1 of section ~~20-05-01-01(1)~~20-05-01-01 to administer botulinum toxin or dermal fillers for the purpose of functional, therapeutic, and aesthetic dental treatment purposes under the following conditions~~:~~

~~a. The~~ if the dentist provides evidence that demonstrates:

~~(1)~~1. The applicant has completed a course and received satisfactory training in a residency or other educational program accredited by the commission on dental accreditation of the American dental association; ~~or~~

~~(2)~~2. The applicant has successfully completed a board-approved continuing education course of instruction within the previous three months of application which includes neurophysiology, including facial tissues, parasympathetic, sympathetic, and peripheral nervous systems relative to the peri-oral tissue, and facial architecture, and:

~~(a)~~a. Patient assessment and consultation for botox and dermal fillers;

~~(b)~~b. Indications and contraindications for techniques;

~~(c)~~c. Proper preparation and delivery techniques for desired outcomes;

~~(d)~~d. Enhancing and finishing esthetic dentistry cases with dermal fillers;

~~(e)~~e. Botulinum neurotoxin treatment of temporomandibular joint syndrome and bruxism;

~~(f)~~f. Knowledge of adverse reactions and management and treatment of possible complications;

~~(g)~~g. Patient evaluation for best esthetic and therapeutic outcomes;

~~(h)~~h. Integrating botulinum neurotoxin and dermal filler therapy into dental therapeutic and esthetic treatment plans; and

~~(i)~~i. Live patient hands-on training, including diagnosis, treatment planning, and proper dosing and delivery of botox and dermal fillers; or

3. The applicant has successfully completed a continuing education course of instruction substantially equivalent to the requirements of this state and provides evidence from another state or jurisdiction where the applicant legally is or was authorized to administer dermal fillers and botulinum toxin.

History: Effective April 1, 2015; amended effective July 1, 2017; July 1, 2022.
General Authority: NDCC 43-28-06
Law Implemented: NDCC ~~43-28-02~~43-28-01, 43-28-06

CHAPTER 20-03-01
DUTIES

Section
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20-03-01-05 Registration of Registered and Qualified Dental Assistants
20-03-01-05.1 Additional Expanded Duties of Registered Dental Assistants [Repealed]
20-03-01-06 Continuing Dental Education for Qualified and Registered Dental Assistants

20-03-01-01. Duties.

~~A dental assistant may perform the duties listed in subsections 1 through 5 under direct, indirect, or general supervision of a dentist as follows~~Duties are delegated to nonregistered and registered dental assistants under prescribed levels of supervision as follows:

1. A dental assistant who is not registered with the board and employed by a dentist may perform the following basic supportive dental duties under direct supervision:

   a. Take and record pulse, blood pressure, and temperature.

   b. Take and record preliminary dental and medical history for the interpretation by the dentist.

   c. Apply topical medications and drugs to oral tissues, including topical anesthetic~~, but not including desensitizing or caustic agents or anticariogenic agents~~.

   d. Receive removable dental prosthesis for cleaning or repair.

   e. Take impressions for study casts.

   f. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).

   g. Retract patient's cheek, tongue, or other tissue parts during a dental procedure.

   h. Remove such debris as is normally created in the course of treatment during or after dental procedures by vacuum devices, compressed air, mouthwashes, and water.

   i. Isolate the operative field, not to include rubber dams.

   j. Hold a curing light for any dental procedure. Curing lights may not include a laser capable of cutting, burning, or damaging hard or soft tissue or for electrosurgery for tissue retraction.

2. A qualified dental assistant may perform the following duties~~ set forth in subsection 1 and take dental radiographs under the direct supervision of a dentist.~~:

   a. Duties set forth in subsection 1 under the direct supervision of a dentist.

   b. Take dental radiographs under the direct supervision of a dentist.

   c. Produce on a patient of record a final scan by digital capture for review by the authorizing dentist under general supervision for a prescriptive fixed or removable appliance.

3. A registered dental assistant may perform the duties set forth in subsection 2 and the following duties under the direct supervision of a dentist:

a. ~~Place and remove arch wires or appliances that have been activated by a dentist.~~

~~b.~~ Acid etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.

~~c. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.~~

~~d.~~b. Take face bow transfers.

~~e.~~c. Place and remove matrix bands and wedges.

~~f.~~d. Adjust permanent crowns outside of the mouth.

~~g.~~e. Orally transmit a prescription that has been authorized by the supervising dentist.

~~h.~~f. Administer emergency medications to a patient in order to assist the dentist in an emergency.

g. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).

4. A registered dental assistant may perform the following duties on a patient of record under the ~~direct or~~ indirect supervision of a dentist:

a. ~~Apply anticariogenic agents topically.~~

~~b. Apply desensitizing solutions to the external surfaces of the teeth.~~

~~c.~~ Dry root canal with paper points.

~~d.~~b. Place and remove rubber dams.

~~e. Take occlusal bite registration for study casts.~~

~~f.~~c. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.

~~g.~~d. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments ~~only~~or a slow-speed handpiece.

~~h. Perform nonsurgical clinical and laboratory diagnosis tests, including pulp testing, for interpretation by the dentist.~~

~~i.~~e. Place and remove periodontal dressings~~, dry socket medications, and packing~~.

~~j.~~f. Monitor a patient who has been inducted by a dentist into nitrous oxide ~~relative~~inhalation analgesia.

~~k. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.~~

~~l. Preselect and prefit orthodontic bands.~~

~~m. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.~~

~~n. Take dental radiographs.~~

g. Apply bleaching solution, activate light source, and monitor and remove bleaching materials.

h. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.

5. A registered dental assistant may perform the following duties under the ~~direct, indirect, or~~ general supervision of a dentist:

a. Take and record pulse, blood pressure, and temperature.

b. Take and record preliminary dental and medical history for the interpretation by the dentist.

c. Apply topical medications and drugs to oral tissues, including topical anesthetic, ~~but not including~~and topical fluoride, fluoride varnish, silver diamine fluoride, and desensitizing ~~or~~agents but not including caustic agents ~~or anticariogenic agents~~.

d. Receive removable dental prosthesis for cleaning or repair.

e. Take impressions or occlusal bite registrations for study casts.

f. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.

g. Remove sutures.

h. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.

i. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.

j. Provide oral hygiene education and instruction.

~~j.~~k. Provide an oral assessment for interpretation by the dentist.

~~k.~~l. Repack dry socket medication and packing for palliative treatment.

~~l.~~m. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board-approved sealant course. Adjust sealants with slow-speed handpiece.

~~m.~~n. Polish the coronal surfaces of the teeth with a rubber cup or brush.

~~n.~~o. Polish restorations with a slow-speed handpiece.

p. Take dental radiographs.

q. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.

r. Produce on a patient of record, a final scan by digital capture for review by the authorizing dentist for a prescriptive fixed or removable appliance.

s. Preselect and prefit orthodontic bands.

t. Perform nonsurgical clinical and laboratory diagnosis tests, including pulp testing, for interpretation by the dentist.

u. Place and remove arch wires or appliances that have been activated by a dentist.

v. Provide screenings as defined by subsection 44 of section 20-01-02-01.

w. Adjust a temporary denture or partial for dentitions actively under treatment for which permanent dentures or partial dentures are being fabricated.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-01.1. Expanded duties of registered dental assistants.

A registered dental assistant shall apply for a permit to perform the following duties:

1. A registered dental assistant authorized by permit and under the direct supervision of a dentist may perform the following restorative functions:

   a. Place, carve, and adjust class I, II, and class V amalgam or glass ionomer restorations with hand instruments or a slow-speed handpiece;

   b. Adapt and cement stainless steel crowns; and

   c. Place, contour, and adjust class I, II, and class V composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.

2. A registered dental assistant or a dental sedation assistant authorized by permit and under the contiguous supervision of a dentist authorized by permit to provide ~~parenteral~~moderate sedation, deep sedation, or general anesthesia may ~~provide anesthesia duties as follows~~:

   a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia;

   b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open;

   c. Prepare anesthesia equipment and perform patient monitoring; and

   d. Assist with emergency treatment and protocols.

3. A registered dental assistant or a dental sedation assistant authorized by permit and under the direct visual supervision of a dentist authorized by permit to provide ~~parenteral~~moderate sedation ~~shall provide anesthesia duties as follows~~, deep sedation, or general anesthesia may:

   a. Draw up and prepare medications;

   b. Follow instructions to deliver medication into an intravenous line upon verbal command of the supervising dentist;

   c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate upon verbal command of the supervising dentist; and

d. Adjust an electronic device to provide medications, such as an infusion pump upon verbal command of the supervising dentist.

4. A registered dental assistant authorized by permit and under the indirect supervision of a dentist may administer nitrous oxide analgesia to a patient who has not taken sedative medications before treatment in accordance with subsection 2 of section 20-03-01-05.

History: Effective April 1, 2015; amended effective July 1, 2017; July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-01.2. Requirements of permit for expanded duties.

The board may grant a permit to a registered dental assistant or a dental sedation assistant for the following:

1. The board may issue or renew a class I dental anesthesia assistant permit authorizing a registered dental assistant or dental sedation assistant to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide general anesthesia, deep sedation, or moderate sedation, upon successful completion of the following:

   a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course.

   b. Submits proof of current certification status from the American association of oral and maxillofacial surgeon's dental anesthesia assistant national certification or a board-approved competency examination.

   c. The applicant holds current and valid certification for health care provider basic life support, advanced cardiac life support, or pediatric advanced life support; and

   d. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or moderate sedation permit of the dentist where the registered dental assistant will be performing anesthesia assistant services.

2. The board may issue or renew a class II dental anesthesia assistant permit authorizing a registered dental assistant or dental sedation assistant to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide general anesthesia, deep sedation, or moderate sedation, upon successful completion of the following:

   a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course.

   b. Submits proof of current dental anesthesia assistant national certification or a board-approved competency examination;

   c. The applicant has successfully completed hands-on training in intravenous access or phlebotomy that includes live experience starting and maintaining intravenous lines;

   d. The applicant holds current and valid certification for health care provider basic life support, advanced cardiac life support, or pediatric advanced life support; and

   e. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or moderate sedation permit of the dentist where the registered or qualified dental assistant will be performing anesthesia assistant services.

3. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental assistant under the direct supervision of a dentist to provide restorative functions under the following conditions:

a. The applicant meets any of the following requirements:

(1) The applicant has successfully completed a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years. The board may require successful completion of the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or

(2) The applicant has successfully passed the western regional examining board's restorative examination or other board-approved examination over five years from the date of application and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination or other board-approved examination and provides evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the immediate five years from the date of application.

b. A registered dental assistant may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.

c. The restorative functions only may be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental assistant.

d. Before the patient is released, the final restorations must be checked and documented by the supervising dentist.

History: Effective July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-13.2

20-03-01-02. Prohibited services.

A dental assistant, qualified dental assistant, or registered dental assistant may not perform the following services:

1. Diagnosis and treatment planning.

2. Surgery on hard or soft tissue.

3. Administer local anesthetics, sedation or general anesthesia drugs or titrate local anesthetics, sedation or general anesthesia drugs without a board authorized permit.

4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.

5. Adjust a crown which has been cemented by a dentist.

6. Activate any type of orthodontic appliance or fabricate orthodontic impressions for an individual who is not a patient of record.

7. Cement or bond orthodontic bands or brackets that have not been previously placed by a dentist.

8. Place bases or cavity liners.

9. Scaling, root planing, or gingival curettage.

10. Measure the gingival sulcus with a periodontal probe.

11. Use a high-speed handpiece inside the mouth.

12. Unless authorized by permit in accordance with section 20-03-01-05.1, monitor a patient who has been induced to a level of moderate sedation, deep sedation, or general anesthesia until the dentist authorized by permit to administer sedation or anesthesia determines the patient may be discharged for recovery.

History: Effective February 1, 1992; amended effective October 1, 1993; April 1, 2000; June 1, 2002; July 1, 2004; January 1, 2011; April 1, 2015; July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-05. Registration of registered and qualified dental assistants.

An individual seeking registration as a registered or qualified dental assistant shall apply on forms prescribed by the board. The application must be notarized and include the application fee.

1. The board may grant registration as a registered dental assistant to an applicant meeting all the following requirements:

   a. The applicant meets any of the following requirements:

      (1) The applicant successfully completed a dental assisting program, accredited by the commission on dental accreditation of the American dental association or approved by the board, within one year of application.

      (2) The applicant was certified by the dental assisting national board within one year of application.

      (3) The applicant successfully completed a dental assisting program, accredited by the commission on dental accreditation of the American dental association or approved by the board, and completed, within two years before application, sixteen hours of continuing education in accordance with section 20-03-01-06.

      (4) The applicant was certified by the dental assisting national board, and completed, within two years before application, sixteen hours of continuing education in accordance with section 20-03-01-06.

      (5) The applicant successfully completed the examination administered by the joint commission on national dental examinations or the dental hygiene certification board of Canada and completed within two years of application sixteen hours of continuing education in accordance with section 20-03-01-06.

   b. The applicant passed a written examination on the laws and rules governing the practice of dentistry in North Dakota within one year of application.

c. The applicant successfully completed a cardiopulmonary resuscitation course within two years of application.

d. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

2. The board may grant registration as a qualified dental assistant to an applicant meeting all the following requirements:

a. The applicant meets any of the following requirements:

(1) The applicant passed the ~~infection control and radiation parts of~~national entry level dental assistant certification administered by the dental assisting national board ~~examination~~and completed three hundred hours of on-the-job clinical training within one year of application.

(2) The applicant passed the ~~infection control and radiation parts of~~national entry level dental assistant certification administered by the dental assisting national board ~~examination~~, three hundred hours of on-the-job clinical training, and completed, within two years before application, sixteen hours of continuing education in accordance with section 20-03-01-06.

(3) The applicant successfully completed the national entry level dental assistant certification administered by the dental assisting national board and successfully completed the North Dakota department of career and technical education dental assisting education program association.

(4) The applicant successfully completed a board-approved equivalent course within one year of application.

b. ~~The applicant completed six hundred fifty hours of dental assistance instruction, including on-the-job training.~~

~~c.~~ The applicant passed a written examination on the laws and rules governing the practice of dentistry in North Dakota within one year of application.

~~d.~~c. The applicant successfully completed a cardiopulmonary resuscitation course within two years of application.

~~e.~~d. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

History: Effective January 1, 2011; amended effective July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-13.2

20-03-01-05.1. Additional expanded duties of registered dental assistants.

Repealed effective July 1, 2022.

~~The board may grant a permit to a registered dental assistant for the following:~~

~~1. The board may issue or renew a class I dental anesthesia assistant permit authorizing a registered dental assistant to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide parenteral sedation, upon successful completion of the following:~~

a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course.

b. Submits proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification or a board-approved competency examination.

c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and

d. The applicant provides a copy of a valid North Dakota general anesthesia permit or parenteral sedation permit of the dentist where the registered dental assistant will be performing anesthesia assistant services.

2. The board may issue or renew a class II dental anesthesia assistant permit authorizing a registered dental assistant to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide parenteral sedation, upon successful completion of the following:

a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course and submitting proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification or a board-approved competency examination;

b. The applicant has successfully completed hands-on training in intravenous access or phlebotomy that includes live experience starting and maintaining intravenous lines;

c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and

d. The applicant provides a copy of a valid North Dakota general anesthesia or parenteral sedation permit of the dentist where the registered dental assistant will be performing anesthesia assistant services.

3. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental assistant under the direct supervision of a dentist to provide restorative functions under the following conditions:

a. The applicant meets any of the following requirements:

(1) The applicant has successfully completed a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years. The board may require successful completion of the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or

(2) The applicant has successfully passed the western regional examining board's restorative examination or other board-approved examination over five years from the date of application and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination or other board-approved examination and provide evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the

~~supervising dentist of successful completion of at least twenty-five restorative procedures within the immediate five years from the date of application.~~

~~b. A registered dental assistant may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.~~

~~c. The restorative functions shall only be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental assistant.~~

~~d. Before the patient is released, the final restorations shall be checked and documented by the supervising dentist.~~

~~**History:** Effective April 1, 2015; amended effective July 1, 2017.~~
~~**General Authority:** NDCC 43-20-10~~
~~**Law Implemented:** NDCC 43-20-13.2~~

20-03-01-06. Continuing dental education for qualified and registered dental assistants.

Each qualified or registered dental assistant shall provide evidence ~~on forms supplied by the board that the qualified or registered dental assistant has attended or participated~~of attendance or participation in continuing clinical dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing ~~dental~~ education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a qualified or registered dental assistant may earn no more than eight hours from self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor. A qualified professional may act as a proctor who oversees a clinical continuing education course which may be used for classroom style continuing education credits. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from ~~online education~~webinars or classroom style learning. The continuing education must include:

   a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

   b. Two hours of infection control.

   c. A cardiopulmonary resuscitation course.

   d. For registered dental anesthesia assistant permitholders, two hours related to sedation or anesthesia.

   e. For registered dental restorative assistant permitholders, two hours related to restorative dentistry.

4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement. Certificates awarded for continuing education must indicate the name of the continuing education provider, date, and number of hours of continuing education. Certificates obtained

from webinar courses must indicate the course was a webinar. For continuing education courses utilizing a proctor, the certificate of attendance must be signed by the proctor.

5. All qualified or registered dental assistants must hold a current cardiopulmonary resuscitation certificate.

6. The board may audit continuing education credits of a registered dental assistant. Proof of continuing education shall be maintained from the previous renewal cycle. Upon receiving notice of an audit from the board, a registered dental assistant shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities ~~listed on the licensee's continuing education form~~. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the registration.

History: Effective January 1, 2011; amended effective April 1, 2015; July 1, 2017; July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-13.1

CHAPTER 20-04-01
DUTIES

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20-04-01-01. Duties.

1. A dental hygienist may perform the following services under the ~~general,~~ direct~~, direct visual, indirect, or contiguous~~ supervision of a dentist:

~~1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.~~

~~2. Polish and smooth existing restorations with a slow-speed handpiece.~~

~~3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth, including anticariogenic agents and desensitizing solutions.~~

~~4. Take impressions for study casts on a patient of record.~~

~~5. Take and record preliminary medical and dental histories for the interpretation by the dentist.~~

~~6. Take and record pulse, blood pressure, and temperature.~~

~~7. Provide oral hygiene treatment planning after an oral assessment or dentist's diagnosis.~~

~~8. Take dental radiographs.~~

~~9. Apply therapeutic agents subgingivally for the treatment of periodontal disease.~~

~~10.~~ a. Administer local anesthetic as authorized by section 20-04-01-03.

b. Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids, rubber base, etc.).

~~11. Receive removable dental prosthesis for cleaning and repair.~~

~~12. Dry root canal with paper points.~~

~~13. Place and remove rubber dams.~~

~~14.~~ c. Place and remove matrix bands or wedges.

~~15. Take occlusal bite registration for study casts.~~

~~16. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.~~

~~17. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.~~

~~18.~~ d. Adjust permanent crowns outside of the mouth.

~~19. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.~~

~~20. Apply pit and fissure sealants. Adjust sealants with slow speed handpiece.~~

~~21. Place and remove periodontal dressings, dry socket medications, and packing.~~

~~22. Remove sutures.~~

~~23. Monitor a patient who has been inducted by a dentist into nitrous-oxide inhalation analgesia.~~

~~24. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.~~

~~25. Preselect and prefit orthodontic bands.~~

~~26. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.~~

~~27. Place and remove arch wires or appliances that have been activated by a dentist.~~

~~28. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.~~

~~29.~~ e. Acid-etch enamel surfaces ~~prior to pit and fissure sealants,~~before direct bonding of orthodontic brackets~~,~~ or composite restorations.

~~30. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a dentist.~~

~~31.~~ f. Take face bow transfers.

~~32. Orally transmit a prescription that has been authorized by the supervising dentist.~~

~~33. Repack dry socket medication and packing for palliative treatment.~~

~~34.~~ g. Administer emergency medications to a patient in order to assist the dentist.

~~35. Screenings as defined in section 20-01-02-01.~~

~~36. Produce on a patient of record, a final scan by digital capture for review by the authorizing dentist for a prescriptive removable or permanent appliance.~~

~~37. Apply bleaching solution, activate light source, and monitor and remove bleaching materials.~~

~~38. Apply interim therapeutic restorations using the standards and protocols established by an authorizing dentist and after completion of a board-approved course.~~

~~39. A dental hygienist under direct or indirect supervision may assist a dentist authorized by permit as set forth in section 20-02-01-05 as follows:~~

~~a. Sedation procedure preparation and presedation documentation, including date of procedure, nothing by mouth status, availability of responsible adult escort, and allergies.~~

~~b. Emergency equipment and use preparedness.~~

~~c. Monitor a patient discharged by a dentist once the patient is in recovery.~~

~~d. Documentation of patient responsiveness, vital signs, including heart rate, respiratory rate, blood pressure, oxygen saturation, and expired carbon dioxide.~~

~~e. Training must be documented and may be acquired directly by an employer-dentist, by a planned sequence of instruction in an educational institution or by in-office training.~~

~~40. A dental hygienist authorized by permit and under contiguous supervision of a dentist authorized by permit to provide moderate parenteral sedation may:~~

~~a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia.~~

~~b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.~~

~~c. Prepare anesthesia equipment and perform patient monitoring.~~

~~d. Assist with emergency treatment and protocols.~~

~~41. A dental hygienist authorized by permit and under direct visual supervision of a dentist authorized by permit to provide parenteral sedation may:~~

~~a. Draw up and prepare medications;~~

~~b. Follow instructions to deliver medication into an intravenous line upon verbal command of the supervising dentist;~~

~~c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate upon verbal command of the supervising dentist; and~~

~~d. Adjust an electronic device to provide medications, such as an infusion pump upon the verbal command of the supervising dentist.~~

~~42.~~2. A dental hygienist authorized by permit and under the direct supervision of a dentist may:

a. Place, carve, and adjust class I, II, and class V amalgam or glass ionomer restorations with hand instruments or a slow-speed handpiece;

b. Adapt and cement stainless steel crowns; and

c. Place, contour, and adjust class I, II, and class V composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.

~~43.~~3. A dental hygienist may perform the following services under the indirect supervision of a dentist:

a. Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids).

b. Dry root canal with paper points.

c. Place and remove rubber dams.

d. Place retraction cord in the gingival sulcus of a prepared tooth before the dentist taking an impression of the tooth.

e. Monitor a patient who has been inducted by a dentist into nitrous oxide inhalation analgesia.

f. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a dentist.

g. Assist a dentist authorized by permit as set forth in section 20-02-01-05 as follows:

(1) Sedation procedure preparation and presedation documentation, including date of procedure, nothing by mouth status, availability of responsible adult escort, and allergies.

(2) Emergency equipment and use preparedness.

(3) Monitor a patient discharged by a dentist once the patient is in recovery.

(4) Documentation of patient responsiveness, vital signs, including heart rate, respiratory rate, blood pressure, oxygen saturation, and expired carbon dioxide.

(5) Training must be documented and may be acquired directly by an employer-dentist, by a planned sequence of instruction in an educational institution, or by in-office training.

h. Monitor a patient who has been inducted by a dentist into nitrous oxide inhalation analgesia.

i. A dental hygienist authorized by permit and under the indirect supervision of a dentist may administer nitrous oxide analgesia to a patient who has not taken sedative medications prior to or for the duration of the dental hygiene treatment in accordance with ~~subsection 2 of~~ section 20-02-01-05.

4. A dental hygienist authorized by permit and under contiguous supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia may:

a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation, or general anesthesia.

b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.

c. Prepare anesthesia equipment and perform patient monitoring.

d. Assist with emergency treatment and protocols.

5. A dental hygienist authorized by permit and under direct visual supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia may:

a. Draw up and prepare medications;

b. Follow instructions to deliver medication into an intravenous line upon verbal command of the supervising dentist;

c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate upon verbal command of the supervising dentist; and

d. Adjust an electronic device to provide medications, such as an infusion pump upon the verbal command of the supervising dentist.

6. A dental hygienist may perform the following services under the general supervision of a dentist:

a. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist also may perform root planing and soft tissue curettage upon direct order of the dentist.

b. Polish and smooth existing restorations with a slow-speed handpiece.

c. Apply topical applications of drugs to the oral tissues and anticariogenic caries arresting and desensitizing solutions to the teeth.

d. Take impressions for study casts on a patient of record.

e. Take and record preliminary medical and dental histories for the interpretation by the dentist.

f. Take and record pulse, blood pressure, and temperature.

g. Provide oral hygiene treatment planning after an oral assessment or dentist's diagnosis.

h. Take dental radiographs.

i. Apply therapeutic agents subgingivally for the treatment of periodontal disease.

j. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments or a slow-speed handpiece.

k. Receive removable dental prosthesis for cleaning and repair.

l. Take occlusal bite registration for study casts.

m. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.

n. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.

o. Apply pit and fissure sealants. Adjust sealants with slow-speed handpiece.

p. Place and remove periodontal dressings, dry socket medications, and packing.

q. Remove sutures.

r. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.

s. Preselect and prefit orthodontic bands.

t. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.

u. Place and remove arch wires or appliances that have been activated by a dentist.

v. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.

w. Provide an oral assessment for interpretation by the dentist.

x. Orally transmit a prescription that has been authorized by the supervising dentist.

y. Repack dry socket medication and packing for palliative treatment.

z. Screenings as defined in section 20-01-02-01.

aa. Produce on a patient of record a final scan by digital capture for review by the authorizing dentist for a prescriptive fixed or removable appliance.

bb. Apply bleaching solution, activate light source, and monitor and remove bleaching materials.

cc. Apply interim therapeutic restorations using the standards and protocols established by an authorizing dentist and after completion of a board-approved course.

dd. Adjust a temporary denture or partial for dentitions actively under treatment for which permanent dentures or partial dentures are being fabricated.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; July 1, 2004; April 1, 2006; January 1, 2011; April 1, 2015; July 1, 2017; April 1, 2021; July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.2, 43-20-03, 43-20-11, 43-20-12

20-04-01-02. Prohibited services.

A dental hygienist may not perform the following services:

1. Diagnosis and treatment planning.

2. Surgery on hard or soft tissue.

3. Administer anesthetics, except topical and local anesthetic, as permitted under sections 20-04-01-01 and 20-04-01-03, or titrate local anesthetics, sedation or general anesthesia drugs without a board authorized permit.

4. ~~Monitor~~Unless authorized by permit in accordance with section 20-04-01-03.1 monitor a patient who has been induced to moderate sedation, deep sedation, or general anesthesia until the dentist authorized by permit to administer sedation or anesthesia determines the patient may be discharged for recovery.

5. Any irreversible dental procedure or procedures which require the professional judgment and skill of a dentist.

6. Adjust a crown which has been permanently cemented ~~without a restorative functions permit~~.

7. Activate any type of orthodontic appliance or fabricate impressions for an individual who is not a patient of record.

8. Cement or bond orthodontic bands or brackets that have not been previously placed by a dentist.

9. Place bases or cavity liners.

10. Use a high-speed handpiece inside the mouth.

History: Effective February 1, 1992; amended effective October 1, 1993; July 1, 2004; January 1, 2011; April 1, 2015; April 1, 2021; July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-03; 43-20-11, 43-20-12, 43-20-12.3

20-04-01-03. Duties of dental hygienists - Administration of local anesthesia - Authorization.

A dental hygienist may perform the following services under the direct supervision of a dentist:

1. A licensed dental hygienist may apply for ~~a permit~~authorization to administer local anesthesia to a patient who is at least eighteen years old, under the direct supervision of a licensed dentist.

2. Requirements for local anesthesia authorization are as follows:

   a. Submit evidence that ~~a~~the hygienist ~~must have~~ successfully completed a didactic and clinical course in local anesthesia within the last twenty-four months sponsored by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association resulting in the dental hygienist becoming clinically competent in the administration of local anesthesia; or

   b. Submit evidence that the hygienist has been authorized to administer local anesthesia in another jurisdiction and provide verification of clinical competency during the previous twelve months. Verification may consist of the following:

      (1) A letter from the accredited school with the school seal affixed. Photocopies will not be accepted.

      (2) A notarized copy of the certification of the local anesthesia course .

      (3) A notarized letter from a licensed dentist stating the licensed dental hygienist has competently administered local anesthesia ~~compentently~~.

   c. A licensed dental hygienist requesting authorization to administer local anesthesia who cannot provide verification as required in ~~subdivision a~~this section must submit evidence of successful completion of a didactic and clinical course in local anesthesia sponsored by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

History: Effective July 1, 2004; amended effective April 1, 2021; July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-03

20-04-01-03.1. Duties of the dental hygienist ~~requiring a~~- Requirements of permit.

The board may issue or renew a permit to a dental hygienist for the following:

1. The board may issue or renew a class I dental anesthesia assistant permit authorizing a dental hygienist to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide ~~parenteral~~moderate sedation, deep sedation, or general anesthesia, upon successful completion of the following:

   a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course.

b. The applicant submits proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification, or a board-approved competency examination;

c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and

d. The applicant provides a copy of a valid North Dakota general anesthesia~~ or parenteral~~, deep sedation, or moderate sedation permit of the dentist where the registered dental hygienist will be performing anesthesia assistant services.

2. The board may issue or renew a class II dental anesthesia assistant permit authorizing a registered dental hygienist to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide ~~parenteral~~moderate sedation, deep sedation, or general anesthesia upon successful completion of the following:

a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course and has proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification or a board-approved competency examination;

b. The applicant has successfully completed hands-on training in intravenous access or phlebotomy that includes live experience starting and maintaining intravenous lines;

c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and

d. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or ~~parenteral~~moderate sedation permit of the dentist where the registered dental hygienist will be performing anesthesia assistant services.

3. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental hygienist under the direct supervision of a dentist to provide restorative functions under the following conditions:

a. The applicant meets any of the following requirements:

(1) The applicant has successfully completed a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years. The board may require successful completion of the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or

(2) The applicant has successfully passed the western regional examining board's restorative examination or other board-approved examination over five years from the date of application and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination or other board-approved examination and provided evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the immediate five years before the date of application.

b. A dental hygienist may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.

c. The restorative functions shall only be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental hygienist.

d. Before the patient is released, the final restorations shall be checked and documented by the supervising dentist.

History: Effective April 1, 2015; amended effective July 1, 2017; July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-03

20-04-01-04. Additional requirements for licensure by examination.

The board may grant a license to practice dental hygiene to an applicant who has met the requirements of North Dakota Century Code section 43-20-01.2 and all the following requirements:

1. The applicant has passed the examination administered by the joint commission on national dental examinations or the dental hygiene certification board of Canada within five years of application.

2. The applicant has passed, within five years of application, a clinical competency examination administered by one of the following:

   a. Any regional dental testing service before September 17, 2009.

   b. Central regional dental testing service.

   c. Council of interstate testing agencies.

   d. ~~Western~~Commission on dental competency assessments - western regional examining board.

   e. American board of dental examiners.

3. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

4. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

History: Effective January 1, 2011; amended effective April 1, 2021; July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.2

20-04-01-05.1. Refresher course - Reentry.

An eligible dental hygienist may return to the practice of dental hygiene upon submitting an application fee and application on a form provided by the board, providing proof of having successfully completed a refresher course approved by the board, and meeting the following requirements:

1. Was previously licensed to practice dental hygiene in another state or jurisdiction where the licensure requirements were substantially equivalent.

2. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

3. The applicant has passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state.

4. Has successfully completed a cardiopulmonary resuscitation course within the previous two years.

5. Has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

6. Has practiced dental hygiene.

7. Has successfully completed a refresher course approved by the board that meets the following minimum criteria:

   a. Taught at a dental hygiene school accredited by the American dental association's commission on dental accreditation;

   b. Consists of a minimum of forty-three clock-hours, including a minimum of thirty-two clock-hours of clinical instruction;

   c. Includes didactic coursework, which may be presented in a classroom or independent study setting, or both, and clinical coursework covering the following:

      (1) Infection control and sterilization;

      (2) Patient assessment, including the taking of health histories, an oral inspection and evaluation, and charting;

      (3) Radiographic techniques;

      (4) Instrumentation techniques, including periodontal procedures and instrument sharpening;

      (5) Current techniques in the polishing of teeth and the application of fluoride;

      (6) Patient education; and

      (7) Office emergency situations.

8. A formerly licensed dental hygienist who is returning to the practice of dental hygiene may not administer local anesthesia or nitrous oxide until having completed courses of instruction in local anesthesia and nitrous oxide approved by the board.

9. Anything necessary for a criminal history record check pursuant to North Dakota Century Code section 43-28-11.2.

10. The applicant may be required to appear before the board.

History: Effective July 1, 2022.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-20-01.3, 43-20-10

20-04-01-08. Continuing dental education for dental hygienists.

Each dental hygienist shall provide evidence ~~on forms supplied by the board that the dental hygienist has attended or participated~~of attendance or participation in continuing clinical dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a dental hygienist may earn no more than eight hours from self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor. A qualified professional may act as a proctor who oversees a clinical continuing education course which may be used for classroom style continuing education credits. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from webinars or classroom style learning. The continuing education must include:

   a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

   b. Two hours of infection control.

   c. A cardiopulmonary resuscitation course.

   d. For registered dental anesthesia hygienist permitholders, two hours related to sedation or anesthesia.

   e. For registered dental restorative hygienist permitholders, two hours related to restorative dentistry.

   f. For a dental hygienist practicing under general supervision, two hours related to medical emergencies.

4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement. Certificates awarded for continuing education must indicate the name of the continuing education provider, date, and number of hours of continuing education. Certificates obtained from webinar courses must indicate the course was a webinar. For continuing education courses utilizing a proctor, the certificate of attendance must be signed by the proctor.

5. All dental hygienists must hold a current cardiopulmonary resuscitation certificate.

6. A dental hygienist who maintains a license on inactive status is not subject to continuing education requirements.

7. The board may audit the continuing education credits of a dental hygienist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities listed. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

History: Effective January 1, 2011; amended effective April 1, 2015; July 1, 2017; April 1, 2021; July 1, 2022.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.4

TITLE 20.5

DIETETIC PRACTICE, BOARD OF

JULY 2022

CHAPTER 20.5-01-01

20.5-01-01-01. Organization of the board of dietetic practice.

1. **History and function.** The 1985 legislative assembly passed legislation to license dietitians and nutritionists, codified as North Dakota Century Code chapter 43-44. This chapter requires the governor to appoint a state board of dietetic practice. It is the responsibility of the board to license dietitians and nutritionists.

2. **Board membership.** The board consists of five members appointed by the governor. Three members must be licensed registered dietitians, one other member must be a licensed nutritionist, and one member represents consumer interests. Each board member serves a term of three years. No member may serve more than two successive terms on the board.

3. **Officers.** Officers are elected annually. The board may hire an executive secretary and other employees as it deems necessary.

4. **Inquiries.** Inquiries regarding the board may be addressed to:

   North Dakota Board of Dietetic Practice
   ~~2304 Jackson Avenue~~603 Foster Avenue NW
   ~~Bismarck, ND 58501-2273~~Cooperstown, ND 58425

   Email: ndbodp@gmail.com
   Phone: 701-253-0700
   Fax: 888-681-2813

History: Effective December 1, 1986; amended effective October 1, 1993; July 1, 2009; April 1, 2013; July 1, 2022.
General Authority: NDCC 28-32-02.1
Law Implemented: NDCC 43-44-03

CHAPTER 20.5-02-01
INITIAL LICENSURE AND RENEWALS

Section
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20.5-02-01-05 Continuing Education
20.5-02-01-06 Provisional License

20.5-02-01-01. Licensure application.

An application for a license for dietetic practice must be made to the state board of dietetic practice on forms approved by the board found at www.ndbodp.com. The application must contain such information as the board may reasonably require.

1. Each application for a license as a licensed registered dietitian must be accompanied by:

   a. The prescribed fee; ~~and~~

   b. ~~A copy of the certificate indicating~~Verification of registration by the commission on dietetic registration of the academy of nutrition and dietetics or its predecessor or successor organization; and

   c. A background check or fingerprinting if requested by the board.

2. Each application for a license as a licensed nutritionist must be accompanied by:

   a. The prescribed fee; and

   b. Proof that the applicant:

      (1) Has received a master's or doctorate degree ~~in human nutrition, nutrition education, foods and nutrition, or public health nutrition~~ from an accredited college or university~~; or a master's or doctorate degree in a related field that meets eligibility requirements of the commission on dietetic registration of the academy of nutrition and dietetics or its predecessor or successor organization; or~~ in a field of nutrition as specified in North Dakota Century Code section 43-44-07 and have completed coursework leading to competence in medical nutrition therapy. A transcript must be mailed or electronically sent to the board from the college or university of origin. If the degree is greater than ten years old, the applicant shall submit evidence of at least seventy-five continuing professional education units received in the past five years.

      (2) ~~Has completed and received a baccalaureate degree and a minimum of nine semester hours or twelve quarter hours of academic nutrition credits with at least two semester hours or three quarter hours in advanced nutrition. Such advanced nutrition must have human physiology and either organic chemistry or biochemistry as a prerequisite. For applicants who enroll in a baccalaureate program after August 1, 2000, the applicant's baccalaureate degree must be in the field of dietetics or food and nutrition as approved by the board and from an accredited college or university. If the baccalaureate degree is greater than ten years old, evidence of seventy-five hours of continuing education under section 20.5-02-01-05 must be provided.~~Has completed a board-approved internship demonstrating competency in nutrition care services and the provision of medical nutrition therapy of not less than one thousand hours. The scope of activities may include up to three

hundred hours of alternate supervised experiential learning, such as observational client-practitioner interactions, simulation, case studies, and role playing, but also must include at least seven hundred hours in a professional work setting. This experience must be under the supervision of a qualified supervisor as defined in North Dakota Century Code section 43-44-01 and need not be a paid experience. The following is necessary to determine and verify the supervised practice experience:

(a) The qualified supervisor shall have primary responsibility of all nutrition care services rendered by the individual and have access to all relevant patient records kept during the supervised practice experience. Medical nutrition therapy may not be provided by the individual without onsite supervision by the supervisor.

(b) If there is more than one supervisor or facility for different parts of the supervised practice experience, information and verification of each part is required.

(c) The supervisee shall identify as a student or trainee throughout the supervised practice experience.

(d) The applicant shall provide to the board for each supervisor or facility:

[1] The name and address of the facility providing the supervised practice experience;

[2] The name, address, phone, and title of the supervisor who supervised the supervised practice experience;

[3] A summary of nutrition services performed, along with dates and hours spent performing them documented on a board-approved form;

[4] Evidence the supervisor met the requirements of a qualified supervisor as defined in North Dakota Century Code section 43-44-01 at the time of supervision; and

[5] An attestation that the supervisor is not related to, married to, or domestic partners with the supervisee.

(e) Each supervisor shall review the evidence provided by the applicant and verify the information is true, including:

[1] That the applicant participated in nutrition services under the supervisor's supervision, stating the total number of hours for each required category;

[2] Providing a summary of the nutrition services provided under the supervisor's supervision;

[3] Attesting that onsite supervision as defined in North Dakota Century Code section 43-44-01 was provided for activities constituting medical nutrition therapy, and general supervision was provided for all other nutrition care services completed by the individual; and

[4] Providing an evaluation of the applicant for the board to be able to assess the applicant's competence in the areas of nutrition assessment; nutrition intervention, education, counseling, or management; and nutrition

monitoring or evaluation for the treatment or management of a disease or medical condition.

(3) Has passed a board-approved examination administered by the board for certification of nutrition specialists or the diplomate examination administered by the American clinical board of nutrition or has valid certification and has been given the right to use the credential certified nutrition specialist or diplomate of the American clinical board of nutrition.

(4) A background check or fingerprinting if requested by the board.

3. Each application for a provisional license must be accompanied by:

a. The prescribed fee;

b. Written confirmation of the date that a board-approved examination is scheduled;

c. Proof of being under the supervision of a North Dakota licensed dietitian or nutritionist; and

d. A background check or fingerprinting if requested by the board.

For individuals applying for a provisional license as a nutritionist, applicants also must submit:

a. Evidence of successful completion of academic requirements within the past five years. A transcript must be mailed or electronically sent to the board from the college or university of origin; and

b. Evidence of successful completion of supervised practice requirements within the past five years.

4. Each application for limited practice without a license must be accompanied by:

a. The prescribed fee; and

b. Written verification of licensure from the licensing authority, which includes that jurisdiction's requirements for licensure and confirms the licensee is in good standing.

5. All applications must be signed by the applicant~~ and notarized~~.

~~4.~~6. The board may request such additional information or clarification of information provided in the application as it deems necessary.

~~5.~~7. Any applicant who was previously issued a license from the board will have any prior licensing records, including complaints and disciplinary measures taken, applied to the record of the new license.

History: Effective December 1, 1986; amended effective May 1, 1987; October 1, 2000; January 1, 2006; April 1, 2013; July 1, 2022.
General Authority: NDCC 43-44-03
Law Implemented: NDCC 43-44-07, 43-44-08

20.5-02-01-02. Initial licensure.

~~Any person who has maintained membership in the American institute of nutrition, American society for clinical nutrition, or the American board of nutrition, and who can present evidence to the board regarding employment and competence as a nutritionist prior to July 1, 1985, will be granted a license as a licensed registered dietitian or a licensed nutritionist upon application and proof of certification or~~

~~registration to the board.~~An applicant shall be issued a license based on compliance with requirements stated in North Dakota Century Code chapter 43-44 and the rules in the chapter.

It is the responsibility of the licensee to immediately notify the board of any change to the licensee's contact information, including name change, electronic mail address, and mailing address.

History: Effective December 1, 1986; amended effective October 1, 2000; July 1, 2022.
General Authority: NDCC 43-44-03
Law Implemented: NDCC 43-44-09

20.5-02-01-03. Licensure renewal.

1. For renewals submitted before September 30, 2022. Licenses are renewable annually and are effective for a renewal year which runs from October first to the following September thirtieth.

~~1.~~ a. Applications for renewal of license will be mailed by the board on or before June first to all licenseholders. Fees are payable to the board on or before July first of the year preceding the renewal year.

~~2.~~ b. License fees are considered delinquent and a late charge is assessed if the renewal application is not postmarked on or before July first of the year preceding the renewal year.

~~3.~~ c. A licensee may have the licensee's license renewed up to one year after the license has lapsed without submitting a new application. To apply for renewal of a lapsed license, an applicant must submit:

~~a.~~ (1) The renewal form;

~~b.~~ (2) The initial license fee;

~~c.~~ (3) Late charges assessed by the board;

~~d.~~ (4) CPE unit activity form; and

~~e.~~ (5) Commission on dietetic registration card for LRD only.

~~4.~~ d. Renewal licenses must be mailed on or before September twentieth of the renewal year if the renewal request is complete and postmarked on or before July first.

~~5.~~ e. Notwithstanding the provisions in this section regarding renewal of lapsed licenses, once a license has lapsed, the person who held the lapsed license may not practice as a dietitian or use a title reserved under state law for individuals who are licensed by the board until the person's license is renewed or until a new license is issued. A person whose license has lapsed but who continues to practice as a dietitian or use a restricted title violates state law and this chapter. Such a violation is grounds for denying an application by the former licensee for renewal of the lapsed license or for a new license.

2. For renewals submitted on or after October 1, 2022. Licenses are renewable annually and are effective for a renewal year which runs from October first to the following September thirtieth.

a. Instructions for renewal of license must be mailed or sent by electronic mail by the board at least ninety days before the end of the licensing year to all licenseholders. Fees are payable to the board on or before August first of the year preceding the renewal year.

b. License fees are considered delinquent and a late charge is assessed if the renewal application is not postmarked on or before August first of the year preceding the renewal year.

c. A licensee may have the licensee's license renewed up to one year after the license has lapsed without submitting a new application. To apply for renewal of a lapsed license, an applicant must submit:

(1) The renewal form;

(2) The renewal license fee;

(3) Late charges assessed by the board;

(4) Confirmation of compliance with continuing education requirements; and

(5) Verification of current registration as a registered dietitian nutritionist with the commission on dietetic registration or certification as a certified nutrition specialist or diplomate of the American clinical board of nutrition. Licensed nutritionists who are grandfathered in do not need to meet this requirement.

d. Renewal licenses must be sent by electronic mail on or before September thirtieth of the renewal year if the renewal request is complete and postmarked on or before August first.

e. Notwithstanding the provisions in this section regarding renewal of lapsed licenses, once a license has lapsed, the person who held the lapsed license may not practice as a dietitian or nutritionist or use a title reserved under state law for individuals who are licensed by the board until the person's license is renewed or until a new license is issued. A person whose license has lapsed but who continues to practice as a dietitian or nutritionist or use a restricted title violates state law and this chapter. Such a violation is grounds for denying an application by the former licensee for renewal of the lapsed license or for a new license.

History: Effective December 1, 1986; amended effective October 1, 2000; January 1, 2006; July 1, 2022.
General Authority: NDCC 43-44-03
Law Implemented: NDCC 43-44-03, 43-44-14

20.5-02-01-04. Fees.

The board has adopted the following fee payment schedule:

1. Initial license fee:

Licensed registered dietitian	~~$60.00~~$75.00
Licensed nutritionist	~~$60.00~~$75.00
~~Limited permit~~ Provisional license	$25.00
Provisional licensee examination passage	$50.00
Limited practice without a license	$25.00

2. License fees for renewal are:

Licensed registered dietitian	~~$45.00~~$50.00
Licensed nutritionist	~~$45.00~~$50.00
~~Limited permit~~Provisional license	$25.00

3. Late fees in the amount of ~~ten dollars per month~~fifty percent of the renewal fee must be charged for all applications received by the board which are postmarked after ~~July~~August first of the year prior to the year of renewal.

4. ~~An application for a new license from a person whose license has lapsed within the last twelve months will be treated as an application for renewal of the lapsed license and must be accompanied by all applicable late fees.~~Initial and renewal licensing fees are waived for active military personnel stationed in North Dakota and serving in the United States armed forces, including reserve components, and their spouses. Proof of active duty in North Dakota must be submitted to the board with application.

5. ~~Dietetic practitioners~~Practitioners who initially become licensed ~~after August first of any~~within ninety days of the end of the renewal year are exempt from licensure renewal for a period of one year.

6. Limited ~~permits are issued for one year and are renewable for one additional six-month period. On receipt of notification of change in status to registered dietitian, no additional fee is charged until renewal time, at which time the initial fee would be due~~practice without a license application requires a fee of twenty-five dollars.

History: Effective December 1, 1986; amended effective October 1, 1993; October 1, 2000; January 1, 2006; July 1, 2022.
General Authority: NDCC 43-44-03
Law Implemented: NDCC 43-44-03, 43-44-05, 43-44-12

20.5-02-01-05. Continuing education.

To renew a license, a person must present proof of having attended continuing education approved by the board. The ~~LRD~~ licensee must have attended at least seventy-five hours of continuing education in the licensee's five-year recertification cycle. The five-year recertification cycle for licensed registered dietitians is based on the commission on dietetic registration's recertification cycle. For the licensed nutritionist, it is based on the year of initial licensure. The applicant must retain evidence of having attended the continuing education hours and submit upon request.

1. Continuing education courses must be related to or increase the professional competence of the attendee. This determination will be made by the board through approval of requested courses. ~~If any licensee allows the licensee's license to lapse for a period of more than one year, the licensee may be required to submit proof of completion of at least fifteen clock-hours of continuing education for each year that the licensee's license has lapsed up to a total of seventy-five hours.~~Continuing education designed for the general public does not meet requirements for professional continuing education. One continuing professional education unit is equivalent to one clock-hour unless otherwise noted.

2. The board shall accept continuing education that is approved or provided by the board for certification of nutrition specialists, the commission on dietetic registration, and any other organization approved by the board.

   a. A licensed nutritionist shall meet the continuing education requirements set by the board. The following forms of continuing education may be approved for licensed nutritionists:

      (1) Nonacademic coursework: recorded online academic lectures or seminars. Nutrition-related academic coursework, including distance learning, at a United States regionally accredited college or university may be awarded continuing professional education units according to the listing below.

Continuing Professional Education Units Approved	Course Credits	Course Audited

1 semester credit-hour	15 continuing professional education units	8 continuing professional education units
1 trimester credit-hour	14 continuing professional education units	7 continuing professional education units
1 quarter credit-hour	10 continuing professional education units	5 continuing professional education units

(2) Exhibits or poster viewing. A maximum of fifteen continuing professional education units are allowed per five-year cycle.

(3) Interactive workshops. The workshop must include interactive discussions or participation among attendees.

(4) Lectures, seminars, webinars, or teleseminars. Lecture or seminar content must be nutrition related. Web or telephone conference seminars must occur in real time and include a provision for discussion and interaction between the presenter and attendees.

(5) Recorded preapproved activities. The recorded presentation must be preapproved by a board-approved provider. The recording must be listened to or viewed within one year of the original date of the live presentation. Licensees may claim up to thirty continuing professional education units under this activity type per five-year cycle.

(6) Professional reading. Peer-reviewed, nutrition-related articles from professional journals and professional newsletters may be awarded continuing professional education units. The article must be read within five years of the date the article was published. One article is equivalent to one-half of one hour continuing professional education units.

(7) Certificate programs. Must be sponsored by the commission on dietetic registration or another accredited provider approved by the board.

(8) Programs that do not meet the above criteria may be submitted to the board for review.

b. If a grandfathered licensed nutritionist chooses to provide medical nutrition therapy, then before doing so the nutritionist must complete fifteen continuing professional education units specific to medical nutrition therapy. A grandfathered licensed nutritionist who chooses to provide medical nutrition therapy must submit a minimum of fifteen continuing professional education units specific to medical nutrition therapy per five-year cycle.

History: Effective December 1, 1986; amended effective October 1, 2000; January 1, 2006; July 1, 2022.
General Authority: NDCC 43-44-03
Law Implemented: NDCC 43-44-03, 43-44-09.1

20.5-02-01-06. Provisional license.

An applicant shall provide evidence of completing the educational and supervised practice requirements and provide evidence of making application to take the registered dietitian nutritionist examination or the certified nutrition specialist examination or the diplomate of the American clinical board of nutrition examination.

1. A provisional license must be issued for the period of time up to the scheduled examination date and upon the applicant completing the requirements for application as referenced in section 20.5-02-01-01.

2. Following the successful passing of one of the licensing examinations, the provisionally licensed dietitian or nutritionist may apply for licensure as a registered dietitian or nutritionist and is required to pay a licensing fee of fifty dollars.

3. If the provisionally licensed dietitian or nutritionist does not successfully pass the licensing examination, the provisionally licensed dietitian or nutritionist may renew a maximum of one time until the date of the next examination, at which time the provisional license expires and must be surrendered to the board.

History: Effective July 1, 2022.
General Authority: NDCC 43-44-12
Law Implemented: NDCC 43-44-12

CHAPTER 20.5-02-02

20.5-02-02-01. Code of ethics.

~~The board has adopted and incorporated into these rules by reference, the code of ethics for the profession of dietetics and review process for alleged violations of the academy of nutrition and dietetics or its predecessor or successor organization, as revised June 1, 1999.~~A licensee shall comply with the following code of ethics in the licensee's professional practice and conduct. The code reflects the ethical principles of the dietetic and nutrition profession and outlines obligations of the licensee to self, client, society, and the profession and sets forth mandatory standards of conduct for all licensees.

1. The licensee shall provide professional services with objectivity and with respect for the unique needs and values of individuals as determined through the nutritional assessment.
2. The licensee shall conduct all practices of dietetics or nutrition with honesty and integrity.
3. The licensee shall present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist.
4. The licensee shall practice dietetics or nutrition based on scientific principles and current information.
5. The licensee shall assume responsibility and accountability for personal competence in practice.
6. The licensee shall inform the public of the licensee's services by using factual information and may not advertise in a false or misleading manner.
7. The licensee may not exercise undue influence on a client, including the promotion or the sale of services or products. The licensee shall be alert to any conflicts of interest and shall provide full disclosure when a real or potential conflict of interest arises.
8. The licensee may not reveal information about a client obtained in a professional capacity, without prior consent of the client, except as authorized or required by law and shall make full disclosure about any limitations on the licensee's ability to guarantee this.
9. The licensee shall recognize and exercise professional judgment within the limits of the licensee's qualifications and may not accept or perform professional responsibilities which the licensee knows or has reason to know that the licensee is not qualified to perform.
10. The licensee shall take action, with prior consent of the client, to inform a client's physician or other health care practitioner in cases where a client's nutritional status indicates a change in health status.
11. The licensee shall give sufficient information based on the client's ability to process information such that the client can make the client's own informed decisions. The licensee may not guarantee that nutrition care services will cause any certain outcome or particular result for the client.
12. The licensee shall permit use of that licensee's name for the purpose of certifying that dietetic or nutrition services have been rendered only if the licensee has provided or supervised those services.
13. The licensee shall demonstrate professionalism and respect in all communication, including social media.

History: Effective December 1, 1986; amended effective October 1, 2000; April 1, 2013; July 1, 2022.
General Authority: NDCC 43-44-03

Law Implemented: NDCC 43-44-03

20.5-02-02-02. Unacceptable professional conduct.

The following constitute unacceptable professional conduct by a licensed registered dietitian or nutritionist and shall subject such licensee or potential licensee to discipline, revocation of licensure, or sanction, or a combination thereof:

1. Taking financial advantage of a client, or using one's position within an agency to enhance one's private practice or the private practice of others for personal gain.

2. Entering into any illegal acts with a client.

3. Participating in, condoning, or being an accessory to dishonesty, fraud, deceit, or misrepresentation in the practice of dietetics or nutrition.

4. Not providing clients with accurate and complete information regarding the extent and nature of the services available to them.

5. Convicted of a criminal act which affects the practice of the profession. (North Dakota Century Code section 12.1-33-02.1).

6. Violating any federal or state confidentiality client care regulation statutes.

7. Violating any federal or state discrimination statutes or regulations.

8. ~~Refusal to seek~~Not seeking adequate and appropriate treatment for any illness or disorder which interferes with professional functioning or ability to perform the basic expected functions, or both, of a dietitian or a nutritionist.

9. Using misrepresentation in the procurement of licensing as a dietitian or nutritionist or knowingly assisting another in the procurement of licensing through misrepresentation. Misrepresentation of professional qualifications, certifications, accreditations, affiliation, and employment experiences.

10. Failure to report through the proper channels the incompetent, unethical, or illegal practice of any licensed dietitian or nutritionist who is providing such service.

11. Participating in activities that constitute a conflict of professional interest and adversely affect the licensee's ability to provide dietetic or nutrition services.

12. ~~Violating any of the principles of ethics as listed in the code of ethics for the profession of dietetics and review process for alleged violations of the academy of nutrition and dietetics or its predecessor or successor organization as revised June 1, 1999.~~Being disciplined by an agency of another state that regulates the practice of dietetics or nutrition and at least one of the grounds for the discipline is the same or substantially equivalent to the grounds for discipline in this state.

13. Providing any inaccurate, misleading, or false information to the board regarding a licensure action.

14. Providing inaccurate or incompetent services to a client which present a risk of harm to the client, even if harm does not actually occur.

History: Effective June 1, 1991; amended effective October 1, 2000; April 1, 2013; July 1, 2022.
General Authority: NDCC 43-44-03
Law Implemented: NDCC 43-44-03

TITLE 32

COSMETOLOGY, BOARD OF

JULY 2022

CHAPTER 32-02-01

32-02-01-13. Pets.

No animals~~, birds, or other pets~~, except ~~assistance~~service or companion animals~~ for the disabled~~ and fish in aquariums, shall be permitted in any licensed salon. Service or companion animals must be under control of the handler or owner at all times.

History: Amended effective December 1, 2005; January 1, 2017; July 1, 2022.
General Authority: NDCC 43-11-05
Law Implemented: NDCC 43-11-11

TITLE 33

STATE DEPARTMENT OF HEALTH

JULY 2022

CHAPTER 33-04-01

33-04-01-02. Requirements for preparation of paper certificates and worksheets.

All paper certificates and records ~~relating to~~for all vital events must ~~either~~ be ~~prepared on a typewriter with a black ribbon or printed legibly in black nonfading ink~~printed on security paper directly from an authorized computer or copier. All signatures required shall be entered in black nonfading ink or be an acceptable e-signature. Unless otherwise specified by the state registrar, no certificates or record shall be complete, correct, and acceptable for registration that:

1. Does not ~~have~~include the certifier's name~~ typed or printed legibly under the certifier's signature~~.
2. Does not supply all items of information called for thereon or satisfactorily account for their omission.
3. Contains significant alterations or erasures.
4. Does not contain handwritten signatures ~~as~~where required.
5. Is marked "copy" or "duplicate".
6. Is a carbon, photographic, or xerographic copy.
7. Is prepared on an improper form.
8. Contains inconsistent or improper data.
9. Contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease.
10. Is not prepared in conformity with rules or instructions issued by the state registrar.

History: Amended effective January 1, 2008; July 1, 2022.
General Authority: NDCC 23-02.1-04, 28-32-02
Law Implemented: NDCC 23-02.1-04

CHAPTER 33-04-04
BIRTH REGISTRATION

Section
33-04-04-01 General Provisions
33-04-04-02 Home Births

33-04-04-02. Home births.

If a birth occurs outside an institution and is not attended by a physician or midwife, or is not witnessed by a physician or midwife immediately after the birth, the parents are required to provide additional documents approved by the state registrar to prove the mother was pregnant, the child was born alive, and the child was born in North Dakota, before the birth will be registered.

If the parents are unable or unwilling to provide all the additional documents, the birth may only be registered by an order received from a court of competent jurisdiction. The parents shall complete the informational worksheets containing all the birth facts, regardless of the terms of the order.

History: Effective July 1, 2022.
General Authority: NDCC 23-02.1-04, 28-32-02
Law Implemented: NDCC 23-02.1-13

CHAPTER 33-04-15

33-04-15-02. Amount of fee.

1. For the issuance of the first full certified copy, short form, or certification of a birth record, the initial fee per request is ~~seven~~fifteen dollars. ~~For subsequent copies or certifications, issued at the time of the request, the fee is four dollars per copy.~~ The filing fee for a delayed record of birth is ~~five~~fifteen dollars. The fee for amendments to vital records is ~~five~~fifteen dollars per request. The fee for creation of a new record of birth following adoption, legitimation, or paternity determination is ~~five~~fifteen dollars. For each search of the files when no birth record is found or no copy is made, a fee of ~~seven~~fifteen dollars shall be charged.

2. For the issuance of the first certified copy of a death, fetal death, or marriage record, the initial fee per request is ~~five~~fifteen dollars. For subsequent copies issued at the time of the request, the fee is ~~two~~ten dollars per copy. For each search of the files when no death or marriage record is found or no copy is made, a fee of ~~five~~fifteen dollars shall be charged.

3. For statistical research purposes, the state registrar shall determine the fee for such services and shall determine the manner in which the costs are to be paid.

4. For each verification of a vital record, the fee is the same as the first certified copy for that record unless specific approval has been obtained from the state registrar or otherwise provided by statute or regulation.

History: Amended effective February 1, 1984; January 1, 1986; January 1, 2008; July 1, 2022.
General Authority: NDCC 23-02.1-04, 28-32-02
Law Implemented: NDCC 23-02.1-29

CHAPTER 33-44-01
MEDICAL MARIJUANA

Section
33-44-01-01 Definitions
33-44-01-02 Cardholder Notification of Change
33-44-01-03 Fees for Failure to Provide Notice
33-44-01-03.1 Minor Application
33-44-01-04 Cardholder Disposal of Usable Marijuana
33-44-01-05 Expiration of Registry Identification Cards
33-44-01-06 Compassion Center Application Process
33-44-01-07 Establishing Additional Compassion Centers
33-44-01-08 Compassion Center Inventory Limits
33-44-01-09 Use of Pesticides Prohibited
33-44-01-10 Pesticide Presence
33-44-01-11 Operations Manual
33-44-01-12 Restricted Access Areas
33-44-01-13 Dispensary Display Areas
33-44-01-14 Usable Marijuana Take Back
33-44-01-15 Medical Marijuana Waste Disposal
33-44-01-16 Recall Procedures
33-44-01-17 Surveillance Requirements
33-44-01-18 Alarm System Requirements
33-44-01-19 Inventory Control Measures
33-44-01-20 Conducting Inventory
33-44-01-21 Personnel Record Retention
33-04-01-22 Compassion Center and Laboratory Incidents
33-44-01-23 Advertising and Marketing
33-44-01-24 Strain or Brand Names
33-44-01-24.1 Medical Cannabinoid Product Formulation
33-44-01-25 Usable Marijuana Packaging
33-44-01-26 Manufacturing Facility Labeling
33-44-01-27 Dispensary Labeling
33-44-01-28 Removal of Product Labels
33-44-01-29 Transportation Authorization
33-44-01-30 Transportation Requirements
33-44-01-31 Compassion Center Inspections and Compliance
33-44-01-32 Plan of Correction
33-04-01-33 Data Reporting
33-44-01-34 Law Enforcement Reportable Incidents
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33-44-01-40 Usable Marijuana Testing
33-44-01-41 Ordering Tests
33-44-01-42 Compliance Testing Requirements for Dried Leaves and Flowers
33-44-01-43 Compliance Testing Requirements for Cannabinoid Concentrates
33-44-01-44 Compliance Testing Requirements for Medical Cannabinoid Products
33-44-01-44.1 Terpene Analysis
33-44-01-45 Batch Requirements for Compliance Testing
33-44-01-46 Manufacturing Facility Requirements for Labeling, Storing, and Securing Usable Marijuana Batches

33-44-01-47 Standards for Pesticides and Degradation Compounds Compliance Testing
33-44-01-48 Standards for Microbiological Contaminants and Mycotoxin Compliance Testing
33-44-01-48.1 Standards for Heavy Metals Compliance Testing
33-44-01-49 Standards for Solvents Compliance Testing
33-44-01-50 Standards for Water Activity and Moisture Content Compliance Testing
33-44-01-51 Standards for Concentration Compliance Testing
33-44-01-52 Failed Test Samples
33-44-01-53 Tentative Identification of Compounds
33-44-01-54 Random Testing
33-44-01-55 Manufacturing Facility Quality Control and Quality Assurance Program

33-44-01-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Activation time" means the amount of time it is likely to take for an individual to begin to feel the effects of ingesting or inhaling usable marijuana.

2. "Adverse reaction" means an unwanted, unexpected, or dangerous effect caused by the administration of usable marijuana dispensed pursuant to North Dakota Century Code chapter 19-24.1.

3. "Analyte" means a component, substance, or chemical or microbiological constituent that is of interest in an analytical procedure or test.

4. "Batch" means a quantity of dried leaves and flowers from a harvest lot, a quantity of cannabinoid concentrate, or medical cannabinoid product from a process lot.

5. "Compliance test" means a test required by these rules to be performed by a laboratory selected by the department in order to allow the transfer or sale of usable marijuana.

6. "Container" means a sealed, hard- or soft-bodied receptacle in which usable marijuana is placed.

7. "Container identification number" means the identification number that was generated by the manufacturing facility at the time the usable marijuana was packaged and labeled for sale to the dispensary.

8. "Cotyledons" means an embryonic leaf of a plant, one or more of which are the first leaves to appear.

9. "Date of harvest" means the date the mature marijuana plants in a harvest lot were removed from the soil or other growing media. If the harvest occurred on more than one day, the "date of harvest" is the day the last mature marijuana plant in the harvest lot was removed from the soil or other growing media.

10. "Degradation compound" or "Pesticide degradate" means a resultant product from the transformation of a parent compound to a product with different physical and chemical properties, the fate and significance of which, is altered due to the structural changes.

11. "Harvest lot" means a specifically identified quantity of the same strain of marijuana that is cultivated utilizing the same growing practices, harvested within a seventy-two-hour period at the same location, and cured under uniform conditions.

12. "Hazardous waste" means the same as defined in North Dakota Century Code chapter 23-20.3.

13. "Laboratory" means a laboratory selected by the department in accordance with section 33-44-01-36 to sample and conduct tests in accordance with these rules.

14. "Medical marijuana waste" means the same as defined in North Dakota Century Code chapter 19-24.1.

15. "Net weight" means the gross weight minus the tare weight of the packaging.

16. "Parent compound" means the original molecular structure from which other compounds can be derived through a chemical reaction or natural breakdown process.

17. "Pediatric symbol" means the image, established by the department and made available to manufacturing facilities, indicating the product complies with the pediatric medical marijuana maximum concentration limit as defined in North Dakota Century Code chapter 19-24.1.

18. "Plant" means a marijuana plant that has produced cotyledons or a cutting of a marijuana plant that has produced cotyledons.

19. "Process lot" means any amount of:

    a. Cannabinoid concentrate of the same type and processed within a forty-eight-hour period, unless prior written authorization is received from the department, using the same extraction methods, standard operating procedures, and batches, not to exceed three, of the same strain from the same or a different harvest lot; or

    b. Medical cannabinoid product of the same type and processed within a forty-eight-hour period, unless prior written authorization is received from the department, using the same ingredients, standard operating procedures, and a process lot or process lots, not to exceed three, of cannabinoid concentrate as defined in subsection a.

20. "Product identity" means a common name of the product that is contained in the package.

21. "Remediation" means a process used by a manufacturing facility to remedy a lot or batch that has failed testing.

22. "Sterilization" means the removal of all micro-organisms and other pathogens from usable marijuana by treating it with approved chemicals or subjecting it to high heat.

23. "Tentatively identified compounds" means compounds detected in a sample using gas chromatography mass spectrometry or liquid chromatography mass spectrometry that are not among the target analytes for the residual solvent analysis and pesticide and mycotoxin analysis.

24. "Test sample" means anything collected by a laboratory from a compassion center for testing.

25. "Unit of sale" means an amount of usable marijuana commonly packaged in a container for transfer to a registered qualifying patient or registered designated caregiver, or capable of being packaged in a container for transfer to a registered qualifying patient or registered designated caregiver.

26. "Universal symbol" means the image, established by the department and made available to manufacturing facilities, indicating the product contains marijuana.

27. "Water activity" means a measure of the free moisture in usable marijuana and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

28. "Written notice" means a notice provided to the department via letter, electronic mail, or other electronic form or medium made available on the department's website.

History: Effective April 1, 2018; amended effective October 1, 2019; July 1, 2022.
General authority: NDCC 19-24.1-01
Law Implemented: NDCC 19-24.1-01

33-44-01-03.1. Minor application.

The department may process a qualifying patient application for a registry identification card without the signature of the minor's parent or legal guardian if the applicant is eighteen years of age and the department determines the minor has no parent or legal guardian with responsibility for health care decisions of the minor.

History: Effective July 1, 2022.
General Authority: NDCC 19-24.1-03
Law Implemented: NDCC 19-24.1-03

33-44-01-13. Dispensary display areas.

1. A dispensary may have a display area where usable marijuana is displayed in enclosed locked cases accessible only by compassion center agents. The purpose of the display area is to provide registered qualifying patients and registered designated caregivers the opportunity to view usable marijuana and receive education regarding its use. Usable marijuana may not be visible from the street or other public areas.

2. Individuals authorized to enter dispensary display areas include:

   a. Registered qualifying patients;

   b. Registered designated caregivers;

   c. Compassion center agents;

   d. Authorized department personnel;

   e. Individuals accompanied by a compassion center agent when the compassion center agent has received written authorization from authorized department personnel; and

   f. Individuals accompanied by authorized department personnel.

3. Before allowing an individual to enter a dispensary display area, the dispensary shall verify the validity of a cardholder's registry identification card.

4. A dispensary shall post department-provided signs or materials regarding warnings, recalls, and education materials in a display area or lobby.

History: Effective April 1, 2018; amended effective October 1, 2019; July 1, 2022.
General Authority: NDCC 19-24.1-25
Law Implemented: NDCC 19-24.1-25

33-44-01-14. Usable marijuana take back.

1. A dispensary ~~shall~~may accept at no charge unused, excess, or contaminated usable marijuana for disposal. A dispensary shall maintain a written record of returned usable marijuana that includes:

   a. The name of the registered qualifying patient;

b. The registered qualifying patient's registry identification number;

c. The date the usable marijuana was returned;

d. The quantity of usable marijuana returned; and

e. The type of usable marijuana returned.

2. A dispensary shall dispose of the returned usable marijuana as follows:

a. In accordance with these rules; or

b. By transferring it to a manufacturing facility for disposal in accordance with these rules. A dispensary shall maintain a written record that includes the amount of returned usable marijuana transferred to a manufacturing facility for disposal and the date.

3. A manufacturing facility may accept returned usable marijuana from a dispensary. Any returned usable marijuana accepted from a dispensary must be disposed of in accordance with these rules. A manufacturing facility shall maintain a written record that includes the amount of returned usable marijuana and the date accepted by a manufacturing facility for disposal.

History: Effective April 1, 2018; amended effective July 1, 2022.
General Authority: NDCC 19-24.1-10
Law Implemented: NDCC 19-24.1-10

33-44-01-15. Medical marijuana waste disposal.

1. All medical marijuana waste generated during production, processing, and testing, must be stored, managed, and disposed of in accordance with these rules.

2. All medical marijuana waste generated during production, processing, and testing must be evaluated against the state's hazardous waste regulations to determine if the medical marijuana waste is designated as hazardous waste. It is the responsibility of each medical marijuana waste generator to properly evaluate their medical marijuana waste to determine if it is designated as hazardous waste. If a generator's medical marijuana waste is designated as hazardous waste, the medical marijuana waste is subject to the hazardous waste management standards in North Dakota Century Code chapter 23-20.3.

3. Medical marijuana waste not designated as hazardous waste must be rendered unusable in accordance with subsection 4 prior to disposal. Medical marijuana waste rendered unusable must be disposed of in accordance with subsection 5.

4. The required method for rendering medical marijuana waste unusable is by grinding the medical marijuana waste and incorporating it with other ground materials so the volume of the resulting mixture is less than fifty percent medical marijuana waste. All other methods for rendering medical marijuana waste unusable must be approved by the department before implementation. ~~There are two categories of ground material that can be incorporated with medical marijuana waste: compostable mix waste and noncompostable mix waste.~~

~~a. Compostable mixed waste: medical marijuana waste to be disposed as compost feedstock or in another organic waste method, such as an anaerobic digester, may be mixed with:~~

~~(1) Food waste.~~

~~(2) Yard waste.~~

~~(3) Vegetable-based grease or oils.~~

~~(4) Other wastes as approved by the department.~~

~~b. Noncompostable mixed waste: medical marijuana waste to be disposed in a landfill or another disposal method, such as incineration, may be mixed with these materials:~~

~~(1) Paper waste.~~

~~(2) Cardboard waste.~~

~~(3) Plastic waste.~~

~~(4) Soil.~~

~~(5) Other wastes as approved by the department.~~Medical marijuana waste to be disposed in a landfill may be mixed with soil or other material as approved by the department.

5. Medical marijuana waste rendered unusable in accordance with subsection 4 can be disposed.

   a. Disposal of the medical marijuana waste rendered unusable may be delivered to a permitted and state-approved solid waste facility for final disposition.~~ Acceptable and department-approved permitted solid waste facilities include:~~

   ~~(1) Compostable mixed waste: compost, anaerobic digester, or other facility with the approval of the jurisdictional state or local health department.~~

   ~~(2) Noncompostable mixed waste: landfill, incinerator, or other facility with the approval of the jurisdictional state or local health department.~~

   ~~b. Disposal of the medical marijuana waste rendered unusable may be managed onsite by the generator in accordance with the standards of North Dakota Century Code chapter 23-29.~~

   ~~c.~~b. A compassion center or laboratory shall maintain a record of the final destination of medical marijuana waste rendered unusable. The record shall be maintained for a period of seven years.

History: Effective April 1, 2018; amended effective July 1, 2022.
General Authority: NDCC 19-24.1-16, 19-24.1-23
Law Implemented: NDCC 19-24.1-16, 19-24.1-23

33-44-01-22. Compassion center and laboratory incidents.

1. Compassion centers and the laboratory shall contact 911 in the event of an emergency and contact law enforcement or 911 to report criminal activities.

2. Compassion centers and the laboratory shall provide the department with written notice, within twenty-four hours, of any of the following:

   a. A breach of security;

   b. Failures of, or tampering with, security and surveillance equipment, cameras, or recordings;

   c. Power failures lasting longer than two hours;

d. Embezzlement or fraud;

e. Contacting 911 or contact with law enforcement;

f. Incidents that occur while transporting marijuana, usable marijuana, and medical marijuana waste; ~~and~~

g. Attempts to obtain marijuana or usable marijuana in a manner not prescribed by North Dakota Century Code chapter 19-24.1 and these rules; and

h. Violations of North Dakota Century Code chapter 19-24.1 and these rules.

History: Effective April 1, 2018; amended effective October 1, 2019; July 1, 2022.
General Authority: NDCC 19-24.1-25
Law Implemented: NDCC 19-24.1-25

33-44-01-24.1. Medical cannabinoid product formulation.

A manufacturing facility must have a certificate of authenticity or similar documentation approved by the department for all ingredients used in formulating a medical cannabinoid product. A certificate of authenticity or similar documentation approved by the department must include the date of expiration.

History: Effective July 1, 2022.
General Authority: NDCC 19-24.1-36
Law Implemented: NDCC 19-24.1-36

33-44-01-26. Manufacturing facility labeling.

1. A manufacturing facility shall label all usable marijuana in accordance with the following before their sale or transfer to a dispensary:

   a. A container holding dried leaves and flowers must include the following information:

      (1) Manufacturers' business or trade name and registry certification number;

      (2) Container identification number;

      (3) ~~Harvest lot~~Batch number;

      (4) Date of harvest;

      (5) Name of strain;

      (6) Net weight in United States customary ~~and~~or metric units;

      (7) Concentration of total tetrahydrocannabinol and total cannabidiol as identified by the laboratory selected by the department in accordance with section 33-44-01-36;

      (8) Activation time expressed in words or through a pictogram;

      (9) Expiration date;

      (10) Universal symbol; and

      (11) Consumer warnings that state:

         (a) "This product is not approved by the Food and Drug Administration to treat, cure, or prevent any disease."

(b) "For use by North Dakota registered qualifying patients only."

(c) "Keep out of reach of children."

(d) "It is illegal to drive or to be in actual physical control of a motor vehicle while under the influence of marijuana."

b. A container holding a cannabinoid concentrate must include the following information:

(1) Manufacturing facility's business or trade name and registry certification number;

(2) Container identification number;

(3) Process lot number;

(4) Product identity;

(5) Date the concentrate was made;

(6) Net weight or volume in United States customary ~~and~~or metric units;

(7) If applicable, serving size and number of servings per container or amount suggested for use by the consumer or patient at any one time;

(8) Concentration or amount of total tetrahydrocannabinol, and the concentration or amount of total cannabidiol, by weight or volume ~~in each amount suggested for use and~~ in the container as identified by the laboratory selected by the department in accordance with section 33-44-01-36;

(9) Activation time, expressed in words or through a pictogram;

(10) Expiration date;

(11) A disclosure of the type of extraction process used and any solvent, gas, or other chemical used in the extraction process;

(12) Universal symbol;

~~(12)~~(13) Pediatric symbol, if applicable; and

~~(13)~~(14) Consumer warnings that state:

(a) "This product is not approved by the Food and Drug Administration to treat, cure, or prevent any disease."

(b) "For use by North Dakota registered qualifying patients only."

(c) "Keep out of reach of children."

(d) "It is illegal to drive or to be in actual physical control of a motor vehicle while under the influence of marijuana."

c. A container holding a medical cannabinoid product must include the following information:

(1) Manufacturers' business or trade name and registry certification number;

(2) Container identification number;

(3) Process lot number;

(4) Product identity;

(5) Date the product was made;

(6) Net weight or volume in United States customary ~~and~~or metric units;

(7) ~~Serving~~If applicable, serving size and number of servings per container;

(8) Concentration or amount of total tetrahydrocannabinol, and the concentration or amount of total cannabidiol, by weight or volume in each serving and in each container as identified by the laboratory selected by the department in accordance with section 33-44-01-36;

(9) List of ingredients in descending order or predominance by weight or volume used to process the medical cannabinoid product;

(10) Activation time, expressed in words or through a pictogram;

(11) Expiration date;

(12) A disclosure of the type of extraction process used and any solvent, gas, or other chemical used in the extraction process;

(13) Universal symbol;

~~(13)~~(14) Pediatric symbol, if applicable; and

~~(14)~~(15) Consumer warnings that state:

(a) "This product is not approved by the Food and Drug Administration to treat, cure, or prevent any disease."

(b) "For use by North Dakota registered qualifying patients only."

(c) "Keep out of reach of children."

(d) "It is illegal to drive or to be in actual physical control of a motor vehicle while under the influence of marijuana."

2. Usable marijuana labels required in accordance with this section must be no smaller than eight point, arial or calibri, font. If, due to the size of the container, sufficient space does not exist for a label containing all of the required information, the manufacturing facility may:

a. Use a peel-back or accordion label if, the peel-back or accordion label is easily identified as containing the required information; or

b. Reduce the size of the required information to six point font.

3. Usable marijuana labels may not contain the word "organic".

History: Effective April 1, 2018; amended effective October 1, 2019; July 1, 2022.
General Authority: NDCC 19-24.1-36
Law Implemented: NDCC 19-24.1-36

33-44-01-27. Dispensary labeling.

1. All usable marijuana delivered to a dispensary from a manufacturing facility must meet the labeling requirements in section 33-44-01-26.

2. A dispensary shall affix a label to all usable marijuana distributed to registered qualifying patients and registered designated caregivers that includes:

   a. The registered qualifying patient's name and department-issued registry identification card number.

   b. ~~The registered designated caregiver's name and department-issued registry identification card number, if applicable.~~

   ~~c.~~ The name of the dispensary.

   ~~d.~~c. Date dispensed.

3. Usable marijuana labels required in accordance with this section must be no smaller than eight point, arial or calibri, font. If, due to the size of the container, sufficient space does not exist for a label containing all of the required information, the dispensary may:

   a. Use a peel-back or accordion label if, the peel-back or accordion label is easily identified as containing the required information; or

   b. Reduce the size of the required information to six point font.

History: Effective April 1, 2018; amended effective July 1, 2022.
General Authority: NDCC 19-24.1-36
Law Implemented: NDCC 19-24.1-36

33-44-01-29. Transportation authorization.

1. Transportation of marijuana, usable marijuana, and medical marijuana waste by a manufacturing facility is authorized as follows:

   a. A manufacturing facility may transport usable marijuana:

      (1) From its manufacturing facility to a dispensary;

      (2) From its manufacturing facility to its quality control and quality assurance testing location; and

      (3) From a dispensary to its manufacturing facility.

   b. A manufacturing facility may transport marijuana or medical marijuana waste:

      (1) From its manufacturing facility to its quality control and quality assurance testing location;

      (2) From its manufacturing facility or a dispensary to a waste disposal site; and

      (3) From a dispensary to its manufacturing facility.

2. Transportation of usable marijuana and medical marijuana waste by a dispensary is authorized as follows:

   a. A dispensary may transport usable marijuana:

      (1) From a manufacturing facility to its dispensary;

      (2) From its dispensary to a manufacturing facility; and

(3) From its dispensary to a registered qualifying patient or registered designated caregiver.

b. A dispensary may transport medical marijuana waste:

(1) From its dispensary to a manufacturing facility; and

(2) From its dispensary to a waste disposal site.

3. A laboratory may transport marijuana, usable marijuana, or medical marijuana waste:

a. From a manufacturing facility or a dispensary to its laboratory;

b. From its laboratory to a manufacturing facility; and

c. From its laboratory to a waste disposal site.

History: Effective April 1, 2018; amended effective July 1, 2022.
General Authority: NDCC 19-24.1-36
Law Implemented: NDCC 19-24.1-36

33-44-01-46. Manufacturing facility requirements for labeling, storing, and securing usable marijuana batches.

When samples are taken from a harvest or process lot batch, a manufacturing facility shall:

1. ~~Ensure the batch is labeled with the following information:~~

~~a. The manufacturing facility's name;~~

~~b. The harvest lot or process lot unique identification number;~~

~~c. The name of the laboratory that took samples;~~

~~d. The unique identification sample numbers; and~~

~~e. The date the samples were taken.~~

~~2.~~ Store and secure the batch in a manner that prevents the product from being tampered with or transferred prior to required tests being completed.

~~3.~~2. Be able to easily locate a batch stored and secured under subsection 2 and provide that location to the department or a laboratory upon request.

History: Effective April 1, 2018; amended effective October 1, 2019; July 1, 2022.
General Authority: NDCC 19-24.1-36
Law Implemented: NDCC 19-24.1-36

33-44-01-51. Standards for concentration compliance testing.

1. Usable marijuana concentration testing must include:

a. Tetrahydrocannabinol (THC).

b. Tetrahydrocannabinolic acid (THCA).

c. Cannabidiol (CBD).

d. Cannabidiolic acid (CBDA).

2. The total tetrahydrocannabinol and total cannabidiol must be calculated as follows:

   a. Total tetrahydrocannabinol, where M is the mass or mass fraction of ~~delta-9~~ tetrahydrocannabinol or ~~delta-9~~ tetrahydrocannabinolic acid:

      M total ~~delta-9~~ THC = ~~delta-9~~ THC + (0.877 x M ~~delta-9~~ THCA)

   b. Total cannabidiol, where M is the mass or mass fraction of cannabidiol and cannabidiolic acid:

      M total CBD = M CBD + (0.877 x M CBDA)

3. Test results must report tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic acid content by dry weight calculated as follows:

   a. P THC(dry) = P THC(wet) / [1-(P moisture/100)].

   b. P THCA(dry) = P THCA(wet) / [1-(P moisture/100)].

   c. P CBD(dry) = P CBD(wet) / [1-(P moisture/100)].

   d. P CBDA(dry) = P CBDA(wet) / [1-(P moisture/100)].

4. The concentration test fails if the total amount of tetrahydrocannabinol and tetrahydrocannabinolic acid, as calculated pursuant to this section, exceeds the maximum concentration or amounts permitted in North Dakota Century Code chapter 19-24.1.

5. ~~The concentration test fails if the concentration amount identified by the laboratory varies from the concentration amount identified by the manufacturing facility, if known, by more than plus or minus fifteen percent.~~

~~6.~~ The concentration test fails if the tetrahydrocannabinol or cannabidiol content of a medical cannabinoid product is determined through testing not to be homogenous. A medical cannabinoid product is considered not to be homogenous if ten percent of the infused portion of the medical cannabinoid product contains more than twenty percent of the total tetrahydrocannabinol or cannabidiol contained within the entire medical cannabinoid product.

~~7.~~6. If the samples do not pass testing standards for concentration, the manufacturing facility must comply with section 33-44-01-52.

History: Effective April 1, 2018; amended effective October 1, 2019; July 1, 2022.
General Authority: NDCC 19-24.1-36
Law Implemented: NDCC 19-24.1-36

33-44-01-52. Failed test samples.

1. If a sample fails any test, the manufacturing facility may submit a written request to the department for a reanalysis. The request must be received by the department within seven calendar days from the date the laboratory sent notice of the failed test to the manufacturing facility. The department, in consultation with the laboratory, shall determine whether a reanalysis will be performed on the samples held by the laboratory or a new sample will be selected from the batch. The reanalysis must be completed by the laboratory within thirty days from the date the reanalysis request was received.

2. If a sample fails a test or a reanalysis under subsection 1:

   a. The batch may be remediated or sterilized in accordance with this section; or

b. If the batch is not or cannot be remediated or sterilized under this section, the batch must be disposed of in accordance with section 33-44-01-15.

3. If a sample from a batch of dried leaves and flowers, cannabinoid concentrate, or cannabinoid product fails pesticide or degradation compound testing, the batch may not be remediated and must be disposed of as ordered by the department or the department of agriculture. An affected or contaminated batch may not be destroyed without obtaining written permission from the department or the department of agriculture.

4. A manufacturing facility shall comply with the following requirements when a sample fails to meet the standards for microbiological contaminant or mycotoxin testing:

   a. If a sample from a batch of dried leaves and flowers fails microbiological contaminant or mycotoxin testing, the batch may be used to make a cannabinoid concentrate if~~:~~

      ~~(1) The batch is not combined with another batch of dried leaves and flowers to process a cannabinoid concentrate; and~~

      ~~(2) The~~ the processing method effectively sterilizes the batch, such as a method using a hydrocarbon-based solvent or a carbon dioxide closed loop system, or the processing method selectively removes the mycotoxins from the batch.

   b. If a sample from a batch of a cannabinoid concentrate fails microbiological contaminant or mycotoxin testing, the batch may be further processed if:

      (1) The processing method effectively sterilizes the batch, such as a method using a hydrocarbon-based solvent or a carbon dioxide closed loop system; or

      (2) The processing method selectively removes the mycotoxins from the batch.

   c. If a sample from a batch of a medical cannabinoid product fails microbiological contaminant or mycotoxin testing, the batch may be remediated if written approval from the department is obtained prior to remediation.

   d. A batch that is remediated in accordance with subdivision a, b, or c of subsection 4 must be sampled and tested in accordance with these rules.

   e. A batch that fails microbiological contaminant or mycotoxin testing after undergoing remediation in accordance with subdivision a, b, or c of subsection 4 must be disposed of in accordance with section 33-44-01-15.

5. If a sample from a batch of dried leaves and flowers, cannabinoid concentrate, or cannabinoid product fails heavy metals testing, the batch may be remediated if written approval from the department is obtained prior to remediation. A batch that is remediated must be sampled and tested in accordance with these rules. A batch that fails heavy metals testing after undergoing remediation must be disposed of in accordance with section 33-44-01-15.

6. A manufacturing facility shall comply with the following requirements when a sample fails to meet the standards for solvent testing:

   a. If a sample from a batch fails solvent testing, the batch may be remediated using procedures that would reduce the concentration of solvents to less than the action level established in these rules.

   b. A batch that is remediated in accordance with subdivision a of subsection 6 must be sampled and tested in accordance with these rules.

c. A batch that fails solvent testing after undergoing remediation in accordance with subdivision a must be disposed of in accordance with section 33-44-01-15.

7. A manufacturing facility shall comply with the following requirements when a sample fails to meet the standards for water activity and moisture testing:

   a. If a sample from a batch of dried leaves and flowers fails for water activity or moisture testing, the batch from which the sample was taken may:

      (1) Be used to make a cannabinoid concentrate or a medical cannabinoid product and must comply with testing requirements established in these rules; or

      (2) Continue to dry or cure.

   b. A batch that undergoes additional drying or curing as described in paragraph 2 of subdivision a must be sampled and tested in accordance with these rules.

8. A manufacturing facility shall comply with the following requirements when a sample fails to meet the standards for concentration testing:

   a. A batch that has a sample failing concentration testing under subsection 4 of section 33-44-01-51 may be remediated to meet the concentration limits permitted in North Dakota Century Code chapter 19-24.1.

   b. If a sample from a batch of pediatric medical marijuana fails concentration testing, the manufacturing facility may use the batch for nonpediatric usable marijuana rather than remediating the pediatric medical marijuana in accordance with subdivision a. No additional testing is required if the manufacturing facility does not label the usable marijuana for pediatric use and does no further processing with a batch of pediatric medical marijuana failing concentration testing. Any usable marijuana processed with a batch from a failed pediatric medical marijuana concentration test must be sampled and tested in accordance with these rules.

   c. A batch that has a sample failing concentration testing under subsection 5 of section 33-44-01-51 may be remediated or the manufacturing facility may use the concentration test results of the laboratory for labeling purposes.

   d. A batch that has a sample failing concentration testing under subsection 6 of section 33-44-01-51 may be remediated.

   e. A batch that is remediated in accordance with subdivision a, c, or d must be sampled and tested in accordance with these rules.

9. A manufacturing facility shall, as applicable:

   a. Have detailed written procedures for remediation processes to be used pursuant to this section.

   b. Document all remediation processes used pursuant to this section.

History: Effective April 1, 2018; amended effective October 1, 2019; July 1, 2022.
General Authority: NDCC 19-24.1-36
Law Implemented: NDCC 19-24.1-36

TITLE 33.1

DEPARTMENT OF ENVIRONMENTAL QUALITY

JULY 2022

CHAPTER 33.1-15-24

33.1-15-24-01. Scope.

The sections of title 40 Code of Federal Regulations part 745, as they exist on ~~January 31, 2002~~March 8, 2021, which are listed under section 33.1-15-24-02 are incorporated into this chapter by reference. Any changes to the standards are listed below the title of the section.

History: Effective January 1, 2019; amended effective July 1, 2022.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-24-02. Standards for activities.

745.220 Scope and applicability is amended as follows:

(a) This subpart contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures, and requirements for the certification of individuals and the licensing of firms engaged in lead-based paint activities and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and licensed firms.

(b) This subpart applies to all individuals and firms who are engaged in lead-based paint activities as defined in subpart 745.223, except persons who conduct these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(c) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the federal government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all federal, state, interstate, and local requirements, both substantive and procedural, including the requirements of this subpart regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(d) While this subpart establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this subpart requires that the owner or occupant undertake any particular lead-based paint activity.

745.223 Definitions

The terms United States environmental protection agency administrator and agency are deleted and replaced with department, except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, environmental protection agency means the United States environmental protection agency and administrator means the administrator of the United States environmental protection agency.

"Authorized state" is added and means a state that has been authorized in accordance with title 40 Code of Federal Regulations part 745, subpart Q, to administer and enforce sections 745.225, 745.226, and 745.227.

The acronym "EPA" is added and means the United States environmental protection agency or authorized state when used in the phrases "accredited by EPA" and "certified by EPA" or when referring to EPA accreditation of a training course or referring to EPA certification of an individual.

Certified firm is amended as follows: delete the words certified and certificate and replace with licensed and license.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, six years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facilities may include day care centers, preschools, and kindergarten classrooms.

"Department" means the North Dakota department of environmental quality.

"Elevated blood lead level" ~~is changed from twenty micrograms of lead per deciliter of whole blood for a single venous test to ten~~means three and five-tenths micrograms of lead per deciliter of whole blood for a single venous test. ~~The remainder of the definition is deleted.~~

"Lead-based paint activities" means in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this subpart.

"Lead-based paint hazard" is amended as defined in 40 CFR 745.223 and as defined in 40 CFR 745.63 and means hazardous lead-based paint, dust-lead hazard or soil-lead hazard or any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the administrator pursuant to TSCA section 403.

"Licensed firm" is added and means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the department has issued a license approval pursuant to North Dakota Administrative Code chapter 33.1-15-24.

"Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

The following definitions are incorporated into section 745.223:

"Chewable surface" as defined in 40 CFR 745.63.

"Concentration" as defined in 40 CFR 745.63.

"Dripline" as defined in 40 CFR 745.63.

"Dust-lead hazard" as defined in 40 CFR 745.65(b).

"Friction surface" as defined in 40 CFR 745.63.

"Impact surface" as defined in 40 CFR 745.63.

"Paint-lead hazard" as defined in 40 CFR 745.65(a).

"Play area" as defined in 40 CFR 745.63.

"Renovation" as defined in 40 CFR 745.83.

"Soil-lead hazard" as defined in 40 CFR 745.65(c).

"Soil sample" as defined in 40 CFR 745.63.

"Wipe sample" as defined in 40 CFR 745.63.

"Work practice requirements" as defined in 40 CFR 745.65(d).

745.225 Accreditation of training programs: Target housing and child-occupied facilities.

745.225(a)(2) is deleted.

In 745.225(b)(4), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.225(f)(3)(v), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.225(h)(4)(iv), the number fifteen is deleted and replaced with ten.

In 745.225(h)(5), the references to section 14 of TSCA or by part 2 of this title is deleted and replaced with North Dakota Administrative Code section 33.1-15-01-16.

745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

745.226(a)(2) is deleted.

In 745.226(a)(6), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.226(b)(1)(ii) after EPA add: or an authorized state.

745.226(d) is deleted and replaced with: Certification based on prior training or prior certification with the United States environmental protection agency or an authorized state.

(1) Anyone who has completed an approved lead training course within nine months of the effective date of this rule and has not completed a certification examination will have six months from the effective date of this rule to complete a certification examination and make application to the state.

(2) Anyone who is certified by the United States environmental protection agency or an authorized state prior to the effective date of this rule will have six months from the effective date of this rule to apply for reciprocal lead-based paint certification and license in North Dakota. Reciprocity applicants should submit an application, proof of training

and certification, and the appropriate fee in accordance with North Dakota Administrative Code section 33.1-15-24-04. Certification will be for a period of three years from the date of the last training course attended.

In 745.226(e)(3), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.226(f), delete the words certification and certified and replace with licensing and licensed.

745.226(f)(5) is deleted.

In 745.226(f)(6), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.226(f)(7), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.226(h), delete the word certifications and replace with licenses.

In 745.226(h)(1)(i), delete the ~~word~~words certification and certified and replace with ~~license~~licensing and licensed.

In 745.226(h)(1)(iii), delete the word certification and replace with licensing.

In 745.226(i), delete the words certification and certified and replace with license and licensed when referring to a firm.

In 745.226(i)(4)(iv), the number fifteen is deleted and replaced with ten.

In 745.226(i)(5), the references to TSCA section 14 or by part 2 of this title is deleted and replaced with North Dakota Administrative Code section 33.1-15-01-16.

745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

In 745.227(e)(3), certified firm is deleted and replaced with licensed firm.

745.227(e)(4) is deleted in its entirety and replaced with North Dakota Administrative Code section 33.1-15-24-03.

745.227(i) is ~~added~~amended as follows:

(i) Recordkeeping. All reports or plans required in this section shall be maintained by the licensed firm or individual who prepared the report for no fewer than three years. The licensed firm or individual shall also provide copies of these reports to the building owner who contracted for its services.

745.233 Lead-based paint activities requirements.

History: Effective January 1, 2019; amended effective July 1, 2022.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-24-04. Lead-based paint abatement licensing, certification, and course approval fees.

1. **Purpose.** This section establishes fees charged for the issuance of licenses and certificates by the department for lead-based paint activities. This section also establishes fees charged to recover costs associated with regulatory activities involving lead-based paint.

2. **Scope.** This section applies to a person or company who is an applicant for a lead-based paint certificate, license, or course approval issued by the department.

3. **Exemptions.**

   a. No application fees, license fees, amendment fees, or renewal fees shall be required for:

      (1) Nonprofit educational institutions are exempt from the fees prescribed in this section. This exemption does not apply to institutions which perform any of the following:

         (a) Remunerated services to other persons.

         (b) Activities performed under a government contract.

      (2) Public employees.

      (3) Firms which perform only in house lead-based paint activities.

   b. The department may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this section as it determines are authorized by law and are otherwise in the public interest.

4. **Payment of fees.** Any fees required by this subsection are not refundable.

   a. License, certification, and course approval fees. The appropriate licensing, certification, or course approval fee shall accompany the application when filed with the department.

   b. Renewal fees. The appropriate renewal fee shall accompany the renewal application when filed with the department.

   c. Special project fees. Special project means those projects submitted to the department for review and for which specific fees are not prescribed in this chapter. Special project fees will be based upon the current professional staff hourly rate. Fees for special projects are payable upon notification by the department that review of the project is completed.

   d. Method of payment. Fee payments shall be made by check~~, draft,~~ or money order made payable to the department.

   e. Submittal of application and fee payment. The application for licensure or certification shall be submitted to:

      North Dakota Department of Environmental Quality
      Division of Air Quality
      1200 Missouri Avenue, Room 304
      P.O. Box 5520
      Bismarck, ND 58506-5520

5. **Failure by applicant or licensee to pay prescribed fees.** If the department finds that an applicant or a licensee has failed to pay a prescribed fee required in this section, the

department will not process any application and may suspend or revoke any certification, license, or course approval involved or may issue an order with respect to licensed activities as the department determines to be appropriate or necessary in order to carry out the provisions of this chapter and of the North Dakota Century Code.

6. **Schedule of fees for ~~lead based~~lead-based paint activities.**

   a. Applicants for lead-based paint licenses, certifications, and course approvals shall pay the following fees:

Fee Category	Term	Fee
Contractor license	3 years	$450.00
Individual certifications	3 years	$150.00 (per discipline)

   b. Training course approvals. Any training provider requesting a review of the provider's course for approval by the department shall submit a filing fee of one hundred fifty dollars and pay an application processing fee. The application processing fee will be based on the actual processing costs, including time spent by the department to conduct the course review and course audit, and any travel and lodging expenses the department incurs conducting these activities. Following the course review and audit, and after making a determination on the accreditation status of the course, a statement will be sent to the applicant listing the remaining application processing costs. The course provider must conduct a course in North Dakota for audit purposes within fifteen months of the submittal of the initial filing fee or the initial filing fee and any application processing fees paid will be forfeited.

History: Effective January 1, 2019; amended effective July 1, 2022.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

TITLE 62

PLUMBING, BOARD OF

JULY 2022

CHAPTER 62-01-01

62-01-01-01. Organization of board of plumbing.

1. **History.** The 1941 legislative assembly passed a state plumbing law, codified as North Dakota Century Code chapter 43-18. The chapter was intended to promote and protect the public health through the regulation of the business of plumbing by creating a state board of plumbing and empowering the board and the department of environmental quality to adopt rules governing the practice of plumbing and establishing a code of minimum standards of plumbing work. The 1973 legislative assembly passed legislation, codified as North Dakota Century Code chapter 43-18.1, which regulates the installation of water-conditioning equipment. The 1987 legislative assembly passed legislation, codified as North Dakota Century Code chapter 43-18.2, which regulates the installation of sewer and water services.

2. **Board membership.** The board of plumbing consists of the chief sanitary engineer of the department of environmental quality, and four persons appointed by the governor: one a master plumber; one a journeyman plumber; one a registered professional engineer; and one a representative of the consuming public. The four appointed members of the board serve four-year terms, with one term expiring each year.

3. **Secretary and ~~chief inspector~~executive director.** The secretary and ~~chief inspector~~executive director of the board is appointed by the board and is responsible for administration of the board's activities.

4. **Inquiries.** All inquiries and communication relating to licensing, plumbing installation, and inspections may be directed to:

   North Dakota State Plumbing Board
   1110 College Drive, Suite 210
   Bismarck, ND 58501

   Phone (701) 328-9977
   Fax (701) 328-9979
   E-mail ndplumb@nd.gov

History: Amended effective November 1, 1981; September 1, 1987; April 1, 1994; March 1, 2000; April 1, 2010; July 1, 2022.
General Authority: NDCC ~~28-32-02.1~~28-32-02, 43-18-08
Law Implemented: NDCC ~~28-32-02.1~~43-18-06

CHAPTER 62-02-01

62-02-01-01. Application for journeyman or master plumber license.

No applicant shall be entitled to take the examination for either the master or journeyman plumber's certificate and license unless and until the applicant furnishes to the board satisfactory evidence that the applicant possesses sufficient practical experience to enable the applicant to perform satisfactorily the duties of the classification for which the applicant has made application. The application fee is fifty dollars.

1. Applicants for a journeyman plumber's examination and license shall have had four years' experience as an apprentice plumber under a licensed master plumber. Applicants who are working at the plumbing trade in localities where state licenses are not required, who have had five years of experience (one thousand nine hundred hours per year and a total of nine thousand five hundred hours) and who furnish four affidavits verifying years of experience, may make application for a journeyman examination screening test. The screening test is defined as an oral and written test given by the state plumbing board and a plumbing inspection report, signed by a state plumbing inspector, of an installation installed by the applicant to determine the applicant's qualifications for writing the journeyman examination. The journeyman license fee is one hundred dollars.

2. Applicants who are journeyman plumbers in other states who desire to work in this state in localities where a state journeyman license is required may make application for a journeyman examination and license. Proof of such journeyman license from another state shall be vouched for as provided on the application blank furnished by the North Dakota state plumbing board.

3. All applicants for a master plumber's license must be twenty-one years of age and must have had two years' (three thousand four hundred hours) experience as a journeyman plumber licensed by the state of North Dakota or any other state that has a state licensing law. Proof of such journeyman license from another state shall be vouched for as provided on the application blank furnished by the North Dakota state plumbing board. The master license fee is two hundred dollars.

4. Applicants who are master plumbers in other states who desire to work in this state in localities where a state master license is required may make application for a master examination and license. Proof of such master license from another state shall be vouched for as provided on the application blank furnished by the North Dakota state plumbing board.

5. All applications will expire and be canceled after a period of six months from date of approval if the applicant fails to appear for examination within the six-month period.

History: Amended effective February 1, 1994; July 1, 2022.
General Authority: NDCC 43-18-08
Law Implemented: NDCC 43-18-13, 43-18-13.1

62-02-01-02. Examination fee for each examination.

An applicant for examination shall be entitled to one examination only for each examination fee paid. The examination fee is fifty dollars.

History: Amended effective July 1, 2022.
General Authority: NDCC 43-18-08
Law Implemented: NDCC 43-18-13

62-02-01-06. Master plumber - Renewal of journeyman and master plumber certificate.

The holder of a master plumber's certificate and license may renew the holder's journeyman certificate and license upon payment of the journeyman renewal fee and during the same year may reinstate the holder's master plumber's certificate and license upon payment of the difference between the journeyman renewal fee of one hundred dollars and the master renewal fee of two hundred dollars.

History: Amended effective July 1, 2022.
General Authority: NDCC 43-18-08
Law Implemented: NDCC 43-18-17

62-02-01-07. Renewal of expired license.

No certificate and license need be renewed by the board later than one year subsequent to its expiration. The board may, in its discretion, require that a holder of a license which has been expired for one year or more submit to a new examination. The late renewal fee is fifty dollars.

History: Amended effective July 1, 2022.
General Authority: NDCC 43-18-08
Law Implemented: NDCC 43-18-17

CHAPTER 62-03.1-01

62-03.1-01-04. Administrative powers and duties.

The ~~secretary-chief inspector~~executive director and ~~other~~ inspectors of the North Dakota state plumbing board, under the direction of the board, shall administer laws, rules, plumbing installation standards of this state, and the North Dakota Plumbing Code. In all cases when any action is taken by the ~~secretary-chief inspector~~executive director or inspectors of the board to enforce the provisions of any sections contained in this article or the North Dakota Plumbing Code, such acts must be done in the name of and on behalf of the state.

History: Effective March 1, 2000; amended effective April 1, 2020; July 1, 2022.
General Authority: NDCC 28-32-02, 43-18-08, 43-18-09
Law Implemented: NDCC 43-18-06, 43-18-08, 43-18-09

TITLE 70

REAL ESTATE COMMISSION

JULY 2022

CHAPTER 70-01-01

70-01-01-01. Organization of real estate commission.

1. **History and functions.** The 1957 legislative assembly passed a real estate licensing law, codified as North Dakota Century Code chapter 43-23. This chapter requires the governor to appoint a state real estate commission. It is the responsibility of the commission to administer the real estate license law regarding brokers and salespersons and to regulate the sale of out-of-state subdivided lands offered for sale to residents of North Dakota. In addition, the commission is required to administer a real estate education, research, and recovery fund whereby aggrieved persons may make application for the payment of unsatisfied judgments.

2. **Commission membership.** The commission consists of five members, three of whom are active real estate brokers, appointed by the governor. Members of the commission are appointed for a term of five years, staggered so the term of one member expires each year. At the expiration of the term of any member of the commission, the governor appoints a successor for a term of five years.

3. **Executive director.** The executive director of the commission is employed by the commission and is responsible for administration of the commission's activities.

4. **Inquiries.** Inquiries regarding the commission may be addressed to the executive director~~:~~

   ~~North Dakota Real Estate Commission~~
   ~~P.O. Box 727~~
   ~~Bismarck, ND 58502-0727~~.

History: Amended effective July 1, 2006; April 1, 2008; July 1, 2022.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-23-03

CHAPTER 70-01-02

70-01-02-05. Conduct of hearing.

The hearing shall be conducted and presided over by a member of the commission or such subordinate as may be designated to hear the matter by the ~~chairman~~chair of the commission.

History: Amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1(3)

70-01-02-08. Hearings.

1. Proceedings going to the revocation or suspension of licenses may be initiated by a verified complaint of an individual or an individual's representative. Proceedings requesting the promulgation, amendment, or repeal of any rules of the commission may be initiated on a verified petition by an individual, or an individual's representative.

2. The commission may in its discretion initiate proceedings to ~~revoke or suspend a license~~discipline a licensee whenever an investigation by the commission or its employees discloses probable grounds therefore. No hearings shall be initiated until a motion duly authorizing the hearing has been recommended by the commission.

History: Amended effective May 1, 1986; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1(3)

CHAPTER 70-02-01
LICENSING, TRUST ACCOUNTS, AND COMPLAINTS

Section
70-02-01-01 Application and Purpose of Title
70-02-01-02 Application for License
70-02-01-03 Examinations
70-02-01-04 Renewal of License
70-02-01-05 Inactive Licenses
70-02-01-06 Nonresident Brokers and Salespersons
70-02-01-07 Licensee's Duties Upon ~~Surrender~~Release of License Due to Cancellation, Transfer, Suspension, or Revocation~~ of License~~
70-02-01-08 Salesperson and Broken Associate Transfer or Release
70-02-01-09 Broker Associates
70-02-01-10 Salesperson
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70-02-01-12 Sharing Office Space
70-02-01-13 Prevention of Same or Deceptively Similar Real Estate Firm Names
70-02-01-14 Salesperson Closing
70-02-01-15 Trust Account Requirements - Handling of Funds - Records
70-02-01-16 Complaints - Answer - Dismissal - Hearing
70-02-01-17 Disputes Between Licensees
70-02-01-18 Commissions
70-02-01-19 Definitions - Psychologically Impacted Properties
70-02-01-20 Disclosure of Psychologically Impacted Properties - Not a Material Defect
70-02-01-21 Responsibilities of Designated Broker

70-02-01-01. Application and purpose of title.

1. This title applies in all proceedings and hearings had before the commission in matters within its jurisdiction, except in cases where the statute involved provides a procedure inconsistent with this title, and in such case the statute shall govern to the extent of such inconsistency.

2. It is the purpose of this commission, acting under the provisions of the law creating it, to safeguard the public interest in real estate transactions, to regulate the licensing of real estate brokers and salespersons, to encourage and require the maintenance of high standards ~~in ethical~~of ethics and practices by all real estate licensees doing business in North Dakota~~, and to seek out and prosecute those persons who unlawfully engage in dishonest, fraudulent, or criminal activities in connection therewith~~.

History: Amended effective January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-11.1(3)
Law Implemented: NDCC 43-23-02

70-02-01-02. Application for license.

1. No application for either a broker's or salesperson's license will be accepted from a person under the age of eighteen years.

2. All applications must be filed with the commission before an examination, complete in every detail with every question answered and correct fees ~~sent with the application~~submitted.

3. It shall be incumbent upon the applicant for a real estate broker's license to submit the applicant's proofs of qualification pursuant to subsection 3 of North Dakota Century Code section 43-23-08. Broker applicants wishing to qualify under the two-year experience requirement shall be required to submit to the commission a letter from said applicant's broker

or brokers that the applicant has been actively engaged in the real estate business as a salesperson for at least two years.

"Actively engaged" means that the applicant must have devoted the applicant's full time as a licensed real estate salesperson. The foregoing shall be certified by a licensed real estate broker.

4. Each application for license shall be made on application forms provided by the real estate commission~~ and are to be filled in personally by, or under the supervision of, the applicant~~.

5. After an application is filed, no refund of application fee will be made to any applicant.

6. The commission may deny any application for license when one or more of the following conditions are present:

   a. The application contains any false statement.

   b. An investigation fails to show affirmatively that the applicant possesses in every instance the necessary qualifications.

   c. The applicant has acted or attempted to act in violation of North Dakota Century Code chapter 43-23 or this title.

   d. The applicant has had a real estate license suspended or revoked in North Dakota or another state.

   e. ~~The check used in paying an examination or license fee shall not, for any reason, be honored by the financial institution upon which it is written.~~

   ~~f.~~ The applicant has issued one or more checks or drafts which have been dishonored by a payor bank because:

      (1) No account exists;

      (2) The account was closed; or

      (3) The account did not contain sufficient funds to pay the check or draft in full upon its presentment.

   ~~g.~~f. The applicant's credit history shows the existence of unpaid and overdue judgments, liens, or other debt obligations which, for the protection of the public, requires that the application be denied.

7. If the application and supporting documents on their face show that the applicant is qualified, but from complaints and information received or from investigation it shall appear to the commission at any time before the initial license is delivered, that there may be cause to deny a license, the commission may order a hearing to be held to consider such complaints or information.

8. The commission may require such other proof as may be deemed advisable of the honesty, truthfulness, and good reputation of any applicant, including the officers and directors of any corporation, or the members of any copartnership or association making such application, before accepting an application for license.

9. Inquiry and investigation may be made by the commission as to the financial responsibility of each applicant.

10. When a corporation submits its application for a license, the application must be accompanied by a copy of the articles of incorporation and a certificate of authority issued by the secretary of state.

11. When a partnership submits its application for a license, the application must be accompanied by a copy of the partnership agreement.

12. An applicant for licensure in another state may request the commission to certify to such other state that the applicant is a licensee of this state. A fee as set by the commission shall accompany the request.

13. An application for an organization to be licensed ~~as~~for a salesperson~~ or~~, broker associate, or broker pursuant to North Dakota Century Code section 43-23-05.1 must be accompanied by a one-time license fee of not more than ~~two~~three hundred dollars, as set by the commission. The individual who owns the organization must possess and maintain a valid and active real estate license in order for the organization to be licensed. The failure to do so will cause the organization's license to become inactive and invalid. The ~~one-time~~ fee must be paid each time the organization's license is activated.

History: Amended effective August 1, 1981; May 1, 1986; January 1, 1992; February 1, 2004; January 1, 2006; April 1, 2008; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08(6)
Law Implemented: NDCC 43-23-05.1, 43-23-08, 43-23-09, 43-23-11.1

70-02-01-03. Examinations.

1. An applicant will not be permitted to take the ~~written~~ examination until and unless the applicant has been authorized in writing to ~~appear for~~take the examination.

2. If an applicant should fail to ~~appear for~~take the examination within four months after notification by the commission that the applicant is qualified to take the examination, an applicant must ~~reapply for examination as in the first instance and pay the required fee~~submit a new application together with fees.

3. During the examination the use or possession of any unfair methods or notes, the giving or receiving of aid of any kind, or the failure to obey instructions will result in a denial of the application and license.

4. If the salesperson applicant passes one portion of the examination, national or state, the salesperson applicant shall not be required to repeat that portion of the examination if that applicant passes the remaining portion within twelve months from the date of the first examination. An applicant must submit a new application ~~in complete detail together~~ with ~~the statutory~~ fees if the examination has not been passed within the same twelve-month period.

5. A broker applicant must pass the broker examination within twelve months from the date of the first examination. An applicant must submit a new application in complete detail together with the statutory fees if the examination has not been passed within the same twelve-month period.

6. A prelicensure course is valid for two years from the date the applicant completed the course, as indicated on the certificate of completion or other official documentation provided by the school.

History: Amended effective January 1, 1992; February 1, 2004; April 1, 2008; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)
Law Implemented: NDCC 43-23-13(4)

70-02-01-04. Renewal of license.

All licenses expire on December thirty-first of each year. Persons desiring to continue in business must make proper application for renewal on or before November fifteenth of each year in order for the respective license to be renewed on a timely basis for the following license period. Failing to do this subjects such persons to loss of the right to charge a commission and also prosecution for doing business without a license after December thirty-first. Any person whose license has been canceled for failure to renew the person's license when due must ~~comply with all the requirements of a new applicant to regain a license~~submit a new application with the fees and pass the examinations to be licensed again. No license renewal fees are refunded after the beginning of the new license year if a licensee cancels their license or is deceased.

History: Amended effective October 1, 2015; July 1, 2022.
General Authority: NDCC 43-23-08, 43-23-08.2, 43-23-11.1(3)
Law Implemented: NDCC 43-23-13(4)

70-02-01-05. Inactive licenses.

1. A qualified licensed salesperson desiring to place the salesperson's license on an inactive status may do so by ~~having the broker with whom the salesperson is associated surrender the salesperson's license to the commission, with a written~~a request from the salesperson in a format prescribed by the commission that the salesperson's license be placed on an inactive status. The salesperson may keep the salesperson's license on an inactive status for an indefinite period~~ from the date the license is surrendered~~. The salesperson placing the salesperson's license on inactive status shall pay the required fee for renewing such salesperson's license each year. A salesperson whose license is in an inactive status shall not engage in any manner in any of the activities described under North Dakota Century Code chapters 43-23 and 43-23.1, until the salesperson shall first request that the salesperson's license be reactivated by the commission. During the time that a salesperson's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.

2. A qualified licensed broker who ~~withdraws from the real estate business entirely and who~~ desires to place the broker's license on an inactive status may do so ~~by surrendering the broker's license to the commission, with a written request that~~in a format prescribed by the commission that requests the license be placed on an inactive status. The broker may keep the broker's license on an inactive status for an indefinite period~~ from the date of expiration of the license surrendered~~. The broker placing the broker's license on inactive status shall pay the required fee for renewing such broker's license each year. During the time that a broker's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.

3. While a license is on inactive status it is not necessary, in the case of a broker, to maintain an active trust account. While a license is on inactive status, in the case of a designated broker, the firm license is automatically canceled unless another broker is the designated broker. A firm license that is canceled may be activated only by submitting a firm license application with all fees.

4. To reactivate an inactive license, a licensee must meet the continuing education hours as required by section 70-02-04-02 for each continuing education period the licensee's license was inactive, not to exceed the number of hours required for the three continuing education periods prior to reactivation. The requirements of section 70-02-04-02 must have been fulfilled within the three years immediately preceding the return to active status.

History: Amended effective May 1, 1986; January 1, 1992; February 1, 2004; July 1, 2010; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08(6)
Law Implemented: NDCC 43-23-08, 43-23-08.2

70-02-01-06. Nonresident brokers and salespersons.

1. Any person who becomes an applicant for a nonresident license shall become subject to the same rules required of an applicant whose residence is in North Dakota. A designated broker shall obtain a nonresident license before an associate broker or salesperson licensed under the designated broker can be issued a nonresident license.

2. An applicant for nonresident broker's or salesperson's license shall hold a currently valid broker's or salesperson's license in the state of the applicant's ~~domicile~~principal place of business and that state shall certify that the applicant is in good standing and no complaints are pending.

3. A nonresident broker must maintain an active place of business as a real estate broker in the state of the broker's ~~residence~~principal place of business. The nonresident broker shall furnish proof of maintaining an active place of business by submitting information deemed necessary by the commission. A North Dakota firm license shall be obtained if the company is a partnership, corporation, limited liability company, or association.

4. North Dakota will not recognize the licensee from another state for a reciprocal license unless an agreement granting reciprocal privileges to North Dakota licensees has been made by the commission with the proper regulatory authorities of that state. The agreement shall set out the terms and the regulations to be followed.

5. An applicant currently licensed in a nonreciprocal state who has successfully passed the real estate licensing examination given in another state need only take the state portion of the examination in North Dakota. Prelicensure course is not required if the applicant is already licensed in another nonreciprocal state.

History: Amended effective May 1, 1986; January 1, 1992; April 1, 2008; October 1, 2015; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08(6)
Law Implemented: NDCC 43-23-10

70-02-01-07. Licensee's duties upon ~~surrender~~release of license due to cancellation, transfer, suspension, or revocation ~~of license~~.

~~A broker or salesperson, upon surrendering the broker's or salesperson's license or upon notice of suspension or revocation of the broker's or salesperson's license, shall forward the same at once to the commission.~~Upon release of license or upon notice of suspension, revocation, or cancellation of the license, the designated broker shall destroy the license and remove the licensee's name and licensee's number from the broker's website. If the license is that of a broker, the broker shall also ~~forward to the commission with the broker's license all salesperson's licenses in the broker's possession or in the broker's office and shall be responsible for all missing licenses of the broker's salesperson~~release all licensees associated with the broker. No refund will be made upon any license when ~~surrendered, suspended, or revoked~~released.

History: Amended effective January 1, 1992; February 1, 2004; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1

70-02-01-08. Salesperson and broker associate transfer or release.

~~The real estate broker shall retain in the broker's possession the license of all real estate salespersons licensed under the broker and shall relinquish possession of the licenses only to the real estate commission.~~ When for any reason a ~~salesperson~~licensee severs connection with the ~~salesperson's~~licensee's designated broker and desires to transfer to another broker, the ~~salesperson~~licensee must ~~secure~~complete a transfer and release form provided by the commission, to be executed by the ~~salesperson~~licensee, the ~~salesperson's former~~licensee's current broker, and the ~~salesperson's new employing~~licensee's new broker. Should the ~~salesperson's former~~licensee's current broker not be agreeable to the transfer or release, the current broker then shall have the right to state the broker's reasons for refusal. Unless there is sufficient justification, the license will be transferred pending the receipt of the transfer form and fee.

History: Amended effective May 1, 1986; January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, ~~43-23-08(7)~~43-23-08, 43-23-11.1(3)
Law Implemented: NDCC 43-23-12(2), 43-23-13(6), 43-23-13(7)

70-02-01-09. Broker associates.

A real estate broker ~~regularly licensed~~ who does not ~~conduct~~have an office under the broker's own name, but is ~~employed by another licensed broker or~~ affiliated with another licensed broker ~~on a fee division basis~~ and performs service similar to that of a salesperson, must not at any time act independently as a broker, and shall not perform any real estate service without full consent and knowledge of the broker's ~~employing or~~ supervising broker. The ~~employing or supervising~~designated broker shall at all times be responsible for the action of the ~~employed or~~ affiliated broker associate to the same extent as though the ~~employed or~~ affiliated broker were an ~~employed~~affiliated salesperson.

History: Amended effective January 1, 1992; July 1, 2022.
General Authority: NDCC 43-23-11.1(3)
Law Implemented: NDCC 43-23-06.1(5)

70-02-01-10. Salesperson.

A salesperson shall not commence work until the salesperson's ~~employing~~ broker receives ~~the appropriate license~~notification of licensure from the commission. Any ~~salesperson~~licensee leaving ~~the employment of~~ a broker shall not take nor use any agreements ~~(listing/buyer broker agreements, management contracts, etc.)~~ secured through the office or through ~~salespersons~~licensees of the former ~~employing~~ broker unless specifically authorized by the former broker. All materials and records that belong to the former broker shall be returned to the former broker.

History: Amended effective January 1, 1992; February 1, 2004; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)
Law Implemented: NDCC 43-23-12(2)

70-02-01-11. Branch office.

1. **Definition.** If a broker maintains more than one office, then one office shall be designated as the main office and each additional office shall constitute a branch office. If a real estate broker maintains a regular office, the broker's home shall not be considered a branch office.

2. **Applications.** The broker desiring to open a branch office shall file with the commission an application for a branch office license on forms provided by the commission.

3. **Supervision.** The applicant broker must designate the applicant broker or another licensee to act as branch office manager to aid the broker in actively managing each branch office and to aid the broker in supervising the licensees working from such branch office. The designated

licensee shall be responsible for all activities of that branch office. The applicant broker may designate the applicant broker to act as manager for all branch offices.

4. **Notification to commission of change.** It shall be the responsibility of the applicant broker to notify the commission in writing of any change of address of a branch office or change of supervisor of the branch office, within ~~ten~~five days after the change.

5. **Notification to commission.** The applicant broker shall at all times notify the commission of the location and address of each branch office which the broker operates and the name of the licensee who supervises the branch office.

6. **Additional office.** Every additional office or place of business, other than the principal place of business of a broker, shall be licensed only with the approval of the commission and only after the applicant broker has given satisfactory proof that this additional office shall be under the supervision of a duly authorized licensee.

7. **Display license.** A branch license shall be displayed in the branch office or listed on the broker's website, shall bear the address of the branch office, and shall bear the name of the licensee designated to actively manage the branch office.

8. **Identical name.** The branch office must be operated under the same name as the principal office.

History: Amended effective December 1, 1999; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)
Law Implemented: NDCC 43-23-12, 43-23-13(5)

70-02-01-14. Salesperson closing.

A salesperson shall not handle the closing of any real estate transaction (unless authorized by the salesperson's ~~employer~~ broker), except under the direct supervision of the broker, a licensed officer, or a licensed partner of the corporation or partnership under whom the salesperson is licensed.

History: Amended effective January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1(1)

70-02-01-15. Trust account requirements - Handling of funds - Records.

1. All moneys belonging to others and accepted by the broker while acting in the capacity as a broker shall be deposited in ~~an authorized~~a federally insured financial institution in this state in an account separate from money belonging to the broker. Clients' funds shall be retained in the depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amounts received.

   a. ~~Definitions. The term "authorized financial institution" means a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation.~~

   ~~b.~~ Name of account. The name of such separate account shall be identified by the words "trust account" or "escrow account".

   ~~c.~~b. Notification. Each broker shall notify the commission of the name of the institution in which the trust account or accounts are maintained and also the name of the accounts on forms provided therefore. ~~A trust account card shall be filed with the commission by~~

~~each new applicant for a real estate broker's license.~~ A new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever, including~~, but not limited to,~~ change of depository, change of account number, change of business name, or change of method of doing business. The form shall be filed with the commission within ten days after the aforementioned change takes place.

~~d.~~c. Authorization. Each broker shall authorize the commission to examine and audit the trust account and shall complete an authorization form attesting to the trust account and consenting to the examination and audit of the account by a duly authorized representative of the commission.

~~e.~~d. Commingling prohibited. Each broker shall only deposit trust funds received on real estate transactions in the broker's trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds which sum shall be specifically identified and deposited to cover service charges relating to the trust account.

~~f.~~e. Number of accounts. A broker may maintain more than one trust account provided the commission is advised of the account.

~~g.~~f. Time of deposit. Each broker shall deposit all real estate trust money received by the broker or the broker's salesperson in the trust account within twenty-four hours of receipt of the money by the broker or the salesperson unless otherwise provided in the purchase contract. In the event the trust money is received on a day prior to a holiday or other day the depository is closed, the money shall then be deposited on the next business day of the depository. If the trust money is wired by the buyer to either the broker's trust account or a nonbroker third party, the broker shall maintain in the broker's office a complete record of all moneys transferred, including the initial contact request for the wire from the buyer to their financial institution, and confirmation of completion of the transfer. If earnest money is mailed by the buyer to the broker or the nonbroker third party, the envelope containing the postmark must be retained by the broker to establish the date the money was sent.

~~h.~~g. Responsibility. When a broker is registered in the office of the real estate commission as in the employ of another broker, the responsibility for the maintenance of a separate account shall be the responsibility of the employing broker.

~~i.~~h. ~~Interest-bearing~~Noninterest bearing accounts. All trust accounts must be ~~interest-bearing and the interest earned must be disbursed only as provided by law, unless all persons having an interest in the funds have otherwise agreed in writing and a copy of the agreement is maintained by the broker for inspection by the commission~~noninterest bearing.

2. Brokers are responsible at all times for deposits and earnest money accepted by them or their salespersons.

   a. Personal payments. No payments of personal indebtedness of the broker shall be made from the ~~separate~~trust account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the ~~separate~~trust account.

   b. Withdrawals. Money held in the ~~separate~~trust account which is due and payable to the broker should be withdrawn promptly.

c. Earnest money. A broker shall not be entitled to any part of the earnest money or other moneys paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated. The earnest money contract shall include a separate written provision, approved by all parties including the broker, for any division of moneys taken in earnest, when the transaction is not consummated and such moneys are retained as forfeiture payment.

d. Abandoned deposits. Abandoned deposits in a broker's trust account are subject to the laws governing abandoned property as provided in North Dakota Century Code chapter 47-30.1. A deposit that has remained unclaimed for more than three years after it became payable or distributable is presumed abandoned by North Dakota Century Code chapter 47-30.1 and must be reported and delivered to the administrator of the unclaimed property division as provided by North Dakota Century Code chapter 47-30.1. Earnest money deposits are considered payable or distributable as of the closing date on the purchase agreement or date of cancellation of the purchase agreement.

3. A broker shall maintain in the broker's office a complete record of all moneys received or escrowed on real estate transactions, in the following manner:

a. Bank deposit slips. A bank deposit slip showing the date of deposit, amount, source of the money, and where deposited.

b. Bank statements. Monthly bank statements are to be retained and kept on file.

c. Trust account checks. Trust account checks should be numbered and all voided checks retained. The checks should denote the broker's business name, address, and should be designated as "real estate trust account".

d. Journal. A ~~permanently bound record book called a~~ journal which shows the chronological sequence in which funds are received and disbursed:

(1) For funds received, the journal must include the date, the name of the party who is giving the money, the ~~name of the principal~~property address, and the amount.

(2) For disbursements, the journal must include the date, the payee, and the amount.

(3) ~~For interest earned and withdrawn, the journal must include the amount, the date earned or withdrawn, and the payee.~~

~~(4)~~ A running balance must be shown after each entry (receipt or disbursement).

e. Ledger. This record book will show the receipt and the disbursements as they affect a single, particular transaction as between buyer and seller, etc. The ledger must include the names of both parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and amount must be shown.

f. Reconciliation. The trust account must be reconciled monthly except in the case where there had been no activity during that month.

g. Maintain records. Every broker shall keep permanent records of all funds and property of others received by the broker for not less than six years from the date of receipt of any such funds or property.

History: Amended effective August 1, 1981; January 1, 1992; April 1, 1992; December 1, 1999; July 1, 2010; January 1, 2016; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-14.1~~, 43-23.4-06(2)~~

Law Implemented: NDCC 43-23-11.1(1), 43-23-14.1

70-02-01-16. Complaints - Answer - Dismissal - Hearing.

1. All complaints to be investigated by the real estate commission, as required by North Dakota Century Code section 43-23-11.1, must be in writing~~ and filed in triplicate~~ on forms furnished by the commission. The complaint shall be verified and shall include: the full name and address of the person making the complaint, hereinafter referred to as the complainant; the full name and address of the person against whom the complaint is made, hereinafter referred to as the respondent; an allegation that respondent is either a licensed broker or salesperson, and if the respondent is a salesperson, then the full name and address of the broker employer; and a clear and concise statement of the facts constituting the alleged complaint including the time and place of occurrence of particular acts and the names of persons involved.

2. The licensee against whom a complaint~~, or complaints,~~ has been filed must, within twenty days from receipt of ~~copy or copies of complaints~~complaint, file the licensee's answer~~ in triplicate~~ on forms furnished by the commission. This answer must be in ~~written~~ affidavit form ~~in triplicate~~, properly certified, and contain a factual response to the allegations set out in the complaint.

3. If the investigation reveals that the complaint does not involve a violation of the laws~~,~~ or rules, ~~or code of ethics regulating licensees,~~ the complaint shall be dismissed without a formal hearing, and the complainant and respondent so informed in writing.

4. If the investigation reveals that the acts of the respondent may be such as to justify disciplinary action against the respondent, a formal hearing will be held on the complaint. Notice of such hearing shall be given at least twenty days in advance by serving upon the respondent a copy of the complaint against the respondent and the date and place of hearing.

History: Amended effective May 1, 1986; January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1

70-02-01-17. Disputes between licensees.

The~~ real estate~~ commission is not authorized by law nor will it consider or conduct hearings involving disputes over fees or commissions between ~~cooperating brokers or brokers and salespersons~~licensees.

History: Amended effective January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-11.1(3)
Law Implemented: NDCC 43-23-11.1(1)

70-02-01-21. Responsibilities of designated broker.

The designated broker must have a written company policy that identifies and describes the types of real estate agency relationships in which the agency may engage. In addition, any agency that offers representation to both buyers and sellers must also address in the policy manual the agency's procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the agency, the arrangement of agency office space, and the personal relationships of agents who are representing clients with adverse interests. The designated broker is responsible for supervising teams and shall have a written policy that identifies and describes the team relationships in which its licensees may engage. Designated brokers shall maintain a chronological written record of all teams and team membership and provide such records to the commission upon request.

History: Effective July 1, 2010; amended effective July 1, 2022.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-23-12.1

CHAPTER 70-02-02
EDUCATION AND EXPERIENCE STANDARDS

Section
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70-02-02-14 Facilities [Repealed]
70-02-02-15 Course Content Must Not Be Duplicated [Repealed]
70-02-02-16 No Credit Given for Salesmanship Courses [Repealed]
70-02-02-17 Correspondence Courses [Repealed]
70-02-02-18 ~~Distance Education~~Online-Only Asynchronous Prelicensure Courses Must Be ~~Approved~~Certified

70-02-02-01. Purpose of chapter.

The purpose of this chapter is to delineate the rules which the real estate commission will follow in approving and regulating all schools ~~which wish to offer a course which will comply with~~offering prelicensure courses to meet the requirements ~~as outlined under~~in North Dakota Century Code section 43-23-08.~~ The commission intends that the courses be educational in nature and that they not be specifically oriented to the passing of the state licensing examination. No course will be approved if the name of the course or any advertising of the school or person offering the course indicates that the primary objective of the course is to prepare students for passing the state licensing examination.~~

History: Amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08

70-02-02-02. Application for prelicensure course approval~~ of classroom instruction, distance education, or correspondence course~~.

In order for any prelicensure course to be approved by the real estate commission ~~an~~a complete application ~~for approval~~ shall be filed with the commission not less than forty-five days prior to the contemplated date of ~~opening~~offering the first course. The application, in addition to the name and address of the school~~ or person~~ offering the course as well as any other identifying criteria which the commission may require, must be accompanied by a nonrefundable fee ~~of fifty~~not to exceed two hundred dollars, and must ~~set forth the following~~include:

1. A proposed course outline, in reasonable detail, with hours spent on each subject area to be covered by the course. Each outline shall make reference to the textbook used and other material related to the course or subject matter, and shall substantially conform to the approved curricula outlines prepared by the commission.

2. ~~A~~An instructor application or resume on all instructors and subject to be taught~~ must accompany the application~~.

3. ~~A schedule of course offerings for the year for which approval is sought must accompany the application. Each schedule must include the name,~~The date, time, and place of any synchronous course ~~offering. The schedule of offerings must be arranged so as to allow reasonable time for either home study or in-class preparation for each classroom session~~hours.

4. ~~A fee schedule for all course offerings must accompany the application.~~Tuition and other costs or fees for students.

History: Amended effective January 1, 1992; January 1, 2006; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-13
Law Implemented: NDCC 43-23-08, 43-23-13

70-02-02-04. Courses of study approved by the commission.

Repealed effective July 1, 2022.

~~Courses of study provided in North Dakota Century Code section 43-23-08 shall be courses of study approved by the real estate commission and which are offered by any of the following:~~

~~1. North Dakota accredited baccalaureate degree granting institutions and North Dakota or non-North Dakota institutions offering programs, and credits from which can be transferred to an accredited North Dakota baccalaureate degree granting institution.~~

~~2. Special institutes or courses relating to real estate which are approved by the commission.~~

~~3. A correspondence course approved by the commission.~~

~~4. A distance education course approved by the commission.~~

~~**History:** Amended effective January 1, 2006.~~
~~**General Authority:** NDCC 43-23-08~~
~~**Law Implemented:** NDCC 43-23-08~~

70-02-02-05. Commission review of all real estate courses.

~~Periodically, but not less frequently than every two years, the commission shall survey and evaluate the total real estate education program of each school approved by the commission, a written report of which will be provided to the school. The review will be considered by the commission in determining whether the school meets the requirements of law and the commission for continued approval of the school.~~Every three years, the school shall submit another complete application. The commission shall review the school to determine if it meets the requirements of law and commission for certification for another three years.

History: Amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08
Law Implemented: NDCC 43-23-08

70-02-02-06. Approval of classroom instruction.

Repealed effective July 1, 2022.

~~If based upon the application submitted, together with the commission's survey of the total real estate educational program to be provided by the school, the commission determines that the requirements of law and the commission rules have been met, the application shall be approved. Prior to the contemplated date of opening, the applicant shall be notified in writing of the commission's decision to grant or deny approval.~~

~~**General Authority:** NDCC 43-23-08~~
~~**Law Implemented:** NDCC 43-23-08~~

70-02-02-07. Review of courses not having received prior approval.

Repealed effective July 1, 2022.

~~Any person completing a thirty-hour, sixty-hour, or ninety-hour course of study, either classroom, distance education, or correspondence, which has not received prior commission approval, shall submit a complete listing of the courses taken, the number of hours of study for each course and the qualifications of the teachers, and answer any additional questions which the commission may have regarding the course of study. After review of the information, the commission may approve the course of instruction, distance education, or the correspondence courses and give the applicant credit for meeting the educational requirements imposed by North Dakota Century Code chapter 43-23.~~

~~**History:** Amended effective January 1, 2006.~~
~~**General Authority:** NDCC 43-23-08~~
~~**Law Implemented:** NDCC 43-23-08~~

70-02-02-08. Withdrawal of approval.

If the commission ~~at any time determines that a person approved to offer a course in real estate~~determines a school is not meeting the requirements of law for continued approval, the commission shall immediately notify the school in writing detailing the deficiencies requiring correction. The schools' approval by the commission shall continue ninety days from the date of the commission's written notice to the school, and if, at the expiration of that period, the school has failed to correct to the commission's satisfaction the deficiencies noted, the commission may withdraw approval of the school.

History: Amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08
Law Implemented: NDCC 43-23-08

70-02-02-09. Advertising of approved courses.

If the name of the commission is used or if commission approval is indicated, any advertisement may not make or imply any guarantee concerning the applicant's passing of the ~~state~~ real estate licensing examination~~. Advertising, as it is used in this section, includes any type of solicitation, and the advertisement may not be drawn, printed, or illustrated in any fashion which would indicate that the North Dakota real estate~~ or that the commission has any interest in the school other than ensuring that it complies with the standards imposed by North Dakota Century Code chapter 43-23. ~~In no event can the~~The phrase "North Dakota real estate commission" may not appear ~~anywhere~~ in the advertisement in larger type than the words and phrases preceding or following the phrase "North Dakota real estate commission". ~~Printed bulletins or other promotional information must be specific with respect to the purpose of each course of instruction, the curricula, the classroom (or other unit), content of the course, tuition, and criteria for successful completion of the course.~~ No promotional material of any school approved by the commission shall state or imply that its program of instruction is the sole vehicle for which the education requisites for licensure shall be attained. Schools or their representatives shall not promote their school in such a manner as to state or imply that their program excels over any other course of instruction.

History: Amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08
Law Implemented: NDCC 43-23-08

70-02-02-10. ~~Classroom~~Course hour.

A ~~classroom~~course hour ~~in a course~~ shall be defined as fifty minutes~~ of lecture in classroom attendance or the equivalent materials through correspondence in a school approved by the department of public instruction. No more than eight hours of instruction can be taken in one day~~.

History: Amended effective October 1, 2015; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08
Law Implemented: NDCC 43-23-08

70-02-02-11. Coordinators.

Repealed effective July 1, 2022.

~~Coordinators or the principal instructor of commission approved program shall be responsible for the conduct and administration of each course presentation, and shall be held responsible for punctuality of classroom session, student attendance records, instructor performance and attendance, examination administration, and student certification.~~

~~**General Authority:** NDCC 43-23-08~~
~~**Law Implemented:** NDCC 43-23-08~~

70-02-02-12. Examinations.

Each prelicensure course~~ of instruction~~ shall ~~utilize written~~include examinations as a component ~~of measurement for determination of~~to determine successful course completion~~ of a course of study~~.

The weight of ~~written examination~~examinations as the determination of successful completion of a course and the criteria for passing of examinations may be developed by each school~~ based on each school's educational concepts~~. However, the commission may direct alterations in examination procedures, criteria for passing, and the administration whenever deemed necessary. Each school shall furnish the commission with copies of its examinations.

History: Amended effective July 1, 2022.
General Authority: NDCC 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08, 43-23-08.2

70-02-02-13. Certificate of ~~approval~~completion.

Each school shall issue to the students successfully completing a course of instruction an official certificate of completion which reflects the school's name, course title, ~~course number,~~ and number of classroom hours (or other recognized educational unit) involved in the course. Such certificate, or copies thereof, shall serve as evidence when presented to the commission of successful completion of the course of instruction. Letters of other official communication may also be provided the student, which may be utilized by the student for submission to the commission as evidence of satisfactory completion of the course. The letters will fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school.

History: Amended effective July 1, 2022.
General Authority: NDCC 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08, 43-23-08.2

70-02-02-14. Facilities.

Repealed effective July 1, 2022.

~~Each course of study shall have such classrooms and such other facilities and supportive personnel as is necessary to adequately implement the program.~~

~~**General Authority:** NDCC 43-23-08~~
~~**Law Implemented:** NDCC 43-23-08~~

70-02-02-15. Course content must not be duplicated.

Repealed effective July 1, 2022.

~~The commission shall not accept for the educational requisites for broker or salesperson applications which have more than one course with the same course title and level or same course content and level.~~

~~**General Authority:** NDCC 43-23-08~~
~~**Law Implemented:** NDCC 43-23-08~~

70-02-02-16. No credit given for salesmanship courses.

Repealed effective July 1, 2022.

~~No courses of instruction shall operate under commission approval which will offer a course of instruction based on salesmanship, sales techniques, nor shall a sales training course offered by a real estate firm be considered eligible for consideration of commission approval.~~

~~**General Authority:** NDCC 43-23-08~~
~~**Law Implemented:** NDCC 43-23-08~~

70-02-02-17. Correspondence courses.

Repealed effective July 1, 2022.

~~Applicants for brokers' or salespersons' licenses who have completed the required course hours through a correspondence school must have also successfully passed a midterm and final examination. This examination shall be prepared by the applicant's correspondence school and be taken before a proctor appointed by a school approved by the commission.~~

~~**General Authority:** NDCC 43-23-08~~
~~**Law Implemented:** NDCC 43-23-08~~

70-02-02-18. ~~Distance education~~Online-only asynchronous prelicensure courses must be ~~approved~~certified.

~~Courses of study offered in a distance education format must be approved by the real estate commission and certified by the association of real estate license law officials.~~Online-only asynchronous prelicensure courses must be certified by the association of real estate license law officials before being approved by the commission. A student must complete the ~~distance education~~online-only asynchronous prelicensure course within one year of the date of enrollment.

History: Effective December 1, 1999; amended effective July 1, 2022.
General Authority: NDCC 43-23-08, 43-23-08.1, 43-23-08.2
Law Implemented: NDCC 43-23-08, 43-23-08.2

CHAPTER 70-02-03

70-02-03-01. Application of licensee responsibilities.

The commission shall have the power to investigate and to ~~suspend or revoke a broker's or salesperson's license~~discipline a licensee upon violation by a licensee of any provisions of the licensee responsibilities.

History: Amended effective January 1, 1992; April 1, 2008; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08
Law Implemented: NDCC 43-23-11.1(1)

70-02-03-02.1. Advertising.

1. Definition. As used in this section, the terms "advertise", "advertising", and "advertisement" include all forms of representation, promotion, and solicitation disseminated in any manner and by any means of communication for any purpose related to real estate brokerage activity, including, at a minimum, advertising the sale or purchase of real estate or promotion of real estate brokerage services~~ conducted by mail, telephone, the internet, the world wide web, electronic mail, electronic bulletin board, or other similar electronic common carrier systems, business cards, signs, television, radio, magazines, newspapers, and telephonic greetings or answering machine messages~~.

2. Trade name. Advertising must be done in the real estate brokerage agency's trade name as licensed with the commission and the trade name must be ~~prominently displayed~~equal to or greater than, in size and visibility, the name of any salesperson, associate broker, or team on the advertising. Discipline of licensees based on failure to meet this size and visibility requirement will be delayed until January 1, 2023.

3. Contact information. Advertising must include information on how the public can contact the real estate brokerage agency.

4. Advertising by licensees. Advertising by licensees must be under the supervision of the designated broker. Such advertising may include a licensee's name and telephone number or other contact information, provided the real estate brokerage agency's registered business name or trade name and contact information are also clearly included as required in this section.

5. Deception and misrepresentation prohibited. Advertising and promotion must be free from deception and shall not misrepresent the terms of the sale or purchase, real estate brokerage agency policies, or real estate brokerage services.

6. A real estate broker may advertise, in the licensee's own name, property which is owned by the licensee, provided that ~~immediately~~ following the licensee's name where it appears in the advertisement, the words "Owner/Licensed Broker" must also appear. The provisions of this subsection apply both to active broker licensees and licensees whose license is on an inactive status.

7. A real estate salesperson may advertise in that person's own name property which is owned by the salesperson, provided that ~~immediately~~ following the name where it appears in the advertisement, the words "Owner/Licensed Salesperson" must also appear. The provisions of this subsection apply both to active salesperson licensees and licensees whose license is on an inactive status.

8. Teams. A team is two or more licensees who work for the same brokerage under the supervision of the designated broker, work together on real estate transactions to provide real estate brokerage services, represent themselves to the public as being part of a team, and are

designated by a team name. Advertising by a team must comply with all requirements of section 70-02-03-02.1. Teams may not advertise in any manner which suggests a team is an independent real estate brokerage firm.

History: Effective January 1, 1992; amended effective February 1, 2004; April 1, 2008; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08
Law Implemented: NDCC 43-23-11.1(1)

70-02-03-06. Offer to purchase.

A ~~broker or salesperson~~licensee shall promptly tender to the seller every written offer to purchase obtained on the property involved and, upon obtaining a proper acceptance of the offer to purchase, shall promptly deliver true executed copies of same, signed by the seller and purchaser, to both seller and purchaser. All ~~brokers and salespersons~~licensees shall make certain that all of the terms and conditions of the real estate transaction are included in the offer to purchase. ~~Brokers and salespersons~~Licensees shall also make certain that any changes in the text of the offer made by the seller are agreed to and initiated by the offeror in the first place before proceeding with the transaction. If any changes made are material or extensive, the entire offer or contract should be rewritten.

History: Amended effective January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(1)
Law Implemented: NDCC 43-23-11.1(1)

70-02-03-07. Closing statements.

In every real estate sales transaction wherein the closing is handled by an attorney, bank, ~~savings and loan association,~~ or similarly recognized individual or group other than a real estate broker, it shall be the responsibility of the broker involved to see the party or parties represented by the broker receive a complete, detailed closing statement showing all of the receipts and disbursements handled in such transaction. The broker must retain true copies of such statements for the represented party or parties in the broker's files.

History: Amended effective April 1, 2008; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08
Law Implemented: NDCC 43-23-11.1(1)(o)

70-02-03-09. Use of false or misleading documents.

Any ~~broker or salesperson licensed by the commission~~licensee who uses, proposes the use of, agrees to the use of, or knowingly permits the use of any contract of sale, earnest money agreement, loan application, mortgage, note, or other document, which is not made known to the prospective lender or the loan guarantor, to enable the purchaser to obtain a larger loan than the true sales price would allow, or to enable the purchaser to qualify for a loan which the purchaser otherwise could not obtain, shall be deemed to have engaged in a course of misconduct permitting suspension or revocation of the broker's or salesperson's license ~~as a broker or salesperson~~or assessment of fines.

History: Amended effective August 1, 1981; January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(1)
Law Implemented: NDCC 43-23-11.1(1)

70-02-03-13. Personal interest.

1. A broker shall not, either directly or indirectly, buy for oneself property listed with the broker or as to which the broker has been approached by the owner to act as broker, nor shall the broker acquire interest in any other property therein, either directly or indirectly, without first making the broker's true position clearly known to the owner. Satisfactory written proof of this fact must be produced by the broker upon a request.

2. A broker shall not take an option to oneself, either directly or indirectly, upon property for the sale of which the broker has been approached by the owner to act as a broker, without first making the broker's true position clearly known that the broker is now acting as a prospective buyer and is no longer acting as a broker or agent for the owner. Satisfactory proof of this must be produced by the broker upon request.

3. A salesperson shall not buy for oneself, either directly or indirectly, property listed with the salesperson's ~~employer~~ broker, nor shall the salesperson acquire interest in any other property, either directly or indirectly, without first making the salesperson's true position clearly known to the owner, nor shall the salesperson take an option unto oneself from any such owner or to anyone on the salesperson's behalf upon any property without first making the salesperson's position known. Satisfactory written proof of these facts must be produced by the salesperson on request.

4. A real estate broker or salesperson who sells property in which the broker or salesperson owns an interest must make such interest known to the purchaser.

History: Amended effective January 1, 1992; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-11.1(1)
Law Implemented: NDCC 43-23-11.1(1)

CHAPTER 70-02-04
CONTINUING EDUCATION

Section
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70-02-04-13 Substantively Identical ~~Offerings~~Courses
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70-02-04-22 ~~Distance~~Online-Only Asynchronous Education Courses Must Be Certified and Approved
70-02-04-23 Model Rule for Distance Education [Repealed]

70-02-04-01. Continuing education defined.

As used in this chapter, continuing education, unless the context otherwise requires, means ~~accredited educational experience derived from participation in approved lectures, seminars, distance education, and correspondence courses~~education in areas related to real estate, which has been approved by the commission, to maintain and improve the professional skills and upgrade the standard of all real estate licensees, and to qualify for license activation and renewal.

The commission considers courses in the following areas to be acceptable, but not limited to, when considering approval:

1. Real estate ethics;

2. Legislative issues that influence real estate practice;

3. The administration of licensing provisions of real estate law and the rules, including compliance and regulatory practices;

4. Real estate financing, including mortgages and other financing techniques;

5. Real estate market measurement and evaluation, including site evaluations, market data, and feasibility studies;

6. Real estate brokerage administration, including office management, trust accounts, and employee contracts;

7. Real property management, including leasing agreements, accounting procedures, and management contracts;

8. Real property exchange;

9. Land use planning and zoning;

10. Real estate securities and syndication;

11. Estate building and portfolio management;

12. Accounting and taxation as applied to real property;

13. Land development;

14. Real estate appraising;

15. Real estate marketing procedures;

16. Marketing business opportunities;

17. Business courses which relate to the practice of real estate;

18. Agency representation; and

19. Contracts.

History: Effective August 1, 1981; amended effective May 1, 1986; January 1, 2006; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-02. Hours required.

To qualify for the renewal of a real estate license, each broker or salesperson must complete ~~nine~~twelve hours of continuing education in approved courses every continuing education period. The continuing education period is twelve months preceding the renewal application deadline date. The commission may require that a portion or all of the continuing education hours must be in one or more specific areas for salespersons or brokers. Such areas may include the following:

1. Fair housing and antitrust.

2. Environmental issues.

3. License law and ethics.

4. Agency law and principles.

5. Contracts.

History: Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999; July 1, 2010; October 1, 2015; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08(6), 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-03. Hour defined.

An hour of continuing education ~~means a clock-hour. A clock-hour may be a fifty-minute hour~~is fifty minutes. Time spent on breaks does not count toward the fifty-minute hour.

History: Effective August 1, 1981; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-04. Exceptions and extensions.

The commission may make exceptions and grant extensions for continuing education as follows:

1. For reasons of health, military service, or other good cause if adequate proof is provided to the commission; and

2. A nonresident licensee ~~may be~~is exempted from the continuing education requirements if the licensee meets the real estate licensing requirements in the state of the licensee's residence.

History: Effective August 1, 1981; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-05. Nonqualifying courses.

The following ~~course offerings~~courses will not be considered as qualifying for continuing education purposes:

1. ~~"Cram courses" for examinations.~~

~~2. Offerings~~Courses in ~~mechanical~~general office and business skills, such as ~~typing, speed reading, memory improvement, language, and~~ report writing.

~~3.~~2. Sales promotion or other meetings held in conjunction with the general business of the ~~attendee or the attendee's employer~~licensee's broker.

~~4. Time devoted to breakfast, luncheons, or dinners.~~

~~5.~~3. Any course certified by the use of a challenge examination. All students must complete the required number of classroom hours in order to receive ~~certification~~credit.

The listing of the above ~~offerings~~courses does not limit the commission's authority to disapprove any application which fails to meet the standards for course approval.

History: Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999; January 1, 2006; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-06. Criteria for course approval.

The commission may approve ~~any course, seminar, conference, correspondence course, or equivalent that is~~education provided by a course sponsor, such as the commission, a public or private school, organization, association, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course ~~offering~~, will consider~~, but not be limited to,~~ the following criteria:

1. ~~Course offerings~~Courses will be eligible for approval only if the total instruction time ~~of the offering~~ is two hours or more.

2. A ~~school~~course sponsor shall certify to the best of its knowledge the attendance of each student at the offering. The ~~school's~~course sponsor's criteria for measuring attendance shall be submitted in the application for course approval ~~on a form prescribed by the commission~~.

3. The ~~school~~course sponsor shall maintain, for a minimum of three years, records of students successfully completing any course ~~offering~~.

4. Credit ~~will be earned on the basis of attendance, or in the case of correspondence courses, completion of the course~~is earned based on in-person or virtual attendance or completion of online-only asynchronous courses.

5. Each course ~~of study~~ shall have a coordinator ~~or administrator~~ supervising the program. ~~The coordinator shall be qualified, either through previous education or experience, to administer a real estate course of study, to evaluate course content and instructors, and to analyze examinations.~~

6. All instructors in a real estate course ~~of study shall file with the commission credentials showing the necessary specialized preparation, training, and experience to ensure competent instruction. Approval of each instructor will be on an individual basis, and approval must be obtained from the commission prior to the instructor's lecture in an approved course of study~~shall complete and submit an instructor application for each course before teaching the course. Instructors~~, lecturers, seminar leaders, and others who present a continuing education requirement course offering~~ must meet at least one of the following qualifications:

   a. A bachelor's degree in the field in which the person is to teach.

   b. A valid teaching credential or certificate from North Dakota or another state authorizing the holder to teach in the field of instruction being offered.

   c. Five years' full-time experience in a profession, trade, or technical occupation in the applicable field.

   d. Any combination of at least five years of full-time applicable field and college level education.

History: Effective August 1, 1981; amended effective October 1, 1993; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-07. Application for approval of ~~course offerings~~courses.

A ~~school~~course sponsor shall apply for approval of ~~course offerings on~~courses in a form prescribed by the commission. The application form shall include~~, but not be limited to, the following information and enclosures~~:

1. The name, address, ~~and~~ telephone number, and website of the ~~school~~course sponsor.

2. The name and electronic mail address of the course coordinator.

3. The title of the course ~~offering~~.

~~3.~~4. A ~~complete~~ description ~~or~~, copies, or examples of all materials to be distributed to the participants.

~~4.~~5. The date and exact location of ~~each presentation of~~ the course ~~offering~~.

~~5.~~6. The duration and time of course ~~offering~~.

~~6.~~7. A comprehensive, detailed outline of the subject matter together with the time sequence of each segment, faculty for each segment, and teaching technique used in each segment.

~~7.~~8. A sample of any proposed advertising used for promotional purposes.

~~8.~~9. The method of evaluation of the program.

~~9.~~10. The procedure for measuring attendance.

~~10.~~11. ~~A description of the faculty, including name, professional background, and practical or teaching experience. A complete resume may be furnished.~~An instructor application for each instructor.

12. A fee not to exceed one hundred dollars per course.

History: Effective August 1, 1981; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-09. Application for post course approval.

A ~~school~~course sponsor may seek approval of a course subsequent to a course offering by submitting all information requested on the commission's application forms.

History: Effective August 1, 1981; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-10. Material change.

The ~~school's~~course coordinator or instructor of each approved real estate offering shall promptly notify the commission of any material changes contained in the application for approval or attached exhibits. Changes shall be deemed acceptable to the commission if no action has been taken after fourteen days from the date received by the commission.

History: Effective August 1, 1981; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-11. Suspension, revocation, or denial of course approval.

The commission may deny, suspend, or revoke approval of a real estate course~~ offering~~, coordinator, or instructor if it is determined that it is not in compliance with the statute or rules and regulations. If disciplinary action is taken a written order of suspension, revocation, or denial of approval will be issued.

History: Effective August 1, 1981; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-12. Correspondence programs.

Repealed effective July 1, 2022.

~~The amount of credit to be allowed for correspondence programs shall be recommended by the program sponsor based upon the average completion time calculated by the sponsor after it has conducted "field tests". Although the program sponsor must make recommendations concerning the number of credit hours that should be granted, the number of credit hours that will be granted shall be determined by the commission.~~

~~**History:** Effective August 1, 1981; amended effective January 1, 1992; January 1, 2006.~~
~~**General Authority:** NDCC 43-23-08.2~~
~~**Law Implemented:** NDCC 43-23-08.2~~

70-02-04-13. Substantively identical ~~offerings~~courses.

Courses may not be taken for continuing education more than once during any continuing education period, unless material has been significantly changed, or updated, or both.

History: Effective August 1, 1981; amended effective December 1, 1999; July 1, 2010; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08(6), 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-14. Maximum hours of accreditation per day.

Repealed effective July 1, 2022.

~~The commission will allow a maximum of eight hours of accreditation per day for prelicensing, postlicensing, and continuing education.~~

~~**History:** Effective August 1, 1981; amended effective October 1, 2015.~~
~~**General Authority:** NDCC 43-23-08.2~~
~~**Law Implemented:** NDCC 43-23-08.2~~

70-02-04-15. Exemptions from continuing education requirement.

Any salesperson ~~applicant, upon successful completion of the required postlicensing education requirement, evidence of which has been furnished to the commission by the salesperson applicant's broker,~~who completed the prerequisite ninety hours of course of study to obtain a license is exempt from the continuing education requirement for ~~only the continuing education period during which the salesperson applicant successfully completed the postlicensing education~~the first license renewal. Any broker ~~applicant~~, upon successful completion of the real estate broker licensing examination is exempt from the continuing education requirement for only the continuing education period during which the broker applicant successfully completed said examination.

History: Effective August 1, 1981; amended effective January 1, 1992; December 1, 1999; January 1, 2006; July 1, 2010; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08(6), 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-16. Service as ~~a lecturer, discussion leader, or speaker~~an instructor.

~~For those persons who serve as a lecturer, discussion leader, or speaker regarding a real estate continuing education program, the commission will grant~~Instructors who are licensees may request one-hour credit for every hour ~~of service~~ as an instructor ~~or speaker~~of a unique course, not to exceed fifty percent of the continuing education requirement for any continuation education period and not to replace any mandatory continuing education requirement. Requests for credit must be accompanied by an outline of the instruction~~, discussion, or speech. No credit shall be given for the teaching of a course which is the same or substantially the same as one taught for credit within the same continuing education period. The maximum credit given for service as a lecturer, discussion leader, or speaker will not exceed fifty percent of the continuing education requirement for any continuing education period~~ and be submitted before a licensee renews their license. The commission may disapprove a request.

History: Effective August 1, 1981; amended effective December 1, 1999; July 1, 2010; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08(6), 43-23-08.2
Law Implemented: NDCC 43-23-08, 43-23-08.2

70-02-04-17. Responsibilities of ~~program~~course sponsors.

In addition to other responsibilities imposed on ~~program~~course sponsors, they must comply with the following:

1. Disclose to prospective participants the prerequisites, course content, and number of continuing education hours in the program.

2. Selection and review of instructors. The program sponsor or coordinator has the obligation for selecting and assigning qualified instructors for the continuing education program. Sponsors are required to evaluate the performance of the instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors in the future.

History: Effective August 1, 1981; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-18. Facilities.

Repealed effective July 1, 2022.

~~Each course offering shall have classrooms, facilities, and personnel necessary to implement the offerings adequately.~~

~~**History:** Effective August 1, 1981.~~
~~**General Authority:** NDCC 43-23-08.2~~
~~**Law Implemented:** NDCC 43-23-08.2~~

70-02-04-20. Inspections and audits.

By applying for the commission's approval of any course in real estate, the sponsor or coordinator agrees to permit periodic inspections, audits, and monitoring by the commission or its authorized representative for the purpose of evaluating facilities, course content, instructor performance, or any other relevant aspect of the administration and conduct of such course.

History: Effective August 1, 1981; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-21. Continuing education certificate of ~~attendance~~completion.

All ~~schools, seminars, and workshops~~course sponsors shall provide an individual certificate of ~~attendance~~completion to each licensee upon completion of the ~~educational program or training session~~course under the following conditions:

1. No certificate of ~~attendance~~completion shall be issued to a licensee who is absent for more than ten percent of the classroom hours.

2. The certificate shall contain information as to the licensee's name, course title, course number, date, location of course, number of approved credit hours, and ~~signature of~~ course sponsor or instructor.

3. The licensee shall retain the ~~attendance~~ certificate. The responsibility for recordkeeping will remain with the licensee.

4. The North Dakota real estate commission shall not be required to maintain a list of licensees and their completed courses of education.

History: Effective August 1, 1981; amended effective December 1, 1999; January 1, 2006; July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-22. ~~Distance~~Online-only asynchronous education courses must be certified and approved.

1. Courses ~~of study offered in a distance education format must be approved by the real estate commission and~~offered online only and in an asynchronous format must be certified by the association of real estate license law officials, and approved by the commission. The commission may waive the certification by the association of real estate license law officials. A student must complete the distance education course within one year of the date of enrollment.

2. Courses which are presently certified by the association of real estate license law officials must be approved under this rule upon provision of appropriate documentation that the certification by the association of real estate license law officials is in effect and that the course meets the content requirements and any other requirements of the commission. Approval under this subsection must cease immediately if the certification by the association of real estate license law officials is discontinued for any reason.

History: Effective December 1, 1999; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-08, 43-23-08.2
Law Implemented: NDCC 43-23-08.2

70-02-04-23. Model rule for distance education.

Repealed effective July 1, 2022.

~~Distance education is defined as courses in which instruction does not take place in a traditional classroom setting but rather through other media if the teacher and student are separated by distance and sometimes by time.~~

~~1. A distance education course shall be approved if the real estate commission determines to its satisfaction that:~~

~~a. The distance education course serves to protect the public by contributing to the maintenance and improvement of the quality of real estate services provided by real estate licensees to the public;~~

~~b. An appropriate and complete application has been filed and approved by the real estate commission;~~

~~c. The information specified in the guidelines for distance education as adopted by the real estate commission has been submitted and approved; and~~

~~d. The distance education course meets the content and all other requirements prescribed in North Dakota Administrative Code chapter 70-02-02 for prelicensing education required by subsection 4 of North Dakota Century Code section 43-23-08 or the requirements prescribed in North Dakota Administrative Code chapter 70-02-04 for continuing education required by North Dakota Century Code section 43-23-08.2.~~

~~2. Courses which are presently ARELLO-certified will be approved under this rule upon provision of appropriate documentation that the ARELLO certification is in effect and that the course meets the content requirements of the rules and statutes listed in subsection 1 and any other requirements of the real estate commission. Approval under this subsection will cease immediately should ARELLO certification be discontinued for any reason.~~

~~**History:** Effective May 1, 2000.~~
~~**General Authority:** NDCC 43-23-08.2~~
~~**Law Implemented:** NDCC 43-23-08.2~~

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~~Release 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 the group plan carrier has submitted to the commission a list of all policyholders, or a licensee has submitted to the commission a certificate of ~~insurance~~equivalent coverage with a list of all licensees covered by the policy on a form prescribed by the commission.

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 insurance department 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 insurance department 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; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 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~~designated 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; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-19
Law Implemented: NDCC 43-23-19

70-02-05-10. ~~Surrender~~Release 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~~broker shall immediately ~~surrender~~destroy the license ~~to the commission~~and the licensee's name and licensee's number must be removed from the broker's website.

History: Effective February 1, 2002; amended effective January 1, 2006; July 1, 2022.
General Authority: NDCC 28-32-02, 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; amended effective July 1, 2022.
General Authority: NDCC 28-32-02, 43-23-19
Law Implemented: NDCC 43-23-19

TITLE 70.5

REAL ESTATE TRUST ACCOUNT COMMITTEE

JULY 2022

TITLE 70.5
REAL ESTATE TRUST ACCOUNT COMMITTEE

[Repealed effective July 1, 2022.]

~~Article~~
~~70.5-01 Real Estate Trust Account Committee Grants~~

TITLE 74

SEED COMMISSION

JULY 2022

ARTICLE 74-02
SEED

Chapter
74-02-01 Seed Representation and Labeling
74-02-02 Seed Sale [Repealed]

CHAPTER 74-02-02
SEED SALE

[Repealed effective July 1, 2022.]

~~Section~~
~~74-02-02-01 Definitions~~
~~74-02-02-02 Nonresident Seed Dealer - License Application~~
~~74-02-02-03 Identification Cards [Repealed]~~
~~74-02-02-04 State Grain Grade Standards [Repealed]~~

ARTICLE 74-03
SEED CERTIFICATION STANDARDS

Chapter	
74-03-00.1	Definitions
74-03-01	General Seed Certification Requirements
74-03-02	Specific Crop Requirements - Small Grains
74-03-03	Specific Crop Requirements - Alfalfa (Nonhybrid) [Repealed]
74-03-04	Specific Crop Requirements - Birdsfoot Trefoil [Repealed]
74-03-05	Specific Crop Requirements - Red Clover [Repealed]
74-03-06	Specific Crop Requirements - Sweetclover [Repealed]
74-03-07	Specific Crop Requirements - Grasses
74-03-07.1	Specific Crop Requirements - Buckwheat
74-03-08	Specific Crop Requirements - Millet - Self-Pollinating
74-03-09	Specific Crop Requirements - Mustard, Crambe, and Rape (Nonhybrid)
74-03-09.1	Specific Crop Requirements - Hybrid Canola and Rapeseed
74-03-10	Specific Crop Requirements - Safflower
74-03-11	Specific Crop Requirements - Sunflower
74-03-12	Specific Crop Requirements - Soybeans, Chickpeas, and Lentils
74-03-12.1	Specific Crop Requirements - Field Peas
74-03-13	Specific Crop Requirements - Dry Field Beans
74-03-14	Specific Crop Requirements - Hybrid Wheat and Hybrid Rye Commingled Parent Lines
74-03-14.1	Specific Crop Requirements - Cytoplasmic Male Sterile Hybrid Wheat
74-03-15	Specific Crop Requirements - Flax
74-03-16	Specific Crop Requirements - Hemp
74-03-17	Specific Crop Requirements - Faba Beans

CHAPTER 74-03-01

74-03-01-03. Eligibility requirement for certification of crop varieties.

As used in this chapter, "variety" includes hybrids and breeding lines, and selections, clones, or strains of true varieties.

1. Only those varieties that are accepted by the North Dakota state seed department as meriting certification in accordance with the criteria established by the association of official seed certifying agencies shall be eligible for certification. A variety will normally be considered eligible for certification if it has received favorable action by one or more of the following:

   a. A national variety review board.

   b. The plant variety protection office, including additional information itemized in subdivisions e through i of subsection 2 of section 74-03-01-03, which is required.

   c. An official seed certifying agency.

   d. The organization for economic cooperation and development (OECD).

   In the absence of a national review board, a state or regional variety review committee may determine the eligibility for certification, if operating under similar criteria and approved by the seed commissioner. Contact the state seed commissioner for varieties not covered by one of the above categories on questions regarding eligibility.

2. The following must be made available by the originator, developer, owner, or agent when eligibility for certification is requested by the applicant. After a variety has been released, there

is no limitation as to when it may be accepted into certification by AOSCA or its vested member agencies providing that all other provisions of this section are met.

a. The name of the variety. This name must be the established name if the variety has previously been marketed.

b. A statement concerning the variety's origin and the breeding ~~procedure~~or reproductive stabilization procedures used in its development.

c. A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.

d. Evidence of performance of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.

e. A statement delineating the geographic area of adaptation of the variety.

f. A statement on the plans and procedures for the maintenance of stock seed classes, including the number of generations through which the variety may be multiplied.

g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.

h. Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand, or other factors affecting genetic purity.

(1) Should testing be required to verify the presence of a particular trait by the developer, sponsoring breeder, or originator before final certification, the exact protocols, approved facilities, tolerances, and all other relevant information will be provided to the seed-certifying agency that may retain the results of any test for its records.

(2) Additional certification requirements. Seed may require additional certification requirements that are clearly referenced in the variety description, provided that the following is completed:

(a) Additional certification requirements have been communicated by the sponsoring breeder or originator to all parties involved with regulation and production of the variety; and

(b) The sponsoring breeder or originator shall authorize the seed-certifying agency to verify specific characteristics that are referenced in the variety description. Verification of such characteristics will be completed before a certificate (tag) of final certification is issued by the seed-certifying agency.

i. A sample of seed representative of the variety that will be planted for certified seed production.

3. This rule does not create a mandatory duty or a cause of action on account of the department's recognizing or refusing to recognize a variety as meriting certification.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012; July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-53-43

74-03-01-06. Seed eligibility.

1. The seed department shall be supplied with satisfactory evidence of the source and class of seed used to plant each crop considered for certification.

2. Eligible seed stocks include ~~breeder's~~breeder, foundation, registered or, in special cases, approved lots of the certified class. Eligible seed obtained from another person must be accompanied by the official tag or bulk certificate from an approved certifying agency, which will be the documentation of acceptance required for field inspection.

3. Certified seed growers may plant seed from their own fields if the field passed inspection and if the class of seed is eligible to be certified. The grower must provide sufficient evidence to the department to verify eligibility.

4. Certified seed growers may only plant seed from their own field that failed field inspection previously if the field did not fail due to genetic purity, and the grower is the applicant for field inspection. If the field fails inspection a second time for any reason, that seed shall no longer be eligible for certification.

5. Contract growers may not replant any of the seed produced unless final certification has been completed.

6. Growers should check with the state seed department regarding approved lots of the certified class eligible for recertification.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012; July 1, 2018; July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-53-42, 4.1-53-44, 4.1-53-45

74-03-01-09. Field inspection.

1. Applications. Applications for field inspection, accompanied by the correct fees, payment of past-due accounts, and proof of seed eligibility, must be received at the state seed department office in Fargo not later than June fifteenth. The penalty fee will apply after that date. Applications for grass seed must be received by May first to avoid late penalty. Applications for ~~hybrid wheat and industrial~~ hemp must be received by June first to avoid late penalty. Applications for millet and buckwheat must be received by July fifteenth to avoid late penalty. Applications for soybeans requiring only a single inspection (preharvest) must be received by August first to avoid late penalty. In case of an emergency or unusual circumstances due to weather or crop conditions, the deadline may be extended at the discretion of the seed commissioner. In such an event, late application penalties may be waived.

2. Information required on application. The application shall be completed by the applicant and returned to the seed department. All questions must be answered completely and correctly. The location of the farm and field, including the legal description, shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. Farm service agency field maps or equivalent must be provided by the applicant. If the seed is the grower's own seed, sufficient evidence must be provided to the department to verify eligibility. If the seed is purchased, an official certified seed tag or bulk certificates must accompany the application.

3. Roguing and spraying fields. Roguing is essential to maintain the purity of varieties and high standards of certified seed. Roguing fields prior to inspection is recommended to remove undesirable plants from fields. Plants that should be removed include off-type plants, other crop plants, prohibited and restricted noxious weeds, and other impurities which may be growing in the field.

Roguing is usually done by pulling off-types or other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, fertile off-types and undesirable plants should be removed before pollen is shed. Sterile off-types may be removed any time prior to the final inspection.

Whenever practical and advisable, seed fields should be sprayed with pesticides according to the manufacturer's label to control pests. Growers must follow posting requirements as specified by state and federal agencies responsible for the regulation and use of pesticides.

4. Weeds and diseases.

   a. Prohibited noxious weeds under North Dakota seed laws and rules are leafy spurge, field bindweed (creeping jenny), Canada thistle, perennial sow thistle, Russian knapweed, hoary cress (perennial peppergrass), absinth wormwood, musk thistle, spotted knapweed, yellow starthistle, and Palmer amaranth.

   b. Restricted noxious weeds under North Dakota seed laws and rules are dodder species, hedge bindweed (wild morning glory), wild oats, and quackgrass.

   c. A field may be rejected if it is the field inspector's opinion that the amount and kind of weeds present make it difficult to conduct the inspection, or the field condition is such that the quality of the cleaned seed may be questionable.

   d. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and may include some common weeds which cause a specific problem in the conditioning of some individual crops.

   e. Diseases not governed by specific crop standards may be cause for rejection if it is the field inspector's opinion that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.

5. Cancellation of field inspection. An application may be canceled by the applicant before the field inspection is completed. The application fee minus an administrative fee will be refunded to the applicant. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the field or before inspection has occurred. Refunds will not be made after the field is inspected or because the field has been rejected.

6. Appeal. Reinspection of rejected fields may be considered, provided the application for appeal allows a reasonable amount of time for reinspection prior to harvest. A fee for reinspection may be assessed.

7. The variety name stated on the application will be standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared by the applicant will be presumed correct if the documentation provided is valid.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012; July 1, 2018; July 1, 2020; July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-53-37, 4.1-53-42, 4.1-53-59

74-03-01-11. Seed conditioning, sampling, and laboratory inspection.

1. **Identification in storage.** Field-inspected seed must be identified at all times. Identification must be traceable to field inspection numbers from the crop year in which the seed was

produced. Conditioned seed in storage must be identified by kind, variety, class, and lot number displayed on the bin or storage container.

2. **Preconditioned sample testing.** To hasten labeling or determine the quality of seed which has passed field inspection prior to conditioning, a representative sample of seed may be submitted to the state seed department for the purpose of germination and disease testing. The sample should be cleaned on a small mill or hand sieve to approximate as nearly as possible the quality of the entire lot after conditioning.

   Results of germination and disease tests conducted on preconditioned samples may be used for final certification purposes. A labeler may request new tests for labeling purposes after the seed lot is conditioned. Fragile crops such as soybeans, field beans, lentils, chickpeas, and field peas must be tested for germination after the final conditioning of the seed lot to assure correctness of label claims. The labeler is responsible in all cases for information stated on seed labels.

3. **Conditioning.** All field-inspected seed which is to be labeled must be conditioned and must meet the minimum seed standards for the crop and class. Field-inspected seed may be conditioned either by the grower or by an approved seed conditioner.

   a. Conditioning by seed grower.

      (1) A seed grower does not need an approved conditioning facility permit if the grower conditions the grower's own seed on the grower's premises with the grower's equipment.

      (2) The seed grower must complete a sampler's report in its entirety, attach the report to a two-pound [.907-kilogram] sample that is representative of the entire seed lot, and ~~deliver~~submit to the state seed department for analysis.

   b. Conditioning by an approved facility.

      (1) To be eligible for final certification, field-inspected seed shall be conditioned by a facility approved by the seed department. Seed conditioned at an unapproved facility will be ineligible for final certification.

      (2) If ownership of the seed lot is transferred to a different individual or entity, the grower must complete and sign a grower's declaration. Transfer of ownership of field-inspected seed is limited to an approved conditioner or bulk retailer unless the transfer has been approved by the commissioner.

      (3) While conditioning, the seed lot must be sampled at regular intervals by an authorized sampler. The sample and completed sampler's report must be submitted to the state seed department for analysis.

4. **Sampling procedures.** Representative samples of seed for testing and analysis must be collected during or after conditioning in accordance with sampling procedures outlined in the current association of official seed certifying agencies operational procedures.

   ~~a.~~ All seed lots eligible for final certification shall be sampled during conditioning as follows:

   ~~(1)~~a. Portions of conditioned seed may be drawn by hand as seed is conditioned to form a composite, representative sample for a seed lot; ~~and~~or

   ~~(2)~~b. Automatic mechanical devices may be used to continually or intermittently draw representative samples as a seed lot is conditioned.

~~b. Specific instructions to samplers are found on the reverse side of the sampler's report.~~

5. **Maximum lot size and numbering.**

   a. The maximum lot size for bagged seed is five thousand bushels [17619.54 dekaliters] except for small seeded legumes and grasses which is twenty-two thousand five hundred pounds [10000 kilograms]. Bulk seed lots do not have a maximum size limit except bin capacity. Each bin is considered a separate seed lot. For all crops, one sample for each lot is required. The entire lot must be certified at the time final certification is completed.

   b. The lot number shall be designated by the labeler. ~~The lot number of the seed planted may not be used as the new lot number for the seed being certified during the current crop year.~~For purposes of easier identification on-site, the labeler should incorporate the storage bin number in the lot number.

6. **Commingling (mixing) of inspected seed fields.** Seed of the same kind and variety from different fields that pass field inspection may be commingled if the seed is of the same class and general quality. If seed of different classes is commingled, the seed becomes eligible for the lowest class only.

7. ~~**Commingling carryover certified seed lots.** Carryover seed from certified lots may be commingled if the seed is of the same variety, class, and general quality. If seed of different classes is commingled, the seed becomes eligible for the lowest class only. A new germination test is required for labeling. Germination tests should be done on each lot prior to commingling to ensure none of the lots have gone out of condition.~~

~~8.~~ The state seed department may resample any lot of seed before final certification or after the seed is labeled.

~~9.~~8. **Official samples.** At the request of a customer, an official sample may be collected by a representative of the seed department, with expenses incurred by the customer. The seed department shall determine the appropriate collection method and sample size. Sampling bulk seed in bins requires that a minimal amount of seed is withdrawn from the bin. The amount shall be determined by the quantity of seed in the lot, but shall be no less than five percent of the total lot size. Test results from official samples shall supersede all previous test results and shall be final.

~~10.~~9. **Laboratory analysis.**

   a. All laboratory testing shall be done by qualified personnel of the state seed department. Analysis and tests of seed samples and definition of analysis terms shall be in accordance with the rules of the association of official seed analysts (AOSA). In certain cases when time constraints are critical to the efficient movement of certified seed, the commissioner may accept germination or other test results from an approved laboratory~~, through the certification agency of the state of origin of the seed~~.

   b. If more than one sample of seed from the same lot is tested without additional conditioning, an average shall be taken of all purity tests conducted. Results from the most recent germination or disease test shall be used as the final result.

   c. Seed from certain classes or kinds, or both, may be subject to variety identification analysis at the discretion of the department, with testing fees payable by the grower or labeler.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012; July 1, 2018.; July 1, 2020; July 1, 2022.

General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-53-46

74-03-01-14. Carryover seed.

All carryover seed must be retested for germination before new certified seed labels will be issued by the state seed department. The sample must be obtained from the bulk or bagged product and not from the file sample.

Commingling carryover certified seed lots. Carryover seed from certified lots may be commingled if the seed is of the same variety, class, and general quality. If seed of different classes is commingled, the seed is eligible for the lowest class only. A new germination test is required for labeling. Germination tests should be done on each lot before commingling to ensure none of the lots have gone out of condition.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012; July 1, 2020; July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-53-42

CHAPTER 74-03-14
SPECIFIC CROP REQUIREMENTS - HYBRID WHEAT AND HYBRID RYE COMMINGLED PARENT LINES

Section
74-03-14-01 General Requirements
74-03-14-02 Land Requirements
74-03-14-03 Field Inspection
74-03-14-04 Field Standards
74-03-14-05 Seed Standards

74-03-14-02. Land requirements.

1. Maintainer and restorer lines are not eligible for foundation class if planted on land on which the same kind was grown the previous two years unless the previous crop was the same variety and was inspected for certification.

2. Seed parents are not eligible for certification if planted on land on which the same kind was grown the previous two years.

3. Commercial ~~hybrid~~hybrids are not eligible for certification if planted on land on which the same kind was grown the previous ~~two years~~year.

History: Effective July 1, 2018; amended effective July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-14-03. Field inspection.

Fields for the production of parental lines utilized in hybrid wheat and hybrid rye production must be inspected as follows. Roguing to remove undesirable plants must be done prior to field inspection. Rogued plants must be removed from the field.

1. AxB production. Seed parents must be inspected ~~three times. The first inspection must occur after heading but before anthesis to check for off-type plants. The second and third inspections must be during anthesis to check for shedders in the seed parent, the presence of which must be communicated immediately with the seed producer to allow for roguing~~at least once during anthesis to check for off-type plants, shedders, and proper isolation.

2. Maintainers and restorers. Male lines must be inspected at least once for purity after the crop is fully headed.

3. Commercial hybrid production fields must be inspected at least once.

History: Effective July 1, 2018; amended effective July 1, 2020; July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-14-05. Seed standards.

A variety identification test is required for A-, B-, and R-lines of wheat. A hybridity test is required on hybrid seed. A seed count is required on all hybrids.

	Standards for Each Class	
	A-, B-, and R-Lines	Commercial Hybrid
Factor	Foundation	Certified

Pure seed (minimum) *	~~98.0~~99.0 percent	~~98.0~~99.0 percent
Hybridity (minimum) ~~*~~**	N/A	75.0 percent
Total weed seeds (maximum)	0.10 percent	0.10 percent
Other varieties ~~**~~***	0.005 percent	0.05 percent
Other crop seeds (maximum)	0.01 percent	0.08 percent
Inert matter (maximum) ~~***~~****	~~2.0~~1.0 percent	~~2.0~~1.0 percent
Prohibited noxious weed seeds	none	none
Germination *****	~~80.0~~85.0 percent	~~80.0~~85.0 percent

*Pure seed minimum for rye is 98.0 percent.

~~*~~**Hybridity will be determined by an acceptable method and test results shall be submitted to the agency with a declaration of the hybridity prior to final certification of each lot of spring cereals and within one hundred sixty days of harvest for winter cereals.

~~**~~***Other varieties include plants that can be differentiated from the variety being inspected, but may not include variants that are characteristic of the variety.

~~***~~****Inert matter may not include more than 0.5 percent of material other than seed fragments of the variety under consideration. Maximum inert matter for rye is 2.0 percent.

*****Minimum germination for rye is 80.0 percent.

History: Effective July 1, 2018; amended effective July 1, 2020; July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-52-10, 4.1-53-42

CHAPTER 74-03-14.1
SPECIFIC CROP REQUIREMENTS - CYTOPLASMIC MALE STERILE HYBRID WHEAT

Section
74-03-14.1-01 General Requirements
74-03-14.1-02 Land Requirements
74-03-14.1-03 Field Inspection
74-03-14.1-04 Field Standards
74-03-14.1-05 Seed Standards

74-03-14.1-01. General requirements.

The following genetic standards are applicable for the production of parental lines and hybrids of wheat produced in alternating strips of cytoplasmic male-sterile seed parent and a fertility restorer line.

1. **Eligibility requirements for varieties.** Standards applicable to wheat varieties apply to the production of pollinator lines.

2. **Definition of parental types.**

   a. **Maintainer (B-line).** A line with normal fertile cytoplasm which is used as a pollinator to increase the seed parent.

   b. **Seed parent (A-line).** A cytoplasmic male-sterile line (CMS), which is genetically identical to the maintainer line that when pollinated by a restorer, produces hybrid seed.

   c. **Restorer (R-line).** Any male fertile line possessing nuclear restoration genes used as a pollinator in the production of commercial hybrid seed.

3. **Eligible seed classes.**

   a. Only the certified class is recognized in the production of commercial hybrid seed. A commercial hybrid is planted for any use except for seed production. To be certified, a commercial hybrid must be produced from foundation class seed stocks. These seed stocks must consist of male steriles, inbred lines, and/or hybrids.

   b. Only the foundation class is recognized for parental lines.

History: Effective July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-14.1-02. Land requirements.

1. Maintainer and restorer lines are not eligible for foundation class if planted on land on which the same kind was grown the previous two years unless the previous crop was the same variety and was inspected for certification.

2. Seed parents are not eligible for certification if planted on land on which the same kind was grown the previous two years.

3. Commercial hybrids are not eligible for certification if planted on land on which the same kind was grown the previous year.

History: Effective July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-14.1-03. Field inspection.

Fields for the production of parental lines utilized in hybrid wheat production must be inspected as follows. Roguing to remove undesirable plants must be done before field inspection. Rogued plants must be removed from the field.

1. AxB production. Seed parents must be inspected at least once during anthesis to check for off-type plants, shedders, and proper isolation. Additional inspections may be required at the discretion of the certifying agency to determine shedder frequency or varietal purity.

2. Maintainers and restorers. Male lines must be inspected at least once for purity after the crop is fully headed.

3. Commercial hybrid production fields must be inspected at least once.

History: Effective July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-14.1-04. Field standards.

1. **Isolation.**

   a. Seed parent increases (AxB). Fields or parts of fields acceptable for production of seed parents to be used for the production of commercial hybrid seed must be so located that the seed parent is not less than two thousand six hundred forty feet [804.67 meters] from fields of other kinds or varieties that could provide a source of contamination, or from fields of the same variety that do not meet varietal purity requirements for certification. The A-line and B-line must be separated by an unplanted strip of ground adequate to prevent mechanical mixture.

   b. Maintainer and restorer increases. Fields or parts of fields acceptable for production of pollinator lines must be so located that the line is not less than thirty feet [9 meters] from fields of other kinds or varieties which could provide a source of contamination, or from fields of the same variety that do not meet varietal purity requirements for certification. Before inspection, the field must be isolated from inseparable crops by a strip at least five feet [1.52 meters] wide to prevent mechanical contamination.

   c. Commercial hybrids. Fields or parts of fields acceptable for production of commercial hybrid seed must be no less than three hundred thirty feet [100.58 meters] from fields of other kinds or varieties that would provide a source of contamination, or from fields of the same variety that do not meet varietal purity requirements for certification. Seed parent and restorer lines must be separated from each other by an unplanted strip of ground adequate to prevent mechanical mixture.

2. **Specific field standards.**

Factor	A-Line Foundation	B- and R-Lines Foundation	Commercial Hybrid Certified
Pollen shedders	1:3,000	N/A	N/A
Other varieties *	1:3,000	1:3,000	1:3,000
Inseparable other crops	1:30,000	1:30,000	1:5,000
Prohibited noxious weed seeds **	none	none	none

*Other varieties include plants that can be differentiated from the variety being inspected,

but may not include variants that are characteristic of the variety.

**The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

History: Effective July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-14.1-05. Seed standards.

A variety identification test is required for A-, B-, and R-lines of wheat. A seed count is required on all hybrids.

	Standards for Each Class	
	A-, B-, and R-Lines	Commercial Hybrid
Factor	Foundation	Certified
Pure seed (minimum)	99.0 percent	99.0 percent
Total weed seeds (maximum)	0.10 percent	0.10 percent
Other varieties *	0.005 percent	0.05 percent
Other crop seeds (maximum)	0.01 percent	0.08 percent
Inert matter (maximum) **	1.0 percent	1.0 percent
Prohibited noxious weed seeds	none	none
Germination	85.0 percent	85.0 percent

*Other varieties include plants that can be differentiated from the variety being inspected, but may not include variants that are characteristic of the variety.

**Inert matter may not include more than 0.5 percent of material other than seed fragments of the variety under consideration.

History: Effective July 1, 2022.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-52-10, 4.1-53-42

TITLE 75

DEPARTMENT OF HUMAN SERVICES

JULY 2022

CHAPTER 75-03-17
PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN

Section	
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75-03-17-22	Incident and Sentinel Event Reporting
75-03-17-23	Conditions
75-03-17-24	Variance

75-03-17-01. Definitions.

1. "Accredited" means to be accredited and in good standing by an independent, not-for-profit accreditation organization approved by the United States department of health and human services and the department, including the commission on accreditation of rehabilitation facilities, the joint commission, and the council on accreditation.

2. "Active treatment" means a strength based, culturally competent, and medically appropriate treatment designed to meet immediate needs with specific outcome and return to the family or

another less restrictive community setting as soon as clinically possible and when treatment in a facility is no longer medically necessary.

3. "Aftercare" means followup support and services provided to a resident and family after discharge from a facility.

4. "Applicant" means the entity requesting licensure as a psychiatric residential treatment facility for children under this chapter.

~~2.~~5. "Child"~~ or~~, "children", or "resident" means a person or persons under the age of twenty-one.

~~3.~~6. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery.

~~4.~~7. "Condition" means a violation of the requirements of any applicable law or regulation.

8. "Department" means the department of human services.

~~5.~~9. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a person with a mental illness using diagnostic, interview, and other relevant assessment techniques.

~~6.~~10. "Discharge planning" means the multidisciplinary process that begins at the time of admission that identifies the child's and family's needed services and supports upon discharge.

~~7.~~11. "Employee" means an individual compensated by the facility to work~~ and does not include~~, including contracted service providers who conduct onsite training, treatment groups, individual therapy, or other ~~program~~facility services.

~~8.~~12. "Family-driven" means the family has a primary decisionmaking role in the care of its own children.

~~9.~~13. "Individual person-centered treatment plan" means a youth-guided and family-driven written plan of intervention, treatment, and services that is developed under clinical supervision on the basis of a diagnostic assessment.

~~10.~~14. "Initial license" means a license for a new facility that is in effect for one year.

~~11.~~15. "Nonemployee" means an individual, including a volunteer or student intern, who is not compensated by the facility.

~~12.~~16. "Person with a mental illness" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Person with a mental illness" does not include an individual with intellectual disabilities of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who has intellectual disabilities may also be an individual who has a mental illness. A substance use disorder does not per se constitute mental illness, although an individual who has a substance use disorder may also be an individual who has a mental illness.

~~13.~~17. "Psychiatric residential treatment facility for children" or "facility" means a facility or a distinct part of a facility that provides to children and adolescents a total, twenty-four-hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively

treated in their own family, in another home, or in a less restrictive setting. The facility must be in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of Federal Regulations, subpart D, part 441 and subpart G, part 483.

~~14.~~18. "Residential treatment" means a twenty-four-hour a day program under clinical supervision in a community residential setting other than an acute care hospital, for the active treatment of persons with mental illness.

~~15.~~19. "Sentinel event" means any serious injury or trauma to a resident, death of a resident, or inappropriate sexual contact.

20. "Serious injury" means any significant impairment of the physical condition of the child as determined by qualified medical personnel. This includes burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.

~~16.~~21. "Serious ~~occurrence~~risk of harm" means ~~an incident in which a resident has died, has sustained a serious injury, or has attempted suicide, has been exposed to inappropriate sexual contact, or has been the subject of seclusion or restraint~~a substantial likelihood of:

a. Suicide, as manifested by current suicidal threats, attempts, or significant depression creating immediate risk of suicide;

b. Killing or inflicting serious bodily harm to self or another person, as manifested by current act; or

c. Substantial deterioration in physical health or substantial injury, disease, or death based on current poor self-control or judgment.

~~17.~~22. "Special treatment procedures" are defined as follows:

a. "Drug used as a restraint" means any drug that:

(1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;

(2) Has a temporary effect of restricting the resident's freedom of movement; and

(3) Is not a standard treatment for the resident's medical or psychiatric condition.

b. "Emergency safety interventions" means the use of restraint or seclusion as an immediate response to an emergency safety situation.

c. "Emergency safety situation" means unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.

d. "Mechanical restraint" means any device attached or adjacent to the resident's body that the resident cannot easily remove that restricts freedom of movement or normal access to the resident's body.

e. "Personal restraint" means the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident in order to calm or comfort the resident, or holding a resident's hand to safely escort a resident from one area to another.

f. "Physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a resident who is acting out to walk to a safe location.

g. "Restraint" means a personal restraint, mechanical restraint, or drug used as a restraint.

h. "Seclusion" means the confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving.

i. "Timeout" means the voluntary option of a resident to move to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.

~~18.~~23 "Tier 1 mental health professional" means a licensed psychiatrist, licensed psychologist, licensed physician or a physical assistant, or an advanced practice registered nurse.

24. "Trauma-informed" means an understanding of the prevalence of traumatic experiences in a child who receives mental health services and of the profound neurological, biological, psychological, and social effect of trauma and violence on the child being treated.

~~19.~~25. "Youth-guided" means a child has the right to be empowered, educated, and given a decisionmaking role in the care of the child's own life.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; July 1, 2012; April 1, 2014; April 1, 2016; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-01, 25-03.2-03

75-03-17-02. Procedures for licensing.

1. **Application.** An application for license or for renewal as a facility must be submitted to the department. The department shall determine the suitability of the applicant for licensure under this chapter. The application must contain any materials the department may require, including:

a. ~~An architectural plan.~~

~~b.~~ A comprehensive list and description of the program plan which includes:

(1) A plan demonstrating compliance with this chapter;

(2) A copy of current accreditation certification, accreditation letter, and findings report;

(3) The facility's organizational chart;

(4) The treatment modalities offered, including milieu therapy, family therapy, psychopharmacology, and psychotherapy;

(5) Prohibited treatment modalities; and

(6) The services provided directly by the facility and those provided by other community resources, including special education as required by law and contracted services.

~~c. The funding base for building and operating the facility, including a projected twelve-month budget based on predictable funds and, for a new facility, a statement of available funds or documentation of available credit sufficient to meet the operating costs for the first twelve months of operation.~~

~~d.~~b. A copy of all policies and procedures as required by this chapter with a detailed plan for their implementation.

~~e.~~c. A list of licensed professionals employed or to be employed by or contracting with the facility.

2. **License contents.** The license to operate a psychiatric residential treatment facility for children must specify:

   a. The name of the licensee;

   b. The premises for which the license is applicable;

   c. The number of children who may reside at the facility at any one time;

   d. The date of expiration of the license;

   e. The facility license number; and

   f. The name of the accreditation body.

3. **Initial license and license renewal.**

   a. An initial license for a new facility is in effect for one year. Subsequent licenses shall be renewed at least once every two years, either through a full onsite license review or the facility may receive deemed status, at the discretion of the department.

   b. The license is valid only on the premises indicated and is not transferable.

   c. License renewals are based on the outcomes of the department's licensure reviews, the facility's ongoing compliance with the licensure rules set forth in this chapter, and the facility's accreditation standings. The facility must list the department as a confidential inquiry for the accrediting body on their accreditation intent to survey prior to each accreditation review. If the accrediting body determines a facility to not be in good standing, the facility shall report that determination to the department within five working days after the facility has learned of that determination.

   d. A facility shall submit a license renewal application on a form required by the department to the department licensor ~~forty-five~~fifteen days prior to the date ~~of~~ the department has notified the facility will be the date the facility's licensure review will begin.

4. **Provisional license.** The department may issue a provisional license, effective for up to ninety days, to a facility that has failed to comply with any of the standards of this chapter or with any other state law or regulation, compliance with which is required for licensure. The facility will have thirty days from the issuance of the provisional license to submit a written plan of correction for the department's review and approval. The department may perform an onsite followup visit to assure that the standards have been met by the facility.

   a. The department may renew a provisional license if the licensee demonstrates to the department that it has made progress towards compliance and can be fully compliant within the next ninety days. A provisional license may be renewed but may not exceed one hundred eighty consecutive days.

   b. When a facility operating under a provisional license notifies the department that it has corrected its deficiencies, the department must ascertain whether all deficiencies have been corrected. Upon finding compliance and sustainability, the department shall issue an unrestricted license for the balance of the licensing period.

c. The department may apply restrictions to a provisional license to limit the number of children in residence or the ages of the children in residence while the provisional license is in effect.

5. **License display.** A facility shall display its license in a conspicuous place within the facility.

6. **Notice of change.** A facility shall notify the department in writing at least thirty days before any of the following changes occur:

   a. Transfer of or change in ownership.

   b. Transfer of operating rights, including a lease of the facility where the lessor retains no control of the operation or management of the facility.

   c. Change in the name of the facility.

7. **Denial and revocation of a license.** Failure to comply with any of the standards of this chapter or other state law or regulation is cause for refusal or revocation of a license. Conviction of an offense by an owner or operator of a facility does not disqualify the facility from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a psychiatric residential treatment facility for children, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

8. **Appeal.** An applicant may appeal a license denial or a department decision not to allow an increase or decrease in bed capacity in accordance with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code chapter 75-01-03.

9. **License report procedures.**

   a. Within thirty days of an onsite review of a facility, the department shall send a license report to the facility that was reviewed.

   b. A license report must contain a description of the programs and services reviewed, strengths, concerns, recommendations, and conditions.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-02, 25-03.2-03, 25-03.2-05

75-03-17-03. Organization and administration.

1. **Governing body.** The applicant must have a governing body that designates or assigns responsibility for the operation, policies, program, and practice of the facility. The governing body shall:

   a. Define:

      (1) The facility's philosophy;

      (2) The facility's purpose;

      (3) The facility's function;

      (4) The geographical area served by the facility;

      (5) The ages and types of children accepted for care by the facility; and

(6) The clinical disorders addressed by the facility's program;

b. Ensure that all policies and procedures required by this chapter are in writing and on file at the facility and are accessible to all employees, family members, and residents;

c. Develop a records retention policy and procedures consistent with state and federal law;

d. Assure that all vehicles transporting children are:

(1) Subject to routine inspection and maintenance;

(2) Licensed by the state motor vehicle department;

(3) Equipped with seatbelts for every passenger;

(4) Equipped with a first-aid kit and a fire extinguisher;

(5) Carrying no more individuals than the manufacturer's recommended maximum capacity;

(6) Disability accessible where appropriate; and

(7) Driven by an individual who holds a valid driver's license, of a class appropriate to the vehicle driven, issued by the driver's jurisdiction of residence; and

e. Obtain sufficient insurance, including:

(1) Liability insurance covering bodily injury, property damage, personal injury, professional liability; and

(2) Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.

2. ~~**Legal status.** The applicant shall provide to the department:~~

~~a. A copy of the articles of incorporation, bylaws, partnership agreement, or articles of organization and any evidence of required legal registration of the entity;~~

~~b. A current list of partners or members of the governing body and any advisory board, including the address, telephone number, principal occupation, and term of office of each listed person;~~

~~c. A statement disclosing the owner of record of any building, facility, or major piece of equipment occupied or used by the applicant, the relationship of the owner to the applicant, the cost of such use, if any, to the applicant, and the identity of the entity responsible for the maintenance and upkeep of the property; and~~

~~d. Whether the owner, operator, or an employee of the facility is or has been found guilty of an offense determined by the department to have a direct bearing on the person's ability to serve as an owner, operator, or employee, or the department determined, following conviction of an offense, that the person is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.~~

~~3. **Financial plan.** The applicant shall have a financing plan which includes a twelve-month budget, and which shows the facility's financial ability to carry out its purposes and function. A new applicant shall have sufficient funds available for the first year of operation.~~

~~4. **Audits.** All financial accounts must be audited annually by a certified public accountant. The facility shall make the audit report a part of the facility's records. The report must contain the~~

~~accountant's opinion about the facility's present and predicted financial solvency. The facility shall submit the report with an application for license renewal.~~

~~5.~~ **Quality improvement.** The applicant and facility shall implement a quality improvement program. The applicant and facility shall submit the quality improvement program and evaluations of the program to the department for review at a minimum of every six months. The applicant shall create policies and procedures and have them in place to implement its facility's quality improvement program. The ~~program~~facility must monitor and evaluate the quality and appropriateness of care of children, and identify performance indicators that will be monitored to assess the program's effectiveness. The quality improvement program must include:

a. A plan for child and employee safety and protection;

b. A method to evaluate personnel performance and the utilization of personnel;

c. A plan to ensure the facility accesses and maintains copies of the current license of all employees, contract workers, and consultants when relevant for that person's role or function;

d. A system of credentialing, granting, and withholding employee privileges;

e. A method to review and update policies and procedures assuring the usefulness and appropriateness of policies and procedures;

f. A method to review the appropriateness of admissions, care provided, and employee utilization;

g. A plan for the review of individual treatment plans that ensures compliance with paragraph ~~4~~3 of subdivision b of subsection 3 of section 75-03-17-05;

h. A plan for program evaluations that includes measurements of progress toward the facility's stated goals and objectives; and

i. A method to evaluate and monitor standards of resident care.

~~6.~~3. **Outcomes and data collection.** The department shall require a facility to engage in data management practices to collect and report outcomes every six months. Data collection efforts will offer facilities a continuous quality improvement process that measures and monitors the safety, wellbeing, and service delivery provided to children in placement. Facilities must have written policy to identify a plan to implement, collect, and measure outcomes data requirements. The policy must also include how a facility will respond to identified data outcomes by utilizing one or more facility improvement plans every six months.

~~7.~~4. **Children's case records.** The facility shall establish and implement policies and procedures to ensure the facility maintains a confidential record for each child which must be current and reviewed monthly. Each record must contain:

a. An application for service;

b. A social history;

c. A release of information and medical treatment consent form signed by a person who may lawfully act on behalf of the child and any consent for the use of psychotropic medications as required under subdivision d of subsection 10 of section 75-03-17-07;

d. The name, address, and telephone number of individuals to be contacted in an emergency;

e. Reports on medical examinations, including immunizations, any medications received, allergies, dental examinations, and psychological and psychiatric evaluations which occurred prior to the placement;

f. An explanation of custody and legal responsibility for the child and relevant court documents, including custody or guardianship papers;

g. Documentation on all medical examinations, including immunizations, all medications received, allergies, dental examinations, and psychological and psychiatric evaluations received during placement;

h. Documentation of medical care given during placement as a result of an admission to the hospital or inpatient care, including:

(1) Hospitalization admission and discharge records to include history and physical;

(2) Medications administered, with the quantity, directions, physician's name, date of issue, and name of the pharmacy indicated; and

(3) Significant illnesses or accidents;

i. Records of the annual medical examination required under section 75-03-17-07; and

j. A written agreement between a person who may lawfully act on behalf of the child and the facility and a record that the person who acted on behalf of the child received a copy. The agreement must include:

(1) A statement as to who has financial responsibility;

(2) How payments are to be made to cover the cost of care;

(3) Which items are covered by the normal or regular facility charges for care;

(4) Medical arrangements, including the cost of medical care;

(5) Visiting arrangements and expectations;

(6) Arrangements for clothing and allowances;

(7) Arrangements for therapeutic leave;

(8) Regulations about gifts permitted;

(9) Arrangements for participation by the person who acted on behalf of the child through regularly scheduled interviews with designated employee;

(10) The facility's policy on personal monetary allowance to be provided to the child at the facility;

(11) Records of special treatment orders; and

(12) Educational arrangements agreed upon discharge.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-04. Admissions.

1. A child may be admitted to a psychiatric residential treatment facility for children if ~~the~~:

   a. The child has been diagnosed by a psychiatrist or psychologist as suffering from a mental illness or emotional disturbance ~~and the child is in need of and is able to respond to active psychotherapeutic intervention and cannot be effectively treated in the child's family, in another home, or in a less restrictive setting. The facility shall take into account the age and diagnosis of the child in order to provide an environment that is safe and therapeutic for all children. The facility may admit only those children who are found eligible according to the facility's admission policies~~;

   b. The child's situation meets the definition of serious risk of harm; and

   c. A less restrictive setting cannot meet the immediate treatment need.

2. The facility shall provide a short-term, intense, focused mental health treatment program to promote successful return of the child to the community with specific outcomes of the mental health services to include the child returning to the family or another less restrictive community living situation as soon as clinically possible.

3. Every facility shall have specific admission policies that describe which professional staff have admission authority ~~and describe the membership of the facility's admission committee or committees. Admission committee membership must include a psychiatrist.~~

~~2. a. The facility shall also base all admission decisions on:~~

   ~~(1) A social history which includes presenting problems, family background, developmental history, educational history, and employment;~~

   ~~(2) A psychosocial history which includes current status, any relevant findings of previous physical or psychiatric evaluations, and a list of the child's current medications and allergies;~~

   ~~(3) Prior psychological and addiction evaluations; and~~

   ~~(4) Other assessments, including trauma, suicide, substance use, and eating disorders.~~

   ~~b. The facility shall obtain the child's known history and prior evaluations from the referral source before admission~~. Admissions must occur emergently and planned. Diagnostic assessment and plan of care must document immediate need for inpatient psychiatric residential services.

4. A tier 1 mental health professional must complete an assessment of a child upon admission to a facility.

~~3.~~5. The facility shall grant or deny admission within ~~fourteen~~three business days of receipt of a completed ~~universal~~ application.

~~4.~~6. If admission is denied, the facility shall indicate the reason in writing to the individual or referral source making the application for placement, including recommendations for services and supports available to the child and family.

~~5.~~7. No child may be denied admission to a facility on the basis of race, color, creed, religion, or national origin.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022.

General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-06

75-03-17-05. Diagnosis and treatment while at the facility.

1. **Duties of the facility.** The facility shall:

   a. Provide for a medical, psychiatric, and psychological assessment of each child ~~within~~no later than seventy-two hours ~~of~~after admission~~ and thereafter as needed by the child~~;

   b. ~~Keep the child in contact with the child's~~Immediately include family and ~~relatives by initiating family therapy upon admission and developing a plan for continued family therapy throughout placement for timely reunification of the child with the family. The plan must include therapeutic telemedicine options, such as web cam, polycom access, telephone therapy, or other means of electronic contact to provide ongoing therapeutic connection with the child's family~~custodians in the active treatment;

   c. Involve the families and the person who may lawfully act on behalf of the child in the person-centered treatment plan;

   d. Provide ~~ongoing and consistent family therapy for all residents with supporting documentation that ties therapeutic treatment to the person-centered plan. When family therapy is not occurring or is not in the best interest of the child, the child's case file must include documentation explaining why family therapy is not occurring~~daily therapy and programming that are individually tailored to meeting a child's need and in sufficient volume to resolve immediate inpatient need. Therapies must include individual and family components to facilitate rapid return of the child to a family setting;

   e. ~~Provide conferences involving the facility, the person who may lawfully act on behalf of the child, the referring agency, and when appropriate, the child, to review the case status and progress on a monthly basis;~~

   ~~f.~~ Provide ~~a progress report to the referring agency, and the person who lawfully may act on the child's behalf every two months~~ongoing and consistent individual therapy utilizing evidence-based models of care for psychiatric residential treatment facilities for children. Individual therapy must focus on providing the child skills they need to be successful in their home and community;

   ~~g.~~f. Complete ~~for each child admitted for care within five business days an individual person-centered treatment plan~~a diagnostic assessment, completed by a licensed psychiatrist, no less than seventy-two hours after admission that includes:

      (1) A psychiatric history;

      (2) A mental status examination, including ~~a~~an assessment of suicide~~ screening~~;

      (3) ~~A trauma screening;~~

      ~~(4) Intelligence and projective tests, as necessary;~~

      ~~(5) A behavioral rating scale completed by the custodian, facility, and child;~~

      ~~(6) A brain injury screening;~~

      ~~(7) A family and child substance use history to include substance use during pregnancy; and~~

(8) A fetal alcohol spectrum disorder screeningPsychosocial, including family history; and

(4) Complete set of diagnosis and recommendations for immediate treatment; and

h.g. TherapeuticEnsure therapeutic leave such as weekend overnight visits or day passes with family must be documented in the child's case file and be tied to family therapy and therapeutic goals of the child and family, or it must be documented in the child's case file why weekend overnight visits or day passes are not tied to therapy and therapeutic goals of the child and familiyfamily.

2. **Specialists.** The services of specialists in the fields of medicine, psychiatry, nursing, psychology, and education must be used as needed.The facility shall provide a sufficient number of qualified psychiatric professionals to meet the resident needs. Each facility shall provide a minimum of one-halfone hour per week per bed of psychiatricpsychiatry time and twenty hours, one hour per week per bed of nursingfamily therapy time, and two hours per week per bed of individual therapy time. Each facility shall provide twenty-four-hour nursing, which may include a combination of onsite or on-call hours.

3. **Individual person-centered treatment plan.**

a. The facility shall develop and implement an individual person-centered treatment plan that includes the child's input giving the child a voice and a choice in the treatment planning and interventions used. The plan must be based upon a comprehensive interdisciplinary diagnostic assessment, which includes the role of the family, identifies the goals and objectives of the therapeutic activities and treatment and it must be developed by an interdisciplinary team. The plan providesmust provide a schedule for accomplishing the therapeutic activities and treatment goals and objectives, and identifiesidentify the individuals responsible for providing services to children consistent with the individual person-centered treatment plan. Clinical supervision for the individual person-centered treatment plan must be accomplished by full-time or part-time employment of or contracts with a licensed physician who is a psychiatrist, a licensed psychologist, a licensed independent clinical social worker, or a nurse who holds advanced licensure in psychiatric nursing. Clinical supervision must be documented by the clinical supervisor cosigning individual person-centered treatment plans and by entries in the child's record regarding supervisory activity. The child, and the person who lawfully may act on the child's behalf, must be involved in all phases of developing and implementing the individual person-centered treatment plan. The child may be excluded from planning if excluding the child is determined to be in the best interest of the child and the reasons for the exclusion are documented in the child's plan.

b. The plan must be:

(1) Based on a determination of a diagnosis using the current diagnostic and statistical manual of mental disorders and a biopsychosocial assessment. In cases where a current diagnosis has been completed within thirty days preceding admission, only updating is necessary;

(2) Developed within fivethree business days of admission; and

(3) Reviewed at least monthlya minimum every fourteen days and updated or amended to meet the needs of the child by the interdisciplinary team.

c. The person-centered treatment plan must identify:

(1) Treatment goals that ~~address the therapeutic treatment needs of the child and family~~are short term and intense, focused on successful return to home and community;

(2) Time frames for achieving the goals;

(3) ~~Indicators of goal achievement~~Goals that are achievable and measurable;

(4) The individuals responsible for coordinating and implementing child and family treatment goals;

(5) Therapeutic intervention or techniques or both for achieving the child's treatment goals;

(6) The projected length of stay and discharge plan; and

(7) Referrals made to other service providers based on treatment needs, and the reasons referrals are made.

4. ~~**Work experience.**~~

~~a. If a facility has a work program, it shall:~~

~~(1) Provide work experience that is appropriate to the age and abilities of the child, therapeutically relevant to the child's treatment plan and treatment needs, and approved by the treatment team;~~

~~(2) Differentiate between the chores that the child is expected to perform as the child's share in the process of living together, specific work assignments available to the child as a means of earning money, and jobs performed in or out of the facility to gain vocational training; and~~

~~(3) Give the child some choice in the child's chores and offer change from routine duties to provide a variety of experiences.~~

~~b. Work may not interfere with the child's time for school study periods, play, sleep, normal community contacts, or visits with the child's family.~~

~~c. The facility shall obtain written authorization for work experience in writing from a person who lawfully may act on behalf of the child.~~

~~5.~~ **Solicitation of funds.** A facility may not use a child for advertising, soliciting funds, or in any other way that may cause harm or embarrassment to a child or the child's family. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any child or member of a child's immediate family, without first securing the child's written consent and the written consent of the person who may lawfully act on behalf of the child. The written consent must apply to an event that occurs no later than ninety days after the date the consent was signed and must specifically identify the image or information that may be disclosed by reference to dates, locations, and other event-specific information. Consent documents that do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes. The duration of an event identified in a consent document may not exceed fourteen days.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022.
General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-06. Special treatment procedures.

A facility shall have written policies and procedures regarding implementation of special treatment procedures. Special treatment procedures must be therapeutic and meaningful interventions and may not be used for punishment, for the convenience of employees, or as substitute for therapeutic programming. Upon admission, the facility shall inform the child and the person who may lawfully act on behalf of the child of the facility policy on restraint and seclusion procedures during an emergency safety situation. The facility shall provide education to the children, providing each child the opportunity to express the child's opinion and educating the child on alternative behavior choices to avoid the use of special treatment procedures. Alternatives to behaviors must be documented in each child's individual person-centered treatment plan. The health, safety, and well-being of children receiving care and treatment in the facility must be properly safeguarded. A physician shall review the use of special treatment procedures.

1. Timeout. Employees shall supervise the use of timeout procedures at all times, and shall document the use of timeout procedures in the child's file. The use of the resident's bedroom for timeout is prohibited.

2. Physical escort. Employees shall supervise the use of physical escort procedures at all times and shall document the use of physical escort in the child's file.

3. Physical restraints.

   a. Physical restraints must be ordered by a psychiatrist or other physician, ~~or in the absence of a physician by a licensed physician who is a psychiatrist,~~ a licensed psychologist, a licensed ~~independent~~ clinical social worker, or a nurse who holds advanced licensure in psychiatric nursing. Staff authorized to order physical restraint must be trained in the use of emergency interventions~~ and a~~. A psychiatrist or other physician, a licensed psychologist, a licensed clinical social worker, or a nurse who holds advanced licensure in psychiatric nursing must review and sign the order within forty-eight hours after the ordered physical restraint. Physical restraints may be imposed only in emergency circumstances and must be used with extreme caution to ensure the immediate physical safety of the child, an employee, or others after all other less intrusive alternatives have failed or have been deemed inappropriate;

   b. All physical restraints must be applied by employees who are certified in the use of restraints and emergency safety interventions; and

   c. The facility shall have established protocols that require:

      (1) Entries made in the child's file as to the date, time, employee involved, reasons for the use of, and the extent to which physical restraints were used, and which identify less restrictive measures attempted;

      (2) Notification within ~~twenty-four~~twelve hours of the individual who lawfully may act on behalf of the child; and

      (3) Face-to-face assessment of children in physical restraint completed by a psychiatrist or other physician, ~~registered~~a licensed psychologist, a licensed clinical social worker, a nurse who holds advanced licensure in psychiatric nursing, or other licensed health care professional or practitioner who is trained in the use of safety, emergency interventions. The face-to-face assessment must be documented in the child's case file and include assessing the mental and physical well-being of the child. The face-to-face assessment must be completed as soon as possible, and no later than one hour after the initiation of physical restraint or seclusion.

4. Seclusion. Seclusion must be ordered by ~~the attending~~a psychiatrist or other physician~~ or in the absence of a physician by a licensed physician who is a psychiatrist~~, a licensed psychologist, a licensed ~~independent~~ clinical social worker, or a nurse who holds advanced licensure in psychiatric nursing. Staff authorized to order seclusion must be trained in the use of emergency interventions~~ and a~~. A psychiatrist or other physician, a licensed psychologist, a licensed clinical social worker, or a nurse who holds advanced licensure in psychiatric nursing must review and sign the order within forty-eight hours after the ordered seclusion. Seclusion may be imposed only in emergency circumstances after all other less intrusive alternatives have failed or have been deemed inappropriate. Seclusion is to be used with extreme caution, and only to ensure the immediate physical safety of the child, an employee, or others. A child's bedroom may not be used for seclusion. If seclusion is indicated, the facility shall ensure that:

   a. The proximity of the employee allows for visual and auditory contact with the child at all times;

   b. Employees conduct assessments of the child every fifteen minutes and document the assessments in the child's case file;

   c. The seclusion room is not locked, or is equipped with a lock that only operates with an employee present such as a push-button lock that only remains locked while it is being pushed;

   d. All nontherapeutic objects are removed from the area in which the seclusion occurs;

   e. All fixtures within the room are tamperproof, with switches located outside the room;

   f. Smoke-monitoring or fire-monitoring devices are an inherent part of the seclusion room;

   g. Security mattresses used are made of fire-resistant material;

   h. The room is properly ventilated;

   i. Notification of the individual who lawfully may act on behalf of the child is made within ~~twenty-four~~twelve hours of a seclusion and is documented in the child's case file;

   j. A child under special treatment procedures is provided a similar diet that other children in the facility are receiving;

   k. No child remains in seclusion:

      (1) For more than four hours in a twenty-four-hour period; and

      (2) Without physician approval;

   l. Seclusion is limited to the maximum time frame per episode for fifteen minutes for children aged nine and younger and one hour for children aged ten and older; and

   m. Face-to-face assessment of children in seclusion is completed by a psychiatrist or other physician, ~~registered~~licensed psychologist, a licensed clinical social worker, a nurse who holds advanced licensure in psychiatric nursing, or other licensed health care professional or practitioner who is trained in the use of safety, emergency interventions ~~and is~~. The face-to-face assessment must be documented in the child's case file~~. The face-to-face assessment must~~ and include assessing the mental and physical well-being of the child. The face-to-face assessment must occur no later than one hour after the initiation of seclusion.

5. Within twenty-four hours of each use of seclusion or physical restraint, the facility shall conduct a face-to-face discussion which includes the child and all employees involved in the

emergency intervention, except when the involvement of a particular employee may jeopardize the wellbeing of the child, and which:

a. Evaluates and documents in the child's case file the well-being of the child served and identifies the need for counseling or other therapeutic services related to the incident;

b. Identifies antecedent behaviors and modifies the child's individual person-centered treatment plan as appropriate; and

c. Analyzes the incident and identifies needed changes to policy and procedures, employee training, and strategies that could have been used by an employee, by the child, or by others which could prevent the future use of seclusion or physical restraint.

6. Within twenty-four hours after the use of physical restraint or seclusion, all employees involved in the emergency safety intervention, and appropriate supervisory and administrative employees, shall conduct a debriefing session that includes, at a minimum a review and discussion of:

a. Precipitating factors to the emergency situation;

b. Alternative techniques that might have prevented the use of physical restraint or seclusion;

c. The procedures, if any, that employees are to implement to prevent any recurrence of the use of physical restraint or seclusion; and

d. The outcomes of the intervention, including any injuries that may have resulted from the use of the physical restraint or seclusion.

7. Employees shall document in the child's record both the face-to-face discussion and debriefing sessions identified in subsections 5 and 6 and the names of employees involved, employees excused, and any changes to the child's treatment plan as a result of the face-to-face discussion and debriefing. The facility also shall document that the person who may lawfully act on behalf of the child was notified.

8. Special treatment procedure training. Each facility must have policies and procedures regarding annual training in the use of all special treatment procedures listed in this section, which comply with the standards set forth by the facility's accrediting body.

~~9. Reporting requirement for serious occurrences that include a death, serious injury, suicide attempt, inappropriate sexual contact, restraint, or seclusion.~~

~~a. Each facility shall notify the medical services and the behavioral health divisions of the department of each serious occurrence that occurs at the facility as follows:~~

~~(1) The report must include the name and date of birth of the child involved.~~

~~(2) The facility shall provide the report within twenty-four hours of the serious occurrence.~~

~~(3) The report must contain information identified in subsection 6 of this section on any serious occurrence involving seclusion or restraint or any other serious occurrence involving a death, serious injury, suicide attempt, or inappropriate sexual contact if seclusion or restraint preceded the occurrence.~~

~~b. Each facility shall notify its accrediting body of any serious occurrence.~~

~~c. Each facility shall notify the regional supervisor of child welfare programs at the human service center serving the region within which the facility is located of any serious occurrence.~~

~~d. Each facility shall report all deaths to the committee on protection and advocacy, unless prohibited by state law, by the close of business the day following the date the death was discovered.~~

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 50-11-03, 50-11-03.2

75-03-17-07. Medical care.

The facility shall institute policies and procedures to address the medical ~~and psychiatric~~ care for each child during placement at the facility, including:

1. **Medical examination.** Each child must have a medical examination within thirty days prior to admission or within seventy-two hours of admission.

2. **Immunizations.** Each child must have current immunizations as required by North Dakota Century Code section 23-07-17.1.

3. **Medical care arrangements.** A facility shall make arrangements with a physician ~~and a psychiatrist~~ for medical ~~and psychiatric~~ care of each child.

4. **Annual medical examination.** Each child shall have a medical examination at least annually.

5. **Employee instruction.** The facility shall train employees what medical care, including first aid, may be given by employees without specific orders from a physician. The facility shall instruct employees how to obtain further medical care and how to handle emergency cases.

6. **Hospital admission.** Each facility shall institute policies and procedures regarding transfers and discharges from an admission to the hospital. A facility's policies and procedures must include arrangements made with a hospital for the admission of children from the facility in the event of serious illness or an emergency.

7. **Hospitalization or death reports.** A facility shall report all hospitalizations immediately to an individual who lawfully may act on behalf of the involved child. The facility shall report any death immediately to the department, an individual who lawfully may act on behalf of the child, a law enforcement agency, and the county coroner. The facility shall document these contacts in the involved child's case file.

8. **Prescription labels.** The facility shall obtain prescribed medications on an individual prescription basis and labeled according to state and federal rules.

9. **Administration of medications.**

   a. The facility shall institute policies and procedures for guidance in the administration of all medications. Medications must be administered by a designated employee who is medication-certified. All medications must be labeled and stored in a locked cabinet, with the keys for the cabinet kept under the supervision of the designated employee assigned to administer the medications. The medication cabinet must be equipped with separate cubicles, plainly labeled with each child's name.

b. The facility shall return medications belonging to a child to the person who lawfully may act on behalf of the child upon discharge, or the designated person in charge of medication storage shall dispose of the medications according to the facility's policies and procedures for the disposal of medications. The facility's policies and procedures for the disposal of medications must be in accordance with state and federal requirements for the disposal of medications.

c. The facility may possess a limited quantity of nonprescription medications. The medications must be ordered by a physician and administered under the supervision of medication-certified employee.

d. (1) The facility shall obtain written consent, including via electronic mail, or shall obtain verbal consent witnessed by another person, from a person who lawfully may act on behalf of the child prior to administering:

(a) A newly prescribed medication to the child except in an emergency situation;

(b) A psychotropic medication; or

(c) A medication dosage or dosage range change.

A person who lawfully may act on behalf of the child who receives medication must be informed of benefits, risks, and the potential side effects of all prescribed medication. The facility shall obtain written consent within fourteen days verifying verbal consent received. The facility shall document and file all consents in the child's case file.

(2) The facility shall institute policies and procedures governing the use of psychotropic medications, which require documentation in the case file justifying the necessity and therapeutic advantages for the child receiving psychotropic medication. Documentation must reflect that a trauma screening has been completed and that the symptomology that the psychotropic medication is attempting to treat is not more effectively treated through therapeutic interventions that specifically address symptomology related to trauma.

e. Upon admission, when a new psychotropic medication is prescribed, and when a psychotropic medication is discontinued, a child's psychotropic medication regime must be reviewed by the attending psychiatrist every seven days for the first thirty days and every thirty days thereafter. Additionally, the facility's nursing staff shall complete an involuntary movement assessment prior to the start of, or a change in the dose of, a psychotropic medication. An involuntary movement assessment must be repeated every three months, or sooner if determined necessary, following completion of the initial involuntary movement assessment to monitor the child for side effects of the psychotropic medication.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-09. General health.

1. **Sleep.** Each child must receive enough sleep for the child's age at regular and reasonable hours, and under ~~conditions~~situations conducive to rest.

2. **Personal hygiene.** The facility shall educate children on age-appropriate hygiene.

3. **Bathing facilities.** The facility shall maintain properly and keep clean toilet facilities.

4. **Personal articles.** The facility shall ensure that each child has a toothbrush, comb, and an adequate supply of towels, washcloths, and personal toiletry articles.

5. **Daily diet.** The facility shall provide ~~menus for~~food that meets all dietary needs ~~that meet~~for each child's daily nutritional requirements, including special dietary needs, such as food allergies and diabetes.

6. **Clothing.** Each child shall have clothing for the child's exclusive use. The clothing must be comfortable and appropriate for current weather conditions.

7. **Play.** The facility shall provide safe, age-appropriate equipment for indoor and outdoor play. The facility shall provide safety instructions on all equipment prior to the child participating in the activity.

8. **Services.** The facility shall provide education on general health and promote positive healthy activities, such as sufficient therapeutic treatment, and educational, recreational, and leisure activities.

9. **Spirituality.** The facility shall make a reasonable effort to make opportunities available for children to attend spiritual ceremonies within the area in which the facility is located, giving reasonable consideration to requests by the child or a person with lawful authority to act on behalf of the child. The facility shall respect the spiritual beliefs of the child and the child's family.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-10. Education and training.

1. **Public education.** Any primary or secondary program offered by a facility must be in compliance with standards established by the department of public instruction. The facility shall ensure that children comply with all state school attendance laws.

2. **Employee training.** The facility shall provide quarterly training to employees which is relevant to address the changing needs of the milieu and according to the requirements of the facility's accrediting body.

   a. All employees on duty must have satisfactorily completed annual training on current first aid, therapeutic crisis intervention or crisis prevention intervention, suicide awareness and prevention training, standard precautions as used by the centers for disease control and prevention, training on institutional child abuse and neglect to include reporting requirements and prohibition of employer retaliation for reporting, and cardiopulmonary resuscitation training and have on file at the facility a certificate of satisfactory completion prior to having direct contact with residents. A certificate must be provided to each employee demonstrating their competencies in cardiopulmonary resuscitation on an annual basis and therapeutic crisis intervention on a semi-annual basis. An employee who is in orientation status~~, who has successfully completed the background check,~~ and who is in the process of completing the required trainings and background check may be allowed to job shadow with an employee who ~~has a minimum of one year of experience at~~ the facility ~~and who~~ has ~~successfully completed all of the required training~~deemed to be an experienced and competent employee to supervise during orientation status. The facility ensures that employees who are in orientation status are always under the

supervision of experienced employees and are not left alone with the children until all required training and background check has been completed.

b. Each employee must be able to recognize the common symptoms of illnesses of children, signs and symptoms of an overdose, and to note any marked physical defects of children. The facility shall ensure a sterile clinical thermometer and a complete first-aid kit are available.

3. **Discipline.** A facility shall create a trauma-informed culture that promotes respect, healing, and positive behaviors and which minimizes the use of restrictive behavior management interventions to the extent possible. Discipline must be constructive or educational in nature and follow the discipline guidelines of the facility's accrediting body. A facility shall adopt and implement written policies and procedures for discipline and behavior management consistent with the following:

a. Only employees of the facility may prescribe, administer, or supervise the discipline of children. Authority to discipline may not be delegated to children or nonemployees.

b. A child may not be slapped, punched, spanked, shaken, pinched, roughly handled, struck with an object, or receive any inappropriate physical treatment.

c. Verbal abuse and derogatory actions or remarks about the child, the child's family, religion, or cultural background may not be used or permitted.

d. A child may not be locked in any room.

e. The facility shall develop and implement a youth-guided, family-driven plan of discipline as part of the child's person-centered treatment planning, emphasizing the use of positive behavior supports and therapeutic interventions, that promote an effective means of discipline. Daily documentation must reflect whether the interventions are effective and if they need revising.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-12. Discharge.

1. Discharge planning for each child must begin during the admission process. The facility shall develop an evolving discharge plan within ~~thirty~~seven days of admission that identifies the child's and family's needed services and supports upon discharge and include the discharge plan in the treatment plan. The facility's interdisciplinary team shall review the discharge plan every fourteen days at the same time as the treatment plan review. The facility's interdisciplinary team shall update or amend the discharge plan to meet the needs of the child.

2. Prior to discharge, the facility shall complete a discharge plan ~~and~~, coordinate ~~related~~ community services required for the child to return to the home, and provide information for aftercare services with each child's family, school, and community to ensure continuity of care. The discharge plan must address and include:

a. Psychiatric, medical, educational, psychological, social, behavioral, developmental, and chemical dependency treatment needs;

b. The reason for discharge;

c. A progress report, including an update on the child's psychiatric care and treatment recommendations;

d. An assessment of community-based service needs for the child and family;

e. A statement that the discharge plan recommendations have been reviewed with the child and the person who lawfully may act on behalf of the child;

f. The name and title of the individual into whose care the child was discharged.

~~2.~~3. The discharge committee shall review and approve each anticipated discharge thirty days before the discharge and provide the completed discharge plan to the custodian at least seven days before the anticipated discharge.

4. ~~Seven~~At least seven days prior to discharge a team meeting involving the child, the person who lawfully may act on behalf of the child, the facility treatment team, and related community services providers must take place to ensure the continuity of services consistent with the child's treatment needs after discharge. As part of the discharge planning requirements, facilities shall ~~ensure~~:

a. Identify a prescribing provider in the community and schedule an outpatient visit;

b. Ensure the child has a seven-day supply of needed medication and a written prescription for medication to last through the first outpatient visit in the community with a prescribing provider~~. Prior to discharge, the facility must identify a prescribing provider in the community and schedule an outpatient visit. The facility shall include~~; and

c. Include documentation of the medication plan and arrangements for the outpatient visit in the medical records in the child's case file. If medication has been used during the child's treatment in the facility but is not needed upon discharge, the reason the medication is being discontinued must be documented in the medical records in the child's case file.

~~3.~~5. The discharge committee shall review and approve each discharge from a facility prior to the discharge. The discharge committee must include the following:

a. ~~Treating psychiatrist~~Tier 1 mental health professional;

b. Attending therapist;

c. Assigned social worker;

d. Facility nurse;

e. Facility educator;

f. Facility residential staff; and

g. A person who lawfully may act on behalf of the child.

~~4.~~6. The facility shall assist the child and the person who lawfully may act on behalf of the child in preparing for the transition from residential treatment to return the child home, to a foster family, adoptive family, an institution, or to the home of relatives.

~~5.~~7. The facility treatment team shall develop a discharge plan that ensures appropriate appointments are scheduled, based on the child's needs and input from the person who lawfully may act on behalf of the child, as part of the post discharge plan. Appointments must support continuity of care addressing needs for individual therapy, psychiatric services and educational services, and other services or supports that may be appropriate. The facility

treatment team shall provide a copy of the plan to the person who lawfully may act on behalf of the child and a copy must remain in the chart.

~~6.~~8. If a discharge is not anticipated at least thirty calendar days ahead of time, the discharge is considered unplanned and the facility shall:

a. Hold a discharge planning meeting involving the child, custodian, parent, guardian, facility treatment team, additional family members, and any other relevant parties. This meeting must allow relevant parties time to review the discharge plan and aftercare engagement strategies while discussing services needed to best meet the needs of the child; and

b. Create and provide in writing a finalized discharge and aftercare plan to the custodian and parent or guardian at least seven days before the child's discharge.

9. A child's discharge from the facility may not be based on the child's need for short-term inpatient treatment at a psychiatric facility.

10. The facility may not discharge a child without community-based support services in place. If a child does not have a home or safe place for discharge, the facility shall work with the legal custodian or placing agency to implement a safety plan for the child until a safe place is available.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-16. Personnel policies and employee and nonemployee files.

1. The facility shall have clearly written personnel policies. The policies must be made available to each employee and nonemployee and must include:

   a. An employee training and development plan;

   b. Procedures for reporting suspected child abuse and neglect for employees and nonemployees;

   c. Procedures for employee evaluation, disciplinary actions, and termination;

   d. A prohibition of sexual contact between employees and nonemployees and children in accordance with the Prison Rape Elimination Act of 2003 [Pub. L. 108-79];

   e. Procedures for employee grievances;

   f. Both oral and written instructions regarding employee and nonemployee responsibility for preserving confidentiality;

   g. Evaluation procedures that include a written evaluation following the probationary period for new employees and at least annually thereafter; and

   h. A plan for review of the personnel policies and practices with employee and, as ~~approrpriate~~appropriate, nonemployee, participation at least once every three years, or more often if necessary.

2. The facility shall maintain an individual file on each employee. The file must include:

a. The application for employment including a record of previous employment and the applicant's statement in answer to the question, "Have you been convicted of a crime?";

b. Annual performance evaluations; or

c. Annual professional development and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation;

d. The following required training certificates:

(1) First-aid training;

(2) Cardiopulmonary resuscitation and automated external defibrillator; ~~and~~

(3) Nonviolent crisis intervention;

(4) Suicide prevention training;

(5) Evidence-based treatment modalities; and

(6) Trauma training;

e. Evidence of the employee having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures;

f. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;

g. Any other evaluation or background check deemed necessary by the administrator of the facility; and

h. Documentation of the status of any required license or qualification for the position or tasks assigned to the employee.

3. The facility shall maintain an individual file on each nonemployee. The file must include:

a. Personal identification information;

b. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;

c. Description of duties;

d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation; and

e. Evidence of the nonemployee having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.

4. The facility shall adopt a policy regarding the retention of employee and nonemployee files.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-16.1. Child abuse and neglect reporting.

1. All facility employees and nonemployees, upon hire and annually thereafter, shall certify having read the law requiring the reporting of suspected child abuse or neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect reporting procedures.

2. The facility shall adopt written policies and procedures requiring ~~an employee~~employees and nonemployees to report cases of suspected child abuse and neglect. The procedures must include the following statements:

   "All ~~employers~~employees and nonemployees shall comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. ~~It~~Therefore, it is the policy of this facility that an employee or nonemployee who knows or reasonably suspects that a ~~child in residence~~current resident or former resident receiving aftercare services whose health or welfare has been, or appears to have been, harmed ~~in health or welfare~~ as a result of abuse~~,~~ or neglect, ~~or sexual molestation~~that employee or nonemployee shall immediately report this information to the ~~regional human service center in the region in which the facility is located~~department.

   Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment or placement of nonemployee and referral of the employee or nonemployee to the office of the state's attorney for investigation of possible criminal violation."

3. The facility's ~~procedure~~policies and procedures must address:

   a. To whom a report is made;

   b. When a report must be made;

   c. The contents of the report;

   d. The responsibility of each individual in the reporting chain;

   e. The status of an employee or nonemployee who is the alleged perpetrator subject of a report pending assessment, administrative proceeding, or criminal proceeding;

   f. The discipline of an employee or nonemployee who is the perpetrator subject of a confirmed decision or a determination that institutional child abuse or neglect is indicated, up to and including termination; and

   g. The status and discipline of an employee or nonemployee who fails to report suspected child abuse or neglect.

4. The facility shall cooperate fully with the department throughout the course of ~~an~~any assessment or investigation of ~~an~~any allegation of child abuse or neglect made concerning care furnished to a ~~child~~resident. The facility shall, at a minimum, provide the assessors, investigators, or reviewers with all documents and records available to the facility and reasonably relevant to the assessment or investigation, and shall permit confidential interviews with ~~both~~ employees, nonemployees, and ~~children~~residents. Internal facility interviews and investigations are not permitted to occur concurrent with a department assessment or law enforcement investigation. A facility may use risk reduction techniques to ensure safety and security of employees, nonemployees, and residents.

~~5. The~~ In the case of an indicated determination, the facility shall notify the ~~licensor~~department licensing administrator, in writing, of ~~an "indicated" finding by the state institutional child protection team that includes~~ the corrective action ~~that~~ the facility has taken, or plans to take, to comply with ~~the institutional~~any resulting recommendations from the state child protection

~~team's recommendations~~team. The facility shall make assurances that revised facility practice will reduce the risk of the incident reoccurring. The facility shall respond within thirty days of ~~the~~receiving written notification of the ~~institutional child protection team's findings~~determination.

History: Effective September 1, 1998; amended effective April 1, 2008; April 1, 2014; April 1, 2016; April 1, 2022; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-16.2. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee, contracted service providers, or nonemployee and any child cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapter 12.1- 16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse or neglect of a child;

   b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

   c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.

      (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed.

      (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.

2. A facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement subsection 1.

3. The department has determined the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.

4. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment,

without subsequent charge or conviction. The department may not be compelled to make such determination.

5. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

6. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

   a. Common knowledge in the community;

   b. Acknowledged by the individual; or

   c. Discovered by the facility, authorized agent, or department as result of a background check.

7. The facility shall ~~ensure that a prospective employee and nonemployee shall consent to and have completed~~require a fingerprint-based criminal background ~~checks in criminal conviction records~~check and child abuse or neglect ~~records prior to direct care or contact with children residing in the facility~~index be completed for each employee and nonemployee.

8. The facility shall make an offer of employment to an employee or an offer of placement to a nonemployee conditional upon the individual's consent to complete required background checks. While awaiting the results of the required background checks, a facility may choose to provide training and orientation to an employee or nonemployee. However, until the approved background check results are placed in the employee or nonemployee file, the employee or nonemployee shall only have supervised interaction with any child cared for by the facility.

9. A facility shall establish written policies specific to how the facility will proceed if a current employee or nonemployee is known to have been found guilty of, plead guilty to, or pled no contest to an offense.

~~9.~~10. If a prospective employee has previously been employed by one or more group homes, residential child care facilities, or facilities, the facility shall request a reference from all previous group home, residential child care facility, and facility employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.

~~10.~~11. The facility shall perform a background check for reported suspected child abuse or neglect each year on each facility employee. Each employee, including direct care staff, supervisors, administrators, administrative, and facility maintenance staff, shall complete a department-approved authorization for child abuse and neglect background check form no later than the first day of employment and annually thereafter to facilitate the background checks required under this subsection.

~~11.~~12. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

~~12.~~13. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section.

History: Effective April 1, 2016; amended effective July 1, 2022.
General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-17. Facility employee.

1. The facility's employees shall include:

   a. An executive director who has a bachelor's degree in a behavioral science, or a bachelor's degree in any field and two years of experience in administration;

   b. A program director who has a master's degree in social work, psychology, or in a related field with two years of professional experience in the treatment of children suffering from mental illnesses or emotional disturbances;

   c. Facility care employees who are at least twenty-one years of age and have sufficient training and demonstrated skills experience to perform assigned duties;

   d. ~~The clinical services of a psychologist, psychiatrist, alcohol and drug addiction counselor, nurse, and physician, which may be obtained on a consultation basis~~A sufficient number of qualified psychiatric professionals, employed or contracted, to meet the resident needs; and

   e. Educators, where onsite education is provided.

2. Nonemployees may be used to augment and assist other employees in carrying out program or treatment plans. Nonemployees shall receive orientation training regarding the program, employees, and children of the facility, and the functions to be performed.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2016; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-20. Rights and obligations of the applicant.

1. **Right to apply for license.** An applicant has the right to apply to receive a license to operate a facility under this chapter.

2. **Entry and inspection.**

   a. The department may evaluate a facility's compliance with this chapter at any time through:

      (1) An announced or unannounced onsite review; or

      (2) A request for written documentation verifying compliance.

   b. The applicant shall allow authorized representatives of the department to enter any of the applicant's buildings or facilities to determine the extent to which the applicant is in compliance with the rules of the department, to verify information submitted with an application for licensure or license renewal, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the facility unless the effectiveness of the inspection would be substantially diminished by prearrangement.

3. **Access to records.** The applicant shall allow duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department.

4. **Denial of access to facilities and records.** Any applicant or licensee which denies access, by the authorized representative of the department, to a facility or records for the purpose of determining the applicant's or licensee's state of compliance with the rules of the department shall have its license revoked or application denied.

5. **License refusal or revocation.** Failure to comply with any of the standards of this chapter or other state law or regulation is cause for refusal or revocation of a license. Conviction of an offense by an owner or operator of a facility does not disqualify the facility from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a psychiatric residential treatment facility for children or that, following conviction of any offense, the person is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.

6. **Appeal.** An applicant may appeal a license denial in accordance with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code chapter 75-01-03.

7. **Deemed status.** The department may recognize "deemed status" for those providers who are accredited by nationally recognized bodies who review and certify providers of psychiatric residential treatment services for children. When applying for licensure or licensure renewal, proof of accreditation or "deemed status" in the form of the accreditation agency's most recent review and certification must be submitted to the department. "Deemed status" means status conferred on a ~~program~~facility accredited by a national accreditation body based on standards that exceed the standards set forth in these licensure rules.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-02, 25-03.2-03, 25-03.2-07, 25-03.2-08, 25-03.2-09

75-03-17-22. Incident and sentinel event reporting.

1. The facility shall have a written policy outlining the documentation of incidents that occur while the resident is in placement. The policy must include:

   a. A description of an incident as an unplanned occurrence that resulted or could have resulted in injury to an individual or damage to property, specifically involving the public, residents, or agency employees and nonemployees; incidents involving law enforcement, including in the case of a runaway, criminal activity, behavior resulting in harm to others, or restraint injury; and incidents involving outbreak of a serious communicable disease, harassment, violence, and discrimination; and

   b. Notification must be made to the custodian and parent or guardian immediately or no more than twelve hours;

2. The facility shall have a written policy outlining the documentation of sentinel events that occur while the resident is in placement. The policy must include:

   a. A description of a sentinel event as an unexpected occurrence involving death or serious physical or psychological injury not related to the natural course of a resident's illness or underlying medical condition, including any process variation for which a reoccurrence would carry a significant chance of a serious adverse outcome, trauma to a resident, attempted suicide by the resident, or inappropriate sexual contact; and

   b. Notification must be made to the custodian and parent or guardian, and the department immediately or no more than twelve hours;

3. Documentation of an incident or sentinel event must be completed and placed in the resident's record. The report must include:

   a. Resident's name, age, and sex;

   b. A description of the incident or event;

   c. The date, time, and location of the incident or event;

   d. The name of each employee or nonemployee involved;

   e. Methods used to address the resident's behavior, including duration of each intervention;

   f. Detailed description of the technique or approach engaged with the resident at the time of the incident or event;

   g. Results achieved from methods used to address resident behavior; and

   h. Injuries received by either the resident, employee, or nonemployee in using physically enforced separation or restraint, how the injuries occurred, and any medical care provided;

4. The facility shall maintain a log of written reports of incidents involving residents;

5. Direct care staff must be given time at the beginning of each shift to be informed of or review incident reports occurring since their last shift; and

6. Employees, nonemployees, and residents must be given time to debrief the incident with clinical staff.

History: Effective July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-10

75-03-17-23. Conditions.

1. The department may require immediate correction of a condition that threatens the life or safety of a resident.

2. The facility shall submit to the department a plan of corrective action within thirty days of receiving the licensure visit report. The facility shall be allowed sixty days after the plan of corrective action is submitted to and approved by the department to implement the plan and satisfy the conditions.

3. The department may conduct another onsite review before issuing the license after a facility has developed a plan of corrective action.

4. If the facility does not satisfy a condition or develop a plan of corrective action to satisfy the condition within the time frames allowed, the department may impose a ninety-nine-day suspension of the facility's license. At the end of the ninety-nine-day suspension, if the condition has been corrected, the department may issue a one-year provisional license to the facility. If the facility has not corrected the condition, the department may revoke the facility's license.

5. Upon written request by the facility and upon showing a need for an extension created by circumstances beyond the control of the facility and documentation that the facility has diligently pursued correction of the condition, the department may grant extensions of time to correct conditions.

6. A facility which has had its license revoked is prohibited from submitting a new application to the department for consideration for a license for any facility during the three hundred sixty-five days following a license revocation.

History: Effective July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-10

75-03-17-24. Variance.

Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance regarding a specific provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any resident cared for by the facility and no variance may be granted except at the discretion of the department. A facility shall submit a written request to the department justifying the variance. A refusal to grant a variance is not subject to appeal.

History: Effective July 1, 2022.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-10

CHAPTER 75-09.1-11

75-09.1-11-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "ASAM criteria" means the current edition of the criteria of the American society of addiction medicine.

2. "Certified ~~recovery~~peer support specialist" means a person ~~who has been certified by a recognized training program to provide recovery support services to individuals who have a substance use disorder~~meeting the requirements of certified peer support specialist I or certified peer support specialist II in compliance with chapter 75-03-43.

3. "Comprehensive biopsychosocial clinical assessment" means an assessment that integrates information regarding the biological, psychological, and social factors of an individual's life in determining the nature of the individual's substance use disorder and criteria for treatment.

4. "Department" means the North Dakota department of human services.

5. "Individual" means an individual who meets the identified eligibility criteria for services under the substance use disorder treatment voucher system.

6. "Outcomes measures" means the events or conditions that indicate the effectiveness of the substance use disorder treatment services.

7. "Process measures" means the steps and actions taken to implement the substance use disorder treatment services.

8. "Program" means ~~a human being~~an individual, partnership, association, corporation, or limited liability company that establishes, conducts, or maintains a substance abuse treatment program license in compliance with chapter 75-09.1-01 or similar license from a bordering state for the care of individuals with a substance use disorder. "Program" does not include a DUI seminar, which is governed by chapter 75-09.1-09 or a substance abuse treatment program operated by a state agency.

9. "Voucher" means funding issued by the department to a licensed substance abuse treatment program, excluding human service centers and the state hospital, for the purpose of providing eligible individuals substance use disorder treatment and recovery services.

History: Effective July 1, 2016; amended effective April 1, 2020; July 1, 2022.
General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06-42

75-09.1-11-02. Application for program participation in the substance use disorder treatment voucher system.

The department shall approve or deny a program's application within twenty working days of receipt of a complete application. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of the department's notification to the applicant that the application is incomplete. A complete application includes:

1. A signed application in the form and manner prescribed by the department;

2. A signed agreement pursuant to section 75-09.1-11-05; ~~and~~

3. Receipt of the program's policies:

a. Ensuring compliance with ~~chapters 75-09.1-01 and 75-09.1-11~~this chapter;

b. Ensuring that a screening is completed to determine an individual's need for further assessment of a substance use disorder;

c. Ensuring that a screening is completed to determine financial eligibility consistent with the individual eligibility criteria in subsection ~~6~~5 of section 75-09.1-11-07;

d. Defining specific ASAM level of care services provided through the substance use disorder treatment voucher system;

e. Ensuring that only appropriately licensed or certified staff are providing the specific level of care service that is being reimbursed through the voucher system;

f. Identifying services based on best practice, including individualized, trauma-informed, recovery-oriented, and person-centered programming for reimbursement through the substance use disorder voucher system;

g. Defining specific procedures to ensure reporting of process measures and outcomes measures consistent with department requirements;

h. Defining and developing specific procedures to ensure timely and accurate billing for services qualifying for reimbursement through the voucher system;

i. Defining procedures allowing the department access to records; and

j. Ensuring ~~participation in training consistent with department requirements; and~~

~~k. Ensuring that an individual completes and the program submits a voucher application in the form and manner prescribed by the department~~the reporting of any change in licensing status to the department; and

4. A completed assessment of need and receipt of approval from the department for an out-of-state program located within a bordering state.

History: Effective July 1, 2016; amended effective July 1, 2022.
General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06-42

75-09.1-11-03. Program denials and revocations.

1. A program's application to participate in the voucher system may be denied if:

a. The program is ~~not~~:

(1) Not currently licensed under chapter 75-09.1-01;

(2) Not currently licensed as an out-of-state program located within a bordering state; or

(3) Currently licensed as an out-of-state program located within a bordering state and has not received an assessment of need approval from the department;

b. The program is currently operating under a restricted license pursuant to subsection 2 of section 75-09.1-01-03 or a similar license restriction for an out-of-state program located within a bordering state; or

c. The program's policies submitted to the department in accordance with subsection 3 of section 75-09.1-11-02 fail to ensure compliance with ~~chapters 75-09.1-01 and 75-09.1-11~~this chapter.

2. A program's participation in the voucher system may be revoked for failure to:

   a. Comply with the terms and conditions of the signed agreement between the program and the department;

   b. ~~Comply with~~Maintain licensing ~~standards set forth~~status in accordance with chapter 75-09.1-01 or similar license for an out-of-state program located within a bordering state;

   c. Comply with or enforce the program's policies submitted as required by subsection 3 of section 75-09.1-11-02;

   d. Properly document and submit a request for a substance use disorder treatment voucher as required by section 75-09.1-11-08;

   e. Provide a request for services covered by section 75-09.1-11-06; ~~or~~

   f. Comply with section 75-09.1-11-13; or

   g. Maintain, as an out-of-state program, an assessment of need approval from the department.

3. Payment on a voucher may be denied if:

   a. A revocation of the program's participation in the voucher system has occurred prior to the date the service identified on the voucher was provided;

   b. The program fails to comply with the terms and conditions of the signed agreement between the program and the department;

   c. The out-of-state program fails to ~~comply with licensing standards set forth in chapter 75-09.1-01~~maintain an assessment of need approval from the department;

   d. The program fails to comply with or enforce the program's policies submitted as required by subsection 3 of section 75-09.1-11-02;

   e. The program does not have a valid substance abuse treatment program license on the date the service identified on the voucher was provided;

   f. The program fails to properly document and submit a request for substance use disorder treatment voucher in accordance with section 75-09.1-11-08;

   g. The program submits a voucher for a service that is not identified as a service provided under section 75-09.1-11-06;

   h. The program submits a voucher for a service that the program is not approved to provide; or

   i. The program fails to comply with section 75-09.1-11-13.

History: Effective July 1, 2016; amended effective July 1, 2022.
General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06-42

75-09.1-11-07. Individual eligibility for a substance use disorder treatment voucher.

1. The individual completes a voucher application in the form and manner prescribed by the department;

2. The individual resides in North Dakota;

3. The individual is fourteen years of age or older;

4. ~~A licensed professional operating within their scope of practice has determined the individual is in need of one or more of the services identified in section 75-09.1-11-06;~~

~~5.~~ The individual grants the department access to treatment and payment records consistent with the confidentiality requirements found under title 42, Code of Federal Regulations, part 2 and title 45, Code of Federal Regulations, part 164;

~~6.~~5. The individual does not have resources to cover any care for treatment and the:

a. Individual's third-party payment resources will not cover all costs for treatment;

b. Individual has a pending application for medical assistance which presents a barrier to timely access to treatment; or

c. Individual does not qualify for medical assistance and has no alternative third-party payment resources.

~~7.~~6. The individual has an annual income no greater than two hundred percent of federal poverty guidelines.

History: Effective July 1, 2016; amended effective April 1, 2020; July 1, 2022.
General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06-42

75-09.1-11-08. Approval of an individual's application and voucher.

1. A program shall submit the individual's voucher application and proper documentation to the department requesting a substance use disorder treatment voucher for screening, assessment, treatment, or recovery support services. A licensed professional operating within their scope of practice or a certified ~~recovery~~peer support specialist acting consistent with training and certification who is employed by a program approved to participate in the substance use disorder treatment voucher system can provide services under the voucher system. Documentation submitted by the program must be in the form and manner prescribed by the department and must be in compliance with established requirements for each voucher request.

2. An approved substance use disorder voucher must be activated for ninety days. If the service is not initiated within ninety days the voucher will no longer be valid and a new voucher will need to be requested. Vouchers will allow payment at the rate established by the department for the specific ASAM service indicated. A new voucher will have to be activated for each service identified under section 75-09.1-11-06.

3. Within five working days of receiving a request for a voucher, the department shall notify the program submitting the request and the individual completing the application of the application approval. The department shall notify the individual of the programs that provide the specific service covered by the voucher.

History: Effective July 1, 2016; amended effective July 1, 2022.
General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06-42

TITLE 106

BOARD OF ATHLETIC TRAINERS

JULY 2022

ARTICLE 106-01
GENERAL ADMINISTRATION

Chapter
106-01-01 Organization of the Board
106-01-02 Definitions [Repealed]

CHAPTER 106-01-01

106-01-01-01. Organization of the board of athletic trainers.

1. **History and function.** The 1983 legislative assembly passed legislation to license athletic trainers, codified as North Dakota Century Code chapter 43-39. That chapter requires the governor to appoint a board of athletic trainers. It is the responsibility of that board to license and regulate athletic trainers within the state of North Dakota.

2. **Purpose.** The purpose of the board's rules is to safeguard the public's health, safety, and welfare, by establishing minimum qualifications and creating exclusive titles corresponding to the level of qualifications for individuals who wish to offer athletic trainer services to the public. Further, in order to ensure the highest degree of professional conduct by those engaged in offering athletic trainer services to the public, it is the purpose of these rules to provide for and impose disciplinary sanctions, be they civil or criminal, against persons who do not meet or adhere to the procedures, qualifications, and standards set out in North Dakota Century Code chapter 43-39 or in this title.

3. **Board membership.** The board consists of five members appointed by the governor. One member is a licensed physician, three members are licensed athletic trainers, and one member is a representative of the general public and may not be licensed in any health care field. Members serve staggered terms of four years. No member may serve more than two successive four-year terms on the board.

4. **Officers.** The board each year elects one of its members as chairman and one of its members as secretary-treasurer.

5. **Inquiries.** Inquiries regarding board activities may be addressed to:

   North Dakota Board of Athletic Trainers
   P.O. Box 5545
   Fargo, ND 58105-5545

History: Effective April 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 43-39-02

CHAPTER 106-01-02
DEFINITIONS

[Repealed effective July 1, 2022.]

~~Section~~
~~106-01-02-01 Definitions~~

CHAPTER 106-02-01
INITIAL LICENSURE AND RENEWALS

Section
106-02-01-01 Initial Licensure
106-02-01-02 Reciprocity
106-02-01-03 License Renewal
106-02-01-04 Continuing Education [Repealed]
106-02-01-05 Fees

106-02-01-01. Initial licensure.

To apply for initial licensure, an applicant:

1. Must meet all requirements of certification established by the ~~national athletic trainers association~~ board of certification, incorporated;

2. Must submit an application along with the application fee and initial license fee provided in section 106-02-01-05; and

3. ~~Must have passed an examination approved by the board;~~

~~4.~~ Must meet with the approval of the board~~; and~~

~~5. Must not have committed an act that constitutes grounds for denial of a license~~.

History: Effective April 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 43-39-02
Law Implemented: NDCC 43-39-05, 43-39-06, 43-39-08

106-02-01-03. License renewal.

1. Licenses issued by the board expire on June thirtieth of each year. Renewal ~~forms~~notice will be sent no later than May fifteenth of each year. A renewal application will be considered timely if ~~it is postmarked~~received before July first and if the application is accompanied by the proper fee ~~and by proof of sufficient continuing education under section 106-02-01-04~~.

2. ~~A person who previously held a license issued by the board and whose license has expired may have the license restored immediately upon payment of the appropriate late renewal fee; provided, however, that not more than one year has elapsed since the date of expiration and provided that the person has not provided athletic training during the time in which the license was expired.~~

~~3.~~ This section does not relieve any person from criminal prosecution for practicing athletic training without a license as required by North Dakota Century Code chapter 43-39. Once a license has lapsed, the person who held the license may not practice athletic training until the license is renewed or until a new license is issued.

~~4.~~3. Any person who fails to renew a lapsed license within one year must reapply for a new license ~~and provide proof of sufficient continuing education under section 106-02-01-04 for the time period during which the license was expired~~.

~~5. A license issued by virtue of the grandfather provision in North Dakota Century Code section 43-39-07 which has expired will not be renewed. Any person seeking to renew such a license after it has expired must meet all licensing requirements in effect at the time of the application for renewal, including eligibility for certification.~~

History: Effective April 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 43-39-02
Law Implemented: NDCC 43-39-07, 43-39-09

106-02-01-04. Continuing education.

Repealed effective July 1, 2022.

~~1. To be eligible to apply for renewal of a license issued by the board, the licensee must provide sufficient proof of the accumulation of at least eighty continuing education units (CEUs) in the last three years.~~

~~2. As used in this section, "CEU" means one contact hour of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.~~

~~3. A licensee who is also a certified athletic trainer may provide a photocopy of the licensee's current national athletic trainers association membership card or current national athletic trainers association board of certification, incorporated, card as proof of the completion of CEUs.~~

~~4. A licensee who is not also a certified athletic trainer must obtain approval of experiences intended to be used as CEUs. Approval is provided through the secretary-treasurer of the board and must be requested during the same time frame in which the experience is to be used to satisfy the CEU requirements. Continuing education programs which have been approved by the national athletic trainers association board of certification, incorporated, or its successor need not receive prior approval for CEU credit for uncertified licensees.~~

~~**History:** Effective April 1, 2002.~~
~~**General Authority:** NDCC 43-39-02~~
~~**Law Implemented:** NDCC 43-39-02~~

106-02-01-05. Fees.

The board charges the following fees:

1. For applications for initial licensure, ~~fifty~~one hundred dollars.

2. ~~For an examination, three hundred seventy-five dollars.~~

~~3.~~ For ~~an initial annual license or~~ a timely renewal of a current annual license, fifty dollars.

~~4.~~3. For renewal of an annual license which has expired within the last year, ~~fifty~~one hundred dollars.

~~5. For a replacement certificate of licensure or renewal card, ten dollars.~~

History: Effective April 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 43-39-02
Law Implemented: NDCC 43-39-02, 43-39-06

CHAPTER 106-03-01

106-03-01-01. Posting Licenses.

~~1.~~ A person who is licensed by the board shall display the license at the location of the licensee's principal place of employment. ~~A current renewal card must be displayed with the certificate or be in the possession of the licensee while practicing athletic training.~~

~~2. If the original license or current renewal card is lost, misplaced, stolen, or destroyed, the licensee shall immediately report that fact to the board in writing. Upon receipt of a statement from the licensee satisfactorily explaining the circumstances making replacement necessary, and upon payment of the proper fee, the board may issue a replacement license or card.~~

History: Effective April 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 43-39-02
Law Implemented: NDCC 43-39-02

106-03-01-02. Use of titles and abbreviated titles.

~~1.~~ A person licensed by the board may use~~, so long as the use is appropriate and accurate,~~ the ~~titles "athletic trainer", "certified athletic trainer",~~title "licensed athletic trainer"~~, or "licensed athletic trainer, certified",~~ and the ~~abbreviations "LATC", "ATC", "AT", or "CAT"~~abbreviation "LAT".

~~2. A student athletic trainer may not use the title "student athletic trainer" or the abbreviation "SAT" unless the student is enrolled in an approved athletic trainer program.~~

History: Effective April 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 43-39-02
Law Implemented: NDCC 43-39-02, 43-39-04

106-03-01-03. Complaints.

All complaints will be investigated and evaluated by the board. Complaints must be in writing and sent to ~~the president of~~ the board. A complaint must state, at a minimum, the name or names of the ~~licensees~~person against whom the complaint is made and a brief explanation of the complaint. The complaint must be dated and signed by the person making the complaint. The board may also investigate a complaint on its own motion. Following an investigation, the board may file ~~charges~~a complaint against a licensee under North Dakota Century Code chapter 28-32.

History: Effective April 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 43-39-02
Law Implemented: NDCC 43-39-02

106-03-01-05. Disciplinary actions.

The disciplinary actions which may be taken by the board include:

1. Revocation of a license;
2. Suspension of a license, for any period of time;
3. Placing restrictions on the practice of a licensee;
4. Issuing a letter of reprimand to a licensee;
5. Placing a licensee on probationary status, which may include any of the following conditions:
   a. Regular reports to the board upon matters that are the basis of probation;

b. Additional ~~CEUs~~continuing education units until a satisfactory degree of skill has been attained in those areas that are the basis of probation; or

c. Such other reasonable requirements or restrictions as are proper.

6. Refusing to renew a license;

7. Revoking probation that has been granted and imposing any other disciplinary action in this subsection when the requirements of probation have not been fulfilled or have been violated; or

8. Denying an application for a license.

History: Effective April 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 43-39-02
Law Implemented: NDCC 43-39-02, 43-39-10

106-03-01-06. Notice of name or address change.

Applications for an initial license or renewal of a license must contain the current name and address of the applicant. If, for any reason, a change of name or address occurs, the applicant or licensee shall ~~immediately~~ notify the board~~. The board shall issue a replacement license upon surrender of the original or renewal license and upon payment of the proper fee~~ within thirty days of such change.

History: Effective April 1, 2002; amended effective July 1, 2022.
General Authority: NDCC 43-39-02
Law Implemented: NDCC 43-39-02, 43-39-09