NORTH DAKOTA ADMINISTRATIVE CODE

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TITLE 33

STATE DEPARTMENT OF HEALTH

JANUARY 2025

CHAPTER 33-06-16

33-06-16-01. Definitions.

As used in this chapter:

1. "Care coordination" means services that promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special health care needs and their families.

2. "Licensed clinician" means a currently licensed physician, physician assistant, or advanced practice registered nurse.

3. "Metabolic disease" and "genetic disease" mean a disease as designated by ~~rule of~~ the state health ~~council~~officer for which early identification and timely intervention will lead to a significant reduction in mortality, morbidity, and associated disabilities.

4. "Metabolic disorders clinic team" means medical providers and other professionals that provide comprehensive pediatric evaluations and coordinated care recommendations using a team approach to help effectively manage care for individuals with metabolic disorders.

5. "Newborn screening program" means the North Dakota screening program in the ~~state~~ department of health and human services facilitating access to appropriate testing, followup, diagnosis, intervention, management, evaluation, and education regarding metabolic diseases and genetic diseases identified in newborns.

6. "Protected health information" means any information, including genetic information, demographic information, and fluid or tissue samples collected from an individual, diagnostic and test results, whether oral or recorded in any form or medium, which:

   a. Is created or received by a health care provider, health researcher, health plan, health oversight authority, public health authority, employer, health or life insurer, school or university; and

   b. (1) Relates to the past, present, or future, physical or health or condition of an individual, including individual cells and their components; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and

      (2) (a) Identifies an individual; or

(b) With respect to which there is a reasonable basis to believe that the information can be used to identify an individual.

7. "Responsible clinician" means the licensed clinician, midwife, naturopath, doula, or birth attendant attending a newborn.

8. "Screening" means initial testing of a newborn for the possible presence of metabolic disease or genetic disease.

9. "Screening laboratory" means the laboratory the department of health and human services selects to perform screening.

History: Effective December 1, 1996; amended effective March 1, 2003; January 1, 2006; April 1, 2016; January 1, 2025.
General Authority: NDCC ~~23-01-03(3),~~ 23-01-03.1, 23-01-04, 23-01-15, 25-17-01, 25-17-02
Law Implemented: NDCC 23-01-03.1, 25-17-01(3), 25-17-02, 25-17-03

33-06-16-05. Research and testing materials.

~~Information and testing materials received or generated by the newborn screening program under North Dakota Century Code chapter 25-17 are confidential except as provided by law or regulation.~~

1. Access to information or testing materials may be obtained only as follows:

   a. Information may be disclosed for statistical purposes in a manner such that no individual person can be identified.

   b. ~~Information~~Protected health information may be disclosed to the individual tested, that person's parent or guardian, or that person's licensed clinician, responsible clinician, dietitian, metabolic disorders clinic team, screening laboratory, other employees and contractors of the department of health and human services with need for the information, or to ~~children's~~ special health services within the ~~state~~ department of health and human services for purposes of care coordination and provision of medical and low-protein modified foods.

   ~~c. Information and testing materials may be disclosed to a person engaged in a research project concerning medical, psychological, or sociological issues provided all of the following conditions are met:~~

   ~~(1) Written authorization from the parent or guardian must be obtained by the researcher for the information or testing materials requested.~~

   ~~(2) The research project must be sponsored by a public or private college or university; a governmental entity; a nonprofit medical, sociological, or psychological association; or the pharmaceutical industry.~~

   ~~(3) The research project must be reviewed and approved pursuant to policies and procedures pertaining to research utilizing human subjects by the institutional review board or equivalent panel of the institution or entity where the research is being done or which is sponsoring the research.~~

   ~~(4) Protected health information may not appear in any report, summation, thesis, or other document arising out of the research project.~~

   ~~(5) Protected health information may not be provided to a person engaged in a research project until that person has submitted a written proposal explaining and justifying the need to examine such information.~~

~~(6) The researcher shall agree in writing to pay all costs of the department incurred in providing access to testing materials or other information, including copy or research services.~~

2. ~~Storage, maintenance, and disposal of information and testing materials.~~

~~a.~~ Information and testing materials must be stored in such a way as to protect the integrity of the materials and the privacy of patients.

~~b. Information and testing materials provided to the state department of health may be retained indefinitely or destroyed according to this subsection~~3. Dried blood spots must be destroyed thirty days after completion of testing. Residual specimens may be retained for laboratory quality assurance purposes and must be destroyed after completion of quality assurance activities.

~~c.~~4. Information and testing materials may be destroyed by any available means that preserves individual confidentiality and, for the testing materials, complies with any applicable standards for destruction of human blood samples.

~~d. Information and testing materials may be destroyed based upon the following schedule:~~

~~(1) Information and testing materials created less than eighteen years before the present date may be destroyed only with the state health officer's prior written approval.~~

~~(2) After eighteen years, information and testing materials may be destroyed without prior approval.~~

History: Effective March 1, 2003; amended effective April 1, 2016; January 1, 2025.
General Authority: NDCC ~~23-01-03(3),~~ 23-01-03.1, 23-01-04, 23-01-15, 25-17-01, 25-17-02
Law Implemented: NDCC 23-01-03.1, 25-17-01(3), 25-17-02, 25-17-03

33-11-01.2-14. Transporting of patients.

Ambulance services shall transport patients to the nearest appropriate licensed health care facility according to their hospital transport plan except for:

1. Interfacility transports must be made in accordance with the referring physician's orders.

2. In the following specific instances transport must be made to a licensed health care facility with specific capabilities or designations. This may result in bypassing a closer licensed health care facility for another located farther away. An ambulance service may deviate from these rules contained in this section on a case-by-case basis if online medical control is consulted and concurs.

   a. Trauma patients must be transported to a designated trauma center ~~as per~~under article 33-38 or to an Indian health service facility that has entered into a memorandum of understanding with the department certifying the facility meets the requirements of a designated trauma center under article 33-38.

   b. A patient suffering acute chest pain that is believed to be cardiac in nature or an acute myocardial infarction determined by a twelve-lead electrocardiograph must be transported to a licensed health care facility capable of performing primary percutaneous coronary intervention or fibrinolytic therapy pursuant to the North Dakota cardiac system ST-elevation myocardial infarction, non-ST elevation myocardial infarction, and acute coronary syndrome guide.

   c. A patient suffering a suspected stroke must be transported to a designated acute stroke ready hospital, primary stroke center, or a comprehensive stoke center pursuant to the North Dakota acute stroke treatment guidelines.

   d. In cities with multiple hospitals an ambulance service may bypass one hospital to go to another hospital with equal or greater services if the additional transport time does not exceed ten minutes.

3. An officer, employee, or agent of any emergency medical services operation may refuse to transport an individual to a licensed health care facility for which transport is not medically necessary and may recommend an alternative course of action to that individual, including transportation to an alternative destination such as an urgent care center, clinic, physician's office, or other appropriate destination identified by the emergency medical services operation's medical director, if the emergency medical service operation has developed protocols to refuse transport of an individual and recommend an alternative course of action.

History: Effective January 1, 2008; amended effective July 1, 2010; April 1, 2024; August 22, 2024; January 1, 2025.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

TITLE 50

NORTH DAKOTA BOARD OF MEDICINE

JANUARY 2025

ARTICLE 50-01.1
DEFINITIONS

CHAPTER 50-01.1-01

50-01.1-01-01. Grounds for discipline - Definitions.

The following definitions apply to grounds for discipline for licenses under the jurisdiction of the board.

1. "Chaperone" means a third individual who is present during a medical examination, with the patient's consent.

2. "Conduct" includes:

   a. Behaviors, gestures, or expressions, whether verbal or physical; or

   b. The creation, receipt, exchange, saving, or sending of images or communications, whether verbal or written, via a telecommunications device.

3. "Former patient" means one of the following:

   a. An individual for whom the licensee has not rendered health care services since the licensee-patient relationship was terminated; or

   b. An individual who has otherwise been admitted, discharged, or referred to another licensee for care subsequent to receipt of health care services by a licensee in an emergency setting or on an episodic basis, and such action has been recorded in the individual's medical record or chart.

4. "Health care services" means examination, consultation, health care, treatment, or other services provided by a licensee under the legal authority conferred by a license, certificate, or registration issued by the board.

5. "Intimate examination" means an examination of the pelvic area, genitals, rectum, breast, or prostate.

6. "Key third party" means an individual closely involved in the patient's decisionmaking regarding health care services, including the patient's spouse or partner, parent, child, sibling,

or guardian. An individual's status as a key third party ceases upon the termination of the licensee-patient relationship or upon termination of the individual's relationship with the patient.

7. "Licensee" means any professional licensed under the jurisdiction of the board of medicine.

8. "Patient" means an individual for whom the licensee has provided health care services, whether provided by mutual consent or implied consent, or provided without consent pursuant to a court order. Once a licensee-patient relationship is established, an individual remains a patient until the relationship is terminated. The determination of whether an individual is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent, and context of the professional relationship between the licensee and the individual. The fact that an individual is not actively receiving treatment or professional services is not the sole determining factor. The term includes:

   a. An individual who is receiving or has received health care services from the licensee without termination of the licensee-patient relationship; or

   b. A key third party, as that term is defined in this section.

9. "Sexual abuse, misconduct, or exploitation" means conduct that exploits the licensee-patient relationship in a sexual way, whether verbal or physical, and may include the expression of thoughts, feelings, or gestures that are sexual or that reasonably may be construed by a patient or key third party as sexual. Sexual abuse, misconduct, or exploitation include:

   a. "Sexual impropriety" means conduct by the licensee that is seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient, including the following:

      (1) Neglecting to employ disrobing or draping practices respecting the patient's privacy;

      (2) Subjecting a patient to an intimate examination in the presence of a third party, other than a chaperone, without the patient's consent or if consent has been withdrawn;

      (3) Making comments that are not clinically relevant about or to the patient, including making sexual comments about a patient's body or underclothing; making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation, or making comments about potential sexual performance;

      (4) Soliciting a date or romantic relationship with a patient;

      (5) Participation by the licensee in conversation regarding the sexual problems, sexual preferences, or sexual fantasies of the licensee;

      (6) Requesting details of the patient's sexual history, sexual problems, sexual preferences, or sexual fantasies if not clinically indicated for the type of health care services; and

      (7) Failing to offer the patient the opportunity to have a third individual or chaperone in the examining room during an intimate examination or failing to provide a third individual or chaperone in the examining room during an intimate examination upon the request of the patient.

   b. "Sexual contact" includes the following:

(1) Touching a breast, genital, or any body part that has sexual connotation for the licensee or patient, for any purpose other than appropriate health care services, or if the patient has refused or withdrawn consent; and

(2) Examining or touching of the patient's genitals without the use of gloves.

c. "Sexual interaction" means conduct between a licensee and patient, whether or not initiated by, consented to, or participated in by a patient, that is sexual or may be reasonably interpreted as sexual, including:

(1) Sexual intercourse or genital to genital contact;

(2) Oral to genital contact;

(3) Oral to anal contact or genital to anal contact;

(4) Kissing in a romantic or sexual manner;

(5) Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present;

(6) Offering to provide health care services, including drugs, in exchange for sexual favors;

(7) Performing an intimate examination without clinical justification; or

(8) Conduct that is sexually demeaning to a patient or which demonstrates a lack of respect for the patient's privacy.

d. Conduct described in paragraph 1 of subdivision a, paragraph 2 of subdivision a, paragraph 7 of subdivision a, and paragraph 1 of subdivision b of this rule does not constitute sexual abuse, misconduct, or exploitation if the following criteria are met:

(1) The conduct occurred during the rendering of health care services in an emergency setting;

(2) The health care services rendered were clinically necessary;

(3) The patient was unconscious or otherwise unable to consent to health care services; and

(4) The patient's clinical condition required immediate action and the licensee's violation of paragraph 1 of subdivision a, paragraph 2 of subdivision a, paragraph 7 of subdivision a, or paragraph 1 of subdivision b of this rule was due to circumstances not within the licensee's control.

e. This section does not prohibit conduct required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

f. It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

10. "Unethical conduct" means conduct contrary to the following codes of ethics for each licensed profession:

a. For medical doctors, the 2016 code of medical ethics adopted by the American medical association;

b. For osteopathic doctors, the 2016 code of ethics adopted by the American osteopathic association;

c. For physician assistants, the 2018 guidelines for ethical conduct for the physician associates profession adopted by the American academy of physician associates;

d. For genetic counselors, the 2017 code of ethics adopted by the national society of genetic counselors; and

e. For naturopaths, the 2015 code of ethics adopted by the American association of naturopathic physicians.

History: Effective January 1, 2025.
General Authority: NDCC 43-17-07.1(10), 43-58-03.1, 43-60-06
Law Implemented: NDCC 43-17-02.1(1), 43-17-02.5, 43-17-31(1), 43-58-11(2)(o), 43-60-07(1)(o)

CHAPTER 50-02-15
TELEMEDICINE

50-02-15-03. Exceptions.

A physician who holds an active, unrestricted license in good standing to practice medicine or osteopathy in any state or territory of the United States, the District of Columbia, or a province of Canada, may practice medicine or osteopathy in this state via telehealth without first obtaining a license from the North Dakota board of medicine if one of the following applies:

1. A physician who has established a patient-provider relationship in another state with a patient who is a resident of North Dakota may provide continued care to the patient via telehealth without obtaining a North Dakota physician license subject to the following:

   a. The provider-patient relationship must have been established in a state in which the physician is licensed;

   b. Subsequent care may be provided to the patient via telehealth while the patient is in North Dakota if the care is logical and expected continuation of care previously provided in the state where the physician is licensed. If the patient is presenting with new medical conditions, or conditions for which the standard of care dictates an in-person encounter is needed, the patient shall return to the state in which the physician is licensed for care or must be referred to a North Dakota licensed health care provider; and

   c. The telehealth care provided to a patient located in North Dakota may continue for up to one year after establishment of the provider-patient relationship in another state, after which an encounter must take place in a jurisdiction where the physician is licensed before the telehealth may resume for another one year.

2. Temporary care may be provided if a physician has an established patient-provider relationship with an individual who is in North Dakota temporarily for business, work, education, vacation, or other reasons and the individual requires health care services from that primary provider.

3. A physician may provide health care services in preparation for a scheduled in-person care visit.

4. A physician licensed in another state may consult using telemedicine or other means with a North Dakota licensed physician who has been and remains responsible for the diagnosis and treatment of the patient within the state and requests the consultation.

5. A physician may provide gratuitous service in the case of an emergency.

By engaging in virtual care with a patient located in North Dakota, a provider exempted from North Dakota licensure under this section consents to the applicable North Dakota laws, rules, and regulations governing the provider's profession, including sections 43-17-44 and 43-17-45 of the North Dakota Century Code, this title, North Dakota community standards of care, and the jurisdiction of the board, including the board's disciplinary process.

History: Effective January 1, 2025.
General Authority: NDCC 43-17-07.1(10)
Law Implemented: NDCC 43-17-02.3(5)

CHAPTER 50-03-01

50-03-01-02. Licensure requirements.

~~Every~~An applicant for licensure shall file a written application, on ~~forms~~a form 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 for physician assistants accredited by the accreditation review commission on education for the physician assistant or other entity as approved by the board;

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; April 1, 2024; January 1, 2025.
General Authority: NDCC 43-17-02.1
Law Implemented: NDCC 43-17-02.1

ARTICLE 50-07
GENETIC COUNSELORS

CHAPTER 50-07-01
GENETIC COUNSELORS

50-07-01-01. Definitions.

Unless specifically stated otherwise, all definitions found in North Dakota Century Code chapter 43-60 are applicable to this article, including:

1. "ABGC" means the American board of genetic counseling.

2. "ABMG" means the American board of medical genetics.

3. "Board" means the North Dakota board of medicine.

History: Effective January 1, 2025.
General Authority: NDCC 43-60-06
Law Implemented: NDCC 43-60-01, 43-60-06

50-07-01-02. License issued.

If the board determines that a candidate has successfully completed all requirements by law and rule for licensure, the board shall issue a license to the candidate. An officer of the board and the board's executive director or deputy executive director may issue a provisional temporary license to an applicant who is seeking a permanent North Dakota genetic counselor license if in the officer and director's judgment the applicant meets all the requirements for a license. A provisional temporary license is valid from the date of issue until the time of the next regularly scheduled meeting of the board.

History: Effective January 1, 2025.
General Authority: NDCC 43-60-06
Law Implemented: NDCC 43-60-06

50-07-01-03. Location of practice - License displayed.

A licensed genetic counselor shall maintain a permanent electronic mail or mailing address with the board to which all communications from the board to the licensee shall be sent. A licensee who changes an address shall notify the board in writing of the new contact information within thirty days. A current certificate or duplicate certificate issued by the board at all times must be displayed in each office location of the genetic counselor.

History: Effective January 1, 2025.

General Authority: NDCC 43-60-06
Law Implemented: NDCC 43-60-06

50-07-01-04. Fees.

The fee for initial licensure of a genetic counselor is fifty dollars per year. The renewal fee is fifty dollars per year.

History: Effective January 1, 2025.
General Authority: NDCC 43-60-06
Law Implemented: NDCC 43-60-03, 43-60-05, 43-60-06

50-07-01-05. Reporting requirements.

A genetic counselor is subject to the mandatory reporting requirements specified in North Dakota Century Code section 43-17.1-05.1. The genetic counselor shall report to the board within ten days if the individual no longer holds a valid certification from the ABGC. Upon verification that the genetic counselor no longer holds the certification, the license automatically expires. The expiration of the genetic counselor license under this section does not preclude the board from taking disciplinary action.

History: Effective January 1, 2025.
General Authority: NDCC 43-60-06
Law Implemented: NDCC 43-60-06

50-07-01-06. Disciplinary action.

The board may take disciplinary action against a licensed genetic counselor under North Dakota Century Code chapter 43-17.1 on the grounds set forth by North Dakota Century Code 43-60-07, by any one or more of the following means, as the board 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 genetic counselor.
5. Letter of censure.
6. Impose fines, not to exceed one thousand dollars for any single disciplinary action. The board shall deposit any fines collected by the board in the state general fund.

History: Effective January 1, 2025.
General Authority: NDCC 43-60-06
Law Implemented: NDCC 43-60-06, 43-60-07

50-07-01-07. Disciplinary proceedings.

In an order or decision issued by the board to resolve a disciplinary proceeding in which disciplinary action is imposed against a genetic counselor, the board may direct any genetic counselor to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and investigative panels of the board in the investigation and prosecution of the case. If applicable, the board may suspend the genetic counselor's license until the costs are paid to the board. A genetic counselor may challenge the reasonableness of a 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 a cost item, and the determination of the judge is final.

History: Effective January 1, 2025.
General Authority: NDCC 43-60-06
Law Implemented: NDCC 43-60-06

50-07-01-08. Notice of denial or limitation of licensure.

If the board determines that an applicant does not meet the requirements for licensure, the board promptly shall notify the applicant, personally or by certified mail, that the board 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 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 shall contact the board to request the hearing within thirty days of being notified of the board's informal decision.

If an applicant does not request a formal hearing within thirty days of the date on which the applicant was notified that the board has made an informal decision to deny the application or to place conditions or limitations on the applicant's license, the board's informal decision is the final order of the board.

History: Effective January 1, 2025.
General Authority: NDCC 43-60-06
Law Implemented: NDCC 43-60-06

TITLE 71

RETIREMENT BOARD

JANUARY 2025

CHAPTER 71-01-01

71-01-01-01. Organization of public employees retirement board.

1. **History.** The 1965 legislative assembly created the public employees retirement system by legislation codified as North Dakota Century Code chapter 54-52. The starting date of the program was July 1, 1966. The board acts as the administrating body to manage the public employees retirement system, the judges retirement system, the highway patrol retirement system, the national guard security officers and firefighters system, the uniform group insurance program, the deferred compensation plan, the prefunded retiree health program, and a pretax benefit program for public employees.

2. **Board membership.** The board consists of ~~nine~~eleven members. ~~Two~~Four are members of the legislative assembly~~ appointed by the chairman of the legislative management; one member, the chairman, is~~. The majority leader of the house of representatives shall appoint two members of the house of representatives and the majority leader of the senate shall appoint two members of the senate. The members of the legislature shall serve a term of two years, at the pleasure of the appointing majority leader. Four members of the board must be appointed by the governor~~; one member is appointed by the attorney general from the attorney general's staff; one member is the state health officer or state health officer's designee; three~~ to serve a term of five years, at the pleasure of the governor. Three members are elected by the active membership of the system~~; and one member is elected by the retired public employees~~ to serve a term of five years.

3. **Executive director.** The executive director is appointed by the board and is responsible for the administration of the day-to-day activities of the retirement systems, the prefunded retiree health program, the uniform group insurance program, the deferred compensation program, and the pretax benefit program for public employees.

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

   Executive Director
   Box 1657
   Bismarck, North Dakota 58502

History: ~~**Amended** effective~~Effective November 1, 1981; amended effective November 1, 1985; April 1, 1988; September 1, 1989; January 1, 1992; May 1, 2004; April 1, 2016; January 1, 2025.
General Authority: NDCC ~~28-32-02.1,~~ 54-52-04
Law Implemented: NDCC ~~28-32-02.1,~~ 54-52-03

CHAPTER 71-01-02

71-01-02-02. Eligible voters.

1. ~~All~~An active ~~employees~~employee, eligible to serve as an elected ~~members~~member of the board in accordance with subsection 4 of North Dakota Century Code section 54-52-03, ~~are~~is eligible to cast one vote for each active member vacancy on the retirement board.

2. ~~All persons receiving retirement benefits are eligible to cast one vote for a retiree member vacancy on the retirement board.~~

~~3.~~ ~~Persons~~An individual participating in the uniform group insurance program, the deferred compensation plan for public employees, or the pretax benefits program but not in the retirement system ~~are~~is ineligible to cast votes in retirement board elections.

History: Effective April 1, 1992; amended effective July 1, 1994; April 1, 2008; April 1, 2012; January 1, 2025.
General Authority: NDCC 54-52-04~~, 54-52-17(5)~~
Law Implemented: NDCC 54-52-03

71-01-02-03. Candidate eligibility.

~~1.~~ Any active participating member, members of the defined contribution retirement plan, the highway patrol retirement system, and the job service retirement plan are eligible to serve as an elected member of the board in accordance with subsection 4 of North Dakota Century Code section 54-52-03, may become a candidate for election to the board. ~~A department~~An agency or political subdivision may not be represented by more than one elected member. Employees who have terminated their employment for whatever reason are not eligible to serve as an active elected member of the board.

~~2. Any person, as of April fifteenth of the election year, who has accepted a retirement allowance, may become a candidate for the retiree member to the board.~~

History: Effective April 1, 1992; amended effective July 1, 1994; July 1, 2000; April 1, 2008; July 1, 2010; April 1, 2012; January 1, 2025.
General Authority: NDCC 54-52-04~~, 54-52-17(5)~~
Law Implemented: NDCC 54-52-03

71-01-02-04. Election notification.

1. The director of the North Dakota public employees retirement system shall ensure that notification of an active member vacancy and the election is given to all ~~employees~~active participating members through publication of a notice in the North Dakota public employees retirement system newsletter or any other method of communication as deemed appropriate by the director at least ~~three weeks~~twenty-one calendar days in advance of ~~a~~the filing date for nomination petitions. ~~The director shall ensure that notification of the vacancy of a retiree member and the election is given to all persons who have accepted a retirement allowance through publication of a notice in the North Dakota public employees retirement system newsletter or any other method of communication as deemed appropriate by the director at least three weeks in advance of a filing date for nomination petitions.~~

2. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of election, the filing date for the nomination petition, and where to obtain the nomination petitions for filing.

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008; April 1, 2014; April 1, 2020; January 1, 2025.
General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-05. Petition format.

1. The nomination petition for an active member on the board must include the signatures of at least one hundred active eligible voters. ~~The nomination petition for the retiree member on the board must include the signatures of at least twenty-five persons receiving a retirement allowance.~~

2. The nomination petition must include the following statement: "We, the petitioners, who are members of the North Dakota Public Employees Retirement System, nominate _____ for election to the North Dakota Public Employees Retirement System board."

3. The nomination petition must include a certification by the candidate, as follows: "I accept the nomination and if elected will fulfill the responsibilities as a member of the North Dakota Public Employees Retirement System board."

4. If there is not room for the required signatures on a single nomination petition, additional petitions may be used. Candidates may reproduce, at their own expense, blank nomination petitions that meet the format requirements without requesting additional petitions from the North Dakota public employees retirement system. All nomination petitions used must be certified and signed by the nominee when submitted to the North Dakota public employees retirement system office.

History: Effective April 1, 1992; amended effective May 1, 2004; April 1, 2008; April 1, 2012; January 1, 2025.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-03

71-01-02-08. Election.

1. Ballots must be mailed by first-class United States mail to the address of all eligible active voters for an election of an active board member~~, or all eligible retired voters for an election of a retired board member,~~ as determined by the North Dakota public employees retirement system's membership ~~roles~~ as of April fifteenth in the year of the election. Each eligible voter gets one ballot. Lost ballots may not be replaced.

2. North Dakota public employees retirement system members who become eligible to vote after April fifteenth, but before the deadline for the receipt of ballots, may be issued a special election ballot by making their request for such ballot in writing to the North Dakota public employees retirement system office no later than the two weeks before the deadline for receipt of ballots.

3. Ballots must be returned to the North Dakota public employees retirement system office no later than four p.m. on the date provided on the election ballots.

4. The candidate receiving the highest number of votes must be considered elected. When there is more than one active member board vacancy to be filled, the candidate with the second highest number of votes must be considered elected. If there are three active member board vacancies to be filled, the person with the third highest number of votes must be considered elected.

History: Effective April 1, 1992; amended effective April 1, 2008; April 1, 2020; January 1, 2025.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-03

71-01-02-13. Election voting.

In lieu of sections 71-01-02-07 ~~and~~, 71-01-02-08, and 71-01-02-09 the retirement board may allow for a process by which electronic ballots are submitted to elect an active ~~or retiree~~ candidate to the board.

History: Effective April 1, 2014; amended effective January 1, 2025.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-03

71-02-03-06. Conversion of sick leave.

To convert unused sick leave to service credit, the member must submit an application to the office, no later than the end of the month in which the member is no longer eligible to accrue the sick leave hours, unless otherwise approved by the executive director. The member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member is no longer eligible to accrue sick leave hours. For ~~members~~a member transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system ~~will~~shall record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer. One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The employer and employee contributions rates used to calculate the cost must be the rate of the retirement program of the member at termination.

1. Aftertax payments may be accepted from the member as early as six months prior to when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:

   a. A notice of employment change has been provided to the public employees retirement system.

   b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.

   c. The sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of ~~that~~the date of calculation. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member by the fifteenth of the month following the month the member is no longer eligible to accrue sick leave hours.

2. The member's record must be updated with the additional service credit once payment is made in full.

3. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:

   a. A notice of employment change has been provided to the public employees retirement system.

   b. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date the member is no longer eligible to accrue sick leave hours, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to the public employees retirement system during the final months of employment.

   c. The sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer and the

member's final average salary as of the date ~~the member is no longer eligible to accrue sick leave hours~~of calculation. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the date the member is no longer eligible to accrue sick leave hours will be added to the member's record. The member account balance ~~will~~must be credited with the full amount of funds from the rollover or transfer.

d. If an underpayment has occurred, then the remaining amount must be collected from the member by the fifteenth of the month following the month the member is no longer eligible to accrue sick leave hours.

e. The retiree health credit portion must be paid as a personal aftertax payment.

4. The member's record must be updated with the additional service credit once payment is made in full.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008; July 1, 2018; January 1, 2025.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-27

CHAPTER 71-02-05

71-02-05-03. Cancellation of disability benefit.

When a member receiving a disability benefit attains the member's normal retirement date, that member may elect to terminate that member's disability benefits and draw retirement benefits as specified in North Dakota Century Code section 54-52-17.

History: Amended effective January 1, 1992; May 1, 2004; July 1, 2006; January 1, 2025.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17

CHAPTER 71-02-08
PARTICIPATION BY GOVERNMENTAL UNITS

71-02-08-01. Participation.

Repealed effective January 1, 2025.

~~Any governmental unit not participating in the retirement system on July 1, 1977, may choose to participate in the retirement system and may elect to purchase past service in accordance with North Dakota Century Code section 54-52-02.1. If the governmental unit elects to purchase past service and prior to the governmental unit's governing authority contracting with the retirement board, the governmental unit must furnish the board with information concerning the permanent employees of the governmental unit. This information should contain, but is not limited to (1) name; (2) social security number; (3) date of birth; (4) date of employment; (5) current monthly salary; and (6) any previous public employment.~~

~~After receipt of this data, the retirement office will calculate the cost to the governmental unit to participate in the retirement plan as offered in North Dakota Century Code section 54-52-17. The governmental unit's governing authority will then decide whether or not to participate in the plan and whether or not to provide service credit for employment prior to the date of participation.~~

~~**History:** Amended effective September 1, 1982; April 1, 2012.~~
~~**General Authority:** NDCC 54-52-04~~
~~**Law Implemented:** NDCC 54-52-02.1~~

ARTICLE 71-03
UNIFORM GROUP INSURANCE PROGRAM

CHAPTER 71-03-03

71-03-03-01. Enrollment.

An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility criteria, unless otherwise noted below, if the employee submits an application for coverage within the first thirty-one days of employment or within the thirty-one days of meeting eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health, dental, vision, or prescription drug insurance plan.

2. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage ~~must~~shall enroll for coverage at the time the employee's spouse is enrolled.

3. Addition of a dependent as a result of receiving legal guardianship or receiving a court order to provide health coverage. An employee who previously waived coverage ~~must~~shall enroll for coverage at the same time that the employee's eligible dependent is enrolled.

4. Addition of a dependent as a result of birth, adoption, or placement for adoption. Effective date of coverage is the first of the month in which the event occurred. An employee who previously waived coverage shall enroll for coverage at the same time that the employee's eligible dependent is enrolled.

History: Effective October 1, 1986; amended effective July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2010; April 1, 2012; April 1, 2016; April 1, 2022; January 1, 2025.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-02, 54-52.1-03

71-03-03-08. Continuation of life insurance after retirement.

An employee who is enrolled in the group life insurance program may continue the basic and supplemental life insurance coverage upon retirement or disability if the employee ~~is entitled to~~receives a retirement allowance from an eligible retirement system by ~~making application~~applying for life insurance coverage and remitting timely payments to the board. Life insurance coverage must be continuous from when active group life insurance ends and retired employee life insurance coverage begins. Supplemental life insurance coverage can only be continued until age sixty-five.

History: Effective October 1, 1986; amended effective June 1, 1996; May 1, 2004; April 1, 2014; January 1, 2025.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC ~~54-52.1-03~~54-52.1-02

71-03-03-10. Employee contribution.

An employee who selects a level of coverage which requires an additional amount of premium shall pay the amount due to the employing agency ~~in advance~~. The employee contribution may be paid via payroll deduction or any other means acceptable to the agency.

History: Effective October 1, 1986; amended effective January 1, 2025.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-03

CHAPTER 71-03-05

71-03-05-01. Premium billing.

The board will maintain a monthly billing and reconcile the moneys for all ~~agencies, individual retirees,~~employers and ~~terminated employees with continued coverage~~other eligible individuals provided in North Dakota Century Code chapter 54-52.1.

~~The board will reconcile the moneys received from each agency, retiree, and terminated employee to the billing.~~

History: Effective October 1, 1986; amended effective January 1, 2025.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-08

CHAPTER 71-03-06
~~PARTICIPATION OF~~PARTICIPATING POLITICAL SUBDIVISIONS EMPLOYEE RESPONSIBILITIES

Section
71-03-06-01 Enrollment
71-03-06-02 Late Enrollment
71-03-06-03 Special Enrollment for Certain Qualifying Events
71-03-06-04 Continuation of Hospital and Medical Coverages After Termination
71-03-06-05 Continuation of Health Benefits for Dependents
71-03-06-06 Continuation of Life Insurance After Retirement
71-03-06-07 Leave Without Pay
71-03-06-08 Employee Contribution

71-03-06-01. Enrollment.

An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility criteria, unless otherwise noted below, if the employee submits an application for coverage within the first thirty-one days of employment, or within the thirty-one days of meeting eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health insurance plan.

2. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage ~~must~~shall enroll for coverage at the time the employee's spouse is enrolled.

3. Addition of a dependent as a result of ~~birth, adoption, placement for adoption,~~ receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage ~~must~~shall enroll for coverage at the same time that the employee's eligible dependent is enrolled.

4. Addition of a dependent as a result of birth, adoption, or placement for adoption. The effective date of coverage is the first of the month in which the event occurred. An employee who previously waived coverage shall enroll for coverage at the same time that the employee's eligible dependent is enrolled.

History: Effective June 1, 1996; amended effective July 1, 1998; July 1, 2010; January 1, 2025.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52.1-03.1, 54-52.1-03.4

71-03-06-08. Employee contribution.

An employee who is enrolled in the group insurance plan and required by the ~~employing agency~~employer to pay a part of the premium must pay the amount due to the ~~employing agency in advance of the employer's payment to the public employees retirement system~~employer. The employee contribution may be paid via payroll deduction or any other means acceptable to the employer.

History: Effective June 1, 1996; amended effective July 1, 2010; January 1, 2025.
General Authority: NDCC 54-52-04, 54-52.1-03.1, 54-52.1-08
Law Implemented: NDCC 54-52.1-02, 54-52.1-03.1

CHAPTER 71-04-01

71-04-01-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code section 54-52.2-04, except:

1. "Beneficiary" means an individual designated by the participant to receive benefits under the plan in the event the participant dies.

2. "Compensation" means the total annual remuneration for employment or contracted services received by the participant from the employer.

3. "Deferred compensation" means the amount of compensation not yet earned which the participant and the employer shall mutually agree shall be deferred from current monthly salary in accordance with the provisions of the plan.

4. "Eligible state deferred compensation plan" means a plan established and maintained by this state that complies with the Internal Revenue Code (IRC) 457(b).

5. "Employer" means the state of North Dakota or any of its political subdivisions, institutions, departments, or agencies.

6. "Participant" is any employee of a participating employer who executes a participant agreement.

7. "Participant agreement" means an agreement between the employer and a participant setting forth certain provisions and elections relative to the plan, incorporating the terms of the plan and establishing the deferral and participation in the plan.

8. "Provider" means any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 authorized by the retirement board to provide investment vehicles to employees.

9. "Retirement" means separation from service with the employer on a date coincidental with the normal, postponed, early, or disability retirement dates as described in North Dakota Century Code chapter 54-52-17.3.

10. "Retirement board" or "board" means the ~~nine~~eleven persons described in North Dakota Century Code chapter 54-52-03.

11. "Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes termination of employment with the employer by reason of death, disability, retirement, resignation, or discharge.

12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.

13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

14. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation

leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported pursuant to section 71-08-11-01.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010; April 1, 2016; April 1, 2020; January 1, 2025.
General Authority: NDCC ~~28-32-02,~~ 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2, 54-52.2-04

CHAPTER 71-04-03

71-04-03-01. Enrollment.

Public employees may enroll with up to three providers in the deferred compensation plan by completing and submitting a participant agreement to the office or the board's designated vendor.

History: Effective April 1, 1989; amended effective April 1, 2014; April 1, 2016; January 1, 2025.
General Authority: NDCC ~~28-32-02,~~ 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03

71-04-03-03. Change in monthly deferral.

A participant may change the amount of deferral at any time, as long as a participant agreement is completed and submitted to the office or the board's designated vendor as set forth in section 71-04-03-01.

History: Effective April 1, 1989; amended effective April 1, 2016; January 1, 2025.
General Authority: NDCC ~~28-32-02~~54-52-04, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03; IRC 457(b)(4)

71-05-02-06. Cancellation of disability benefit.

When a member receiving a disability benefit attains the member's normal retirement date, that member may elect to terminate that member's disability benefit and draw retirement benefits as specified in North Dakota Century Code section 39-03.1-11. Upon receipt of normal retirement benefits, interest accrual on the member account must end and benefit option factors must be based upon the actuarial retirement factors on the date of disability to normal conversion.

History: Effective May 1, 2004; amended effective July 1, 2006; January 1, 2025.
General Authority: NDCC 39-03.1-06, 39-03.1-11
Law Implemented: NDCC 39-03.1-11

71-05-04-08. Conversion of sick leave.

To convert unused sick leave to service credit, the member ~~must notify~~shall submit an application to the office~~, in writing,~~ of the amount of unused sick leave to be converted, and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For ~~members~~a member transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system ~~will~~shall record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer.

One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The cost to convert unused sick leave into service credit must be paid with after tax employee contributions.

1. Aftertax payments may be accepted from the member as early as six months prior to termination if the following requirements are met:

   a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.

   b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.

   c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave, confirmed by the member's employer, and the member's final average salary as of ~~that~~the date of calculation.

   d. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member by the fifteenth of the month following the month of the member's date of termination.

   e. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

2. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to termination if the following requirements are met:

   a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.

   b. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date of termination, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to the public employees retirement system during the final months of employment.

   c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of ~~that~~the date of calculation. If there is a difference between the sick leave balance or conversion payment amount and the

amount the member has paid, then only the amount of sick leave available as of the termination date will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover or transfer.

d. If an underpayment has occurred, then the remaining amount must be collected from the member by the fifteenth of the month following the month of the member's date of termination.

e. The retiree health credit portion must be paid as a personal aftertax payment.

3. The member's record must be updated with the additional service credit once payment is made and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008; January 1, 2025.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-30

ARTICLE 71-08
DEFINED CONTRIBUTION RETIREMENT PLAN

CHAPTER 71-08-01
ELECTION AND TRANSFER

71-08-01-01. Ability to elect to transfer into the defined contribution retirement plan.

Repealed effective January 1, 2025.

~~Once a member of the public employees retirement system under North Dakota Century Code chapter 54-52 has declined or failed to elect to transfer into the defined contribution retirement plan, that member may not later elect to transfer unless one of the following applies:~~

~~1. The member is appointed or elected to a new office that is eligible for the defined contribution retirement plan.~~

~~2. The member leaves eligible employment and later reacquires eligible employment.~~

~~**History:** Effective July 1, 2000.~~
~~**General Authority:** NDCC 28-32-02(1)~~
~~**Law Implemented:** NDCC 54-52.6-02~~

71-08-01-05. Transfer amount of persons transferring into eligible employment after December 31, 1999.

The amount the board shall transfer for persons beginning or transferring to eligible employment after December 31, 1999, and before January 1, 2025, ~~shall~~must equal the actual employer and employee contributions plus interest, as provided in subsection 2 of North Dakota Century Code section 54-52.6-03.

History: Effective July 1, 2000; amended effective January 1, 2025.
General Authority: NDCC ~~28-32-02(1)~~54-52-04
Law Implemented: NDCC 54-52.6-03

71-08-01-07. Late election opportunity.

Repealed effective January 1, 2025.

~~An eligible member who is not provided a timely opportunity to enroll in the defined contribution plan within the first six months of employment may be provided additional time to make an election if:~~

~~1. The executive director determines that the member was not given an election opportunity within the first six months of employment. The executive director shall then give the member a special enrollment opportunity of three months beginning from the date a new enrollment packet is mailed to the member.~~

~~2. The board determines that member was not given timely notice or the member was unable to make an election within the first six months. If the board determines that the member should have an additional election opportunity, the member shall have three months from the date a new enrollment packet is mailed to the member.~~

~~**History:** Effective April 1, 2002.~~
~~**General Authority:** NDCC 28-32-02(1)~~
~~**Law Implemented:** NDCC 54-52.6-02~~

CHAPTER 71-08-08

71-08-08-01. Temporary employee participation.

For each eligible temporary employee who elects to participate as such in the defined contribution plan, the following applies:

1. A temporary employee hired before January 1, 2025, must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.

2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.

3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.

4. Upon taking a refund, future participation as a temporary member is waived.

5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.

6. All temporary employee contributions must be made on an after-tax basis. An employer may not enter into a pickup arrangement under IRC 414(h) with any temporary employee.

7. A temporary employee first employed after December 31, 2024, may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. If an application is not made and filed with the office, a waiver of participation must occur for as long as the employee is in temporary employee status. Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional one, two, three, four, five, or six percent. The election to contribute an additional percent is a lifetime election and will continue for as long as the temporary employee is employed by any participating employer.

8. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee. For a temporary employee who becomes a permanent employee, all provisions applicable to permanent employees apply upon eligibility as a permanent employee.

History: Effective July 1, 2006; amended effective January 1, 2025.
General Authority: NDCC 54-52-04, 54-52.6
Law Implemented: NDCC ~~54-52.6-01.3, 54-52.6-02.6~~54-52-02.9, 54-52.6-09.6

CHAPTER 71-08-10
PERMANENT EMPLOYEE PARTICIPATION

71-08-10-01. Permanent employee participation.

1. Under this chapter "eligible employee" means a permanent employee who:

   a. Meets all the eligibility requirements set by North Dakota Century Code chapter 54-52;

   b. Is at least eighteen years of age;

   c. Becomes a participating member after December 31, 2024; and

   d. Is not eligible to participate in the law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under subsection 6 of North Dakota Century Code chapter 15-10-17 for employees of the board of higher education or state institutions under the jurisdiction of the board of higher education.

2. Effective January 1, 2025, the public employees retirement system defined benefit main plan maintained for employees is closed to new eligible employees. However, an employee who first becomes a participating or deferred member under North Dakota Century Code chapter 54-52 before January 1, 2025, remains in the defined benefit retirement plan under North Dakota Century Code chapter 54-52, regardless of being rehired after December 31, 2024.

3. Except as otherwise provided under this section, effective January 1, 2025, an eligible employee who begins employment with an employer as defined under subsection 6 of North Dakota Century Code chapter 54-52-01 shall participate in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 as provided under North Dakota Century Code chapter 54-52.6-02.1.

4. This section does not impact an employee to the extent the employee is a participating member in one or more of the following enumerated plans: law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under subsection 6 of North Dakota Century Code chapter 15-10-17 for employees of the board of higher education or state institutions under the jurisdiction of the board of higher education.

   a. A participating or deferred member in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 who becomes eligible to participate in a plan enumerated under subsection 4 shall cease participation in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 and commence participation in the retirement plan enumerated under subsection 4.

   b. Unless subsection 2 applies, a participating member of a retirement plan enumerated under subsection 4 who ceases participation in that plan and becomes an eligible employee under the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 shall participate in the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6.

5. An eligible employee must be enrolled in the plan within the first thirty days of employment.

History: Effective January 1, 2025.
General Authority: NDCC 54-52-04, 54-52-02.15
Law Implemented: NDCC 54-52-02.15, 54-52.6-09

71-08-10-02. Contribution.

1. A participating member who first joined the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 after December 31, 2024, except for an employee who elects to participate in the defined contribution retirement plan under North Dakota Century Code section 54-52.6-02.2, shall contribute monthly four percent of the monthly salary or wage paid to the participating member. In addition, the participating member may elect, within thirty days of beginning employment, to contribute monthly to the defined contribution retirement plan under North Dakota Century Code chapter 54-52.6 up to an additional three percent of the monthly salary or wage paid to the participating member. All additional contributions must be in whole percentages.

2. A participating member's election for additional contributions under subsection 1 is a one-time, irrevocable election as long as the individual is a participating member with any participating employer.

History: Effective January 1, 2025.
General Authority: NDCC 54-52-04; IRC 414(h)(2), Rev. Rul. 2006-43
Law Implemented: NDCC 54-52-02.15, 54-52.6-09

71-08-10-03. Designation of beneficiary.

A member may designate a beneficiary or beneficiaries by filing such designation with the office. A member has the right to change the member's designation of beneficiary without the consent of the beneficiary, but no such change shall be effective or binding unless it is received by the office prior to the death of the member. If a vested, married member designates a beneficiary other than or in addition to spouse, the member's spouse's consent must be obtained before benefits can be paid other than to the member's spouse. For the purpose of this section, "member" means a participating member, a deferred member, or a retiree.

History: Effective January 1, 2025.
General Authority: NDCC 54-52-04, 54-52.6-11
Law Implemented: NDCC 30.1-05-02, 54-52-02.15, 54-52.6-09

CHAPTER 71-08-11
CONTRIBUTIONS

71-08-11-01. Adjustment for bonuses, profit sharing, and contributions paid in a month other than month earned.

Adjustments for the following must be made for all participating members:

1. Participating employers shall report bonuses or profit-sharing amounts paid when remitting the contribution associated with the bonus. Recruitment and retention bonuses paid pursuant to North Dakota Century Code section 54-06-31 are not eligible for consideration as salary and contributions associated with those bonuses may not be submitted.

2. Bonuses or profit-sharing amounts may not be submitted to the public employees retirement system for any month other than the month the amount is paid to the participating employer.

History: Effective January 1, 2025.
General Authority: NDCC 54-52-04, 54-52.6-01(8)
Law Implemented: NDCC 54-52.6-01, 54-52.6-02

71-08-11-02. Basis for calculation contributions - Salary reduction - Salary deferral arrangements.

1. Amounts deducted from a participating member's salary at the participating member's option to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or 457 plan are part of wages or salary when calculating retirement contributions.

2. Employee contributions paid by the employer under IRC 414(h) pursuant to a salary reduction agreement do not reduce wages or salary when calculating retirement contributions.

3. Amounts contributed to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or 457 plan by the employer are not part of wages or salary when calculating retirement contributions.

History: Effective January 1, 2025.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52.6-01, 54-52.6-02

71-08-11-03. Employer payment of employee contributions.

1. A written election submitted under subsection 3 of North Dakota Century Code section 54-52.6-09 must be reported to the board a minimum of thirty-one days prior to the effective date.

2. An employer may not discriminate in its contributions to eligible employees within the same plan under North Dakota Century Code section 54-52.6-09.

History: Effective January 1, 2025.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52.6-09

71-08-11-04. Retirement contributions for individuals working less than a forty-hour workweek.

Retirement contributions must be made on wages paid to a permanent employee who is regularly scheduled for less than forty hours per week but who works at least twenty hours per week during a twelve-month period.

History: Effective January 1, 2025.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52.6-09.6

71-08-11-05. Individual employee incentive payments.

Individual employee incentive payments received under North Dakota Century Code section 54-06-24 or similar programs are not considered to be salary and are not subject to retirement contributions.

History: Effective January 1, 2025.
General Authority: NDCC 54-52-04, 54-52.6-01(8), 54-52.6-02
Law Implemented: NDCC 54-52.6-01, 54-52.6-02

71-08-11-06. Contributions transferred from defined benefit retirement plan.

1. The lump sum amount to be transferred from the defined benefit retirement plan under North Dakota Century Code section 54-52.6-02.2 and North Dakota Century Code section 54-52.6-03 based on the actuarial present value of the eligible employee's accumulated benefit obligation as of January 1, 2025, includes the employee contribution portion and the employer contribution portion.

2. The employee contribution portion of the actuarial present value of the eligible employee accumulated benefit obligation means the employee's direct contribution to the defined benefit retirement plan under North Dakota Century Code chapter 54-52 plus the interest on the employee's contributions in the defined benefit retirement plan.

3. The employer contribution portion of the actuarial present value of the eligible employee's accumulated benefit obligation means the lump sum amount transferred minus the employee share. The employee shall vest in the employer contribution under the provisions found in North Dakota Century Code section 54-52.6-10.

History: Effective January 1, 2025.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52.6-02.2, 54-52.6-03

71-08-11-07. Employer-paid additional contribution for a transferee.

For an eligible employee who is employed by a state employer who transfers from the defined benefit plan to the defined contribution plan under North Dakota Century Code chapter 54-52.6, the eligible employee's state employer, on January 1 of each year an additional contribution is due, will make the additional contribution under subsection 3 of North Dakota Century Code section 54-52.6-02.2 no later than January 15 of the year in which the additional contribution is required. An eligible employee who is employed by a state employer at the time each additional contribution is required must receive the additional contribution.

History: Effective January 1, 2025.
General Authority: NDCC 54-52.6-02
Law Implemented: NDCC 54-52.6-02.2, 54-52.6-03

TITLE 75

DEPARTMENT OF HUMAN SERVICES

JANUARY 2025

CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID

75-02-02.1-27 Exempt Assets [Repealed]
75-02-02.1-28 Excluded Assets
75-02-02.1-28.1 Excluded Assets for Medicare Savings Programs, Qualified Disabled and Working Individuals, and Spousal Impoverishment Prevention
75-02-02.1-29 Forms of Asset Ownership
75-02-02.1-30 Contractual Rights to Receive Money Payments
75-02-02.1-30.1 Annuities [Repealed]
75-02-02.1-31 Trusts
75-02-02.1-31.1 Trusts Established by Applicants, Recipients, or Their Spouses After August 10, 1993
75-02-02.1-32 Valuation of Assets
75-02-02.1-33 Disqualifying Transfers Made on or Before August 10, 1993 [Repealed]
75-02-02.1-33.1 Disqualifying Transfers Made Before February 8, 2006 [Repealed]
75-02-02.1-33.2 Disqualifying Transfers Made on or After February 8, 2006
75-02-02.1-34 Income Considerations
75-02-02.1-34.1 MAGI-Based Methodology
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75-02-02.1-34.3 Reasonable Compatibility of Income for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-35 Budgeting [Repealed]
75-02-02.1-36 Disregarded Income [Repealed]
75-02-02.1-37 Unearned Income
75-02-02.1-37.1 Unearned Income for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-38 Earned Income
75-02-02.1-38.1 Post-Eligibility Treatment of Income
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75-02-02.1-42 Eligibility Under 1972 State Plan
75-02-02.1-43 Payment for Services by Attorney-in-Fact
75-02-02.1-44 Children's Health Insurance Program

75-02-02.1-17. Application for other benefits.

Repealed effective January 1, 2025.

~~1. Applicants and recipients, including spouses and financially responsible parents, must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled, unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation, but do not include needs-based payments.~~

~~2. Good cause under this section exists if:~~

~~a. Receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage;~~

~~b. An employed or self-employed individual has not met the individual's full retirement age and chooses not to apply for social security early retirement or widows benefits; or~~

c. An employed individual whose retirement benefits are through the individual's current employer and the individual is not allowed to access them while employed.

History: Effective December 1, 1991; amended effective July 1, 2003; January 1, 2011; April 1, 2018.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01

75-02-02.1-40. Income levels.

1. Levels of income for maintenance shall be used as a basis for establishing financial eligibility for Medicaid. The income levels applicable to individuals and units are:

   a. Categorically needy income levels.

      (1) Family coverage income levels established in the Medicaid state plan are applied to the family coverage group. The family size is increased for each unborn child when determining the appropriate family size.

   (2)b. Except for individuals subject to the nursing care income level, the income level for categorically needy aged, blind, or disabled recipients is that which establishes supplemental security income eligibility.

   b. Medically needy income levels.

   (1)c. Medically needy income levels established in the Medicaid state plan are applied when a Medicaid individual or unit resides in the individual's or the unit's own home or in a specialized facility, and when a Medicaid individual has been screened as requiring nursing care, but elects to receive home and community-based services. The family size is increased for each unborn child when determining the appropriate family size.

   (2)d. The nursing care income levels established in the Medicaid state plan are applied to residents receiving care in a nursing facility, an intermediate care facility for individuals with intellectual disabilities, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, or receiving swing-bed care in a hospital.

   (3)e. The community spouse income level for a Medicaid eligible community spouse is subject to subdivision a, paragraph 1 of subdivision b, or subdivision c. The level for an ineligible community spouse is the greater of two thousand five hundred fifty dollars per month or the minimum amount permitted under section 1924(d)(3)(c) of the Act [42 U.S.C. 1396r-5(d)(3)(C)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].

   (4)f. The income level for each ineligible family member in a spousal impoverishment prevention case is equal to one-third of an amount determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member. For purposes of this paragraph, "family member" has the meaning given in subsection 1 of section 75-02-02.1-24.

   c. Poverty income level.

   (1)g. The income level for children under age six is equal to one hundred forty-seven percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.

   (2)h. The income level for pregnant women is equal to one hundred seventy percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.

~~(3)~~i. Qualified Medicare beneficiaries. The income level for qualified Medicare beneficiaries is equal to one hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.

~~(4)~~j. The income level for children aged six to nineteen and adults aged nineteen to sixty-five is equal to one hundred thirty-three percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.

~~(5)~~k. The income level for transitional Medicaid benefits is equal to one hundred and eighty-five percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.

~~(6)~~l. The income level for qualified working and disabled individuals is equal to two hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.

~~(7)~~m. The income level for specified low-income Medicare beneficiaries is equal to one hundred twenty percent, of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

~~(8)~~n. The income level for qualified individuals is equal to one hundred thirty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

~~(9)~~o. The income level for workers with disabilities is two hundred twenty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

~~(10)~~p. The income level for children with disabilities is two hundred fifty percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

~~2. Determining the appropriate income level in special circumstances.~~

~~a.~~q. During a month in which an individual enters a specialized facility or leaves a specialized facility to return home, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate income level. An individual residing in a specialized facility shall be allowed the appropriate medically needy, workers with disabilities, or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.

~~b.~~r. During a month in which an individual with eligible family members in the home enters or leaves a nursing facility to return home, or elects to receive home and community-based services or terminates that election, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate medically needy, workers with disabilities, or children with disabilities income level. An individual in a nursing facility shall be allowed one hundred dollars to meet maintenance needs during all full calendar months in which the individual resides in the nursing facility. A recipient of home and community-based services shall be allowed the medically needy income level for one during all full calendar months in which the individual receives home and community-based services. In determining eligibility for workers with disabilities or children with disabilities coverage, individuals in a nursing facility, or in receipt of home and community-based services, will be allowed the appropriate workers with disabilities

or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.

~~c.~~s. For an institutionalized spouse with an ineligible community spouse, the one hundred dollar income level is effective in the month of entry, during full calendar months, and in the month of discharge. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.

~~d.~~t. For a spouse electing to receive home and community-based services, who has an ineligible community spouse, the medically needy income level for one is effective in the month the home and community-based services begin, during full calendar months, and in the month the home and community-based services are terminated. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.

~~e.~~u. An individual ~~with no spouse, disabled adult child, or child under age twenty-one at home~~ who enters a nursing facility may receive the medically needy income level for one if a physician certifies that the individual is likely to return to the individual's home within six months. The six-month period begins with the first full calendar month the individual is in the nursing facility. If, at any time during the six-month period, the individual's status changes and the stay in the nursing facility is expected to exceed the six months, the individual may have only the nursing care income level beginning in the month following the month of the status change. An individual may receive the medically needy income level for only one six-month period per stay in a nursing facility. If an individual is discharged, then readmitted to a nursing facility, there must be a break of at least one full calendar month between the periods of institutionalization in order for the new stay to be considered a new period of institutionalization.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; January 1, 2011; July 1, 2012; January 1, 2014; January 1, 2020; January 1, 2024; January 1, 2025.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-02.7, ~~50-24.1-21,~~ 50-24.1-37, 50-24.1-41

75-02-02.1-44. Children's health insurance program.

1. ~~**Eligibility criteria.**~~

~~a.~~ Children ages birth through eighteen years of age are eligible for plan coverage provided all other eligibility criteria are met. Coverage for children who are eighteen years of age will continue through the last day of the month in which the child turns nineteen years of age.

~~b.~~2. A child who has current creditable health insurance coverage or has coverage, which is available at no cost, as defined in section 2701 (c) of the Public Health Service Act [42 U.S.C. 300gg(c)] is not eligible for plan coverage.

~~c.~~3. If the department estimates available funds are insufficient to allow plan coverage for additional applicants, the department may take any action appropriate to avoid commitment of funds in excess of available funds, including denying applications and establishing waiting lists not forbidden by title XXI of the Social Security Act [42 U.S.C. section 1397aa et seq.] or regulations adopted thereunder. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

~~2.~~4. ~~**Asset considerations.**~~ Assets may not be considered in determining eligibility for plan coverage.

~~3.~~5. ~~**Children's health insurance program unit.**~~ This subsection applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014. A plan unit may consist of one individual, a married couple, or a family with children under twenty-one years of age, or if disabled, under age eighteen, whose income is considered in determining eligibility for any member of that unit, without regard to whether the members of the unit all physically reside in the same location. A parent or other caretaker of children under twenty-one years of age may select the children who will be included in the plan unit. Anyone who is included in the unit for any month is subject to all plan requirements that may affect the unit. The financial responsibility of relatives must be considered with respect to all members of the assistance unit.

~~4.~~6. ~~**Income considerations.**~~ This subsection applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014.

~~a.~~ All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant, recipient, or responsible relative when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available; or when the applicant, recipient, or responsible relative has the lawful power to make the income available or to cause the income to be made available.

~~b.~~ It is presumed all parental income is actually available to a child under twenty-one years of age. This presumption may be rebutted by a showing that the child is:

~~(1)~~a. Living independently; or

~~(2)~~b. Living with a parent who is separated from the child's other parent, with or without court order, if the parents did not separate for the purpose of securing plan coverage.

~~c. As a condition of eligibility, an applicant, recipient, and financially responsible relative must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include veterans' compensation and pensions; old-age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.~~

~~(1) Good cause under this section exists if receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage. Good cause must be documented in the case file.~~

~~(2) Application for needs-based payments such as social security supplemental security income benefits or temporary aid to needy families benefits cannot be imposed as a condition of eligibility.~~

~~d.~~ The financial responsibility of any individual for any other member of the plan unit is limited to the responsibility of spouse for spouse and parents for children under age twenty-one or under age eighteen if the child is disabled. Such responsibility is imposed as a condition of plan eligibility. Except as otherwise provided in this subsection, the income of the spouse and parents is considered available even if that income is not actually contributed. Natural and adoptive parents, but not stepparents, are treated as parents.

~~e.~~7. Income may be received weekly, biweekly, monthly, intermittently, or annually. A monthly income amount must be computed by the department or county agency regardless of how often income is received.

~~f.~~8. The following types of income must be disregarded in determining eligibility for plan coverage:

~~(1)~~a. Supplemental security income benefits provided by the social security administration.

~~(2)~~b. Income disregards in section 75-02-02.1-38.2.

~~g.(1)~~9. In determining ownership of income from a document, income must be considered available to each individual as provided in the document or in the absence of a specific provision in the document:

~~(a)~~a. (1) Income is considered available only to the individual if payment of the income was made solely to that individual; and

~~(b)~~(2) Income is considered available to each individual in proportion to the individual's interest if payment of income is made to more than one individual.

~~(2)~~b. One-half of income is considered available to each spouse in the case of income available to a married couple in which there is no document establishing ownership otherwise.

~~(3)~~c. Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent the applicant or recipient can establish the ownership interests are otherwise than as provided in subdivision ~~f~~d of subsection 4.

~~h.~~10. To determine the appropriate income level for a plan unit:

~~(1)~~a. The size of the household is increased by one for each unborn child of a household member;

~~(2)~~b. A child who is away at school is not treated as living independently, but is allowed a separate income level for one in addition to the income level applicable for the family unit remaining at home;

~~(3)~~c. A child who is living outside of the parental home but who is not living independently; or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse, is allowed a separate income level. This does not apply to situations in which an individual simply decides to live separately;

~~(4)~~d. An individual in a specialized facility is allowed a separate income level for one during all full calendar months in which the individual resides in the facility;

~~(5)~~e. An individual in a nursing facility is allowed a separate income level for one; and

~~(6)~~f. A recipient of home and community-based services is allowed a separate income level for one.

~~i.~~11. For a child to be eligible for plan coverage, the income remaining after allowing the appropriate disregards and deductions must be equal to or below the income level set by the department in accordance with state law and federal authorization and must be based on the size of the household. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

~~5.~~12. ~~**Income deductions.**~~ This subsection applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014. The following deductions must be subtracted from monthly income to determine adjusted gross income:

a. For household members with countable earned income:

(1) Actual mandatory payroll deductions, including federal, state, or social security taxes or ninety dollars per month, whichever is greater;

(2) Mandatory retirement plan deductions;

(3) Union dues actually paid; and

(4) Expenses of a nondisabled blind individual, reasonably attributable to earning income;

b. Reasonable child care expenses, not otherwise reimbursed by third parties if necessary to engage in employment or training. Reasonable child care expenses do not include payments to parents to care for their own children;

c. Except for a support payment withheld from an extra check that is disregarded, nonvoluntary child and spousal support payments if actually paid by a parent on behalf of an individual who is not a member of the household;

d. With respect to each individual in the unit who is employed or in training, thirty dollars as a work or training allowance, but only if the individual's income is counted in the eligibility determination;

e. The cost of premiums for health insurance may be deducted from income in the month the premium is paid or may be prorated and deducted from income in the months for which the premium affords coverage. This deduction applies primarily for premiums paid for health insurance coverage of members in the unit who are not eligible for this plan coverage. For eligible members, this deduction may be allowed if the health insurance coverage is not creditable health insurance coverage for hospital, medical, or major medical coverage; and

f. The cost of medical expenses for necessary medical or remedial care for members of the unit who are not eligible for this plan coverage.

History: Effective January 1, 2020; amended effective January 1, 2024; January 1, 2025.
General Authority: NDCC ~~50-29~~50-29-02
Law Implemented: NDCC 50-24.1-37, ~~50-29~~50-29-02, 50-29-04; 42 U.S.C. 1397aa et seq.

CHAPTER 75-02-09
RATESETTING FOR PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES

75-02-09-01. 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. "Adjustment factor" means the ~~inflation rate for psychiatric residential treatment facility services used to develop the legislative appropriation for the department for the applicable rate year~~legislatively approved inflation rate for psychiatric residential treatment facilities services.

3. "Allowable cost" means the facility's actual and reasonable cost after adjustments required by department rules.

4. "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.

5. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. The term includes not only proprietary chains, but also chains operated by various religious and other charitable organizations, and business organizations engaged in other activities not directly related to health care.

6. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting which are used in the determination of cost limitations and rates.

~~5.~~7. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information to the department.

~~6.~~8. "Department" means the department of health and human services.

~~7.~~9. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.

10. "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 2021 edition.

~~8.~~11. "Desk 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.

12. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.

~~9.~~13. "Education" means the cost of activities related to academic and vocational training generally provided by a school district.

~~10.~~14. "Facility" means an entity that is a licensed psychiatric residential treatment facility for children under chapter 75-03-17.

~~11.~~15. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.

~~12.~~16. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.

~~13.~~17. "Fringe benefits" means workers' compensation insurance, group health, dental or vision insurance, group life insurance, payment toward retirement plans, uniform allowances, employer's share of Federal Insurance Contributions Act, unemployment compensation taxes, and medical services furnished at facility expense.

~~14.~~18. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.

19. "Historical costs" means the allowable costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.

20. "Hospital leave day" means any day a resident is not in the facility, but is in an acute care or psychiatric hospital setting and admitted as an inpatient.

~~15.~~21. "In-house day" means a day that an individual was actually residing in the facility and was not on leave.

~~16.~~22. "Interest" means cost incurred for the use of borrowed funds.

~~17.~~23. "Leave day" means any day that an individual is not in the facility but is expected to return to the facility.

~~18.~~24. "Private-pay resident" means an individual on whose behalf the facility is not receiving medical assistance payments.

~~19.~~25. "Rate year" means the ~~twelve-month period beginning the seventh month after the end of a facility's fiscal year~~calendar year from January first through December thirty-first.

~~20.~~26. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, rules, and quality and safety standards. Reasonable cost takes into account that the facility 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 service.

~~21.~~27. "Related organization" means an organization that a facility is, to a significant extent, associated with, affiliated with, able to control, or controlled by; and which furnishes services, facilities, or supplies to the facility. Control exists when an individual or organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or facility.

~~22.~~28. "Report year" means ~~the facility's fiscal year~~the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.

~~23.~~29. "Resident day" means a day for which service is actually provided or for which payment is ordinarily sought.

~~24.~~30. "Special rate" means a desk rate or a final rate adjusted for nonrecurring or initial costs not included in the historical cost basis.

31. "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 May 1, 1994; amended effective October 1, 2011; January 1, 2025.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396a(a)(30)(A)

75-02-09-02. Financial reporting requirements.

1. Records~~.~~ requirements include:

   a. The facility shall maintain on the premises census records and financial information 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. If 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 prior to the audit or review of the facility. Accounting or financial information regarding a related organization must be readily available to substantiate cost.

   c. Each facility shall maintain, until any rate based upon a cost report is final and not subject to any appeal, but in any event, for a period of not less than ~~three~~five years following the date of submission of the cost report to the state agency, accurate financial and statistical records of the period covered by the cost report in sufficient detail to substantiate the cost data reported. Each facility shall make the records available upon reasonable demand to representatives of the department.

2. Accounting and reporting requirements~~.~~ include:

   a. The accrual basis of accounting, in accordance with generally accepted accounting principles, must be used for cost reporting purposes. Ratesetting procedures will prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported.

   b. To properly facilitate auditing, the accounting system must be maintained in a manner that allows cost accounts to be grouped by cost category and readily traceable to the cost report.

c. The cost report must be submitted on or before ~~the last day of the third month following the facility's fiscal yearend except as provided in subdivision g~~October first. The report must contain all actual costs of the facility, adjustments for nonallowable costs, and resident days.

d. The department may impose a nonrefundable penalty of ten percent of any amount claimed for services furnished after the due date if the facility fails to file the cost report on or before the due date. The penalty may be imposed on the first day of the fourth month following the facility's fiscal yearend and continues to the end of the month in which the statement or report is received.

e. Upon request, the following information must be made available:

(1) A statement of ownership including the name, address, and proportion of ownership of each owner;

(2) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the facility or a certification that the content of those documents remains unchanged since the most recent statement given pursuant to this subsection;

(3) Supplemental information reconciling the costs on the financial statements with costs on the cost report; or

(4) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs.

f. The facility must make all adjustments and allocations 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 impose the penalties described in subdivision d.

g. The department may grant one thirty-day extension of the reporting deadline to a facility. To receive an extension, a facility must submit a written request to the department's medical services division.

h. 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 rate must occur on the first of the month beginning after receipt of the required information, but is not retroactive.

3. The department shall perform an audit of the latest available report year of each facility at least once every six years and retain for at least three years all audit-related documents, including cost reports, working papers, and internal reports on rate calculations used and generated by audit staff in the performance of audits and in the establishment of rates. Audits must meet generally accepted governmental auditing standards.

4. ~~Penalties for false reports.~~

~~a.~~ A false report is one where a facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received, the department may:

~~(1)~~a. Immediately adjust the facility's payment rate to recover the entire overpayment within the rate year;

~~(2)~~b. Terminate the department's agreement with the facility;

~~(3)~~c. Prosecute under applicable state or federal law; or

~~(4)~~d. Use any combination of the foregoing actions.

~~b.~~5. The department may determine a report is a false report if a facility claims previously adjusted costs as allowable costs. Previously adjusted costs being appealed must be identified as nonallowable costs. The facility may indicate that the costs are under appeal and not claimed under protest to perfect a claim should the appeal be successful.

History: Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396a(a)(30)(A)

75-02-09-04. Ratesetting.

1. The established rate is based on prospective ratesetting procedures. The establishment of a rate begins with historical costs. Adjustments are then made for claimed costs not includable in allowable costs. Adjustment factors are then applied to allowable costs. Retroactive settlements for actual costs incurred during the rate year exceeding the final rate will not be made unless specifically provided in this chapter.

2. The department shall establish a desk rate, based on the cost report, which will be effective ~~the first day of the seventh month following the facility's fiscal yearend~~January first of each rate year or on an alternate effective date determined by the department.

   a. The desk rate will continue in effect until a final rate is established.

   b. The cost report will be reviewed taking into consideration the prior year's adjustments. A facility will be notified by telephone or electronic mail of any desk adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why a desk adjustment should not be made. The department shall review the submitted information, make appropriate adjustments, including adjustment factors, and issue the desk rate.

   c. Reconsideration will not be given by the department for the desk rate unless the facility has been notified that the desk rate is the final rate.

   d. A desk rate may be adjusted at any time if subsection 4 applies to the facility.

3. The cost report may be field audited by the department to establish a final rate. If no field audit is performed, the desk rate will become the final rate upon notification to the facility from the department.

   a. The final rate will be effective as of the effective date of the desk rate.

   b. The final rate will include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk rate of at least twenty-five cents per day.

   c. Adjustments, errors, or omissions found after a final rate has been established will be included as an adjustment in the report year the adjustments, errors, or omissions are found.

   d. The final rate may be adjusted at any time if subsection 4 applies.

4. A special rate will be established for a facility providing services for the first time, changing ownership, having a capacity increase or major renovation or construction, or having changes in services or staff.

a. The rate for a facility providing first-time services purchased by the department will be established using this subdivision for the first two fiscal years of the facility if that period is less than twenty-four months.

(1) The facility shall submit a budget, to the department's medical services division, for the first twelve months of operation. A final rate based on the budget and adjustments, if any, will be established for a rate period beginning on the first of the month in which the facility begins operation. This rate will remain in effect for eighteen months. Adjustment factors will not be included in the first year final rate. No retroactive settlements will be made.

(2) Upon completion of the first twelve months of operation, the facility must submit a cost report for the twelve-month period regardless of the fiscal yearend of the facility.

(a) The twelve-month cost report is due on or before the last day of the third month following the end of the twelve-month period.

(b) The twelve-month cost report will be used to establish a rate for the remainder of the second rate year. Appropriate adjustment factors will be used to establish the rate.

(3) The facility shall submit a cost report that will be used to establish rates in accordance with subsections 2 and 3 after the facility has been in operation for the entire twelve months of the facility's fiscal year.

b. For a facility with a change in ownership, the rate established for the previous owner ~~will~~must be retained until the end of the rate year in which the change of ownership occurs. The rate for the second rate year after a change in ownership occurs will be established as follows:

(1) For a facility with four or more months of operation under the new ownership during the report year, a cost report for the period since the ownership change occurred will be used to establish the rate for the next rate year; and

(2) For a facility with less than four months of operation under the new ownership in the reporting year, the prior report year's costs as adjusted for the previous owner will be indexed forward using the appropriate adjustment factor.

c. For a facility that increases licensed capacity by twenty percent or more or has a renovation or construction project in excess of fifty thousand dollars, the established desk or final rate may be adjusted for the period after the licensed capacity increase occurs or the construction or renovation is complete to include projected property costs.

(1) For the rate year in which the capacity increase occurs or construction or renovation is completed, an adjusted rate will be calculated based on a rate for historical costs, exclusive of property costs, as adjusted, divided by historical census, plus a rate for property costs based on projected property costs divided by projected census. The adjusted rate will be effective on the first day of the month in which the renovation or construction is complete or when the capacity increase is approved if no construction or renovation is necessary.

(2) For the rate year immediately following the rate year in which the capacity increase occurred or construction and renovation was completed, a rate will be established based on historical costs, exclusive of property costs, as adjusted for the report year, divided by reported census plus a rate for property costs, based on projected property costs, divided by projected census.

d. The department may provide for an increase in the established rate for additional costs necessary to add services or staff to the existing program.

(1) The facility shall submit information, to the department's medical services division, supporting the request for the increase in the rate. Information must include a detailed listing of new or additional staff or costs associated with the increase in services.

(2) The department shall review the submitted information and may request additional documentation or conduct onsite visits. The established rate will be adjusted if an increase in costs is approved. The effective date of the rate increase will be the later of the first day of the month following approval by the department or the first day of the month following the addition of services or staff. The adjustment will not be retroactive to the beginning of the rate year and will exclude adjustment factors provided for in subsection 8.

(3) For the rate year immediately following a rate year in which a rate was adjusted under paragraph 2, the facility may request consideration be given to additional costs. The facility ~~must~~shall demonstrate to the department's satisfaction that historical costs do not reflect twelve months of actual costs of the additional staff or added services in order to adjust the rate for the second rate year. The additional costs would be based on a projection of costs for the remainder of a twelve-month period, exclusive of adjustment factors provided for in subsection 8.

5. The final rate must be considered as payment for all accommodations that include items identified in section 75-02-09-06. For any resident whose rate is paid in whole or in part by the department, no payment may be solicited or received from the resident or any other person to supplement the rate as established.

6. When a facility terminates its participation in the program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until residents can be relocated.

7. Limitations.

a. The department shall accumulate and analyze statistics on costs incurred by psychiatric residential treatment 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 payment to facilities to determine that payments do not exceed an amount that can be reasonably estimated would have been paid for these services under federally required payment principles. If aggregate payments to facilities exceed estimated payments under federally required payments principles, the department may make adjustments to rates so that aggregate payments do not exceed an amount that can be estimated would have been paid under an upper payment limit.

c. Allowable administration costs to be included in the established rate are the lesser of the actual cost of administration as direct costed or allocated to the facility or an amount equal to fifteen percent of the total allowable costs, exclusive of administration costs, for the facility.

8. An adjustment factor may be used to adjust historical allowable costs but may not be used to adjust property costs.

History: Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396a(a)(30)(A)

75-02-09-05. Resident census.

1. A daily census record must be maintained by the facility. Any day services are provided or for which payment is ordinarily sought for an available bed must be counted as a resident day. The day of admission and day of death are resident days. The day of discharge ~~will~~must be counted if payment is sought for that day. For a medical assistance resident, payment may not be sought ~~for any day on which the resident was not in the facility or~~ for the day of discharge.

2. The daily census records must include:

   a. Identification of the resident;

   b. Entries for all days, and not just by exception; ~~and~~

   c. Identification of type of day, i.e., in-house or leave day; and

   d. Monthly totals by resident and by type of day.

3. A maximum of fifteen consecutive days per occurrence are allowed for payment by the medical assistance program for hospital leave. Hospital leave days in excess of fifteen consecutive days not billable to the medical assistance program are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-09-19.

History: Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396a(a)(30)(A)

75-02-09-06. Allowable costs by cost category.

1. Administration costs are ~~those~~the allowable costs of activities performed by the staff in which the direct recipient of the activity is the organization itself, including fiscal activities, statistical reporting, recruiting, and general office management indirectly related to reimbursable services provided. Administration personnel includes administrators, regional directors, program directors, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing personnel, and security personnel. Administration costs directly assignable to the facility must be reported as facility administration. Administration costs not directly assignable to the facility must be reported as other administration. Costs for administration include:

   a. Salary and fringe benefits for individuals who provide services administrative in nature or who are not included specifically in any other cost category;

   b. Office supplies;

   c. Insurance, except property insurance and insurance included as a fringe benefit;

   d. Postage and freight;

   e. Professional fees for services such as legal, accounting, and data processing;

   f. Central or home office costs;

g. Personnel recruitment costs;

h. Management consultants and fees;

i. Dues, license fees, and subscriptions;

j. Travel and training for employees, except for training for personnel required to maintain licensure, certification, or professional standards requirements;

k. Interest on funds borrowed for working capital if repayment of working capital debt is made within three years of the borrowing;

l. Startup costs;

m. Security personnel or services;

n. Telephone service not included in other cost categories; and

~~n.~~o. All costs not specifically identified in other cost categories.

2. Direct care costs are ~~those~~the allowable costs incurred for providing services for the maximum reduction of physical or mental disability and restoration of a resident to the best possible functional level and for providing for the personal needs of the resident. ~~Those~~The services may include any medical or remedial service recommended by a physician or other licensed practitioner of the healing arts, within the scope of the practitioner's practice under state law. Direct care costs include:

a. Salaries and fringe benefits for individuals providing treatment or supervision of residents;

b. Personal supplies used by an individual resident;

c. Clothing necessary to maintain a resident's wardrobe;

d. School supplies and activity fees, when not provided by or at the expense of the school;

e. Costs incurred for providing recreation to the residents including subscriptions, sports equipment, and admission fees to sporting, recreation, and social events;

f. All costs related to transporting residents, and transportation costs that may include actual expenses of facility-owned vehicles or mileage paid to employees for use of personal vehicle; ~~and~~

g. The cost of services purchased and not provided at the facility, including case management, addiction, psychiatric, psychological, and other clinical evaluations, medication review, and partial care or day treatment; and

h. Training required to maintain licensure, certification, or professional standards requirements, and the related travel costs.

3. Dietary costs are ~~those~~the allowable costs associated with the preparation and serving of food. Dietary costs include:

a. Salaries and fringe benefits for all personnel involved with the preparation and delivery of food;

b. Food; and

c. Dietary supplies and utensils including paper products and noncapitalized dietary equipment.

4. Laundry costs are ~~those~~the allowable costs associated with gathering, transporting, sorting, and cleaning of linen and clothing. Laundry costs include:

   a. Salaries and fringe benefits of personnel who gather, transport, sort, and clean linen and clothing;

   b. The cost of laundry supplies; and

   c. Contracted laundry services.

5. Plant and housekeeping costs are ~~those~~the allowable costs related to repairing, cleaning, and maintaining the facility's physical plant. Plant and housekeeping costs include:

   a. Salaries and fringe benefits of personnel involved in cleaning, maintaining, and repairing the facility;

   b. Supplies necessary to maintain the facility, including such items as cleaning supplies, paper products, and hardware goods;

   c. Utility costs, including heating and cooling, electricity, water, sewer, garbage, and cable television;

   d. Local telephone service to the living quarters and long distance telephone service directly related to providing treatment; and

   e. Routine repairs and maintenance of property and equipment, including maintenance contracts and purchased services.

6. Property costs are ~~those~~the allowable capital costs associated with the physical plant of the facility. Property costs include:

   a. Depreciation;

   b. Interest;

   c. Lease costs on equipment and buildings;

   d. Property taxes; and

   e. Property insurance on buildings and equipment.

History: Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396a(a)(30)(A)

75-02-09-07. Cost allocation.

1. Direct costing of allowable facility costs must be used whenever possible. If direct costing is not possible, the allocation methods for facility and nonfacility operations described in this subsection must be used.

   a. Salaries for direct care employees, which cannot be reported based on direct costing, must be allocated using time studies. Time studies must be conducted at least semiannually for a two-week period or quarterly for a one-week period. The time study must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibility. Allocation percentages based

on the time studies must be used starting with the next pay period following completion of the time study or averaged for the report year.

b. Salaries of supervisory personnel must be allocated based on full-time equivalents of the employees supervised or on a ratio of salaries.

c. Fringe benefits must be allocated based on the ratio of salaries to total salaries.

d. Plant and housekeeping expenses must be allocated based on square footage.

e. Property costs must be allocated based on square footage.

f. Administration costs must be allocated on the basis of the percentage of total costs, excluding the allocable administration, property, and utility costs.

g. Dietary costs must be allocated based on meals served.

h. Laundry costs must be allocated on the basis of pounds of laundry or in-house resident days.

i. Vehicle expenses must be allocated based on mileage logs. Mileage logs must include documentation for all miles driven and purpose of travel. If sufficient documentation is not available to determine which cost category vehicle expenses are to be allocated, vehicle expenses must be allocated in total to administration.

j. Costs not direct costed or allocable using methods identified in subdivisions a through i must be included as administration costs.

2. If the facility cannot use any of the allocation methods described in subsection 1, a waiver request may be submitted to the department's medical services division. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility shall also provide a rationale for the proposed allocation method. Based on the information provided, the department shall determine the allocation method used to report costs.

History: Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396a(a)(30)(A)

75-02-09-08. Nonallowable costs.

Nonallowable costs include:

1. Promotional, publicity, and advertising expenses, exclusive of personnel procurement;

2. Political contributions;

3. Salaries or expenses of a lobbyist;

4. Basic research;

5. Fines or penalties including interest charges on the penalty, bank overdraft charges, and late payment charges;

6. Bad debts;

7. Compensation and expenses for officers, directors, or stockholders, except as provided for in section 75-02-09-15;

8. Contributions or charitable donations;

9. Costs incurred for activities directly related to influencing employees with respect to unionization;

10. Costs of membership or participation in health, fraternal, or social organizations such as eagles, country clubs, or knights of columbus;

11. Corporate costs such as organization costs, reorganization costs, costs associated with acquisition of capital stock, costs relating to the issuance and sale of capital stock or other securities, and other costs not related to resident services;

12. Home office costs that would be nonallowable if incurred directly by the facility;

13. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors, including annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements, stock transfer agent fees, and stockbroker and investment analyses;

14. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent the facility demonstrates to the satisfaction of the department that any particular use of equipment was related to resident care;

15. Costs, including by way of illustration and not by way of limitation, for legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any facility;

16. Depreciation expense for facility assets not related to resident care;

17. Personal expenses of owners and employees for items or activities including vacation, boats, airplanes, personal travel or vehicles, and entertainment;

18. Costs not adequately documented (adequate documentation includes written documentation of date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities);

19. The following taxes, ~~when~~if levied on a facility:

    a. Federal income and excess profit taxes, including any interest or penalties paid thereon;

    b. State or local income and excess profit taxes;

    c. Taxes in connection with financing, refinancing, or refunding operations such as taxes in the issuance of bonds, property transfers, issuance or transfer of stocks, etc., which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;

    d. Taxes such as real estate and sales tax for which exemptions are available to the facility;

    e. Taxes on property not used in the provision of covered services; and

    f. Taxes such as sales taxes, levied, collected, and remitted by the facility;

20. The unvested portion of a facility's accrual for sick or annual leave;

21. Expenses or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies, provided that reasonable insurance expenses may not be limited by this subsection;

22. Fringe benefits, not within the definition of that term, which have not received written prior approval of the department;

23. Fringe benefits that discriminate in favor of certain employees, excluding any portion that relates to costs that benefit all employees;

24. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;

25. Funeral and cemetery expenses;

26. Travel not directly related to professional conferences, state or federally sponsored activities, or resident services;

27. Items or services such as telephone, television, and radio located in a resident's room and furnished solely for the convenience of the resident;

28. Value of donated goods and services;

29. Religious salaries, space, and supplies;

30. Miscellaneous expenses not related to resident services;

31. Premiums for top management personnel life insurance policies, except that the premiums shall be allowed if the policy is included within a group policy provided for all employees, or if a policy is required as a condition of a mortgage or loan and the mortgagee or lending institution is listed as the beneficiary;

32. Travel costs involving the use of vehicles not exclusively used by the facility unless:

    a. Vehicle travel costs do not exceed the amount established by the internal revenue service;

    b. The facility supports vehicle costs related to resident care with sufficient documentation, including mileage logs for all miles, purpose of travel, and receipts for purchases; and

    c. The facility documents all costs associated with a vehicle not exclusively used by the facility;

33. Vehicle and aircraft costs not directly related to facility business or resident services;

34. Nonresident-related operations and the associated administrative costs;

35. Costs related to income-producing activities regardless of the profitability of the activity;

36. Costs incurred by the facility's subcontractors or by the lessor of property the facility leases, and which become an element in the subcontractor's or lessor's charge to the facility, if such costs would not have been allowable had they been incurred by a facility directly furnishing the subcontracted services or owning the leased property;

37. All costs for services paid directly by the department to an outside facility;

38. Depreciation on the portion of assets acquired with government grants;

39. Costs incurred due to management inefficiency, unnecessary care or services, agreements not to compete, or activities not commonly accepted in the industry;

40. The cost of consumable food products, in excess of income from employees, guests, and nonresidents offset in accordance with subsection 1 of section 75-02-09-16, consumed by ~~persons~~individuals other than residents or direct care personnel;

41. Payments to residents, whether in cash or in kind, for work performed or for bonuses or rewards based on behavior; ~~and~~

42. In-house education costs including:

    a. Compensation for teachers and teacher aides who provide academic training to residents in-house;

    b. Property and plant operation expenses for space used to provide in-house academic training to residents; and

    c. The cost of supplies and equipment used in a classroom normally provided by a school district as part of the academic training; and

43. Medical assistance noncovered services.

History: Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396a(a)(30)(A)

75-02-09-15. Compensation.

Reasonable compensation for ~~a person~~an individual with a minimum of five percent ownership, ~~persons~~individuals on the governing board, or family members of top management personnel, including spouses and ~~persons~~individuals in the following relationship to top management personnel or their spouses: parent, stepparent, child, stepchild, grandparent, stepgrandparent, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, and stepsister will be considered an allowable cost if services are actually performed and required to be performed. The amount allowed must be in an amount not to exceed the average of salaries paid to individuals in like positions in all psychiatric residential treatment facilities that are nonprofit organizations and have no top management personnel who have a minimum of five percent ownership or are on the governing board. Salaries used to determine the average ~~will~~must be based on the latest information available to the department. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another ~~person~~individual to perform them.

History: Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396a(a)(30)(A)

75-02-09-19. Participation requirement.

1. A facility shall have an effective provider agreement with the department.

2. A facility may charge to hold a bed for a period in excess of the period covered under subsection 3 of section 75-02-09-05, if:

    a. The resident, or a person acting on behalf of the resident, has requested the bed be held and the facility informs the person making the request, at the time of the request, of the amount of the charge; and

b. For a medical assistance resident, the payment comes from sources other than the resident's monthly income.

History: Effective January 1, 2025.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396a(a)(30)(A)

CHAPTER 75-03-23

75-03-23-05. Services covered under the SPED program - Programmatic criteria.

~~Room~~The department may not include room and board costs ~~may not be paid~~ in the SPED service payment. The following categories of services are covered under the SPED program and may be provided to an eligible individual:

1. The department may provide adult day care services to an eligible individual:

   a. Who requires assistance in activities of daily living or instrumental activities of daily living;

   b. Who is able to participate in group activities; and

   c. Who, if the eligible individual does not live alone, has a primary caregiver who will benefit from the temporary relief of care giving.

2. The department may provide adult foster care using a licensed adult foster care provider to an eligible individual eighteen years of age or older:

   a. Who resides in a licensed adult foster care home;

   b. Who requires care or supervision;

   c. Who would benefit from a family or shared living environment; and

   d. Whose required care does not exceed the capability of the foster care provider.

3. The department may provide chore services to an eligible individual for one-time, intermittent, or occasional activities which would enable the eligible individual to remain in the home. Activities such as heavy housework and periodic cleaning, professional extermination, snow removal, and emergency response systems may be provided. Eligible individuals receiving emergency response services must be cognitively and physically capable of activating the emergency response system. The activity must be the responsibility of the eligible individual and not the responsibility of the landlord.

4. The department may provide environmental modification to an eligible individual:

   a. Who owns or rents the home to be modified. If the home is rented the property owner shall approve the modification consistent with the property owner's obligations pursuant to section 804(f)(3)(A) of the Fair Housing Act [42 U.S.C. 3604(f)(3)(A)] before the installation of the environmental modification; and

   b. When the modification will enable the eligible individual to complete the eligible individual's own personal care or to receive care and allow the eligible individual to safely stay in the home.

5. a. The department may provide extended personal care services to an eligible individual who:

      (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and

      (2) Has a cognitive or physical impairment that prevents the eligible individual from completing the required activity.

   b. Extended personal care services do not include assistance with activities of daily living or instrumental activities of daily living.

6. The department may provide family home care services to an eligible individual who:

   a. Lives in the same residence as the care provider on a twenty-four-hour basis;

   b. Agrees to the provision of services by the care provider; and

   c. Is the spouse of the care provider or the current or former spouse of one of the following relatives of the eligible individual: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew.

7. The department may provide home and community-based services case management services to an eligible individual who needs a functional assessment and the coordination of cost-effective delivery issues. ~~The case management services must be provided by a~~A social worker licensed under North Dakota Century Code ~~section 43-41-04~~chapter 43-41 or a registered nurse licensed under North Dakota Century Code chapter 43-12.1 may provide the case management services.

8. The department may provide home-delivered meals to an eligible individual who lives alone and is unable to prepare an adequate meal for themselves, or who lives with an individual who is unable or not available to prepare an adequate meal for the eligible individual.

9. The department may provide homemaker services to an eligible individual who needs assistance with environmental maintenance activities including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis. The department may pay a provider for laundry, shopping, meal preparation, money management, or communication, if the activity benefits the eligible individual. The department may pay a provider for housekeeping activities involving the eligible individual's personal private space and if the eligible individual is living with an adult, the eligible individual's share of common living space. The homemaker services funding cap applies to a household and may not be exceeded regardless of the number of eligible individuals residing in that household.

10. ~~Nonmedical~~The department may provide nonmedical transportation services ~~may be provided~~ to eligible individuals who are unable to provide their own transportation and need transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.

11. The department may provide personal care services to an eligible individual who needs help or supervision with personal care activities if:

    a. The eligible individual is at least eighteen years of age; and

    b. The services are provided in the eligible individual's home or in a provider's home if the provider meets the definition of a relative as defined in subdivision c of subsection 6 of section 75-03-23-05.

12. a. The department may provide respite care services to an eligible individual in the eligible individual's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:

       (1) The eligible individual has a full-time primary caregiver;

       (2) The eligible individual needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;

       (3) The primary caregiver's need for the relief is intermittent or occasional; and

(4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.

b. An eligible individual who is a resident of an adult foster care may choose a respite provider and is not required to use a relative of the adult foster care provider as the eligible individual's respite provider.

13. The department may provide companionship services up to ten hours per month to eligible individuals who live alone and could benefit from services to help reduce social isolation.

14. The department may provide other services as the department determines appropriate.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2020; January 1, 2022; January 1, 2024; January 1, 2025.
General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

75-03-23-06. Services covered under the Medicaid waiver program - Programmatic criteria.

~~Room~~The department may not include room and board costs ~~may not be included~~ in the Medicaid waiver service payment. The following services are covered under the Medicaid waiver program and may be provided to an eligible individual:

1. The department may provide adult day care services to an eligible individual:

   a. Who requires assistance in activities of daily living or instrumental activities of daily living;

   b. Who is able to participate in group activities; and

   c. If the eligible individual does not live alone, the eligible individual's primary caregiver will benefit from the temporary relief of care giving.

2. The department may provide adult foster care, using a licensed adult foster care provider, to an eligible individual who resides in a licensed adult foster care home who:

   a. Is eighteen years of age or older;

   b. Requires care or supervision;

   c. Would benefit from a family or shared living environment; and

   d. Requires care that does not exceed the capability of the foster care provider.

3. The department may provide residential care to an eligible individual who:

   a. Has chronic moderate to severe memory loss; or

   b. Has a significant emotional, behavioral, or cognitive impairment.

4. The department may provide chore services to an eligible individual for one-time, intermittent, or occasional activities that would enable the eligible individual to remain in the home, such as heavy housework and periodic cleaning, professional extermination, and snow removal. The activity must be the responsibility of the eligible individual and not the responsibility of the landlord.

5. The department may provide an emergency response system to an eligible individual who lives alone or with an adult who is incapacitated, or who lives with an individual whose routine absences from the home present a safety risk for the eligible individual, and the eligible individual is cognitively and physically capable of activating the emergency response system.

6. The department may provide environmental modification to an eligible individual, if the eligible individual owns or rents the home to be modified and when the modification will enable the eligible individual to complete the eligible individual's own personal care or to receive care and will allow the eligible individual to safely stay in the home for a period of time that is long enough to offset the cost of the modification. If the home is rented the property owner shall approve the modification consistent with the property owner's obligations pursuant to section 804(f)(3)(A) of the Fair Housing Act [42 U.S.C. 3604(f)(3)(A)] before the installation of the environmental modification.

7. a. The department may provide family personal care to an eligible individual who:

   (1) Lives in the same residence as the care provider on a twenty-four-hour basis;

   (2) Agrees to the provision of services by the care provider; and

   (3) Is the legal spouse of the care provider or is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02.

   b. ~~Family~~The department may not provide a family personal care ~~payments may not be made~~payment for assistance with the activities of communication, community integration, laundry, meal preparation, money management, shopping, social appropriateness, or transportation unless the activity benefits the eligible individual. ~~Family~~The department may not provide a family personal care payment ~~may not be made~~ for assistance with the activity of housework unless the activity is for the eligible individual's personal space or if the eligible individual is living with an adult, the eligible individual's share of common living space.

8. The department may provide home and community-based services case management services to an eligible individual who needs a comprehensive assessment ~~and the~~or care coordination ~~of~~to ensure cost-effective delivery of services. ~~Case management services provided under this subsection must be provided by a~~A social worker licensed under North Dakota Century Code ~~section 43-41-04~~chapter 43-41, a registered nurse licensed under North Dakota Century Code chapter 43-12.1, or another approved provider with substantially similar credentials as defined in the Medicaid waiver program may provide case management services under this subsection.

9. The department may provide home-delivered meals to an eligible individual who lives alone and is unable to prepare an adequate meal for themselves or who lives with an individual who is unable or not available to prepare an adequate meal.

10. The department may provide homemaker services to an eligible individual who needs assistance with environmental maintenance activities, including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis. The department may pay a provider for laundry, shopping, meal preparation, money management, or communication, if the activity benefits the eligible individual. The department may pay a provider for housekeeping activities involving the eligible individual's personal private space and if the eligible individual is living with an adult, the eligible individual's share of common living space. The homemaker service funding cap applies to a household and may not be exceeded regardless of the number of eligible individuals residing in that household.

11. a. The department may provide extended personal care services to an eligible individual who:

   (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and

(2) Has a cognitive or physical impairment that prevents the eligible individual from completing the required activity.

b. Extended personal care services do not include assistance with activities of daily living and instrumental activities of daily living.

12. The department may provide nonmedical transportation services to an eligible individual who is unable to provide their own transportation and who needs transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.

13. The department may provide up to twenty-four hours per day of supervision to an eligible individual who has a cognitive or physical impairment that results in the eligible individual needing monitoring to assure the eligible individual's continued health and safety.

14. a. The department may provide respite care services to an eligible individual in the eligible individual's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:

(1) The eligible individual has a full-time primary caregiver;

(2) The eligible individual needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;

(3) The primary caregiver's need for the relief is intermittent or occasional; and

(4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.

b. An eligible individual who is a resident of an adult foster care home may choose a respite provider and is not required to use a relative of the adult foster care provider as the eligible individual's respite provider.

15. The department may provide specialized equipment and supplies to an eligible individual, if:

a. The eligible individual's need for the items is based on an adaptive assessment;

b. The items directly benefit the eligible individual's ability to perform personal care or household activities;

c. The items will reduce the intensity or frequency of human assistance required to meet the eligible individual care needs;

d. The items are necessary to prevent the eligible individual's institutionalization;

e. The items are not available under the Medicaid state plan; and

f. The eligible individual is motivated to use the item.

16. The department may provide supported employment to an eligible individual who is unlikely to obtain competitive employment at or above the minimum wage; who, because of the eligible individual's disabilities, needs intensive ongoing support to perform in a work setting; and who has successfully completed the supported employment program available through the North Dakota vocational rehabilitation program.

17. The department may provide transitional living services to an eligible individual who needs supervision, training, or assistance with self-care, communication skills, socialization, sensory and motor development, reduction or elimination of maladaptive behavior, community living,

and mobility. The department may provide these services until the eligible individual's independent living skills development has been met or until an interdisciplinary team determines the service is no longer appropriate for the eligible individual.

18. The department may provide community transition services to an eligible individual who is transitioning from an institution or another provider-operated living arrangement to a living arrangement in a private residence where the eligible individual is directly responsible for their own living expenses and needs nonrecurring set-up expenses. Community transition services include one-time transition costs and transition coordination.

    a. Allowable expenses are those necessary to enable an eligible individual to establish a basic household that do not constitute room and board and may include:

        (1) Security deposits that are required to obtain a lease on a private residence;

        (2) Essential household furnishings required to occupy and use a private residence, including furniture, window coverings, food preparation items, and bed and bath linens;

        (3) Setup fees or deposits for utility or service access, including telephone, electricity, heating, and water;

        (4) Services necessary for the eligible individual's health and safety, such as pest eradication and one-time cleaning prior to occupancy;

        (5) Moving expenses;

        (6) Necessary home accessibility adaptations; and

        (7) Activities to assess need and to arrange for and procure need resources.

    b. Community transition services do not include monthly rental or mortgage expenses, escrow, specials, insurance, food, regular utility or service access charges, household appliances, or items that are intended for purely diversional or recreational purposes.

    c. Community transition services are furnished only to the extent that they are reasonable and necessary as determining through the service plan development process, clearly identified in the service plan and the eligible individual is unable to meet such expense, or when the services cannot be obtained from other sources.

19. The department may provide other services as permitted by an approved waiver.

20. The department may provide residential habilitation up to twenty-four hours per day to an eligible individual who needs formalized training and supports and requires some level of ongoing daily support. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the eligible individual's ability to independently reside and participate in an integrated community. Residential habilitation may be provided in an agency foster home for adults facility or in a private residence owned or leased by an eligible individual or their family member.

21. The department may provide community support services up to twenty-four hours per day to an eligible individual who requires some level of ongoing daily support. This service is designed to assist with self-care tasks and socialization that improves the eligible individual's ability to independently reside and participate in an integrated community. Community support services may be provided in an agency foster home for adults facility or in a private residence owned or leased by an eligible individual or their family member.

22. The department may provide companionship services up to ten hours per month to eligible individuals who live alone and could benefit from services to help reduce social isolation.

23. The department may provide personal care services to an eligible individual who needs supervision and help with personal care services.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2018; January 1, 2020; January 1, 2022; January 1, 2024; January 1, 2025.
General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

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~~submit 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 eligible individuals 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, using applicable forms and providing documentation as required by the department:

(1) Revalidate qualified service provider 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.

h. A representative of an enrolled qualified service provider agency or an individual qualified service provider ~~must~~shall complete a department-approved qualified service provider orientation prior to initial enrollment.

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 provider 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 eligible individuals 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 eligible individual who is incontinent;

g. Feeding or assisting an eligible individual with eating;

h. Basic meal planning and preparation;

i. Assisting an eligible individual with the self-administration of medications;

j. Maintaining a kitchen, bathroom, and other rooms used by an eligible individual 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 an eligible individual with bill paying and balancing a check book;

m. Dressing and undressing an eligible individual;

n. Assisting with toileting;

o. Routine eye care;

p. Proper care of fingernails;

q. Caring for skin;

r. Turning and positioning an eligible individual in bed;

s. Transfer using a belt, standard sit, or bed to wheelchair;

t. Assisting an eligible individual 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~~shall 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 eligible individual-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 eligible individual's need for services has been determined, the eligible individual 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~~The department may issue a service payment ~~may be issued only~~ to a qualified service provider ~~who~~that bills the department after the delivery of authorized services.

13. Agency providers who employ nonfamily members ~~must~~shall have a department-approved quality improvement program that includes a process to identify, address, and mitigate harm to the eligible individuals they serve.

14. Agency providers who have accepted an authorization to provide twenty-four-hour supports to an eligible individual ~~must~~shall give a thirty-day written notice before they can involuntarily discharge the eligible individual from their care, unless otherwise approved by the department.

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; January 1, 2024; January 1, 2025.

General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-03(5)

CHAPTER 75-04-01
LICENSING OF PROGRAMS AND SERVICES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES - DEVELOPMENTAL DISABILITIES

75-04-01-01. Definitions.

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

1. "Accreditation" means ~~recognition~~accredited by a department-approved national organization of a licensee's compliance with a set of specified standards.

2. "Applicant" means an entity ~~which~~that has requested licensure from the North Dakota department of health and human services pursuant to North Dakota Century Code chapter 25-16 and this chapter.

3. "~~Basic services~~Application" means ~~those services required to be provided by an entity in order to obtain and maintain a license~~a request in the form and manner prescribed by the department signed by the applicant or principal officer on behalf of the applicant.

4. ~~"Client" means an individual found eligible as determined through the application of North Dakota Administrative Code chapter 75-04-06 for services coordinated through intellectual disabilities - developmental disabilities program management, on whose behalf services are provided or purchased.~~

~~5.~~ ~~"Client-authorized~~Authorized representative" means a person who has legal authority, either designated or granted, to make decisions on behalf of the ~~client~~eligible individual.

~~6.~~5. "Day habilitation" means a day program of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills. Activities should focus on improving a ~~client's~~an eligible individual's sensory, motor, cognitive, communication, and social interaction skills.

~~7.~~6. "Department" means the North Dakota department of health and human services.

~~8.~~7. "Developmental disability" means a severe, chronic disability of an individual which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments, including Down syndrome and fetal alcohol spectrum disorders, including fetal alcohol syndrome, partial fetal alcohol syndrome, and alcohol-related neurodevelopmental disorder;

b. Is manifested before the individual attains age twenty-two;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity:

(1) Self-care;

(2) Receptive and expressive language;

(3) Learning;

(4) Mobility;

(5) Self-direction;

(6) Capacity for independent living; and

(7) Economic sufficiency; and

e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

~~9.~~8. "Developmental disability services" means those services required to be provided by an entity in order to obtain and maintain a license.

9. "Eligible individual" means an individual determined to be eligible by applying for services coordinated through intellectual disabilities - developmental disabilities program management under chapter 75-04-06, for whom services are provided or purchased.

10. "Employment support" means ongoing supports to assist ~~clients~~eligible individuals in obtaining and maintaining paid employment at or above minimum wage in an integrated setting. Services are designed for ~~clients~~eligible individuals who need intensive ongoing support to perform in a work setting. Service includes on-the-job or off-the-job employment-related support for ~~clients~~eligible individuals needing intervention to assist them in maintaining employment, including job development. Employment support includes individual employment support and small group employment support.

~~10.~~11. "Family member" means relatives of a ~~client~~an eligible individual to the second degree of kinship.

~~11.~~12. "Family support services" means a family-centered support service contracted based on the ~~client's~~eligible individual's or primary caregiver's need for support in meeting the health, developmental, and safety needs to remain in an appropriate home environment. Family support services includes parenting support, respite, extended home health care, in-home supports, and family care option.

~~12. "Generic service" means a service that is available to any member of the population and is not specific to meeting specialized needs of individuals with intellectual disabilities or developmental disabilities.~~

13. "Governing body" means the individual or individuals designated in the articles of incorporation of a corporation, bylaws, or constitution of a legal entity as being authorized to act on behalf of the entity.

14. "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16 and this chapter, housing more than three individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.

15. "Infant development" means a systematic application of an individualized family service plan designed to alleviate or mediate developmental delay of the ~~client~~eligible individual from birth through age two.

16. "Intellectual disability" means a diagnosis of the condition of intellectual disability, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior as accepted by the American psychiatric association, and made by an appropriately licensed professional.

17. "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to title 42, Code of Federal Regulations, parts 442 and 483, et seq.

18. "License" means authorization by the department to provide a service to eligible individuals ~~with developmental disabilities~~, pursuant to North Dakota Century Code chapter 25-16 and this chapter.

19. "Licensee" means that entity which has received authorization by the department, pursuant to North Dakota Century Code chapter 25-16 and this chapter and who has executed a Medicaid agreement with the department, to provide a service or services to eligible individuals ~~with developmental disabilities~~.

20. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare ~~clients~~eligible individuals for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the ~~client's~~eligible individual's person-centered service plan.

21. "Primary caregiver" means a responsible person providing continuous care and supervision to an eligible individual that prevents institutionalization in meeting the needs of the ~~client~~eligible individual and who is not employed by or working under contract of a ~~provider agency licensed~~licensee pursuant to this chapter.

22. "Principal officer" means the presiding member of a governing body, a chairperson, or president of a board of directors.

23. "Program management" means a process of interconnected steps which will assist ~~a client~~an eligible individual in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.

24. ~~"Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.~~

~~25.~~ "Resident" means an individual receiving services provided through any licensed residential facility or service.

~~26.~~25. "Residential services" means formalized training and supports provided to ~~clients~~eligible individuals to assist with and develop self-help, socialization, and adaptive skills that improve the ~~client's~~eligible individual's ability to independently reside and participate in an integrated community. Residential services include residential rehabilitation and independent habilitation.

~~27.~~26. "Standards" means requirements which result in accreditation ~~by the council on quality and leadership in supports for people with disabilities~~and, if applicable, certification as an intermediate care facility for individuals with intellectual disabilities~~, or for employment supports results in accreditation by the commission on accreditation of rehabilitation facilities~~.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; July 1, 2001; July 1, 2012; April 1, 2018; April 1, 2020; January 1, 2025.
General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-02. License required and renewal.

1. No individual, association of individuals, partnership, limited liability company, or corporation shall offer or provide a service or own, manage, or operate a facility offering or providing a service to more than two individuals with developmental disabilities without first having obtained a license from the department unless the facility is:

~~1.~~ a. Exempted by North Dakota Century Code section 15.1-34-02; or

~~2.~~ b. Operated by a nonprofit corporation that receives no payments from the state or any political subdivision and provides only day supports for six or fewer individuals with

developmental disabilities. "Payment" does not include donations of goods and services or discounts on goods and services.

2. Licensure does not create an obligation for the state to purchase services from the ~~licensed facility~~licensee.

3. At the discretion of the department, the department may issue a single license for a discrete service or issue multiple licenses by service location.

4. A license is nontransferable, expires not more than one year from the effective date of the license, and is valid for the services or locations identified therein.

5. A license issued by the department must include the legal name of the licensee, the address or location where services are provided, the occupancy or service limitations, the unique services authorized, the region and counties where services are provided, and the expiration date of the license.

6. A licensee shall submit to the department an application for a license no later than sixty days prior to the expiration date of a valid license. If the licensee is not able to provide the application within this time frame, a request to waive the sixty days submission time line must be submitted to the department prior to the license expiration date. If the licensee continues to meet all standards established by North Dakota Century Code chapters 25-01.2 and 25-16 and the rules of the department, the department shall issue a license renewal.

7. The licensee shall place the license in an area accessible to the public where it may be readily seen, except in residences or residential areas of a facility where a license must be available to the public or the department upon request.

8. Licensees shall sign a Medicaid provider agreement and required addendums with the department to provide services to eligible individuals.

9. A licensee who voluntarily terminates a license shall submit a new application to reapply for licensure.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 2001; July 1, 2012; April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-18, 25-16-02, 25-16-03

75-04-01-03. ~~Single or multiple license~~Application.

~~A single~~

1. An applicant shall submit an application for a license ~~may be issued authorizing the conduct of multiple services by one applicant or single licenses may be issued authorizing the conduct of each discrete service, at the discretion of~~to provide services or operate a facility to the department in the form and manner prescribed by the department.

2. An application is not complete until all required information and verifications are submitted to the department. The department may declare an application withdrawn if an applicant fails to submit all required information and verifications within thirty days of the department's notification to the applicant the application is incomplete.

3. Within sixty days from the date of the receipt of the completed application, the department shall notify the applicant of the department's intent to grant or deny a license.

History: Effective April 1, 1982; amended effective January 1, 2025.

General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-03.1. Types of licenses.

A license issued pursuant to North Dakota Century Code chapter 25-16 and this chapter must be identified as a provisional, unrestricted, or restricted license.

1. A "provisional license" may be issued to an applicant who complies with the rules of the department, North Dakota Century Code chapters 25-01.2 and 25-16, and who has engaged in obtaining accreditation. The licensee shall obtain accreditation by the expiration of the provisional license. A provisional license may be extended for an additional six months only upon the department's determination the licensee has made significant progress toward obtaining accreditation.

2. An "unrestricted license" may be issued to an applicant who complies with the rules of the department and North Dakota Century Code chapters 25-01.2 and 25-16, and who is accredited.

3. A "restricted license" may be issued to a licensee upon a finding of noncompliance with the rules of the department and North Dakota Century Code chapters 25-01.2 and 25-16.

   a. The department may not issue a restricted license to a licensee whose practices or facilities pose a clear and present danger to the health and safety of eligible individuals.

   b. The department may issue a restricted license for any or all services provided, or facilities operated by the licensee.

   c. Upon a finding that the licensee is not in compliance, the department shall notify the licensee, in writing, of its intent to issue a restricted license. The notice must provide the reasons for the action, the specific services that are affected by the restricted license, and describe the corrective actions required of the licensee.

   d. The licensee shall, within ten days of the receipt of notice under subdivision c, submit to the department, on a form provided, a plan of correction. The plan of correction must include the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the licensee's plan of correction and shall notify the licensees of its decision within thirty days. If the plan of correction is not submitted or it is rejected, the department shall notify the licensee the license has been revoked. The department may conduct periodic inspection of the facilities and operations of the licensee to evaluate the implementation of the plan of correction.

   e. The department shall terminate a restricted license and issue an unrestricted license to the licensee upon successful completion of an accepted plan of correction.

   f. A restricted license may be extended for an additional six months upon the department's determination the licensee has made significant progress toward meeting the standards identified in the plan of correction or the licensee has shown good cause for failure to implement the plan of correction.

History: Effective January 1, 2025.
General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-18, 25-16-02, 25-16-03

75-04-01-04. License denial or revocation.

The department may deny a license to an applicant or licensee or revoke an existing license upon a finding of noncompliance with North Dakota Century Code chapter 25-01.2 or 25-16 or the rules of the department.

1. If the department denies a license, the applicant or licensee may not reapply for a license for a period of six months from the date of denial. After the six-month period has elapsed, the applicant or licensee may submit a new application to the department.

2. If the department revokes a license, the licensee may not reapply for a license for a period of one year from the date of the revocation. After the one-year period has elapsed, the licensee may submit a new application to the department.

3. A license denial or revocation may affect all or some of the services and facilities operated by a licensee~~, as determined by the department~~.

4. Notification is made upon mailing or upon electronic transmission. The notice must identify any law, rule, or standard alleged to have been violated, the factual basis for the allegation, the specific service or facility responsible for the violation, the date after which the denial or revocation is final, and the procedure for appealing the action.

5. If an action to revoke a license is appealed, the licensee may continue to provide services until the final appeal decision is rendered unless continued operations would jeopardize the health and safety of eligible individuals.

6. The licensee, upon final revocation notification, shall destroy the license.

History: Effective April 1, 1982; amended effective June 1, 1986; April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-18, 25-16-03, 25-16-08

75-04-01-05. Notification of license.

Repealed effective January 1, 2025.

~~1. The department shall, within sixty days from the date of the receipt of an application for a license, or upon finding a licensee in noncompliance with the rules of the department, notify the applicant or licensee's principal officer of the department's intent to grant, deny, or revoke a license.~~

~~2. The department shall notify the applicant or licensee in writing. Notification is made upon deposit with the United States postal service. The notice of denial or revocation shall identify any rule or standard alleged to have been violated and the factual basis for the allegation, the specific service or facility responsible for the violation, the date after which the denial or revocation is final, and the procedure for appealing the action of the department.~~

~~3. The applicant or licensee may appeal the denial or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within ten days of receipt of the notice of intent to deny or revoke. The hearing must be governed by the provisions of chapter 75-01-03.~~

~~4. The licensee may continue to provide services until the final appeal decision is rendered. If clients have been removed from the licensed facility or service because of a health, welfare, or safety issue, they shall remain out of the facility or service while the appeal is pending.~~

~~5. The licensee, upon final revocation notification, shall return the license to the department immediately.~~

~~**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018.~~
~~**General Authority:** NDCC 25-16-06, 50-06-16~~
~~**Law Implemented:** NDCC 25-16-08~~

75-04-01-06. Disclosure of criminal record.

1. Each member of the governing body of the applicant, the chief executive officer, and any employees, volunteers, or agents who receive and disburse funds on behalf of the governing body, or who provide any direct service to ~~clients~~eligible individuals, shall disclose to the department if they have been found guilty of, pled guilty to, or pled no contest to a criminal offense or been placed on the Medicaid exclusion list.

2. The applicant or licensee shall conduct federal and state criminal background checks on all ~~persons~~individuals employed who work with ~~clients~~eligible individuals, including volunteers. If the applicant or licensee is contracting or subcontracting with other entities, there must be an agreement ensuring federal and state criminal background checks have been completed on all ~~persons~~individuals employed who work with ~~clients~~eligible individuals, including volunteers.

3. The applicant or licensee shall disclose to the department the names, type of offenses, dates of having been found guilty of, pled guilty to, or pled no contest to a criminal offense, and position and duties within the applicant's organization of employees and volunteers with a criminal record.

4. ~~Such disclosure must~~Disclosure may not disqualify the applicant from licensure or an individual from employment or volunteering, unless ~~having been~~the applicant or individual has been found guilty of, pled guilty to, or pled no contest to, a crime having direct bearing on the capacity of the applicant, employee, or volunteer to provide a service under the provision of this chapter or the convicted applicant, employee, or volunteer is not sufficiently rehabilitated.

5. The department shall determine the effect of an applicant, employee, or volunteer having been found guilty of, pled guilty to, or pled no contest to, a criminal offense.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; April 1, 2018; January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03.1

75-04-01-06.1. Criminal conviction - Effect on operation of ~~provider agency~~licensee or employment by ~~provider agency~~licensee.

1. A ~~provider agency~~licensee may not employ in any capacity that involves or permits contact between the employee or volunteer and any individual cared for by the ~~provider agency~~licensee, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapters 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 in North Dakota Century Code sections 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 a police 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 child; ~~or~~ 14-09-22.1, neglect of 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

b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.

2. For purposes of subdivision b of subsection 1, an offender's completion of a period of ~~five~~three years after final discharge or release from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

3. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of services to eligible individuals ~~with developmental disabilities~~.

4. In the case of ~~a misdemeanor~~ an offense described in North Dakota Century Code sections 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, correction 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 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 conviction~~.

5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

a. Common knowledge in the community;

b. Acknowledged by the individual;

c. Reported to the ~~provider agency~~licensee as the result of an employee background check; or

d. Discovered by the department or licensee.

History: Effective July 1, 2001; amended effective April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03, 25-16-03.1

75-04-01-07. Content of license.

Repealed effective January 1, 2025.

~~A license issued by the department must include the legal name of the licensee, the address or location where services are provided, the occupancy or service limitations of the licensee, the unique services authorized for provision by the licensee, and the expiration date of the license.~~

~~**History:** Effective April 1, 1982; amended effective December 1, 1995; April 1, 2018.~~
~~**General Authority:** NDCC 25-16-06, 50-06-16~~
~~**Law Implemented:** NDCC 25-16-05~~

75-04-01-08. Types of licenses.

Repealed effective January 1, 2025.

~~1. A license issued pursuant to this chapter must be denominated "unrestricted license", "restricted license", or "provisional license".~~

~~2. An "unrestricted license" may be issued to an applicant who complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03, and who is accredited by the accreditation council for services for individuals with disabilities, or for employment supports accredited by the rehabilitation accreditation commission (CARF) for existing provider agencies initially and continuously licensed prior to April 1, 2018. The license is nontransferable, expires not more than one year from the effective date of the license, and is valid for only those services or facilities identified thereon.~~

~~3. A "restricted license" may be issued subject to the provision of section 75-04-01-09.~~

~~4. A "provisional license" may be issued subject to the provision of section 75-04-01-10.~~

~~**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018.~~
~~**General Authority:** NDCC 25-16-06, 50-06-16~~
~~**Law Implemented:** NDCC 25-16-03~~

75-04-01-09. Restricted license.

Repealed effective January 1, 2025.

~~1. A restricted license may be issued to a licensee with an acceptable plan of correction notwithstanding a finding of noncompliance with the rules of the department and North Dakota Century Code section 25-16-03. A restricted license must not be issued to a licensee whose practices or facilities pose a clear and present danger to the health and safety of individuals with developmental disabilities, including fire safety requirements as evidenced in writing by the fire marshal, negligent or intentional misrepresentations to the department regarding any aspect of the licensee's operations, or any violation that places a client's life in danger.~~

~~2. A restricted license may be issued for any or all services provided or facilities operated by an applicant or licensee as determined by the department.~~

~~3. Upon a finding that the licensee is not in compliance, the department shall notify the licensee, in writing, of its intent to issue a restricted license. The notice must provide the reasons for the action, the specific services that are affected by the restricted license, and describe the corrective actions required of the licensee.~~

~~4. The licensee shall, within ten days of the receipt of notice under subsection 3, submit to the department, on a form provided, a plan of correction. The plan of correction must include the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the licensee's plan of correction and shall notify the licensees of their decision within thirty days. If the plan of correction is rejected, the department shall notify the licensee that the license has been~~

revoked. The department may conduct periodic inspection of the facilities and operations of the licensee to evaluate the implementation of a plan of correction.

5. The department shall terminate a restricted license and issue an unrestricted license to the licensee upon successful completion of an accepted plan of correction, as determined by the department.

6. A restricted license may be issued for any period not exceeding one year. A restricted license may be renewed for an additional six months only upon the department's determination the licensee has made significant progress toward meeting the standards identified in the plan of correction or the licensee has shown good cause for failure to implement the plan of correction. A restricted license is nontransferable and valid only for the facilities or services identified thereon. Notice of the granting of a restricted license, or of a decision to modify or reject a plan of correction, may be appealed in the same manner as a notice of revocation of a license.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-10. Provisional license.

Repealed effective January 1, 2025.

1. An applicant may submit an application, on a form provided, for a provisional license, permitting the provision of a new provider agency.

2. A "provisional license" may be issued to an applicant who complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03 and who is accredited by the council on quality and leadership for services for individuals with disabilities. The license is nontransferable, expires not more than one year from the effective date of the license, and is valid for only those services or facilities identified thereon.

3. A provisional license may be renewed for an additional six months only upon the department's determination the licensee has made significant progress toward meeting the standards.

4. Notice of a denial of a provisional license may be appealed in the same manner as a notice of revocation of a license.

History: Effective April 1, 1982; amended effective December 1, 1995; April 1, 2018.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-11. License renewal.

Repealed effective January 1, 2025.

The licensee shall submit to the department, on a form or forms provided, an application for a license not later than sixty days prior to the expiration date of a valid license. If the provider agency continues to meet all standards established by the rules under this chapter, the department shall issue a license renewal annually on the expiration date of the previous year's license.

History: Effective April 1, 1982; amended effective April 1, 2018.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-12. Display of license.

Repealed effective January 1, 2025.

~~The licensee shall place the license in an area accessible to the public and where it may be readily seen. Licenses need not be placed on display in residences or residential areas of a facility, but must be available to the public or the department upon request.~~

~~**History:** Effective April 1, 1982; amended effective April 1, 2018.~~
~~**General Authority:** NDCC 25-16-06, 50-06-16~~
~~**Law Implemented:** NDCC 25-16-03~~

75-04-01-12.1. Provider agreement.

Repealed effective January 1, 2025.

~~Licensees shall sign a Medicaid provider agreement and required addendums with the department to provide services to individuals with developmental disabilities.~~

~~**History:** Effective April 1, 2018.~~
~~**General Authority:** NDCC 25-16-06, 50-06-16~~
~~**Law Implemented:** NDCC 25-16-03~~

75-04-01-15. Standards of the department.

The department herein adopts and makes a part of ~~these rules~~this chapter for all licensees the current standards used for accreditation~~ by the council on quality and leadership in supports for people with disabilities~~, additionally, for intermediate care facilities for individuals with intellectual disabilities, standards for certification under title 42, Code of Federal Regulations, parts 442 and 483 et seq.~~, or for employment supports, by the rehabilitation accreditation commission (CARF) for existing provider agencies initially and continuously licensed prior to April 1, 2018.~~ If a licensee fails to meet an accreditation standard, the department may analyze the licensee's failure using the appropriate current standards~~ of the council on quality and leadership in supports for people with disabilities~~. Infant development licensees who have attained accreditation status~~ by the council on quality and leadership in supports for people with disabilities~~ are not required to maintain accreditation status.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; May 1, 2006; July 1, 2012; April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-06

75-04-01-16. Imposition of the standards.

~~Unaccredited applicants issued a provisional license shall provide the department with a plan to secure accreditation.~~ The licensee, ~~upon~~at the request of the department, shall submit copies of reports generated by the accreditation process.

History: Effective April 1, 1982; amended effective June 1, 1986; January 1, 2025.
General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-06

75-04-01-17. Identification of ~~basic~~developmental disability services subject to licensure.

~~**Services**~~

1. Developmental disability services provided to eligible ~~clients~~individuals must be identified and licensed by the following titles:

~~1.~~ a. Residential services:

~~a.~~ (1) Residential habilitation; or

~~b.~~ (2) Independent habilitation;

~~2.~~ b. Day habilitation;

~~3.~~ c. Intermediate care facility for individuals with intellectual disabilities;

~~4.~~ d. Employment supports:

~~a.~~ (1) Individual employment supports; or

~~b.~~ (2) Small group employment supports;

~~5.~~ e. Prevocational services;

~~6.~~ f. Family support services:

~~a.~~ (1) Parenting supports;

~~b.~~ (2) In-home supports;

(3) Respite:

~~c.~~ (4) Extended home health care; or

~~d.~~ (5) Family care option; or

~~7.~~ g. Infant development services.

2. For services that allow a virtual service delivery option, the licensee shall identify that option on the license application.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 1996; July 1, 2001; July 1, 2012; April 1, 2018; April 1, 2020; January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-06

75-04-01-20. Applicant guarantees and assurances.

1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner which:

   a. Guarantees each ~~client~~eligible individual a person-centered service plan pursuant to the provisions of North Dakota Century Code section 25-01.2-14;

   b. Guarantees ~~that~~ each ~~client~~eligible individual, ~~client-authorized~~authorized representative, or advocate receives written notice of the ~~client's~~eligible individual's rights in the manner provided by North Dakota Century Code section 25-01.2-16;

   c. Guarantees ~~that~~ each ~~client admission is subject to a multidisciplinary determination that placement is appropriate~~eligible individual has a right to appropriate treatment, services, and habilitation and these are provided in the least restrictive appropriate setting pursuant to North Dakota Century Code section 25-01.2-02;

   d. Guarantees the ~~client~~eligible individual the right to receive authorized services and supports included in his or her person-centered service plan in a timely manner and the

opportunity to fully participate in the benefits of community living, vote, worship, ~~interact socially~~socialize, freely communicate ~~and receive guests~~, have visitors, own and use personal property, and unrestricted access to legal counsel, and guarantees that all rules regarding such conduct are posted or made available pursuant to North Dakota Century Code sections 25-01.2-03, 25-01.2-04, and 25-01.2-05;

e. Guarantees ~~that such~~any restrictions ~~as may be imposed~~implemented are based upon ~~a client relate solely to capability~~an eligible individual's assessed need and are imposed pursuant to the provisions of due process and a person-centered service plan;

f. Guarantees the confidentiality of all ~~client~~eligible individual records;

g. Guarantees ~~that~~ the ~~client~~eligible individual receives adequate remuneration for compensable labor, that subminimum wages are paid only pursuant to title 29, Code of Federal Regulations, part 525, et seq., that the ~~client~~eligible individual has the right to seek meaningful employment in integrated settings, that restrictions upon ~~client~~eligible individual access to money are subject to the provisions of a person-centered service plan, that assets managed by the applicant on behalf of the ~~client~~eligible individual inure solely to the benefit of that ~~client~~eligible individual, that each ~~client has a money management plan or documented evidence of the client's capacity to manage money~~eligible individual is assessed on the individual's ability to manage the individual's finances, and that, in the event the applicant or licensee is a representative payee of ~~a client~~an eligible individual, the informed consent of the ~~client~~eligible individual is obtained and documented;

h. Guarantees the ~~client access to appropriate and~~eligible individual timely access to preferred and qualified medical and dental ~~care and~~services, adequate protection from infectious and communicable diseases, and ~~guarantees effective control and administration of medication~~receives safe and effective administration of medications, as well as prevention of drug use as a substitute for programming;

i. Guarantees the ~~client~~eligible individual freedom from corporal punishment, imposition of isolation, seclusion, chemical, physical, or mechanical restraint, except as prescribed by North Dakota Century Code section 25-01.2-10 or ~~these rules~~this chapter, and guarantees the ~~client~~eligible individual freedom from psychosurgery, sterilization, medical behavioral research, pharmacological research, and electroconvulsive therapy, except as prescribed by North Dakota Century Code sections 25-01.2-09 and 25-01.2-11;

j. Guarantees, where applicable, ~~that~~ a nutritious diet, approved by a qualified dietitian, will be provided in sufficient quantities to meet the ~~client's~~eligible individual's dietary needs and preferences;

k. Guarantees the ~~client~~eligible individual the right to choose and refuse services, who provides the services, the right of the ~~client~~eligible individual and the ~~client's~~eligible individual's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may ~~harm~~impact the ~~client~~eligible individual or others;

l. Assures the ~~client~~eligible individual safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff;

m. Assures the existence and operation of both behavior management and human rights committees;

n. Assures ~~that~~the residential provider agency will coordinate with ~~the developmental and remedial~~ services outside the residential setting in which ~~a client~~an eligible individual lives;

o. Assures ~~that~~ adaptive equipment, where appropriate for ~~personal hygiene, self-care,~~ mobility, activities of daily living, or communication is provided ~~in the service for use by individuals with disabilities~~ consistent with the person-centered service plan;

p. Assures ~~that~~ all ~~service~~ staff demonstrate basic professional competencies as required by their job descriptions and complies with all required trainings, credentialing, and professional development activities;

q. Assures ~~that annual evaluations that measure program~~at least annually, outcomes ~~against previously stated goals and objectives~~ are ~~conducted~~evaluated to determine whether an eligible individual is achieving the individual's goals and objectives;

r. Assures ~~that~~ all vehicles ~~transporting clients~~providing transportation to eligible individuals are ~~subject to routine inspection and maintenance~~routinely inspected and maintained, licensed by the department of transportation, ~~equipped with a first-aid kit and a fire extinguisher, carry~~transport no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible, where appropriate, and are driven by individuals who hold a valid state driver's license. Additionally, all vehicles owned by the licensee must be equipped with a first-aid kit and a fire extinguisher;

s. Assures ~~that~~ an annual inspection ~~with a written report of safety program and practices is conducted in facilities providing day services~~is conducted to ensure environments are sanitary and hazard free;

t. Guarantees ~~that~~ incidents of alleged abuse, neglect, and exploitation are thoroughly investigated and reported to the governing body, chief executive officer, ~~client~~ authorized representative, or advocate, the protection and advocacy project, and the department with written records of these proceedings being retained for three years; guarantees that all incidents of restraint utilized to control or modify ~~a client's~~an eligible individual's behavior are recorded and reported to the governing body; guarantees ~~that~~ any incident resulting in injury to the ~~client~~eligible individual or ~~agency~~ staff that requires medical attention or hospitalization must be recorded and reported to the governing body immediately, and as soon thereafter as possible to the ~~client~~ authorized representative or advocate; and guarantees ~~that~~ incidents resulting in injury to the ~~client~~eligible individual or ~~agency~~ staff that requires extended hospitalization, endangers life, or results in permanent disability must also be reported to the department immediately; and guarantees ~~that~~ corrective action plans are implemented;

u. Guarantees ~~that~~ a grievance procedure, reviewed and approved by the department, affords the ~~client~~eligible individual or the ~~client's~~ authorized representative or advocate the right to ~~a fair hearing of any complaint~~have any grievance addressed; and guarantees that grievance records ~~of such hearings~~ are maintained and must note ~~therein the complaint, the names of the individuals complaining~~the nature of the grievance, individuals submitting the grievance, and the resolution of the grievance;

v. Assures ~~that~~ policies and procedures are established and maintained for the management and maintenance of property and equipment purchased or depreciated with state funds. The applicant shall make the records, and items identified in them, available for inspection by the department, or designee, upon request to facilitate a determination of the adequacy with which the applicant is managing property and equipment;

w. Assures ~~that~~ policies and procedures regarding admission to their services and termination of services are in conformance with the rules of the department;

x. Assures ~~that~~ all documentation, data reporting requirements, rules, regulations, and policies are conducted as required by the department; and

y. Assures ~~that~~ all applicable federal and state laws and regulations are being abided by.

2. ~~Accredited applicants~~Licensees shall submit evidence, satisfactory to the department, of accreditation.

3. The department shall determine the degree to which the unaccredited applicant's policies and procedures are in compliance with the standards.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-02, 25-01.2-03, 25-01.2-04, 25-01.2-05, 25-01.2-06, 25-01.2-07, 25-01.2-09, 25-01.2-10, 25-01.2-11, 25-01.2-14, 25-01.2-16, 25-01.2-18, 25-16-06

75-04-01-20.1. Wages of eligible individuals ~~with developmental disabilities~~.

Licensees ~~generating income from the direct labor of individuals with developmental disabilities and~~ paying subminimum wages for work performed shall submit to the department a true, correct, and current copy of a certificate from the United States department of labor authorizing the payment of subminimum wages.

History: Effective December 1, 1995; amended effective January 1, 2025.
General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-06, 25-01.2-18, 25-16-06

75-04-01-20.2. Recording and reporting abuse, neglect, exploitation, and use of restraint.

1. Licensees shall implement policies and procedures to assure ~~that~~ incidents of alleged abuse, neglect, exploitation, and restraints:

a. Are reported to the governing body, chief executive officer or designee of the ~~provider agency, client-authorized~~licensee, authorized representative, advocate, and the protection and advocacy project;

b. Are thoroughly investigated, the findings reported to the governing body, chief executive officer or designee of the ~~provider agency, client-authorized~~licensee, authorized representative, advocate, and the protection and advocacy project and that the report and the action taken are recorded in writing and retained for three years; and

c. Are immediately reported to the department.

2. Incidents resulting in injury to the staff ~~of the licensee~~ or an eligible individual ~~with developmental disabilities~~, requiring medical attention, hospitalization, endangering life, or result in a permanent disability must be recorded and reported to the governing body, chief executive officer or designee of the ~~provider agency~~licensee, and to the department immediately, and as soon thereafter as possible to the ~~client-authorized~~authorized representative or advocate.

History: Effective December 1, 1995; amended effective April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-18, 25-16-06, 50-25.1-02

75-04-01-21. Legal status of applicant.

The applicant shall submit, in a form or manner prescribed by the department, the following items:

1. A correct and current statement of their articles of incorporation, bylaws, license issued by a local unit of government, partnership agreement, or any other evidence of legal registration of the entity;

2. A correct and current statement of tax exempt or taxable status under the laws of North Dakota or the United States;

3. A current list of partners or members of the governing body and any advisory board with their ~~address, telephone number~~contact information, principal occupation, term of office, and status as ~~a client~~an eligible individual or ~~client~~authorized representative and any changes in this list since last submission for all nonprofit applicants and licensees;

4. A statement disclosing the owner of record of any buildings, facilities, or equipment used by the applicant, the relationship of the owner to the applicant, and the cost, if any, of such use to the applicant and the identity of the entity responsible for the maintenance and upkeep of the property;

5. A statement disclosing any financial benefit which may accrue to the applicant or ~~applicants~~ to be diverted to personal use, including director's fees or expenses, dividends, return on investment, rent or lease proceeds, salaries, pensions or annuities, or any other payments or gratuities; and

6. The amount of any payments made to any member or members of the governing ~~board~~body of the applicant, or board or body of a related organization, exclusive of reimbursement for actual and reasonable personal expenses.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-22. Applicant's buildings.

Applicants or licensees occupying buildings, whether owned or leased, shall provide the department with a license or registration certificate properly issued pursuant to North Dakota Century Code chapter 15.1-34 or 50-11 or with:

1. The written report of an authorized fire inspector, following an initial or subsequent annual inspection of a building pursuant to section 75-04-01-23, which states:

   a. Rated occupancy and approval of the building for occupancy; or

   b. Existing hazards and recommendations for correction which, if followed, would result in approval of the building for occupancy;

2. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances; and

3. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or

4. Plans and specifications of buildings and site plans for facilities, proposed for use, but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018; January 1, 2022; January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-06

75-04-01-23. Safety codes.

1. Applicant's or licensee's intermediate care facilities for individuals with intellectual disabilities shall meet the provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code of the national fire protection association, ~~2000~~2012 edition~~, as determined by the department~~.

2. Applicant's or licensee's group home facilities which are not intermediate care facilities for individuals with intellectual disabilities shall meet the applicable life safety standards established by the local governing municipality's ordinances. If the local governing municipality has no ordinances establishing life safety standards, the group home facilities shall meet the one-family and two-family dwellings chapter of the Life Safety Code of the national fire protection association, ~~2000~~2012 edition~~, as determined by the department~~.

3. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from any specific requirement of the Life Safety Code, upon terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of the facility.

4. Applicant's or licensee's facilities housing individuals with multiple physical disabilities or impairments of mobility shall conform to American National Standards Institute Standard No. A117.1 (1980), or, if remodeled or newly constructed after July 1, 1995, with appropriate standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336.

5. Applicant's ~~and~~or licensee's buildings used to provide day services must conform to the appropriate occupancy chapters of the Life Safety Code of the national fire protection association, ~~2000~~2012 edition, ~~as determined by the department~~ and must meet applicable accessibility standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336. The selection of an appropriate Life Safety Code chapter shall be determined considering:

   a. Primary activities in the facility;

   b. The ability of ~~clients~~eligible individuals occupying the facility to take action for self-preservation in an emergency; and

   c. Assistance available to ~~clients~~eligible individuals occupying the facility for evacuation in an emergency.

6. All licensed day service facilities must be surveyed for Life Safety Code compliance at least annually. The department must be notified and a resurvey may be required if any of the following conditions are present between annual inspections:

   a. Occupancy increases of ten percent or more;

   b. Primary usage of the facility changes;

   c. Hazardous materials or processes are introduced into the facility;

   d. Building alterations or modifications take place;

e. ~~Clients~~Eligible individuals requiring substantial assistance to evacuate in an emergency are enrolled;

f. There are public or ~~client~~eligible individual concerns about safety conditions; or

g. Other changes occur in physical facilities, activities, materials and contents, or numbers and capabilities of ~~clients~~eligible individuals enrolled which may affect safety in an emergency.

History: Effective April 1, 1982; amended effective June 1, 1986; August 1, 1987; December 1, 1995; April 1, 2000; May 1, 2004; July 1, 2012; April 1, 2020; January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-06

75-04-01-24. Entry, access to records, and inspection.

1. The applicant or licensee shall affirm the right of the department, or designee, to enter any of the ~~applicant's~~ buildings or facilities and access to its records to determine ~~the extent to which the applicant is in~~ compliance with the rules of the department, to facilitate verification of the information submitted with an application for licensure, and to investigate complaints~~. Inspections must be scheduled for the mutual convenience of the department and the provider agency unless the effectiveness of the inspection would be substantially diminished by prearrangement~~.

2. The ~~provider agency~~licensee shall authorize the department, or designee, entry to its facilities and access to its records in the event the ~~provider agency~~licensee declares bankruptcy, transfers ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties. The department's entry is for the purpose of facilitating the orderly transfer of ~~clients~~eligible individuals to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.

History: Effective April 1, 1982; amended effective December 1, 1995; April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-25. Access to records.

Repealed effective January 1, 2025.

~~The applicant shall affirm the right of duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department.~~

~~**History:** Effective April 1, 1982.~~
~~**General Authority:** NDCC 25-01.2-08, 25-16-06, 50-06-16~~
~~**Law Implemented:** NDCC 25-01.2-08, 25-16-06~~

75-04-01-26. Denial of access to facilities and records.

Any applicant or licensee which denies the department, or designee, access to a facility or its records, ~~shall~~may have its license revoked or its application denied.

History: Effective April 1, 1982; amended effective December 1, 1995; April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-27. Group home design.

1. Group home facilities shall be small enough and of a modest design, minimizing the length of hallways, the number of exterior corners, and the complexity of construction, to ensure the development of meaningful interpersonal relationships and the provision of proper programming, services, and direct care. New or remodeled homes completed after July 1, 1985, are limited to occupancy by no more than eight individuals with developmental disabilities.

2. Group home facilities shall simulate the most homelike atmosphere possible in order to encourage a personalized environment.

3. Group home facilities shall provide, at a minimum, enough living space, based on the needs of both males and females, with provisions for privacy and appropriate access to quiet areas where an individual can be alone.

4. Group home facilities shall provide arrangement of space ~~to permit clients~~for all eligible individuals to participate in ~~different kinds of~~various activities, both in groups and singly. Space must be arranged to minimize noise ~~and permit~~for communication at normal conversational levels.

5. Group home facilities shall be accessible to nonambulatory eligible individuals, visitors, and employees.

History: Effective June 1, 1986; amended effective December 1, 1995; January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-28. Group home location.

1. Group home facilities ~~shall~~must be located at least three hundred feet [91.44 meters] from hazardous areas, including bulk fuel or chemical storage, anhydrous ammonia facilities, or other fire hazards or sources of noxious or odoriferous emissions.

2. Group home facilities ~~shall~~may not be located in areas subject to adverse environmental conditions, including mud slides, harmful air pollution, smoke or dust, sewage hazards, rodent or vermin infestations, excessive noise, vibrations, or vehicular traffic.

3. Group home facilities ~~shall~~may not be located in an area within the one-hundred-year base flood elevations unless:

   a. The facility is covered by flood insurance as required by 42 U.S.C. 4101; or

   b. The finished lowest floor elevation is above the one-hundred-year base flood elevation and the facility is free from significant adverse effects of the velocity of moving water or by wave impact during the one-hundred-year flood.

4. Group home facilities ~~shall~~must be located in residential neighborhoods reasonably accessible to shops, commercial facilities, and other community facilities; and shall be located not less than six hundred feet [182.88 meters] from existing group homes or day service facilities licensed by the department ~~to serve individuals with developmental disabilities~~, schools for ~~the disabled~~individuals with disabilities, long-term care facilities, or other institutional facilities. Upon written application, and good cause shown, the department may grant a variance from the provisions of this subsection upon terms the department may prescribe.

History: Effective June 1, 1986; amended effective December 1, 1995; January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-29. Group home bedrooms.

1. Bedrooms in group home facilities must accommodate no more than two individuals.

2. Bedrooms in group home facilities must provide at least eighty square feet [7.43 square meters] per individual in a single occupancy bedroom, and at least sixty square feet [5.57 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space. Bedrooms in newly constructed homes or existing homes converted to group home facilities completed after July 1, 1985, must provide at least one hundred square feet [9.29 square meters] per individual in a single occupancy bedroom, and at least eighty square feet [7.43 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space.

3. Bedrooms in group home facilities must be located on outside walls and separated from other rooms and spaces by walls extending from floor to ceiling and be at or above grade level.

4. Bedrooms in group home facilities must not have doors with vision panels and must be capable of being locked from the inside of the bedroom, except when justified by a specific assessed need and documented in the person-centered service plan.

5. Each ~~client~~eligible individual must have the opportunity to furnish and decorate their bedrooms as they choose, ~~such as~~including a chest of drawers, table, or desk.

6. Bedrooms in group home facilities must provide storage space for clothing in the bedroom which is accessible to all, including nonambulatory individuals.

~~7. Group home facilities shall provide space outside the bedrooms to be equipped for out-of-bed activities for all individuals not yet mobile, except for those who have a short-term illness or those for whom out-of-bed activity is a threat to life.~~

History: Effective June 1, 1986; amended effective December 1, 1995; April 1, 2018; January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-30. Group home kitchens.

~~1. Kitchens~~A kitchen in a group home ~~facilities~~facility must ~~provide~~:

1. Provide sufficient space ~~to permit~~for participation by both staff and ~~clients~~eligible individuals in the preparation of food.

2. ~~Kitchens in group home facilities must provide~~Provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.

3. ~~Kitchens in group home facilities must have~~Have hot water supplied to sinks in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude ~~client~~eligible individual access.

History: Effective June 1, 1986; amended effective December 1, 1995; January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-31. Group home bathrooms.

1. ~~Bathrooms~~A bathroom in a group home ~~facilities~~facility must ~~be~~:

a. Be located in places that facilitate maximum ~~self-help~~self-care by ~~clients~~eligible individuals.

~~2. Bathrooms in group home facilities must provide~~

b. Provide showers, bathtubs, toilets, and lavatories approximating normal patterns found in homes, unless specifically contraindicated by program needs.

~~3. Bathrooms in group home facilities must serve~~

c. Support only up to four individuals each.

~~4. At least one bathroom per group home facility must be accessible and usable by nonambulatory visitors and employees.~~

~~5. Bathrooms in group home facilities must have~~

d. Have hot water supplied to lavatories and bathing facilities in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude ~~client~~eligible individual access.

2. At least one bathroom per group home facility must be accessible and usable by nonambulatory eligible individuals, visitors, and employees.

History: Effective June 1, 1986; amended effective December 1, 1995; January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-37. Emergency plans.

There must be written plans and procedures, ~~which~~that are clearly communicated to and periodically reviewed with staff and ~~clients~~eligible individuals for meeting emergencies, including fire, serious illness, severe weather, and missing individuals. Applicable requirements of state law and regulations by the state fire marshal and applicable licensing authorities must be met.

History: Effective June 1, 1986; amended effective December 1, 1995; January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-40. Documentation and data reporting requirements.

1. ~~Licensee~~A licensee shall submit and retain all requisite documentation to demonstrate the right to receive payment for all services and supports and comply with all federal and state laws, regulations, and policies necessary to disclose the nature and extent of services provided and all information to support claims submitted by, or on behalf of, the ~~provider agency~~licensee.

2. The department may require a licensee to submit a statement of policies and procedures, and evidence of the implementation of the statement, in order to facilitate a determination the licensee is in compliance with the rules of the department and with North Dakota Century Code chapters 25-01.2 and 25-16.

3. ~~Licensee~~A licensee shall maintain program records, fiscal records, and supporting documentation, including:

   a. Authorization from the department for each ~~client~~eligible individual for whom service is billed;

b. Attendance sheets and other records documenting the days and times the ~~clients~~eligible individuals received the billed services from the licensee; and

c. Records of all bills submitted to the department for payment.

4. ~~Licensee~~A licensee shall report the results of designated quality and performance indicators, as requested by the department.

5. ~~Licensee~~A licensee shall retain a copy of the records required for six years from the date of the bill unless an audit in process requires a longer retention.

6. The department maintains the right to withhold a payment for services or suspend or terminate Medicaid enrollment if the licensee has failed to abide by terms of the Medicaid contract, federal and state laws, regulations, and policies regarding documentation or data reporting.

History: Effective April 1, 2018; amended effective January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-41. Appeals.

An applicant or licensee principal officer may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the applicant's or licensee's receipt of written notice of the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing may be conducted in the manner prescribed by chapter 75-01-03.

History: Effective January 1, 2025.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

CHAPTER 75-04-06

75-04-06-01. Principles of eligibility.

1. The process of determining an individual's eligibility to receive intellectual disabilities - developmental disabilities program management services involves the recognition of several criteria and an understanding of expected outcomes as each criterion is applied. Professional judgment is applied to determine the applicability of the provision of intellectual disabilities - developmental disability program management services.

2. The following criteria must be used as the frame of reference for a team of at least three professionals ~~in the human service center~~, led by the developmental disabilities program administrator or the administrator's designee, for the determination of an individual's eligibility for intellectual disabilities - developmental disabilities program management services.

History: Effective July 1, 1991; amended effective January 1, 1997; July 1, 2012; April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-18, 50-06-16
Law Implemented: NDCC 25-01.2-02, 50-06-05.3

75-04-06-05. Service availability.

The extent to which appropriate services other than program management services are available to an eligible ~~clients~~individual is dependent upon legislative appropriations and resources. Eligibility for program management services does not create an entitlement to services other than program management services if resources are not available.

History: Effective August 1, 1997; amended effective April 1, 2018; January 1, 2025.
General Authority: NDCC 25-01.2-18, 50-06-16
Law Implemented: NDCC 25-01.2-02

75-04-06-07. Denial, reduction, and termination of services by the department - Appeal.

1. ~~A client~~An eligible individual or ~~client-authorized~~authorized representative may appeal a denial, reduction, or termination of services under this chapter. An appeal under this section must be made within thirty days of the date of the notice of the denial, reduction, or termination. ~~The client~~An eligible individual or ~~client-authorized~~authorized representative shall submit the request for an appeal and hearing under North Dakota Century Code chapter 28-32 and chapter 75-01-03 to the appeals supervisor for the department.

2. ~~A client~~An eligible individual or ~~client-authorized~~authorized representative may request an informal review within ten days of the date of the notice. A request for an informal review does not change the time within which the request for an appeal hearing must be filed.

History: Effective April 1, 2018; amended effective January 1, 2025.
General Authority: NDCC 25-01.2-18
Law Implemented: NDCC 25-01.2-02, 25-01.2-18

75-04-06-08. Developmental disabilities program management caseload and responsibilities.

1. The average caseload of the developmental disabilities program managers must be no more than sixty ~~clients~~eligible individuals per program manager.

2. The developmental disabilities program manager shall complete the following:

   a. Review ~~client~~individual rights with eligible ~~clients~~individuals and applicants.

   b. Conduct service coordination and monitoring for eligible ~~clients~~individuals.

c. Authorize appropriate services for eligible ~~clients~~individuals.

History: Effective April 1, 2020; amended effective January 1, 2025.
General Authority: NDCC 25-01.2-18
Law Implemented: NDCC 25-01.2-02, 25-01.2-18

TITLE 96

BOARD OF CLINICAL LABORATORY PRACTICE

JANUARY 2025

CHAPTER 96-02-02
LICENSURE

96-02-02-02. Requirements for specific licenses.

1. Medical technologist (clinical laboratory scientist) must have earned a bachelor's degree in a science-related discipline, completed the academic requirements of a structured clinical educational program recognized by the board, and passed a national certifying examination approved by the board.

2. A clinical laboratory specialist must have a bachelor's or higher degree with a major in one of the chemical, physical, or biological sciences and may only perform functions directly related to the person's particular specialty.

   A clinical laboratory specialist must pass a national certifying examination approved by the board in a specialty area. A license issued to a clinical laboratory specialist will designate the area of specialty.

3. A categorical license issued to a clinical laboratory specialist must designate the area of specialty. Specialty areas include:

   a. Blood bank or immunohematology~~.~~;

   b. Chemistry~~.~~;

   c. Hematology~~.~~;

   d. Microbiology; and

   e. Molecular biology.

4. A clinical laboratory technician or medical laboratory technician must successfully complete the academic requirements of a structured clinical educational program recognized by the board and must pass a national certifying examination approved by the board.

5. The board may issue a provisional permit to a person who has applied for licensure and is eligible to take a board-recognized national certifying examination.

   The provisional permit may not exceed one year. At the board's discretion, the permit may be renewed a maximum of two consecutive times for a period of one year each.

History: Effective June 1, 1991; amended effective May 1, 2002; July 1, 2017; April 1, 2020; January 1, 2025.
General Authority: NDCC 43-48-04
Law Implemented: NDCC 43-48-04, 43-48-07, 43-48-08, 43-48-09, 43-48-11

96-02-02-07. Scope of practice.

The profession of clinical laboratory encompasses the design, performance, evaluation, reporting, interpreting, and clinical correlation of clinical laboratory testing, and the management of all aspects of these services. Clinical laboratory tests are utilized for the purpose of diagnosis, treatment, monitoring, and prevention of disease. The profession includes generalists as well as individuals qualified in several specialized areas of expertise including blood bank, chemistry, hematology, microbiology, and molecular biology. Integral features of each of the specialties include diagnostic testing, research, consultation, education, information management, marketing, and administration.

History: Effective January 1, 2025.
General Authority: NDCC 43-48-04
Law Implemented: NDCC 43-48-04

CHAPTER 96-02-09
DISCIPLINE

Section
96-02-09-01 Disciplinary Procedure
96-02-09-02 Unprofessional Conduct
96-02-09-03 Code of Ethics

96-02-09-01. Disciplinary procedure.

1. Upon filing of a written and signed complaint alleging a licensee engaged in conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-48-15, the board shall notify the licensee of the complaint and require a written response from the licensee. The board may initiate a complaint on its own motion upon learning of conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-48-15, and shall notify the licensee of the complaint and require a written response from the licensee.

2. The board may ~~direct~~designate a board member to investigate the complaint. After completing the investigation, the board member will recommend whether the board should take disciplinary action against the licensee.

3. The board shall determine if there is a reasonable basis to believe the licensee engaged in conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-48-15. If the board determines there is not a reasonable basis to believe a violation occurred, the board will notify the complainant and the licensee. If the board determines there is a reasonable basis to believe a violation occurred, the board will proceed with a disciplinary action in accordance with North Dakota Century Code chapter 28-32.

4. The board may, at any time, offer or accept a proposal for informal resolution of the complaint or disciplinary action.

History: Effective May 1, 2002; amended effective July 1, 2017; January 1, 2025.
General Authority: NDCC 43-48-04
Law Implemented: NDCC 43-48-15

96-02-09-02. Unprofessional conduct.

Unprofessional conduct includes:

1. Scientific and professional misconduct including falsification, fabrication, plagiarism, concealment, inappropriate omission of information, and making false or deceptive statements.

2. Dishonest or illegal compensation for services rendered.

3. Failure to comply with all laws regarding confidentiality and security of patient information and test results.

4. Failure to protect the safety and welfare of patients, employees, coworkers, the public, and the environment as it relates to clinical laboratory practice.

5. Failure to report a violation of clinical laboratory practice law or rules to the board.

6. Suspension or revocation of, or disciplinary action against, an individual's license in another jurisdiction.

7. Failure to meet minimum standards of clinical laboratory practice.

8. Practice beyond the scope of practice allowed by an individual's current license.

9. ~~Personal problems, legal problems, substance abuse, or mental health difficulties that have interfered with a licensee's professional judgment or practice~~Conviction of an offense determined by the board to have a direct bearing upon that individual's ability to practice clinical laboratory science or is failure to sufficiently rehabilitate as determined by the board in accordance with North Dakota Century Code section 12.1-33-02.1.

10. Addiction to the habitual use of alcoholic beverages, narcotics, stimulants, or other addictive substances which impairs the licensee's ability to practice clinical laboratory science.

History: Effective January 1, 2010; amended effective January 1, 2025.
General Authority: NDCC 43-48-04
Law Implemented: NDCC 43-48-15

96-02-09-03. Code of ethics.

A licensee shall comply with the following code of ethics in the licensee's professional practice and conduct. The code reflects the ethical principles of the clinical laboratory profession and outlines the obligations of licensees to self, client, society, and the profession and sets forth mandatory standards of conduct for all licensees.

1. A licensee's primary duty is to the patient, placing the welfare of the patient above the licensee's own needs and desires and ensuring each patient receives the highest quality of care according to current standards of practice. High quality laboratory services are safe, effective, efficient, timely, equitable, and patient centered. A licensee shall work with all patients and all patient samples without regard to disease state, ethnicity, race, religion, or sexual orientation. A licensee shall prevent and avoid conflicts of interest that undermine the best interests of patients.

2. A licensee is accountable for the quality and integrity of the laboratory services the licensee provides. This obligation includes maintaining the highest level of individual competence as patient needs change, yet practicing within the limits of the licensee's level of practice. A licensee shall exercise sound judgment in all aspects of laboratory services they provide. Furthermore, a licensee shall safeguard patients from others' incompetent or illegal practice through identification and appropriate reporting of instances where the integrity and high quality of laboratory services have been breached.

3. A licensee shall maintain strict confidentiality of patient information and test results. A licensee shall safeguard the dignity and privacy of patients and provide accurate information to patients and other health care professionals. A licensee shall respect patients' rights to make decisions regarding the patient's own medical care.

4. A licensee shall uphold the dignity and respect of the profession and maintain a reputation of honesty, integrity, competence, and reliability. A licensee shall contribute to the advancement of the profession by improving and disseminating the body of knowledge, adopting scientific advances that benefit the patient, maintaining high standards of practice and education, and seeking fair socioeconomic working conditions for members of the profession.

5. A licensee shall establish cooperative, honest, and respectful working relationships within the clinical laboratory and with all members of the health care team with the primary objective of ensuring a high standard of care for the patients they serve.

6. As a practitioner of an autonomous profession, a licensee has the responsibility to contribute from the licensee's sphere of professional competence to the general well-being of society. A

licensee shall serve as a patient advocate, applying the licensee's expertise to improve patient health care outcomes by eliminating barriers to access to laboratory services and promoting equitable distribution of health care resources.

7. A licensee shall comply with all relevant laws and regulations pertaining to the practice of clinical laboratory science.

History: Effective January 1, 2025.
General Authority: NDCC 43-48-04
Law Implemented: NDCC 43-48-04

TITLE 115

NORTH DAKOTA ETHICS COMMISSION

JANUARY 2025

CHAPTER 115-02-01
COMPLAINT PROCESS

115-02-01-03. Submission of a complaint.

1. Any individual may submit information to the North Dakota ethics commission alleging a violation of article XIV of the Constitution of North Dakota, related North Dakota laws, and rules or regulations adopted by the commission.

2. A complaint will be denied if there is not sufficient information to create a reasonable belief that a violation within the jurisdiction of the commission has occurred. Mere speculation is insufficient to proceed with a complaint.

3. The commission maintains a confidential whistleblower hotline for the submission of relevant information. Complaints and relevant information may be submitted to the commission through the hotline or through any other medium, i.e. written, oral, or electronic.

4. No specific format is required for complaints and relevant information.

5. A complaint is considered filed with the commission upon receipt of the complaint by the office of the commission.

6. To enable the commission to more effectively evaluate and investigate a complaint, it is strongly recommended that the following information be provided:

   a. Name and contact information for the individual submitting the complaint or information must be provided;

b. Clearly identify each person, entity, committee, or group that is alleged to have committed a violation;

c. Clearly recite the facts that show specific violations under the commission's jurisdiction. Citations to the constitution, North Dakota law, or rules or regulations are not required but helpful. The individual submitting the complaint or information should be as specific as possible as it relates to dates, times, and individuals involved;

d. Differentiate between statements based on the individual's personal knowledge and those based on information and belief. Statements not based on the individual's personal knowledge should identify the source of the information, if known; and

e. Include any and all documentation supporting the allegations, if available.

7. The executive director shall conduct an initial review of any complaint or information received by the commission.

a. If the executive director determines that the matter falls within the jurisdiction of the commission and contains sufficient information to believe a violation has occurred, the executive director shall prepare a written summary of the complaint along with a notice to the respondent.

b. The executive director may summarily dismiss the complaint if the alleged violation:

(1) Does not fall within the commission's jurisdiction;

(2) Is insufficient to identify a possible violation; or

(3) Fails to comply with the rules adopted by the commission.

c. The complainant may appeal the decision to summarily dismiss a complaint to the commission by appealing in writing within ~~twenty calendar~~thirty days of the notice by the executive director.

(1) A complainant may submit materials in writing in support of the complainant's appeal of the summary dismissal.

(2) The commission shall provide the respondent the materials the complainant submits in support of the appeal. The respondent may respond in writing within thirty days.

(3) The complainant shall receive any response submitted by the respondent.

(4) If the documents on appeal from a summary dismissal relate to the grounds for the summary dismissal, the commission shall consider the documents.

(5) The complainant and respondent may not orally address the commission regarding the appeal from summary dismissal.

d. If the executive director determines that the matter falls within the jurisdiction of another agency, the executive director may refer the complainant to the relevant agency.

e. If the matter contains allegations of criminal conduct, the matter shall be coordinated with the appropriate law enforcement agency with jurisdiction over the offense. If the law enforcement agency agrees to accept a referral for possible criminal prosecution the commission will take no further action on the complaint until resolved. If the law enforcement agency declines a referral for prosecution the commission will proceed with the complaint process. Absent rejection by the referring entity, the executive director shall

inform the complainant and respondent as soon as reasonably possible by registered mail of a referral and the nature of the referred allegations.

f. If the commission receives an anonymous complaint that contains documentary or real evidence of possible criminal conduct, the commission may refer the matter to the appropriate law enforcement agency as provided under North Dakota Century Code section 54-66-08, and may not otherwise divulge the documentary or real evidence.

8. The executive director shall report all summarily dismissed or referred complaints and report to the commission at the commission's next regular meeting. The commission shall consider any appeals of a summarily dismissed complaint and vote to either reopen or deny the appeal. The commission shall ratify or direct reopening the actions of the executive director.

History: Effective June 17, 2020; amended effective July 28, 2021; June 23, 2022; April 1, 2024; January 1, 2025.

115-02-01-04. Notice to respondents.

1. The respondent over whom the commission has jurisdiction shall be informed of any complaint that the commission receives. The executive director shall prepare the notice which shall include the identity of the complainant who submitted the complaint unless the complaint or information was submitted confidentially. The ethics commission may not release a confidential complainant's name and address to the accused individual without the authorization of the complainant. If the confidential complainant is a witness to an alleged offense and does not authorize release of the complainant's name and address to the accused individual, the statement of the complainant may not be used as evidence of a violation. The notice shall include the written complaint or written summary of the complaint. The respondent will receive a copy of all evidence and witness statements included with the complaint.

2. Notice to the respondent shall be provided as soon as reasonably possible but no later than thirty ~~calendar~~ days after the complaint was received by the commission.

3. The respondent may respond to the complaint within thirty ~~calendar~~ days of notice of the complaint or after the commission requests a response. In the executive director's discretion, the respondent may be granted an extension of time to provide any written response to the complaint or summary of the complaint.

4. If a complaint is summarily dismissed prior to the executive director notifying the respondent of a complaint, notice to the respondent shall include notice of the summary dismissal.

History: Effective June 17, 2020; amended effective July 28, 2021; April 1, 2024; January 1, 2025.

115-02-01-08. Commission review and action on complaint.

1. The executive director's investigation report shall be provided to the respondent at least ten ~~calendar~~ days prior to any special or regular commission meeting at which the report and recommendation will be considered by the commission in executive session. The respondent may submit to the commission a written response to the executive director's report and recommendation no later than five days prior to the special or regular commission meeting in which the commission will take action on the matter. Any written response must be submitted to the executive director at the commission's office and not directly to the commissioners. The executive director will provide copies to the commission. The commission chair may grant an extension of any time periods required by these rules.

2. In lieu of a written response to the executive director's investigation report and recommendation, respondent may provide an in-person response at the special or regular

meeting of the commission at which the commission will take action on the complaint. At the commission meeting, at least a quorum of commissioners must be present. The commissioner chairing the meeting shall determine the order of presentations and the time allotted to the respondent. The commissioner chairing the meeting shall also determine any other procedural matters necessary for an orderly conduct of the commission meeting. The respondent shall meet separately with the commission in closed executive sessions to present their in-person responses to the executive director's report and recommendation. The respondent may be accompanied by legal counsel when appearing before the commission to provide an in-person response to the executive director's report and recommendation.

3. Upon the completion of any in-person response to the commission, the commission shall deliberate on the complaint in executive session. The commission shall determine whether a violation of article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying occurred. The commission shall determine what penalty, if any, authorized under North Dakota law will be imposed upon the respondent. In lieu of a penalty authorized under North Dakota law, the commission may refer the matter to another agency with enforcement authority over the violation.

4. The respondent shall be informed of the commission's decision. The complainant and others shall be provided information regarding the commission's decision only as permitted under applicable North Dakota law.

History: Effective June 17, 2020; amended effective January 1, 2025.

115-02-01-09. Appeal to district court.

The respondent may appeal a finding of the commission to the district court of the county where the respondent resides within thirty days after notice of the finding.

History: Effective June 17, 2020; amended effective January 1, 2025.

115-02-01-11. Computing time.

1. If the period is stated in days or a longer unit of time:

   a. Exclude the day of the event that triggers the period;

   b. Count every day, including intermediate Saturdays, Sundays, and legal holidays; and

   c. Include the last day of the period. But if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

2. As used in this article:

   a. "Last day" means, unless a different time is set by statute or the commission's rules, the last day until midnight in the central time zone.

   b. "Legal holiday" means a day set aside as a holiday under North Dakota Century Code sections 1-03-01, 1-03-02, and 1-03-02.1.

   c. "Next day" means the day determined by continuing to count forward if the period is measured after an event and backward if measured before an event.

History: Effective January 1, 2025.