

NORTH DAKOTA ADMINISTRATIVE CODE

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

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TITLE 10
ATTORNEY GENERAL

OCTOBER 2022

CHAPTER 10-11-01

10-11-01-01. Definitions.

As used in this article:

1. ~~"Board" means six licensed detection of deception examiners appointed by the attorney general to serve as an advisory board.~~
- ~~2.~~ "Detection of deception examination" means the use of a polygraph on an individual for the purpose of deception detection.
- ~~3.~~2. "Intern" means a person being trained in the use of a polygraph and the interpretation of the results obtained for the purpose of deception detection under the personal supervision and control of a licensed examiner.
- ~~4.~~ "License examination" means ~~examination by the board of applicants for licensure as a detection deception examiner.~~
- ~~5.~~3. "Polygraph" means an instrument or device which simultaneously combines continuous permanent recording with a means of recording the examinee's cardiovascular patterns, respiratory patterns, and ~~galvanic skin~~electrodermal response.

History: Effective July 1, 1984; amended effective October 1, 2022.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-13

CHAPTER 10-11-02
APPLICATION FOR LICENSE PROCESS AND PROCEDURE FOR ISSUANCE

Section

10-11-02-01	Application
10-11-02-02	Application Fee
10-11-02-03	Qualifications for License <u>[Repealed]</u>
10-11-02-04	Reciprocity
10-11-02-05	License Examinations <u>[Repealed]</u>

10-11-02-01. Application.

1. Upon receipt of a request for application, the attorney general's licensing division will prepare and furnish the applicants with a copy of North Dakota Century Code chapter 43-31 and ~~will send a copy of the procedures and rules for licensing, pursuant to North Dakota Century Code sections 14-31-07 and 14-31-07.1.~~
2. When an application for detection of deception examiners license is received by the attorney general's licensing division, all requested information has been furnished, and the examination fee has been received, the application will be forwarded to ~~the chairman of the board~~ a representative from the bureau of criminal investigation.
3. After a background investigation has been conducted, by the ~~board~~representative, the ~~chairman~~representative will return the application to the licensing division with advice to the attorney general regarding the action to be taken on the application, i.e., issuance on reciprocity, ~~setting an examination date~~approval, or denial.
4. Upon receipt of the application, the ~~attorney general's~~ licensing division will notify the attorney general of the representative's findings, and the attorney general will take final action on the application, i.e., issuance on reciprocity, approval, or denial. Then the licensing division will notify the applicant in regard to the appropriate action taken by the attorney general. ~~If testing is required, the date, time, and place will be scheduled in consultation with the board chairman.~~

History: Effective July 1, 1984; amended effective October 1, 2022.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-04

10-11-02-02. Application fee.

Applicants shall pay a ~~fifty~~thirty-five dollar application fee ~~for examination~~. The fee is nonrefundable.

History: Effective July 1, 1984; amended effective October 1, 2022.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-14

10-11-02-03. Qualifications for license.

Repealed effective October 1, 2022.

~~— No detection of deception examiner license will be issued to any person, nor will any such previously issued license be renewed or retained unless the applicant shall file a sworn statement showing the following qualifications:~~

- ~~1. The applicant must not have been convicted within five years prior to the application for the license of any violation of any law of the United States or this state or of any local ordinance which law or ordinance relates to:
 - ~~a. Felony offenses.~~
 - ~~b. Offenses involving moral turpitude.~~~~
- ~~2. Applicant must have successfully completed a polygraph examiners course from a school that is accredited by the American polygraph association.~~

History: Effective July 1, 1984.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-07

10-11-02-04. Reciprocity.

Applicants who are licensed examiners under the laws of another state of the United States may be issued a license ~~without examination~~ by the attorney general if ~~the~~:

1. The requirements pursuant to North Dakota Century Code section ~~43-31-16~~43-31-07 are met.
 2. The applicant ~~shall provide~~provides to the attorney general a copy of such license, which must be active and in good standing.
 3. The applicant ~~shall also provide to~~provides the attorney general a copy of that state's licensing requirements at the time that said applicant was licensed. ~~That law will then be compared to the North Dakota law which sets forth the licensing requirements by the board with the board reporting to the attorney general.~~
 4. The attorney general determines the laws of the other state, at the time of the applicant's original licensure, are substantially equivalent to North Dakota Century Code chapter 43-31 and this chapter.
 5. The applicant has paid the required application fees.
 6. The required background check is successfully completed.
- The representative shall report its recommendation to either approve or deny the request for reciprocity to the attorney general.

History: Effective July 1, 1984; amended effective October 1, 2022.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-16

10-11-02-05. License examinations.

Repealed effective October 1, 2022.

- ~~1. Any person who is not exempted from a license examination under North Dakota Century Code sections 43-31-15 and 43-31-26 will be required to take a state license examination administered by the board.~~
- ~~2. License examinations will be conducted in May and October of each calendar year.~~
- ~~3. This examination will be administered by not less than three members of the board.~~
- ~~4. The examination will include written, oral, and demonstration skills in the polygraph field as follows:~~

~~a. Phase I: Written examination, four parts.~~

~~(1) Physiological.~~

~~(2) Psychological.~~

~~(3) Mechanical.~~

~~(4) Technical.~~

~~A minimum score of seventy percent will be needed on each part for a license. Failure of any part will require retesting of that part upon reapplication after six months.~~

~~b. Phase II: Instrumentation, five parts.~~

~~(1) Familiarity with instrument.~~

~~(2) Familiarity with components.~~

~~(3) Familiarity with mechanical operation.~~

~~(4) Familiarity with attachments.~~

~~(5) Familiarity in attaching instrument to the subject and activation.~~

~~This phase will be graded on a scale of one to five. A three is acceptable, below three is an unacceptable score and may limit licensure.~~

~~c. Phase III: Question formulation, five parts.~~

~~(1) Applicability.~~

~~(2) Wording.~~

~~(3) Sequence.~~

~~(4) Placement of controls.~~

~~(5) Placement of irrelevant questions.~~

~~This phase will be graded on a scale of one to five. A three is acceptable, below three is an unacceptable score and may limit licensure.~~

~~d. Phase IV: Chart interpretation (must supply twenty-five recent and complete examination charts for analysis and questions, reports must also be furnished), five parts.~~

~~(1) Knowledge of interviewing.~~

~~(2) Observations of subject.~~

~~(3) Knowledge of reactions on charts.~~

~~(4) Interpretation of chart events.~~

~~(5) Knowledge of chart marking.~~

~~This phase will be graded on a scale of one to five. A three is acceptable, below three is an unacceptable score and may limit licensure.~~

~~e. Phase V: Oral interview, five parts.~~

- ~~————— (1) Applicant's history and schooling.~~
- ~~————— (2) Applicant's work and professional experience.~~
- ~~————— (3) Applicant's interviewing techniques.~~
- ~~————— (4) Applicant's polygraph theory.~~
- ~~————— (5) Applicant's personal feelings regarding detection of deception.~~

~~This phase is the final part of examination. It will be graded on a scale of one to three. The total examination process will then be reviewed. A score of three is required for licensure. A score of two is required for the person to receive a qualified licensure which would require supplemental information or action. A score of two will be assigned to interns until twenty-five charts are reviewed by a board member. A score of one renders the applicant unacceptable for licensure. A score of one will be explained in writing by the board.~~

- ~~———— 5. In grading the examination, a scoring sheet will be filled out and signed by each examining board member. The score will be averaged for a final score.~~
- ~~———— 6. Grading of the written examination will be based on one hundred percent score. Each true and false question has a three percent value. Each multiple choice question has a four percent value. Each completion and essay question has a six percent value. There are ten true and false questions, ten multiple choice questions, and five completion/essay questions per part of the written examination. Partial credit will be given for multiple choice answers that are partially correct.~~

History: Effective July 1, 1984.
General Authority: NDCC 43-31-13
Law Implemented: NDCC 43-31-07

CHAPTER 10-11-03

10-11-03-01. Detection of deception examination procedures.

1. No person may be present during the detection of deception examination without the express consent of the examiner.
2. An examiner shall terminate a detection of deception examination in progress immediately upon request of the examinee.
3. ~~A polygraph test may not continue for more than four minutes if a high pressure cuff is being utilized on the arm, no more than five minutes if a high pressure cuff is being utilized on the wrist.~~
- ~~4.~~ No detection of deception examination may be conducted prior to a complete understanding between the examiner, the requesting agency, and examinee as to the specific reason for the test, including all records, documents, and investigative reports necessary to conduct the examination.
- ~~5.4.~~ An examiner when administering a detection of deception examination, may not attempt to determine truth or deception on matters or issues not previously discussed with the examinee at the preexamination interview or not reasonably related to the matters or issues previously discussed with the examinee.
- ~~6.5.~~ The detection of deception examination of a subject and that subject's fitness for the examination is at the discretion of the examiner.

History: Effective July 1, 1984; amended effective October 1, 2022.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-13

CHAPTER 10-11-04

10-11-04-01. Internship license.

1. Every person who applies for an internship license shall, at the time of application, provide the attorney general with the name, address, qualifications, and state license number of the examiner who will be acting as the supervising examiner. The applicant also must pay the required application fee.
2. In the event an applicant does not have access to an immediate supervisor, the attorney general may appoint a supervising examiner to supervise the trainee.
3. The attorney general shall approve the applicant's choice of supervising examiner.
4. The minimum requirements to be fulfilled by a supervising examiner are as follows:
 - a. Inspection of ~~twenty-five~~ten examination records selected by the supervising examiner; and
 - b. The ~~direct~~ observation by the supervising examiner of at least one complete examination including preparation, pretest interview, testing, post-test interrogation, where applicable, and report writing which is deemed satisfactory by the supervising examiner.
 - c. At the completion of the internship, the supervising examiner shall advise the representative whether the applicant has successfully completed the internship. The representative then shall notify the attorney general regarding the supervising examiner's recommended action to be taken on the application for license, i.e., issuance on reciprocity, approval, or denial.
5. An internship license is valid for the term of twelve months from the date of issue. Such license may be extended or renewed for any term not to exceed six months upon good cause shown to the attorney general.
6. A trainee is not entitled to hold an internship license after the expiration of the original twelve-month period and six-month extension, if such extension is granted by the attorney general, until twelve months after the date of expiration of the last internship license held by said trainee.

History: Effective July 1, 1984; amended effective October 1, 2022.

General Authority: NDCC 43-31-13

Law Implemented: NDCC 43-31-07.1

TITLE 20
STATE BOARD OF DENTAL EXAMINERS

OCTOBER 2022

CHAPTER 20-03-01

20-03-01-01. Duties.

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.
 - 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:
 - 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 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. Acid etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.
 - b. Take face bow transfers.
 - c. Place and remove matrix bands and wedges.
 - d. Adjust permanent crowns outside of the mouth.
 - e. Orally transmit a prescription that has been authorized by the supervising dentist.
 - 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 indirect supervision of a dentist:
 - a. Dry root canal with paper points.
 - b. Place and remove rubber dams.
 - c. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
 - d. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments or a slow-speed handpiece.
 - e. Place and remove periodontal dressings.
 - f. Monitor a patient who has been inducted by a dentist into nitrous oxide inhalation analgesia.
 - 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 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, and topical fluoride, fluoride varnish, silver diamine fluoride, and desensitizing agents but not including caustic 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.
- k. Provide an oral assessment for interpretation by the dentist.
- l. Repack dry socket medication and packing for palliative treatment.
- 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.
- n. Polish the coronal surfaces of the teeth with a rubber cup or brush.
- 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.
- ~~s-t.~~ Perform nonsurgical clinical and laboratory diagnosis tests, including pulp testing, for interpretation by the dentist.
- ~~t-u.~~ Place and remove arch wires or appliances that have been activated by a dentist.
- ~~u-v.~~ Provide screenings as defined by subsection 44 of section 20-01-02-01.
- ~~v-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; October 1, 2022.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

CHAPTER 20-04-01

20-04-01-01. Duties.

1. A dental hygienist may perform the following services under the direct supervision of a dentist:
 - 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.).
 - c. Place and remove matrix bands or wedges.
 - d. Adjust permanent crowns outside of the mouth.
 - e. Acid-etch enamel surfaces before direct bonding of orthodontic brackets or composite restorations.
 - f. Take face bow transfers.
 - g. Administer emergency medications to a patient in order to assist the dentist.
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.
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 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.

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

~~ee~~.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; October 1, 2022.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.2, 43-20-03, 43-20-11, 43-20-12

TITLE 33
STATE DEPARTMENT OF HEALTH

OCTOBER 2022

CHAPTER 33-44-01
MEDICAL MARIJUANA

Section

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33-44-01-03.2. Application fees for registry identification cards.

The department shall collect nonrefundable original application fees and nonrefundable renewal application fees for registry identification cards as follows:

1. For qualifying patient applications, twenty-five dollars.
2. For compassion center agent application fees, two hundred dollars.

History: Effective October 1, 2022.

General Authority: NDCC 19-24.1-03, 19-24.1-18

Law Implemented: NDCC 19-24.1-03, 19-24.1-18

33-44-01-03.3. Replacement fees for registry identification cards.

The department shall collect fees for issuing new registry identification cards when an original application or renewal application is not submitted as follows:

1. For a lost qualifying patient registry identification card or compassion center registry identification card, twenty-five dollars.
2. For a change in name of a registered qualifying patient or registered compassion center agent, five dollars.

History: Effective October 1, 2022.

General Authority: NDCC 19-24.1-10, 19-24.1-18

33-44-01-06. Compassion center application process.

1. The department shall announce the open application period for the submission of compassion center applications. The announcement may be made using the department's website, electronic mail, press release, or any other means determined by the department. The announcement must include:
 - a. Instructions;
 - b. Forms;
 - c. Deadline for submission;
 - d. Criteria and score sheet to be used to review applications;
 - e. Number, and category, of compassion centers eligible for registration; and
 - f. Department contact information.
2. The department shall announce a change to the application requirements in the same manner used to announce the open application period.
3. The department may use a separate open application period for each category of compassion center.
4. Each proposed compassion center must be a separate legal entity and must submit a complete application.
5. The department shall establish a panel to evaluate all complete compassion center applications received before the deadline. The panel must be comprised of at least ~~five~~^{three}, but no more than ~~twelve~~^{five}, members. Panel members shall execute a conflict of interest form developed by the department. An individual with a conflict of interest, as determined by the department, may not participate as a panel member.
6. The panel shall evaluate all complete compassion center applications using an impartial and numerical scoring system. The panel must include the criteria in subsection 2 of North Dakota Century Code section 19-24.1-14 when reviewing compassion center applications. The department may include additional criteria in the review as long as the criteria is included in the open application period announcement.
7. Each panel member shall review and score every complete application.
8. The cumulative total of all the scores assigned to an application by each panel member is the final score. The final score will determine which applicants are eligible for registration.
9. The department shall notify, in writing, the highest scoring applicants for each category of compassion center of their eligibility for registration. Upon approval of the criteria in subsection 1 of North Dakota Century Code section 19-24.1-15 the department shall issue a compassion center registration certificate to the eligible compassion centers in each category. A separate legal entity may possess only one compassion center registration certificate. The department shall notify, in writing, compassion center applicants who are not selected for registration.
10. The department shall determine the amount and acceptable evidence of the financial assurance or security bond required in subsection 1 of North Dakota Century Code section

19-24.1-15. The amount may not exceed one hundred thousand dollars for a dispensary and may not exceed one million dollars for a manufacturing facility.

11. If a compassion center applicant eligible for registration does not meet the criteria in subsection 1 of North Dakota Century Code section 19-24.1-15, the department may select the next highest scoring compassion center applicant in the category for registration, or establish a new open application period.

History: Effective April 1, 2018; amended effective October 1, 2022.

General Authority: NDCC 19-24.1-12

Law Implemented: NDCC 19-24.1-12

33-44-01-07.1. Additional categories of registered medical marijuana establishments.

The department may use the compassion center application and selection process in accordance with North Dakota Century Code chapter 19-24.1 and section 33-44-01-06 to register a manufacturing facility as a specific category of a medical marijuana establishment. A manufacturing facility selected and registered as a specific category of medical marijuana establishment shall comply with applicable compassion center requirements of North Dakota Century Code chapter 19-24.1 and these rules. The category of medical marijuana establishments are as follows:

1. A production only authorized manufacturing facility is a specific category of manufacturing facility. The activities of a production only authorized manufacturing facility are limited to producing and to related activities, including acquiring, possessing, storing, transferring, and transporting marijuana and the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form for the sole purpose of selling dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form to a dispensary.
2. A medical marijuana product processor only authorized manufacturing facility is a specific category of manufacturing facility. The activities of a medical marijuana product processor only authorized manufacturing facility are limited to producing and processing and to related activities, including acquiring, possessing, storing, transferring, and transporting marijuana and medical marijuana products for the sole purpose of selling medical marijuana products to a dispensary.

History: Effective October 1, 2022.

General Authority: NDCC 19-24.1-36

Law Implemented: NDCC 19-24.1-36

33-44-01-07.2. Compassion center application fees.

The department shall collect nonrefundable application fees for compassion centers as follows:

1. For a manufacturing facility, five thousand dollars.
2. For a dispensary, five thousand dollars.

History: Effective October 1, 2022.

General Authority: NDCC 19-24.1-14

Law Implemented: NDCC 19-24.1-14

33-44-01-07.3. Compassion center certification fees.

The department shall collect certification fees for compassion center registrations as follows:

1. For a manufacturing facility, one hundred ten thousand dollars.

2. For a dispensary located in a city with a population of more than ten thousand, ninety thousand dollars.
3. For a dispensary located in a city with a population of ten thousand or less, thirty thousand dollars.
4. For a production only authorized manufacturing facility, seventy thousand dollars.
5. For a medical marijuana product processor only authorized manufacturing facility, thirty thousand dollars.

History: Effective October 1, 2022.

General Authority: NDCC 19-24.1-15

Law Implemented: NDCC 19-24.1-15

TITLE 33.1
DEPARTMENT OF ENVIRONMENTAL QUALITY

OCTOBER 2022

ARTICLE 33.1-12
[RESERVED] PETROLEUM TANK RELEASE COMPENSATION FUND

Chapter
33.1-12-01 General Fund Provisions

CHAPTER 33.1-12-01
GENERAL FUND PROVISIONS

Section
33.1-12-01-01 Definitions
33.1-12-01-02 Tank Registration
33.1-12-01-03 Registration Fee
33.1-12-01-04 Notification of Release Procedures
33.1-12-01-05 Procedures for Investigation of Claims
33.1-12-01-06 Reimbursement
33.1-12-01-07 Reimbursement Disputes
33.1-12-01-08 Third-Party Damages

33.1-12-01-01. Definitions.

For the purposes of this chapter, the following definitions apply in addition to the definitions set forth in North Dakota Century Code chapter 23.1-12:

1. "Annual base registration fee" means the portion of the total annual registration fee that is charged equally for all tanks based on the amount in the fund.
2. "Classification system matrix fee" means the portion of the total annual registration fee that is charged based on the department's matrix system with respect to the degree of hazard associated with the tank classification risk.
3. "Farm tank" means a tank located on a tract of land devoted to the production of crops or for raising animals and associated residences and improvements.
4. "Leak detection" means a detection system that performs line leak testing for underground piping connected to aboveground storage tanks.
5. "Properly registered tanks" means tanks having the current registration fee paid with an up-to-date online electronic tank certification or a signed and dated tank data sheet on file with the department.

6. "PTRCF program" means petroleum tank release compensation fund program.
7. "Residential tank" means a tank located on property used primarily for residential purposes.
8. "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials.
9. "Testing" means the preliminary and ongoing environmental evaluation procedures performed and used to obtain information related to the extent and cleanup of the petroleum contamination caused by the release.
10. "Tank location" means a location where a tank is located, which may include other tanks.
11. "Total annual registration fee" means the annual base registration fee plus additional classification system matrix fees.

History: Effective October 1, 2022.

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-05

33.1-12-01-02. Tank registration.

Tank owners and operators shall register their tanks with the fund on an annual basis, and the registration year runs August first through July thirty-first. The department shall send, electronically or by mail, all known tank owners and operators a registration letter and billing notice. The letter must explain the function of the fund and the requirement to have all tanks owned or operated registered and all fees paid before a petroleum release in order to be eligible for reimbursement.

History: Effective October 1, 2022.

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-17

33.1-12-01-03. Registration fee.

1. For each aboveground or underground tank owned or operated by the tank owner or operator, the owner or operator shall pay a total annual registration fee. The total annual registration fee is due and payable on August first. The total annual registration fee consists of both the annual base registration fee and the classification system matrix fee, as described in subsection 5.
2. No reregistration or fee modification will be made during any registration year when an owner or operator removes a tank or replaces an underground tank with an aboveground tank within a registration year. The renewal billing will reflect the tank status change.
3. For each aboveground or underground tank, the annual base registration fee is one hundred forty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual base registration fee of one hundred forty dollars will increase to one hundred fifty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is seven million dollars or more and the annual base registration fee has been increased to one hundred fifty dollars, the annual base registration fee will be reduced to one hundred forty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual base registration fee will be reduced to one hundred dollars. The annual base registration fee will continue at one hundred dollars until the fund balance does not exceed nine million dollars. If, after the fiscal year has been closed and all expenses

relating to the fiscal year have been accounted for, the fund balance is less than nine million dollars, the annual base registration fee will return to one hundred forty dollars.

4. For each aboveground or underground tank, the classification system matrix fee must be calculated based on the degree of hazard associated with the tank classification risk using the multiplier factors in Table 1 or Table 2.

5. The total annual fee is computed by the following equations:

X = (Y)(a) - applies only to underground storage tanks

X = (Y)(b) - applies only to aboveground storage tanks

Where:

X = total annual fee applied to each tank

Y = annual base registration fee for each tank

a = rate multiplier assigned to the registered site with the type of underground storage tank(s) on location from Table 1

b = rate multiplier assigned to the registered site with the type of aboveground storage tank(s) on location from Table 2

Table 1

These rate multipliers apply to underground storage tank(s) only:

<u>Underground Storage Tank Type at Registered Tank Location</u>	<u>Rate Multiplier</u>
<u>1 = Double wall piping and tank(s) - Underground 2009 and new installation</u>	<u>1.00</u>
<u>2 = Double wall piping and tank(s) - Underground 2008 and older installation</u>	<u>1.25</u>
<u>3 = Single wall underground tank(s) with double wall piping</u>	<u>1.50</u>
<u>4 = Double wall underground tank(s) with single wall piping</u>	<u>1.75</u>
<u>5 = Single wall underground tank(s) with single wall piping</u>	<u>2.00</u>

Table 2

These rate multipliers apply to aboveground storage tank(s) only:

<u>Aboveground Storage Tank Type at Registered Tank Location</u>	<u>Rate Multiplier</u>
<u>1 = Aboveground tank(s) feeding aboveground piping</u>	<u>1.00</u>
<u>2 = Aboveground tank(s) feeding underground piping with *leak detection</u>	<u>1.50</u>
<u>3 = Aboveground tank(s) feeding underground piping without *leak detection</u>	<u>2.00</u>

*Note: See definition in subsection 4 in section 33.1-12-01-01.

6. Additional fees may apply, as specified in North Dakota Century Code section 23.1-12-17.

History: Effective October 1, 2022.

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-17

33.1-12-01-04. Notification of release procedures.

Upon receiving notice of a release, the PTRCF program must:

1. Verify the tank and all other tanks owned or operated by the operator are registered with the fund.
2. Record the release information in the registration file for the location.
3. Verify the department has received proper notice of the release.
4. Send a denial letter to the owner or operator if the owner or operator has not registered all the tanks owned and operated by the owner or operator at the location of the release. A copy must be sent to the department's division assigned to the cleanup.
5. Obtain verification from the owner or operator the affected tank, equipment, components, material, and dispenser are in compliance with state and federal regulations for the petroleum product stored and dispensed. If the previously mentioned tank, equipment, components, material, and dispenser are noncompliant with state and federal regulations, the PTRCF program must send a denial letter to the owner or operator. A copy of the denial letter must be sent to the department's division assigned to the cleanup.
6. Send the registered owner or operator of the site an application packet and a letter outlining the procedure for filing a claim for reimbursement of corrective action if all tanks are registered and the affected tank, piping, fitting, and dispenser are in compliance with state and federal regulations for the petroleum product stored and dispensed before the release.

History: Effective October 1, 2022.

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-10, 23.1-12-19

33.1-12-01-05. Procedures for investigation of claims.

In each release investigation, the PTRCF program shall:

1. Investigate the location and cause of the release.
2. Interview persons with knowledge of the release.
3. Examine records and documentation concerning the release, including documentation of the corrective action taken and expenses incurred.
4. Prepare a written report determining the validity of the claim and the eligible cleanup expenses.
5. Complete other claims-related tasks as required.

History: Effective October 1, 2022.

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-18, 23.1-12-20

33.1-12-01-06. Reimbursement.

1. The department shall reimburse reasonable and necessary environmental consultant, contractor, and excavation expenses in consultation with the department's division assigned to the cleanup.

2. No payments for reimbursement may be made from the fund unless a completed claim application form has been received and approved by the PTRCF program.

3. Eligible expenses for corrective action include the following:

a. Labor.

b. Testing.

c. Use of machinery.

d. Materials and supplies.

e. Professional services.

f. Remediation, monitoring, or cleanup expenses incurred with the oversight and direction of the department's division assigned to the cleanup.

g. Any other expenses the department and the board deem to be reasonable and necessary to remedy cleanup of the release.

h. Consultant fees if authorized by the department's division assigned to the cleanup.

4. The following are not eligible expenses:

a. The cost of replacement, repair, and maintenance of affected tanks, associated piping, or system.

b. Pumping out of any product, including water, from any tanks which need to be removed.

c. The cost of upgrading existing affected tanks, associated piping, or system.

d. The loss of income, profits, or petroleum product.

e. Decreases in property value.

f. Attorney's fees.

g. Costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this chapter.

h. The costs of making improvements to the facility beyond those required for corrective action, including replacing concrete, asphalt, equipment, or buildings.

i. Any cleanup costs resulting from negligence or misconduct on the part of the owner or operator.

j. Consultant marked-up costs.

k. Costs in excess of those considered reasonable by the fund.

l. Fines or penalties imposed by order of federal, state, or local government.

m. Finance charges, interest charges, or late payment charges.

5. To determine what expenses are reasonable and necessary, the owner or operator shall bid the excavation and consultant work. The owner or operator is required to obtain a minimum of three bids. The bid that meets the cost effectiveness, technical, and environmental requirements of the department will be deemed by the PTRCF program to be the reasonable

cost for that project. The bid must be submitted according to the fund's excavation and consultant worksheets. Additional work over and above the original bid will be reimbursed according to unit costs on the original bid.

6. The PTRCF program may provide partial payments before the final determination of the amount of the loss, if it is determined the cleanup is proceeding according to the department-approved workplan of the department's division assigned to the site assessment. The payment may be made to the owner, operator, or that person's assigned representative if the appropriate assignment form is submitted to the PTRCF program with appropriate documentation verifying the work has been completed by the assignee.
7. All claims for payment are subject to the availability of funds in the petroleum tank release compensation fund and must be submitted no later than one year after the work has been completed to be eligible.
8. Before payment for any loss, the owner, operator, or landowner shall subrogate to the PTRCF program all rights, claims, and interest which the owner, operator, or landowner has or may have against any party, person, property, corporation, or other entity liable for the subject loss, and shall authorize the fund to sue, compromise, or settle in the name of the owner, operator, or landowner or otherwise, all such claims. The subrogation agreement required by this section must be prescribed and produced by the PTRCF program.
9. Reimbursement will be considered when the owner, operator, or landowner has submitted complete excavation or consultant worksheets along with legible copies of all invoices and a description of the work performed.
10. The owner, operator, or landowner shall submit, before any payment, evidence the amounts shown on the invoices for which the payment is requested were either paid in full by the owner, operator, or landowner or, if the owner, operator, or landowner has assigned the right to receive payment from the fund, that a contractor hired has expended time and materials for which payment must be made. This must include documentation the work has been completed by the assignee.
11. Before payment, the department must be satisfied the corrective action taken has met all state and federal regulations and the corrective action has satisfied public health, welfare, and environmental concerns.

History: Effective October 1, 2022.

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-18, 23.1-12-20

33.1-12-01-07. Reimbursement disputes.

If a reimbursement is denied or payment is reduced to a tank owner or operator, the tank owner or operator may request a review by the board by filing a written request and supporting documentation with both the department and the board within thirty days of receiving a "sworn statement in proof of loss" regarding a denial of reimbursement or a payment reduction notification.

History: Effective October 1, 2022.

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-18

33.1-12-01-08. Third-party damages.

No reimbursement may be made for damage to employees as defined by the title 65 governing workforce safety and insurance or agents of the owner or operator.

History: Effective October 1, 2022.

General Authority: NDCC 23.1-12-05, 28-32-02

Law Implemented: NDCC 23.1-12-26, 23.1-12-27

TITLE 50
NORTH DAKOTA BOARD OF MEDICINE

OCTOBER 2022

ARTICLE 50-01
GENERAL ADMINISTRATION

Chapter	
50-01-01	Organization of Board
50-01-02	Rulemaking <u>[Repealed]</u>

CHAPTER 50-01-01

50-01-01-01. Organization of North Dakota board of medicine.

1. **History and function.** The 1890 legislative assembly passed a medical practice act, codified as North Dakota Century Code chapter 43-17. This chapter requires the governor to appoint a state board of medicine. ~~The board, generally speaking, stands between the medical school graduate and the public.~~ It is the responsibility of the board to protect the health, safety, and welfare of the public ~~against poorly trained physicians~~by licensing qualified and competent individuals.
2. **Executive director.** The executive director of the board is appointed by the board and is responsible for administration of the board's activities.
3. **Inquiries.** Inquiries regarding the board may be addressed to the executive director:

Executive Director
North Dakota Board of Medicine
4204 Boulder Ridge Road, Suite 260
Bismarck, 58503-6392

History: Amended effective December 1, 1980; September 1, 1983; July 1, 1988; November 1, 1993; December 1, 1993; August 1, 2003; January 1, 2009; October 1, 2022.

General Authority: NDCC ~~28-32-02.143-17-07.1~~

Law Implemented: NDCC ~~28-32-02.143-17-03~~

**CHAPTER 50-01-02
RULEMAKING**

[Repealed effective October 1, 2022.]

Section

~~50-01-02-01 — Public Participation~~

~~50-01-02-02 — Substantive Rules~~

ARTICLE 50-02 PHYSICIAN LICENSURE

Chapter	
50-02-01	Provisional Temporary License
50-02-02	Special License
50-02-02.1	Administrative License
50-02-03	Examinations
50-02-04	National Board of Examiners for Osteopathic Physicians and Surgeons, Inc. [Repealed]
50-02-05	Graduates of Foreign Medical Schools
50-02-06	American Students in Foreign Medical Schools <u>[Repealed]</u>
50-02-07	License Fees [Repealed]
50-02-07.1	<u>Physician</u> License Fees
50-02-08	Credentials Committee [Repealed]
50-02-09	Informal Disciplinary Action [Repealed]
50-02-10	Patient Records <u>[Repealed]</u>
50-02-11	Examinations
50-02-12	Notice of Denial or Limitation of Licensure
50-02-13	Resident Licensure
50-02-14	Renewal of Licenses
50-02-15	Telemedicine

CHAPTER 50-02-01

50-02-01-01. License for interval between board meetings.

An officer of the board and the board's executive director or deputy executive director may issue a locum tenens license or a provisional temporary license to an applicant who is seeking a permanent North Dakota medical license if in their judgment the applicant meets all of the requirements for licensure. A provisional temporary license is valid from the date of issue until the time of the next regularly scheduled meeting of the board.

History: Amended effective December 1, 2000; August 1, 2003; January 1, 2009; October 1, 2022.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-21

50-02-01-02. License for locum tenens.

A ~~provisional temporary~~ license for "locum tenens" may be issued for a specific practice location or health care facility and for a period not to exceed three months.

History: Amended effective October 1, 2022.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-21

CHAPTER 50-02-05 GRADUATES OF FOREIGN MEDICAL SCHOOLS

Section

50-02-05-01	Standard Certificate From Educational Commission Required
50-02-05-02	Requirements for Licensure by Reciprocity or Endorsement [Repealed]
50-02-05-03	American Specialty Board Certificate Requirements [Repealed]
50-02-05-04	Canadian Medical School Graduate Licensure by Endorsement [Repealed]
50-02-05-05	Licentiates of Medical Council of Canada Accepted by Endorsement [Repealed]
50-02-05-06	FLEX Examination Requirements [Repealed]
50-02-05-07	Passing Requirements for FLEX Examination [Repealed]
50-02-05-08	Fees for Examination [Repealed]
50-02-05-09	Exception to Statutory Qualifications for License - When Available [Repealed]

50-02-05-01. Standard certificate from educational commission required.

All applicants for licensure who are graduates of foreign medical schools, except the medical schools of Canada, the United Kingdom, Australia, and New Zealand, are required to present ~~the standard certificate~~ a valid certification status from the educational commission for foreign medical graduates ~~with an examination grade of seventy-five or better as a prerequisite for admission to the North Dakota medical board examinations.~~ This requirement shall not apply to applicants who were first licensed to practice medicine in the United States prior to the availability of the educational commission for foreign medical graduates examination.

History: Amended effective April 1, 1996; October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-21

Law Implemented: NDCC ~~43-17-18~~43-17-21

50-02-05-02. Requirements for licensure by reciprocity or endorsement.

Repealed effective October 1, 2022.

~~— Graduates of medical schools not located within the United States or Canada who have a license from another state will not be licensed in North Dakota by either reciprocity or endorsement unless licensure was secured by passing the federation licensing examination, or the United States medical licensing examination (USMLE), and the candidate has fulfilled other North Dakota licensure requirements. However, those applicants seeking licensure by either reciprocity or endorsement who passed a written examination in another state before the advent of the federation licensing examination may be considered on an individual basis. Those candidates may also be required to pass the special purpose examination (SPEX) administered by the federation of state medical boards of the United States.~~

~~**History:** Amended effective December 1, 1988; November 1, 1995; April 1, 1996.~~

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

~~**Law Implemented:** NDCC 43-17-21~~

50-02-05-03. American specialty board certificate requirements.

Repealed effective October 1, 2022.

~~— A graduate from a foreign medical school who has an American specialty board certificate must also present an educational commission for foreign medical graduates standard certificate with a grade of seventy-five or better for admission to the North Dakota medical board examinations. For such a specialist, under special circumstances, the educational commission for foreign medical graduates standard certificate requirement may be waived by unanimous approval of the board.~~

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

~~Law Implemented: NDCC 43-17-18~~

50-02-05-04. Canadian medical school graduate licensure by endorsement.

~~Repealed effective October 1, 2022.~~

~~—A graduate of a Canadian medical school may be licensed by endorsement if the board deems it to be in the best interest of this state. However, such graduate must first present to the board satisfactory evidence establishing that the graduate has legally been licensed in another state or Canada in which the requirements for such license with respect to qualifications are equivalent to the requirements of this state.~~

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

~~Law Implemented: NDCC 43-17-18~~

50-02-05-07. Passing requirements for FLEX examination.

~~Repealed effective October 1, 2022.~~

~~—The minimum passing score for each component of the federal licensing examination is seventy-five percent as scored by the federation of state medical boards.~~

~~History: Effective February 1, 1985; amended effective December 1, 1988; November 1, 1993.~~

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

~~Law Implemented: NDCC 43-17-18(4)~~

**CHAPTER 50-02-06
AMERICAN STUDENTS IN FOREIGN MEDICAL SCHOOLS**

[Repealed effective October 1, 2022.]

Section

~~50-02-06-01 — Fifth Pathway Program~~

~~50-02-06-02 — Supervised Clinical Training~~

~~50-02-06-03 — Requirements for Supervised Clinical Training~~

~~50-02-06-04 — Effect of Supervised Clinical Training~~

~~50-02-06-05 — Consideration for Licensure [Repealed]~~

CHAPTER 50-02-07.1
PHYSICIAN LICENSE FEES

Section

- 50-02-07.1-01 License Fees
- 50-02-07.1-02 ~~Late~~Unlicensed Practice Fees
- 50-02-07.1-02.1 Arrearage
- 50-02-07.1-03 Administrative Sanctions

50-02-07.1-01. License fees.

The fee for licensure in North Dakota, whether it be by qualification, ~~reciprocity, endorsement compact, locum tenens,~~ or special license, is two hundred dollars. ~~The fee for a locum tenens license is two hundred dollars and the annual registration fee for all licensed physicians is two hundred dollars per year. The fee to convert from a locum tenens license to permanent licensure status is two hundred dollars.~~

History: Effective January 1, 2010; amended effective October 1, 2011; October 1, 2022.

General Authority: NDCC ~~43-17-25~~43-17-27.1

Law Implemented: NDCC 43-17-25

50-02-07.1-02. ~~Late~~Unlicensed practice fees.

A physician seeking to renew ~~the annual registration~~ a license who has failed to complete the ~~annual~~ registration process within ~~the time specified by the North Dakota board of medicine~~ three years from the expiration date must be assessed a fee equal to three times the normal annual registration fee, in addition to such other penalties as are authorized by law, if that physician is found to have been practicing medicine in this state after the physician's license expired.

History: Effective January 1, 2010; amended effective October 1, 2022.

General Authority: NDCC 43-17-25, 43-17-26.1

Law Implemented: NDCC 43-17-26.1

50-02-07.1-02.1. Arrearage.

A physician whose license has expired may renew the expired license upon payment of two hundred dollars per year, up to three years, for each year past the renewal deadline.

History: Effective October 1, 2022.

General Authority: NDCC 43-17-25

Law Implemented: NDCC 43-17-26.1

**CHAPTER 50-02-10
PATIENT RECORDS**

[Repealed effective October 1, 2022.]

Section

~~50-02-10-01 Patient Records Relating to Psychiatric Care~~

CHAPTER 50-02-11

50-02-11-01. Eligibility for examination.

To be eligible for steps 1 and 2 of USMLE (United States medical licensing examination), the applicant must be in one of the following categories:

1. A medical student officially enrolled in, or a graduate of, a United States or Canadian medical school accredited by the liaison committee on medical education (LCME).
2. A medical student officially enrolled in, or a graduate of, a United States osteopathic medical school accredited by the American osteopathic association (AOA).
3. A medical student officially enrolled in, or a graduate of, a foreign medical school and eligible for examination by the educational commission for foreign medical graduates (ECFMG) for its certificate.

To be eligible for USMLE step 3, the applicant must (a) have obtained the MD degree or the DO degree; and (b) have completed successfully both parts I and II of the national board examination or steps 1 and 2 of the USMLE or part I and step 2 or step 1 and part II or FLEX component 1; ~~(c) if a graduate of a foreign medical school, be certified by the ECFMG or have successfully completed a fifth pathway program; and (d) have completed, or be within six months of having completed, at least one postgraduate training year in a program of graduate medical education accredited by the accreditation council for graduate medical education or the American osteopathic association or the royal college of physicians and surgeons of Canada or the college of family physicians of Canada or be enrolled in an approved postgraduate training program within the state of North Dakota.~~

History: Effective November 1, 1993; amended effective November 1, 1995; December 1, 1996; December 1, 2000; July 26, 2001; March 1, 2003; October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-18

Law Implemented: NDCC 43-17-18

50-02-11-03.1. Limitation on attempts at examination passage.

1. An applicant is permitted a maximum of three attempts to pass each step or part or component of a licensing examination. This rule does not apply to an individual who required more than three attempts to pass USMLE step 1 or USMLE step 2 if that individual was enrolled in a postgraduate training program in North Dakota prior to July 10, 2005, and if:
 - a. The individual is still enrolled in the program when the application for licensure is submitted to the board's office; or
 - b. The individual has completed the program successfully.

Parts, steps, and components may not be combined so as to enlarge the number of attempts permitted under this rule.
2. Upon review of an individual applicant, the board may allow an exception to this rule if it finds that it is in the best interest of the state and the applicant:
 - a. Is validly licensed as a physician in another state;
 - b. Has practiced a minimum of ~~ten~~five years;
 - c. Has no disciplinary actions imposed by any other state medical licensing board; and

- d. Is certified by a specialty board recognized by the American board of medical specialties or by the royal college of physicians and surgeons of Canada.

3. Upon review of an individual applicant, the board may allow an exception to this rule if it finds it is in the best interest of the state and the applicant shows a documented disability as determined by the board.

History: Effective June 1, 2005; amended effective October 1, 2011; April 1, 2020; October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-18

Law Implemented: NDCC 43-17-18

50-02-11-04. Examination combinations acceptable.

Any applicant who has successfully completed part I (NBME) or step 1 (USMLE) plus part II or step 2 plus part III or step 3; or FLEX component 1 plus step 3; or part I or step 1, plus part II or step 2, plus FLEX component 2 shall be deemed to have successfully completed a medical licensure examination as required by subsection 4 of North Dakota Century Code section 43-17-18, if such combination of testing was completed before January 1, 2000. The acceptable combinations include:

1. USMLE step 1 + USMLE step 2 + USMLE step 3;

2. NBME part I + NBME part II + NBME part III;

3. FLEX component 1 + FLEX component 2;

4. USMLE step 1 + NBME part II + NBME part III;

5. USMLE step 1 + USMLE step 2 + NBME part III;

6. USMLE step 1 + NBME part II + USMLE step 3;

7. NBME part I + USMLE step 2 + USMLE step 3;

8. NBME part I + USMLE step 2 + NBME part III;

9. NBME part I + NBME part II + USMLE step 3;

10. FLEX component 1 + USMLE step 3;

11. FLEX component 2 + USMLE step 1 + NBME part II;

12. FLEX component 2 + USMLE step 1 + USMLE step 2;

13. FLEX component 2 + NBME part I + USMLE step 2; or

14. FLEX component 2 + NBME part I + NBME part II.

History: Effective November 1, 1993; amended effective November 1, 1995; October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-18

Law Implemented: NDCC 43-17-18

CHAPTER 50-02-12

50-02-12-01. Notice of denial or limitation of licensure.

In the event the board makes an initial determination that an applicant does not meet the requirements for licensure, or that an applicant should be granted a limited or conditioned license, the board shall promptly give the applicant notice, personally or by certified mail, that it has made an informal decision to deny the application or to place conditions or limitations on the applicant's license. The board shall also advise the applicant as follows:

1. The applicant has the right to have the merits of the application considered at a formal hearing in accordance with the provisions of the North Dakota Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32.
2. To secure a formal hearing on the merits of the application, the applicant must contact the board to request the hearing within ~~sixty~~thirty days of being given notice of the board's informal decision.

In the event an applicant does not request a formal hearing within ~~sixty~~thirty days of the date on which the applicant is given notice that the board has made an informal decision to deny the application or to place conditions or limitations on the applicant's license, then the board's informal decision will become the final order of the board.

History: Effective April 1, 1999; amended effective October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-18

Law Implemented: NDCC 43-17-18

CHAPTER 50-02-13

50-02-13-02. License requirement.

A person may not participate in an approved postgraduate training program in this state unless that person has first been granted a license by the board.

History: Effective May 1, 2000; amended effective October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-02(1)

Law Implemented: NDCC ~~43-17-18~~43-17-02(1)

50-02-13-02.1. License requirement - Exception.

The provisions of section 50-02-13-02 notwithstanding, a resident who is enrolled in an approved postgraduate training program in another state may complete a rotation in this state without obtaining a North Dakota license if:

1. The out-of-state postgraduate training program is accredited by the accreditation council for graduate medical education;
2. Participation in the North Dakota rotation is an official component of the participant's postgraduate training program;
3. The North Dakota rotation will be completed within ninety days or less; and
4. The participant holds a valid unencumbered license to participate in postgraduate training programs in the state in which the participant's postgraduate training program is located. If that state does not require residents to hold a license, then the individual must obtain a North Dakota license before beginning the rotation in this state.

The director of the postgraduate training program shall provide written notice to the board with the names of individuals and the state of licensure who are practicing under this exception within twenty days.

History: Effective November 1, 2002; amended effective October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-02(1)

Law Implemented: NDCC ~~43-17-18~~43-17-02(1)

50-02-13-03. Qualifications.

The board may issue an approved postgraduate training license to an applicant who meets each of the following requirements:

1. The applicant is enrolled in an approved postgraduate training program within the state of North Dakota;
2. The applicant meets all qualifications for permanent licensure except those requirements pertaining to postgraduate training and the examination requirement specified in North Dakota Century Code section 43-17-18; and
3. The applicant has paid the prescribed fee.

History: Effective May 1, 2000; amended effective October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-02(1)

Law Implemented: NDCC ~~43-17-18~~43-17-02(1)

50-02-13-04. Applications.

Applications for a postgraduate training license or the annual renewal of aan approved postgraduate training license must be submitted to the office of the board upon such forms as are supplied by the board or otherwise approved by the board. The board may require any applicant to appear for an interview regarding the applicant's qualifications for licensure. The board shall establish a policy setting forth the criteria used in determining which applicants will be required to appear for such interviews.

History: Effective May 1, 2000; amended effective October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-02(1)

Law Implemented: NDCC ~~43-17-18~~43-17-02(1)

50-02-13-06. Discipline.

Individuals who have been granted aan approved postgraduate training license are subject to the board's disciplinary authority as specified in North Dakota Century Code chapters 43-17 and 43-17.1 and a postgraduate training license may be revoked if:

1. The individual to whom that license was issued ceases to be enrolled in a postgraduate training program in this state; or
2. The individual to whom that license was issued engages in the practice of medicine outside the scope of a postgraduate training program.

Upon verification under section 50-02-13-08 that a resident has been terminated or resigned from the postgraduate training program, the license automatically expires. The expiration of a resident's license does not preclude the board from taking disciplinary action as provided in this section.

History: Effective May 1, 2000; amended effective October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-02(1)

Law Implemented: NDCC ~~43-17-18~~43-17-02(1)

50-02-13-07. Period of licensure.

A postgraduate training license may, in the discretion of the board, be issued for a period of one or more years. However, in no event shall the license be issued for a period of time exceeding the date on which the applicant is reasonably expected to complete the approved postgraduate training program for which the license is being issued.

In the event a license is issued for a period of time exceeding one year, the board may nevertheless require the licensee to periodically supply information to the board regarding the licensee's credentials and ~~physical and mental health~~ability to practice in a competent and safe manner. Failure to provide that information to the board will constitute a violation of subdivision bb of subsection 281 of North Dakota Century Code section 43-17-31.

The board may issue a temporary postgraduate training license to allow the applicant to participate in an approved postgraduate training between the time the application is submitted to the board's office and the time of the next meeting of the board. A temporary postgraduate training license may not be issued if the application file contains significant derogatory information.

History: Effective May 1, 2000; amended effective April 1, 2006; October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-02(1)

Law Implemented: NDCC ~~43-17-18~~43-17-02(1)

50-02-13-08. Reporting requirements.

A person holding a postgraduate training license is subject to the mandatory reporting requirements specified in North Dakota Century Code section 43-17.1-05.1. In addition to the requirements imposed under North Dakota Century Code section 43-17.1-05.1, a postgraduate training licensee and the director of each postgraduate training program must ~~promptly~~ report within ten days the following circumstances to the board's investigative panels:

1. The termination or resignation of a resident for any reason, including poor academic performance.
2. The imposition of sanctions against a resident for reasons other than poor academic performance.

History: Effective May 1, 2000; amended effective October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-02(1)

Law Implemented: NDCC ~~43-17-18~~43-17-02(1)

CHAPTER 50-02-15

50-02-15-01. Definitions.

As used in this chapter:

1. "Telemedicine" means the practice of medicine using electronic communication, information technologies, or other means between a licensee in one location and a patient in another location, with or without an intervening health care provider. It includes direct interactive patient encounters as well as asynchronous store-and-forward technologies and remote monitoring.
2. "Licensee" means a physician or physician assistant licensed to practice in North Dakota. A physician assistant practicing telemedicine from another state is subject to the rules regarding physician ~~supervision~~collaboration, except that ~~supervision may~~collaboration must be by a North Dakota licensed physician who is practicing telemedicine in North Dakota and need not be by a North Dakota licensed physician who is physically located in North Dakota.

History: Effective January 1, 2018; amended effective October 1, 2022.

General Authority: NDCC ~~28-32-02~~43-17-01(6)

Law Implemented: NDCC ~~43-17~~43-17-01, 43-17-44

ARTICLE 50-03
PHYSICIAN ASSISTANTS ~~AND TECHNICIANS~~

Chapter	
50-03-01	Physician Assistants
50-03-02	Technicians <u>[Repealed]</u>
50-03-03	Emergency Medical Technicians <u>[Repealed]</u>
50-03-04	Fluoroscopy Technologists

CHAPTER 50-03-01
PHYSICIAN ASSISTANTS

Section	
50-03-01-01	Description and Authority of Physician Assistant [Repealed]
50-03-01-01.1	Description and Scope of Practice of the Physician Assistant
50-03-01-02	Examination <u>Licensure</u> Requirements
50-03-01-03	Supervision Contract Requirements [Repealed]
50-03-01-03.1	Collaboration With Physicians and Other Health Care Providers
50-03-01-03.2	Practice Requirements
50-03-01-04	Supervising Physician's Responsibility [Repealed]
50-03-01-05	Designation of Substitute Supervising Physician [Repealed]
50-03-01-06	Assistant's Functions Limited [Repealed]
50-03-01-07	Drug Therapy [Repealed]
50-03-01-07.1	Medication Dispensation [Repealed]
50-03-01-08	Assignment of Tasks by Supervising Physician [Repealed]
50-03-01-09	Number of Assistants Under Physician's Supervision Limited [Repealed]
50-03-01-09.1	Physician Assistant for More Than One Physician [Repealed]
50-03-01-09.2	Physician Assistants Under Physician's Supervision [Repealed]
50-03-01-10	Assistant's Services Limited [Repealed]
50-03-01-10.1	Disciplinary Action
50-03-01-10.2	Disciplinary Proceedings
50-03-01-11	Grounds for Disciplinary Action
50-03-01-12	Physician's Delegation to Qualified Person Not Restricted [Repealed]
50-03-01-13	Fees
50-03-01-14	License Renewal Requirements
50-03-01-15	Forms of Licensure
50-03-01-16	Renewal of Licenses
50-03-01-17	Late Fees
50-03-01-18	Physician Assistant - Use of Certain Words or Initials Prohibited
<u>50-03-01-19</u>	<u>Physician Assistant - Reporting Requirements</u>

50-03-01-02. Examination ~~Licensure~~ requirements.

~~No individual may be licensed as a physician assistant without passing~~

Every applicant for licensure shall file a written application, on forms provided by the board, showing to the board's satisfaction that the applicant satisfies all of the requirements for licensure, including:

1. Satisfactory proof of graduation from a physician assistant program;

2. Successful passage of the certifying examination of the national commission on certification of physician assistants or other certifying examinations approved by the North Dakota board of medicine. The physician assistant must maintain certification with the national commission on certification of physician assistants or other certifying entity approved by the board during the entire period of licensure;

3. Payment of the fee as required by section 50-03-01-13;
4. Submission to a statewide and nationwide criminal history record check pursuant to subsection 4 of North Dakota Century Code section 43-17-07.1; and
5. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction, of the commission of any act that would constitute grounds for disciplinary action.

History: Amended effective July 1, 1988; November 1, 1993; January 1, 2020; October 1, 2022.

General Authority: NDCC ~~43-17~~43-17-02(9)

Law Implemented: NDCC 43-17-02.1

50-03-01-03.2. Practice requirements.

1. A physician assistant shall practice at a:

~~1. a. Licensed health~~Health care facility licensed by the department of health and human services;

~~2. b.~~ Facility with a credentialing and privileging system; or

~~3. c.~~ Physician-owned facility or practice; ~~or.~~

~~4.2. Facility or practice approved by the board. If a physician assistant is not practicing at a facility under subsection 1 or at a correctional, state, or federal facility, the physician assistant may apply to the board for approval to practice independently with the following criteria:~~

a. The practice is at a physical location in a rural, medically underserved area in North Dakota as determined by the board;

b. Collaboration with a North Dakota-licensed physician who will perform chart reviews at periodic intervals as required by the board; and

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

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

History: Effective January 1, 2020; amended effective October 1, 2022.

General Authority: NDCC 43-17-02.1

Law Implemented: NDCC 43-17-02.1

50-03-01-10.1. Disciplinary action.

The board is authorized to take disciplinary action against a licensed physician assistant in accordance with North Dakota Century Code chapter 43-17.1 by any one or more of the following means, as it may find appropriate:

1. Revocation of license.
2. Suspension of license.

3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the duties of a physician assistant.
5. Letter of censure.
6. Require the licensee to provide free public or charitable service for a defined period.
7. Impose fines, not to exceed five thousand dollars for any single disciplinary action. Any fines collected by the North Dakota board of medicine must be deposited in the state general fund.

History: Effective August 1, 2002; amended effective October 17, 2002; [October 1, 2022](#).

General Authority: NDCC ~~28-32-02~~[43-17-02\(9\)](#)

Law Implemented: NDCC ~~43-17-02(10)~~[43-17-02\(9\)](#)

50-03-01-10.2. Disciplinary proceedings.

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

History: Effective January 1, 2020; [amended effective October 1, 2022](#).

General Authority: NDCC ~~28-32-02~~[43-17-02\(9\)](#)

Law Implemented: NDCC ~~43-17-31.1~~[43-17-02\(9\)](#)

50-03-01-13. Fees.

The fee for initial licensure of a physician assistant is fifty dollars [per year](#). The ~~annual~~ renewal fee is fifty dollars [per year](#). The fee for ~~a change in practice location is twenty-five~~ [license verification is thirty](#) dollars.

History: Effective July 1, 1988; amended effective November 1, 1993; December 1, 1996; October 1, 1999; January 1, 2020; [October 1, 2022](#).

General Authority: NDCC [43-17-02\(9\)](#), 43-17-13

Law Implemented: NDCC ~~43-17-02(10)~~[43-17-02\(9\)](#)

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

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

History: Effective August 1, 1989; amended effective November 1, 1993; October 1, 1999; July 1, 2013; January 1, 2020; [October 1, 2022](#).

General Authority: NDCC ~~28-32-02~~[43-17-02\(9\)](#)

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

50-03-01-15. Forms of licensure.

The North Dakota board of medicine may recognize the following forms of licensure for a physician assistant and may issue licenses accordingly:

1. Permanent licensure - which will continue in effect so long as the physician assistant meets all requirements of the board.
2. Locum tenens permit - which may be issued for a specific health care facility and for a period not to exceed three months.

History: Effective July 1, 1994; amended effective October 1, 1999; October 1, 2022.

General Authority: NDCC ~~43-17-13~~43-17-02(9)

Law Implemented: NDCC ~~43-17-02(10)~~43-17-02(9)

50-03-01-16. Renewal of licenses.

Provided that all renewal requirements are deemed by the board to be met, a physician assistant who applies for renewal of a physician assistant license within thirty-one days of the expiration date of that license shall be granted a license with an effective date of the first day following expiration of the physician assistant's license. Nothing in this rule shall be construed to affect the board's ability to impose statutory fines or other disciplinary action against a physician assistant for failing to renew a license prior to its expiration date or for practicing with an expired license. A physician assistant whose license lapsed more than three years before the physician assistant petitioned the board for reinstatement shall submit a new application for licensure.

History: Effective October 1, 2011; amended effective October 1, 2022.

General Authority: NDCC 43-17-07.1

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

50-03-01-17. Late fees.

A physician assistant seeking to renew the ~~annual~~ license who has failed to complete the annual registration process within ~~the time specified by the North Dakota board of medicine~~three years from the expiration date must be assessed a fee equal to three times the normal ~~annual~~ license registration fee, in addition to such other penalties as are authorized by law, if that physician assistant is found to have been practicing in this state after the physician assistant's license expired. A physician assistant may renew the expired license upon payment of fifty dollars per year, up to three years, for each year past the renewal deadline.

History: Effective October 1, 2011; amended effective October 1, 2022.

General Authority: NDCC 43-17-07.1

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

50-03-01-19. Physician assistant - Reporting requirements.

A physician assistant is subject to the mandatory reporting requirements specified in North Dakota Century Code section 43-17.1-05.1. In addition to the requirements imposed under North Dakota Century Code section 43-17.1-05.1, the physician assistant must report to the board within ten days if the individual no longer holds a valid certification from the national commission on certification of physician assistants. Upon verification that the physician assistant no longer holds the certification, the license automatically expires. The expiration of the physician assistant license under this section does not preclude the board from taking disciplinary action.

History: Effective October 1, 2022.

General Authority: NDCC 43-17-07.1

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

**CHAPTER 50-03-02
TECHNICIANS**

[Repealed effective October 1, 2022.]

Section

~~50-03-02-01 — Use of Technicians Authorized — Restrictions~~

~~50-03-02-02 — Technicians Not Considered To Be Practicing Optometry or Medicine~~

CHAPTER 50-03-03 EMERGENCY MEDICAL TECHNICIANS

[Repealed effective October 1, 2022.]

Section

- ~~50-03-03-01 — Scope of Services Regulated~~
- ~~50-03-03-02 — Certification Required~~
- ~~50-03-03-03 — Certification Requirement Exemption~~
- ~~50-03-03-04 — Certification of Emergency Medical Technicians~~
- ~~50-03-03-05 — Supervision~~
- ~~50-03-03-06 — Agreement Termination~~

CHAPTER 50-04-01

50-04-01-04. Compliance.

1. All physicians will periodically be required to answer questions on the board's annual license renewal forms to establish compliance, or eligibility for an exception, pursuant to this chapter. Physicians are not required to provide additional documentation of compliance with continuing education requirements unless specifically requested to do so by the board.

Any physician who is required to report CME credits after having been licensed to practice medicine in North Dakota for more than one year but less than two full years will be required to demonstrate completion of twenty hours of board-approved CME credits during that physician's initial CME reporting period.

Any physician who is required to report CME credits after having been licensed to practice medicine in North Dakota for more than two years but less than three full years will be required to demonstrate completion of forty hours of board-approved CME during that physician's initial CME reporting period.

False statements regarding satisfaction of continuing education requirements on the renewal form or on any documents connected with the practice of medicine may subject the licensee to disciplinary action by the board.

2. ~~Each year the~~The board will audit randomly selected physicians to monitor compliance with the continuing medical education requirements. Any physician so audited will be required to furnish documentation of compliance including the name of the accredited CME provider, name of the program, hours of continuing medical education completed, dates of attendance, evidence of credit designation (i.e., category 1 designation, prescribed credit designation, etc.), and verification of attendance. Any physician who fails to provide verification of compliance with the CME requirements will be subject to revocation of licensure.
3. In order to facilitate the board's audits, every physician is required to maintain a record of all CME activities in which the physician has participated. Every physician must maintain those records for a period of at least one year following the time when those CME activities were reported to the board.

History: Effective November 1, 1998; amended effective July 1, 2013; October 1, 2022.

General Authority: NDCC 43-17-27.1

Law Implemented: NDCC 43-17-27.1

**ARTICLE 50-05
PRESCRIPTIVE PRACTICES**

Chapter
| 50-05-01
50-05-02

Expedited Partner Therapy [\[Repealed\]](#)
Prescription Drug Monitoring Program Rule

**CHAPTER 50-05-01
EXPEDITED PARTNER THERAPY**

[\[Repealed effective October 1, 2022.\]](#)

Section

~~50-05-01-01 Expedited Partner Therapy~~

CHAPTER 50-05-02

50-05-02-01. Prescription drug monitoring program rule.

1. Every practitioner ~~with a drug enforcement agency registration number~~ who prescribes a controlled substance in North Dakota shall register with the prescription drug monitoring program.
2.
 - a. When a practitioner determines that reported drugs will be prescribed to a patient for a period to exceed twelve weeks, the practitioner shall request a prescription drug monitoring program report for that patient and, at a minimum, at least semiannually thereafter.
 - b. This requirement does not apply to reported drugs prescribed to patients in a controlled setting in which the drugs are locked and administered to the patient, for example, admitted hospital or hospice patients, long-term care patients or group home residents.
3. In addition to those reports requested under subsection 2, practitioners shall request a prescription drug monitoring program report when it is documented in the prescribing practitioner's medical record for that patient that the patient exhibits signs associated with diversion or abuse, including:
 - a. Selling prescription drugs;
 - b. Forging or altering a prescription;
 - c. Stealing or borrowing reported drugs;
 - d. Taking more than the prescribed dosage of any reported drug;
 - e. Having a drug screen that indicates the presence of additional or illicit drugs;
 - f. Being arrested, convicted, or diverted by the criminal justice system for a drug-related offense;
 - g. Receiving reported drugs from providers not reported to the treating practitioner;
 - h. Having a law enforcement or health professional express concern about the patient's use of drugs.
 - i. Violating any prescribing agreement with the physician;
 - j. Frequently requests early refills of a reported drug for any reason;
 - k. Appears impaired or excessively sedated to the physician in any patient encounter; and
 - l. Has a history of drug abuse dependency.
4. A practitioner shall document the receipt and assessment of prescription drug monitoring program reports made under this rule.

History: Effective January 1, 2018; amended effective October 1, 2022.

General Authority: NDCC ~~28-32-02~~ 19-03.5-09(2)

Law Implemented: NDCC ~~19-03.5-09, 43-17~~ 19-03.5-09(2)

TITLE 67.1
EDUCATION STANDARDS AND PRACTICES BOARD

OCTOBER 2022

CHAPTER 67.1-02-03 RE-EDUCATION

Section

67.1-02-03-01	Elementary Endorsement
67.1-02-03-02	Kindergarten Endorsement
67.1-02-03-03	Secondary Endorsement
67.1-02-03-04	Middle School Pedagogical Endorsement for Grades Five Through Eight
67.1-02-03-05	Bilingual Education or English Language Learner Development Endorsement
67.1-02-03-06	Minor Equivalency Endorsement
67.1-02-03-07	Major Equivalency Endorsements
67.1-02-03-08	Career and Technical Educator Endorsements
67.1-02-03-09	Early Childhood Education Endorsement (50037)
67.1-02-03-10	Rural Flexibility Endorsement [Repealed]
67.1-02-03-11	Teaching Alternative Flexibility Endorsement
67.1-02-03-12	Special Education Endorsements
67.1-02-03-13	Out-of-Field Endorsements

67.1-02-03-02. Kindergarten endorsement.

1. Reeducation of elementary teachers for kindergarten schoolteaching may be accomplished by presenting a minimum of twelve semester hours of kindergarten coursework in foundations of early childhood, kindergarten methods and materials, early language and literacy, observation, and assessment for the kindergarten child. The applicant must have a minimum of one year full-time equivalent successful teaching experience in prekindergarten, kindergarten, or grade one or student teaching of four semester hours or six quarter hours or a minimum of five consecutive weeks applicable to the endorsed area. Re-education for the kindergarten endorsement must be completed prior to or within two years of assignment to teach at the kindergarten level; or
2. State-approved test endorsement - kindergarten. Re-education of a licensed teacher for kindergarten schoolteaching may also be accomplished by holding a North Dakota regular educator's professional license and successful completion of the pedagogical test birth through grade three and early childhood content test meeting or exceeding the minimum scores determined by the education standards and practices board in the content area to be taught. Re-education for the kindergarten endorsement must be completed prior to assignment to teach in the kindergarten content area.

3. A kindergarten endorsement shall be issued to those applicants for a North Dakota other state educator license who:

- a. Hold a regular teaching license in early childhood, elementary, middle, or secondary education from another state;
- b. Have a kindergarten endorsement from another state; or
- c. Provide verification of two years of successful teaching of kindergarten students.

The applicant must apply online at www.nd.gov/espb using the online application ND Teach, submit official transcripts, and the review fee of seventy-five dollars.

History: Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006; October 1, 2014; April 1, 2018; October 1, 2022.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-18-02

67.1-02-03-05. Bilingual education or English language learner development endorsement.

English language learner development endorsement (24000). Re-education for "English language learner development" endorsement for any licensed teacher may be accomplished by presenting at least sixteen semester hours or twenty-four quarter hours of college coursework in all of the areas following in subsections 1 through 5.

Bilingual education endorsement (24500). Re-education for a bilingual education endorsement for any licensed teacher may be accomplished by completing all the requirements for the English language learner development endorsement in subsections 1 through 5 and meeting the additional requirements related to bilingual education in subsections 6 and 7.

1. Foundations. Four semester hours or six quarter hours of college coursework, including the following:
 - a. Multicultural education.
 - b. Foundations of second language instruction.
2. Linguistics. Six semester or nine quarter hours of college coursework, including the following areas:
 - a. Linguistics.
 - b. Psycholinguistics.
 - c. Sociolinguistics.
3. Methods. Two semester or three quarter hours of college coursework, including methods of teaching English as a second language to students.
4. Assessment. Two semester hours or three quarter hours of college coursework from assessment and testing of culturally diverse students.
5. Field experience. Two semester or three quarter hours of college coursework in field teaching experience with limited English proficient students in a bilingual or English as a second language setting.
6. Methods of teaching bilingual education.
7. A minimum of sixteen semester hours or twenty-four quarter hours in a language other than English or documented proficiency in a language other than English.

Re-education for the bilingual education or English language [learnerdevelopment](#) endorsement must be completed within two years of assignment to teach bilingual education or English as a second language. The applicant shall file a plan with the board upon becoming employed as a bilingual or English language [learnerdevelopment](#) teacher, outlining how the endorsement will be completed within the two-year period. The bilingual or English language [learnerdevelopment](#) endorsement enables the applicant to teach bilingual or English as a second language grades prekindergarten through twelve. Applicants teaching other content material must hold licensure appropriate to the teaching of that content at the assigned grade levels in compliance with North Dakota Century Code sections 15.1-18-03 and 15.1-18-02 and this article.

The applicant must complete the endorsement form and return to the board office with the official transcripts and the review fee of seventy-five dollars.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; July 1, 2008; July 1, 2012; October 1, 2020; [October 1, 2022](#).

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10

67.1-02-03-08. Career and technical educator endorsements.

The applicant wishing to apply for the career and technical educator endorsements must be licensed by the board to teach under North Dakota Century Code section 15.1-18-02 or 15.1-18-03. Prior to applying for the career and technical educator endorsement, the applicant must be approved by the career and technical educator state supervisor of special needs and trade, technical, and health, or the state supervisor of information technology, or the state supervisor of diversified occupations through the review of work experience or college transcripts, development of a program of study, and completion of the career and technical educator endorsement form. The form, transcripts, and review fee of seventy-five dollars should be forwarded to the board office. Applicants may apply for the career and technical educator endorsements in career and technical resource educator endorsement, career and technical basic skills educator endorsement, career and technical teacher-student mentor endorsement, diversified occupations endorsements, trade, technical, and health endorsement, or the information technology endorsement.

[Individuals with a career and technical educator license, who have a four-year degree, and have completed the transition to teaching program may take the state-approved test to qualify for a non-career and technical educator content area.](#)

History: Effective July 1, 2004; amended effective July 1, 2012; October 1, 2020; [October 1, 2022](#).

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

CHAPTER 67.1-02-04

67.1-02-04-01. Alternative access licenses for teacher shortages.

Alternative access licenses will be issued under the following conditions:

1. Consideration for alternative access licenses will not be granted until after July first in any year.
2. Alternative access licenses may be issued only in areas where documented shortages of regularly licensed teachers exist as determined by the board. Shortage areas must be determined by the board based upon the ratio of regularly licensed teachers in the state who are qualified for the position to the number of schools with open positions requesting alternative access licensure. In cases where near shortages exist, the board must give additional consideration to whether the hiring school has made a diligent effort to attract and hire regularly licensed teachers.
3. The request for an alternative access license must be initiated by a school. The school board or administration must make the request in writing to the board for consideration of an alternative access license, indicating intent to offer a contract if licensure can be arranged. The request must document that a diligent effort has been made to employ a regularly licensed teacher to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified applicants, and whether these incentives are comparable to those offered by other schools of similar size and means.
4. The ~~candidate~~applicant must write a letter indicating willingness to accept the position if offered and complete all of the application requirements and fees prior to receiving the alternative access license.
5. Complete official college or state-approved alternative program transcripts must be sent to the board.
6. The applicant must have proficiency and hold minimum qualifications or equivalent of a bachelor's degree in the content area to be assigned or have held a valid license from another state for a minimum of two years in the content area to be assigned and have completed the required North Dakota state tests, including the test in the content area to be assigned. The applicant may apply for the forty-day provisional license before submitting the required North Dakota state test scores.
7. Renewal of alternative access licenses will be reviewed each year and will depend upon the supply of and demand for teachers as evidenced by documented efforts to obtain a licensed person for the position. The alternate access license will be issued only once to complete all testing requirements for regular licensure.
- ~~7:8.~~ Renewal of the alternative access license, if permitted, is contingent upon presentation of at least one-third completion of the requirements for regular licensure as stated in section 67.1-02-02-02 and the North Dakota standards for teacher education program.
- ~~8:9.~~ The fee for the alternative access license is one hundred five dollars for each year the license is issued.

- | ~~9.10.~~ Alternative access licensure is to address documented shortage areas only. Alternative access licensure may not be issued to applicants who have failed to meet the deadlines or conditions of their regular licensure renewal.
- | ~~10.11.~~ Initial applicants for alternative access licensure must also submit to the fingerprint background check as stated in subsection 9 of section 67.1-02-02-02.
- | ~~11.12.~~ Upon completion of all of the requirements for regular licensure stated in section 67.1-02-02-02, an individual holding an alternative access license may apply for a regular two-year initial license and begin accruing the eighteen months of successful teaching time required to move into the five-year cycle according to sections 67.1-02-02-02 and 67.1-02-02-04.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010; April 1, 2013; October 1, 2020; October 1, 2021; [October 1, 2022](#).

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-04-02. Interim licenses for substitute teachers.

Interim licensure may be granted for substitute teachers who hold a minimum of two years of postsecondary education (forty-eight semester hours) when a shortage of regularly licensed substitutes exists. If the applicant for the interim substitute license does not hold a bachelor's degree, the applicant may not spend more than thirty consecutive days in the same classroom as the substitute teacher. The applicant must complete all of the application requirements, fees, and submit to the fingerprint background check as stated in subsection 9 of section 67.1-02-02-02 prior to receiving the interim substitute license. The interim license fee for substitute teachers is eighty dollars for two years. The interim license is valid for a minimum of two years and will expire on the applicant's birthday.

Interim licensure may be granted for substitute teachers who hold a high school diploma or equivalent when a shortage of regularly licensed substitutes exists. If the applicant for the interim substitute license does not hold a bachelor's degree, the applicant may not spend more than thirty consecutive days in the same classroom as the substitute teacher. The applicant must submit evidence of completion of the state-approved substitute training program. The applicant must complete all of the application requirements, fees, and submit to the fingerprint background check as stated in subsection 9 of section 67.1-02-02-02 before receiving the interim substitute license. The interim license fee for substitute teachers is eighty dollars for two years. The interim license is valid for a minimum of two years and will expire on the applicant's birthday.

History: Effective October 16, 1998-April 14, 1999; amended effective June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006; July 1, 2010; July 1, 2012; April 1, 2018; October 1, 2021; [October 1, 2022](#).

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11

TITLE 69
PUBLIC SERVICE COMMISSION

OCTOBER 2022

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations.

The following parts of title 49, Code of Federal Regulations in effect as of ~~August 20, 2020~~December 1, 2021, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by Pipeline, Annual Reports, Incident Reports, and Safety-Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards
5. Part 194 - Response Plans for Onshore Oil Pipelines
6. Part 195 - Transportation of Hazardous Liquids by Pipeline.
7. Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

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

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016; July 1, 2018; July 1, 2020; January 1, 2021; October 1, 2022.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

TITLE 69.5
RACING COMMISSION, NORTH DAKOTA

OCTOBER 2022

ARTICLE 69.5-01
NORTH DAKOTA RACING COMMISSION RULES

Chapter	
69.5-01-01	Definitions
69.5-01-02	The Commission
69.5-01-03	Racing Officials
69.5-01-04	Permits and Requirements
69.5-01-05	Licensees
69.5-01-06	Patrons <u>[Repealed]</u>
69.5-01-07	Conduct of Races
69.5-01-08	Parimutuel Wagering Systems
69.5-01-09	North Dakota Breeders Fund
69.5-01-10	North Dakota Purse Fund
69.5-01-11	Simulcasting And Account Deposit Wagering
69.5-01-12	North Dakota Promotion Fund

CHAPTER 69.5-01-01

69.5-01-01-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 53-06.2, except:

1. "Age" means the age of a horse and shall be reckoned from the first day of January of the year of foaling.
2. "Appaloosa" means a horse registered with the appaloosa horse club.
3. "Applicable horsemen's organization" means the jockey club with respect to thoroughbred horses, the American quarter horse association with respect to quarter horses, the United States trotting association with respect to standard bred horses, the appaloosa horse club with respect to appaloosa horses and the American paint horse association with respect to pinto and paint horses.
4. "Arabian" means a horse registered with the international Arabian horse association, the Arabian horse registry of America, ~~inc.~~Inc., or the Anglo-Arabian horse registry.
5. "Arrears" means all moneys owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.
6. "Association" means an individual or business entity holding ~~a~~:

- a. A permit from the commission to conduct racing ~~and/or~~ pari-mutuel wagering, or both; and
~~an~~
- b. An annual license authorizing the specific dates of the annual racing meeting.
7. "Association grounds" means all real property utilized by an association in the conduct of its race meeting, including the track, concessions, stands, offices, barns, stables, employee housing, and parking.
8. "Authorized agent" means a person licensed by the commission as an agent for a horse owner or principal by virtue of a notarized appointment of agent on a form approved by the commission filed by the owner or principal with the horsemen's bookkeeper authorizing the agent to handle matters pertaining to racing and stabling.
9. "Bleeder" means a horse which hemorrhages from within the respiratory tract during a race or within one hour postrace, or during exercise, or within one hour of such exercise.
10. "Bleeder list" means a tabulation of all bleeders to be maintained by the commission.
11. "Chemist" means any official racing ~~chemist~~individual designated by the commission and working for an accredited and licensed laboratory.
12. "Claiming race" means ~~one~~a race which includes a condition that any horse starting the race may be claimed and purchased by any licensed owner who has started a horse at the current meeting for an amount specified in the conditions for that race by the racing secretary.
13. "Commission" means the North Dakota racing commission.
14. "Contractual concessionaire" means any business or individual dealing in the furnishing, sale, or distribution of materials, supplies, or services to an association.
15. "Day" means a twenty-four-hour period beginning at one minute after twelve a.m. and ending at twelve midnight. Also referred to as a "race day".
16. "Dead heat" means the finish of a race by two horses or more at the same time.
17. "Declaration" means the act of withdrawing an entered horse from a race.
18. "Entry" means:
- a. A horse entered for a race; or
- b. Two or more horses entered and joined for the same race for pari-mutuel wagering purposes because of common ties of ownership, lease, or training.
19. "Field or mutuel field" means a group of two or more horses upon which a single bet may be placed. A mutuel field is required when the number of horses starting in a race exceeds the capacity of the track totalizator. The highest numbered horse with the totalizator capacity and all the higher-numbered horses following are then grouped together in the mutuel field.
20. "Foreign substances" means all substances except those which exist naturally in the untreated horse at normal physiological concentration.
21. "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or penalty imposed by order of the stewards or the commission.
22. "Furosemide" means 4 Chloro-N-(2 furylmethyl)-5-sulfamoy-lanthanilic acid.

23. "Handicap" means a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.
24. "Horse" means any horse (including and designated as a male, filly, stallion, colt, ridgling, or gelding) registered for racing under the jurisdiction of the commission and which requires a jockey to race.
25. "Hypodermic injection" means any injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, and intraocular (intraconjunctival) injection.
26. "Jockey" means a rider licensed to ride in commission-approved races ~~as a jockey~~.
27. "Licensee" means any person or entity holding a license from the commission to engage in racing or related regulated activity.
28. "Maiden" means a horse that, which-at the time of starting, has never won a race on the flat ~~in a state or country~~ where racing is supervised:
 - a. Supervised by a lawfully established racing commission or board ~~and where the races are covered~~;
 - b. Covered by the racing form or official racing publication; (e.g. American quarter horse chart books, the appaloosa horse club chart books, the paint horse chart books, and the Arabian horse chart book ~~); or~~;
 - c. A maiden that has been disqualified after finishing first is still a maiden.
29. "Match race" means a race between two horses, the property of two owners, on terms agreed upon by them. The match is void if either of the horses or if either owner dies prior to the running of the race. It remains a match even if money or other award is added to the stakes.
30. "Meeting" means the specified period and dates each year during which an association is authorized to conduct racing by approval of the commission.
31. "Minor" means any person under the age of eighteen.
32. "Month" means a calendar month.
33. "Nominator" means the person in whose name a horse is entered for a race.
34. "Official time" means ~~the official time for a race shall be~~ the period from the time the first horse crosses the timing beam until the first horse crosses the finish line.
35. "Operating costs" includes, for purposes of subsection 6 of section 53-06.2-05 and subsection 6 of section 53-06.2-08 of the North Dakota Century Code, contributions to the breeders', purse, racing promotion, and general funds.
36. "Overnight race" means a race for which entries close seventy-two hours, or less, before the time set for the first race of the day on which the race is to be run.
37. "Owner" means:
 - a. A person who holds any title, right, or interest, whole or partial, in a horse; or
 - b. A lessee of a horse holding an owner's license.

An interest only in the winnings of a horse does not constitute partial ownership.

38. "Patron" means a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.
39. "Performance" means a schedule of eight races or more per day unless otherwise authorized by the commission.
40. "Permit" means an authorization by the commission to an association to conduct horse racing and pari-mutuel wagering at a specified place.
41. "Permitholder" means an association holding a commission permit to conduct racing meetings and pari-mutuel wagering.
42. "Place":
 - a. In general, to place means to finish a race in either first, second, or third place.
 - b. In particular, to place means to finish second in a race.

Example: Win - to place first in the finish.
 Place - to place second in the finish.
 Show - to place third in the finish.
43. "Post position" means the position assigned to the horse in the starting gate of a race.
44. "Post time" means the time set for the arrival of all horses in a race at the starting gate.
45. "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.
46. "Purse" means the gross cash portion of the prize for which a race is run.
47. "Purse race" means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse and for which entries close less than seventy-two hours prior to its running.
48. "Quarter horse" means a horse registered with the American quarter horse association.
49. "Race" means a running contest between horses ridden or driven by jockeys for a purse, prize, or other reward run at a licensed association in the presence of the stewards of the meeting or such other horse racing contests as may from time to time be authorized by the commission. This includes purse races, overnight races, and stakes races.
50. "Recognized meeting" means any meeting with regularly scheduled races for horses on the flat in a jurisdiction having reciprocal relations with this state and a commission for the mutual enforcement of rulings relating to horse racing.
51. "Rules" means the rules adopted by the commission to regulate the conduct of horse racing.
52. "Schooling" means practice races held using actual racing conditions, but in which no wagering is allowed.
53. "Scratch" means the act of withdrawing an entered horse from the race after the closing of overnight entries.

54. "Scratch time" means the time set by the association for the closing of applications to withdraw from races of that day.
55. "Security area" means the area surrounding the security stall delineated by the commission and controlled by it.
56. "Security stall" means the stall within the security barn assigned by the commission to a horse on the bleeder list, or occupancy as a prerequisite for receiving bleeder medication.
57. "Specimen" means any bodily substance, including, ~~but not limited to,~~ blood or urine taken from a horse under the supervision of the commission veterinarian or such veterinarian's authorized designee and in such manner prescribed by the commission for the purpose of analysis.
58. "Stable name" means a name used by an owner or lessee and registered with the commission.
59. "Stakes race" means one in which nominators of the entries contribute to a purse for the winners. A stakes race shall close for entries more than seventy-two hours in advance of its running. A stakes race includes a race for which horses are invited by an association to run for a guaranteed purse of five thousand dollars or more, without payment of stakes.
60. "Starter" means a horse in a race when the starting gate doors open in front of it at the moment the official starter dispatches the horses for a race.
61. "Stewards" means the duly appointed racing officials or their deputies serving at a licensed horse racing meeting.
62. "Subscription" means moneys paid for nomination, entry, eligibility, or starting of a horse in a stakes race.
63. "Test level" means the concentration of a foreign substance found in the test sample.
64. "Test sample" means any bodily substance, including, ~~but not limited to,~~ blood or urine taken from a horse under the supervision of the commission veterinarian or such veterinarian's authorized designee and in such manner as prescribed by the commission for the purpose of analysis.
65. "Thoroughbred" means a horse registered with the New York jockey club.
66. "Tout" means an individual who offers information or tips for any share of any resulting winnings. This can include spying on racehorses, during practice, or a race, in order to obtain information.
67. "Veterinarian" means a veterinarian currently licensed by the state board of veterinary medical examiners and the commission.
- ~~67-68.~~ "Weigh in" means presentation of a jockey to the clerk of scales for weighing prior to a race.
- ~~68-69.~~ "Weigh out" means presentation of a jockey to the clerk of scales for weighing after a race.
- ~~69-70.~~ "Year" means a calendar year.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2012; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10, 53-06.2-10.1

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-08, 53-06.2-10, 53-06.2-10.1

CHAPTER 69.5-01-02

69.5-01-02-01. General authority.

1. The commission has the authority, upon its own action or upon referral from the stewards, to ~~charge~~:
 - a. ~~Charge~~ any licensee or permittee for a violation of these rules or of the pari-mutuel horse racing laws of this state; ~~to conduct~~
 - b. ~~Conduct~~ hearings and to impose fines and other penalties as provided by law and these rules; and ~~to suspend~~
 - c. ~~Suspend~~, revoke, or encumber through conditions of probation licenses or permits. The commission will include in its rulings against licensees the licensee's full name, ~~social security number~~, and date of birth.
2. The commission, upon application therefore and for good cause shown, may temporarily waive or modify any rule or permit any activity otherwise lawful but not specifically authorized by these rules when, in the opinion of the commission, such circumstances exist that without such waiver, modification, or activity the health or safety of any person or horse is adversely affected or the due conduct or best interest of pari-mutuel horse racing of North Dakota is adversely impaired.
3. Whenever a situation arises in connection with a quarter horse meeting which is not covered by these rules, the American quarter horse association rules shall govern.

Where a conflict exists between the rules of the commission and the American quarter horse association, the commission's rules shall govern. Any rule covered by both a commission and American quarter horse association rule must be interpreted so that the commission rule modifies or supersedes the American quarter horse association rule.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-02. Suspensions.

1. When any license is suspended by the commission or ~~is suspended~~ by the racing regulatory agency of another state recognized by the commission, then the suspended licensee is prohibited from participating in any pari-mutuel activity regulated by the commission.
2. The suspension shall, in addition, render ineligible for entry or starting, every horse in which the suspended licensee has any ownership interest or trainer responsibility. Eligibility for affected horses in such cases may be restored by transfer of the suspended licensee's interest or responsibilities to another licensed person, if approved by the stewards of the meeting.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-04. Commission stewards.

The commission shall appoint ~~one~~two of the three stewards at each horse racing meeting. ~~The steward~~One of the stewards appointed by the commission must be the chief steward.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-05. Search and inspection.

The commission, through its employees or agents, or through employees of the association, so authorized by the commission, may search and inspect for prohibited medication, drugs, drug paraphernalia, or any electrical or mechanical equipment usable to affect the condition or racing condition of a horse or any item prohibited by these rules, at any time without notice. Such search and inspection may be made of the following:

1. Association stables, receiving barns, the paddock, jockeys' room, supply rooms, blacksmith, track, gate area, and similar service shops or any areas located within enclosure of the association grounds, including living quarters or private vehicles ~~located within enclosure of the association grounds;~~ and
2. The person, employee, or agent of any licensee while upon the association grounds in the prescribed areas described in subsection 1.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-06. Exclusion of patrons.

1. **Offenses.** The commission may exclude from the licensed premises a patron who has been convicted of any of the offenses listed in this subsection, if the commission determines that the circumstances of the offense giving rise to the conviction make the patron's presence a hazard to the reputation and conduct of racing and pari-mutuel wagering, or may reasonably undermine the public confidence in the integrity of racing:
 - a. Offenses related to drugs or controlled substances;
 - b. Offenses related to arranging the outcome of a race, or to any fraud or deception while participating in racing or pari-mutuel wagering activities;
 - c. Offenses related to representations made about any horse, ownership interest in a horse, or lease or sale of any horse;
 - d. Any felony of which the patron has been convicted; or
 - e. Any offense related to gaming or gambling.
2. **Notification.** In all cases where the commission excludes a person from any or all pari-mutuel facilities in this state, the commission will attempt to notify said person of the facts or conduct which warrant exclusion in writing by electronic mail or mail and provide said person with a postexclusion hearing.
3. **Ejection.** Nothing in this rule precludes an association from exercising its right to eject persons from the premises.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-07. Commission veterinarian.

1. The commission may employ or contract with a veterinarian or veterinarians who are authorized to:
 - a. Maintain and operate a barn for the detention and testing of horses after each race;
 - b. Collect specimens for analysis to determine the presence of prohibited substances in any entered horse;
 - c. Examine any horse entered in any race and, upon a determination of unfitness to run, may recommend to the stewards that they scratch the horse; and
 - d. Delegate the veterinarian's duties to the veterinarian appointed by the licensed association subject to the supervision of the commission veterinarian and the approval of the commission.
2. Every horse entered to race may be subjected to a veterinary examination for racing soundness and health on a race day, not later than two hours prior to official post time for the first race.
3. Testing of horses entering a race will occur as follows:
 - a. After each race, the winner of each race and any other horse designated by the stewards must be taken directly to the enclosure for such testing as the commission representative may require. Blood samples may be taken only by a veterinarian. All other body fluid samples must be taken by a veterinarian or under a veterinarian's supervision.
 - b. Each horse to be tested must be accompanied by its owner, trainer, or the representative of either who shall remain during the testing and sign as a witness on the sample marking tag which will be detached and safeguarded by the commission representative before the sample is forwarded to the laboratory.
 - c. Samples taken must be marked for identification by a two-part tag initialed by the commission representative that includes on both parts an identical number, and the date of the sample, and on the commission part the name of the horse and its owners or trainer. The numbered part must be delivered under the seal of the commission to the testing laboratory. The identified part must be retained by the commission veterinarian until the results are obtained from the laboratory at which time the sample tag must be filed with the commission.
 - d. The laboratory shall ensure the integrity of samples and sample containers.
 - e. The commission has the authority to direct the official laboratory to retain and preserve by freezing, samples for future analysis.
 - f. Every horse which suffers a breakdown on the racetrack, in training, or in competition, and is destroyed, and every other horse which expires while stabled on association grounds under the jurisdiction of the commission, shall undergo a post mortem examination at a time and place acceptable to the commission veterinarian to determine the injury or sickness which resulted in euthanasia or natural death. The cost of such ~~post mortem~~ examination shall be assessed to the owner of the horse.
4. A track security guard shall monitor access to the test barn area during and immediately following each racing performance. All persons who wish to enter the test barn area must be a minimum of eighteen years old, be currently licensed by the commission, display their commission identification badge, and have a legitimate reason for being in the test barn area.

History: Effective July 1, 1989; amended effective January 1, 2008; [October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-03

69.5-01-03-01. General description.

Every association conducting a race meeting shall appoint at least the following officials:

~~1. Two of the members of a three-member board of stewards.~~

~~2. The racing secretary.~~

~~3. The paddock judge.~~

~~4. The horse identifier.~~

~~5. The clerk of the scales.~~

~~6. The starter.~~

~~7. Timers, if needed.~~

~~8. Three or more patrol judges.~~

~~9. Gate judge.~~

~~10. The association veterinarian who shall assist and be responsible to the commission veterinarian and whose appointment must be from a list approved by the commission veterinarian.~~

~~11. Jockey room custodian, valets, and attendants.~~

~~12. Association steward, consisting of one of the members of a three-member board of stewards.~~

2. Association veterinarian who shall assist and be responsible to the commission veterinarian and whose appointment must be from a list approved by the commission veterinarian.

3. Auditor.

4. Clerk of scales.

5. Horse identifier.

6. Horsemen's bookkeeper.

7. Jockey room attendant, custodian, or valet.

8. Paddock judge.

9. Pari-mutuel manager.

10. Racing secretary.

11. Security manager.

12. Starter.

13. Timer.

14. Track manager.

15. Such other officials as the commission may from time to time require.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-02. Eligibility for officials.

To qualify as a racing official the appointee must be licensed by the commission after a determination that the proposed racing official:

1. Is of good moral character and reputation;
2. Is experienced in horse racing;
3. Is familiar with the duties to which the racing official is appointed and with the commission's rules of horse racing;
4. Possesses the mental and physical capacity to perform the duties which the racing official is appointed to perform;
5. Possesses natural or correctable eyesight sufficient to perform the racing official's duties; and
6. Has not been convicted of a crime which the commission may determine has a direct bearing upon the racing official's ability to serve in the appointed capacity or if so convicted, that the official has ~~not~~ been sufficiently rehabilitated.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-03. Official's prohibited activities.

A racing official or the racing official's assistants listed in section 69.5-01-03-01, while serving during any meeting in such capacity, may not engage in any of the following:

1. Participate in the sale, ~~or~~ purchase, training, or ownership of any horse racing at the meeting;
2. Be involved in any way in the purchase or sale of any contract on any jockey racing at the meeting;
3. Sell or solicit horse insurance on any horse racing at the meeting or participate in any other business sales or solicitation not a part of the official's duties;
4. ~~Wager~~ Directly or indirectly wager on the outcome of any race being run at the track or association grounds; ~~or~~
5. Directly or indirectly wager on any gambling game located on association grounds;
6. Accept or receive money or anything of value for such official's assistance in connection with such official's duties;
7. Act as a tout or provide information on a horse for betting purposes; or
8. Consume any alcoholic beverage or prohibited substance or refuse any breath test or to submit a urine, blood, or hair sample when directed by commission staff.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-04. Report of violations.

Every racing official and such official's assistants are responsible to report immediately to the stewards of the meeting every observed violation of these rules and of the laws of this state which occur within such official's or assistant's jurisdiction.

History: Effective July 1, 1989.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-09. Appeals from stewards' hearings.

1. Any licensee aggrieved by the imposition by the stewards of any fee or suspension may appeal to the commission. Appeals must be in writing, and filed with the commission within fourteen days of the stewards' order. The stewards shall, in that event, forward to the commission their charges and evidence for an administrative hearing (de novo) by the commission upon all ~~of~~ the evidence pursuant to North Dakota Century Code chapter 28-32. No appeal from a stewards' order to the commission shall stay or supersede the penalty imposed by the stewards unless the commission shall order, in writing, a stay of the penalty.
2. The stewards shall possess and may exercise emergency authority, as follows:
 - a. Substitute officials. When in an emergency any official is unable to discharge the official's duties, the stewards may approve the appointment of a substitute. The stewards shall report such appointment immediately to the commission.
 - b. Substitute jockeys. The stewards have the authority in an emergency to place a substitute jockey on any horse in the event the trainer does not do so. Before using such authority, the stewards shall attempt, in good faith, to contact the trainer to inform the trainer of the emergency and to afford the trainer the opportunity to appoint a substitute jockey. If the trainer cannot be contacted, or if the trainer is contacted but fails to appoint a substitute jockey and to inform the stewards by thirty minutes prior to post time, then the stewards may appoint under this rule.
 - c. Substitute trainer. The stewards have the authority, in an emergency, to designate a substitute trainer for any horse.
 - d. Excuse horse. In case of accident or injury to a horse or any other emergency deemed to exist by the stewards before the start of any race, the stewards may excuse the horse from starting.
 - e. Exercise authority. No licensee may exercise a horse on the track between races unless upon the approval of the stewards.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-10. Steward investigations and decisions.

1. **Investigations.** The stewards, upon direction of the commission, shall conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers, and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses and shall submit to the commission a written report of every such inquiry made by them.

2. **Cancel trifecta.** The stewards shall cancel trifecta wagering any time there are fewer than five betting interests unless there is a late scratch.
3. **Form reversal.** The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer, or other persons connected with said horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win, be likely to cause it not to win, finish as near as possible to first, or be likely to finish as near as possible to first.
4. **Fouls.**
 - a. **Extent of disqualification.** Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and shall place any horse found to be disqualified behind the others in the race with which it interfered or may place the offending horse last in the race.
 - b. **Coupled entry.** When a horse is disqualified under this section and where that horse was a part of a coupled entry and, where, in the opinion of the stewards, the act which lead to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may, at their discretion, disqualify the other part of the entry.
5. **Stewards to inquire.**
 - a. The stewards shall take cognizance of foul riding and, upon their own motion or that of any racing official or person empowered by this chapter to object or complain, shall make diligent inquiry or investigation into such objection or complaint when properly received.
 - b. In determining the extent of disqualification, the stewards may:
 - (1) Declare void a track record set or equalled by a disqualified horse, or any horses coupled with it as an entry;
 - (2) Affirm the placing judges' order of finish and hold the jockey responsible if, in the stewards' opinion, the foul riding did not affect the order of finish; or
 - (3) Disqualify the offending horse and hold the jockey blameless if, in the stewards' opinion, the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of a jockey.
6. **Race objections.**
 - a. An objection to an incident alleged to have occurred during the running of a race may be received only when lodged with the clerk of scales, the stewards or their designees, by the owner, the authorized agent of the owner, the trainer, or the jockey of a horse engaged in the same race.
 - b. An objection following the running of any race must be filed before the race is declared official, whether all or some riders are required to weigh in, or the use of a fast official procedure is permitted.
 - c. The stewards shall make all findings of fact as to all matters occurring during and incident to the running of a race; shall determine all objections and inquiries, and shall determine the extent of disqualification, if any, of horses in the race. Such findings of fact and determinations are final and may not be appealed.
7. **Protests and complaints.** The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and

complaints and any rulings made by the stewards and file such reports daily with the commission.

- a. Protests involving fraud. Protests involving fraud may be made by any person at any time to the stewards.
- b. Protests not involving fraud. Protests, except those involving fraud, may be filed only by the owner of a horse or the owner's authorized agent, the trainer, or the jockey of the horse in the race over which the protest is made. The protest must be made to the clerk of the scales or to the stewards before the race is declared official. If the placement of the starting gate is in error, no protest may be made thereon, unless the protest is entered prior to the time the first horse enters the gate.
- c. Protest to clerk of scales. A jockey who intends to enter a protest to the clerk of scales following the running of any race, and before the race is declared official, shall notify the clerk of scales of this intention immediately upon the arrival of the jockey at the scales.
- d. Prize money of a protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race must be paid to and held by the horseman's accountant until the protest is decided.
- e. Protest in writing. A protest, other than one arising out of the actual running of a race, must be in writing, signed by the complainant, and filed with the stewards one hour before post time of the race out of which the protest arises.
- f. Frivolous protests. No person or licensee shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

History: Effective July 1, 1989; amended effective January 1, 2008; April 1, 2018; [October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-11. Racing secretary.

1. **General authority.** The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due, and the recording of racing results.
2. **Conditions.** The racing secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers, and the commission. Unless otherwise provided by the conditions, the winner of a certain sum means the winner of a single race of that sum. Corrections to the conditions must be made within twenty-four hours of publication.
3. **Posting of entries.** Upon the closing of entries each day, the racing secretary shall post a list of entries in a conspicuous location in the racing secretaries' office and furnish that list to local newspapers and radio and television stations.
4. **Stakes and entrance money records.** The secretary is caretaker of the permanent records of all stakes, entrance moneys, and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.
5. **Record of racing.** The racing secretary, no later than the day following each race, shall attach or endorse on the registration certificate of each horse winning in any race the fact of that winning performance and the distance, the date of the race, and the type of conditions of the race.

6. **Record of jockeys.** Upon entry of a horse in a race, the owner or trainer shall furnish to the racing secretary the name of the jockey who will ride the entry no later than scratch time of the date of the race unless unusual circumstances prevail and the stewards grant contrary permission, but in no event ~~not~~ later than forty-five minutes before post time.
7. **Handicapping.** The racing secretary, or a handicapper assigned by the racing secretary, shall assign the weight to be carried by each horse in a handicap, ~~according to the following table,~~ when weights are not stated in the condition of the race:
 - a. ~~Scale of weights for age. The commission has adopted the association of racing commissioners international's model rules of racing for all scale of weights criteria, version 11.0.~~

Distance	Age	Jan./ Feb.	Mar./ Apr.	May	June	July	Aug.	Sept.	Oct.	Nov./ Dec.
One-half Mile	2						105	108	111	114
	3	117	119	121	123	125	126	127	128	129
	4	130	130	130	130	130	130	130	130	130
	5 & up	130	130	130	130	130	130	130	130	130
Six Furlongs	2						102	105	108	111
	3	114	117	119	121	123	125	126	127	128
	4	129	130	130	130	130	130	130	130	130
	5 & up	130	130	130	130	130	130	130	130	130
One Mile	2							96	99	102
	3	107	111	113	115	117	119	121	122	123
	4	127	128	127	126	126	126	126	126	126
	5 & up	128	128	127	126	126	126	126	126	126
One Mile and a Quarter	2									
	3	101	107	111	113	116	118	120	121	122
	4	125	127	127	126	126	126	126	126	126
	5 & up	127	127	127	126	126	126	126	126	126
One Mile and a Half	2									
	3	98	104	108	111	114	117	119	121	122
	4	124	126	126	126	126	126	126	126	126
	5 & up	126	126	126	126	126	126	126	126	126
Two Miles	3	96	102	106	109	112	114	117	119	120
	4	124	126	126	126	126	125	125	124	124
	5 & up	126	126	126	126	126	125	125	124	124

~~b. Sex allowances. In all races except handicaps and races where the conditions expressly state to the contrary, two-year-old fillies are allowed three pounds [1.36 kilograms]; mares three-years-old and upward are allowed five pounds [2.27 kilograms] before September first and three pounds [1.36 kilograms] thereafter.~~

~~c. No sex allowance is permitted in quarter horse races.~~

8. **Penalties not cumulative.** Penalties and weight allowances are not cumulative unless so declared in the conditions of a race by the racing secretary.

9. **Winnings.**

- a. All inclusive. For the purpose of the setting of conditions by the racing secretary, winnings must be considered to include all moneys and prizes won up to the time of the start of a race, including those races outside the United States. Foreign winnings must be determined on the basis of the normal rate of exchange prevailing on the day of the win.
- b. Winnings considered from January first. Winnings during the year must be reckoned by the racing secretary from the preceding January first.
- c. Winner of a certain sum. Winner of a certain sum means the winner of a single race of that sum, unless otherwise expressed in the condition book by the racing secretary. In determining the net value to the winner of any race, the sums contributed by its owner or nominator must be deducted from the amount won. In all stakes races, the winnings must be computed on the value of the gross earnings.
- d. Winner's award. Unless the conditions of a race provide otherwise the entrance money, starting and subscription fees, and other contributions, shall go to the winner of the race. If for any reason a race is not run, those entrance, and starting and subscription fees must be returned to the nominators.

10. **Cancellation of a race.** The racing secretary has the authority to withdraw, cancel, or change any race which has not been closed. In the event the canceled race is a stakes race, all subscriptions and fees paid in connection with the race must be refunded.

History: Effective July 1, 1989; amended effective January 1, 2008; [October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-04 PERMITS AND REQUIREMENTS

Section

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69.5-01-04-02. Commission offices.

Each association shall furnish for the commission's use on the association grounds reasonable office space for the commission's use. The office shall be accessible to the public. ~~Each office shall be equipped with telephone and internet hookups.~~ The office must have appropriate connections for the live and replay capabilities for each race. The office space provided must include heating, cooling, electricity, a refrigerator, and lighting. A separate private office must be provided for the stewards to conduct investigations and hearings.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-03. Ejections.

Associations are obligated to honor commission exclusions and to immediately eject ~~immediately~~ any person found on association grounds who is under exclusion status by the commission and to report same to the commission. Whenever any association ejects any person from the premises, it shall report the ejection to the commission.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-04. Racing surfaces.

Each racing association shall ~~attempt to~~ as determined by the commission, safety committee, or stewards, provide the following:

1. Training and racing surfaces whose construction, elevation, and surfaces have received commission approval as safe and ~~human~~humane; provided, however, that upon proof of economic hardship and a bona fide effort to comply, exemptions to this section may be granted by the commission. Application for exemption must be in writing with notice to all interested parties;
2. Adequate and proper equipment to maintain said surfaces;
3. Sufficient trained personnel to properly operate said equipment; and
4. Daily records on the condition of each training and racing surface which must be open for public inspection.
5. Watering and grooming services to the track before each race. Exemptions may be allowed by the chief steward or safety committee.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-07. First race time approval.

The association shall notify the commission staff of the post time of the first race of each performance for approval.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-08. Appointment of racing officials and department heads.

Each association shall submit to the commission at least thirty days prior to the opening day of a meeting, a complete list of the association racing officials set forth in chapter 69.5-01-03 and department heads appointed for the meeting. No person may hold any appointment for a race meeting unless approved by the ~~commission~~commission's executive director or chief steward after a determination that the appointee is qualified to perform the appointee's assigned duties, and is not prohibited by any law or rule of this state from participating in racing.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-10. Condition book.

The association, at least ~~one week~~sixty days prior to the opening of each meeting, shall furnish to the commission a copy of its first condition book for approval by the executive director of the commission. Additional condition books or sheets must be furnished to the commission as soon as published. All changes to the condition book must be approved either by the executive director of the commission or the chief steward.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-11. ~~Photofinish~~Photo finish equipment.

Each association shall utilize ~~photofinish~~photo finish equipment to assist the stewards in determining the order of finish of every race.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-12. ~~VTR and VCR~~Video equipment.

Every association shall furnish for each race a complete ~~videotape~~video recording of the race. The equipment and ~~tape~~video must be of a reliability and quality approved by the commission and capable of replay within one minute after the end of any race. The association shall safeguard the ~~tapes~~videos of any race in which ~~there~~ were lodged objections, inquiries, or reports of accidents for one year from the date of the ~~taperace~~ and make such ~~tapes~~videos available for inspection by officials of the association and the commission.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-13. Photograph posted.

At least one photograph or ~~television picture~~image of the finish of each race must be posted conspicuously and promptly after each race.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-16. Detention enclosure.

Each association shall provide and maintain a designated detention area or enclosure for use by the commission in securing from horses that have run a race, samples of urine, saliva, blood, or other bodily substances or tissues for chemical analysis. The enclosure must include a wash rack, commission veterinarian office, a walking ring, and a sufficient number of stalls each equipped with a window sufficiently large to allow the taking of the samples to be witnessed from outside the stall.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-17. Grounds' facilities, water, and sewage.

1. Each association shall provide and maintain adequate and sanitary drinking water and toilets for all licensees, patrons, and other persons invited to the track.
2. When a race meeting is in progress, or scheduled for opening, the association shall provide systematic and effective insect control against flies, mosquitos, and other insects at all times.
3. Each association shall ensure that horses are stabled in individual box stalls with separate feeding and watering facilities; that the stables and immediate surrounding area are always maintained in approved sanitary condition at all times; that satisfactory drainage is provided; and that manure and other refuse is kept in separate boxes or containers at locations distant from living quarters and promptly and properly removed.
4. Management is responsible that paddocks, starting gates, and other equipment subjected to contact by different animals be kept in a clean condition and free of dangerous surfaces.

5. Management shall provide isolation facilities for horses ordered isolated by the association or commission veterinarian. Approved sanitary measures must be instituted in cooperation with the state livestock sanitary board, and the commission must be kept informed.
6. Each association shall provide a conveniently located receiving area for the use of arriving horses during the meeting. The area may have adequate stable room and facilities, hot and cold water, and stall bedding. The association shall employ attendants to operate and maintain, in clean and healthy condition, the receiving area.

History: Effective July 1, 1989; [amended effective October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-20. Fire protection.

The association, in accordance with applicable state fire codes, shall prohibit, for the protection of persons and property from fire damage, the following:

1. Smoking in horse stalls, ~~feedrooms~~[feed rooms](#), and under the sheds.
2. Sleeping in ~~feedrooms~~[feed rooms](#) or stalls.
3. Open fires and oil or gasoline burning lanterns or lamps in the stable area.
4. Leaving electrical appliances unattended or in unsafe proximity to walls, beds, or furnishings.
5. Keeping inflammable materials, including cleaning fluids or solvents, in the stable area.

History: Effective July 1, 1989; [amended effective October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-21. Stable and ground security.

Each association shall secure the peaceful use of its grounds and stable areas to licensees and prohibit the use of the grounds to persons not authorized by license or invitation of the association. In this regard, the following rules apply:

1. The stable area must be properly fenced as defined by the commission and admission to the stables permitted only in accordance with the rules of the commission. No person may be admitted to the stable area except:
 - a. Licensees whose duties require them to be in the area and who are wearing a photographic identity badge issued by the commission and recorded in a permanent record maintained by the commission.
 - b. Temporary passholders.
 - (1) A temporary written pass will be issued by the chief of security or the chief of security's designee for the stable area, for a maximum period of forty-eight hours and a copy of the pass will be retained by the chief of track security. The form of the temporary pass must be approved by the commission.
 - (2) A temporary pass is available only to guests of the association or the commission. The term "guests" does not include any person brought to the stable area for the purpose of working in any capacity requiring a commission license except for the individuals who deliver and accompany horses to association premises on nights and weekends when the commission offices for regular licensing are closed.

- (3) A temporary pass to enter the stable area is not an occupational license and does not permit the holder to enter a horse in a race or in any other way participate in racing.
- (4) A temporary pass must contain at least:
 - (a) The bearer's name, address, and employer;
 - (b) The bearer's signature;
 - (c) The date and time of issuance;
 - (d) The date and time of expiration;
 - (e) The reason for issuing the pass;
 - (f) The signature of the chief of security or the chief of security's designee; and
 - (g) A pass number showing the sequence in which the pass was issued.
2. The association through its own employees or persons retained by the association shall maintain twenty-four-hour-a-day security service throughout the stable enclosure during the time horses occupy the grounds, employing such electronic, telephonic, television, and human guard personnel as are required to adequately police the grounds. Upon request, the association shall furnish to the commission a list of personnel employed in security services, giving for each such person, the person's address, employer, employer address, duties, duty station, and areas supervised.
3. The director of security of each association shall submit to the stewards a written report describing every arrest or completed incident of security investigation or real or suspected rule violation including with each such person mentioned as charged in the report, the person's name, the charges against such person, and such person's present whereabouts.
4. Each association shall maintain current records relating to security in permanent form available for commission inspection for a period of two years from the completion of the record and shall provide at the commission's request such additional information related to track security as the commission may require. All such records must be governed by open record provisions of state law.
5. A person may not smoke in a stall, barn, or an area where feed is kept on the grounds of association property.
6. A person may not permit a dog or other animal other than approved horses to enter the stable area of an association during the progress of a race meeting. Exceptions may be authorized by the commission safety committee, chief steward, state veterinarian, executive director, or as authorized by law.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-05 LICENSEES

Section

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69.5-01-05-01. Licenses required.

Every person participating in horse racing, whether as permit holder, holder of any interest in a permit, association employee, concessionaire and contract holder and the owner or general manager of same, pari-mutuel, or racing official, and all other persons, ~~except concessionaire employees~~, whose duties require them to be present on association premises during racing hours, or to regularly visit such premises during racing hours, are required to have an occupational license from the commission authorizing them to be employed on the licensed premises and to practice their business, profession, or skill. License applicants may be required to furnish to the commission a set of fingerprints and a recent photograph and may be required to be re-fingerprinted or re-photographed periodically as the commission may require.

History: Effective July 1, 1989; amended effective January 1, 2008; [October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-02. License fees.

Each application for a license required by this chapter, or its renewal, must be accompanied by the payment of an annual fee according to the following schedule:

1.	Association license to conduct live racing	\$100.00 + \$10.00 per day of racing
2.	Trainer	\$75.00
3.	Owner, individual	\$50.00
4.	Owner-trainer (combined)	\$75.00
5.	Multiple owner	\$75.00
6.	Owner (partnership, corporation)	\$75.00
7.	Jockey/driver	\$35.00
8.	Jockey apprentice	\$35.00
9.	Jockey agent	\$35.00 \$50.00
10.	Authorized agent	\$25.00 \$50.00
11.	Stable name	\$25.00
12.	Pari-mutuel manager	\$35.00
13.	Auditor	\$15.00 \$35.00
14.	Calculator operator	\$10.00
15.	Totalizator operator	\$15.00
16.	Track tote fee	\$35.00
17.	Pari-mutuel employee	\$15.00
18.	Racing secretary	\$35.00
19.	Association veterinarian	\$100.00
20.	Assistant veterinarian	\$25.00
21.	Chief of security	\$10.00
22.	Director of racing/speed	\$35.00
23.	Horse identifier	\$35.00
24.	Paddock judge	\$35.00
25.	Patrol judge <u>Concessions owner/manager</u>	\$35.00 \$10.00
26.	Racing secretary assistant	\$15.00
27.	Steward <u>Association steward</u>	\$35.00
28.	Starter	\$35.00
29.	Track superintendent <u>manager</u>	\$35.00 \$50.00
30.	Custodian jockey room	\$15.00
31.	Clerk of scales	\$35.00
32.	Handicapper	\$10.00
33.	Placing judge	\$15.00

34.	Patrol judge	\$15.00
35-31.	Timer	\$15.00
36-32.	Announcer	\$15.00
37-33.	Exercise person	\$20.00
38-34.	Groom	\$10.00
39-35.	Valet	\$15.00
40-36.	Attendant	\$15.00
41-37.	Photo/Video manager	\$25.00
42-38.	Outrider	\$15.00
43-39.	Pony person	\$20.00
44-40.	Track concessions employee	\$10.00
45-41.	Gate admission seller	\$10.00
46-42.	Starting gate attendant assistant	\$10.00
47-43.	Hot walker	\$10.00
48-44.	Office personnel	\$15.00
49-45.	Photo/Video employee	\$10.00
50-46.	Security staff	\$10.00
51-47.	Stable foreman	\$15.00
52-48.	Others not listed (e.g., track maintenance)	\$10.00
53-49.	Duplicate license issued to same person or entity during same year	\$10.00
54-50.	Farrier	\$50.00
55-51.	Site operator	New \$1,000.00 Renew \$250.00
56-52.	Service provider	New \$7,500.00 Renew \$2,500.00
57-53.	Totalizator companies	New \$2,500.00 Renew \$1,500.00

History: Effective July 1, 1989; amended effective January 1, 2008; July 1, 2011; October 1, 2022.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-05, 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-02.1. Mad scramble wager licensing fee.

Repealed effective October 1, 2022.

~~—A service provider, offering the mad scramble pool in accordance with subsection 15 of section 69.5-01-08-04, shall pay an additional licensing fee of one and one-quarter percent of each mad scramble wager. The additional licensing fee shall be paid to the commission in monthly payments on or before the last day of the next month succeeding the month in which the licensing fees for the mad scramble pool wagers occurred.~~

~~**History:** Effective October 1, 2012.~~

~~General Authority: NDCC 53-06.2-05~~

~~Law Implemented: NDCC 53-06.2-05, 53-06.2-08~~

69.5-01-05-07. Applications recommended by track security.

Repealed effective October 1, 2022.

~~—All applicants for licenses not described in the foregoing sections, and including stable and track facility employees, must submit with their application to the commission the prior recommendation of the supervisor of track security.~~

~~History: Effective July 1, 1989.~~

~~General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10~~

~~Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08~~

69.5-01-05-09. Ineligible license applicants.

The commission may deny or revoke the license of any applicant or holder who:

1. Has been convicted of any of the offenses listed in this subsection, which the commission hereby determines have a direct bearing upon the applicant's or holder's ability to serve the public and present a hazard to the reputation and conduct of racing and pari-mutuel wagering, or may reasonably undermine the public confidence in the integrity of racing:
 - a. Offenses related to drugs, including, without limitation, controlled substances;
 - b. Offenses related to gambling or gaming, including bookmaking, or acting as a tout;
 - c. Offenses related to arranging the outcome of a race, or to any fraud or deception while participating in racing or pari-mutuel wagering activities;
 - d. Offenses related to representations made about any horse, ownership interest in a horse, or lease or sale of any horse;
 - e. Any felony; or
 - f. Any other offense declared by the commission to have a direct bearing upon the applicant's or holder's ability to serve the public in any specified occupation, trade, or profession which is the subject of the commission's jurisdiction.
2. Is not eighteen years of age except owners under eighteen years of age may be licensed with the permission of their legal guardians;
3. Has demonstrated a lack of financial responsibility in transactions related to racing or pari-mutuel wagering;
4. Commits any of the prohibited practices included in section 69.5-01-05-13.
5. Is ineligible to participate in racing in another state or racing jurisdiction whose racing regulatory agency is recognized by and reciprocates in the actions of this state;.
- ~~5.6.~~ Seeks application for more than one occupational license, if in the determination of the stewards, the holding of the two licenses would subject the applicant to a conflict of interest in those two licensed activities;
- ~~6.7.~~ Is employed in any part-time or full-time employment with a government or private employer in any work in which a conflict exists with the interests and objectives of a licensed employment;
- ~~7.8.~~ Has been denied patron privileges by order of the commission and has not been reinstated;

~~8.9.~~ Supplies false information in the application; or

~~9.10.~~ Is not of good moral character.

History: Effective July 1, 1989; amended effective January 1, 2008; [October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-13. Prohibited practices.

The following practices by licensees are prohibited:

1. Giving or offering, directly or indirectly, a bribe in any form to any person licensed by the commission to violate these rules or the laws of this state related to racing.
2. Soliciting or offering to accept, directly or indirectly, a bribe in any form by a person licensed by the commission to violate these rules or the laws of this state related to racing.
3. Failing as a licensee to report any bribe or solicitation as in subsections 1 and 2.
4. Soliciting by any licensee except the association of bets by the public.
5. Improperly influencing or attempting to improperly influence the results of a race or combining with any person or conspiring to combine with any person to improperly influence or attempt to improperly influence the results of a race.
6. Entering or starting a horse known or believed to be ineligible or disqualified.
7. Offering or receiving money or other benefit for withdrawing a horse from a race.
8. Making a wager for a jockey by any person except the jockey's owner or trainer.
9. An owner or trainer making a wager for a jockey on a horse other than that ridden by the jockey. This may not be construed to include bets on another horse in combination with such owner's or trainer's own in multiple wagering bets.
10. Offering or giving a jockey money or other benefit concerning a race, except by the owner or trainer of the horse to be ridden [or a track bonus available to all jockeys](#).
11. Possessing any electrical or mechanical device designed to increase or decrease the speed of a horse during a race, other than an ordinary riding whip.
12. Bookmaking, which is the taking or receiving of a wager upon the result of any horse race of which betting is being conducted by any association licensed by the commission, except through the regular betting windows and facilities provided by the association.
13. Purchasing any ticket or share of a pari-mutuel pool for another, for hire or anything of value.
14. The giving under oath of any false statement or the refusing to testify after proper notice to the commission about any matter regulated by the commission, except in the exercise of a lawful privilege.
15. Subjecting an animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise or shelter, or by neglect or intentional act cause a horse to suffer unnecessary pain.
16. Permitting a horse to start a race unless the horse has been officially tattooed ~~for identification~~ under the upper lip [or electronically chipped or any other approved means of identification](#). A

horse which is not ~~tattooed~~properly identified may be allowed to race if all the following requirements are met:

- a. A tattooer or chip technician is unavailable as determined by the chief steward;
- b. Before post time the horse is inspected by the chief steward and the commission veterinarian; and
- c. Before post time the chief steward and commission veterinarian certify the horse's identity to the racing secretary and the horse identifier.

17. Giving false, misleading, or inaccurate information about a horse's performance for publication in a printed program or racing publication.

18. In addition to any of the foregoing prohibited practices, any person who commits an act on the grounds of any pari-mutuel facility which is patently contrary to the best interest of racing or which is in violation of a criminal statute of the United States or of this state and classified as a felony, is subject to administrative action including license revocation, suspension, fine, or deprivation of patron privileges.

19. Disorderly or offensive conduct that breaches the public peace or use of profane, obscene, or indecent language ~~so as~~ to be heard by another or offer such prohibited conduct to any representative of the commission or the association.

20. ~~Possession, carrying or exhibiting a deadly weapon, or otherwise disturbing the peace on the premises of any permittee. This rule does not prohibit the carrying of a weapon by any duly authorized law enforcement officer or licensed security personnel engaged in their duties.~~

~~21.~~ Possessing ~~in any pari-mutuel wagering area of any association~~ any alcoholic beverage in any pari-mutuel wagering area of any association public areas unless the beverage is purchased on the premises.

~~22.~~21. Possessing any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition and as prescribed by a veterinarian. The supply of such prescribed foreign substances shall be limited by ethical practice consistent with the purposes of this section. Notwithstanding the provisions of this subsection, any person may possess within a racetrack enclosure any chemical or biological substance for such person's own use, provided that if such chemical substance is prohibited from being dispensed by any federal law or the law of this state without a prescription, such person is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to that person. Notwithstanding the provisions of this subsection, any person may possess within any racetrack enclosure any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to such person, provided that such person has notified the state steward:

- a. Of such person's possession of such device;
- b. Of the size of such device; and
- c. Of the chemical substance to be administered by such device, and has obtained written permission for possession and use from the state steward.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-14. Alcohol and drug testing.

1. Alcohol prohibition or breathalyzer test.

- a. No licensee or employee of any entity associated with the conduct of racing, while on the grounds of a licensed premises or racetrack may have a blood alcohol concentration of five one-hundredths of one percent by weight, nor may such persons be in any manner impaired by or under the influence of alcoholic beverages.
- b. Stewards or a designated racing commission representative may direct any jockey or gate crew staff to submit to pre-race alcohol testing. If the results show a reading of five one-hundredths of one percent alcohol content or more by weight, such licensee or employee may not be permitted to continue such licensee's or employee's duties for that day.
- c. Acting with reasonable cause, the stewards or a designated racing commission representative may direct any such licensee or employee to submit to a breathalyzer or intoxolizer test or of a test of such person's blood. Such licensee or employee shall, when so directed, submit to such examination. If the results thereof show a reading of five one-hundredths of one percent alcohol content or more by weight, such licensee or employee may not be permitted to continue such licensee's or employee's duties for that day. Such licensee or employee shall also be subject to fine, or suspension, or other discipline by the stewards or the commission.
- ~~e.d.~~ A racing official may not consume any alcoholic beverage or prohibited substance or refuse any breath test or to submit a urine, blood, or hair sample when directed by commission staff during the race meeting.
- e. For a subsequent violation such licensee or employee may be subject to procedures following positive chemical analysis, as set out in subsection 3.
- ~~e.f.~~ Any licensee who refuses to submit to such test when duly requested to submit to such blood test as set out in this section may be subject to discipline by the stewards and by the commission.

2. Drug prohibition or body fluid test.

- a. No licensee or employee of any entity associated with the conduct of racing while on the grounds of a licensed or franchised racetrack shall have present within the licensee's or employee's system any controlled substance as defined in North Dakota Century Code chapter 19-03.1 or any prescription legend drug unless such prescription legend drug was obtained directly or pursuant to valid prescription or order from a duly licensed physician who is acting in the course of such physician's professional practice.
- b. Acting with reasonable cause, the stewards or a designated commission representative may direct any such licensee or employee to deliver a specimen of urine in the presence of the track physician or subject the licensee or employee to the taking of a blood sample or other body fluids by ~~the track physician or other duly licensed physician appointed by the commission~~ a medically trained professional.
- c. In such cases, the stewards or the designated commission representative may prohibit such licensee or employee from participating in the day's racing or until such time as such licensee or employee evidences a negative test result.
- d. Sufficient sample should be collected to ensure a quantity for a split sample when possible.

- e. Refusal by such a licensee or employee to provide the samples described in this section, as so directed, is a violation of these rules and shall subject such licensee or employee to sanction by the stewards or the commission.
- f. All testing must be at the expense of the commission.

3. Procedures following positive chemical analysis.

- a. For a licensee's or employee's first violation such licensee or employee may not be allowed to participate in racing until such time as a licensee's or employee's condition has been professionally evaluated by an appropriate health care professional.
 - (1) After such professional evaluation, if such licensee's or employee's condition is found by the evaluator or the commission to be nonaddictive and not detrimental to the best interest of racing, such licensee or employee will be allowed to participate in racing provided such person can produce a negative test result and agrees to further testing at the discretion of the stewards or designated commission representative to ensure unimpairment.
 - (2) After such professional evaluation, should such licensee's or employee's condition be found by the evaluator or the commission to be addictive or detrimental to the best interest of racing, such licensee or employee will not be allowed to participate in racing until such time as such person can produce a negative test result and show documented proof that such person has successfully completed a certified alcohol or drug rehabilitation program approved by the racing commission. The licensee or employee must agree to further testing at the discretion of the stewards or racing commission representative to ensure the licensee's or employee's unimpairment.
- b. For a licensee's or an employee's second violation, a licensee or an employee must be suspended and allowed to enroll in a certified alcohol or drug rehabilitation program approved by the commission, and may apply for reinstatement only at the discretion of the commission.

History: Effective July 1, 1989; [amended effective October 1, 2022.](#)

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-15. Veterinarians.

- 1. Every veterinarian practicing on association premises must be:
 - a. Currently licensed by the state board of veterinary medical examiners; and
 - b. Licensed by the commission.
- 2. The following restrictions and duties apply to veterinarians licensed by the commission:
 - a. A licensed veterinarian practicing at any meeting is prohibited from possessing any ownership, directly or indirectly, in any horse racing during the meeting.
 - b. Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other things of value, directly or indirectly, on the outcome of any race conducted at the meeting at which such veterinarians are furnishing professional service.

- c. No veterinarian, within the association grounds, may deliver, furnish, sell, or loan any hypodermic syringe, needle, or other injection device, or without limitation, any drug, narcotic, controlled substance, or other prohibited substance, to any other person within the grounds of an association where racehorses are stabled unless with written permission of the stewards.
 - d. The use of other than single-use disposable syringes and infusion tubes on association premises is prohibited. Whenever a veterinarian has used a hypodermic needle or syringe, such veterinarian shall destroy the needle and syringe and remove it from the association premises.
3. A licensed veterinarian who prescribes or administers any medication or treatment to a horse which the veterinarian considers could affect the racing condition of the horse shall furnish immediately to the horse's trainer and to the stewards a written statement setting forth the name of the horse, its owners, the type of drug or medication and amount prescribed or administered, ~~and~~ the date of the administration or prescription, and withdrawal period for the drug.
 4. Every licensed veterinarian practicing on association premises shall maintain records showing all medications purchased or otherwise obtained, and for each horse treated, the name of the horse and its owner, the medication, its method of administration, and its date of administration. Veterinarians shall retain duplicate copies of bills or statements to trainers or owners which must be retained for at least three years and made available to the commission upon request.
 5. Each veterinarian shall report immediately to the stewards and the commission veterinarian any illness in a horse entrusted into the veterinarian's care presenting unusual or unknown symptoms.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.1-05, 53-06.1-10

69.5-01-05-27. Trainers.

The following restrictions and duties apply to trainers.

1. No person may hold a trainer's license unless the trainer:
 - a. Is at least eighteen years old;
 - b. Is qualified, in the opinion of the stewards, by reason of experience, background, and knowledge of racing as manifested by:
 - ~~(1) Passing passing a written examination and interview administered by the stewards; and~~
 - ~~(2) Passing of a "barn test" administered by a horsemen's representative under the supervision of the stewards.~~
 - c. Has complied with the provisions of the state workers' compensation law and has secured workers' compensation for the trainer's employees in accordance with that law; and
 - d. Has applied for a trainer's license in the trainer's legal name, and not under any fictitious or stable name.

2. The commission, in considering whether to license a trainer in this state, may consider the licensure of the trainer currently licensed or registered in another state that is a member of the national association of state racing commissioners.
3. The trainer is responsible for and is the absolute insurer of the condition of the horses in the trainer's care and custody and for the conditions and contents of stalls, tack rooms, ~~feedrooms~~ feed rooms, sleeping rooms, and other areas which have been assigned by the association to the trainer. The trainer is the absolute insurer of the condition of the horses in the trainer's care and custody during the race and is liable for the presence in the trainer's horse during the race of any drug, medication, or any other prohibited substance. A trainer whose horse has been claimed remains responsible for the horse under this section until after the collection of urine or blood specimens as may be required.
4. Each trainer shall report immediately to the stewards and the commission veterinarian any illness in the horse entrusted into the trainer's care presenting unusual or unknown symptoms. Any alteration in the sex of a horse must be reported and noted by the trainer to the racing secretary or horse identification office immediately, and that office must note the same on the foal certificate.
5. A trainer or the trainer's assistant must be present with the trainer's horse in the paddock and shall supervise the saddling of the horse unless the stewards permit a substitute trainer to perform those duties. Every trainer who brings a horse to the paddock warrants that the horse is qualified for the race, ready to run and in physical condition to exert its best efforts, and entered with the intention to win.
6. A trainer shall present the trainer's horse in the paddock at least twenty minutes before post time of the race in which the horse is entered.
7. The following prohibited acts apply to trainers:
 - a. No trainer may enter or start a horse in any race if the horse is ineligible under these rules or the laws of this state related to racing.
 - b. No trainer may employ a veterinarian who is not licensed by both the state board of veterinary medicine examiners and the commission.
 - c. No trainer may employ any person under the age of sixteen.
 - d. No trainer may employ a jockey for the purpose of preventing the jockey from riding in any race.
 - e. No trainer may train or be responsible for any horse which is wholly or partly owned by a person under suspension by the stewards or the commission.
8. A trainer is responsible for the condition of a horse trained by the trainer and entered in an official workout or race. A trainer is responsible for the presence of a prohibited drug, medication, or substance in a horse trained by the trainer. A trainer is responsible for the presence of a permitted drug, medication, or substance ~~in excess of~~ more than the maximum allowable level in a horse trained by the trainer. A report, by a laboratory approved by the commission, is prima facie evidence of the presence of a prohibited drug, medication, or substance. ~~A report, by a laboratory approved by the commission, and~~ is prima facie evidence of the presence of a permitted drug, medication, or substance in excess of the maximum allowable level.
9. A trainer whose horse has been claimed remains responsible for any violations of rules regarding that horse's participation in the race in which the horse is claimed.

10. The trainer is responsible for maintaining the assigned stable area in a clean, neat, and sanitary condition at all times.
11. Additionally, with respect to horses in a trainer's care or custody, the trainer is responsible for:
 - a. The proper identity, custody, care, health, condition, and safety of the horses;
 - b. Ensuring that at the time of arrival at locations under the jurisdiction of the commission a valid health certificate and a valid negative equine infectious anemia test certificate accompany each horse and which, where applicable, shall be filed with the racing secretary;
 - c. Having each horse in the trainer's care that is racing, or is stabled on association grounds, tested for equine infectious anemia in accordance with state law and for filing evidence of such negative test results with the racing secretary;
 - d. Using the service of those veterinarians licensed by the commission to attend horses that are on association ground;
 - e. Immediately reporting the alteration of the sex of the horse to the horse identifier and the racing secretary;
 - f. Promptly reporting to the racing secretary and the official veterinarian when a posterior digital neurectomy is performed and ensuring that such fact is designated on its certificate of registration;
 - g. Promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in the trainer's charge;
 - h. Promptly reporting the serious injury or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;
 - i. Maintaining a knowledge of the medication record and status;
 - j. Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug, or substance;
 - k. Ensuring the fitness to perform credibly at the distance entered;
 - l. Ensuring that every horse entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in this chapter;
 - m. Ensuring proper bandages, equipment, and shoes;
 - n. Presence in the paddock at least twenty minutes before post time or at a time otherwise appointed before the race in which the horse is entered;
 - o. Personally attending the paddock and supervising the saddling thereof, unless excused by the stewards; and
 - p. Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so.
12. A trainer may represent the owner of a horse in making entry of a horse in a race, or declaring the horse out of a race.

History: Effective July 1, 1989; amended effective January 1, 2008; [October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-29. Jockeys and apprentice jockeys.

1. Eligibility.

a. Jockeys.

- (1) No person under sixteen years of age will be licensed by the commission as a jockey.
- (2) The stewards may require that any jockey pass a physical examination and may refuse to allow any jockey to ride until such jockey successfully completes such examination.
- (3) A jockey may not be an owner or trainer of any racehorse.
- (4) A license may not be granted until the applicant has successfully completed two rides under a provisional license of the commission and has been approved by the starter.
- (5) Whenever a jockey from a foreign country, excluding Mexico and Canada, rides in the United States, such jockey must declare that he or she is a holder of a valid license and currently not under suspension. To facilitate this process, the jockey shall present a declaration sheet to the commission. The sheet must state:
 - (a) That the jockey is the holder of a valid license to ride;
 - (b) That the jockey is not currently under suspension; and
 - (c) That the jockey agrees to be bound by the rules of the commission.

This sheet must be retained by the commission and at the conclusion of the jockey's participation in racing, it must be returned to the jockey, properly endorsed by the commission, stating that the jockey has not incurred any penalty or had a fall. If a penalty has been assessed against the jockey, the appropriate racing official shall notify the racing authority issuing the original license to extend the penalty for the same period of time.

b. Apprentice jockeys.

- (1) A contract with a horse owner to provide apprentice jockey services, or an apprentice certificate from the stewards must be presented to the commission to be licensed.
- (2) The conditions in subdivision a of subsection 1 with regard to jockeys also apply to apprentice jockeys.

2. Jockeys' fees.

- a. Track management shall have the authority to set the jockey mount fee.
- b. Schedule. The minimum fee to jockeys must be in all races as follows:

Purse	Win	2nd	3rd	Unplaced
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\$400 and under		\$27	\$19	\$17	\$16
\$500		30	20	17	16
\$600		36	22	17	16
\$700 - \$900		10%	25	22	20
\$1,000 - \$1,400		10%	30	25	22
\$1,500 - \$1,900		10%	35	30	28
\$2,000 - \$3,400		10%	45	35	33
\$3,500 - \$4,900		10%	55	45	35
\$5,000 - \$9,900		10%	65	50	40
\$10,000 - \$14,900		10%	5%	5%	45
\$15,000 - \$24,900		10%	5%	5%	50
\$25,000 - \$49,900		10%	5%	5%	60
\$50,000 - \$99,900		10%	5%	5%	75
\$100,000 and up		10%	5%	5%	100

- c. Entitlement. Any apprentice or contract jockey is entitled to the regular jockey fees, except when riding a horse owned in part or solely by such jockey's contractholder. An interest in the winnings only (such as trainer's percent) does not constitute ownership.
 - d. Fee earned. A jockey's fee must be considered earned when the jockey is weighed out by the clerk of scales. The fee may not be considered earned if the jockey, of the jockey's own free will, takes himself or herself off of the jockey's mount, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above ruling must be at the discretion of the stewards.
 - e. Multiple engagements. If any owner or trainer engages two or more jockeys for the same race, the owner or trainer is required to pay each of the jockeys whether the jockey rides in the race or not.
 - f. Dead heats. Jockeys finishing a race in a dead heat shall divide equally the totals they individually would have received had one jockey won the race alone. The owners of the horses finishing in the dead heat shall pay equal shares of the jockey fees.
3. **Apprentice subject to jockey rules.** Unless excepted under these rules, apprentice jockeys are subject to all commission rules governing the conduct of jockeys and racing.
4. **Apprentice allowances.**
- a. An apprentice jockey shall ride with a five-pound [\[2.27-kilogram\]](#) weight allowance beginning with the apprentice jockey's first mount and for one full year from the date of the apprentice jockey's fifth winning mount.
 - b. If after riding one full year from the date of the apprentice jockey's fifth winning mount, the apprentice jockey has failed to ride a total of forty winners from the date of the apprentice jockey's first winning mount, the apprentice jockey shall continue to ride with a five-pound [\[2.27-kilogram\]](#) weight allowance for one more year from the date of the apprentice jockey's fifth winning mount or until the apprentice jockey has ridden a total of forty winners, whichever comes first.

- c. If an apprentice jockey is unable to ride for a period of fourteen consecutive days or more after the date of the apprentice jockey's fifth winning mount because of service in the armed forces of the United States of America, or because of physical disablement, the commission may extend the time during which such apprentice weight allowance may be claimed for a period not to exceed the period such apprentice jockey was unable to ride.

5. **Conduct.**

- a. Clothing and appearance. A jockey shall wear the standard colors for the post position of the horse the jockey is riding, except as otherwise ordered or permitted by the commission or stewards, and shall also wear the number of the saddlecloth corresponding to the number given in the racing program. A jockey shall maintain a neat and clean appearance while engaged in the jockey's duties on association premises and shall wear a clean jockey costume, cap, helmet (as approved by commission), a jacket, breeches, and top boots.
- b. Competing against contractor. No jockey may ride in any race against a starting horse belonging to the jockey's contract employer unless the jockey's mount and the contract employer's horse are both trained by the same trainer.
- c. Competing against spouse. No jockey may compete in any race against any horse which is owned or trained by the jockey's spouse.
- d. Confined to jockey room. A jockey who is engaged to ride a race shall report to the scaleroom on the day of the race at the time designated by association officials. The jockey shall then report the jockey's engagements and any overweight to the clerk of scales. ~~Thereafter, the jockey may not leave the jockey room except by permission of the stewards, until all of the jockey's riding engagements of the day have been fulfilled. Once a jockey has fulfilled the jockey's riding assignments for the day and has left the jockey's quarters, the jockey may not be readmitted to the jockey's quarters until after the entire racing program for that day has been completed, except upon permission of the stewards. A jockey is not allowed to communicate with anyone but the trainer or the jockey's agent while the jockey is in the room during the performance except with approval of stewards. On these occasions, the jockey should be accompanied by a security guard.~~
- e. Jockey betting. A jockey may only be allowed to wager on a race in which the jockey is riding if:
 - (1) The jockey's owner or trainer makes the wager for the jockey; and
 - (2) The jockey only wagers on his or her own mount to win or in combination with other horses in multiple bets.
- f. Whip prohibited. No jockey may use a whip on a two-year-old horse before April first of each year.
- g. Spurs prohibited. No jockey may use spurs.
- h. Possessing drugs or devices. No jockey may have in the jockey's care, control, or custody any drugs or prohibited substances or any electrical or mechanical device that could affect a horse's racing performance.

- 6. **Jockey effort.** A jockey shall exert every effort to ride the jockey's horse to the finish in the best and fastest run of which the horse is capable. No jockey may ease up or coast to a finish, without adequate cause, as determined by the stewards, even if the horse has no apparent chance to win prize money.

7. **Duty to fulfill engagements.** Every jockey shall fulfill such jockey's duly scheduled riding engagements, unless excused by the stewards. No jockey may be forced to ride a horse the jockey believes to be unsound, nor over a racing strip the jockey believes to be unsafe, but if the stewards find a jockey's refusal to fulfill a riding engagement is based on personal belief unwarranted by the facts and circumstances, such jockey may be subject to disciplinary action. The jockey is responsible to the jockey's agent for any engagements previously secured by said agent.
8. **Riding interference.**
 - a. Interference. When the way is clear in a race, a horse may be ridden to any part of the course, but may not weave nor cross in front of other contenders so as to interfere with their course or threaten their safety.
 - b. Jostling. No jockey may jostle another horse or jockey. No jockey may strike another horse or jockey or ride so carelessly as to cause injury or possible injury to another horse in the race.
 - c. Partial fault - Third party interference. If a horse or jockey interferes with or jostles another horse, the aggressor may be disqualified, unless the interfered or jostled horse or jockey was partly at fault or the infraction was wholly caused by the fault of some other horse or jockey.
9. **Jockey weighed out.**
 - a. A jockey must wear a safety vest when riding in any official race. A safety vest shall weigh no more than two pounds [~~907.91~~ kilogram] and be designed to provide shock-absorbing protection to the upper body of at least a rating of five as defined by the British equestrian trade association.
 - b. Each jockey must be weighed for his or her assigned horse not more than thirty minutes before the time fixed for the race. Any jockey weighing more than four pounds [1.81 kilograms] over the highest weight stated in the published conditions may be weighed only once prior to the first scheduled race.
 - c. A jockey's weight must include his or her clothing, saddle, girth, pad, and saddle cloth.
 - d. A jockey's weight does not include the number cloth, whip, head number, bridle, bit or reins, blinkers, helmet, tongue strap, tongue tie, muzzle, hood, noseband, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.
 - e. If a jockey weighs less than the required condition weight, the clerk of scales shall require the jockey to add extra weight until they meet the minimum weight.
10. **Overweight limited.** No jockey may weigh more than two pounds [~~0.91 kilograms~~ .91 kilogram] over the weight the jockey's horse is assigned to carry unless with consent of the owner or trainer and unless the jockey has declared the amount of overweight to the clerk of the scales at least forty-five minutes before the start of the race. All weights over published conditions must be announced to the public.
11. **Weigh in - Unsaddling.** Upon completion of a race, each jockey shall ride promptly to the winners circle and dismount. The jockey shall then present himself or herself to the clerk of scales to be weighed in. If a jockey is prevented from riding his or her mount to the winner's circle because of accident or illness either to the jockey or to the jockey's horse, the jockey may walk or be carried to the scales unless excused by the stewards.

- a. Unsaddling. Each jockey upon completion of a race shall return to the winner's circle and shall unsaddle his or her horse, unless excused by the stewards.
- b. Removing horse's equipment. No person except the valet-attendant for each mount is permitted to assist the jockey in removing the horse's equipment that is included in the jockey's weight, unless the stewards permit otherwise. To weigh in, each jockey shall carry to the scales all pieces of equipment with which the jockey weighed out. Thereafter, the jockey may hand the equipment to the valet-attendant.
- c. Underweight. When any horse places first, second, or third in a race, or is coupled in any form of multiple exotic wagering, and thereafter the horse's jockey is weighed in short by more than two pounds [~~0.91 kilograms~~, 91 kilogram] of the weight of which the jockey was weighed out, the jockey's mount may be disqualified and all purse moneys forfeited.
- d. Overweight. No jockey may be weighed in more than two pounds [~~0.91 kilograms~~, 91 kilogram] over the jockey's declared weight, but consideration must be given for excess weight caused by rain or mud. If the jockey is overweight, the jockey's mount may be disqualified and all purse moneys forfeited.

12. **Contracts.**

- a. Jockey contracts. A jockey may contract with an owner or trainer to furnish jockey services whenever the owner shall require, and in that event a jockey may not ride or agree to ride in any race for any other person without the consent of the owner or trainer to whom the jockey is under contract.
- b. Apprentice contracts and transfers.
 - (1) Owners or trainers and apprentices who are parties to contracts for apprentice jockey services shall file a copy of the contract with the commission, upon forms approved by the commission, and shall, upon any transfer, assignment, or amendment of the contract, immediately furnish a copy thereof to the commission.
 - (2) No apprentice jockey may ride for a licensed owner or agent unless with the consent of the apprentice's contract employer.
- c. Contract condition. No person other than an owner, trainer, jockey agent, or authorized agent of an owner in good standing may make engagements for an apprentice jockey or jockey. However, a jockey not represented by an agent may make his or her own engagements.

13. **Jockey fines and forfeitures.** A jockey shall pay any fine or forfeiture from the jockey's own funds within forty-eight hours of the imposition of the fine or forfeiture. No other person may pay jockey fines or forfeitures for the jockey.

14. **Competing claims.** Whenever two or more licensees claim the services of one jockey for a race, first call shall have priority and any dispute must be resolved by the stewards.

15. **Jockey suspension.**

- a. Offenses involving fraud. Suspension of a licensee for an offense involving fraud or deception of the public or another participant in racing shall begin immediately after the ruling unless otherwise ordered by the stewards or commission.
- b. Offenses not involving fraud. Suspension for an offense not involving fraud or deception of the public or another participant in racing shall begin on the third day after the ruling.

- c. Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission must be deemed a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the stewards why such withdrawal should not be deemed frivolous.
16. **Association valet-attendant.** No jockey may have a valet-attendant except one provided and paid for by the association.
17. **Jockey agent.**
- a. No jockey may have more than one agent.
 - b. All engagements to ride other than those for the jockey's contract employer must be made by the agent.
 - c. No revocation of a jockey's agent authority is effective until the jockey notifies the stewards in writing of the revocation of the agent's authority.

History: Effective July 1, 1989; amended effective January 1, 2008; April 1, 2018; [October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

**CHAPTER 69.5-01-06
PATRONS**

[Repealed effective October 1, 2022.]

Section

~~69.5-01-06-01 — Ejections From Track~~

CHAPTER 69.5-01-07 CONDUCT OF RACES

Section

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<u>69.5-01-07-19</u>	<u>Horseracing Integrity and Safety Act of 2020</u>

69.5-01-07-01. Horses ineligible.

A horse is ineligible to start a race when:

1. The horse is not stabled on the grounds of the licensed association or facilities approved by the association at least forty-eight hours prior to the race except for ship-ins on race day. Ship-in horses shall be in their assigned stall on the day they are scheduled to race. The racing association must have designated ship-in stalls and must provide the commission veterinarian with stalls assigned prior to nine a.m. All ship-in horses will be subject to prerace examinations by the commission veterinarian at their assigned stalls between nine a.m. and eleven a.m.;
2. The horse's applicable horsemen's organization registration certificate is not on file with the racing secretary, ~~or~~ horse identifier, or digital certificate available in the jockey club database;
3. The horse is not fully identified by an official tattoo on the inside of the upper lip or through a digital tattoo or chip, or any other approved method;
4. With respect to a horse who is entered for the first time, the nominator has failed to identify the horse by name, color, sex, age, and the names of his sire and dam as registered;
5. A horse is brought to the paddock and is not in the care of and saddled by a trainer or assistant trainer;
6. A horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any association or regulatory agency;
7. A horse has been allowed to enter or start by a person having lawful custody or control of the horse who participated in or assisted in the entry of racing of some other horse under the name of the horse in question;

8. A horse is wholly or partially owned by a disqualified person or a horse is under the direct or indirect management of a disqualified person;
9. A horse is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person, in such cases, it being presumed that the disqualified person and spouse constitute a single financial entity with respect to the horse, which presumption may be rebutted;
10. A horse has no current negative coggins test certificate attached to the registration certificate;
11. The stakes or entrance money for the horse has not been paid;
12. A horse appears on the starter's list, stewards' list, or veterinarian's list;
13. A horse is a first-time starter and not approved by the starter;
14. A horse is owned in whole or in part by an undisclosed person or interest;
15. A horse which has started in a race within the past calendar year which race has not been reported in a nationally published monthly chart book, unless at least forty-eight hours prior to entry, the owner of the horse provides to the racing secretary under oath performance records which show the place and date of the race, the distance, the weight carried, the amount carried, and the horse's finishing position and time;
16. In a stakes race, a horse has been transferred with its engagements, unless, prior to the start, the fact of transfer of the horse and its engagements has been filed with the racing secretary;
17. A horse is subject to a lien which has not been approved by the stewards and filed with the horseman's accountant;
18. A horse seven years of age or older and still a maiden;
19. A horse is subject to a lease not filed with the stewards;
20. A horse is not in sound racing condition;
21. A horse has been nerved by surgical neurectomy except in the case of heel nerves upon veterinarian approval, or cryosurgery;
22. A horse has been trachea-tubed to artificially assist its breathing;
23. A horse has been blocked with alcohol or otherwise drugged to desensitize the nerves above the ankle;
24. A horse has impaired eyesight in both eyes; or
25. When it is thirteen years old unless it wins a recognized race each preceding year in which case it may continue to race.

History: Effective July 1, 1989; amended effective January 1, 2008; [October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-12. ~~Valuation of purse~~Purse money.

1. The amount of purse money earned is credited in United States currency and there may be no appeal for any loss on the exchange rate at the time of transfer from the United States currency to that of another country.

2. All purse money must be paid out in its entirety for each race run.

History: Effective July 1, 1989; amended effective October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-18. Medication.

1. Except as otherwise specifically provided by law, the commission adopts by reference:
 - a. The association of racing commissioners international controlled therapeutic medication schedule version ~~2-1~~14.4.
 - b. The association of racing ~~commissioners~~commissioner's international uniform classification guidelines for foreign substances and recommended penalties version ~~7-00~~14.4.
 - c. The model rules ARCI-011-020 section B(13)(a) through (j) of the association of racing commissioners international model rules of racing version ~~5-6~~11.0.
2. Furosemide.
 - a. Furosemide may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian or the racing veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide shall be permitted only after the official veterinarian has placed the horse on the furosemide list. In order for a horse to be placed on the furosemide list the following process must be followed.
 - (1) After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide the official veterinarian or ~~his/her~~the veterinarian's designee shall be notified using the prescribed form, that the horse is to be put on the furosemide list.
 - (2) The form must be received by the official veterinarian or ~~his/her~~the veterinarian's designee by the proper time deadlines so as to ensure public notification.
 - (3) A horse placed on the official furosemide list must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the official veterinarian or ~~his/her~~the veterinarian's designee, on the proper form, no later than the time of entry.
 - (4) After a horse has been removed from the furosemide list, the horse may not be placed back on the list for a period of sixty calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian. If a horse is removed from the official furosemide list a second time in a three hundred sixty-five-day period, the horse may not be placed on the list for a period of ninety calendar days.
 - (5) Furosemide shall only be administered on association grounds.
 - (6) Furosemide shall be the only authorized bleeder medication.
 - b. The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is utilized:

- (1) Furosemide shall be administered by the official veterinarian or ~~his/her~~the veterinarian's designee no less than four hours prior to post time for the race for which the horse is entered.
 - (2) A horse qualified for furosemide administration must be brought to the detention barn within time to comply with the four-hour administration requirement specified above.
 - (3) The dose administered shall not exceed five hundred milligrams nor be less than one hundred fifty milligrams.
 - (4) Furosemide shall be administered by a single, intravenous injection.
 - (5) After treatment, the horse shall be required by the commission to remain in the detention barn in the care, custody, and control of its trainer or the trainer's designated representative under the association ~~and/or~~ commission security supervision, or both, until called to the saddling paddock.
- c. The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is not utilized:
- (1) Furosemide shall be administered by the official veterinarian or ~~his/her~~the veterinarian's designee no less than four hours prior to post time for the race for which the horse is entered.
 - (2) The furosemide dosage administered shall not exceed five hundred milligrams nor be less than one hundred fifty milligrams.
 - (3) Furosemide shall be administered by a single, intravenous injection.
 - (4) After treatment, the horse shall be required by the commission to remain in the proximity of its stall in the care, custody, and control of its trainer or the trainer's designated representative under general association ~~and/or~~ commission security surveillance, or both, until called to the saddling paddock.
- d. Test result must show a detectable concentration of the drug in the post-race serum, plasma, or urine sample.
- (1) The specific gravity of post-race urine samples may be measured to ensure the samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed;
 - (2) Quantitation of furosemide in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.
- e. The administering authority or association may assess a fee approved by the commission on licensed owners of treated horses to recoup the reasonable costs associated with the administration of furosemide in the manner prescribed in these rules.

3. Bleeder list.

- a. The official veterinarian shall maintain a bleeder list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the official veterinarian.
 - b. Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:
 - (1) First incident - Fourteen days;
 - (2) Second incident within a three hundred sixty-five-day period - Thirty days;
 - (3) Third incident within a three hundred sixty-five-day period - One hundred eighty days;
 - (4) Fourth incident within a three hundred sixty-five-day period - Barred for racing lifetime.
 - c. For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.
 - d. The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by this policy.
 - e. A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal.
 - f. A horse which has been placed on a bleeder list in another jurisdiction pursuant to these rules shall be placed on a bleeder list in this jurisdiction.
4. Antiulcer medications. The following antiulcer medications are permitted to be administered, at the stated dosage, up to 24 hours prior to the race in which the horse is entered:
- a. Cimetidine (Tagamet®) - 8-20 mg/kg PO BID-TID.
 - b. Omeprazole (Gastrogard®) - 2.2 grams PO SID.
 - c. Ranitidine (Zantac®) - 8 mg/kg PO BID.

History: Effective July 1, 1989; amended effective January 1, 2008; January 1, 2015; [October 1, 2022](#).

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

[69.5-01-07-19. Horseracing Integrity and Safety Act of 2020.](#)

[The commission and all licensees are subject to any Horseracing Integrity and Safety Act of 2020 rules that are required to be enforced in North Dakota.](#)

History: Effective [October 1, 2022](#).

General Authority: [NDCC 53-06.2-04](#)

Law Implemented: [NDCC 53-06.2-04](#)

CHAPTER 69.5-01-08

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

1. **General.** The only pari-mutuel wagering pools permitted are, those designated in the association of racing commissioners international model rules of racing ~~version 6.0, rules~~ ARCI-004-105 part I, A through X, and pari-mutuel plus, pick 1-2-3, pick 1-2-3-4-5, 123racing Pick-n Wager®, Tote-X® win, and tournament wager. In each pool there must be a separate and independent calculation and distribution. From each pool there must be deducted by each association or licensee the commissions as provided by state law. The remainder of the moneys in the pool must be distributed as payoff to ticketholders as set out therein.
2. **Pari-mutuel plus.**
 - a. The pari-mutuel plus pool requires selection of the order of any designated number of finishers, in their exact positions, in designated contests. The service provider must obtain written approval from the commission concerning the scheduling of the pari-mutuel plus contests and designate the percentage of the amount of carryover. The pari-mutuel plus pool consists of a pool and jackpot carryover and must have predetermined percentages set aside for the pool designated to winners who selected the designated number of finishers. The pool will be distributed to the winners who selected the finishers, in their exact positions, and they will then be eligible for the random drawing of the randomly generated numbers assigned to the wager's ticket to be drawn for the awarding of the jackpot pool. To be awarded the jackpot pool, the winner of the pool must have the matching randomly generated number on the person's ticket that is drawn randomly from the group of designated numbers. Any changes to the approved pari-mutuel plus format require prior approval from the commission.
 - b. Unless otherwise stated, the major share of the net pari-mutuel plus pool shall be distributed as a single price pool to those who selected the designated number of finishers, in exact positions, based upon the official order of finish.
 - c. The pari-mutuel plus pool shall be apportioned with no minor pool and carryover by choosing the designated number of horses in exact order of finish. The service provider must make a written request to the commission for approval to offer consolation and minor pools in the pari-mutuel plus pool, and be granted approval before implementation.
 - (1) The net pari-mutuel plus pool shall be distributed in accordance with the method for distributing the major share to all winners who selected the designated number of finishers, in exact positions.
 - (2) If there are no wagers qualifying for the major share, the net major share shall be added to the carryover.
 - d. If there is a dead heat in the pari-mutuel plus pool involving:
 - (1) Contestants representing the same betting interest, the pool will be distributed as if no dead heat occurred.
 - (2) Contestants representing two or more betting interests, the pool will be distributed as a single price pool with each winning wager receiving an equal share of the profit.
 - e. The pari-mutuel plus pool shall be canceled and all pari-mutuel plus wagers for the individual performance shall be refunded under the following conditions:

- (1) If the pari-mutuel plus contests are canceled or declared no contest prior to the first pari-mutuel plus contest being declared official, the entire pari-mutuel plus pool shall be refunded on wagers for those contests.
 - (2) If all remaining pari-mutuel plus contests are canceled or declared no contests after the first pari-mutuel plus contest is declared official, the entire net pari-mutuel plus pool, but not the pari-mutuel plus carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the pari-mutuel plus contest. However, if there are no wagers selecting the winning combination in the pari-mutuel plus contest, the entire pool shall be refunded on wagers for those contests.
- f. Mandatory distribution.
- (1) The service provider must submit a written request to the commission for permission to distribute the pari-mutuel plus carryover on a specific performance. The request to the commission shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance of the distribution. The service provider must notify the commission at least ten days prior to implementation. If the pari-mutuel plus pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performance.
 - (2) If the pari-mutuel plus carryover is designated for distribution on a specific date and performance, and if there are no wagers qualifying for the major share, which is sixty-five percent of the pool, then the following precedence shall be followed in determining the winning wagers for the pari-mutuel plus pool and carryover pool:
 - (a) The major share and the pari-mutuel plus carryover shall be distributed as a single price pool to those who selected the designated number of finishers, in exact positions, based upon the official order of finish, and who have received a matching random number selected through a drawing of one of a designated group of numbers, minus the service provider or racetrack take-out.
 - (b) The major share and the pari-mutuel plus carryover shall be distributed as a single price pool to those who correctly selected the most finishers, in their exact positions, based upon the official order of finish.
- g. If for any reason, the pari-mutuel plus carryover must be held over to the corresponding pari-mutuel plus pool of a subsequent pari-mutuel plus contest, the carryover shall be deposited in an interest-bearing account approved by the commission. The pari-mutuel plus carryover plus accrued interest shall then be added to the pari-mutuel plus pool of the following meet on a date and performance so designated by the commission.
- h. With written approval of the commission, the service provider may contribute to the pari-mutuel plus carryover a sum of money to be designated by the service provider or the racetrack. Moneys contributed to the pool may be withdrawn when the pool accumulation totals the moneys contributed.
- i. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.
- j. The service provider may suspend previously approved pari-mutuel plus wagering with prior approval from the commission. Any carryover shall be held until the suspended pari-mutuel plus wagering is reinstated. A service provider may request approval of the pari-

mutuel plus wager or a separate pari-mutuel plus wagering pool for specific performances.

3. **Pick 1-2-3 pool.** The pick 1-2-3 pool requires selection of the first three finishers, irrespective of order, in each of three designated contests. Payment of the ticket may be made only to the purchaser who has selected the qualifying finishers in three designated races.
 - a. Pick 1-2-3 requires a selection of a combination of either nine, eight, seven, or six, first, second, and third place finishers, in any order, in three consecutive races that are designated as pick 1-2-3 races to qualify for a payout. There will be no monetary award for the winning combination for winning the first pick 1-2-3 race or any combination of five or less qualifiers in each of the three races.
 - b. The service provider must obtain written approval from the commission concerning the scheduling of the pick 1-2-3 contests, the designation of qualifying races, and the cap to be set on the carryover. Any changes to the pick 1-2-3 wager format requires prior approval from the commission.
 - c. The pick 1-2-3 pool and carryover, if any, shall be distributed as a single price pool to those who selected the winning combination of the top three finishers in three races, or a decreasing scale of qualifiers eight of nine, seven of nine, or six of nine, in the following payout method:
 - (1) Fifty percent of net pool and accumulated jackpot divided between players selecting nine of nine.
 - (2) Thirty percent of net pool divided between players selecting eight of nine.
 - (3) Fifteen percent of net pool divided between players selecting seven of nine.
 - (4) Five percent of net pool divided between players selecting six of nine.
 - (5) If there are no winning wagers for the nine of nine winners, then fifty percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
 - (6) If there are no winning wagers for the eight of nine winners, then thirty percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
 - (7) If there are no winning wagers for the seven of nine winners, then fifteen percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
 - (8) If there are no winning wagers for the six of nine winners, then five percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
 - d. Dead heats. In the event of a dead heat in any of the position pick 1-2-3 contests based upon the official order of finish for the purposes of determining whether a wager correctly selected the finishers in exact position, contestants in a dead heat are deemed to jointly occupy both or all positions in the dead heat. For example, if five and six finish in a dead heat for first, then a selection of five for either first or second is correct and a selection of six for either first or second is also correct.
 - e. Scratches.

- (1) If, due to a late scratch, the number of betting interests in a contest of the pick 1-2-3 pool is reduced to fewer than six contestants, for the purposes of the pick 1-2-3 pool only, such contests shall be declared no contest and the pick 1-2-3 pool shall be declared a canceled contest.
 - (2) Should a betting interest in any contest of the pick 1-2-3 pool be scratched or excused from the contest, no more wagers shall be accepted selecting that scratched contestant.
 - (3) Scratch contestant losers:
 - (a) The scratch contestant is deemed to be a loser, for the purposes of the pick 1-2-3 pool only.
 - (b) Other correctly selected finishers in the pick 1-2-3 shall continue to count toward winning, as usual.
- f. Canceled contests.
- (1) If any of the pick 1-2-3 contests are canceled or declared no contest prior to the first pick 1-2-3 contest being declared official, the daily pick 1-2-3 pool shall be refunded on the pick 1-2-3 wagers for those contests.
 - (2) If all remaining pick 1-2-3 contests are canceled or declared no contest after the first pick 1-2-3 contest is declared official, the entire net pick 1-2-3 pool, but not the pick 1-2-3 carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the first pick 1-2-3 contest. However, if there are no wagers selecting the winning combination in the first pick 1-2-3 contest, the daily pick 1-2-3 pool shall be refunded on pick 1-2-3 wagers for those contests.
- g. Mandatory distribution. The service provider must submit a written request for permission to distribute the pick 1-2-3 carryover on a specific performance to the commission. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. The service provider must notify the commission at least ten days prior to implementation. If the pick 1-2-3 pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performance.
4. **Pick 1-2-3-4-5 pool.** Pick 1-2-3-4-5 requires selection of the first five finishers, irrespective of order, in each of three designated contests. Payment of the ticket may be made only to the purchaser who has selected the qualifying finishers in three designated races.
- a. Pick 1-2-3-4-5 requires the selection of a combination of either fifteen, fourteen, thirteen, or twelve first, second, third, fourth, and fifth place finishers, in any order, in three consecutive races that are designed as pick 1-2-3-4-5 races to qualify for a payout. There will be no monetary award for the winning combination for winning the first pick 1-2-3-4-5 race or any combination of eleven or less qualifiers in each of the three races.
 - b. The service provider must obtain written approval from the commission concerning the scheduling of the pick 1-2-3-4-5 contests, the designation of qualifying races and the cap to be set on the carryover. Any changes to the pick 1-2-3-4-5 wager format require prior approval from the commission.
 - c. The pick 1-2-3-4-5 pool and carryover, if any, shall be distributed as a single price pool to those who selected the first five finishers in three races or a decreasing scale of qualifiers

fifteen of fifteen, fourteen of fifteen, thirteen of fifteen, or twelve of fifteen in the following payout method:

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

- (1) If any of the pick 1-2-3-4-5 contests are canceled or declared no contest prior to the first pick 1-2-3-4-5 contest being declared official, the entire pick 1-2-3-4-5 pool shall be refunded on the pick 1-2-3-4-5 wagers for those contests.
 - (2) If all remaining pick 1-2-3-4-5 contests are canceled or declared no contest after the first pick 1-2-3-4-5 contest is declared official, the entire net pick 1-2-3-4-5 pool, but not the pick 1-2-3-4-5 carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the first pick 1-2-3-4-5 contest. However, if there are no wagers selecting the winning combination in the first pick 1-2-3-4-5 contest, the entire pick 1-2-3-4-5 pool shall be refunded on pick 1-2-3-4-5 wagers for those contests.
- g. **Mandatory distribution.** The service provider must submit a written request for permission to distribute the pick 1-2-3-4-5 carryover on a specific performance to the commission. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. The service provider must notify the commission at least ten days prior to implementation. If the pick 1-2-3-4-5 pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performances.
 - h. **Coupled entries and mutuel fields.** Coupled entries and mutuel fields are not permitted in pick 1-2-3-4-5 contests.

5. 123racing Pick-n Wager©.

- a. The 123racing Pick-n Wager is a separate pari-mutuel pool wager established by the association or licensee on a designated number of races. The gross pool consists of the total amount wagered for the multiple race bet. Winning wagers are determined by the highest points totals earned after all rounds have been completed, based on cumulative mythical two dollar win, place, show wagers (a fantasy two dollar across the board wager), on one betting interest per wagering race. It is not a parlay and has no connection with or relation to other pools conducted by the association or licensee other than the utilization of live race payouts as a means of calculating players' fantasy points.
- b. A valid 123racing Pick-n Wager ticket shall be evidence of a binding contract between the holder of the ticket and the association or licensee, and shall constitute an acceptance of 123racing Pick-n Wager provisions and rules contained in this chapter.
- c. A licensee may establish a minimum and maximum number of entries per tournament. If the minimum number of entries are not received, the licensee may cancel and refund all wagers in that tournament. The minimum entries for each tournament must be published in advance of the opening of the tournament.
- d. A licensee may limit the number of entries per player. The maximum entries per player for each tournament must be published in advance of the opening of the tournament.
- e. A 123racing bet may not be retracted once it has been purchased.
- f. A 123racing Pick-n Wager may be given a distinctive name by the association conducting the meeting or licensee, subject to commission approval, and existing license, copyrights, and patents.
- g. 123racing Pick-n Wagers shall be conducted as follows:
 - (1) Each player wagers into the gross pool and selects one betting interest per wagering race.

- (2) The number of races that complete the wager varies depending on the specifics of "tournament", as determined by the host racing association or licensee, but shall include no less than four races.
- (3) Each round of the "tournament" consists of a mythical win, place, show wager on one betting interest per race.
- (4) Official program numbers must be used for all wagers. All players are responsible for ensuring each wager is placed correctly.
- (5) Live race payouts are used to calculate players' fantasy points totals.
- (6) As part of the announced tournament rules, and as approved by the commission, the host racing association or licensee may opt to cap the maximum odds on all fantasy payouts.
- (7) Each player's fantasy points will be reflected in their cumulative fantasy points totals at the end of each race.
- (8) Following a race being declared "official", the actual pari-mutuel pool payout for a fantasy across-the-board wager will be translated to points and added to a player's cumulative fantasy points totals. The host racing association or licensee may specify a maximum number of points that can be accumulated by any one wager per contest race subject to commission approval.
- (9) Of the bettors, the players with the highest fantasy points totals after the last leg are the "winners".
- (10) A portion of the net pari-mutuel pool as determined in advance of the contest by the host racing association or licensee and approved by the commission, designated the "major net pool" is distributed in accordance with subdivision i.
- (11) In addition to the major net pool, a host racing association or licensee may designate in advance of the contest and as approved by the commission a portion of the net pari-mutuel pool for carryover as follows:
 - (a) A "perfect pick carryover pool" is carried over to subsequent contests until a bettor successfully selects the winning runners of all designated contests in the current contest, in which case the perfect pick carryover pool will be equally divided between the bettors successfully selecting every winning runner.
 - (b) A "place carryover pool" is carried over to subsequent contests until a bettor successfully selects runners finishing first or second in all designated contests in the current contest, in which case the place carryover pool will be equally divided between the bettors successfully selecting runners finishing first or second in all designated contests.
 - (c) A "show carryover pool" is carried over to subsequent contests until a bettor successfully selects runners finishing first, second, or third in all designated contests in the current contest, in which case the show carryover pool will be divided between the bettors successfully selecting runners finishing first, second, or third in all designated contests.
 - (d) A host racing association or licensee may designate a contest on which a perfect pick carryover pool, place carryover pool, or show carryover pool is terminated and fully distributed to the best performing bettor or bettors in that contest.

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

- (6) If one pari-mutuel ticket wager scores the highest points totals, and two or more pari-mutuel tickets wagers equal the second-highest points totals after all races have been completed, sixty percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to the highest-scoring ticket holder, and forty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets which have the second-highest points totals after all races have been completed.
- (7) If one pari-mutuel ticket wager scores the highest points totals, one pari-mutuel ticket wager scores the second-highest points totals, and two or more pari-mutuel ticket wagers score the third-highest points totals after all races have been completed, then sixty percent of the net amount in the pari-mutuel pool subject to distribution shall be distributed to the highest-scoring ticket holder, thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the second-highest scoring ticket holder, and ten percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of pari-mutuel tickets which have the third-highest points totals.
- o. Should circumstances occur which are not addressed by these rules, questions arising thereby shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of the 123racing Pick-n Wager pool made by the commission are final.

6. Tote-X win.

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

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

- (5) The Tote-X proprietary algorithms shall be applied uniformly to all wagers in the pool.
 - (6) As approved by the commission, the host racing association or licensee may opt to cap the maximum odds on all Tote-X payouts.
 - (7) A Tote-X wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field as determined by the rules of the live corresponding race.
 - (8) The customer may choose to redeem all or part of their RUs for their then-current value at any time prior to the close of the relevant pool if a horse or combination of horses has not been excused by the stewards or declared a nonstarter and the pool operator has not otherwise suspended the capacity for ticket holders to redeem their wagers.
 - (9) A Tote-X wager may not be rescinded once it has been purchased other than through proper redemption of RUs in accordance with these rules.
 - (10) A redemption requires the customer to surrender all or part of the underlying wager. In the event of a redemption of all RUs issued for a specific wager, the original wager shall be surrendered in its entirety. In the event of a partial redemption of the RUs issued for a specific wager, the original wager will be surrendered in proportion to the percentage of RUs being redeemed;
 - (11) Subsequent to the deduction from the pool of each redemption payout, the remainder of the funds in the pool shall constitute the new value of all RUs which are available for subsequent redemptions. Thereafter, those RUs which are not redeemed prior to the closure of the pool constitute the net pool for distribution as payoff to ticket holders of wagers following a race being declared "official".
 - (12) Once the Tote-X win pool is closed prior to the race, ticket holders may no longer redeem any of their RUs.
 - (13) Each customer holding a successful bet after the race is declared "official" is entitled to collect according to the relevant final odds.
 - (14) From each redemption and final pool payout a commission shall be deducted by the host racing association or licensee in accordance with state law.
 - (15) The commission and its distribution for the Tote-X wager shall be approved by the commission.
- c. Notwithstanding any language to the contrary, the funds remaining in the Tote-X win pool following the payment of redemptions prior to the closure of the pool constitute the net pool for the purpose of distribution as payoff to winning ticket holders.
 - d. Any funds remaining after the closing of the Tote-X win pool will be distributed as payoff to the winning ticket holders in the same manner as a win pool pursuant to subsection 2.
 - e. Notwithstanding subsection 20 or any language to the contrary contained in this chapter, if, after wagering has commenced on a race, a horse not coupled with another as a betting interest is excused by the stewards or declared a nonstarter, an amount based on the then-current odds as represented by the current value of the RUs on such horse shall

be deducted from the pools and refunded upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager, then there may be no refund unless all of the horses representing such single betting interest as excused by the stewards or declared a nonstarter, or both.

- f. Notwithstanding subsection 21 or any language to the contrary contained in this chapter, if, after wagering has commenced on a race, the race is thereafter canceled or declared a "no race" by the stewards, and no redemptions have occurred prior to such, then all wagering thereon shall be refunded upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier. However, if one or more redemptions have occurred prior to the stewards canceling or declaring a "no race", then all wagering thereon shall be refunded at the then-current odds, as represented by the current value of the RUs, at the time of cancellation upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier.
- g. Notwithstanding subsection 22 or any language to the contrary contained in this chapter, in the event of an irreparable breakdown of the totalizator system during the wagering on a race, all Tote-X wagering thereon shall be refunded at the then-current odds, as represented by the current value of the RUs, at the time of irreparable breakdown upon presentation and surrender of affected pari-mutuel tickets or unique electronic identifier.
- h. Notwithstanding section 69.5-01-08-05 or any language to the contrary contained in this chapter, there is no minimum payoff for a Tote-X redemption. However, any distribution made after closing of the Tote-X win pool shall be subject to the minimum payoff provisions of section 69.5-01-08-05.
- i. Should circumstances occur which are not addressed by these rules, questions arising therefrom shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of the Tote-X pool made by the stewards are final.

7. Tournament wager.

- a. The tournament wager is a separate pari-mutuel pool wager established by the licensee on a designated number of races. The gross pool consists of the total amount wagered for the multiple race bet. Winning wagers are determined by the highest points totals earned after all races have been completed. It is not a parlay and has no connection with or relation to other pools conducted by the licensee other than the utilization of live race payouts as a means of calculating players' points.
- b. A valid tournament wager ticket is evidence of a binding contract between the holder of the ticket and the association, and constitutes an acceptance of tournament wager provisions and rules contained in this chapter.
- c. A tournament wager ticket may not be retracted within two hours of post time except in accordance with previously published rules. A tournament wager ticket may be canceled only with the approval of the licensee.
- d. A licensee may establish a minimum and maximum number of entries per tournament. If the minimum number of entries are not received, the licensee may cancel and refund all wagers in that tournament. The minimum entries for each tournament must be published in advance of the opening of the tournament.
- e. A licensee may limit the number of entries per player. The maximum entries per player for each tournament must be published in advance of the opening of the tournament.

- f. A tournament wager may be given a distinctive name by the licensee, subject to commission approval.
- g. Tournament wagers must be conducted as follows:
 - (1) Mythical win/place and win/place/show tournament:
 - (a) Players select one or more primary betting interests for each designated tournament race in accordance with published tournament rules.
 - (b) Players may select an alternate betting interests in accordance with published tournament rules. If there is a scratch of the player's primary selection, the alternate will be substituted. If there is also a scratch of the player's alternate selection, or if no alternate selection has been made, the selection will default to the remaining betting interest with the best post time odds as determined by win pool odds.
 - (c) Players accrue earnings based on the actual pari-mutuel win, place, or show payouts for any correct selections, determined from tote payouts, based on a mythical win/place or win/place/show wager of a dollar value established by the licensee in advance of the contest. The licensee may establish maximum mythical earnings in advance of the opening of the contest. As an example, for a two-dollar win/place/show tournament, the maximum payout may be forty-two dollars for a successful win selection, twenty-two dollars for a successful place selection, and twelve dollars for a successful show selection.
 - (d) Should there be a tie in earnings in the contest, ties will be broken in accordance with the following procedures:
 - [1] The entry with the most number of winners selected will win the tie, if a tie still remains, then;
 - [2] The entry selecting the horse with the highest mutuel win payout will win the tie, if a tie still remains, then;
 - [3] The entry with the most number of place horses selected will win the tie, if a tie still remains, then;
 - [4] The entry with the highest mutuel place payout will win the tie, if a tie still remains, then;
 - [5] The entry with the most number of show (third place finishers that did not win or place) horses selected will win the tie, if a tie still remains, then; and
 - [6] The winning entry will be determined by a random draw among eligible entries.
 - (e) A licensee may provide qualification for future or online tournaments for the entry based on their final ranking, including any tie breakers. Such an offering must be included in the tournament rules published in advance of the opening of the tournament.
 - (f) Pari-mutuel distributions are made at the conclusion of the tournaments that are based on the pari-mutuel distribution schedule published by the licensee in advance of the opening of the tournament.

(2) Survivor tournament:

- (a) Players select one primary betting interest for each designated tournament race. Players remain in the tournament if the player's betting interest finishes in a win, place, or show position. A player may remain in a tournament if the player's betting interest finishes in third position where show wagering has been canceled by the track if provided by published tournament rules. Players whose betting interest does not finish win, place, or show must be eliminated from the tournament. If no players select a betting interest finishing win, place, or show in a designated tournament race, the licensee may continue the tournament to the next race with all then remaining players if provided by published tournament rules.
- (b) Players may select an alternate betting interest. If there is a scratch of the player's primary selection, the alternate will be substituted. If there is also a scratch of the player's alternate selection, or if no alternate selection has been made, the selection will default to the remaining betting interest with the best post time odds as determined by win pool odds.
- (c) Players earn one point per correct selection of a betting interest finishing in a win, place, or show position as determined by existence of a pari-mutuel payout for that position.
- (d) If the size of the field or other circumstances produce only win/place or only win payouts, only those horses will be considered to be correct selections for the purposes of scoring.
- (e) In the discretion of the licensee, tiebreakers may be applied in survivor tournaments pursuant to the terms published in advance of the opening of the tournament.
- (f) Pari-mutuel distributions are made at the conclusion of the tournaments that are based on the pari-mutuel distribution schedule published by the licensee in advance of the opening of the contest.

(3) Exacta box tournament:

- (a) Players select three primary betting interests for each designated tournament race.
- (b) Players may select an alternate betting interest for each of their three primary selections. If there is a scratch of the player's primary selection, the alternate will be substituted. If there is also a scratch of the player's alternate selection, or if no alternate selection has been made, the selection will default to the remaining betting interest with the best post time odds as determined by win pool odds.
- (c) Players accrue earnings based on the actual pari-mutuel exacta payout for any correct selections regardless of order, determined from tote payouts, based on a mythical exacta wager of a dollar value established by the licensee in advance of the contest. The licensee may establish maximum mythical earnings in advance of the opening of the contest.
- (d) In the discretion of the licensee, tiebreakers may be applied in exacta box tournaments pursuant to the terms published in advance of the opening of the tournament.

- (e) Pari-mutuel distributions are made at the conclusion of the tournaments that are based on the pari-mutuel distribution schedule published by the licensee in advance of the opening of the contest.
 - h. A fantasy wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field as determined by the rules of the live corresponding race.
 - i. Earnings or points for dead heats will be determined by the payouts of the live corresponding race.
 - j. The takeout and its distribution for the tournament wager shall be set and approved by the host regulatory commission.
 - k. All tickets must be refunded if all races comprising the tournament wager are canceled or declared as a no contest. The entire pool must be refunded if less than seventy percent of the tournament's designated races remain.
 - l. After wagering closes on the first race comprising the tournament wager, the tournament is deemed closed and no entry ticket may be sold, exchanged, or canceled. No person shall be determined to hold a winning tournament wager ticket until the last designated race has been declared official.
 - m. The licensee shall distribute the net pool to the holders of valid tickets that correctly selected the combination of finishers that generated the highest fantasy earnings or points totals through the designated races/rounds comprising the tournament wager. In advance of the opening of the tournament, the licensee shall submit a payout schedule to the racing commission for approval providing the number of places to be paid and the percentage of payout for each place. Approved payout schedules must be published in advance of the opening of the tournament to which they apply.
 - n. Should circumstances occur which are not addressed by these rules, questions arising thereby must be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of the tournament wager pool made by the commission are final.
8. **Refunds.** Unless otherwise provided, after wagering has commenced, if a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate door to open properly, the wagers on such horse must be deducted from the pools, and refunded upon presentation and surrender thereof. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a combination then there may be no refund unless all of the horses representing such single betting interest are excused by the stewards or are prevented from racing because of failure of the starting gate doors to open properly, or both.
 9. **Race canceled.** If for any reason a race is canceled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon must be refunded upon presentation and surrender of pari-mutuel tickets thereon; except as otherwise provided.
 10. **Totalizator breakdown.** In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race must be declared closed and the payoff must be computed on the sums wagered in each pool up to the time of the breakdown. If the odds can be displayed and communicated publicly, betting may continue.

History: Effective July 1, 1989; amended effective January 1, 2008; July 1, 2011; October 1, 2013; July 1, 2014; April 1, 2016; January 1, 2017; October 1, 2018; [October 1, 2022](#).

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-06, 53-06.2-10, 53-06.2-10.1, 53-06.2-11

69.5-01-08-08. Betting explanation.

Each association shall ~~cause to be published~~publish in the daily race program a general explanation of pari-mutuel betting and an explanation of each type of betting pool offered; such explanation also must be posted in conspicuous places about the association grounds so as to adequately inform the public. Such explanation must be submitted to the commission prior to publication so as to ensure an absence of conflict with these rules.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

CHAPTER 69.5-01-09

69.5-01-09-01. Definitions.

1. "Accredited North Dakota-bred race horse" means a horse qualifying for and duly registered in the North Dakota breeders' fund program. For purposes of awards and purse supplements, such accreditation for horses racing shall continue through the age of twelve years. Awards for breeding mares and stallions shall continue ~~indefinitely~~ as long as there is progeny racing.
2. "Breeder" means the owner or lessee, or the respective breed-registering organization of the dam at the time of foaling in North Dakota.
3. "Donor mare" means the mare which produces an embryo or an oocyte which, after fertilization, is transferred into the uterus of a recipient mare.
4. "Embryo transfer" means the process of transferring a donor mare embryo into a recipient mare.
5. "North Dakota-bred" means a foal born in North Dakota out of a mare registered as a broodmare under section 69.5-01-9-02 with the North Dakota racing commission prior to the foal's birth, and which mare was in North Dakota:
 - a. On or before February first of the year foaled; or
 - b. Within thirty days after the date of a bona fide purchase or lease transaction, whichever of those dates is the latest, and provided, in either case, that mare remained physically within the boundaries of North Dakota until foaling.
- ~~4-6.~~ "North Dakota-foaled" means a horse ~~foaled~~ born in North Dakota.
- ~~5-7.~~ "Race horse owner" means the owner or lessee of record with the respective breed-registering organization at the time the horse participates in a race qualifying the horse for breeders' fund awards or purse supplements under the provisions of this chapter.
- ~~6-8.~~ "Recipient mare" means the surrogate mare carrying a donor mare's embryo.
9. "Stallion owner" means the owner of a stallion registered as a breeding stallion in the North Dakota breeders' fund program. North Dakota breeders' fund awards accruing to the owner of a stallion as a result of qualifying race performances by North Dakota-breds sired by a stallion shall be awarded to the owner of the stallion at the time of conception of such progeny.

In a case involving extraordinary circumstances, the North Dakota racing commission or designated registering agency retains the right to allow or disallow the registration of a foal as North Dakota-bred at its sole discretion.

The requirements of this section apply to all breeds.

History: Effective January 1, 1990; amended effective March 1, 2002; July 1, 2011; January 1, 2015; October 1, 2022.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-04.1, 53-06.2-11

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

1. The breeder or owner of a North Dakota-bred horse shall register such horse with the North Dakota racing commission before racing to be eligible to receive breeders' fund award payments. The commission may contract with and designate an official registering agency to implement the registration of North Dakota-bred horses.

- a. The original breed registration certificate must be embossed by the commission or official registering agency before the entry into any race eligible for breeders' fund awards.
 - b. Failure to have all required paperwork submitted and breed registration certificate embossed before racing shall disqualify a horse from an award or payment from the North Dakota breeders' fund.
 - c. The purchaser of a horse is required to have all paperwork submitted and breed registration certificate embossed before racing the horse. Failure to meet these requirements shall disqualify a horse from an award or payment from the North Dakota breeders' fund.
2. Broodmare registration. A broodmare must meet the qualifications as outlined in subsection 4 of section 69.5-01-09-01 to be eligible for broodmare award payments based on a percentage of the North Dakota breeders' fund program awards earned by accredited North Dakota-bred horses foaled by the mare. In addition, the broodmare must meet the following conditions:
- a. The North Dakota racing commission or the designated agency must receive or have access to the broodmare's original breed paper or electronic registration certificate for embossing, a completed North Dakota breeders' fund program registration application as furnished by the North Dakota racing commission, and a registration fee of ~~ten~~thirty dollars.
 - b. Failure to properly register the broodmare, as outlined in section 69.5-01-09-01 and in this section, will disqualify any subsequent claims for North Dakota breeders' fund award payments.
 - c. A broodmare may be registered at any time before the time that she delivers a foal.
3. Stallion registration. To be eligible to receive stallion award payments, the following requirements must be met:
- a. Stallions must physically be in North Dakota and registered ~~or the registration renewed~~ with the North Dakota racing commission or official registering agency by February first of the current breeding year. The stallion's original breed registration certification must be received by the North Dakota racing commission or official registering agency for embossing, with a completed North Dakota breeders' fund program registration application and a registration fee of ~~twenty~~thirty dollars. If the stallion is leased, a copy of the lease must accompany the registration application. The lease must include a statement that the lessee is authorized to sign the breeding certificate. A leased stallion must renew its stallion registration each year.
 - b. When a stallion is purchased after February first of the current breeding season, the new owner must register the stallion within thirty days after the date of a bona fide purchase with the North Dakota racing commission or official registering agency to be eligible for the North Dakota breeders' fund program.
 - c. Stallions must remain in North Dakota for the entire current breeding season from February first to July thirty-first. Stallions registered pursuant to subdivision b must be in North Dakota as of the date of registration and remain in North Dakota through July thirty-first.
4. Foal registration and certification. For a horse foaled in North Dakota to be registered and subsequently certified as a North Dakota-bred, the following requirements must be met:
- a. Any time from foaling through December thirty-first of the foaling year that the horse was foaled in North Dakota, the foal must be registered with the North Dakota racing

commission or official registering agency. The registration form must be provided by the commission and must contain the date, name, registration number, owner's name of the foaling dam, date the foal was born, and foal owner's statement that the foal was born in North Dakota. The application to register a foal in the North Dakota breeders' fund program as a North Dakota-bred must be accompanied by a ~~ten~~thirty dollar registration fee.

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

5. Embryo transfer. For a resulting foal from an embryo transfer to be eligible for accreditation in the North Dakota-bred program, the donor mare must be accredited in the broodmare registry before foaling.

- a. If a donor mare is bred in North Dakota, the donor mare may be shipped out of North Dakota to have the embryo removed but must return to North Dakota within thirty days to continue her domicile, or if the donor mare is to be bred in subsequent cycles at an out-of-state location to obtain additional embryos, the broodmare must return to North Dakota and resume her domicile within thirty days of her final breeding date for that year's breeding season. Nothing in this section would prohibit an accredited broodmare that is serviced out-of-state from producing multiple embryos which are transferred to recipient mares during the period of time she is permitted to be out-of-state for breeding purposes.
- b. Effective January 1, 2023. Before the resulting foal of an embryo transfer is eligible for North Dakota accreditation, the following requirements must be met:
 - (1) All recipient mares shall be permanently identified using methods listed on the "recipient mare form" provided by the commission. The "recipient mare form" must be completed by the breeder and returned to the commission by November first of

the year before foaling. A "recipient mare form" may not be accepted by the commission after this date.

(2) Recipient mares must be domiciled in North Dakota no less than thirty days before the due date indicated on said "recipient mare form" and remain in North Dakota until the foal is born. If a recipient mare is not domiciled in North Dakota at least thirty days before the due date listed on said form, or leaves North Dakota before foaling, the resulting foal is ineligible for entry into the North Dakota-bred program.

(3) Any breeder whose "recipient mare form" is on file with the commission shall be responsible to notify the commission in writing, within thirty calendar days, of any changes in domicile location or ownership. In addition, any new owners of said recipient mares, if any, shall notify the commission in writing, within thirty calendar days, regarding the domicile location of the recipient mare.

(4) If there is a transfer in ownership of a foal in utero, the new owner shall be responsible to notify the commission in writing, within thirty calendar days, regarding the domicile location of the recipient mare carrying the foal in utero.

(5) Failure to comply with these requirements will result in foals being ineligible for entry into the North Dakota-bred program.

c. "Recipient mare forms" may not be accepted by the commission after November first of the year before foaling. Any breeder whose "recipient mare form" is on file with the commission shall be responsible to notify the commission in writing, within thirty calendar days, of any changes in domicile location or ownership. In addition, any new owners of said recipient mares, if any, shall notify the commission in writing, within thirty calendar days, regarding the domicile location of the recipient mare. If there is a transfer in ownership of a foal in utero, the new owner shall be responsible to notify the commission in writing, within thirty calendar days, regarding the domicile location of the recipient mare carrying the foal in utero. Failure to comply with these requirements will result in foals being ineligible for entry into the North Dakota-bred program.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022.

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

Law Implemented: NDCC 53-06.2-11

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

1. The North Dakota racing commission shall deduct one-half of one percent from each pari-mutuel pool resulting from a licensed race meet or simulcast display for the purpose of providing a North Dakota breeders' fund as provided for by North Dakota Century Code section 53-06.2-11. All moneys held in the fund must be deposited with the North Dakota state treasurer in accordance with North Dakota law. All moneys shall remain in the control of the state treasurer until, upon action of the North Dakota racing commission, funds are transferred to the breeders' fund account ~~of the fund administrator~~. The executive director ~~of racing~~ of the racing commission is responsible for the timely deposit of all revenue derived from the breeders' fund take-out and shall keep accurate records of deposits and disbursements.
2. The management procedures, rules, fee schedules, registration forms, publications, and all other instruments necessary to the operation of the North Dakota breeders' fund program by the official registering agency are subject to the review and approval of the commission. The commission must be provided copies of the completed registration forms for all horses entered in the North Dakota breeders' fund program, or the North Dakota stallion or broodmare registry. The official registering agency shall provide the commission with a financial accounting of the North Dakota breeders' fund program by an independent accountant within

ninety days of the end of the ~~calendar~~fiscal year. Costs of administering this program will be funded by ~~a deduction of no more than five percent of the yearly accumulated~~the North Dakota breeders' fund.

3. The racing industry advisory committee shall be the officially recognized advisory body to the North Dakota racing commission on all matters pertaining to the North Dakota breeders' fund program. The actions of the racing industry advisory committee shall be advisory only and shall not be binding upon the North Dakota racing commission. Establishment and membership of the racing industry advisory committee as to number and representative affiliation shall be at the discretion of the North Dakota racing commission.
4. Any person who desires to contest the accuracy of the commission's records or accounting of the North Dakota breeders' fund distribution in any one year shall file a written claim with the commission prior to the end of the calendar year. The written claim must state the basis for the claim.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022.

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

Law Implemented: NDCC 53-06.2-11

69.5-01-09-07. North Dakota-bred racing program.

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

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

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022.

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

Law Implemented: NDCC 53-06.2-11

69.5-01-09-08. Change of ownership.

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

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022.

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

Law Implemented: NDCC 53-06.2-11

69.5-01-09-09. Establishment of North Dakota-bred added money and award payments at a race meeting.

The North Dakota racing commission shall establish North Dakota breeders' fund program added money and award payment levels for accredited North Dakota-bred maiden, claiming, allowance, and

stakes races at commission-licensed race meetings and authorize increases and decreases in those levels as the racing commission deems appropriate with respect to funds available in the North Dakota breeders' fund. For this section trials are not considered eligible races for award payments.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022.

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

Law Implemented: NDCC 53-06.2-11

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

1. ~~Sixty percent of the moneys~~A minimum of seventy-five percent of the previous calendar years' deposits accruing to the North Dakota breeders' fund shall be awarded to accredited North Dakota-bred horses who qualify for awards ~~at licensed races outside the state and forty percent shall be awarded to accredited North Dakota-bred horses who win awards at licensed races within the state.~~ Any race considered in this category must have a minimum purse of ~~one~~two thousand dollars ~~and, if a claiming race, must have a minimum claiming price of two thousand five hundred dollars.~~ All ~~amount minimums~~amounts will be determined in United States currency.
2. The North Dakota racing commission shall establish the award level distribution amounts for in-state and out-of-state racing each year. All in-state awards must be paid out no later than December thirty-first each year, while out-of-state awards must be paid out no later than February twenty-eighth each year.
3. The official order-of-finish distribution amounts accredited must be as follows:
 - a. Fifty percent of the total scheduled award payment to a winning accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any;
 - b. Thirty percent of the total scheduled award payment to the placing accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any; and
 - c. Twenty percent of the total scheduled award payment to the showing accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any.
- ~~3-4.~~ The North Dakota racing commission shall establish a point system assigning monetary values for each win, place, or show by North Dakota-bred horses at licensed race meets within the state and outside the state. The point system will assign values based on the relative moneys available for distribution inside the state and outside the state, and the number of horses that qualify for such awards inside the state and outside the state. The North Dakota racing commission shall award additional points within the system it establishes for qualifying performances by accredited North Dakota-bred horses who win, place, or show in a race at a licensed race meet outside the state where the purse is ten thousand dollars or more as follows:
 - a. Purse of ten thousand dollars or more but less than twenty-five thousand dollars is worth double points.
 - b. Purse of twenty-five thousand dollars or more but less than fifty thousand dollars is worth triple points.
 - c. Purse of fifty thousand dollars or more is worth quadruple points.

~~4-5.~~ Distribution points for win, place, or show shall be established by the North Dakota racing commission for such performances by North Dakota-bred horses. Separate pools shall be established for moneys to be awarded to North Dakota-bred horses that earn awards at licensed races outside the state and for North Dakota-bred horses who earn awards at licensed races within the state.

~~5-6.~~ The distribution of North Dakota breeders' fund award payments must be as follows:

- a. Sixty percent of the scheduled award payment to owners of accredited North Dakota-breds who earn such awards, provided however, that if either the dam or sire, or both, are not duly registered in the program as broodmares or stallions, that the award percentages that would have accrued to them, had they been in the program, be paid to the owner of the accredited foal up to one hundred percent of the scheduled award.
- b. Thirty percent of the scheduled award payment to the breeder of an accredited North Dakota-bred who earns awards, provided that the dam was registered in the North Dakota breeders' fund program as a broodmare at the time the accredited North Dakota-bred was foaled.
- c. Ten percent of the scheduled award payment to the owner of the sire at the time of conception of an accredited North Dakota-bred who earns awards provided that the sire was registered in the North Dakota breeders' fund program as a breeding stallion at the time the foal was conceived.

~~6-7.~~ ~~No more than a total of ten race awards per horse will be permitted. The owner may select the ten races (win, place, or show) for breeders' fund awards.~~ Applications for breeders' fund awards of the preceding out-of-state year's races must be ~~received in~~postmarked to the North Dakota racing commission office on approved forms by January ~~fifteenth~~fifth of the year, following those races.

~~7-8.~~ Award checks must have imprinted on them "This check is void if not cashed within sixty days after date of issuance". This statement is binding and checks not cashed within sixty days of issuance shall revert to the commission to be redeposited in the breeders' fund for future distribution awards with the exception that in the event the commission is unable to locate and award the recipient by United States first-class mail, the commission shall be given an additional sixty days beyond the void date of the award check to attempt to locate the payee. If unable to locate the payee within the additional sixty days, any such award shall revert ~~back~~ to the commission to be held in the breeders' fund for future distribution. Any subsequent claims for such awards by the person or entities not cashing award checks as prescribed or not located as defined by this section shall not be allowed.

~~8-9.~~ In no event may North Dakota breeders' fund moneys be used to subsidize restricted races, other than those restricted to North Dakota-breds.

~~9-10.~~ All ~~broodmare and stallion~~in-state breeders' fund awards must be calculated ~~at the end of the year for distribution and paid by December thirty-first each year.~~

~~10-11.~~ All ~~owner's out-of-state breeders' fund~~ awards ~~may be distributed with purse distribution or, until such time as sufficient criteria is established, may be calculated at yearend for distribution~~must be calculated and paid by February twenty-eighth each year.

~~11.~~ ~~No breeders' fund moneys will be payable to the owner or owners of the sire or dam unless the owner or owners of the runner makes application for and receives an award.~~

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2018; October 1, 2022.

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

Law Implemented: NDCC 53-06.2-11

69.5-01-09-13. Guidelines of a major racing facility.

In addition to any other requirements or conditions required by the commission, a major racing facility must:

1. Be recognized annually by the North Dakota racing commission as a major racing facility.
2. Offer minimum purses of no less than ~~one~~five thousand ~~two-hundred~~-dollars for major breeds racing at this track.
3. Have at least a ~~five-furlong~~six-furlong track with properly designed turns and chutes.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022.

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

Law Implemented: NDCC 53-06.2-11

CHAPTER 69.5-01-10

69.5-01-10-03. Investing the fund.

All moneys held in the North Dakota purse fund must be separately invested and reinvested in any combination of government obligations, certificates of deposit, or bank deposit accounts or trust companies organized under the laws of the United States of America or state thereof, ~~or in any combination thereof~~; provided that such certificates of deposit must be insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

History: Effective January 1, 1990; amended effective October 1, 2022.

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

Law Implemented: NDCC 53-06.2-11

CHAPTER 69.5-01-12

69.5-01-12-02. Deduction from exotic wagers, unclaimed tickets, and breakage.

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

History: Effective March 1, 2002; amended effective January 1, 2008; October 1, 2022.

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

Law Implemented: NDCC 53-06.2-11

69.5-01-12-05. Deposit of revenue.

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

History: Effective March 1, 2002; amended effective October 1, 2022.

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

Law Implemented: NDCC 53-06.2-11

TITLE 75
DEPARTMENT OF HUMAN SERVICES

OCTOBER 2022

CHAPTER 75-02-06

75-02-06-01. Definitions.

In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factor" means the centers for Medicare and Medicaid services skilled nursing facility market basket index four-quarter moving average percent change for quarter two of the applicable rate year from the current market basket data file publicly available as of August thirty-first of the year preceding the rate year. The adjustment factor also shall include any legislatively approved inflation increase for nursing facilities.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
6. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:
 - a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 3 of section 75-02-06-07;
 - b. A sale and leaseback to the same licensee;
 - c. A transfer of an interest to a trust;
 - d. Gifts or other transfers for nominal or no consideration;
 - e. A merger of two or more related organizations;
 - f. A change in the legal form of doing business;
 - g. The addition or deletion of a partner, owner, or shareholder; or

- h. A sale, merger, reorganization, or any other transfer of interest between related organizations.
- 7. "Building" means the physical plant, including building components and building services equipment, licensed as a facility, and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings located on the site used directly for resident care.
- 8. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
- 9. "Certified nurse aide" means:
 - a. An individual who has satisfactorily completed a nurse aide training and competency evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154 and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or who has been deemed or determined competent as provided in 42 CFR 483.151(a) and (b) and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or
 - b. An individual who has worked less than four months as a nurse aide and is enrolled in a training and evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154.
- 10. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.
- 11. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
- 12. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. It does not include a donation to a charity.
- 13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.
- 14. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.
- 15. "Cost rate" means the rate calculated using historical operating costs and adjustment factors up to the limit rate for direct care, other direct care, and indirect care. The cost rate shall include an efficiency incentive and operating margin.
- 16. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.
- 17. "Department" means the department of human services.
- 18. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.

19. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
20. "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 2018 edition.
21. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
22. "Direct care costs" means the cost category for allowable nursing and therapy costs.
23. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
24. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the nursing facility premises.
25. "Effective age" means a facility's building chronological age reduced by allowable projects for improvements to land, building, and fixed equipment. A facility's effective age must be calculated annually based upon improvements made during the cost report period.
- ~~26.~~ "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
- ~~26.27.~~ "Established rate" means the rate paid for services.
- ~~27.28.~~ "Facility" means a nursing facility not owned or administered by state government or a nursing facility, owned or administered by state government, which agrees to accept a rate established under this chapter. It does not mean an intermediate care facility for individuals with intellectual disabilities.
- ~~28.29.~~ "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
- ~~29.30.~~ "Fair rental value" means the depreciated replacement value of the building, land improvements, and fixed equipment based on the facility's effective age; land as a percentage of the building replacement value; and a moveable equipment replacement value based on licensed beds. The calculation of the fair rental value of the building, land improvements, and fixed equipment must include a location factor, annual depreciation, and an annual replacement cost inflation factor. The fair rental value must be calculated using any limitations identified in sections 75-02-06-16 and 75-02-06-16.3.
- ~~31.~~ "Fair rental value rate" means the per diem rate calculated using the fair rental value.
- ~~32.~~ "Final decision rate" means the amount, if any, determined on a per day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration, a request for an administrative appeal, or a request for judicial appeal taken from a decision on an administrative appeal.
- ~~30.33.~~ "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
- ~~34.34.~~ "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
- ~~32.35.~~ "Freestanding facility" means a nursing facility which does not share basic services with a hospital-based provider.

- ~~33-36.~~ "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, uniform allowances, and medical services furnished at nursing facility expense.
- ~~34-37.~~ "Highest market-driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
- ~~35-38.~~ "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
- ~~36-39.~~ "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other settings. It does not mean care provided to an individual residing in a nursing facility.
- ~~37-40.~~ "Hospice inpatient respite care" means short-term inpatient care provided to an individual when necessary to relieve family members or other persons caring for the individual at home. Care may be provided for no more than five consecutive days. For purposes of the definition, home does not include nursing facility.
- ~~38-41.~~ "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient or has been identified in a resident assessment instrument as "discharged anticipated to return".
- ~~39-42.~~ "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
- ~~40-43.~~ "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.
- ~~41-44.~~ "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, swing-bed facility, transitional care unit, subacute care unit, or intermediate care facility for individuals with intellectual disabilities.
- ~~42-45.~~ "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
- ~~43-46.~~ "Limit rate" means the rate established as the maximum allowable rate for a cost category.
- ~~44-47.~~ "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
- ~~45-48.~~ "Managed care organization" means a Medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].
- ~~46-49.~~ "Margin cap" means a percentage of the price rate limit which represents the maximum per diem amount a facility may receive if the facility has historical operating costs, including adjustment factors, below the price rate.
- ~~47-50.~~ "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.
- ~~48-51.~~ "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been

discharged from the facility. It does not include maintenance of medical records for in-house residents.

- | ~~49.52.~~ "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
- | ~~50.53.~~ "Noncovered day" means a resident day that is not payable by medical assistance but is counted as a resident day.
- | ~~51.54.~~ "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
- | ~~52.55.~~ "Payroll taxes" means the employer's share of Federal Insurance Contributions Act (FICA) taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
- | ~~53.56.~~ "Passthrough costs" means the cost category for allowable reasonable legal and related expenses, startup costs, bad debt, education expense, and computer software and related technology costs.
- | ~~54.57.~~ "Peer group" means the grouping of facilities based on their licensed bed capacity available for occupancy as of June thirtieth of the report year to determine the indirect care cost category price rate. The large peer group must be facilities with licensed bed capacity greater than fifty-five beds. The small peer group must be facilities with licensed bed capacity of fifty-five beds or fewer.
- | ~~54.58.~~ "Pending decision rate" means the amount, determined on a per day basis, by which a rate otherwise set under this chapter would increase if a facility prevails on a request for reconsideration, on a request for an administrative appeal, or on a request for a judicial appeal taken from a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter.
- | ~~55.59.~~ "Price rate" means the rate calculated using historical operating costs and adjustment factors up to the limit rate for the direct care, other direct care, and indirect care cost categories.
- | ~~56.60.~~ "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or Medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services to the resident.
- | ~~57.61.~~ "Private room" means a room equipped for use by only one resident.
- | ~~58.62.~~ "Property costs" means the cost category for allowable real property costs and other lease and rental costs ~~which are passed through.~~
- | ~~59.63.~~ "Provider" means the organization or individual who has executed a provider agreement with the department.
- | ~~60.64.~~ "Rate adjustment percentage" means the percentage used to determine the minimum adjustment threshold to the rate weight of one for all facilities. The percentage is thirty-sixth hundredths of one percent effective with the June 30, 2019, cost reporting period.
- | ~~61.65.~~ "Rate year" means the calendar year from January first through December thirty-first.

- | ~~62.66.~~ "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
- | ~~63.67.~~ "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.
- | ~~64.68.~~ "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
- | ~~65.69.~~ "Resident" means a person who has been admitted to the facility, but not discharged.
- | ~~66.70.~~ "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital leave days and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.
- | ~~67.71.~~ "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.
- | ~~68.72.~~ "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
- | ~~69.73.~~ "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater; but does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds, and does not mean an increase in a nursing facility's licensed capacity resulting from converting beds formerly licensed as basic care beds.
- | ~~70.74.~~ "Standardized resident day" means a resident day times the classification weight for the resident.
- | ~~71.75.~~ "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, swing-bed facility, transitional care unit, subacute unit, an intermediate care facility for individuals with intellectual disabilities, or an acute care setting, or, if not in an institutional setting, is not receiving home- and community-based waived services.
- | ~~72.76.~~ "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
- | ~~73.77.~~ "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

History: Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; July 2, 2003; December 1, 2005; October 1, 2010; July 1, 2012; January 1, 2014; July 1, 2016; January 1, 2020; January 1, 2022; October 1, 2022.

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

75-02-06-03. Depreciation.

1. Ratesetting principles require that payment for services includes depreciation on all capital assets used to provide necessary services.
 - a. Capital assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program, may be depreciated. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. To properly provide for costs or the valuation of such assets, an appraisal is required if the provider has no historical cost records or has incomplete records of the capital assets.
 - b. A depreciation allowance is permitted on assets used in a normal standby or emergency capacity.
 - c. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.
2. Depreciation methods.
 - a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared by the facility.
 - b. Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:
 - (1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or
 - (2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.
 - c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:
 - (1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and
 - (2) A composite remaining useful life for movable equipment, determined from the seller's records.
3. Acquisitions.

- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, must be capitalized as a part of the cost of the asset.
 - b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.
4. Proper records must provide accountability for the fixed assets and provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.
 5. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and may be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.
 6. Basis for depreciation of assets acquired as an ongoing operation. Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.
 - a. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1985, is limited to the lowest of:
 - (1) Purchase price paid by the purchaser;
 - (2) Fair market value at the time of the sale; or
 - (3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes.
 - b. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer.
 - c. The cost basis of a facility and its depreciable assets acquired by donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer or donee.
 - d. In order to calculate the increase over the seller's cost basis, an increase may be allowed, under subdivision a, only for assets with a historical cost basis established separately and distinctly in the seller's depreciable asset records.

- e. An adjustment may not subsequently be allowed for any depreciable cost disallowed in rate periods prior to January 1, 2006.
 - f. For purposes of this subsection, "date of acquisition" means the date when ownership of the depreciable asset transfers from the transferor to the transferee such that both are bound by the transaction. For purposes of transfers of real property, the date of acquisition is the date of delivery of the instrument transferring ownership. For purposes of titled personal property, the date of acquisition is the date the transferee receives a title acceptable for registration. For purposes of all other capital assets, the date of acquisition is the date the transferee possesses both the asset and an instrument, describing the asset, which conveys the property to the transferee.
 - g. For rate years beginning on or after January 1, 2006, the limitations of paragraph 3 of subdivision a shall not apply to the valuation basis of assets acquired as an ongoing operation between July 1, 1985, and July 1, 2000.
7. A per bed cost limitation based on single and double occupancy must be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling. The per bed cost limitation applies to construction or renovation projects currently in process or which have approved financing in place on or before December 31, 2021.
- a. Effective July 1, 2019, the per bed limitation basis for double occupancy is \$168,864 and for a single occupancy is \$253,297.
 - b. The per bed limitation basis for single occupancy must be calculated using the limitation determined in subdivision a, multiplied by 1.5.
 - c. The double and single occupancy per bed limitation must be adjusted annually on July first, using the increase, if any, in the consumer price index for all urban consumers, United States city average, all items, for the twelve-month period ending the preceding May thirty-first.
 - d. The per bed limitation in effect at the time a construction, renovation, or remodeling project is put in service must be multiplied times the number of beds in double and single occupancy rooms to establish the maximum allowable cost basis of buildings and fixed equipment.
 - e. The cost basis of a facility's buildings and fixed equipment must be limited to the lower of the recorded cost of total facility buildings and fixed equipment or the per bed limitation.
 - f. The per bed limitation is not applicable to projects started or approved by the state health council before July 1, 1994.
 - g. For rate years beginning after December 31, 2007, the limitations of subdivision a do not apply to the valuation basis of assets acquired as a result of a natural disaster before December 31, 2006. The provisions of this subsection may not be applied retroactively to any rate year before January 1, 2008.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; July 2, 2003; September 7, 2007; July 1, 2009; January 1, 2014; July 1, 2016; January 1, 2020; October 1, 2022.

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

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

75-02-06-16. Rate determinations for cost.

1. This section is applicable for establishing a cost rate for direct care, other direct care, and indirect care for the June 30, 2021, report year.
2. Rate determination.
 - a. For ~~each~~the direct cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 5 divided by standardized resident days ~~for the direct care cost category and resident days for other direct care, indirect care, and property cost categories~~. The actual rate as calculated is compared to the limit rate ~~for each cost category~~ to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification.
 - b. For the other direct cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by resident days. The actual rate as calculated is compared to the limit rate to determine the lesser of the actual rate or the limit rate.
 - c. For the indirect cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by resident days subject to the adjustments provided for in subdivision g of subsection 4. The actual rate as calculated is compared to the limit rate to determine the lesser of the actual rate or the limit rate.
 - d. For the passthrough costs category, the actual rate is calculated using allowable historical operating costs divided by resident days subject to the adjustments provided for in subdivision g of subsection 4.
 - e. The property rate must be the greater of the fair rental value rate or the rate calculated using allowable property costs. The property rate must be calculated using resident days subject to the adjustments provided for in subdivision g of subsection 4. The fair rental value rate must be the rate established under subdivision e of subsection 1 of section 75-02-06-16.3.
 - f. ~~The lesser of the actual rate or the limit rate for other direct care, and indirect care, and property costs~~the passthrough rate, the property rate, and the adjustments provided for in subsections 3 and 4 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.
3.
 - a. For a facility with an actual rate below the limit rate for indirect care costs, an incentive amount equal to seventy percent times the difference between the actual rate, exclusive of the adjustment factor, and the limit rate in effect at the end of the year immediately preceding the rate year, up to a maximum of two dollars and sixty cents or the difference between the actual rate, inclusive of the adjustment factor and the limit rate for indirect care costs, whichever is less, must be included as part of the indirect care cost rate.
 - b. A facility shall receive an operating margin of four and four-tenths percent, effective January 1, 2020, through December 31, 2021, and four and four-tenths percent effective January 1, 2022, through December 31, 2023, based on the lesser of the actual direct care and other direct care rates, exclusive of the adjustment factor, or the limit rate in effect at the end of the year immediately preceding the rate year. The operating margin must be added to the rate for the direct care and other direct care cost categories.
4. Limitations.

- a. The department shall accumulate and analyze statistics on costs incurred by facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.
- b. The department shall review, on an ongoing basis, aggregate payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under Medicare payment principles. If aggregate payments to facilities exceed estimated payments under Medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under Medicare payment principles.
- c. All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, 2021. The limit rates for the direct care, other direct care, and indirect care cost categories must be established using the June 30, 2021, base year. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.
- d. The limit rate for each of the cost categories must be established as follows:
 - (1) Historical costs for the report year ended June 30, 2020, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.
 - (2) For the rate year beginning January 1, 2021, the limit rate for each cost category is:
 - (a) For the direct care cost category, two hundred four dollars and eighty-four cents;
 - (b) For the other direct care cost category, twenty-nine dollars and eighty-four cents; and
 - (c) For the indirect care cost category, eighty-four dollars and fifty-one cents.
- e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.
- f. The cost rate for the January 1, 2023, rate year must be the previous rate year's cost rate increased by the adjustment factor.
- g. The actual rate for indirect care costs, passthrough costs, and ~~property costs~~the fair rental value rate must be the lesser of the rate established using:
 - (1) Actual census for the report year; or
 - (2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:
 - (a) Multiplied times three hundred sixty-five; and

- (b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.
 - h. The department may waive or reduce the application of subdivision g if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:
 - (1) The facility has reduced licensed capacity; or
 - (2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision g.
 - i. The department may waive the application of paragraph 2 of subdivision g for nongeriatric facilities for individuals with disabilities or geropsychiatric facilities or units if occupancy below ninety percent is due to lack of department-approved referrals or admissions.
- 5. An adjustment factor shall be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care under subsection 2 and for purposes of adjusting the limit rates for direct care costs, other direct care costs, and indirect care costs under subsection 4, but may not be used to adjust **property passthrough** costs **and the fair rental value** under either subsection 2 or 4. The adjustment factor for the January 1, 2023, rates must be reduced by one-half percent.
- 6. Rate adjustments.
 - a. Desk audit rate.
 - (1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by electronic mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department shall review the information and make appropriate adjustments.
 - (2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.
 - (3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate except as provided for in section 75-02-06-22 or subdivision c.
 - (4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. No decision on the request for reconsideration of the desk rate may be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.
 - (5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.

- (6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year that result in a change of at least the rate adjustment percentage per day.
- b. Final rate.
- (1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.
 - (2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least the rate adjustment percentage per day that are found during a field audit or are reported by the facility within twelve months of the rate yearend.
 - (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c.
 - (4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.
 - (5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
 - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least the rate adjustment percentage per day must result in a change to the final rate. The change must be applied retroactively as provided for in this section.
 - (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least the rate adjustment percentage per day had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.
 - (c) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.
- c. Pending decision rates for private-pay residents.
- (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.
 - (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section

50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.

- (3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.
 - (4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.
- d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least one dollar per day, except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

7. Rate payments.

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

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

8. Partial year.

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

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

- (a) For a facility with six or more months of operation under the new ownership during the report year, through use of a cost report for the period;
- (b) For a facility with less than six months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 5; or
- (c) If the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.

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

- ~~(a) For a facility with six or more months of operation under the new ownership during the report year, through use of a cost report for the period;~~
- ~~(b) For a facility with less than six months of operation under the new ownership during the report year, by using the rate established for the previous owner for the previous rate year; or~~
- ~~(c) If the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.~~

~~(3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.~~

- b. For a new facility placed into service before December 31, 2022, the department shall establish a rate equal to the limit rates for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the projected

property rate. The projected property rate ~~must be calculated using projected property costs and projected census. The rate must be in effect for no less than ten months and no more than eighteen months. A retroactive adjustment to the property rate must be made to adjust projected property costs to actual property costs~~ is subject to subdivision d of subsection 8. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs must be the greater of actual census, projected census, or census imputed at ninety-five percent of licensed beds.

- (1) If the effective date of the rate is on or after January first and on or before June thirtieth, the rate must be effective for the remainder of that rate year and must continue through June thirtieth of the subsequent rate year. The facility shall file by March first a cost report for the period ending December thirty-first of the year in which the facility first provides services. The cost report is used to establish the actual rate effective July first of the subsequent rate year. The partial year rate established based on the cost report must include applicable incentives, margins, phase-ins, and adjustment factors and may not be subject to any cost settle-up.
- (2) If the effective date of the rate is on or after July first and on or before December thirty-first, the rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report year ending June thirtieth of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year. The facility shall file by March first a cost report for the period July first through December thirty-first of the subsequent rate year.
- (3) The final rate for direct care, other direct care, and indirect care costs established under this subdivision must be limited to the lesser of the limit rate for the current rate year or the actual rate.

~~c. For a facility with renovations or replacements in excess of one hundred thousand dollars, and without a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first day of the month beginning after the date the project is completed and placed into service or the first day of the month beginning after the date the request for a projected property rate is received by the department, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.~~

~~d. For a facility with a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, must be applied to all licensed beds. A projected property rate must be established based on projected property costs and projected census. The projected property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health or the first day of the month beginning after the date when the request for a projected property rate is~~

~~made to the department, whichever is later, through the end of the rate year. The property rate for the subsequent rate year must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on property costs actually incurred during the report year; and may not be subject to retroactive cost settle-up. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.~~

~~e. For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.~~

~~f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.~~

~~g.d. At~~ For a projected property rate in place before January 1, 2023, at such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate ~~established using subdivision c or d~~ and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a projected property rate ~~established using subdivision c or d may not exceed the property rate otherwise allowable,~~ reduced by one-twelfth of that difference.

9. One-time adjustments.

a. Adjustments to meet certification standards.

(1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.

(2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:

(a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;

(b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and

(c) Provide a detailed list of any other costs necessary to meet survey standards.

(3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the limit rate.

(4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the

funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 6.

b. Adjustments for unforeseeable expenses.

- (1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.
- (2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:
 - (a) An explanation as to why the facility believes the expense was unforeseeable;
 - (b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and
 - (c) A detailed breakdown of the unforeseeable expenses by expense line item.
- (3) The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on its background and knowledge of nursing care industry and business trends.
- (4) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.
- (5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 6.

c. Adjustment to historical operating costs.

- (1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.
- (2) The following conditions must be met before a facility can receive the adjustment:
 - (a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;
 - (b) The facility shall document all available resources, including efficiency incentives, if used to increase nursing hours, are not sufficient to meet the minimum standards; and
 - (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type

of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.

- (3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any rate limitations that may apply.
- (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 6.
- (5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.

d. Adjustments for disaster recovery costs when evacuation of residents occurs.

- (1) A facility may incur certain costs when recovering from a disaster such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.
- (2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.
- (3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.
- (4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for the first six months following the month the facility readmits the first resident.
- (5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.

10. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds the rate adjustment percentage per day.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002; July 2, 2003; December 1, 2005; January 1, 2010; July 1, 2010; January 1, 2012; January 1, 2014; July 1, 2016; April 1, 2018; January 1, 2020; January 1, 2022; [October 1, 2022](#).

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

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

75-02-06-16.3. Rate determinations for price.

1. Rate determination.

- a. ~~For each~~ the direct cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection ~~34~~ divided by standardized resident days ~~for the direct care cost category and resident days for other direct care, indirect care, and property cost categories~~. The actual rate must include the margin cap. The actual rate as calculated is compared to the price rate ~~for each cost category, excluding property~~, to determine the lesser of the actual rate or the price rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification.
- b. For the other direct cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 5 divided by resident days. The actual rate must include the margin cap. The actual rate as calculated is compared to the price rate to determine the lesser of the actual rate or the price rate.
- c. For the indirect cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 5 divided by resident days subject to the adjustments provided for in subdivision i of subsection 3. The actual rate must include the margin cap. The actual rate as calculated is compared to the price rate to determine the lesser of the actual rate or the price rate.
- d. For the passthrough costs category, the actual rate is calculated using allowable historical operating costs divided by resident days subject to the adjustments provided for in subdivision i of subsection 3.
- e. The property rate must be the greater of the fair rental value rate or the rate calculated using allowable property costs subject to subsection 2. The property rate must be calculated using resident days subject to the adjustments provided for in subdivision i of subsection 3.
- f. The lesser of the actual rate or the price rate for other direct care and indirect care, the passthrough rate, the property ~~costs~~ rate, and the adjustments provided for in subsection ~~23~~ are then added to the direct care rate for each classification to arrive at the established rate for a given classification.

2. Effective with the 2023 rate year and subsequent rate years:

- a. If the fair rental value rate is greater than the rate calculated using allowable property costs:
 - (1) The increase must be phased in over a four-year period.
 - (2) The increase must be reserved for renovations or replacements that enhance the fair rental value.
 - (3) The increase must be reserved until a renovation or replacement of at least two thousand dollars per licensed bed is placed in service. Only allowable costs for building, land improvements, and fixed equipment may be used in calculating the amount per licensed bed.
- b. If the fair rental value rate is less than the rate calculated using allowable property costs:

(1) The department shall inform the facility of the property rate using allowable property costs and the fair rental value rate.

(2) Annually by November twenty-eighth, the facility shall inform the department if they want to accept the rate calculated using allowable property costs as the property rate.

c. Once the fair rental value rate is equal to or greater than the rate calculated using allowable property costs, or the facility does not inform the department they want to accept the rate calculated using allowable property costs, the department no longer may inform the facility of the rate calculated using allowable property costs and the property rate must be the fair rental value rate.

3. Limitations.

- a. The department shall accumulate and analyze statistics on costs incurred by facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.
- b. The department shall review, on an ongoing basis, aggregate payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under Medicare payment principles. If aggregate payments to facilities exceed estimated payments under Medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under Medicare payment principles.
- c. All facilities, except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13, must be used to establish a price rate for the direct care and other direct care cost categories. The base year is the report year ended June 30, 2021. A new base year will be established using the report year ended June 30, 2023. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection or subsection ~~34~~.
- d. All facilities must be grouped into peer groups based on the licensed bed capacity available for occupancy as of June thirtieth of the report year. Facilities in each peer group must be used to establish a price rate for the indirect care cost category for that peer group. The base year is the report year ended June 30, 2021. A new base year will be established using the report year ended June 30, 2023. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection or subsection ~~34~~.
- e. The price rate for each of the cost categories must be established using historical operating costs for the base year. The price rate will be established using the same percentage of the median used to establish the limit rates for the January 1, 2021, rate year.
- f. A facility with an actual rate that exceeds the price rate for a cost category shall receive the price rate.

- g. The price rate for each of the cost categories for the January 1, 2023, rate year must be the price rate for the previous rate year increased by the adjustment factor.
- h. The price rate for each of the cost categories for the January 1, 2025, rate year must be the price rate for the previous rate year increased by the adjustment factor.
- i. The actual rate for indirect care costs, passthrough costs, and ~~property costs~~ the fair rental value rate must be the lesser of the rate established using:
 - (1) Actual census for the report year; or
 - (2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:
 - (a) Multiplied times three hundred sixty-five; and
 - (b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.
- j. The department may waive or reduce the application of subdivision i if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:
 - (1) The facility has reduced licensed capacity; or
 - (2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year that would be affected by subdivision i.
- k. The department may waive the application of subdivision i for nongeriatric facilities for individuals with disabilities or geropsychiatric facilities or units if occupancy below ninety percent is due to lack of department-approved referrals or admissions.

l. When calculating the fair rental value rate:

- (1) The maximum allowable square footage must be nine hundred fifty square feet [88.26 square meters] per licensed bed.
- (2) The replacement value of land will be ten percent of the building replacement cost.
- (3) The maximum allowable moveable equipment replacement value must be fifteen thousand dollars per licensed bed.
- (4) The maximum annual replacement cost inflation factor for building and land must be two percent.
- (5) The maximum annual depreciation factor for building must be two percent.
- (6) The location factor must be the city of Minneapolis.
- (7) The minimum allowable project to impact a facility's effective age must be one thousand dollars per licensed bed. Only allowable costs for building, land improvements, and fixed equipment may be used in calculating the amount per licensed bed.
- (8) The maximum allowable rental rate must be eight percent.

(9) The building replacement cost must be calculated by multiplying a facility's allowable square footage times the cost per square foot adjusted for the location factor. The building replacement cost per square foot must be for a thirty thousand square foot [2787.09 square meter] building with exterior walls of precast concrete for the calendar year before the end of the cost report year.

(10) A facility's effective age may be updated due to a renovation project reported in the cost report year the project was completed. The following will be used when calculating the update:

(a) The cost per square foot adjusted for the location factor for the cost report year in which the renovation project was completed.

(b) Additional square footage added due to the renovation project must be included in the total square footage.

(c) Only allowable renovation project costs for building, land improvements, and fixed equipment.

34. An adjustment factor must be used for purposes of adjusting historical operating costs for direct care, other direct care, and indirect care under subsection 1 and for purposes of adjusting the price rate for direct care costs, other direct care costs, and indirect care costs under subsection 23, but may not be used to adjust property passthrough costs and the fair rental value under either subsection 1 or 23.

4-5. Rate adjustments.

a. Desk audit rate.

(1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by electronic mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department shall review the information and make appropriate adjustments.

(2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.

(3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate, except as provided for in section 75-02-06-22 or subdivision c.

(4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. A decision on the request for reconsideration of the desk rate may not be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.

(5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.

- (6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year which result in a change of at least the rate adjustment percentage per day.
- b. Final rate.
- (1) The cost report may be field audited to establish a final rate. If a field audit is not performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year, unless the department specifically identifies an alternative effective date.
 - (2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least the rate adjustment percentage per day which are found during a field audit or are reported by the facility within twelve months of the rate year end.
 - (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive, except as provided for in subdivision c.
 - (4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.
 - (5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
 - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least the rate adjustment percentage per day must result in a change to the final rate. The change must be applied retroactively as provided for in this section.
 - (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, which would have resulted in a change of at least the rate adjustment percentage per day had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.
 - (c) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.
- c. Pending decision rates for private-pay residents.
- (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per-day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.
 - (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section

50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.

- (3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.
 - (4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.
- d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least one dollar per day, except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

5.6. Rate payments.

- a. The rate as established must be considered as payment for all accommodations and includes all items designated as routinely provided. Payments may not be solicited or received from the resident or any other person to supplement the rate as established.
- b. The rate as established must be paid by the department only if the rate charged to private-pay residents for semiprivate accommodations equals the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to the department for the same bed type, i.e., hospital or leave days.
- c. If the established rate exceeds the rate charged to a private-pay resident, on any given date, the facility immediately shall report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility, within thirty days, shall refund the overpayment. The refund must be the difference between the established rate and the rate charged the private-pay resident times the number of medical assistance resident days paid during the period in which the established rate exceeded the rate charged to private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.
- d. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments may not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

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

~~6.7.~~ Partial year.

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

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

- (a) For a facility with six or more months of operation under the new ownership during the report year, through use of a cost report for the period;
- (b) For a facility with less than six months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 45; or
- (c) If the change of ownership occurred after the report year end, but before the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.

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

- ~~(a) For a facility with six or more months of operation under the new ownership during the report year, through use of a cost report for the period;~~
- ~~(b) For a facility with less than six months of operation under the new ownership during the report year, by using the rate established for the previous owner for the previous rate year; or~~
- ~~(c) If the change of ownership occurred after the report year end, but before the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.~~

- ~~(3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.~~

- b. For a new facility placed into service before December 31, 2022, the department shall establish a rate equal to the price rate for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the projected

property rate. The projected property rate ~~must be calculated using projected property costs and projected census. A retroactive adjustment to the property rate must be made to adjust projected property costs to actual property costs~~ is subject to subdivision f. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs must be the greater of actual census, projected census, or census imputed at ninety-five percent of licensed beds.

- (1) If the effective date of the rate is on or after January first and on or before June thirtieth, the rate must be effective for the remainder of that rate year and must continue through June thirtieth of the subsequent rate year. The facility shall file by March first a cost report for the period ending December thirty-first of the year in which the facility first provides services. The cost report is used to establish the actual rate effective July first of the subsequent rate year. The partial year rate established based on this cost report must include applicable margins and adjustment factors and may not be subject to any cost settle-up.
- (2) If the effective date of the rate is on or after July first and on or before December thirty-first, the rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report year ending June thirtieth of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year.

~~c. For a facility with renovations or replacements in excess of one hundred thousand dollars, and without a significant capacity increase, the rate established for direct care, other direct care, and indirect care based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first day of the month beginning after the date the project is completed and placed into service or the first day of the month beginning after the date the request for a projected property rate is received by the department, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing before renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing before the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.~~

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

~~e.~~ For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds. For a new facility placed into service after December 31, 2022, the department shall establish a rate equal to the price rate for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the fair rental value rate.

d. For a facility with a major renovation of at least fifteen thousand dollars per licensed bed:

(1) If the renovation is placed into service between July first and December thirty-first, a fair rental value rate must be calculated including the major renovation. The fair rental value rate must be effective July first of the subsequent rate year.

(2) If the renovation is placed into service between January first and June thirtieth, a fair rental value rate must be calculated including the major renovation. The fair rental value rate must be effective January first of the subsequent rate year.

f.e. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.

g.f. ~~At~~ For a projected property rate in place before January 1, 2023, at such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate ~~established using subdivision c or d~~ and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a projected property rate ~~established using subdivision c or d may not exceed the property rate otherwise allowable~~, reduced by one-twelfth of that difference.

7-8. One-time adjustments.

a. Adjustments to meet certification standards.

(1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.

(2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:

(a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;

(b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and

(c) Provide a detailed list of any other costs necessary to meet survey standards.

(3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the price rate.

- (4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 45.
- b. Adjustments for unforeseeable expenses.
- (1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.
 - (2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:
 - (a) An explanation as to why the facility believes the expense was unforeseeable;
 - (b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and
 - (c) A detailed breakdown of the unforeseeable expenses by expense line item.
 - (3) The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on its background and knowledge of nursing care industry and business trends.
 - (4) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward, not to exceed the price rate.
 - (5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 45.
- c. Adjustment to historical operating costs.
- (1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and use of margin cap.
 - (2) The following conditions must be met before a facility can receive the adjustment:
 - (a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;
 - (b) The facility shall document all available resources, including margin cap, if used to increase nursing hours, are not sufficient to meet the minimum standards; and

- (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.
- (3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any margin cap included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any price rate limitations that may apply.
- (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 45.
- (5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.
- d. Adjustments for disaster recovery costs when evacuation of residents occurs.
 - (1) A facility may incur certain costs when recovering from a disaster, such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.
 - (2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.
 - (3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.
 - (4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for the first six months following the month the facility readmits the first resident.
 - (5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.
- e. Adjustments for a significant reduction in census.
 - (1) A facility may request a revised desk rate if the facility has a significant reduction in census. The reduction in census cannot be due to renovation.
 - (2) For purposes of this section a significant reduction in census is defined as:
 - (a) At least ten percent of licensed bed capacity for a facility in the large peer group; and

- (b) At least five percent of licensed bed capacity for a facility in the small peer group.
- (3) The licensed bed capacity will be based on the licensed beds used to establish the peer groups.
- (4) The revised desk rate must be calculated using:
 - (a) The facility's allowable historical operating costs from the most recent base year increased by the adjustment factors, if any, up to the current report year.
 - (b) The facility's allowable property costs from the most recent report year.
 - (c) The standardized resident days and resident days from the most recent report year.
 - (d) The revised desk rate must be limited to the price rate for direct care, other direct care, and indirect cost categories.
- (5) A facility that receives a revised desk rate under this section may not increase licensed bed capacity during the rate year.

8:9. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds the rate adjustment percentage per day.

History: Effective January 1, 2022; [amended effective October 1, 2022.](#)

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

Law Implemented: NDCC 50-24.4

75-02-06-24. Exclusions.

1. A facility that exclusively provides residential services for nongeriatric individuals with physical disabilities or a unit within a facility which exclusively provides geropsychiatric services shall not be included in the calculation of the rate limitations.
2. The rate for a unit within a facility which exclusively provides geropsychiatric services must be established using the actual allowable historical costs adjusted by the indices under subsection 5 of section 75-02-06-16. Actual allowable historical costs must be determined using the applicable sections of the policies and procedures. An operating margin and incentive determined under subsection 3 of section 75-02-06-16 must be included in the facility's cost rate.
3. The direct care rate for a unit within a facility that exclusively provides geropsychiatric services must be established using the allowable historical operating costs and adjustment factors under subsection ~~34~~ of section 75-02-06-16.3. The margin cap for direct care must be included in the facility's direct care rate.
4. The direct care rate for a facility that exclusively provides residential services for nongeriatric individuals with physical disabilities must be established using the allowable historical operating costs and adjustment factors under subsection ~~34~~ of section 75-02-06-16.3. [The direct care rate must be limited to two times the limit rate under subdivision c of subsection 3 of section 75-02-06-16.3.](#) The margin cap for direct care must be included in the facility's direct care rate [up to two times the limit rate.](#)

5. The other direct care rate and indirect care rate for a facility that exclusively provides residential services for nongeriatric individuals with physical disabilities must be limited to one and one-half times the limit rate set under subdivision c of subsection 3 of section 75-02-06-16.3. The margin cap for other direct and indirect care must be included in the facility's rate up to one and one-half times the limit rate.

6. A facility may establish a rate for respite care, hospice inpatient respite care, or hospice general inpatient care services.

History: Effective January 1, 1996; amended effective July 1, 1999; January 1, 2022; October 1, 2022.

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

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

CHAPTER 75-02-07.1

75-02-07.1-01. Definitions.

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factor" means the inflation rate for basic care services used to develop the legislative appropriation for the department for the applicable rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Aid to vulnerable aged, blind, and disabled persons" means a program that supplements the income of an eligible beneficiary who resides in a facility.
6. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by basic care regulations.
7. "Alzheimer's and related dementia facility" means a licensed basic care facility which primarily provides services specifically for individuals with Alzheimer's disease or related dementia.
8. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:
 - a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 4 of section 75-02-07.1-13;
 - b. A sale and leaseback to the same licensee;
 - c. A transfer of an interest to a trust;
 - d. Gifts or other transfer for nominal or no consideration;
 - e. A change in the legal form of doing business;
 - f. The addition or deletion of a partner, owner, or shareholder; or
 - g. A sale, merger, reorganization, or any other transfer of interest between related organizations.
9. "Building" means the physical plant, including building components and building services equipment, licensed as a facility and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings if used directly for resident care.
10. "Capital assets" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
11. "Chain organization" means a group of two or more basic care or health care facilities owned, leased, or through any other device controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to basic care or health care.

12. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
13. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
14. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, determination of cost limitations, and determination of rates.
15. "Cost center" means a division, department, or subdivision thereof, group of services or employees, or both, or any unit or type of activity into which functions of a facility are decided for purposes of cost assignment and allocations.
16. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information of the facility.
17. "Department" means the department of human services.
18. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
19. "Depreciation" means an allocation of the cost of a depreciable asset over its estimated useful life.
20. "Depreciation guidelines" means the American hospital association's depreciation guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised ~~2013~~2018 edition.
21. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
22. "Direct care costs" means the cost category for allowable resident care, activities, social services, and laundry costs.
23. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
24. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the facility premises.
25. "Eligible beneficiary" means a facility resident who is eligible for aid to vulnerable aged, blind, and disabled persons.
26. "Employment benefits" means fringe benefits and other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
27. "Facility" means a provider licensed as a basic care facility, not owned or administered by state government, which does not meet the definition of an Alzheimer's and related dementia facility, traumatic brain injury facility, or institution for mental disease, which is enrolled with the department as a basic care assistance program provider.
28. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.

30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
31. "Food and plant costs" means the cost category for allowable food, utilities, and maintenance and repair costs.
32. "Freestanding facility" means a facility that does not share basic services with a hospital-based provider or a nursing facility.
33. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits, uniform allowances, and medical services furnished at facility expense.
34. "Highest market-driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
35. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
36. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
37. "In-house resident day" for basic care, swing bed, and nursing facilities means a day that a resident was actually residing in the facility. "In-house resident day" for hospitals means an inpatient day.
38. "Institution for mental disease" means a facility with a licensed capacity of seventeen or more beds which provides treatment or services primarily to individuals with a primary diagnosis of mental disease.
39. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
40. "Limit rate" means the rate established as the maximum allowable rate for direct care and indirect care.
41. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
42. "Medical care leave day" means any day that a resident is not in the facility but is in a licensed health care facility, including a hospital, swing bed, nursing facility, or transitional care unit, and is expected to return to the facility.
43. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.
44. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.

45. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
46. "Personal care rate" means a per diem rate that is the sum of the rates established for direct personal care costs, indirect personal care costs, and the operating margin for personal care.
47. "Private-pay resident" means a resident on whose behalf the facility is not receiving any aid to vulnerable aged, blind, and disabled persons program payments and whose payment rate is not established by any governmental entity with ratesetting authority.
48. "Private room" means a room equipped for use by only one resident.
49. "Property costs" means the cost category for allowable real property costs and passthrough costs.
50. "Provider" means the organization or individual who has executed a provider agreement with the department.
51. "Rate year" means the year from July first through June thirtieth.
52. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
53. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.
54. "Report year" means the ~~provider's fiscal year ending during the calendar~~ fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
55. "Resident" means a person who has been admitted to the facility but not discharged.
56. "Resident day" in a facility means any day for which service is provided or for which payment in any amount is ordinarily sought, including medical care leave and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought. The amount of remuneration has no bearing on whether a day should be counted as a resident day. "Resident day" for assisted living or any other residential services provided means a day for which payment is sought by the provider regardless of remuneration.
57. "Room and board rate" means a per diem rate that is the sum of the rates established for property costs, direct room and board costs, indirect room and board costs, the operating margin for room and board and food and plant costs.
58. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
59. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater. It does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses

those beds. It does not mean an increase in a facility's capacity resulting from converting beds formerly licensed as nursing facility beds.

60. "Specialized facility for individuals with mental disease" means a licensed basic care facility with a licensed capacity of less than seventeen which provides treatment or services primarily to individuals with mental disease.
61. "Therapeutic leave day" means any day that a resident is not in the facility or in a licensed health care facility.
62. "Top management personnel" means corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
63. "Traumatic brain injury facility" means a licensed basic care facility which primarily provides services to individuals with traumatic brain injuries.
64. "Working capital debt" means debt incurred to finance facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

History: Effective July 1, 1996; amended effective July 1, 1998; January 1, 2000; July 1, 2001; February 1, 2007; October 1, 2011; July 1, 2014; April 1, 2018; [October 1, 2022](#).

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

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

75-02-07.1-02. Financial reporting requirements.

1. Records.
 - a. The facility shall maintain on the premises the required census records and financial information in a manner sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.
 - b. Where several facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted, for those items known to be lacking support at the reporting facility, with the cost report or must be provided to the local facility prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost. Home office cost reporting and cost allocation must be in conformance with applicable sections in this chapter.
 - c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, accurate financial and statistical records of the period covered by such cost report in sufficient detail to substantiate the cost data reported. Each provider shall make such records available upon reasonable demand to representatives of the department.
 - d. Except for motor vehicles used exclusively for resident-related activities, the provider shall maintain a mileage log for all motor vehicles that identifies mileage and purpose of each trip. Vehicle mileage for nonresident-related activities must be documented.
2. Accounting and reporting requirements.
 - a. The accrual basis of accounting, in accordance with generally accepted accounting principles, must be used for cost reporting purposes. A facility may maintain its

accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported. Ratesetting procedures must prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.

- b. To properly facilitate auditing, the accounting system must be maintained in a manner that allows cost accounts to be grouped by cost category and readily traceable to the cost report.
- c. No later than ~~the last day of the third month following the facility's fiscal yearend, except as provided for in subdivision d~~ December first of each year, each facility shall provide to the department:
 - (1) A cost report on forms prescribed by the department.
 - (2) A copy of the facility's financial statement. For provider organizations that operate more than one facility, a consolidated financial report can be provided. The information must be reconciled to each facility's cost report.
 - (3) A statement of ownership for the facility, including the name, address, and proportion of ownership of each owner.
 - (a) If a privately held or closely held corporation or partnership has an ownership interest in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed in the facility's cost report must be identified regardless of the proportion of ownership interest.
 - (b) If a publicly held corporation has an ownership interest of fifteen percent or more in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of ten percent or more.
 - (4) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the facility or a certification that the content of any such document remains unchanged since the most recent statement given pursuant to this subsection.
 - (5) Supplemental information reconciling the costs on the financial statements with costs on the cost report.
 - (6) The following information, upon request by the department:
 - (a) Access to certified public accountant's workpapers that support audited, reviewed, or compiled financial statements.
 - (b) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs.
 - (c) Separate financial statements for any organization, excluding individual facilities of a chain organization owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconcile costs on the financial statements to costs for the report year.

- (d) Separate financial statements for any organization with which the facility conducts business and is owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconcile costs on the financial statements to costs for the report year.

~~d. A facility may elect to file a cost report based on a December thirty-first report year or a June thirtieth report year, rather than on the facility's fiscal yearend. Once elected, the facility may not change the reporting period without written approval from the department. The due date for the information required in subdivision c will be March thirty-first if the facility elects a December thirty-first report year and September thirtieth if the facility elects a June thirtieth report year.~~

~~e.~~ If a facility fails to file the required cost report on or before the due date, the department may reduce the current payment rate to eighty percent of the facility's most recently established rate. Reinstatement of the current payment rate must occur on the first of the month beginning after receipt of the required information, but is not retroactive.

~~f.e.~~ A facility shall make all adjustments, allocations, and projections necessary to arrive at allowable costs. The department may reject any cost report when the information filed is incomplete or inaccurate. If a cost report is rejected, the department may reduce the current payment rate to eighty percent of its most recently established rate until the information is completely and accurately filed.

~~g.f.~~ Costs reported must include total costs and be adjusted to allowable costs. Adjustments made by the department, to attain allowable cost, may, if repeated on future cost filings, be considered as possible fraud and abuse. The department may forward all such items identified to the appropriate investigative group.

~~h.g.~~ The department may grant an extension of the reporting deadline to a facility for good cause. To receive an extension, a facility shall submit a written request to the department. The deadline for filing may not be extended past April fifteenth of the year following the report year.

3. In order to properly validate the accuracy and reasonableness of cost information reported by the facility, the department may provide for an onsite audit.

4. Penalties for false reports.

a. A false report is one where a facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received, the department may:

- (1) Immediately adjust the facility's payment rate to recover the entire overpayment within the rate year;
- (2) Terminate the department's agreement with the provider;
- (3) Prosecute under applicable state or federal law; or
- (4) Use any combination of the foregoing actions.

b. The department may determine a report is a false report if a provider claims previously adjusted costs as allowable costs. Previously adjusted costs being appealed must be identified as nonallowable costs. The provider may indicate that the costs are under appeal and not claimed under protest to perfect a claim if the appeal is successful.

History: Effective July 1, 1996; amended effective October 1, 2011; October 1, 2022.

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

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

75-02-07.1-14. Compensation.

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:
 - a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the previous report year increased by the consumer price index for all urban consumers, United States city average, all items;
 - b. ~~Sixty thousand nine hundred seventy-four dollars;~~
 - ~~c. The limit set under this subsection for the previous rate year adjusted by the adjustment factor;~~
 - ~~d. If the facility is combined with a nursing facility or hospital, the compensation limit for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility may not exceed the greatest of subdivision a, b, or c; or~~
 - e-c. For a facility licensed before July 1, 2016, which is located in North Dakota and shares a home office that is also located in North Dakota with no more than two nursing facilities that are located in North Dakota, but whose cost report does not include nursing facility costs, the compensation limit for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility may not exceed ~~the greatest of~~ subdivision a, b, or c.
2. Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation described in subsection 1, divided by three hundred sixty-five times the number of calendar days the individual was employed.
3. Compensation includes:
 - a. Salary for managerial, administrative, professional, and other services;
 - b. Amounts paid for the personal benefit of the person, e.g., housing allowance, flat-rate automobile allowance;
 - c. The cost of assets and services the person receives from the provider;
 - d. Deferred compensation, pensions, and annuities;
 - e. Supplies and services provided for the personal use of the person;
 - f. The cost of a domestic or other employee who works in the home of the person; or
 - g. Life and health insurance premiums paid for the person and medical services furnished at facility expense.
4. Reasonable compensation for a person with at least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount required to be paid for the same services if provided by a nonrelated employee to a North Dakota facility. Reasonableness also requires that functions

performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable hourly compensation may not exceed the amount determined under subsection 1, divided by two thousand eighty.

5. Costs otherwise nonallowable under this chapter may not be included as compensation.

History: Effective July 1, 1996; amended effective July 1, 1998; October 1, 2011; July 1, 2011; April 1, 2018; [October 1, 2022](#).

General Authority: NDCC 50-06-16, 50-24.5-02(3), 50-24.5-10

Law Implemented: NDCC 50-24.5-02(3), 50-24.5-10

CHAPTER 75-03-23

75-03-23-07. Qualified service provider standards and agreements.

1. An individual or agency seeking designation as a qualified service provider shall complete and return the applicable forms supplied by the department in the form and manner prescribed. The qualified service provider, including any employees of an agency designated as a qualified service provider, shall meet all licensure, certification, or competency requirements applicable under state or federal law and departmental standards necessary to provide care to clients whose care is paid by public funds. An application is not complete until the individual or agency submits all required information and required provider verifications to the department.
2. A provider or an individual seeking designation as a qualified service provider:
 - a. Must have the basic ability to read, write, and verbally communicate;
 - b. Must not be an individual who has been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code section 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering a vulnerable adult; 12.1-31-07.1, exploitation of a vulnerable adult; 14-09-22, abuse of a child; 14-09-22.1, neglect of a child; subsection 1 of section 26.1-02.1-02.1, fraudulent insurance acts; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
 - (2) An offense, other than a direct-bearing offense identified in paragraph 1 of subdivision b of subsection 2, if the department determines that the individual has not been sufficiently rehabilitated.
 - (a) The department may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment without subsequent charge or conviction has elapsed, unless sufficient evidence is provided of rehabilitation.
 - (b) An individual's completion of a period of three years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation;

- c. In the case of an offense described in North Dakota Century Code section 12.1-17-01, simple assault, if a felony; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence, if a misdemeanor; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-18-03, unlawful imprisonment; 12.1-20-05, corruption or solicitation of minors, if a misdemeanor; 12.1-20-07, sexual assault, if a misdemeanor; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent convictions;
 - d. Shall maintain confidentiality;
 - e. Shall ~~submit a request to be a~~, using applicable forms and providing documentation as required by the department:
 - ~~(1) Revalidate qualified service provider every twenty-four months using applicable forms and shall provide documentation as required by the department enrollment except as provided in paragraph 3, within the time period as required by the Medicaid state plan option for personal care services or Medicaid waiver program, whichever occurs first; and~~
 - ~~(2) Provide evidence of competency, except as provided in paragraph 3, at least every sixty months for an agency enrolled as a qualified service provider or at least every thirty months for an individual enrolled as a qualified service provider, and within the time period as required by the Medicaid state plan option for personal care services or Medicaid waiver program, whichever occurs first; or~~
 - ~~(3) Revalidate qualified service provider enrollment only every sixty months for an individual enrolled as a qualified service provider providing family home care services under the SPED program and expanded service payments for elderly and disabled;~~
 - f. Must be physically capable of performing the service for which they were contracted with or hired as an independent contractor; and
 - g. Must be at least eighteen years of age; ~~and~~
 - ~~h. Must not have been the subject of a child abuse or neglect assessment for which a confirmed decision was made unless the program administrator, after appropriate consultation with persons qualified to evaluate the capabilities of the provider, documenting criteria used in making the decision, and imposing any restrictions necessary, approves the request, provided the provider can demonstrate:~~
 - ~~(1) The successful completion of an appropriate therapy; or~~
 - ~~(2) The elimination of an underlying basis precipitating the neglect or abuse.~~
3. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require the applicant or provide to present evidence of the applicant's or provider's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
 4. The offenses enumerated in paragraph 1 of subdivision b of subsection 2 have a direct bearing on an individual's ability to be enrolled as a qualified service provider.

- a. An individual enrolled as a qualified service provider prior to January 1, 2009, who has been found guilty of, pled guilty to, or pled no contest to, an offense considered to have a direct bearing on the individual's ability to provide care may be considered rehabilitated and may continue to provide services if the individual has had no other offenses and provides sufficient evidence of rehabilitation to the department.
 - b. The department may not approve, deny, or renew an application for an individual or employee of an agency who is applying to enroll or re-enroll as a qualified service provider and who has been charged with an offense considered to have a direct bearing on the individual's ability to provide care or an offense in which the alleged victim was under the applicant's care, until final disposition of the criminal case against the individual.
5. Evidence of competency for adult foster care providers serving clients eligible for the developmental disability waiver must be provided in accordance with subdivision b of subsection 2 of section 75-03-21-08.
6. A provider of services for adult day care, adult foster care, attendant care, community support services, extended personal care, family personal care, nurse assessment, personal care, residential care, respite care, residential habilitation, supervision, and transitional living care shall provide evidence of competency in generally accepted procedures for:
- a. Infection control and proper handwashing methods;
 - b. Handling and disposing of body fluids;
 - c. Tub, shower, and bed bathing techniques;
 - d. Hair care techniques, sink shampoo, and shaving;
 - e. Oral hygiene techniques of brushing teeth and cleaning dentures;
 - f. Caring for an incontinent client;
 - g. Feeding or assisting a client with eating;
 - h. Basic meal planning and preparation;
 - i. Assisting a client with the self-administration of medications;
 - j. Maintaining a kitchen, bathroom, and other rooms used by a client in a clean and safe condition, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks;
 - k. Laundry techniques, including mending, washing, drying, folding, putting away, ironing, and related work;
 - l. Assisting a client with bill paying and balancing a check book;
 - m. Dressing and undressing a client;
 - n. Assisting with toileting;
 - o. Routine eye care;
 - p. Proper care of fingernails;
 - q. Caring for skin;

- r. Turning and positioning a client in bed;
 - s. Transfer using a belt, standard sit, or bed to wheelchair;
 - t. Assisting a client with ambulation; and
 - u. Making wrinkle-free beds.
7. An applicant for qualified service provider status for attendant care, adult foster care, extended personal care, family personal care, nurse assessment, personal care, residential care, supervision, transitional living care, respite care, or adult day care must secure written verification that the applicant is competent to perform procedures specified in subsection 5 from a physician, chiropractor, registered nurse, licensed practical nurse, occupational therapist, physical therapist, or an individual with a professional degree in specialized areas of health care. Written verification of competency is not required if the individual holds one of the following licenses or certifications in good standing: physician, physician assistant, chiropractor, registered nurse, licensed practical nurse, registered physical therapist, registered occupational therapist, or certified nurse assistant. A certificate or another form of acknowledgment of completion of a program with a curriculum that includes the competencies in subsection 5 may be considered evidence of competence.
 8. The department may approve global and client-specific endorsements to provide particular procedures for a provider based on written verification of competence to perform the procedure from a physician, chiropractor, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in a specialized area of health care or approved within the scope of the individual's health care license or certification.
 9. Competence may be demonstrated in the following ways:
 - a. A demonstration of the procedure being performed;
 - b. A detailed verbal explanation of the procedure; or
 - c. A detailed written explanation of the procedure.
 10. The department shall notify the individual or the agency of its decision on designation as a qualified service provider.
 11. The department shall maintain a list of qualified service providers. Once the client's need for services has been determined, the client selects a provider from the list and the department's designee issues an authorization to provide services to the selected qualified service provider.
 12. A service payment may be issued only to a qualified service provider who bills the department after the delivery of authorized services.
 13. Agency providers who employ nonfamily members must have a department-approved quality improvement program that includes a process to identify, address, and mitigate harm to the clients they serve.

History: Effective June 1, 1995; amended effective March 1, 1997; January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2018; January 1, 2020; January 1, 2022; [October 1, 2022](#).

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

75-03-23-08. Denial of application to become a qualified service provider.

The department may deny an application to become a qualified service provider if:

1. The applicant voluntarily withdraws the application;
2. The applicant is not in compliance with applicable state laws, state regulations, or program issuances governing providers;
3. The applicant, if previously enrolled as a qualified service provider, was not in compliance with the terms set forth in the application or provider agreement;
4. The applicant, if previously enrolled as a qualified service provider, was not in compliance with the provider certification terms on the claims submitted for payment;
5. The applicant, if previously enrolled as a qualified service provider, had assigned or otherwise transferred the right to payment of a program claim, except as provided in 42 U.S.C. 1396a(a) (32);
6. The applicant, if previously enrolled as a qualified service provider, had demonstrated a pattern of submitting inaccurate billings or cost reports;
7. The applicant, if previously enrolled as a qualified service provider, had demonstrated a pattern of submitting billings for services not covered under department programs;
8. The applicant has been debarred or the applicant's license or certificate to practice in the applicant's profession or to conduct business has been suspended or terminated;
9. The applicant has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals;
10. The applicant has been convicted of an offense determined by the department to have a direct bearing upon the applicant's ability to be enrolled as a qualified service provider, or the department determines, following conviction of any other offense, the applicant is not sufficiently rehabilitated;
11. The applicant, if previously enrolled as a qualified service provider, owes the department money for payments incorrectly made to the provider;
12. The qualified service provider is currently excluded from participation in Medicare, Medicaid, or any other federal health care program;
13. The applicant has not provided sufficient evidence to the department, after obtaining a formal evaluation under subsection 3 of section 75-03-23-07, that the applicant is physically, cognitively, socially, or emotionally capable of providing the care;
14. ~~The applicant has been the subject of a child abuse or neglect assessment for which a confirmed decision was made and the department has determined the applicant does not meet the standards to enroll;~~
- ~~15.~~ The applicant previously has been terminated for inactivity and does not have a prospective public pay client;
- ~~16.~~^{15.} The applicant previously has been terminated for inactivity and has not provided valid reason for the inactivity; or
- ~~17.~~^{16.} For other good cause.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2020; January 1, 2022; [October 1, 2022](#).

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

75-03-23-08.1. Sanctions and termination of qualified service providers.

1. The department may impose sanctions against a qualified service provider for any of the reasons listed under section 75-02-05-05 or subdivisions b through g of subsection 4. Prior to imposing sanctions, the department may require provider education or a business integrity agreement.
2. The department may consider the following in determining the sanction to be imposed:
 - a. Seriousness of the qualified service provider's offense.
 - b. Extent of the qualified service provider's violations.
 - c. Qualified service provider's history of prior violations.
 - d. Prior imposition of sanctions against the qualified service provider.
 - e. Prior provision of information and training to the qualified service provider.
 - f. Qualified service provider's agreement to make restitution to the department.
 - g. Actions taken or recommended by peer groups or licensing boards.
 - h. Access to care for recipients.
 - i. Qualified service provider's self-disclosure or self-audit discoveries.
 - j. Qualified service provider's willingness to enter a business integrity agreement.
3. The department may impose any of the sanctions listed in subsections 8 or 9 of section 75-02-05-07.
4. The department may terminate a qualified service provider if:
 - a. The qualified service provider voluntarily withdraws from participation as a qualified service provider.
 - b. The qualified service provider is not in compliance with applicable state laws, state regulations, or program issuances governing providers.
 - c. The qualified service provider is not in compliance with the terms set forth in the application or provider agreement.
 - d. The qualified service provider is not in compliance with the provider certification terms on the claims submitted for payment.
 - e. The qualified service provider has assigned or otherwise transferred the right to payment of a program claim, except as provided in 42 U.S.C. 1396a(a)(32).
 - f. The qualified service provider has demonstrated a pattern of submitting inaccurate billings or cost reports.
 - g. The qualified service provider has demonstrated a pattern of submitting billings for services not covered under department programs.
 - h. The qualified service provider has been debarred or the provider's license or certificate to practice in the provider's profession or to conduct business has been suspended or terminated.

- i. The qualified service provider has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals.
- j. The qualified service provider has been convicted of an offense determined by the department to have a direct bearing upon the provider's ability to be enrolled as a qualified service provider, or the department determines, following conviction of any other offense, the provider is not sufficiently rehabilitated.
- k. The qualified service provider is currently excluded from participation in Medicare, Medicaid, or any other federal health care program.
- l. The qualified service provider has not provided sufficient evidence to the department, after obtaining a formal evaluation under subsection 3 of section 75-03-23-07 that the provider is physically, cognitively, socially, or emotionally capable of providing the care.
- ~~m. The qualified service provider has been the subject of a child abuse or neglect assessment for which a confirmed decision was made and the department has determined the provider does not meet the standards to enroll.~~
- ~~n.~~ The qualified service provider refuses to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments.
- ~~e.n.~~ There has been no billing activity within the twelve months since the qualified service provider's enrollment or most recent re-enrollment date.
- ~~p.o.~~ For other good cause.

History: Effective January 1, 2020; amended effective January 1, 2022; [October 1, 2022](#).

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

75-03-23-09. Payment under the SPED program and the Medicaid waiver program.

1. The department shall establish provider rates for home and community-based service in accordance with a procedure that factors in:
 - a. Whether a provider is an individual or an agency; and
 - b. The range of rates submitted by various providers.
2. The rate for a specific qualified service provider is established at the time the provider agreement is signed.
3. The department shall grant a request for a rate decrease when the department receives a written request for the decrease from the qualified service provider.
4. The department shall grant in full or in part, or shall deny, a request for a rate increase when the department receives a written request for the rate increase from the qualified service provider.
5. The department shall determine the maximum amount allowable per client each month for a specific service.
6. The department shall establish the aggregate maximum amount allowable per client each month for all services. The aggregate maximum amount per client depends on whether the client is receiving services under the SPED program, under the Medicaid waiver program, or under both programs.

7. The department or designee may grant approval to exceed the monthly service program maximum for a specific client who is only receiving SPED funds and no Medicaid funds if the client has a special or unique circumstance; the SPED client is not eligible for Medicaid; and the need for additional service program funds will not initially exceed three months. Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.
8. The department may grant approval to exceed the monthly service program maximum for a specific client who is receiving SPED funds and Medicaid funds or only Medicaid funds if the client has a special or unique circumstance; and the need for additional service program funds does not exceed three months. Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.
9. The department's designee shall notify the client of the department's determination regarding the request to exceed the monthly service program maximum. If the department denies the request to exceed the monthly aggregate maximum, the department's designee shall inform the client in writing of the reason for the denial, the client's right to appeal, and the appeal process, as provided in chapter 75-01-03.
10. The department will grant approval to exceed the monthly program maximum or service maximum for individuals receiving SPED funds or Medicaid funds, or both, whose service units exceed the program caps as a result of the qualified service provider rate increase. This extension is limited to individuals who were receiving services prior to July 1, 2007.
11. Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance to the three months extension and one-time extension limitation in subsections 7 and 8 upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of a client and no variance may be granted except at the discretion of the department. A refusal to grant a variance is not subject to appeal.

History: Effective June 1, 1995; amended effective September 27, 2007; January 1, 2009; October 1, 2022.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

CHAPTER 75-03-34

75-03-34-02. Licensing.

1. An assisted living facility shall apply to the department for a license in the form and manner prescribed by the department. The department shall notify a licensed assisted living facility of the need to renew its license at least ~~thirty~~sixty days prior to expiration of that license. The notice must include the form required to renew a license.
2. An application for a license is not complete until the applying assisted living facility submits all required information and verification to the department.
3. The department shall approve or deny an application for a license within thirty days of the department's receipt of complete application materials from an assisted living facility.
4. In order to receive and maintain a license, an assisted living facility shall:
 - a. Pay a licensing fee of seventy-five dollars to the department annually. The licensing fee shall not be prorated nor is any part refundable;
 - b. Maintain a written agreement with each tenant that includes the rates for rent and services provided to the tenant, payment terms, refund policies, rate changes, tenancy criteria, and living unit inspections;
 - c. Provide each tenant with written notice of how a tenant may report a complaint regarding the assisted living facility, which includes the telephone number of the department's senior info-line and the address of the aging services division of the department; and
 - d. Certify that operation of its facility is in compliance with all applicable federal, state, and local laws and, upon request, make available to the department copies of current certifications, licenses, permits, and other similar documents evidencing compliance with such laws.
5. A license is valid for the calendar year in which it is issued. A license is not subject to sale, assignment, or other transfer, voluntary or involuntary. A license is not valid for any premises or entity other than those for which it was originally issued.
6. An assisted living facility must submit to the department ~~ana complete~~ application and materials for license renewal at least thirty days ~~prior to before~~ the ~~calendar year end~~ expiration of the current license. An assisted living facility is subject to the same requirements and has the same responsibility to furnish information for a renewal of its license as it did during its initial application.
7. An assisted living facility shall display its license in a conspicuous place on its premises.
8. No more than two people may occupy one bedroom of each living unit of an assisted living facility.

History: Effective January 1, 2002; amended effective March 1, 2004; July 1, 2006; October 1, 2022.

General Authority: NDCC 50-32-03

Law Implemented: NDCC 50-32-02

TITLE 93
PRIVATE INVESTIGATIVE AND SECURITY BOARD

OCTOBER 2022

ARTICLE 93-01
GENERAL ADMINISTRATION

Chapter

93-01-01 Organization of Board

93-01-02 Executive Director

CHAPTER 93-01-01

93-01-01-01. Organization of private investigative and security board.

The governor shall appoint a private investigative and security board. The board must consist of not less than five, nor more than eleven members appointed for staggered four-year terms. When making appointments, the governor shall consider whether there is member representation from the western, central, and eastern geographic regions of the state. Appointees to the board must be knowledgeable in private investigative or private security matters. A majority of the members of the board must be actively engaged in the private investigative or security profession. It is the practice of said board that at least one member be representative of the law enforcement community to better facilitate cooperative effectiveness within the industry.

Members of the board may not receive any compensation for their service on the board, but they are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided by law for state employees.

History: Effective April 1, 1994; amended effective October 1, 2022.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-03

CHAPTER 93-01-02
EXECUTIVE DIRECTOR

Section

93-01-02-01 Executive Director

93-01-02-01. Executive director.

The private investigative and security board shall appoint an executive director who shall keep a record of all proceedings, transactions, communications, and official acts of the board, be a custodian for all moneys received for licenses, certifications, and training, which must be deposited for safekeeping in depositories designated by the board. The executive director must be a custodian of all records of the board and perform such other duties and administrative functions as the board may require. The executive director shall be employed on either a full-time or part-time basis as directed by the board, and the board is authorized to fix the salary of the executive director.

History: Effective October 1, 2022.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-01(3)

ARTICLE 93-02
PRIVATE INVESTIGATIVE AND SECURITY SERVICES

Chapter

93-02-01	Private Investigative Services [Repealed]
93-02-01.1	Private Investigative Services
93-02-02	Private Security Services [Repealed]
93-02-02.1	Private Security Services
93-02-03	General Rules
<u>93-02-04</u>	<u>Armed First Responder in School or Ambulance or Firefighter Crew Training Program</u>

CHAPTER 93-02-02.1
PRIVATE SECURITY SERVICES

Section

93-02-02.1-01	Qualifications for Individuals Providing Private Security Services
93-02-02.1-02	Licensing of Individuals Providing Private Security Services
93-02-02.1-03	Licensing of Private Security Agencies
93-02-02.1-04	Registration of Employees and Independent Contractors of Private Security Agencies
93-02-02.1-05	Qualifications for Apprentice Security Officers
93-02-02.1-06	Qualifications for Security Officers
93-02-02.1-07	Qualifications for Commissioned Security Officers
93-02-02.1-08	Armed Personnel - Possession and Use of Firearms in the Course of Providing Private Security Services
93-02-02.1-09	Qualifications for Trainers
93-02-02.1-09.1	Qualifications for Armed Instructors
93-02-02.1-10	Equivalency
93-02-02.1-11	Prohibitions
93-02-02.1-12	Surety Requirements
93-02-02.1-13	License - Posting
93-02-02.1-14	Issuance of Pocket Cards
93-02-02.1-15	Change in Ownership or Other Application Information
93-02-02.1-16	Examination Restrictions
<u>93-02-02.1-17</u>	<u>Online Training Certification</u>

93-02-02.1-05. Qualifications for apprentice security officers.

To qualify for registration as an apprentice private security officer, an individual:

1. Must complete, within thirty days after being registered with the board, a minimum of twelve hours of in-person, live remote, or online classroom instruction relating to the provision of private security services or twelve hours of field training. The field training must be supervised either by a security officer who has a minimum of two thousand hours of active service in that grade or equivalent combination of training and experience as defined in section 93-02-02.1-10 or by a commissioned security officer. The training must be at a ratio of no more than four trainees to one officer.
2. Until the apprentice private security officer has fulfilled the requirements in this section, the apprentice may only provide private security services under the direct, onsite supervision of a security officer or commissioned security officer employed by the private security agency.
3. A registration under this section will not be issued after the expiration of a temporary registration issued under North Dakota Century Code section 43-30-05.1 unless the apprentice security officer provides sufficient proof to the board of the completion of the instruction and field training requirements in this section.

History: Effective May 1, 2000; amended effective July 1, 2010; [October 1, 2022](#).

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

93-02-02.1-06. Qualifications for security officers.

To qualify for registration as a security officer, an individual must provide a minimum of one thousand hours of private security service as a registered apprentice security officer and complete an additional thirty-two hours of [in-person or live remote](#) classroom instruction as required by the board. An individual actively serving or honorably discharged from the United States armed forces, army national guard of the United States, army reserve, navy reserve, marine corps reserve, air national guard of the United States, air force reserve, or coast guard reserve is deemed to have met the one thousand hours of private security service requirement.

History: Effective May 1, 2000; amended effective July 1, 2018; [October 1, 2022](#).

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

93-02-02.1-07. Qualifications for commissioned security officers.

To qualify for registration as a commissioned security officer, an individual must provide three thousand hours of private security service as a registered security officer, in addition to at least one thousand hours as an apprentice security officer, and complete an additional eighty hours of [in-person or live remote](#) classroom instruction as required by the board.

History: Effective May 1, 2000; [amended effective October 1, 2022](#).

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

93-02-02.1-09. Qualifications for trainers.

[Classroom](#) [Except as provided in section 93-02-02.1-17, in-person or live remote classroom](#) instruction required of apprentice security officers, security officers, or commissioned security officers must be conducted by trainers certified by the board. To be certified as a trainer, an individual must have achieved the rank of commissioned security officer as defined in section 93-02-02.1-07 and meet at least one of the following requirements:

1. Completion of an instructor training course in a relevant discipline;
2. Equivalent combination of training and experience as defined in section 93-02-02.1-10;
3. One year of experience as an instructor in a relevant discipline at an educational institution or educational agency;
4. A degree from any educational institution in a relevant discipline; or
5. Certification from an accredited vocational education provider.

History: Effective May 1, 2000; amended effective July 1, 2018; [October 1, 2022](#).

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

[93-02-02.1-17. Online training certification.](#)

[Non-live remote or online classroom instruction may be permitted for apprentice security officers through a board-certified security trainer under the following conditions:](#)

1. The board-certified security trainer shall apply on board-approved application forms for approval of any online or non-live remote course, and provide all information requested by the board.
2. The curriculum must be a minimum of twelve hours in length and must include instruction on North Dakota private security requirements as listed under chapter 93, North Dakota Century Code chapters 12.1-05 and 43-30, and applicable North Dakota law related to providing private security services. The curriculum must include an outline listing each topic to be covered and the corresponding time allotted for that topic.
3. Each board-certified security trainer shall submit to the board as part of the application process the manner in which the board-certified security trainer verified completion of the online instruction, and that the student did participate and complete the online instruction course.
4. If the board determines that the training course application is consistent with this section, the board may issue a letter of approval to the board-certified security trainer for the online or non-live remote course that includes a course approval number. Any change in the application information for the course will require a new application and course approval by the board.
5. The board-certified security trainer shall maintain attendance records for all training conducted for a period of three years and shall produce such records to the board upon request. Upon student completion of the approved online or non-live remote course the board-certified security trainer shall provide the student with a certificate of completion that includes the board-certified security trainer's name, signature, date of course completion, course approval number, hours of instruction, and the student's name.
6. The failure of the board-certified security trainer to comply with this chapter may result in the revocation of the letter of approval and the rejection of credit for classroom instruction obtained from that board-approved online or non-live remote training course.

History: Effective October 1, 2022.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

CHAPTER 93-02-03

93-02-03-06. Fees - Amount - Late fees.

In addition to statutory fees, the board charges the following fees:

1. An individual must pay a fee of one hundred dollars to take the examination to become licensed to provide investigative or private security services.
2. An individual must pay a fee of one hundred ~~thirty~~fifty dollars to receive an initial license or renew the individual's license to provide private investigative or private security services. In addition, a late fee of fifty dollars must be paid for each month the renewal is late, up to a maximum cumulative late fee of one hundred dollars for a late renewal. After this two-month time frame, a new application, including criminal history background checks, fees, and testing, is required.
3. An individual or entity must pay a fee of one hundred dollars to apply for a license to operate a private security or detective agency.
4. An individual or entity must pay a fee of ~~two~~three hundred ~~fifty~~ dollars to receive an initial license or renew a license to operate a private security or detective agency. A late fee of one hundred dollars also must be paid for each month the renewal fee is late.
5. An individual must pay a fee of ~~twenty~~twenty-five dollars to receive a private security training certificate. There is no expiration date for these certifications.
6. An individual must pay an annual fee of ~~twenty-five~~thirty dollars to receive an armed ~~private security~~ certificate. Armed ~~private security~~ certificates expire on September thirtieth of each year. A late fee of ten dollars also must be paid for each month the renewal fee is late.
7. An individual or entity must pay a fee of ~~ten~~twenty dollars to obtain a duplicate license or registration.
8. An individual must pay a fee of ~~twenty-five~~thirty dollars to obtain an initial registration to provide private investigative or private security services. The registration shall be submitted by the licensed agency. An individual must pay ~~twenty-five~~thirty dollars for renewing registration to provide private investigative or private security services. A late fee of ten dollars ~~must~~ also must be paid for each month the renewal is late.
9. An individual must pay a fee of four hundred dollars to obtain a training certification as a certified course instructor of the armed first responder program. An individual must pay three hundred dollars for renewal of a course instructor certification for the armed first responder program.

History: Effective May 1, 2000; amended effective May 1, 2005; July 1, 2010; October 1, 2013; July 1, 2018; October 1, 2022.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-16

CHAPTER 93-02-04
ARMED FIRST RESPONDER IN SCHOOL OR AMBULANCE OR FIREFIGHTER CREW
TRAINING PROGRAM

Section

<u>93-02-04-01</u>	<u>Certified Training Course Application</u>
<u>93-02-04-02</u>	<u>Approved Basic Training Instructors</u>
<u>93-02-04-03</u>	<u>Surety Requirements</u>
<u>93-02-04-04</u>	<u>Successful Completion of Training Course</u>
<u>93-02-04-05</u>	<u>Application and Course Certification Fees</u>

93-02-04-01. Certified training course application.

The following procedures apply to all training courses for which certification is requested by the board:

1. An instructor or agency seeking course certification shall submit an application to conduct a training course and certification to the board on a form provided by the board.
2. All application forms must be submitted to the board at least ninety days before training commences.
3. Each application must include the following:
 - a. A course description showing the title of the course, the name of the person or agency preparing the training course, the course objective, testing methods if applicable, course content, estimated length of course, and references;
 - b. Payment to the board of any fees established for certification of the course and instructors.
4. The training course must consist of at least eighty hours of training and must include the following curriculum and subject areas:
 - a. Firearms proficiency, including fulfillment of the equivalent requirements for firearm training as is required for North Dakota peace officers;
 - b. Use of force and deadly force;
 - c. Application of North Dakota law;
 - d. Legal aspects;
 - e. Defensive tactics and weapons retention;
 - f. Weapons storage;
 - g. Concealed carry of firearms tactics;
 - h. Protocol for identifying armed first responder in school or ambulance or firefighter crew;
 - i. Solo and team tactics;
 - j. Mind set; and
 - k. Active threat overview.

5. All certified courses are subject to periodic review by the board.
6. Certified instructors shall notify the board, in writing at least thirty days before the commencement of any certified course, the course dates and curriculum and permit the board to monitor course content and instructor development.
7. A certified instructor shall complete rosters for all courses on a form approved by the board. All rosters must be submitted to the board within fifteen days of completion of the course.
8. Upon approval by the board, instructors and agencies shall receive a letter of course approval. Any change to the certified course curriculum or instructors must require submission of a new application and recertification from the board.

History: Effective October 1, 2022.

General Authority: NDCC 62.1-02-14(7)

Law Implemented: NDCC 62.1-02-14(7)

93-02-04-02. Approved basic training instructors.

The board shall certify instructors for the North Dakota armed first responder in school or ambulance or firefighter crew training course and shall approve all course topics and curriculum prior to instruction. Instructors must meet the following requirements:

1. Instructors shall possess education, training, and experience in the assigned subject area of instruction, and shall possess board-instructor certifications or North Dakota peace officer standards and training board instructor certifications or specialized academic preparation in the course subject areas.
2. Instructors shall submit to a criminal history records search in state and federal databases and shall provide a copy of the instructor-applicant's fingerprints. Instructors shall pay the fees associated with the searches directly to the board.
3. Instructors shall meet the same requirements for individuals providing private security services found in section 93-02-02.1-01.
4. Instructors shall pay any annual licensing fee set by the board.
5. Instructors shall maintain course records for a period of no less than three years after the date of the completion of the course.

History: Effective October 1, 2022.

General Authority: NDCC 62.1-02-14(7)

Law Implemented: NDCC 62.1-02-14(7)

93-02-04-03. Surety requirements.

1. Before a course certification to provide armed first responder in schools or ambulance or firefighter crew training can be issued to any individual or agency, the individual or agency shall file with the board a certificate of insurance executed by the applicant and by an insurance company in the sum of three hundred thousand dollars of general liability with errors and omissions insurance.
2. The certificate of insurance must be conditioned on the faithful and honest conduct of the business of the applicant and the applicant's agents, employees, and independent contractors, and for the full protection of any person who deals with the applicant or the applicant's agents, employees, and independent contractors.

3. The certificate of insurance must provide that any person injured by the breach of the conditions of the insurance policy may bring an action on that insurance policy in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the insurance policy for all damages may, in no event, exceed the sum of the insurance policy. The insurance underwriter may cancel the policy upon giving thirty days' notice in writing to the board and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

4. The surety requirements in this section do not apply to instructors employed with a North Dakota public entity, or agencies that are a public entity in North Dakota while performing the duties of that entity.

History: Effective October 1, 2022.

General Authority: NDCC 62.1-02-14(7)

Law Implemented: NDCC 62.1-02-14(7)

93-02-04-04. Successful completion of training course.

Before any student attends a board-certified course the instructors shall ensure any students have met the following requirements under subsection 8 of North Dakota Century Code section 62.1-02-14 or paragraphs 1 and 2 of subdivision b of subsection 2 of North Dakota Century Code section 62.1-02-05. To successfully complete the North Dakota armed first responder in school or ambulance or firefighter crew training course, applicants must receive a passing score on all written and skills examinations administered by approved instructors or agencies in connection with the course. Instructors shall, before the commencement of the training course, notify applicants of the level of performance that constitutes a passing score for each examination. Upon successful completion of a board-certified course, the instructor or agency, or both, shall issue a certificate of completion to each student and submit a copy of each certificate of completion along with the required roster to the board within fifteen days.

History: Effective October 1, 2022.

General Authority: NDCC 62.1-02-14(7)

Law Implemented: NDCC 62.1-02-14(7)

93-02-04-05. Application and course certification fees.

1. The initial application fee for a certified course, along with instructors is four hundred dollars. Once a course is certified by the board the certification is valid for two years, expiring on September thirtieth of each calendar year.

2. Recertification of a certified course and instructors after the two year period is three hundred dollars, and is then valid for an additional two years.

3. Once a course is certified, any changes to the course or instructors requires a new application and fees.

History: Effective October 1, 2022.

General Authority: NDCC 62.1-02-14(7)

Law Implemented: NDCC 62.1-02-14(7)