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TITLE 2

Abstracter's Board of Examiners

MAY 1, 1995

STAFF COMMENT: Article 2-02 contains all new material but is not underscored so as to improve readability.

ARTICLE 2-02
CONTINUING EDUCATION

Chapter
2-02-01 Continuing Education

CHAPTER 2-02-01
CONTINUING EDUCATION

Section	
2-02-01-01	Continuing Education Requirements - Reporting Periods
2-02-01-02	Reporting
2-02-01-03	Continuing Education Hours Approval Procedure
2-02-01-04	Computation of Hours
2-02-01-05	Waiver of Continuing Education Requirements

2-02-01-01. Continuing education requirements - Reporting periods. Beginning on July 1, 1995, each abstractor who is a holder of a certificate of registration under North Dakota Century Code chapter 43-01 shall complete not less than eighteen hours of approved continuing

education during each three-year period that the abstracter is a holder of a certificate of registration in this state. Continuing education hours will not accumulate beyond each three-year period.

The reporting period for abstracters holding a certificate of registration in the state prior to July 1, 1995, begins on July 1, 1995, and will conclude on June 30, 1998. Subsequent reporting periods will conclude on June thirtieth every three years thereafter. The reporting periods for all other abstracters commence on July first succeeding the date the abstracter initially secures a certificate of registration to practice in this state and concludes on June thirtieth three years later. Subsequent reporting periods will conclude on June thirtieth every three years thereafter. Credits for continuing education hours acquired at the North Dakota land title association school after January 1, 1995, and prior to July 1, 1995, will be recognized.

History: Effective May 1, 1995.

General Authority: NDCC 43-01-10(4)

Law Implemented: NDCC 43-01-10(4)

2-02-01-02. Reporting. Each abstracter shall report to the secretary of the board all schools, seminars, and training sessions attended and all correspondence courses taken relating to the title industry at the time the abstracter applies for renewal of the abstracter's certificate of registration. The report must include the date, where the sessions were held, and the hours attended. Failure to complete the required hours results in nonrenewal of the certificate of registration at the discretion of the board.

History: Effective May 1, 1995.

General Authority: NDCC 43-01-10(4)

Law Implemented: NDCC 43-01-10(4)

2-02-01-03. Continuing education hours approval procedure. The board shall determine what constitutes an approved course or event. It may issue and publish advance guidelines or evaluate courses and supporting information as submitted for approval. It may approve courses or events after they have been presented or for fewer credit hours than requested.

Any abstracter desiring continuing education credits for attendance at a course, session, or other event must request board approval of the event, with the exception that credit will be given for attending all North Dakota land title association and American land title association events, including conventions, seminars, or midwinter conventions. Seminars sponsored by the North Dakota bar association and North Dakota board of realtors may be granted points by the board upon examination of the material being offered. A minimum of four hours of credit must be earned by attendance at North Dakota land title association-sponsored schools, seminars, or conventions.

History: Effective May 1, 1995.
General Authority: NDCC 43-01-10(4)
Law Implemented: NDCC 43-01-10(4)

2-02-01-04. Computation of hours. Credit hours will be awarded on the basis of one hour for each sixty minutes actually spent in the attendance at a course or event approved by the board. Credit hours will be rounded to the nearest quarter hour.

History: Effective May 1, 1995.
General Authority: NDCC 43-01-10(4)
Law Implemented: NDCC 43-01-10(4)

2-02-01-05. Waiver of continuing education requirements. Waiver of continuing education requirements will be granted to a holder of a certificate of registration not actively engaged in the title business. If the abstracter becomes active again, the abstracter shall comply with the educational requirements established by this chapter. The reporting period for the abstracter commences on July first succeeding the date the abstracter becomes reactive and concludes on June thirtieth three years later. Subsequent reporting periods will conclude on June thirtieth every three years thereafter.

History: Effective May 1, 1995.
General Authority: NDCC 43-01-10(4)
Law Implemented: NDCC 43-01-10(4)

TITLE 3
Accountancy, Board of

MARCH 1995

CHAPTER 3-01-02

3-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Accountant" means either a certified public accountant(CPA) or a licensed public accountant ~~certified--to--practice--under North-Dakota-Century-Code-chapter-43-02-1~~ (LPA).
2. "Accounting concentration" means:
 - a. Through December 31, 1999, thirty semester credits or equivalent of accounting and business law education; and
 - b. After December 31, 1999, twenty-four semester credits or equivalent of accounting education, plus twenty-four credits of other business courses.
3. "AICPA" means the American institute of certified public accountants.
- 3.---~~"Beard"--means-the-state-board-of-public-accountancy-~~
4. "Bookkeeping" means the maintaining of financial records and preparation of tax returns. Bookkeeping does not include the preparation of any financial statement or similar such documents on which language similar to that utilized by certified public accountants or licensed public accountants is placed including compilation and review language.

5. "Client" means the person, persons, or entity that retains an accountant or an accountant's firm, engaged in public accounting, for the performance of professional services.
6. ~~"Council" means the council of the American institute of certified public accountants.~~
7. 6. "Enterprise" means any person, persons, or entity, whether or not organized for profit, for which an accountant provides services.
8. 7. "Financial statements" means statements, and footnotes related thereto, that purport to show financial position that relates to a point in time or changes in financial position that relate to a period of time, and statements that use a cash or other ~~incomplete~~ basis of accounting. Balance sheets, statements of income, statements of retained earnings, statements of changes in financial position, and statements of changes in owners' equity are examples of financial statements. Incidental financial data included in management advisory services, reports to support recommendations to a client, and tax returns and supporting schedules do not, for these purposes, constitute financial statements. The statement, affidavit, or signature of preparers required on tax returns neither constitutes an opinion on financial statements nor requires a disclaimer of such opinion.
9. ~~"Firm" means a proprietorship, partnership, corporation, or professional corporation or association engaged in the practice of public accounting, including individual partners or shareholders thereof.~~
10. ~~"Institute" means the American institute of certified public accountants.~~
11. ~~"Licensee" means a certified public accountant or a licensed public accountant licensed by this board.~~
12. ~~"NSPA" means the national society of public accountants.~~
13. 8. "Practice of public accounting" means any of the following:
 - a. ~~Holding oneself out to the public as a provider of public accounting services.~~
 - b. ~~Performing or giving the appearance of performing any form of reporting or attest functions of the type generally rendered by certified public accountants or licensed public accountants.~~
 - c. ~~The rendering of any report or intimating that a report is being given with respect to any financial statements whether audited, reviewed, or compiled.~~

d. --Using-a-reference-to-the-fact-that-financial-statements-or other-documents-were-prepared-in-accordance-with-generally accepted---accounting---principals---or---similar---language indicating-that-the-standards-of-the-accounting-profession have-been-followed.

Practice--of--public--accounting does not include mere bookkeeping-as--defined--by--this--section;--nor--does--it include reviews conducted under the American-institute-of certified-public-accountants AICPA or national society of public accountants peer review programs or the American institute-of-certified-public-accountants AICPA's quality review program or the board's positive review program, or any other similar program approved by this board.

The terms "public practice", "practice", and "practice public accounting" shall be synonymous with the term "practice of public accounting".

The--terms--shall--not--be--limited--by-a-more-restrictive definition-that-might-be--found--in--the--accountancy--law under-which-a-licensee-practices.

14. 9. "Professional services" means one or more types of services performed in the practice of public accounting.

History: Amended effective January 1, 1987; July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6){d} 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6){e} 43-02.2-03

CHAPTER 3-02-01

3-02-01-01. Examinations - Location. The board shall administer all examinations required for licensure in accounting in North Dakota. The written examination administered to applicants for certification as certified public accountants shall be the uniform certified public accountant examination. All successful examination candidates will be required to complete a an approved self-study ethics course based-on-the code-of-ethics-promulgated-by-the-board before they will be issued a certificate ~~to-qualify-for-licensure-in-accounting-in-North-Dakota~~. The written examination shall be given twice a year ~~in-Grand-Forks,-North Dakota~~ at a site or sites selected by the board, on dates specified by the ~~institute~~ board.

History: Amended effective July 1, 1985; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-03(2) 43-02.2-04

CHAPTER 3-02-02

3-02-02-01. Examination fees. The following examination fees have been established by the board for the certified public accountants examination:

1. One hundred ~~twenty-five~~ forty dollars at the time an applicant files an application to take the examination.
2. ~~Sixty-dollars-for-each-reexamination-in-accounting-practice.~~
3. ~~---Thirty~~ Forty dollars per subject for each reexamination ~~in-the~~ other-subjects provided the applicant has already passed ~~accounting-practice-or~~ two other parts of the examination.

History: Amended effective July 1, 1981; July 1, 1985; July 1, 1987; July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02:1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02:1-03(3) 43-02.2-04

3-02-02-02. Fee for certificate without examination. The fee for the issuance of a certificate to a nonresident when the board has waived the examination shall be one hundred forty dollars. The fee for a resident to transfer examination grades shall be one hundred forty dollars.

History: Amended effective March 1, 1995.

General Authority: NDCC 43-02:1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02:1-03(4)(e) 43-02.2-04

3-02-02-04. ~~Fee-for-annual--license~~ Certificate and license annual renewal fees - Annual permit fees. The annual renewal fee for every ~~person--legally--certified--to--practice--as--a--certified-public~~ accountant CPA and every ~~person--legally--licensed--to--practice--as--a~~ licensed--public--accountant LPA within this state, whether in actual practice or not, shall be forty dollars. ~~Each--licensee--that~~ A CPA or LPA who fails to register or pay the annual license renewal fee by July thirty-first of the board's current fiscal year shall pay a late filing fee of twenty dollars in addition to the regular annual license fee.

The annual fee for issuance or renewal of an individual permit to practice public accounting shall be ten dollars. A CPA or LPA who fails to register or pay the annual renewal fee by July thirty-first of the board's current fiscal year shall pay a late filing fee of twenty dollars in addition to the regular annual permit fee.

History: Amended effective August 1, 1981; October 1, 1982; July 1, 1987; June 1, 1988; July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02:1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-06 43-02.2-03, 43-02.2-04, 43-02.2-05, 43-02.2-07

3-02-02-04.1. Fee for annual registration---Sole-practitioner, partnership,--or-professional-corporation firm permit to practice. The annual registration fee for every sole-practitioner,--partnership,--or professional-corporation-required-to--register--under--chapter--3-02-03, whether--in-actual-practice-or-not, firm engaged in public accounting is fifty dollars. A late filing fee of twenty dollars shall also be paid by a firm that fails to register or pay the annual firm permit fee by July thirty-first of the board's current fiscal year. A firm commencing the practice of public accounting shall register and pay a firm permit fee before commencing such practice. Failure to register and pay the appropriate firm permit fees may result in the board proceeding to revoke, suspend, or refuse to renew the certificates, licenses, and permits of each of the firm's partners, officers, directors, shareholders, or owners.

History: Effective June 1, 1988; amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 43-02.2-06, 43-02.2-07

3-02-02-05. Inactive or retired accountants.

1. Any certified--public--accountant CPA or licensed--public accountant LPA who is no longer employed because of disability or retirement may notify the board of that status. In that event a certificate to practice as a certified---public accountant CPA or license to practice as a licensed-public accountant LPA shall be designated "inactive" and shall remain effective as such without payment of the annual registration fee fees required by North--Dakota--Century--Code--section 42-02.1-06--and this chapter. Such-an An inactive certificate holder or licenseholder may not practice as-a-certified-public accountant--or--a-licensed-public-accountant in this state but may continue to use the title "certified public accountant" or "licensed public accountant" or the abbreviation "CPA" or "LPA", as applicable. Such-an An inactive certificate holder or licenseholder must adhere to the code of professional ethics set forth in article 3-04, but is not required to comply with continuing professional education regulations set forth in article 3-03.
2. An inactive certificate holder or licenseholder may apply for reinstatement to practice as-a-certified-public-accountant--or licensed--public-accountant at any time and will be reinstated to "active" practice as a certified-public-accountant CPA or licensed---public---accountant LPA by paying the annual registration fee required for the year of application, and by

satisfying the board that all current requirements for continuing education have been met.

History: Effective October 1, 1982; amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.2-06 43-02.2-03

3-02-02-06. Suspension---or---revocation--of--certified--public accountant's certificate--or--licensed--public--accountant's--license--for nonpayment--of--registration--fee Change of address notification.

1.--The--holder--of--a--certificate--to--practice--as--a--certified--public accountant--may--have--that--certificate--suspended--or--revoked--for nonpayment--of--a--registration--fee.--The--holder--of--a--license--to practice--as--a--licensed--public--accountant--may--have--that--license suspended--or--revoked--for--nonpayment--of--the--registration--fee. In--the--event--the--board--notifies--a--holder--of--a--certificate--to practice--as--a--certified--public--accountant--or--license--to practice--as--a--licensed--public--accountant--that--said--fees--are--in default,--and--payment--is--not--received--by--the--board--for--a--period of--sixty--days--thereafter,--the--board--shall--proceed--pursuant--to North--Dakota--Century--Code--section--43-02.1-05--to--suspend--or revoke--the--certified--public--accountant's--certificate--or licensed--public--accountant's--license.

2.--Licensees CPAs, LPAs, and permitholders are required to notify the board of address changes within thirty days of such change. Should a certificate holder or licenseholder fail to inform the board of a change of address, the board shall make reasonable efforts to obtain the address, but in the event that the address is not found by sixty days from the time when a certified public accountant's or licensed public accountant's registration fee is due, the board shall proceed to suspend or revoke the certified public accountant's certificate or licensed public accountant's license pursuant to North Dakota Century Code section 43-02.1-05.

History: Effective October 1, 1982; amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-06 43-02.2-04, 43-02.2-05, 43-02.2-06, 43-02.2-07, 43-02.2-09

3-02-02-07. Return of suspended or, revoked certified public accountant's or nonrenewed CPA certificate or licensed public accountant's LPA license. Should a certificate holder's certificate be suspended or revoked or not renewed, or a licenseholder's license be suspended or revoked or not renewed, the certificate holder or licenseholder shall return the certificate or license to the North Dakota state board of public accountancy state office within thirty days

after receipt of notice of said suspension ~~or~~, revocation or nonrenewal. The certificate or license returned under this section must be the original document issued by the board.

A licensee CPA or LPA who voluntarily relinquishes the certificate or license must return the original certificate or license to the board within thirty days after notifying the board of the intent to relinquish.

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-05 43-02.2-03, 43-02.2-09

3-02-02-08. Reinstatement fee. ~~Should a certificate holder's A~~ CPA, LPA, or permitholder whose certificate ~~be suspended or revoked, or~~ a ~~licenseholder's~~ license be, or permit is suspended or revoked, the ~~certificate holder or licenseholder~~ is required to pay a reinstatement fee of one hundred dollars in addition to the annual fee, as provided in ~~section sections~~ 3-02-02-04, ~~all annual registration fees that would have been payable had suspension or revocation not occurred. The~~ certificate holder or licenseholder and 3-02-02-04.1, and must also satisfy the state board that all current requirements to hold a certificate or license or permit in good standing have been met. Application for reinstatement shall be in writing, showing good cause for the reinstatement; such application may be submitted at any time and will be considered at the board's next regular meeting. If the board rules against the applicant, the applicant shall have the right to request a hearing on the application, and such hearing will be held within ninety days from receipt of such request at a time and location set by the board.

A licensee CPA or LPA who voluntarily relinquishes the certificate or license may be subsequently reinstated upon payment of the current annual registration fee. ~~The licensee must also satisfy and satisfying~~ the board that all current requirements to hold a certificate or license in good standing have been met.

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-05(2) 43-02.2-03, 43-02.2-11

**CHAPTER 3-02-03
REGISTRATION OF SOLE PRACTITIONERS, PARTNERSHIPS,
AND PROFESSIONAL CORPORATIONS**

[Repealed effective March 1, 1995]

CHAPTER 3-03-01

3-03-01-01. Hours or days required. Continuing professional education ~~reporting dates must be on~~ reports are due from all CPAs and LPAs by December thirty-first of each year and the hours submitted must be for that previous twelve months, January first through December thirty-first. At the end of each continuing professional education reporting years year, each licensee CPA and LPA required to do so by section 3-03-03-01 must have completed one hundred twenty hours of acceptable continuing professional education in the immediate preceding three reporting periods and have completed a minimum of twenty-four credit hours each year. At the end of the first full calendar year following receipt of an original certificate, an individual permit holder must meet the twenty-four-hour per year minimum, and must meet the one-hundred-twenty-hour over three-year minimum at the end of the third full calendar year.

History: Amended effective August 1, 1984; October 1, 1984; July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 43-02.2-05

3-03-01-02. How credits determined.

1. Continuing professional education programs are measured in full-hour increments only, with one hour of credit awarded for each full fifty minutes of instruction.
2. Only class hours or self-study equivalents, and not preparation hours, are to be counted.
3. Service as a lecturer or discussion leader will receive credit to the extent that it contributes to the individual's professional competence, to a total credit limit equal to twice the program's credit allowance for enrolled participants. Credit for lecturer or discussion leader service is further limited to not more than half the total of all hours claimed for any one reporting year. Repetitious presentations are not to be counted.
4. Courses taken for university or college credit may receive continuing professional education credit at the rate of fifteen hours per semester hour of institutional credit, or ten hours per quarter hour of institutional credit, subject to a total limit of not more than half the total of all hours claimed for any one reporting year.
5. A CPA or LPA teaching a specific university or college level accounting course for the first time may be granted credit for preparation and instruction to the extent that it contributes

to the individual's professional competence, up to a limit of twice the continuing professional education course credit available for CPAs or LPAs taking the course. No credit is available for repetitious teaching of the course or for subsequent teaching of courses with similar content. Total credit for these activities is limited to not more than half the total of all hours claimed for any one reporting year.

6. Total credit for self-study program hours is limited to not more than half the total of all hours claimed for any one reporting year.

History: Amended effective July 1, 1987; July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 43-02.2-05

3-03-01-03. Effective date. The continuing professional education requirements under North Dakota Century Code--chapter--43-02.1 first took effect July 1, 1978,--or--three-years-after-the-chapter's effective-date--With-respect-to-any-individual,--at-the-end-of-the-first full--continuing--professional--education-reporting-period-following-the individual's-initial-annual-registration-with-the-board-of--accountancy, the--individual--needs--to-meet-the-twenty-four-hour-minimum-requirement and-will--need--to--meet--the--one-hundred-twenty-hour--over--three-year requirement--at--the--end--of--the--third--full--continuing-professional education-reporting.

History: Amended effective August 1, 1984; October 1, 1984; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 43-02.2-05

3-03-01-04. Exceptions. The board has-the-authority-to may make exceptions to the continuing professional education requirements for reasons including ,--but--not--limited--to, health, military service, foreign residency, and retirement.

History: Amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 43-02.2-05

CHAPTER 3-03-02

3-03-02-01. General determination. The overriding consideration in determining if a specific program qualifies as a continuing professional education program ~~under the requirements of North Dakota Century Code chapter 43-02.1~~ is if it is a formal program of learning which contributes directly to a licensee's professional competence and ~~further meets.~~ The program must also meet the specifications delineated below.

History: Amended effective July 1, 1987; March 1, 1995.

General Authority: NDCC ~~43-02.1-02(6)(d)~~ 43-02.2-03

Law Implemented: NDCC ~~43-02.1-02(6)(d)~~ 43-02.2-03, 43-02.2-05

3-03-02-02. Formal programs.

1. Formal programs requiring class attendance may qualify under ~~North Dakota Century Code chapter 43-02.1~~ only if:
 - a. An outline is prepared in advance and is preserved;_i
 - b. The program is at least one continuing professional education credit hour in length;_i
 - c. The program is conducted by a qualified instructor;_i and
 - d. A record of registration or attendance is maintained.
2. Formal programs not requiring class attendance, subsequently referred to herein as self-study programs, may qualify only if:
 - a. A program syllabus is prepared in advance and is preserved;_i
 - b. The program is at least one continuing professional education credit hour in length;_i
 - c. Program materials are prepared by qualified authors;_i
 - d. The program is offered and administered by an appropriate sponsor;_i and
 - e. Records of registration and documented completion are maintained.
3. Programs offered by organizations registered in the national association of state boards of accountancy CPE registry qualify for continuing professional education.

History: Amended effective July 1, 1987; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 43-02.2-05

3-03-02-03. Programs deemed approved. Provided--the-criteria listed-in-sections-3-03-02-01-and-3-03-02-02-are-met,-the-following--are deemed-to-qualify-for-continuing-professional-education:

1.--Professional-development-programs-of-the-American-institute-of certified-public-accountants,-the-national-society--of--public accountants,-the-national--association--of--state--boards-of accountancy,-and--state--certified--public---accountant---and licensed-public-accountant-societies.

2.--Technical--sessions--at--meetings-of-the-American-institute-of certified-public-accountants,-the-national-society--of--public accountants,-the-national--association--of--state--boards-of accountancy,-state-societies,-and-local-chapters.

3.--University-or-college-courses.

a.--Courses-taken-for-university-or-college-credit-may-receive continuing-professional-education-credit-at--the--rate--of fifteen--hours--per-semester-hour-of-institutional-credit, or-ten-hours-per-quarter--hour--of--institutional--credit, subject--to--a-total-limit-of-not-more-than-half-the-total of-all-hours-claimed-for-any-one-reporting-year.

b.--Licensees--teaching-a-specific-university-or-college-level accounting-course-for-the-first-time-may-be-granted-credit for--preparation--and--instruction--to--the-extent-that-it contributes-to-the-individual's--professional--competence, up--to--a--limit--of--twice--the--continuing--professional education-course-credit-available-for-licensees-taking-the course.---No--credit-is-available-for-repetitious-teaching of-the-course-or-for-subsequent-teaching-of--courses--with similar--content.---Total--credit--for-these-activities-is limited-to-not-more-than--half--the--total--of--all--hours claimed-for-any-one-reporting-year.

c.--Noncredit-short-courses.

4.--Formal,-organized-in-firm-educational-programs.

5.--Programs--in--other--organizations--(accounting,-professional, industrial,-etc-). Repealed effective March 1, 1995.

History: Amended-effective-July-1,-1987;-July-1,-1991.

General Authority: NDCC-43-02.1-02(6)(d)

Law Implemented: NDCC-43-02.1-02(6)(d)

3-03-02-04. Self-study programs. ~~Provided the criteria listed in sections 3-03-02-01 and 3-03-02-02 are met, formal correspondence courses or other self-study programs will be deemed to qualify for continuing professional education. Total credit for self-study program hours is limited to not more than half the total of all hours claimed for any one reporting year.~~ Repealed effective March 1, 1995.

History: Amended effective July 1, 1987; July 1, 1991.

General Authority: NDCC-43-02.1-02(6)(d)

Law Implemented: NDCC-43-02.1-02(6)(d)

3-03-02-05. Board may seek assistance. The board may look to the North Dakota society of certified public accountants, the North Dakota society of licensed public accountants, the national society of public accountants, the American--institute--of--certified--public--accountants AICPA, or the national association of state boards of accountancy for assistance in interpreting the acceptability of, and credit to be allowed for, individual continuing professional education courses.

History: Amended effective July 1, 1987; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 436 002.2-05

CHAPTER 3-03-03

3-03-03-01. Coverage of requirement. The continuing professional education requirements promulgated by the board will apply to all ~~certified--public--accountants~~ CPAs and ~~licensed-public-accountants~~ LPAs in public practice either full-time or part-time, whether or not on their own account, in North Dakota. ~~Licensees~~ CPAs or LPAs not in public practice full-time or part-time in North Dakota are not required to meet continuing professional education requirements except that they must file annual continuing professional education reports but they need not list any education credits. In the event they decide to enter public practice either full-time or part-time in North Dakota, they must at that time meet the continuing professional education requirements and furnish evidence of familiarity with current accounting and auditing procedures and practices.

A late filing fee of twenty dollars will be imposed on any ~~licensee~~ CPA or LPA whose continuing professional education reports are not received by the date indicated on the reporting form.

History: Amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 43-02.2-05

3-03-03-02.1. Temporary license permit. The board may allow a ~~licensee-to~~ the practice of public accounting under a temporary license permit if the ~~licensee~~ CPA or LPA has acquired at least sixty hours of approved continuing professional education within the preceding three years and agrees in writing to complete, within one hundred eighty days of commencing public practice, the remaining continuing professional education hours necessary to total one hundred twenty hours. If the ~~licensee~~ CPA or LPA completes the remaining continuing professional education hours within the one hundred eighty days, ~~the-licensee-will-be~~ granted a regular license permit to practice public accounting will be granted. If the ~~licensee--does-not-complete-the~~ remaining continuing professional education hours are not completed within the one hundred eighty days, the ~~licensee~~ CPA or LPA must immediately cease practicing public accounting and return the temporary license permit to the board. Temporary licenses permits may not be renewed.

History: Effective July 1, 1991; amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 43-02.2-05

3-03-03-04. Documentation. Formal evidence of course registrations and written records of course sponsorships, titles, dates, times, locations, and instructors must be maintained by licensees permitholders for all continuing professional education credit hours claimed for participation in formal courses and programs.

All documentations must be maintained for a period of at least ~~three~~ five calendar years beyond the year of participation.

History: Amended effective July 1, 1987; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 43-02.2-05

3-03-03-05. Compliance monitors. Continuing professional education reporting forms filed by ~~licensees~~ individual permitholders must be examined annually by the state board of ~~public~~ accountancy or an appointed agent thereof, on a sampling basis, to confirm ~~eligibilities~~ eligibility and--~~qualifications~~ of credit hours claimed. ~~Licensees~~ Individual permitholders claiming ineligible hours will be notified, and the hours will be disqualified. Flagrant violations of reporting standards, and situations where bad faith in compliance appears likely, will be reviewed ~~by-the-board~~ for possible action as noncompliance.

History: Effective July 1, 1987; amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-03, 43-02.2-05

3-03-03-06. Noncompliance. ~~Upon--failure--of-any-accountant-to comply-with-the-board's-continuing-professional-education--requirements, the--board--may--suspend-or-revoke-either-a-certificate-or-a-license,-or both,-to-practice.~~ Repealed effective March 1, 1995.

History: ~~Effective-July-1,-1987.~~

General Authority: ~~NDCC-43-02.1-02(6)(d)~~

Law Implemented: ~~NDCC-43-02.1-05(1)(d)~~

CHAPTER 3-04-01

3-04-01-01. Suspension and revocation. ~~The state board of public accountancy derives its authority from North Dakota Century Code chapter 43-02.1, the Public Accountancy Act of 1975 as amended, which provides that the board may, after a hearing, suspend, or revoke the certificate or license of an accountant found guilty of violating any provisions of this code of ethics.~~ Repealed effective March 1, 1995.

History: Amended effective November 1, 1982; July 1, 1991.

General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC 43-02.1-02(6)(e); 43-02.1-05(1)(d)

3-04-01-02. Applicability. This code of ethics applies to all services performed in the practice of public accounting, including tax and management advisory services, except where specifically stated otherwise. An accountant practicing outside of North Dakota will not be subject to discipline for departing from any of the provisions of the code of ethics so long as the accountant's conduct is in accord with the rules of the organized accounting profession in the state in which the accountant is practicing, as interpreted by the accountancy board of that state.

History: Amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(e) 43-02.2-03

3-04-01-03. Associates. An accountant may be held responsible for compliance with the code of ethics by all persons associated with the accountant in the practice of public accounting who are either under the accountant's supervision, or who are partners or shareholders or owners in the practice.

History: Amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(e) 43-02.2-03

3-04-01-06. Aiding unauthorized practice of public accounting. A ~~certified public accountant~~ CPA or ~~licensed public accountant~~ LPA shall not aid a ~~noncertified public accountant or nonlicensed public accountant~~ in the unauthorized practice of public accounting.

History: Effective October 1, 1982; amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(e) 43-02.2-03

Law Implemented: NDCC 43-02.1-07 43-02.2-03

3-04-01-07. Dividing fees with noncertified public accountant or nonlicensed public accountant. A ~~certified--public--accountant~~ CPA or ~~licensed--public--accountant~~ LPA, or ~~certified--public--accountant~~ CPA firm or ~~licensed--public--accountant~~ LPA firm shall not share fees derived from the practice of public accounting with a noncertified or nonlicensed person, except that:

1. An agreement by a ~~certified--public--accountant~~ CPA or ~~licensed--public--accountant~~ LPA with one's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the accountant's death to the accountant's estate or to one or more specified persons.
2. A ~~certified---public---accountant~~ CPA or ~~licensed--public--accountant~~ LPA or ~~certified--public--accountant~~ CPA firm or ~~licensed--public--accountant~~ LPA firm who undertakes to complete unfinished business of a deceased ~~certified--public--accountant~~ CPA or ~~licensed--public--accountant~~ LPA may pay to the estate of the deceased ~~certified--public--accountant--or--licensed--public--accountant~~ that portion of the total compensation which fairly represents the services rendered by the deceased ~~certified--public--accountant--or--licensed--public--accountant~~.
3. A ~~certified---public---accountant~~ CPA or ~~licensed--public--accountant~~ LPA or ~~certified--public--accountant~~ CPA firm or ~~licensed--public--accountant~~ LPA firm may include nonlicensed employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

History: Effective October 1, 1982; amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(e) 43-02.2-03

Law Implemented: NDCC 43-02.1-07 43-02.2-03

3-04-01-08. Avoiding influence by noncertified public accountants or nonlicensed public accountants. A ~~certified--public--accountant~~ CPA or ~~licensed--public--accountant~~ LPA shall not practice with or in the form of a professional corporation or other entity if any of the entity's activities consist of the practice of public accounting, if:

1. A noncertified public accountant or nonlicensed public accountant owns any interest therein, except that a fiduciary representative of the estate of a ~~certified--public--accountant~~ CPA or ~~licensed--public--accountant~~ LPA may hold the stock or interest of the ~~certified--public--accountant~~ CPA or ~~licensed--public--accountant~~ LPA for a reasonable time during administration;
2. A noncertified public accountant or nonlicensed public accountant is a corporate director, or officer thereof; or
3. A noncertified public accountant or nonlicensed public accountant has the right to direct or control the professional

judgment of the certified-public-accountant CPA or licensed
public-accountant LPA.

History: Effective October 1, 1982; amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02~~(6)~~~~(3)~~ 43-02.2-04

Law Implemented: NDCC 43-02.1-07 43-02.2-03

CHAPTER 3-04-02

3-04-02-01. Independence. An accountant or a firm of which the accountant is a partner or a shareholder shall not express an opinion on financial statements of an enterprise unless the accountant and the accountant's firm are independent with respect to such enterprise. Independence will be considered to be impaired if, for example:

1. During the period of the accountant's professional engagement, or at the time of expressing the opinion, either the accountant or the firm:
 - a. Had or was committed to acquire any direct or material indirect financial interest in the enterprise; or
 - b. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise; or
 - c. Had any joint closely held business investment with the enterprise or any officer, director, or principle stockholder thereof that was material in relation to the accountant's or the firm's net worth; or
 - d. Had any loan to or from the enterprise or any officer, director, or principal stockholder thereof except as permitted by Interpretation 101-5 of the AICPA Code of Professional Conduct, as of July 1, 1994. ~~This--later prescription--does-not-apply-to-the-following-loans-from-a financial--institution--when--made--under--normal--lending procedures,--terms,--and--requirements:~~
 - ~~{1}--Loans--obtained--by-an-accountant-or-the-accountant's firm--which-are-not-material-in-relation--to--the--net worth-of-such-borrower.~~
 - ~~{2}--Home-mortgages.~~
 - ~~{3}--Other--secured--loans,--except-loans-guaranteed-by-an accountant's-firm-that-are-otherwise-unsecured.~~
2. During the period covered by the financial statements, during the period of the professional engagement or at the time of expressing an opinion, the accountant or the firm:
 - a. Was connected with the enterprise as a promoter, underwriter, or voting trustee, a director or officer, or in any capacity equivalent to that of a member of management or of an employee; or

- b. Was a trustee for any pension or profit-sharing trust of the enterprise.

The examples set out in this section are not intended to be all inclusive.

History: Amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(e) 43-02.2-03

CHAPTER 3-04-03

3-04-03-01. General standards. An accountant in public practice shall comply with the following standards as interpreted by the board.

1. **Professional competence.** An accountant shall undertake only those professional services which the accountant or the accountant's firm can reasonably expect to complete with professional competence.
2. **Due professional care.** An accountant shall exercise due professional care in the performance of professional services.
3. **Planning and supervision.** An accountant shall adequately plan and supervise the performance of professional services.
4. **Sufficient relevant data.** An accountant shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.
5. **Forecasts.** An accountant shall not permit the accountant's name to be used in conjunction with any forecast of future transactions in a manner which may lend to the belief that the licensee accountant vouches for the achievability of the forecast.

History: Amended effective November 1, 1982; July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02:1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02:1-02(6)(e) 43-02.2-03

3-04-03-02. Auditing standards. An accountant shall not permit the accountant's name to be associated with financial statements in such a manner as to imply that the accountant is acting as an independent public accountant unless the accountant has complied with the applicable generally accepted auditing standards promulgated by the institute AICPA. Statements on auditing procedure issued by the institute's AICPA auditing standards executive committee are, for the purposes of this section, considered to be interpretations of the generally accepted auditing standards. Departures from such statements or standards must be justified by those who do not follow them.

History: Amended effective November 1, 1982; March 1, 1995.

General Authority: NDCC-43-02:1-02(6)(d) 43-02.2-03

Law Implemented: NDCC-43-02:1-02(6)(e) 43-02.2-03

CHAPTER 3-04-04

3-04-04-01. Confidential client information. An accountant shall not disclose any confidential information without the specific consent of the client.

1. This section shall not be construed:
 - a. To relieve an accountant of the accountant's obligations under sections 3-04-03-02 and 3-04-03-03.
 - b. To affect in any way the accountant's obligation to comply with a validly issued and enforceable subpoena or summons.
 - c. To prohibit review of an accountant's professional work under institute AICPA or board authorization.
 - d. To preclude an accountant from initiating a complaint with, or responding to any inquiry made by, the board or its designee or a duly constituted investigative or disciplinary body.
2. Board members, members of a recognized investigative or disciplinary body, and practice reviewers shall not use to their own advantage or disclose any confidential client information that comes to their attention in carrying out their official responsibilities. However, this prohibition shall not restrict the exchange of information with recognized investigative or disciplinary bodies or affect in any way compliance with a validly issued and enforceable subpoena or summons.

History: Amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(e) 43-02.2-03, 43-02.2-16

3-04-04-02. Contingent fees. A ~~licensee~~ An accountant in public practice may not ~~perform~~:

1. Perform for a contingent fee any professional services for, or receive such a fee from, a client for whom the ~~licensee~~ accountant or ~~licensee's~~ accountant's firm also performs:
 - 1- a. An audit or review of a financial statement; or
 - 2- b. A compilation of a financial statement when the ~~licensee~~ accountant expects, or reasonably might expect, that a third party will use the financial statement and the ~~licensee's~~ accountant's compilation report does not disclose a lack of independence; or

3. c. An examination of prospective financial information; or
2. Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

~~This~~ The prohibition in subsection 1 applies during the period in which the ~~licensee accountant~~ licensee's accountant's firm is engaged to perform any of the services listed above as well as the period covered by any historical financial statements involved in any such listed services.

For purposes of this section, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

A member's fees may vary depending, for example, on the complexity of services rendered. Fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. ~~The preparation of original or amended tax returns or claims for refunds does not fall within these exceptions.~~

History: Amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(e) 43-02.2-03

CHAPTER 3-04-06

3-04-06-03. Commission and referral fees. A--licensee An accountant in public practice may not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee accountant or the licensee's accountant's firm also performs for that client:

1. An audit or review of a financial statement;
2. A compilation of a financial statement when the licensee accountant expects, or reasonably might expect, that a third party will use the financial statement and the licensee's accountant's compilation report does not disclose a lack of independence; or
3. An examination of prospective financial information.

This prohibition applies during the period in which the licensee accountant is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

A--licensee An accountant in public practice who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee accountant recommends or refers a product or service to which the commission relates.

Any licensee accountant who accepts a referral fee for recommending or referring any service of a certified--public--accountant CPA or licensed--public--accountant LPA to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

History: Amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02{6}{d} 43-02.2-03

Law Implemented: NDCC 43-02.1-02{6}{e} 43-02.2-03

3-04-06-04. Incompatible occupations. An accountant who--is engaged in the practice of public accounting shall not concurrently engage in any business or occupation that would create a conflict of interest in rendering professional services.

General Authority: NDCC 43-01.1-02{6}{d} 43-02.2-03

Law Implemented: NDCC 43-02.1-20{6}{e} 43-02.2-03

3-04-06-05. Form of practice - Name. An-accountant-may-practice public-accounting,-whether-as-an-owner-or-as-an-employee,-only-in-the form-of-a-proprietorship,-a-partnership,-or-a-professional-corporation or-a-business-corporation-formed-for-such-purposes-and-in-existence-on July-1,-1975.-An-accountant-shall-not-practice-public-accounting-under a-firm-name-that-is-misleading.-Names-of-one-or-more-past-partners-or shareholders-may-be-included-in-the-firm-name-of-a-successor-partnership or-corporation.-Also,-a A partner or shareholder surviving the death or withdrawal of all other partners or shareholders may continue to practice public accounting under a name which includes the name of past partners or shareholders for up to two years after becoming a sole practitioner.

History: Amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(e) 43-02.2-03, 436 002.2-12

CHAPTER 3-05-01

3-05-01-01. Establishment of program. There is hereby established a positive review program ("the program"). The purpose of the program is to improve the quality of financial reporting and to assure that the public can rely on the fairness of presentation of financial information on which ~~sole-practitioners, partnerships, or professional corporations~~ public accounting firms issue reports. The program emphasizes education and rehabilitation rather than disciplinary action. Appropriate educational programs or procedures will ordinarily be recommended or required where reporting does not comply with appropriate professional standards. However, when a registrant is unwilling or unable to comply with such standards, or a registrant's professional work is so substandard as to warrant disciplinary action, such action may be resorted to as the appropriate means of protecting the public interest.

History: Effective June 1, 1988; amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-06

3-05-01-02. Appointment of positive review program committee. The state board of public accountancy shall annually ~~appoint~~ maintain a positive review program committee to assist in the implementation and administration of the program. The positive review program committee will consist of a ~~program coordinator and two~~ or more board members, all appointed by the board.

History: Effective June 1, 1988; amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-06

3-05-01-03. Committee responsibilities. ~~The positive review program committee's responsibilities include:~~

- ~~1. Developing procedures for the internal operation of the positive review program committee.~~
- ~~2. Developing criteria for assignment of reviewers to specific tasks taking into account such factors as geographic location, size of firm, technical skill requirements, and such other criteria as the board determines appropriate.~~
- ~~3. Assisting the board in the selection and training of reviewers.~~
- ~~4. Developing and recommending to the board a system for selection of reports to be reviewed.~~

5.--Evaluating--the--findings--of--the--reviewers--and--making--reports
and--recommendations--to--the--board.

6.--Compiling--and--reporting--to--the--board--statistics--on--the--impact
and--effect--of--the--program.

7.--Considering--such--other--matters--and--performing--such--other
duties--regarding--the--program--as--may--be--assigned--to--it--by--the
board--from--time--to--time. Repealed Effective March 1, 1995.

History: Effective-June-1,-1988.

General Authority: NDEG-43-02.1-02(6)(d)

Law Implemented: NDEG-43-02.1-02(6)(d)

CHAPTER 3-05-02

3-05-02-01. Submission of reports. When so directed by the board, each ~~sole-practitioner; partnership; or professional corporation~~ required--to--register--under--chapter--3-02-03--and firm which performs compilation or review services but no audit services, shall furnish to the board in--connection--with--its--registration, with respect to each office maintained by the applicant in this state, one copy of each of the following kinds of reports issued by that office during the preceding twelve-month period ~~preceeding the date of registration~~, if any report of such kind was issued during such period:

1. A compilation report {including accompanying financial statements}; if the firm has produced a compilation with full disclosures, then this type of compilation must be furnished, and
2. A review report (including accompanying financial statements).

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02-1-02{6}{d} 43-02.2-03

Law Implemented: NDCC 43-02-1-02{6}{d} 43-02.2-06

3-05-02-01.1. Onsite practice review. Beginning July 1, 1992, and when directed by the board, a ~~sole-practitioner; partnership; or professional corporation required to register under chapter 3-02-03; and~~ firm which performs audit services, is required to undergo an onsite practice review conforming to the standards of the American-institute-of ~~certified public accountants~~ AICPA quality review program or peer review program, or a program deemed comparable in the opinion of the board. A copy of the report of such review and the letter of ~~comments; if any;~~ acceptance, plus the letter of comments and letter of response, if any, are to be submitted to the board as-directed.

History: Effective July 1, 1991; amended effective March 1, 1995.

General Authority: NDCC 43-02-1-02{6}{d} 43-02.2-03

Law Implemented: NDCC 43-02-1-02{6}{d} 43-02.2-06

3-05-02-02. Exception to submission of report. The requirements of sections 3-05-02-01 and 3-05-02-01.1 may not apply with respect to any office which within the three years immediately preceding the registration had been subjected to a review ~~program as defined in~~ section--3-05-02-01-1 under the AICPA quality review program or peer review program, or a program deemed comparable in the opinion of the board; provided, that a copy of the report of such review and the letter of ~~comments; if any; is~~ acceptance, and if applicable the letter of comments and letter of response are submitted with the registration

renewal and such report--of--the--registrant--reflected--an--unqualified opinion.

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-06

3-05-02-03. Format of report. Any documents submitted in accordance with section 3-05-02-01 shall may have the name of the client, the client's address, and other identifying factors omitted, provided that the omission does not render the type or nature of the enterprise undeterminable. For example, the client name, address, or federal identification number must may be omitted, but reference to the type of organization, such as a financial institution, school district, hospital, etc., may not be omitted.

History: Effective June 1, 1988; amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-06

3-05-02-04. Request of additional information by committee. The positive review program committee may also solicit for review financial statements and related reports of registrants firms from clients, public agencies, banks, and other users of financial statements.

History: Effective June 1, 1988; amended effective March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-06

3-05-02-05. Confidentiality of information in report. The identities of the sources of financial statements and reports received by the board or the positive review program committee from other than the registrants firm who that issued the reports must be preserved in confidence. Reports and other materials submitted to the board or the positive review program committee pursuant to sections 3-05-02-01, 3-05-02-01.1, and 3-05-02-02, and 3-05-02-04 and comments of reviewers, the positive review program committee, and the board on such reports or other materials relating thereto, must also be preserved in confidence except to the extent that they are communicated by the board to the registrant who issued the reports, and except to the extent that the open records law of North Dakota is not violated.

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC 43-02.1-02(6)(d) 43-02.2-03

Law Implemented: NDCC 43-02.1-02(6)(d) 43-02.2-06

CHAPTER 3-05-03

3-05-03-05. Review of onsite practice reviews. Reports and letters of comments submitted in accordance with section 3-05-02-01.1 and 3-05-02-02 must be reviewed, and resultant findings and recommendations must be given to the board and the board shall take appropriate action, which may include similar actions to those in section 3-05-04-01.

History: Effective July 1, 1991; amended effective March 1, 1995.

General Authority: NDCC ~~43-02-1-02(6)(d)~~ 43-02.2-03

Law Implemented: NDCC ~~43-01-1-02(6)(d)~~ 43-02.2-06

CHAPTER 3-05-04

3-05-04-01. Deficient reports and board action. If the board determines that a report referred to the board by the positive review program committee is deficient or marginal with respect to applicable professional standards, the board may take any one of the following actions:

1. The board may submit a letter of comment to the registrant firm ~~a letter of comment~~ detailing the deficiencies noted in connection with the review and requiring the registrant firm to detail the steps which ~~the registrant~~ it will take to ensure that similar occurrences will not ~~be present in the future recur~~. A response ~~from the registrant~~ will be required within ~~forty-five~~ thirty days of the mailing of the board's letter and will ~~may~~ be subject to followup review ~~by the~~ board.
2. The board may require any individual who had responsibility for issuance of the report or who substantially participated in preparation of the report or the related workpapers, or both, to successfully complete specific courses or types of continuing education as specified by the board. The cost of the course or courses must be borne by such registrant.
3. The board may require that the office responsible for the deficient report submit all or specified categories of its reports for a preissuance review in a manner and for a duration prescribed by the board.
4. If it appears that the professional conduct reflected in the deficient report is so serious as to warrant consideration of possible disciplinary action, the board may initiate an investigation pursuant to ~~subdivision b of subsection 6 of North Dakota Century Code section 43-02.1-02 sections 43-02.1-03, and subdivision g of subsection 1 of North Dakota Century Code section 43-02.1-05~~ 43-02.2-09, and 43-02.2-10.

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995.

General Authority: NDCC ~~43-02.1-02(6)(d)~~ 43-02.2-03

Law Implemented: NDCC ~~43-02.1-02(6)(d)~~ 43-02.2-03, 43-02.2-06, 43-02.2-09

TITLE 4

Budget and Management, Office of

DECEMBER 1994

STAFF COMMENT: Article 4-08 contains all new material but is not underscored so as to improve readability.

ARTICLE 4-08

**STATE BUILDING CODE AND ENERGY CONSERVATION STANDARDS
IN NEW BUILDING CONSTRUCTION**

Chapter
4-08-01

State Building Code and Energy Conservation Standards
in New Building Construction

**CHAPTER 4-08-01
STATE BUILDING CODE AND ENERGY CONSERVATION STANDARDS
IN NEW BUILDING CONSTRUCTION**

Section

4-08-01-01	Organization of the State Building Code and Energy Conservation Standards in New Building Construction
4-08-01-02	Intent
4-08-01-03	Scope
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4-08-01-01. Organization of the state building code and energy conservation standards in new building construction.

1. **History.** The legislative assembly adopted the state building code in 1979 and the state energy conservation standards in 1977. The state building code is codified as North Dakota Century Code chapter 54-21.3, and the energy conservation standards in new building construction is codified in North Dakota Century Code chapter 54-21.2. In 1983 the legislative assembly transferred responsibility of the state building code from the state construction superintendent to the director of the office of management and budget and removed reference in the energy conservation standards to any designated office. In 1993 the legislative assembly amended the energy conservation standards, giving the office of management and budget responsibility for implementing, updating, and amending the code.

The legislative assembly designated that the state building code will consist of the uniform building code published by the international conference of building officials. In 1985 the legislative assembly added the uniform mechanical code as a component of the state building code, with an amendment to section 504(f), LPG Appliances, of that code. For manufactured housing, the legislative assembly identified the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Construction and Safety Standards Act [42 U.S.C. 5401 et seq.] as the state building code for manufactured housing. In 1991 the legislative assembly amended North Dakota Century Code section 54-21.3-03, designating the 1989 edition of the model energy code as the minimum energy conservation standards that must be met.

In 1991 the legislative assembly amended subsection 3 of North Dakota Century Code section 54-21.3-03 to allow cities, townships, and counties to amend the state building code to conform to local needs. In 1993 the legislative assembly amended subsection 1 of North Dakota Century Code section 54-21.3-03 to permit the director of the office of management and budget to adopt rules to implement and periodically update the code, and to adopt rules to amend the code. Subsection 3 of North Dakota Century Code section 54-21.3-03 was also amended by the legislative assembly to require cities, townships, and counties that elect to administer and enforce a building code to adopt and enforce the state building code. This provision became effective August 1, 1994.

2. **Administration.** Administration and enforcement of the state building code and energy conservation standards in new building construction are local responsibilities. The director of the office of management and budget assigned the director of the office of intergovernmental assistance the

responsibility to develop rules and regulations to implement, update, and amend both codes as necessary.

3. **Inquiries.** Inquiries regarding the office of intergovernmental assistance may be addressed to the building code administrator:

Building Code Administrator
Office of Intergovernmental Assistance
State Capitol - 14th Floor
600 East Boulevard Avenue
Bismarck, ND 58505-0170

History: Effective December 1, 1994.

General Authority: NDCC 54-21.2-03, 54-21.3-03

Law Implemented: NDCC 54-21.2-03, 54-21.3-03

4-08-01-02. Intent. It is the intent of this chapter to prescribe rules for implementing, updating, and amending nationally recognized standards for use in the construction, alteration, movement, demolition, repair, and use of buildings in the state of North Dakota.

History: Effective December 1, 1994.

General Authority: NDCC 54-21.2-03, 54-21.3-03

Law Implemented: NDCC 54-21.2-03, 54-21.3-03

4-08-01-03. Scope.

1. This chapter supplements all laws defined within the North Dakota Century Code relating to construction, alterations, improvements, and siting of buildings, unless specifically exempted.
2. This chapter applies to all counties, cities, and townships that adopt, administer, and enforce building codes within their jurisdictional boundaries.
3. This chapter applies to all state and local government public buildings.

History: Effective December 1, 1994.

General Authority: NDCC 54-21.2-03, 54-21.3-03

Law Implemented: NDCC 11-33-01, 18-12-06, 23-13-04, 40-47-01, 54-21.2-03, 54-21.3-03, 58-03-11

4-08-01-04. Definitions. The following definitions shall be used when referred to in this chapter:

1. "ASHRAE" means the American society of heating, refrigerating, and air conditioning engineers.

2. "Codes" means the state building code in North Dakota Century Code chapter 54-21.3 and the energy conservation standards in new building construction in North Dakota Century Code chapter 54-21.2.
3. "ICBO" means the international conference of building officials.
4. "MEC" means model energy code published by the council of American building officials.
5. "OIA" means office of intergovernmental assistance.
6. "UBC" means uniform building code published by the international conference of building officials.
7. "UMC" means uniform mechanical code published by the international conference of building officials.

History: Effective December 1, 1994.

General Authority: NDCC 54-21.2-03, 54-21.3-03

Law Implemented: NDCC 54-21.2-03, 54-21.3-03

4-08-01-05. Responsible agency. The office of intergovernmental assistance is responsible for implementing the procedures for updating and amending the state building code and the energy conservation standards for new building construction. The OIA will publish and distribute amendments, if made, to the state building code and energy conservation standards in new building construction.

History: Effective December 1, 1994.

General Authority: NDCC 54-21.2-03, 54-21.3-03

Law Implemented: NDCC 54-21.2-03, 54-21.3-03

4-08-01-06. Code administration and enforcement. The administration and enforcement of the state building code and energy conservation standards for new construction are the responsibility of each city, township, and county. No jurisdiction is required to administer and enforce building codes, but those that elect to administer and enforce building codes must adopt and enforce the state building code as of August 1, 1994, and thereafter. The energy conservation standards for new building construction must be separately adopted by each city, township, and county to be administered and enforced.

History: Effective December 1, 1994.

General Authority: NDCC 54-21.2-03, 54-21.3-03

Law Implemented: NDCC 54-21.2-03, 54-21.3-03

4-08-01-07. Updating and amending the codes. The following procedures will be used to update and amend the codes:

1. **Technical review committee.** The OIA will assemble a technical review committee within six months of the publication by the ICBO of updated versions of the UBC and UMC, changes announced by the secretary of energy concerning energy conservation standards, and updates to the MEC and ASHRAE energy conservation standards. The committee will be assembled by nominations from the following entities:
 - a. Two members from the North Dakota building officials association. One member must be from a jurisdiction of less than ten thousand people. The size of a county will be determined by the population of nonincorporated areas, and jurisdictions that have relinquished their authority to administer and enforce the codes to the county;
 - b. One member from the North Dakota chapter of the American institute of architects;
 - c. One member from the North Dakota society of professional engineers;
 - d. One member from the North Dakota association of builders;
 - e. One member from the North Dakota association of mechanical contractors;
 - f. One fire marshal nominated by the North Dakota state fire marshal;
 - g. One member nominated from the North Dakota electrical board; and
 - h. One member from the associated general contractors.

One committee member will be selected by the committee members as the chairman. The chairman will vote only in the case of a tie.

The technical review committee will meet once for up to two days to review the updated UBC and UMC, MEC, and ASHRAE 90-1, as applicable, and statewide proposed amendments. The committee may also propose amendments. All proposed amendments will be made available by the OIA, and a second meeting of the committee will be scheduled for one day to receive testimony on each proposed amendment. The committee will then develop a recommendation on each proposed amendment, and for adoption of the UBC, UMC, MEC, and ASHRAE 90-1, as applicable. The committee's recommendations will be distributed by the OIA to all interested parties.

2. **Submission of an amendment.** Each proposed amendment must be submitted to the OIA for consideration by the technical review committee within one hundred twenty days of the publication of the updated code.
3. **Statewide meeting.** Within thirty days of the publication of the recommendations from the technical review committee, a statewide meeting will be held to hear testimony and vote on the recommendations. The statewide meeting may be held for up to two days.
4. **Voting.** Each jurisdiction that has adopted and administers and enforces the state building code and the energy conservation standards for new building construction may vote on the recommendations developed by the technical review committee. The OIA will be responsible for certifying voting eligibility up to one week prior to the statewide meeting. The number of votes permitted by each eligible jurisdiction will be as follows:

<u>Number of Residents</u>	<u>Number of Votes</u>
1 - 999	1
1,000 - 4,999	2
5,000 - 9,999	3
10,000 - 29,999	4
30,000 - 49,999	5
50,000 +	6

The population of an eligible county will be determined by subtracting the population of eligible cities.

5. **Publication of amendments.** The OIA will publish and distribute all adopted amendments.
6. **Contingency.** During interim years, supplements are published for the UBC and UMC by the ICBO. If the OIA, in consultation with the entities represented on the technical review committee, determines that significant changes have been made to the codes, a technical review committee may be assembled and statewide voting may occur.

History: Effective December 1, 1994.

General Authority: NDCC 54-21.2-03, 54-21.3-03

Law Implemented: NDCC 54-21.2-03, 54-21.3-03

4-08-01-08. Limitation. Subsection 2 of North Dakota Century Code section 54-21.3-03 specifies that for manufactured homes, the state building code consists of the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.]. This subsection may not be amended as these are federal minimum standards for

construction of manufactured homes inspected by the department of housing and urban development. Each manufactured home carries a label of inspection indicating that it meets these standards.

History: Effective December 1, 1994.

General Authority: NDCC 54-21.2-03, 54-21.3-03

Law Implemented: NDCC 54-21.2-03, 54-21.3-03

4-08-01-09. Supplements. The ICBO publishes interim yearly supplements to the UMC and UBC. The provisions of those supplements are included in the updates to the UMC and UBC every three years. The supplements will not be considered as part of the state building code, except as provided in subsection 6 of section 4-08-01-07.

History: Effective December 1, 1994.

General Authority: NDCC 54-21.2-03, 54-21.3-03

Law Implemented: NDCC 54-21.2-03, 54-21.3-03

4-08-01-10. Appendix chapter of the UBC and UMC. These chapters must be separately adopted by statewide voting to be included as part of the state building code, with or without amendments.

History: Effective December 1, 1994.

General Authority: NDCC 54-21.2-03, 54-21.3-03

Law Implemented: NDCC 54-21.2-03, 54-21.3-03

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CHAPTER 4-07-05

4-07-05-01.1. Definitions. The terms used throughout this chapter have the same meaning as those in North Dakota Century Code chapters 54-42 and 54-44.3, except "underfill" means to fill a classified position by employing an individual in a lower level class than originally announced.

History: Effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12(1)

4-07-05-06. Underfill of a position. An appointing authority may underfill a position if each of the following requirements are met:

1. The duration of the underfill does not exceed one year. In cases where special circumstances require a period exceeding one year, an appointing authority shall request written approval from the central personnel division.
2. The applicant selected possesses the appropriate license or meets other applicable statutory requirements.

History: Effective July 1, 1995.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

CHAPTER 4-07-06

4-07-06-02. Probationary period. Each newly hired or-rehired classified employee shall serve a one probationary period at the time of the employee's initial hiring into the classified service. An employee who is rehired into the classified service after a break in service shall also serve a probationary period.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-44.3-12

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

4-07-06-03. Purpose and duration. The purpose of the probationary period is to evaluate whether the employee can meet the performance requirements of the position to which the employee has been assigned. The duration of the initial probationary period must be for six months; ~~which is determined by the completion of one thousand forty hours of work, exclusive of overtime.~~ However, an agency may use a probationary period with a longer duration if it is needed to determine satisfactory performance, and if it does not exceed one year's duration.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-44.3-12

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

4-07-06-08. Promotion during initial probationary period. An employee may be promoted during the employee's initial probationary period. The employee shall gain the right to appeal to the state personnel board following the successful completion of the probationary period imposed at the time of hire. Any additional period used to determine whether the employee can meet the requirements of the position to which the employee has been promoted may not be used to affect the employee's rights to appeal to the state central personnel board division.

History: Effective September 1, 1992; amended effective August 1, 1995.

General Authority: NDCC 54-44.3-12

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

4-07-06-09. Promotion following the initial probationary period. An employee may be promoted following the employee's initial probationary period. When an employee is so promoted, a subsequent period of probation may be imposed. The purpose of the subsequent period of probation is to determine whether the employee can meet the performance requirements of the new position. If an employee does not complete the subsequent period of probation successfully, the employee may be reassigned, returned to the employee's former position, if

available, or dismissed. However in such instances, the employee has the right to appeal to the state central personnel board division.

History: Effective September 1, 1992; amended effective August 1, 1995.

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-12

4-07-12-10. Pay during employment. An employee may not be paid for unused annual leave while the employee remains in the service of the agency, except when the employee either takes a long-term leave of absence, goes on educational leave, or moves from permanent to temporary employment. When an employee is transferring from one agency to another, the employee must be paid for the difference in hours between what the employee has accumulated and the number of hours the gaining agency will accept. When an employee is leaving the service of the agency, the employee must be paid for all accrued hours of annual leave.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-22

4-07-22-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration as administered by the central personnel division.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-22-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-42 and 54-44.3, except:

1. "Closing date" means a date after which applications will no longer be accepted for a specific vacancy.
2. "Open register" means a list of applicants available for future employment vacancies maintained by the division so that applications may be accepted at any time, and the minimum qualifications used are taken directly from the class specifications, and the duration of the register is for one year.
3. "Specific vacancy register" means a list of applicants available for employment prepared for a specific position using minimum qualifications developed by the employing agency, and the register is maintained until the particular position is filled or the vacancy is canceled.
4. "Underfill" means to fill a classified position by employing an individual in a lower level class than originally announced.
5. 3. "Vacancy announcement" means an announcement that a particular position is vacant and that the appointing authority intends to recruit to fill it.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-22-03. Requirements. Each vacancy announcement must include the following information:

1. Class title.

2. Position number.
3. Salary range.
4. Closing date.
5. Location of position.
6. Merit---system---application---form---requirement Application procedures.
7. Summary of work.
8. Minimum qualifications and special requirements.
9. Type of recruitment.
 - a. Internal unit posting.
 - b. Internal agency posting.
 - c. External.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-22-04. Minimum qualifications.

1. ~~An--appointing--authority--shall--contact--the--central--personnel--division--prior--to--the--distribution--of--a--vacancy--announcement--to--resolve--any--question--about--minimum--qualifications--statements.~~
2. If an appointing authority wishes to consider underfilling, the appointing authority shall include the following information in the minimum qualifications statements:
 - a. The intent to underfill.
 - b. The class title of the underfill.
 - c. The minimum qualifications of the underfill class.
3. 2. Once a position has been advertised, an appointing authority may not change the minimum qualifications or the closing date without readvertising the position.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-22-05. Open register vacancy announcements.

1. ~~A vacancy announced for a class maintained on the open register must use the minimum qualifications as appear on the class specification.~~
2. ~~An appointing authority may state a preference for additional education or experience, but the preference may not replace the minimum qualifications in subsection 1 of section 4-07-22-05.~~ Repealed effective July 1, 1995.

History: Effective September 1, 1992.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12(1)

4-07-22-06. Specific-vacancy Vacancy announcements.

1. ~~Minimum qualifications for a specific~~ A vacancy announcement may not contain minimum qualifications that are less than the established minimum qualifications on the class specification, but they may contain more specific requirements.
2. When advertising for required education on a specific vacancy announcement, an appointing authority may:
 - a. Narrow the range of appropriate degrees.
 - b. Specify the additional training or experience needed for working in an upper level of a class series.
3. An appointing authority may not use the terms "the equivalent of" or "equivalent to" in the minimum qualifications on a vacancy announcement.
4. An appointing authority shall define the type and length of experience that substitutes for a college degree, if a substitution statement is used in the minimum qualifications of the class specification.
5. An appointing authority shall define the terms "related field" or "related experience" if used in the minimum qualifications.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

CHAPTER 4-07-23-01

4-07-23-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration ~~as-administered by-the-central-personnel-division.~~

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3

Law Implemented: NDCC 54-42-03, 54-44.3-23

4-07-23-02. Documentation required. The documentation required to be submitted at the time of making application to substantiate a claim for veterans' preference is as follows:

1. An applicant claiming veterans' preference shall provide a copy of report of separation DD-214.
2. An applicant claiming disabled veterans' preference shall provide a copy of report of separation DD-214 and a letter less than one year old from the veterans' administration indicating the veteran's disability status.
3. An applicant claiming veterans' preference as an eligible spouse of a deceased veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and the veteran's death certificate.
4. An applicant claiming disabled veterans' preference as an eligible spouse of a disabled veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and a letter less than one year old from the veterans' administration indicating the veteran's disability status.
5. Documents relating to veterans' preference must be postmarked on or before the closing date on the vacancy announcement.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3

Law Implemented: NDCC 54-42-03, 54-44.3-23

4-07-23-03. Deadlines for receipt of documentation.

1.--Open-registers.

a.--The---central---personnel--division--shall--add--veterans' preference-points,-if-applicable,-to-an-applicant's--score

effective--on--the--date--the--veterans'--documentation-is
received-and-processed.

b.--Veterans'--preference--points--may--not--be--added--to--a
certificate-of-eligibles-retroactively.

2.--Specific-vacancy-registers.

a.--Veterans'--preference--documentation--required--in--section
4-07-23-02-must-be-postmarked-on--or--before--the--closing
date-on-the-vacancy-announcement.

b.--Veterans'--preference--points--may--not--be--added--to--a
certificate--of--eligibles--retroactively. Repealed
effective July 1, 1995.

History: Effective-September-1,-1992.

General Authority: NDCC-54-42-03,-54-44.3

Law Implemented: NDCC-54-42-03,-54-44.3-23

4-07-23-04. Expiration of documentation. Disabled veterans'
preference documentation expires one year from the date of the
disability letter from the veterans' administration.

1.--Disabled-veterans'--preference-documentation-must-be-considered
valid-for-a-period-of-one-year-from-the-date-of-the-disability
letter-from-the-veterans'-administration.

2.--Notice--of--the--expiration--date--of--the--documentation-must-be
provided-to-the-disabled-veteran-when-the--disabled--veteran's
name-is-placed-on-the-register.

3.--Disabled-veterans'--preference-points-must-be-removed-from-each
register-if-current-documentation-from-the-disabled-veteran-is
not-received-by-the-expiration-date-in-subsection-2-of-section
4-07-23-04.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3

Law Implemented: NDCC 54-42-03, 54-44.3-23

CHAPTER 4-07-24

4-07-24-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration as administered by the central personnel division.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-24-02. Application or application supplement required for a position. Each application for a position in an agency covered by the North Dakota merit system must be made on an application or supplemental application form, or as otherwise specified by the central personnel division employing agency.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3

Law Implemented: NDCC 54-42-03, 54-44.3

4-07-24-03. Open register applications.

1.--The central personnel division shall accept an application for a class maintained on an open register at any time and shall consider only information contained in that application and in previous applications.

2.--The central personnel division may not consider additional education and experience information received from an applicant after a rating has been established. However, that information must be retained in the applicant's file for consideration for any future rating. Repealed effective July 1, 1995.

History: Effective September 1, 1992.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-24-04. Specific vacancy applications Application accepted after announced. The employing agency shall accept an application for a position only after it has been announced. An application may not be accepted after the closing date.

1.--The central personnel division shall accept an application for a class maintained on a specific vacancy register only when--

specific--vacancy--has--been--announced,---The--division--shall
consider--only--information--contained--in--that--application--and--in
previous--applications.

2.--The--central--personnel--division--may--not--accept--an--application
for--a--class--maintained--on--a--specific--vacancy--register--after
the--closing--date.

3.--The--central--personnel--division--may--not--consider--additional
education--and--experience--information--submitted--by--an--applicant
after--the--closing--date.--However,--the--division--must--retain--the
information--and--place--it--in--the--applicant's---file---for
consideration--for--any--future--vacancy.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-24-05. Investigation of application information. The
central--personnel--division employing agency may investigate an
applicant's training and experience in order to verify the application
information provided. If the investigation produces evidence that the
applicant falsified information affecting-the-applicant's-rating, the
division employing agency may rate--or--rerate--the--applicant's--record
accordingly,--make take any necessary adjustments-to-registers action and
notify the applicant of the action.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-24-06. Disapproval and disqualification of applications.
Applications may be disapproved or disqualified after rating review for
any of the following reasons:

1. If an applicant does not meet the minimum qualifications.
2. If an applicant has made a false statement of material fact on
the application.
3. If an erroneous approval was made by the central-personnel
division employing agency.
4. If an applicant has used or attempted to use political
pressure or bribery to secure an advantage in the examination
or employment process.
5. If an applicant has directly or indirectly obtained
information regarding the examination process to which the
applicant was not entitled.

6. If there are other valid reasons to justify the disqualification.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-24-07. Merit system application appeals to the director agency appointing authority. [Reserved]

1. An applicant who has submitted a timely and properly completed application for a position within an agency, department, or institution subject to this chapter and who has been determined by the employing agency to be disqualified for that position because of failure to meet the minimum qualifications, may appeal the disqualification to the agency appointing authority.
2. The employing agency must notify an applicant who fails to meet the minimum qualifications for a position of the applicant's disqualification and right to appeal by letter mailed to the applicant's last known address. If an applicant wishes to appeal the disqualification, the applicant shall file a written appeal to the agency appointing authority. The appeal must be postmarked no later than fifteen working days from the date on the letter of notification of rejection by the employing agency. The letter of appeal must specify the basis upon which the applicant relies to assert that the applicant meets the minimum qualifications for the position.
3. The agency appointing authority has fifteen working days from the receipt of the appeal to review the appeal and provide a written response to the applicant.

History: Effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-24-08. Merit system application appeals to the central personnel division.

1. If an applicant is a nonprobationary employee in the classified service and does not agree with the response of the agency appointing authority, the applicant may further appeal the disqualification to the central personnel division. A letter of appeal must be addressed to the Director, Central Personnel Division, 600 East Boulevard Avenue, Bismarck, ND 58505-0120, and must be postmarked no later than fifteen working days from the date of the agency appointing authority's response to the appeal. The letter of appeal must specify the basis upon which the applicant relies to assert

that the applicant meets the minimum qualifications for the position.

2. Upon receipt of the appeal letter, the director, central personnel division, shall certify the appeal, and submit a written request to the director, office of administrative hearings, to designate an administrative law judge to conduct the hearing in accordance with this section.
3. If the applicant and the appointing authority agree in writing, an appeal taken under this section may be disposed of informally as provided in this subsection. The administrative law judge shall notify the applicant and the appointing authority to provide documentation upon which each relies to assert its position on the appeal. Each party may also provide a memorandum of support for its position and may request oral argument before the administrative law judge at the time it submits its memorandum. If either party requests oral argument before the administrative law judge, the administrative law judge shall notify the parties of the time, date, and location of the oral argument. After oral argument, if any, the administrative law judge shall issue findings of fact, conclusions of law, and a final order and provide them to the parties and the central personnel division. If the applicant and the appointing authority do not agree to informal disposition of the appeal, the administrative law judge shall conduct a hearing in accordance with this section. After the hearing, the administrative law judge shall issue findings of fact, conclusions of law, and a final order and provide them to the parties and the central personnel division.

History: Effective August 1, 1995.

General Authority: NDCC 28-32-05.1, 54-42-03, 54-44.3-12

Law Implemented: NDCC 28-32-05.1, 54-42-03, 54-44.3-12

CHAPTER 4-07-25

4-07-25-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration ~~as-administered by-the-central-personnel-division.~~

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-25-02. Examinations administered---by---the---division. Examinations administered--by--the--division may include one or a combination of the following:

1. A rating of training and experience.
2. A written examination to determine skill or otherwise measure suitability.
3. A keyboard performance examination.
4. A pass or fail review.
5. A scored oral interview.
6. Or another appropriate job screening technique.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-25-03. Conduct of examinations. The ~~central--personnel~~ division employing agency shall conduct all examinations in places convenient for applicants and practicable for administration. The ~~division~~ employing agency may make arrangements for the use of various public buildings in order to conduct the examinations.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-25-04. Reexamination schedule. An applicant who has taken an examination may retake the examination according to procedures established by the ~~central--personnel-division~~ employing agency. The

~~central-personnel-division~~ employing agency shall then use the highest of the examination scores.

History: Effective September 1, 1992; amended effective May 1, 1994; July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-25-05. Notice of final rating status. The ~~central-personnel-division~~ employing agency shall notify an applicant who applies for a ~~class-maintained-on-an-open-or-specific~~ job vacancy register of the applicant's final rating status in writing.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-25-05.1. Exception. If an agency has a contract with job service North Dakota, only those applicants referred to the agency by job service must be notified of their final status in writing.

History: Effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-25-06. Correcting an error. The ~~central-personnel-division~~ employing agency shall promptly take action, upon notification, to correct an error made by the ~~division~~ agency in any part of the examination process. The ~~division~~ agency shall notify an applicant in writing of any corrective action taken.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

CHAPTER 4-07-26
MERIT SYSTEM REGISTERS

[Repealed effective July 1, 1995]

CHAPTER 4-07-27
MERIT SYSTEM CERTIFICATES OF ELIGIBLES

[Repealed effective July 1, 1995]

CHAPTER 4-07-28

4-07-28-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration ~~as-administered by-the-central-personnel-division.~~

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-28-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-42 and 54-44.3 except:

1. "Emergency status" means a category of employment that applies to an individual employed as a result of unusual or unexpected conditions without regard to the normal certification open, competitive selection process and the duration of the employment does not exceed sixty ninety working days.
2. "Internal applicant" means an employee who has permanent, probationary, or temporary merit system employment status within an agency, or a previous employee who is eligible for reinstatement to an agency.
3. "Merit system exempt status" means a category of employment that applies to an individual employed in a nonclassified position without regard to the normal certification open, competitive selection process such as with seasonal or time-limited programs and for appointed officials.
3. 4. "Permanent status" means a category of employment that applies to an individual employed in a classified position, who was certified--to--an--agency--by--the--central--personnel--division, selected for a position on an open, competitive basis and who has successfully completed the six-month probationary period.
4. 5. "Probationary status" means a category of employment that applies to an individual employed in a classified position, who was certified--to--an--agency--by--the--central--personnel--division, selected for a position on an open, competitive basis and who has not yet completed the initial six-month probationary period.
5. 6. "Temporary status" means a category of employment that applies to an individual who has certified-to-an-agency-by-the-central personnel--division was selected for a position on an open,

competitive basis and is employed in a position that is
time-limited in duration.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3

Law Implemented: NDCC 54-42-03, 54-44.3

CHAPTER 4-07-29
MERIT SYSTEM INTERNAL APPLICANT REVIEW

[Repealed effective July 1, 1995]

CHAPTER 4-07-30

4-07-30-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration ~~as-administered by-the-central-personnel-division.~~

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-30-03. Requirements. An employee who has permanent, probationary, or temporary merit system employment status, is eligible for consideration by an appointing authority for a promotion within the agency, if each of the following requirements are met:

1. The employee meets the minimum qualifications announced for the position.
2. The employee successfully completes an examination requirement specified by the ~~central-personnel-division~~ employing agency, if applicable.
3. ~~The--employee's--name-is-certified-to-the-appointing-authority by-the-central-personnel-division.~~

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

CHAPTER 4-07-31

4-07-31-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration ~~as-administered by-the-central-personnel-division.~~

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-31-03. Requirements. An employee who has permanent, probationary, or temporary merit system employment status, is eligible for consideration by an appointing authority for a transfer within the agency, if each of the following requirements are met:

1. The employee meets the minimum qualifications announced for the position.
2. The employee successfully completes an examination requirement specified by the ~~central-personnel-division~~ employing agency, if applicable.
3. ~~The--employee's--name-is-certified-to-the-appointing-authority by-the-central-personnel-division.~~

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

CHAPTER 4-07-32

4-07-32-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration ~~as administered by the central personnel division.~~

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-32-03. Requirements. When an employee's position is reclassified, the following requirements apply:

1. The ~~central--personnel--division~~ employing agency shall waive any examination requirement.
2. If the employee does not meet the minimum qualifications of the new classification, either through education or experience, the employee must underfill in a lower classification until the employee meets the minimum qualifications.
3. ~~---If---the---reclassification---involves---a---review---of---a---class---series, and the employee does not meet the minimum---qualifications---of the---new---series, the central personnel division director shall waive---the---minimum---qualifications---requirements---for---the employee's current position only.~~
4. ~~---If---the---employee---meets---the---minimum---qualifications, then the central personnel division shall certify the---employee's---name to the appointing authority.~~

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

CHAPTER 4-07-33

4-07-33-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration as-administered by-the-central-personnel-division.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-33-03. Requirements. A former employee who previously had permanent, probationary, or temporary status is eligible for consideration by an appointing authority for reinstatement within the agency, if each of the following requirements are met:

1. The employee meets the minimum qualifications announced for the position.
2. The employee successfully completes an examination requirement specified by the central-personnel-division employing agency, if applicable.
3. --The--employee's--name-is-certified-to-the-appointing-authority by-the-central-personnel-division-

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

CHAPTER 4-07-34

4-07-34-01. Scope of chapter. This chapter applies to all applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel administration as-administered by-the-central-personnel-division.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

4-07-34-02. Payroll review. ~~The-central-personnel-division-shall review-the-payrolls-of--agencies--subject--to--this--chapter--to--ensure compliance--with--the--merit--system--of--personnel-administration--The central-personnel-division-may-delegate--this--responsibility--to--those agencies--provided--the-agencies-agree-to-perform-the-reviews.~~ Repealed effective July 1, 1995.

History: Effective-September-1,-1992-

General Authority: NDCC-54-42-03,-54-44.3-12

Law Implemented: NDCC-54-42-03,-54-44.3-12

4-07-34-03. Oversight and audit procedures. The central personnel division shall conduct periodic audits or oversight reviews for the following purposes:

1. To ensure compliance with the federal merit system principles.
2. To respond to any complaint relating to an agency's recruitment, selection, or employment procedures.

The reviews may consist of, but not limited to, a periodic or selective audit of payroll records, personnel records, or other employment related records. The central personnel division shall provide a notice of ten working days prior to an audit or oversight review, unless the audit or review is the result of a complaint provided for in subsection 2.

History: Effective July 1, 1995.

General Authority: NDCC 54-42-03, 54-44.3-12

Law Implemented: NDCC 54-42-03, 54-44.3-12

TITLE 4.5
Addiction Counseling Examiners, Board of

NOVEMBER 1994

CHAPTER 4.5-02-01

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

1. The required fee.
2. An official transcript verifying academic requirements.
3. An official document verifying practicum requirements completion.
4. Documentation verifying completion of a minimum one-year full-time (two thousand hours) internship.
5. Documentation verifying a passing score on the prescribed examinations.

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

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

Law Implemented: NDCC 43-45-04, 43-45-06 43-45-05.1

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

1. Proof of completion of required continuing education units is submitted by December ~~first~~ thirty-first of the renewal year.

2. License is not in suspension or revocation.
3. Renewal application form is completed and submitted prior to December first of each year.
4. Renewal application fee is submitted.

If the application for renewal does not meet the above conditions within six months of the expiration date of the license, the board may revoke the license.

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

General Authority: NDCC 28-32-02.1, 43-45-07

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

4.5-02-01-04. Academic requirements. Academic requirements related to the licensing of addiction counselors must be completed at an accredited college or university. A bachelors degree is required after January 1, 1992. The following academic courses are also required. One semester hour is equivalent to fifteen contact hours.

1. Psychopathology, the equivalent to a two-semester credit (thirty contact hours) course in abnormal psychology from the upper division level.
2. Theories of personality, the equivalent to a two-semester credit course from an upper division level.
3. Theories in practice of psychotherapy, the equivalent to a two-semester credit course from an upper division level.
4. Pharmacology, the equivalent to a two-semester credit course from an upper division level, focusing on the physiological and pathological effects of mood altering drugs.
5. Introduction to group counseling, the equivalent to a two-semester credit course from an upper division level.
6. Introduction to individual counseling, the equivalent to a two-semester credit course from an upper division level.
7. Advanced counseling, the equivalent to a two-semester credit course from an upper division level.
8. Dynamics of addiction, the equivalent to a two-semester credit course from an upper division level including a minimum of six classroom hours related to HIV/AIDS education.
9. Professional ethics, the equivalent to a one-semester credit course with content including: legal issues, client welfare as primary concern, professional competence, supervision and

development, financial issues, personal wellness, and relationships to other counselors and institutions.

10. Marriage and the family, the equivalent to a two-semester credit course from an upper division level.
11. Child psychology or development, the equivalent to a two-semester credit course from an upper division level.
12. Adolescent psychology or development, the equivalent to a two-semester credit course from an upper division level.

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

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

Law Implemented: NDCC 43-45-04, 43-45-06 43-45-05.1

4.5-02-01-05. Practicum requirements. A practicum is successful completion of a full-time minimum of nine months (one thousand four hundred hours) clinical training experience in a board-approved training program. Completion of this requirement must be verified by the training program or consortium. ~~The--practicum-is-a-minimum-of-nine months-(one-thousand-four-hundred-hours)-of-clinical-training--and--must be--a-combination-of-inpatient-and-outpatient-treatment--Each-component must-be-a-minimum-of-three-months-(four--hundred--eighty--hours)--Each component--must--be-completed-in-a-separate-facility-unless-specifically approved-by-the-board--The-full-time-clinical-experience-may-include--a maximum--of--six-academic-credits-exclusive-of-credits-for-the-practicum during-the-nine-month-period--If--additional--academic--work--is--taken during--the--clinical-experience--a-minimum-of-twelve-months-of-clinical training-is-required.~~ An individual may remain a trainee for two years after which time training status will expire.

~~The--areas--of--addiction--counseling--to-be-covered--known-as-the "twelve-core-functions"--include:~~

- ~~1--Screening;~~
- ~~2--Intake;~~
- ~~3--Orientation;~~
- ~~4--Assessment;~~
- ~~5--Treatment-planning;~~
- ~~6--Counseling-(individual,-group,-and-significant-others);~~
- ~~7--Case-management;~~
- ~~8--Crisis-intervention;~~

9---Client-education;

10---Referral;

11---Reports-and-recordkeeping;-and

12---Consultation.

The clinical practicum may be extended due to additional supervisory recommendations, individual circumstances, health circumstances, or other personal matters. Extension of the clinical portion of training is the responsibility of the director of the training program.

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

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

Law Implemented: NDCC 43-45-04, 43-45-06 43-45-05.1

4.5-02-01-06. Internship. The internship is a minimum of a twelve-month full-time (two thousand hours) of addiction counseling professional experience or employment under the supervision of an approved clinical supervisor in a licensed addiction treatment facility approved by the board for internship training. Completion of the internship is documented by an evaluation from the intern's supervisor or the clinical director of the program, or both. An individual may remain an intern for a maximum of two years before completion of all examinations is required. Upon a showing of good cause, the board may, by special provision, extend internship status for longer than two years before completion of all examinations is required.

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

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

Law Implemented: NDCC 43-45-04, 43-45-06 43-45-05.1

4.5-02-01-07. Examinations. Two levels of examinations occur in the licensing process:

1. A written examination consisting of a knowledge-based objective test.
2. An oral examination using a performance-based case presentation-method history and interview.

The written examination may be taken when offered any time after the completion of the required academic coursework. ~~Successful completion--of--the-written-examination-is-required-before-an-individual-is-eligible-to-take-the-case-presentation-method-of--examination.~~ Only individuals who have completed their clinical practicum training and

successfully--completed--the--written--examination will be considered eligible for the ease-presentation-method oral examination.

In the case of an applicant certified as having passed the-ease presentation-method an oral examination in another state, the applicant would be required to have successfully completed the North Dakota written examination before being considered for the addiction counselor license.

Applicants may take the examination when offered. The individual will be responsible for fee payment with each examination. An individual--may--remain--an--intern--for--only--two--years--or--for--longer--than--two--years--by--special--provision--of--the--board--before--being--required--to--be--licensed--in--North--Dakota.

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

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

Law Implemented: NDCC 43-45-04, 43-45-06 43-45-05.1

4.5-02-01-08. Reciprocity. Out-of-state applicants who have completed training in addiction counseling in another state or in a work or training setting which has not been approved by the board of addiction counseling examiners must document equivalencies in all areas of training including academic coursework, clinical training, and work experience, and must--also--satisfactorily--complete--the written and performance oral examinations if--required--by--the--board. A person need not reside in the state or be employed in the state to make application or be licensed in North Dakota.

Clinical professional applicants who have related clinical proficiencies must document equivalencies in all areas of training including the academic coursework, clinical training, and work experience and must satisfactorily complete the written and performance oral examinations if required by the board.

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

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

Law Implemented: NDCC 43-45-04, 43-45-06 43-45-05.1

4.5-02-01-09. Approved training program.

1. Each training program or consortium for addiction counseling training must be approved biennially by the board of addiction counseling examiners. The training program or consortium must provide at a minimum, an application which must include documentation of the academic and clinical training experiences;--proposed--training--methods;---conditions;---and schedules--for--supervision; syllabi syllabuses of academic courses or other evidence of the academic quality of those

courses; evidence of licensure of addiction treatment facilities; evidence of certification of academic institutions involved; and clinical supervisors' credentials, and other information requested by the board trainee handbook and guidelines, institutional policies related to training, including grievance procedures available to trainees, and goals and objectives for each training site.

An approved training program or consortium must meet the following conditions:

- a. Practicum training experiences must meet a combination of inpatient and outpatient addiction treatment experience in an approved addiction training program. The inpatient and outpatient experience must be provided in separate facilities unless specifically approved by the board occur in at least two separate licensed treatment facilities with a minimum of three months in each facility unless specifically approved by the board. These licensed facilities must consist of at least one public provider of addiction treatment and may be at either an inpatient or outpatient treatment setting.
 - b. The areas of addiction counseling to be covered must include the "twelve core functions". Each training consortium must document that the program provides fifty hours of direct supervision in each of the following: individual therapy, intake and assessment, group therapy, and family counseling.
 - c. Each program may establish the length of the practicum with a nine-month minimum requirement.
 - d. Academic instructor and clinical training supervisors must be board approved to perform their teaching and clinical supervisory function.
2. a. Training programs must have one board-approved clinical supervisor for each trainee in residence individual in training. In order to receive approval as a clinical supervisor prior to July 1, 1996, the following qualifications and conditions must be met:
- a- (1) Complete and submit the required application.
 - b- (2) Have two years experience as a licensed addiction counselor.
 - c- (3) Be approved by the board of addiction counseling examiners.

b. After July 1, 1996, the following qualifications and conditions must be met to receive approval as a clinical supervisor:

(1) Complete and submit the required application.

(2) Must have three years (six thousand hours) of supervised experience as a licensed addiction counselor.

(3) Must have completed a minimum of twenty hours of continuing education units of clinical supervisory training.

(4) Must submit two letters of reference and recommendation, one from the current clinical supervisor and one from another board-approved clinical supervisor.

(5) Be approved by the board of addiction counseling examiners.

3. Academic instructors of training programs must have an appropriate academic degree and otherwise be qualified in the specific field of instruction, and be a member of a college or university academic staff in order to be approved. In addition, the academic instructors must submit with the training program and consortium application the following:

a. A letter of introduction to the board which should include a resume of past work experience, education, and experience in the field of addiction is preferred.

b. A syllabus for each core academic class taught.

4. Individualized training ~~proposals~~ plans may be board approved when they are submitted by and under the auspices of an approved training program or consortium. Each plan must designate the board-approved clinical supervisors responsible for the training and also provide additional information as required by the board.

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

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

Law Implemented: NDCC 43-45-04, 43-45-06 43-45-05.1

4.5-02-01-10. Internship sites.

1. Facilities must apply biennially to the board for approval as an internship site by providing the following information:

- 1- a. Completed application form.
 - 2- b. Names of approved clinical supervisors within the facility who are responsible for supervising interns.
 - 3- c. Plan of supervision. This plan must be approved by the board on an individual site basis.
 - 4- d. Evidence of licensure as an addiction treatment facility.
2. An individualized internship plan may be approved when it is submitted by and under the auspices of an approved internship site. Each intern must have a board-approved clinical supervisor in a licensed facility and the internship site must provide additional information as required by the board.
 3. All individuals working in the state as addiction counselors and who are not either licensed or in an approved training program or consortium as an addiction counselor trainee must be in or supervised by an approved internship site.

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

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

Law Implemented: NDCC 43-45-04, 43-45-06 43-45-05.1

STAFF COMMENT: Chapter 4.5-02-01.1 contains all new material but is not underscored so as to improve readability.

**CHAPTER 4.5-02-01.1
REQUIREMENTS FOR PRIVATE PRACTICE**

Section

4.5-02-01.1-01	Activities Constituting the Private Practice of Addiction Counseling
4.5-02-01.1-02	Application for Registration

**4.5-02-01.1-01. Activities constituting the private practice of
addiction counseling.**

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

History: Effective November 1, 1994.

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

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

4.5-02-01.1-02. Applications for registration.

1. **Qualifications.** To be eligible for registration to provide private practice, the following must be met:
 - a. Licensure as a licensed addiction counselor.
 - b. Beginning July 1, 1999, an applicant must have a master's degree in one of the social or behavioral sciences.
 - c. Beginning July 1, 1995, an applicant must have a minimum of three years (six thousand hours) beyond licensure of

supervised clinical experience by an approved clinical supervisor.

2. **Registration.** All individuals requesting to be registered for private practice shall make a formal application to the board. This application must include:

- a. A description of the types of services and programs that will be provided in the private practice; and
- b. A description of the method that has been established to provide for a system of peer review of cases.

3. **Peer review process:**

- a. The peer review process consists of the quarterly presentation and discussion of cases with members of a predetermined peer review committee in order to ensure quality of care, obtain input in reference to problem cases, and to assist in case management.
- b. The peer review committee must consist of individuals with expertise in the field of addiction counseling. At least one member of the committee in addition to the practitioner must be a licensed addiction counselor.

Annually the private practitioner must submit to the board proof of the quarterly peer review meetings.

History: Effective November 1, 1994.

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

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

CHAPTER 4.5-02-02

4.5-02-02-01. Code of professional conduct. The board has adopted and incorporated into this title a code of professional conduct for addiction counselors. The following constitutes unacceptable professional conduct for an addiction counselor and shall subject the counselor, training consortium, training program, or internship site, or any combination thereof, to sanction.

1. Exploiting relationships with clients such as participating in or soliciting sexual relationships during the time of services and for twelve months following the termination of services.
2. Taking financial advantage of client, or using one's position within an agency to enhance one's private practice or the private practice of others for personal gain.
3. Entering into any illegal acts with a client.
4. Participating in, condoning, or being an accessory to dishonesty, fraud, deceit, or misrepresentation in the practice of addiction counseling.
5. Not providing clients with accurate and complete information regarding the extent and nature of the services available to them.
6. Convicted of a criminal act which affects the practice of the profession. (North Dakota Century Code section 12.1-33-02.1)
7. Violating the federal or state confidentiality client care regulation statutes.
8. Violating the federal or state discrimination statutes or regulations.
9. Refusal to seek and follow through with adequate and appropriate treatment for any illness or disorder which interferes with professional functioning or ability to perform the basic expected functions, or both, of an addiction counselor.
10. Using misrepresentation in the procurement of licensing as an addiction counselor or knowingly assisting another in the procurement of licensing through misrepresentation. Misrepresentation of professional qualifications, certifications, accreditations, affiliation, and employment experiences.

11. Impaired behavior that adversely affects the licensee's ability to practice addiction counseling.
12. Any licensed addiction counselor or person subject to regulation by the board, having knowledge that another counselor or regulated person has violated the law or rules or whose knowledge of that counselor's incompetent, unethical, illegal, or impaired behavior raises a substantial question as to that counselor's fitness to be a member of the addiction counseling profession who fails to report that knowledge to the board.
- 12- 13. Failure to act in a manner which meets the generally accepted standards of practice, including harassment of clients or coworkers, performing services outside individual's area of training, experience, or competence.
- 13- 14. Failure to properly supervise trainees and interns practicing addiction counseling under the licensee's supervision in a board-approved training program or internship site.
- 14- 15. Accepting as a client someone with whom the counselor already has another relationship which will or is likely to adversely affect the objectivity of the counselor. Examples include, ~~but are not limited to~~, employee, supervisee, twelve-step sponsorship, or relative.

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

General Authority: NDCC 28-32-02.1

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

4.5-02-02-02. Disciplinary action. A violation of any of the grounds for discipline contained in this section may result in the following:

1. Denial of license.
2. Reprimand.
3. Suspension of license.
4. Probation.
5. Revocation of license.
- 5- 6. Revocation of training program or internship site approval.

History: Effective August 1, 1988; amended effective November 1, 1994.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 43-45-04, 43-45-07 43-45-07.1

TITLE 13

Banking and Financial Institutions, Department of

NOVEMBER 1994

CHAPTER 13-01.1-01

13-01.1-01-01. Applicability. This article shall apply to all practice and procedure before the state banking board and commissioner unless rendered inconsistent by a specific statute or rule, in which instance the more specific statute or rule shall apply. The board will follow title 98 for all practices and procedures not contained under this article.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05

13-01.1-01-02. Address - Sessions. The principal office of the state-banking board shall be in the state capitol, Bismarck, North Dakota. ~~The-board-shall-be-considered-as-in-session-in-January,-March,-May,-July,-September,-and-November-of-each-year-and--specially--when--so-called-by-the-commissioner-as-chairman-of-the-board.~~

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05

13-01.1-01-05. Personal and representative appearances. ~~Participants-may-appear-in-any-proceeding-in-person-or-by-an-attorney-or other-qualified-representative.--The-following-persons-may-appear-in-any proceeding--(1)-an-individual-in-the-individual's--own--behalf;--(2)--a member--of--a--partnership;--(3)--a-bona-fide-officer-or-duty-authorized employee-of-a-corporation,-association,-or-group;-and-(4)-an-officer--or employee--of-a-state-agency,-department,-or-political-subdivision-of-the~~

~~state-or-other-governmental-authority--representing--the--state--agency,
department,--or--political--subdivision--in--any--proceeding. Repealed
effective November 1, 1994.~~

History: Effective January 1, 1980.

General Authority: NDCC-28-32-02

Law Implemented: NDCC-6-01-04

13-01.1-01-06. Practice before the board Rules of conduct.

1. ~~Person in own interest. Any person may appear before the board in the person's own right if the person has a bona fide interest in the subject matter of the proceeding.~~
2. ~~Attorneys. Attorneys at law who are admitted to practice before the courts of the state of North Dakota may represent any party to a proceeding. Any member of the bar of another state may be permitted by the commissioner to appear in and conduct a cause or matter while retaining the member's residence in another state.~~
3. ~~Other persons. Any other person who shall file proof to the satisfaction of the commissioner that the person is possessed of necessary legal or technical qualifications to enable the person to render valuable service may be permitted to practice before the board.~~
4. Rules of conduct. All persons appearing before the board or a hearing examiner officer must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota. Any member of the bar of another state may be permitted by the commissioner to appear in and conduct a cause or matter while retaining the member's residence in another state.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05

13-01.1-01-08. Investigation on board's own motion. The board may at any time, upon its own motion or upon the complaint of any person, institute investigation proceedings and order hearing in any action or thing done or omitted to be done by any party under the board's jurisdiction which the board may believe is in violation of the law or of any order, or rule, or regulation of the board. It may, through its staff or otherwise, secure and present such evidence as it may consider necessary or desirable in any proceeding in addition to the evidence presented by the parties.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-08

13-01.1-01-09. Definitions. As used in this article except as otherwise required by the context:

1. "Board" and "board member" means the state banking board, and a member thereof, respectively.
2. "Board's staff" means and includes the board's experts, employees and attorneys, and the staff of the department of banking and financial institutions.
3. "Commissioner" means the commissioner of banking and financial institutions.
4. "Hearing examiner officer" means and includes any one or more of the members of the board duly designated, or one or more trial examiners appointed according to law and duly designated to preside at hearings or conferences.
5. "Participants" means and includes any party or person admitted by the board or commissioner to participate in a proceeding, including the board's staff.
6. ~~"Person" means and includes individuals, partnerships, corporations, and associations or organized groups.~~

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-01

13-01.1-01-13. Ex parte communications. The board may sanction any party or the party's counsel who makes an ex parte communication as prohibited by North Dakota Century Code section 28-32-12.1 by directing the party or counsel to pay such additional administrative costs that may be attributable to the ex parte communication or may rule adversely on the issue which is the subject of the prohibited communications, or both.

History: Effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-12.1

CHAPTER 13-01.1-02

13-01.1-02-01. Informal complaint: - Form and disposition. Informal complaints may be made orally or in writing addressed to the board. Letters to the board will be considered as informal complaints. Matters thus presented will be handled by any of the following methods:

1. Correspondence or other informal communications.
2. Conference with the complaining party or parties ~~complained of~~.
3. Formal investigation instituted by the board upon its own motion.
4. Such Any other manner as the commissioner shall ~~deem to be~~ believes appropriate and warranted by the facts and the nature of the complaint in an endeavor to bring about satisfaction of the complaint without formal hearing.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05.1

13-01.1-02-02. Formal complaints.

1. Complaints may be made by the board on its own motion, by the commissioner on the commissioner's own motion, or by any person. Complaints shall be made in writing setting forth any act or thing done or omitted to be done by any party under the board's jurisdiction in violation of or claimed to be in violation of any provision of law, or any order, or rule, ~~--or~~ regulation of the board. ~~Any--party--under--the--board's jurisdiction--shall--have--the--right--to--complain--on--any--of--the grounds--upon--which--complaint--may--be--made--by--other--parties.~~
2. Form and content. Each formal complaint shall must show the venue, "Before the State Banking Board of North Dakota" and shall must contain a heading showing the name of the complainant and the name of the respondent and ~~will--bear--the name--and--address--of--each--complainant's--attorney,--if--any.~~ The complaint shall ~~be--so--drawn--as--to--fully--and--completely~~ must advise the respondent and the board of the facts constituting the ground of the complaint, the provisions of the statutes, rules, regulations, and orders relied upon involving the ~~authority--of--the--board;~~ the injury complained of, and a clear, concise statement of the relief sought.
3. Verification. All formal complaints shall must be verified ~~under--oath~~ by the person filing same, ~~--or--officer--or--other~~

person--having--knowledge--of--the--facts-set-forth, or by the person's legal representative.

4. Number of copies. At the time when the complainant files the original complaint, the complainant must also file ten copies thereof--equal--in--number--to--seven more than the number of respondents named in the complaint.
5. Service. The board shall serve a true copy of the complaint and--notice--for--hearing upon the respondent personally,--or--by certified--mail; as the commissioner may direct, at least forty-five days before the time--specified--for hearing thereof unless the service of such complaint or--notice--of--hearing is waived, in writing, by the respondent, or unless the parties agree upon a definite time and place for hearing thereof with the consent of the commissioner. However,--in--case--of--an emergency--the--commissioner--in--the--commissioner's-discretion may--notice--a--proceeding--for--hearing--upon--its--merits--upon--less than--forty-five-days--notice.
6. Satisfaction of complaint. If the respondent desires to satisfy the complaint, the respondent may file with the board and complainant, within five days after the service of the complaint, a statement of the relief which the respondent is willing to give. The--commissioner--shall--immediately--forward--a copy--thereof--to--the--complainant;---if,--in--the--complainant's opinion,--the--satisfaction--meets--the--complaint,--the--complainant shall--make--written--request--to--the--board--that--the--complaint--be dismissed;---Such--request--shall--be--forwarded--to--the--board--not less--than--ten--days--prior--to--the--time--of--hearing;---If--the complainant--is--of--the--opinion--that--the--satisfaction--does--not meet--the--complaint,--the--complainant--shall--so--notify--the--board, whereupon--the--commissioner--shall--notify--the--respondent--that the--latter--must--answer--the--complaint. If the offer of relief is satisfactory to the complainant, the complainant must submit a written request to withdraw the complaint within ten days after the offer was served. If a written request to withdraw is not made within the ten days, the offer is deemed denied and the respondent must answer the complaint.
7. Sufficiency of complaint. Upon the filing of a formal complaint, the commissioner shall examine same to ascertain whether or not it states a prima facie case and conforms to this article. If the commissioner finds that the complaint does not state a prima facie case or does not conform to this article or does not fall within the board's jurisdiction, it the commissioner shall notify the complainant or the complainant's attorney to that effect, and the complainant shall be given an opportunity to amend within a specified time. If the complaint is not so amended within such time, or extension thereof as the commissioner may for good cause shown grant, it will be deemed dismissed. The--filing--of--an--answer

~~will not be deemed an admission of the sufficiency of the complaint, but a motion to dismiss may be made at the hearing.~~

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05, 28-32-05.1

13-01.1-02-03. Answers.

1. **Content.** Each answer filed with the board shall must contain:
(a) the correct title of the proceeding; (b) the name and address of each answering party; (c) a specific denial of such material allegations of the complaint as are controverted by the respondent; and (d) a statement of any new matter which may constitute a an affirmative defense. If the answering party ~~has no~~ respondent lacks information or belief upon the ~~subject sufficient to enable the party~~ which to answer an allegation of the complaint, the party may so state in the answer and ~~place~~ plead the denial upon that ground.
2. **Verification.** An answer must be signed and verified by the respondent ~~filing the same.~~
3. **Service and number of copies.** The original answer and seven ~~copies thereof~~ must be filed with the board, and, at the same time, ~~a copy of the answer shall be served personally, or by certified mail, upon each complainant or the complainant's attorney by the respondent making such answer. The respondent shall certify to the board that the service has been made~~ served within twenty days after the date the complaint was served on each complainant or the complainant's attorney. The respondent must file with the board an original answer and ten copies thereof together with proof of service on each complainant or the complainant's attorney.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05

13-01.1-02-09. Amendments and withdrawal. The commissioner may ~~in the commissioner's discretion~~, after notice to the other parties to a proceeding, allow any pleading to be amended or corrected or any omission therein to be supplied, ~~provided that if~~. If any such amendment, ~~when allowed~~, so alters or broadens the issues ~~that it~~ appears proper, the commissioner may permit any ~~party~~ the affected ~~thereby~~ party a reasonable time to ~~prepare to meet the changed issues~~ reply. A ~~partieipant~~ party desiring to withdraw a pleading filed with the board may file a written notice of withdrawal ~~thereof with the~~ board. The notice shall ~~set forth~~ must state the reason for the withdrawal. A copy of the withdrawal notice must be served upon all other ~~partieipants~~ parties to the proceeding and a ~~certificate~~ proof of

service to that effect filed with the notice of withdrawal. This section shall not be construed as allowing, without express permission of the commissioner, withdrawal of any pleading in any proceeding in which a hearing has been held or convened.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05

13-01.1-02-10. Motion. After--a--hearing--has--commenced--in-a proceeding--a request may be made--by--motion--for--any--procedural--or interlocutory--ruling--or relief desired. All other motions shall be in writing and shall be served on the other parties to the proceeding by the moving parties. Except as provided in section 13-01.1-02-08, the commissioner hearing officer is authorized to rule upon all motions unless the action on the motion involves or constitutes a final determination of the proceeding, in which case the motion shall be ruled upon by the board.

1.--Argument. The commissioner hearing officer may, in the commissioner's discretion, set any motion for oral argument.

2.--Disposition. The hearing examiner designated to preside at a hearing is authorized to rule upon any motion not formally acted upon by the board or commissioner prior to the commencement of the hearing, wherein the immediate ruling is essential in order to proceed with the hearing, and upon any motion filed and made after the commencement thereof and prior to the decision in the proceeding. However, no motion made before or during a hearing, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon by a hearing examiner.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 6-01-04, 28-32-05

13-01.1-02-11. Show cause orders.

1. The board or commissioner may, by order, compel any person to whom it has granted authority to show cause why the authority should not be suspended, changed, or revoked in whole or in part. The term "authority" includes a certificate, license, and permit.
2. The show cause order shall specifically advise the respondent of the alleged violation and of the time and place of the hearing on such order.
3. When the board finds that the respondent has committed, or is committing, the alleged violation, the board may enter a cease

and desist order or any order the board deems just and reasonable.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05

CHAPTER 13-01.1-03

13-01.1-03-01. To adjust or settle proceedings. In accordance with section 98-02-02-09 in order to provide an opportunity for a settlement of a proceeding, or any of the issues therein, there may be held at any time prior to or during hearings before the ~~board--or--a~~ hearing examiner officer such informal conferences of parties for the admission and consideration of facts, arguments, offers of settlement, or proposals of adjustments as time, the nature of the proceeding, and the public interest may permit. Unaccepted proposals of settlement, adjustment, procedure to be followed, or proposed stipulations not agreed to shall be privileged and not admissible in evidence against any party.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-08.3

13-01.1-03-02. To expedite hearings. To expedite the orderly conduct and disposition of any hearing, at such prehearing conferences as may be held, there may be considered, in addition to any offer of settlement or proposals of adjustment, the possibility of the following:

1. The simplification of issues.
2. The necessity or desirability of amendments to the pleadings.
3. The exchange and acceptance of service of exhibits proposed to be offered in evidence.
4. The obtaining of admission as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which may properly shorten the hearing.
5. The limitation of the number of witnesses.
6. The limitation of the time allowed for the testimony of expert witnesses.
7. Such Any other matters matter as may properly be dealt with to aid in expediting the orderly conduct of the proceeding.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-08.3

13-01.1-03-03. Initiation of conferences. The board or the commissioner, with or without motion, may direct that a prehearing conference be held upon such terms as the board may provide. Upon

~~motion-by-a-party,-the-hearing-examiner-may-direct-the-parties--to--such~~
~~proceedings--to-appear-for-prehearing-conference-to-consider-the-matters~~
~~outlined-in-section-13-01.1-03-02.~~ Due notice of the time and place of
such conference will be given to all parties to the proceeding.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-08.3

13-01.1-03-04. Conference results stipulated. Upon conclusion of
the prehearing conference, the parties shall ~~immediately--reduce--the~~
~~results--thereof--to--the--form--of,~~ if applicable, provide a written
stipulation which recites the matters agreed upon, and the original and
seven ten copies thereof shall be filed with the board. Any such
stipulation ~~may-be~~ received in evidence at a hearing and, ~~--when--and--so~~
~~received,--shall-be~~ is binding on the parties with respect to the matters
therein stipulated.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-08.3

CHAPTER 13-01.1-04

13-01.1-04-01. Notice. In those proceedings in which a hearing is to be held, the board will, by order or otherwise, assign a time and place for hearing, and notice will be issued. ~~Where specified by statute, notice will be given as specified in the statute.~~ When the notice procedure is not specified by statute, notice will be given at least ~~fifteen~~ twenty days prior to the date of the hearing, except in cases of emergency.

The notice procedures of the board are as follows, unless emergency circumstances require otherwise:

1. **Proposed rules.** Notice of proposed rules, inviting comments, will be given to all known interested parties by mail. Notice will also be published in the following newspapers:
 - a. Bismarck Tribune, Bismarck.
 - b. Devils Lake Daily Journal, Devils Lake.
 - c. Dickinson Press, Dickinson.
 - d. The Forum, Fargo.
 - e. Grand Forks Herald, Grand Forks.
 - f. Jamestown Sun, Jamestown.
 - g. Minot Daily News, Minot.
 - h. Williston Daily Herald, Williston.
 - i. Valley City Times-Record, Valley City.
 - j. The Daily News, Wahpeton.
2. **Bank applications.** Notice of hearing on an application for an organization certificate for a new bank will be issued at least thirty days prior to the hearing on the application. Notice will be mailed to all banks within the same service area as the location of the proposed new bank and published three times in the official newspaper newspapers of the county and city where the proposed bank is to be located.
3. **Paying and receiving station applications.** Notice of hearing on an application ~~for~~ to establish a paying and receiving station will be issued in the same manner and to the same parties as specified in subsection 2.

4. **Separate facility applications.** Notice of application for a separate drive-in and walk-up facility will be issued as specified in sections 13-02-05-05 and 13-02-05-08.
5. **Electronic funds transfer center applications.** Notice of intent to apply for authorization to establish an electronic funds transfer center shall be issued as specified in section 13-02-06-12.
6. **Move of bank to new location.** Notice of hearing on an application to move a bank to some place within the state other than the town in which it is presently located will be issued in the same manner and to the same parties as specified in subsection 2.
7. ~~Trust--company--and-powers-applications.--Notice-of-hearing-on an-application-for-an-organization--certificate--for--a--trust company,--or-for-authority-for-a-bank-to-exercise-trust-powers will-be-issued-in-the-same-manner-and-to-the-same--parties--as specified-in-subsection-2.~~
8. **Savings and loan branch applications.** Notice of hearing on an application for a savings and loan branch will be issued at least thirty days prior to the hearing on the application, and will be published three times in the official newspaper newspapers of the county and city in which the proposed branch is to be located.

The board may mail a copy of the notice to the chairperson of the board of county commissioners in each county wherein citizens who are or will be affected reside, and to the chief executive officer of each city affected in the county.

In addition, the board may, in those instances where it regularly issues notice to the official newspaper of the county to be affected, also issue the same notice to the official newspapers of the adjoining counties, if those areas would similarly be affected.

The board may also give additional notice where it deems such action appropriate.

The procedures outlined above may be altered by the commissioner in cases of an emergency.

History: Effective January 1, 1980; amended effective May 1, 1993; November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 6-02-05, 6-03-02(8), 6-03-13, 6-03-13.3, 6-03-16, 6-05-01, 7-01-01, 28-32-02

13-01.1-04-03. Continuance. ~~After--hearings--are--scheduled, continuances-may-be-granted-by-the-commissioner,-but-will-ordinarily-not~~

be--granted--except--for--good--and--sufficient--cause.---A--motion--for
continuance--may--be--made--orally--at--a--hearing--or--in--writing,--filed--with
the--board,--and--served--on--opposing--counsel--or--parties.---Such--motions
shall--be--presented--as--far--in--advance--of--date--fixed--for--hearing--as
possible--to--ensure--adequate--consideration.---The--board--or--commissioner
may--effect--a--continuance--upon--its--or--the--commissioner's--own--motion.
Repealed effective November 1, 1994.

History: Effective January 1, 1980.
General Authority: NDCC-28-32-02
Law Implemented: NDCC-6-01-04

13-01.1-04-04. Consolidation. The---commissioner,--upon--the
commissioner's--motion--or--upon--motion--by--any--party,--may--order--two--or--more
proceedings--involving--a--similar--question--of--law--or--facts--to--be
consolidated--for--hearing--where--rights--of--the--parties--or--the--public
interest--will--not--be--prejudiced--by--such--procedure. Repealed effective
November 1, 1994.

History: Effective January 1, 1980.
General Authority: NDCC-28-32-02
Law Implemented: NDCC-6-01-04

13-01.1-04-05. Waiver of hearing - Shortened procedure. In any
proceeding--in--which--the--board--is--authorized--to--act--after--opportunity--for
hearing,--such--opportunity--shall--be--deemed--to--have--been--afforded--by
service--of--notice--of--the--application--or--other--initial--pleading--or
filing,--where--the--board--fixes--a--reasonable--period--of--time--within--which
any--person--desiring--to--be--heard--may--file--a--protest--or--petition--for--a
hearing.---Upon--the--expiration--of--such--period--of--time,--in--the--absence--of
a--protest--or--a--request--for--hearing,--the--board--may--forthwith--dispose--of
the--matter--upon--the--basis--of--the--pleading--and--other--submittals--and--the
studies--and--recommendations--of--the--staff.---A--party--not--requesting--oral
hearing--in--the--party's--pleading--shall--be--deemed--to--have--waived--a--hearing
for--the--purpose--of--such--decision,--but--shall--not--be--bound--by--such--waiver
for--the--purposes--of--an--application--for--rehearing--with--respect--to--an
order--so--entered.---This--section--shall--not--apply--to--hearings--required--by
North--Dakota--Century--Code--title--6. Repealed effective November 1, 1994.

History: Effective January 1, 1980.
General Authority: NDCC-28-32-02
Law Implemented: NDCC-6-01-04

13-01.1-04-06. Order of procedure. In hearings on formal
complaints, petitions, and applications, the complainant, petitioner, or
applicant, as the case may be, shall open and close. In all other
hearings, the hearing examiner officer may direct who shall open and
close. In hearings on an order to show cause, the respondent shall open
and close. When proceedings have been consolidated for hearing, the
hearing examiner shall designate who shall open and close. Intervenor

shall follow the parties in whose behalf the intervention is made; where the intervention is not in support of an original party, the presiding hearing officer shall designate at which stage such intervenor shall be heard. In--proceedings--where--the--evidence--is--materially--within--the--knowledge--or--control--of--another--party--or--participant;--the--foregoing--order--or--presentation--may--be--varied--by--the--hearing--examiner.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-11.1

13-01.1-04-07. Hearing examiner. When--evidence--is--to--be--taken--in--a--proceeding;--either--the--board;--any--member--thereof;--or--one--or--more--of--its--hearing--examiners;--when--duly--designated--for--that--purpose;--may--preside--at--the--hearing.

1.--Authority--delegated;---A--hearing--examiner--duly--designated--by--the--board--to--preside--at--a--hearing--shall--have--the--authority;--within--the--board's--powers--and--subject--to--its--rules;--to:

a.--Regulate--the--course--of--hearing.

b.--Administer--oath.

c.--Issue--subpoenas.

d.--Take--depositions--or--cause--depositions--to--be--taken.

e.--Rule--upon--offers--of--proof--and--to--receive--evidence.

f.--Hold--appropriate--conferences--before--or--during--hearings.

g.--Dispose--of--procedural--matters--but--not--to--dispose--of--motions--made--during--hearings--to--dismiss--proceedings--or--other--motion--which--involves--a--final--determination--of--proceedings.

h.--Within--the--hearing--examiner's--discretion--or--upon--direction--of--the--board--or--the--commissioner;--certify--any--question--to--the--board--for--its--consideration--and--disposition.

i.--Take--any--other--action--necessary--or--appropriate--to--discharge--the--duties--vested--in--the--hearing--examiner;--consistent--with--statutory--or--other--authorities--under--which--the--board--functions--and--with--the--rules;--regulations;--and--policies--of--the--board.

j.--Exclude--evidence--which--is--cumulative--or--repetitious.

k.--Authorize--any--party--to--furnish--and--serve--designated--late--filed--exhibits--within--a--specified--time--after--the--close--of--the--hearing.

1.--Order-discovery.

- 2.--Limitations:----Hearing-examiners--shall--perform--no--duties inconsistent-with-their-responsibilities-as-such:--No-hearing examiner-shall,-in-any-proceeding-for-an-adjudication-required by-statute-to-be-determined-on-the--record--after--opportunity for-hearing,-consult-any-person-or-party-on-any-fact-in-issue unless--upon--notice--and--opportunity--for--all--parties---to participate. Repealed effective November 1, 1994.

History: Effective-January-1,-1980-

General Authority: NDEC-28-32-02

Law Implemented: NDEC-6-01-04

13-01.1-04-08. Appeal to board from ruling of hearing examiner. An-appeal-may-be-taken-to-the-full-board-from-a--ruling--of--a--hearing examiner--during--the--course--of--a--hearing--only--where-extraordinary circumstances-necessitate-a-prompt-decision--by--the--board--to--prevent detriment-to-the-public-interest:--Any-offer-of-proof-made-in-connection with-an-objection-taken-to-any-ruling-of-the-hearing-examiner--rejecting or--excluding--proffered--oral-testimony-shall-consist-of-a-statement-of the-substance-of-the-evidence-which-counsel-contents-would-be-adduced-by such--testimony;--and,--if-the-excluded-evidence-consists-of-evidence-in documentary-or-written-form-or-reference-to-documents-or-records,-a-copy of-such-evidence-shall-be-marked-for-identification-and-shall-constitute the-offer-of-proof. Repealed effective November 1, 1994.

History: Effective-January-1,-1980-

General Authority: NDEC-28-32-02

Law Implemented: NDEC-6-01-04

13-01.1-04-09. Oral argument.

- 1.--Before-hearing-examiner:--When-in-the-opinion-of-the-hearing examiner,-time-permits-and-the-nature-of-the-proceedings;--the complexity--or--the--importance--of--the--issues-of-fact-or-law involved;--and--the--public--interest-warrant;--such-hearing examiner--may;--either-on-the-hearing-examiner's-own-motion-or at-the-request-of-any-party-at-or-before--the--close--of--the taking-of-testimony,-allow-and-fix-a-time-for-the-presentation of-oral-argument-imposing-such-limits-of-time-on-the--argument as--deemed--appropriate:--Such-arguments-shall-be-transcribed and-bound-with-the-transcript-of-testimony:
- 2.--Before--the--full--board:--A-request-for-authority-to-present oral-argument-before-the-full-board-may-be-made--at--any--time during-the--hearing;--at--the--conclusion--of--the--taking--of evidence,-or-on-brief:--The-board-will-announce-and--fix--the time--for--oral--argument;--if--allowed: Repealed effective November 1, 1994.

History: Effective-January-1,-1980-
General Authority: NDEG-28-32-02
Law Implemented: NDEG-6-01-04

13-01.1-04-10. Briefs - Proposed findings of fact and conclusions of law.

- 1.--Each--party--to--any--proceeding--may--file--proposed--findings--of--fact--and--conclusions--of--law,--briefs,--or--memoranda--of--law. However,--the--hearing--examiner--may--direct--any--party--to--file--proposed--findings--of--fact--and--conclusions--of--law,--briefs,--or--memoranda--of--law.
- 2.--The--hearing--examiner--shall--fix--the--time--for--the--filing--and--service--of--proposed--findings--of--fact--and--conclusions--of--law, briefs,--or--memoranda--of--law, giving--due--regard--to--the--nature--of--the--proceeding,--the--magnitude--of--the--record,--and--the--complexity--or--importance--of--the--issues--involved, and--the--hearing--examiner--shall--fix--the--order--in--which--such--briefs--shall--be--filed.
- 3.--Should--a--party--find--that--it--is--unable--to--meet--the--date--for--filing--and--serving--proposed--findings--of--fact--and--conclusions--of--law,--briefs,--or--memoranda--of--law, said--party--should--so--notify--the--board--and--the--other--parties--in--writing,--therein--setting--forth--the--reasons--for--such--inability--together--with--a--request--for--an--extension--of--time--to--a--date--certain--for--filing--and--service.
- 4.--When--it--is--ordered--that--proposed--findings--of--fact--and--conclusions--of--law, briefs, or memoranda--of--law--be--filed--and--served,--and--where--the--party--that--initiated--the--proceeding--fails--to--file--and--serve--by--the--date--specified--without--complying--with--subsection--3, the--board--on--its--own--motion--or--the--motion--of--any--party--may, in--its--discretion,--dismiss--the--proceeding.---Such--failure--in--the--case--of--an--intervenor, protestant, or respondent--may--be--deemed--a--waiver--of--the--right--to--participate--further--in--the--proceeding, and--the--board--on--its--own--motion--or--the--motion--of--any--party--may--so--order.
- 5.--Exhibits--should--not--be--reproduced--in--a--brief, but--may, if--desired,--be--reproduced--in--an--appendix--to--the--brief.---Every--brief--of--more--than--twenty--pages--shall--contain--a--subject--index, with--page--references,--and--a--list--of--all--cases--cited, alphabetically--arranged,--with--references--to--the--pages--where--the--citations--appear.---All--briefs--shall--be--as--concise--as--possible.
- 6.--All--briefs--shall--be--accompanied--by--certificate--showing--service--upon--all--parties--or--their--attorneys--who--appeared--at--the--hearing.---Seven--copies--of--each--brief--shall--be--furnished--for

the-use-of-the-board-unless-otherwise-directed-by-the--hearing
examiner.

7.--The---time--within--which--any--pleading,--motion,--brief,--or
exceptions-may-be-filed,--or-the-time-within-which-any--act--is
required--to--be-performed-or-may-be-performed,--as-provided-by
any-rule-or-order-of-the-board-or-commissioner,--shall--be--so
computed-as-to-exclude-the-first-day-and-include-the-last-day;
provided,--that-when-the-last--day--of--such--period--falls--on
Saturday,--Sunday,--a--legal--holiday--under--the-laws-of-this
state,--or-a-day-on-which-the-offices-of-the--commissioner--for
any--reason-are-not-open-for-business,--the-computation-of-time
shall-omit-such-day-and-begin-on--the--first--day--thereafter
which---does---not---fall--on--such--day. Repealed effective
November 1, 1994.

History: Effective-January-1,-1980-

General Authority: NDCC-28-32-02

Law Implemented: NDCC-6-01-04

13-01.1-04-11. Motions. Before a hearing officer has been
appointed, the commissioner or board may act on any motion, including a
motion for continuance or consolidation.

History: Effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05

CHAPTER 13-01.1-05

13-01.1-05-01. Rules. The--admissibility--of--evidence--shall--be determined--generally--in--accordance--with--the--practice--in--the--district courts--of--this--state;---The--board;--commissioner;--or--hearing--examiner; however;--may--waive--the--usual--common--law--or--statutory--rules--of--evidence where--such--waiver--is--necessary--to--ascertain--the--substantial--rights--of the--public--and--interested--parties;---When--objection--is--made--to--the admissibility--of--evidence;--the--hearing--examiner--may--receive--such evidence--subject--to--later--ruling--by--the--board;---Any--ex--parte--written communication--to--the--board--regarding--a--particular--proceeding--before--the board--shall--be--delivered--to--the--secretary--of--the--board--who--shall--place the--ex--parte--communication--in--public--files--associated--with--the--pending proceeding;--but--separate--from--the--record--material--upon--which--the--board can--rely--in--reaching--its--decision; Repealed effective November 1, 1994.

History: Effective--January--1;--1980;

General Authority: NDCC-28-32-02

Law Implemented: NDCC-6-01-04

13-01.1-05-02. Witnesses. Witnesses--will--be--orally--examined under--oath--before--the--hearing--examiner--unless--their--testimony--is--taken by--deposition--as--provided--in--section--13-01.1-05-04;---Written--testimony of--any--witness--may--be--received--when--properly--supported--by--the--oral testimony---of---its---author---on---direct---examination---subject---to cross--examination--and--motion--to--strike; Repealed effective November 1, 1994.

History: Effective--January--1;--1980;

General Authority: NDCC-28-32-02

Law Implemented: NDCC-6-01-04

13-01.1-05-03. Subpoena. Subpoenas--for--the--attendance--of witnesses--or--for--the--production--of--documentary--evidence;--unless--directed by--the--board--or--commissioner--upon--the--board's--or--commissioner's--own motion;--will--issue--only--upon--application--in--writing--to--the--board--or hearing--examiner;--except--that--during--a--hearing--such--application--may--be orally--on--the--record--before--the--board--or--the--hearing--examiner--who--shall have--the--authority--to--determine--the--relevancy--and--the--materiality--of--the evidence--sought--and--to--issue--such--subpoena--if--warranted;---Written application--shall--specify--the--general--relevance--and--materiality--of--the testimony--or--documentary--evidence--sought;--including;--as--to--documentary evidence;--specifications--as--nearly--as--may--be--of--the--documents--desired and--the--facts--to--be--proved--by--them;---The--cost--of--serving--such--subpoena shall--be--paid--by--the--party--requesting--it;---Any--witness--who--is--subpoenaed under--the--provisions--of--this--section--and--who--appears--at--the--hearing shall--receive--the--same--fees--and--mileage--as--witnesses--in--the--district courts--of--this--state;--and--such--costs--will--be--paid--by--the--party--at--whose

~~instance-the-witness-appears.--No-witness-fees-will-be-allowed-except-on
a-subpoena.~~ Repealed effective November 1, 1994.

History: Effective-January-1,-1980-

General Authority: NDGG-28-32-02

Law Implemented: NDGG-6-01-04

~~13-01.1-05-04. Depositions. The-deposition-of-a-witness-required
in-any-proceeding-before-the-board-may-be-taken-in-the-same-manner--and
on--the--same--notice--as-in-any-action-pending-in-the-district-court-of
this-state.--Any-witness-whose-deposition-is--taken--shall--receive--the
same--fees--and--mileage--as--a--witness-in-a-civil-case-in-the-district
court,-and-such-costs-shall-be-paid-by-the-party-at-whose--instance--the
witness's-deposition-is-taken.~~ Repealed effective November 1, 1994.

History: Effective-January-1,-1980-

General Authority: NDGG-28-32-02

Law Implemented: NDGG-6-01-04

13-01.1-05-06. Expert witnesses.

1. **Notification required.** Parties intending to present expert testimony shall notify the board and all parties to the proceeding of that intent. The notification shall indicate the nature of the expert testimony, whether or not one or more exhibits supplementing the testimony are intended, and the name and qualifications of the expert witness.
2. **Supplemental exhibits.** Within the times specified in this section, the party on whose behalf the testimony is given shall file with the board seven ten copies of any exhibits supplementing the expert testimony, and shall also provide copies to all parties to the proceeding.
3. **Applicants.** Applicants under section 13-01.1-02-04 who intend to present expert testimony shall comply with subsection 1 within ten days after receipt of notification that the application has been accepted for filing and shall comply with subsection 2 at least twenty days prior to the hearing on the application.
4. **Protestants.** Protestants under section 13-01.1-02-05 who intend to present expert testimony shall comply with subsection 1 at least twenty days prior to the date of the hearing on the application and shall comply with subsection 2 at least ten days prior to the hearing on the application.
5. **Others.** All other parties intending to present expert testimony shall comply with subsection 1 at least twenty days prior to the date set for hearing and may comply with subsection 2 at the time the exhibit is introduced.

History: Effective January 1, 1980; amended effective November 1, 1994.
General Authority: NDCC 6-01-04, 28-32-02
Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-06

13-01.1-05-07. Documentary evidence. Where relevant and material matter offered in evidence by any party is embraced in a book, paper, or a document containing other matter not material or relevant, the party must plainly designate the matter so offered; if the other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant and material matter may be read into the record, or, if the hearing examiner directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party offering the same to all parties or their attorneys appearing at the hearing who shall be afforded an opportunity to examine the entire book, paper, or document and to offer in evidence in like manner any portions thereof found to be material and relevant. Any matter contained in a report or other document on file with the board may be offered in evidence by merely specifying the report, document, or other file containing the matter so offered. Repealed effective November 1, 1994.

History: Effective January 1, 1980.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 6-01-04

13-01.1-05-08. Exhibits. Exhibits must be on paper of good quality and so prepared as to be plainly legible and durable whether printed, typewritten, mimeographed, photographed, or otherwise, and if possible should be folded to a size not to exceed eight and one-half by fourteen inches {21.59 by 35.56 centimeters}. Whenever practicable the sheets of each exhibit and line of each sheet should be numbered, and, if the exhibit consists of five or more sheets, the first sheet or title page should contain a brief statement of what the exhibit purports to show with reference by sheet and line to illustrative or typical example contained in the exhibit. Whenever practicable, documents produced by a single witness shall be assembled and bound together, suitably arranged, and indexed so that they may be identified and offered as one exhibit. The source of all material contained in any exhibit should be definitely shown.

Seven Ten copies of each exhibit will be furnished for the use of the board whenever practicable. Copies must also be available for all parties of record in a proceeding.

History: Effective January 1, 1980; amended effective November 1, 1994.
General Authority: NDCC 6-01-04, 28-32-02
Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-06

13-01.1-05-09. Official notice. The board may take notice of any fact or facts set forth in its orders, duly established regulations, rules, examination reports, annual reports, or any statistical data, to which reference is made on the record at in the hearing, or any facts which are judicially noticed by the courts of this state.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-06

13-01.1-05-10. Former employees employee participation prohibited. Except with the written permission of the commissioner, no former employee of the board, the department, or member of the attorney general's staff assigned to the board, may appear in a representative capacity or as an expert a witness on behalf of other parties any party at any proceeding at any time within six twelve months after severing the employee's or member's association with the board, nor may the employee or member appear after said six months' period in any proceeding wherein the employee or member previously took an active part when associated with the board termination of employment or assignment.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-06

13-01.1-05-11. Interrogatories to parties and requests for admission. Any interrogatories required in any proceeding before the board may be requested in the same manner as in an action pending in the district court of this state. Any party may serve upon any other party written interrogatories or requests for admission to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information or answer as is available to the party.

Each interrogatory or request for admission must be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection must be stated in lieu of an answer. The party upon whom the interrogatories or requests for admission have been served shall serve a copy of the answers, and objections if any, within fifteen days after service of the interrogatories or requests for admission.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-09

CHAPTER 13-01.1-06

13-01.1-06-01. Petition to reopen. ~~At any time after~~ After the conclusion of a hearing ~~in a proceeding~~, but before ~~entering and~~ issuance by the board ~~of issues~~ its final order ~~or rule~~, any party ~~to a~~ proceeding may file with the board a petition to reopen the proceeding for the purpose of taking additional evidence.

1. **Contents:** The petition ~~shall set forth clearly~~ must state the facts claimed to constitute the grounds requiring for reopening of the proceeding, including the material changes of fact or law alleged to have occurred since the conclusion of the hearing.
2. **Service:** A copy of the petition to reopen shall must be served by the petitioning party upon all parties to the proceedings or their attorneys of record, and a certificate to that effect will be attached to the petition when filed with the board. The original and seven ten copies must be filed with the board.
3. **Responses:** Within ten days following the service of any petition to reopen, any other party to the proceeding may file with the board the party's answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition.
4. **Order to reopen:** If, after the hearing in a proceeding, either before or after the issuance of its final order, the board ~~shall have~~ has reason to believe the conditions of fact or law have so changed as to require, or that public interest requires, the reopening of such proceeding, the board will shall issue an order for the reopening of the proceeding. If approved, the board may grant the petition to reopen upon such terms and conditions as the board may provide.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-14

13-01.1-06-02. Petition for rehearing reconsideration.

1. ~~Time for filing: A petition for rehearing of a proceeding must be filed within fifteen days after a copy of the decision has been delivered to the petitioning party by the board.~~
2. ~~Content: The petition shall state concisely the alleged errors in the board's decision or order and the specific grounds relied upon by the petitioner. If an order of the board is sought to be vacated, reversed, or modified by reason~~

of--matters--that--have--arisen--since--the--hearing--and--decision--or
order,--or--by--reason--of--a--consequence--that--would--result--from
the--compliance--therewith,--the--matters--relied--upon--by--the
petitioner--shall--be--set--forth--in--the--petition.

3.--Service:--A--petition--for--rehearing--shall--be--served--by--the
petitioner--upon--all--parties--to--the--proceeding--or--their
attorneys--of--record,--and--a--certificate--to--that--effect--will--be
forwarded--to--the--board--at--the--time--the--petition--is--filed.--The
original--and--seven--copies--must--be--filed--with--the--board.

4.--Responses:--Within--ten--days--following--the--service--of--the
petition,--any--party--to--the--proceeding--may--file--with--the--board
the--party's--answer--thereto,--and--in--default--thereof--shall--be
deemed--to--have--waived--any--objection--to--the--granting--of--the
petition. Petitions for reconsideration must be filed in
accordance with North Dakota Century Code section 28-32-14.
The original and ten copies of all petitions for
reconsideration must be filed with the board at the time the
petition is served upon the parties. Responses to petitions
for reconsideration must be filed with the board within ten
days following the service of the petition or objection to the
granting of the petition will be deemed waived.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-14

CHAPTER 13-01.1-07

13-01.1-07-01. Generally Application. An application for the promulgation, amendment, repeal, or adoption of any board rule ~~or regulation-shall~~ must state the precise wording of the proposed rule and regulation and shall must state briefly the reasons for ~~such the~~ promulgation, amendment, repeal, or adoption. The board may, at any time, propose adoption, amendment, or repeal of any rule ~~or--regulation~~.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05

CHAPTER 13-01.1-08

13-01.1-08-01. Generally. The board must conduct open meetings at which the public may attend but will not necessarily be permitted to participate. The agenda for each open meeting will be made available in advance of the session. Items may be added to, or stricken from, the agenda without further notice. Public documents relating to the items on the agenda may be examined in the board's offices. As permitted provided by law, the board may conduct closed meetings to consider confidential ~~matters--covered--in--North--Dakota--Century--Code--section 6-01-07:1~~ information.

History: Effective January 1, 1980; amended effective November 1, 1994.

General Authority: NDCC 6-01-04, 28-32-02

Law Implemented: NDCC 6-01-01, 6-01-04, 6-01-07.1, 44-04-19

STAFF COMMENT: Chapter 13-02-19 contains all new material but is not underscored so as to improve readability.

CHAPTER 13-02-19 TRUST COMPANIES

Section

13-02-19-01	Application
13-02-19-02	Criteria for Approval
13-02-19-03	Equity Capital
13-02-19-04	Publication and Hearing

13-02-19-01. Application. An original and ten copies of the application to organize a trust company must be filed with the board. In lieu of an original application, the board will accept a copy of the application submitted to the federal deposit insurance corporation. The application must clearly indicate the types of trust services to be performed. The application must specify the location as to where the trust company is proposed to be located. The applicant must provide any additional information determined by the commissioner or board to be necessary.

History: Effective November 1, 1994.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-05-01

13-02-19-02. Criteria for approval. The applicant must demonstrate that the proposed trust committee and officers have experience commensurate with the trust powers being requested. Upon granting trust powers, the board may require the applicant to commit to a training program of trust schools and seminars acceptable to the board. The board may also direct the applicant to enter into a training agreement with another trust company or bank.

History: Effective November 1, 1994.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-05-01

13-02-19-03. Equity capital. The minimum equity capital for organization of a trust company is five hundred thousand dollars. The board may require additional equity capital whenever the proposed location of the trust company, the amount of fiduciary assets projected for the trust company, the amount of direct investments by the trust company, or other relevant financial projections so indicate. The minimum equity capital level set by the board will be such as necessary

to ensure that the applicant is adapted to the filling of the need to establish trust services.

History: Effective November 1, 1994.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-05-01

13-02-19-04. Publication and hearing. A notice of hearing on an application must be issued at least forty-five days prior to the hearing on an application. The notice of hearing must be published by the secretary of the board for two successive weeks in the official newspaper of the county where the proposed trust company is to be located. The notice of hearing must also be sent by certified mail by the secretary of the board to all banks and trust companies located within the trade area of the trust company.

History: Effective November 1, 1994.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-05-01

TITLE 30
Game and Fish Department

MAY 1995

CHAPTER 30-03-01

30-03-01-01. License required. No person shall sell, at retail or at wholesale, any live bait without first obtaining the appropriate annual license authorizing the person to do so. All licenses must be publicly displayed on the business premises. ~~Vendor-license-numbers-and business~~ Business names must be displayed on any vehicle used to transport bait. Licenses will be issued on a calendar year basis.

History: Amended effective January 1, 1991; May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-02. Live bait. The term "live bait" as used in this chapter includes all fishes, ~~mammals,--birds,~~ amphibians, insects, or other invertebrates or parts thereof.

History: Amended effective May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-03. License limitations. The holder of a retail bait vendor license may sell live bait at retail only, at one specified selling location per license. The holder of a wholesale bait vendor license may sell live bait at wholesale only. Both a retail license and a wholesale license are necessary to sell live bait at both retail and wholesale.

History: Amended effective May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-04. Assistants covered by license. Retail or wholesale bait vendor licenses are issued to one individual only. A licensed retail bait vendor may have the assistance of other persons to sell live bait at the selling location designated on the vendor's license. A licensed wholesale bait vendor may have the assistance of other persons to sell and transport live bait, provided the original or copy of the wholesale license and other appropriate permits are carried on the person or in the transport vehicle.

History: Amended effective May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-05. Quantity requiring license. It shall be considered as possessing for commercial purposes when any person has in possession at one time over twelve dozen minnows or bait fish legal for use or resale.

History: Amended effective May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-06. Equipment. Persons commercializing in or transporting live bait shall use equipment capable of maintaining such live bait in a healthy and lively condition at all times. Each species of baitfish must be kept separate from other species of baitfish in holding and transport equipment. The premises and equipment of all persons commercializing in live bait shall be open to the inspection of the game and fish commissioner director or any of the commissioner's director's duly appointed agents at any time. Upon inspection, if equipment is found to be inadequate for these purposes, the vendor will be notified in writing. Upon written notification, the vendor shall make the necessary corrections within thirty days. ~~Failure-to-make these-corrections-within-thirty-days-of-notification-is-a-noncriminal offense--and--the-vendor-will-be-assessed-a-penalty-of-two-hundred-fifty dollars.--In-addition,-the-commissioner-may-revoke-the-vendor's-license-~~

History: Amended effective January 1, 1991; May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-07. Species permitted. Persons raising minnows or other bait fish for sale shall raise for sale only the following species: the common white sucker, *catostomus commersoni*; and members of the family cyprinidae native to North Dakota waters with the exception of the carp, *cyprinus carpio*; the goldfish, *carassius auratus*; ~~and-the-golden-shiner;~~

notenigenus--eryseleueas or any species listed as threatened or endangered.

History: Amended effective May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-08. Interstate transport. It shall be illegal to transport minnows or other live baitfish and amphibians into or out of the state except with ~~written permission of~~ a permit issued by the game and fish commissioner director and only with equipment approved by the ~~commissioner~~ director. Shipments of legal baitfish and amphibians into or out of North Dakota are subject to periodic inspection by a duly appointed agent of the game and fish ~~commissioner~~ director. The director must be notified a minimum of twenty-four hours prior to any import of minnows or other live baitfish or amphibians. Failure of the vendor to secure the proper permission is a noncriminal offense and ~~will~~ may result in the revocation of the vendor's license and assessment of a penalty of two hundred fifty dollars.

History: Amended effective June 1, 1985; January 1, 1991; May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-09. Records. Each licensee shall keep accurate and up-to-date records, on forms furnished by the department, of location, species, and numbers of minnow or live bait seined or trapped by the dealer from public or private waters. Authorization to trap rivers and streams is required from the director prior to trapping. A bait dealer purchasing live bait or minnows for resale must record, on forms furnished by the department, the species and number as well as the name and address of the person from whom the dealer purchased them. This record must be open to inspection by an employee of the department at any reasonable hour. A copy of this record shall be submitted to the director no later than thirty days following expiration of the license. The record must be kept intact for a period of two years after the expiration of any license issued under this section.

History: Amended effective January 1, 1991; May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-12. Equipment for live bait farms. A wholesaler operating a live bait farm may use additional equipment for harvesting the live bait, under the following conditions:

1. Upon application by a wholesaler, a permit may be granted by the game and fish ~~commissioner~~ director for the use of additional trapping or seining nets to harvest live bait from described private areas. The permit shall be issued only

after it has been determined that the use of the private areas does not in any way interfere or conflict with the fishery management program of the North Dakota game and fish department or the United States fish and wildlife service.

2. Netting equipment allowed by special permit shall be used only in areas listed on the permit, and the equipment must have attached at all times the ~~metal-tag-or~~ tags issued with and corresponding to the permit.
3. Fishtraps used by a wholesaler under permit shall be restricted to those less than five feet [1.5 meters] in diameter. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure, and the throat opening shall be less than six inches [152 millimeters] in diameter.
4. Seines used by a wholesaler under permit shall be restricted to those less than two hundred fifty feet [76 meters] in length and fourteen feet [4.25 meters] in depth. Mesh size shall not exceed one-half inch [12.7 millimeters] square measure.

History: Amended effective May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-04

30-03-01-13. Minnow stocking. It shall be illegal to stock minnows or other live bait into any waters of North Dakota where ~~escapement--of such minnows or bait will result in the stocking of any~~ could escape into waters under sport fish management by the North Dakota game and fish department or the United States fish and wildlife service. Violation of this is a class B misdemeanor.

History: Amended effective May 1, 1995.

General Authority: NDCC 20.1-06-14

Law Implemented: NDCC 20.1-06-14

30-03-01-14. Violations are noncriminal. Any person who violates any section of this chapter for which a penalty is not specifically provided is guilty of a noncriminal offense and shall pay a fifty dollar fee. The violation may result in revocation of the wholesale or retail license.

History: Effective April 1, 1986; amended effective January 1, 1991; May 1, 1995.

General Authority: NDCC 20.1-02-05(24)

Law Implemented: NDCC 20.1-02-05(24)

CHAPTER 30-04-05

30-04-05-06. Computer-generated licenses. In addition to the license system described in sections 30-04-05-01 to 30-04-05-05, licenses may be generated by computer. These licenses will consist of a computer-generated certificate, required information, and a listing of the licenses that have been purchased. For these licenses to be valid, the licenseholder must sign the computer-generated certificate.

History: Effective May 1, 1995.

General Authority: NDCC 20.1-02-04

Law Implemented: NDCC 20.1-02-04

CHAPTER 30-05-01

30-05-01-02. Boat safety equipment. The following equipment is required as indicated, and must be usable and in serviceable condition.

1. **Personal flotation devices.** All motorboats less than sixteen feet [4.8 meters] in length and all nonpowered boats must have one coast guard approved type I, II, or III, ~~or IV~~ device aboard for each person. All motorboats sixteen feet [4.8 meters] or greater in length must have one coast guard approved type I, II, or III device aboard for each person, and, in addition, one coast guard approved throwable type IV device.

All persons manipulating any water skis, surfboard, or similar device must wear a coast guard approved type I, II, or III device. The only exception is that of a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under North Dakota Century Code section 20.1-13-11.

2. **Fire extinguishers.** Motorboats of less than twenty-six feet [7.8 meters] in length need no fire extinguishing equipment, unless the boat has a double bottom not sealed to the hull or not completely filled with flotation material; or unless it has closed stowage compartments in which combustible or flammable materials are stored; or unless it has closed compartments under thwarts and seats wherein portable fuel tanks may be stored; or unless it has closed living spaces; or unless it has permanently installed fuel tanks. If in any of these categories, it must have either a fixed fire extinguishing system in the machinery spaces, or at least one coast guard approved B-I type portable extinguisher. Motorboats twenty-six [7.8 meters] to forty feet [12 meters] in length must have either two coast guard approved B-I type portable extinguishers or one coast guard approved B-II type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces and one coast guard approved B-I type portable extinguisher. Motorboats forty feet [12 meters] or over in length must have either three coast guard B-I type portable extinguishers, or one coast guard approved B-II type portable extinguisher and one B-I type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces along with one coast guard approved B-II type or two B-I type portable extinguishers, or a fixed fire extinguishing system in the machinery spaces along with one coast guard approved B-II type or two B-I type portable extinguishers.
3. **Backfire flame arrester.** One coast guard approved device is required on each carburetor of all gasoline powered engines, except outboard motors.

4. **Bells and whistles.** Boats sixteen feet [4.8 meters] to less than twenty-six feet [7.8 meters] in length require one hand, mouth, or power operated whistle audible at least one-half mile [.8 of a kilometer]. Boats twenty-six feet [7.8 meters] to less than forty feet [12 meters] in length require a hand or power operated whistle audible at least one mile [1.6 kilometers], and a bell which produces a clear, bell-like tone when struck. Boats over forty feet [12 meters] in length require a power operated whistle audible at least one mile [1.6 kilometers] and a bell which produces a clear, bell-like tone when struck.
5. **Ventilation.** All motorboats with enclosed engine or fuel compartments, and using gasoline as a fuel, must have at least two ventilator ducts, fitted with cowls, or the equivalent, leading to each such compartment, to properly and efficiently ventilate the compartment.
6. **Lighting.** When operating between sunset and sunrise, all motorboats under twenty-six feet [6.8 meters] in length shall exhibit a twenty-point [225 degree] combination red and green bowlight visible for one mile [1.6 kilometers], ten points [112.5 degrees] to the left of the centerline of the boat being red, the ten points [112.5 degrees] to the right of the centerline being green, and a thirty-two-point [360 degree] white stern light, visible for two miles [3.2 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

When operating between sunset and sunrise, all motorboats twenty-six feet [6.8 meters] in length or over shall exhibit a twenty-point [225 degree] white bowlight visible for two miles [3.2 kilometers], a ten-point [112.5 degree] red side light, visible for one mile [1.6 kilometers], on the left side of the vessel, a ten-point [112.5 degree] green side light, visible for one mile [1.6 kilometers] on the right side (the side lights shall be visible through an arc beginning parallel to the centerline of the vessel and extending ten points [112.5 degrees] toward the stern), and a thirty-two-point [360 degree] white stern light visible for two miles [3.6 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

All nonpowered boats operating between sunset and sunrise shall have readily accessible a white light source which shall be temporarily exhibited in sufficient time to prevent a collision.

All vessels at anchor between sunset and sunrise must display a white light visible to a boat approaching from any direction.

Any person who violates this section is guilty of a noncriminal offense and shall pay a twenty-five dollar fee.

History: Amended effective December 1, 1982; April 1, 1986; May 1, 1995.

General Authority: NDCC 20.1-13-12

Law Implemented: NDCC 20.1-13-05

CHAPTER 30-05-03

30-05-03-30. Raleigh Reservoir. Boats-powered-by-gas,-gasohol,-diesel,-or-other-internal-combustion-motors--are--prohibited Motorboat operators on the waters of Raleigh Reservoir in Grant County must operate their boats at idle speed only. "Idle speed" means operating the motorboat at the slowest possible speed necessary to maintain steerage.

History: Effective September 1, 1993; amended effective May 1, 1995.

General Authority: NDCC 20.1-13-12, 20.1-13-14

Law Implemented: NDCC 20.1-13-12

30-05-03-35. Spring Park Lakes (Williston Park Ponds). Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Spring Park Lakes (Williston Park Ponds) in Williams County.

History: Effective September 1, 1993; amended effective May 1, 1995.

General Authority: NDCC 20.1-13-12, 20.1-13-14

Law Implemented: NDCC 20.1-13-12

30-05-03-36. Lake Tschida. Motorboat operators in marked areas on the waters of Lake Tschida in Grant County must operate their boats at idle speed only. "Idle speed" means operating the motorboat at the slowest possible speed necessary to maintain steerage. Idle speed areas are designated with signs along the shore or with buoys in the water.

History: Effective May 1, 1995.

General Authority: NDCC 20.1-13-12, 20.1-13-14

Law Implemented: NDCC 20.1-13-12

30-05-03-37. Mirror Lake. Motorboat operators on the waters of Mirror Lake in Adams County must operate their boats at idle speed only. "Idle speed" means operating the motorboat at the slowest possible speed necessary to maintain steerage.

History: Effective May 1, 1995.

General Authority: NDCC 20.1-13-12, 20.1-13-14

Law Implemented: NDCC 20.1-13-12

30-05-03-38. Leland Dam. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Leland Dam in McKenzie County.

History: Effective May 1, 1995.

General Authority: NDCC 20.1-13-12, 20.1-13-14

Law Implemented: NDCC 20.1-13-12

30-05-03-39. Kettle Lake. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Kettle Lake in Williams County.

History: Effective May 1, 1995.

General Authority: NDCC 20.1-13-12, 20.1-13-14

Law Implemented: NDCC 20.1-13-12

30-05-03-40. Sheep Creek Dam. Motorboat operators on the waters of Sheep Creek Dam in Grant County must operate their boats at idle speed only. "Idle speed" means operating the motorboat at the slowest possible speed necessary to maintain steerage.

History: Effective May 1, 1995.

General Authority: NDCC 20.1-13-12, 20.1-13-14

Law Implemented: NDCC 20.1-13-12

TITLE 45
Insurance Commissioner

MARCH 1995

CHAPTER 45-06-06.1

45-06-06.1-02. Applicability and scope.

1. a. Except as provided in subdivision b and section 45-06-06.1-13, this chapter applies to any health benefit plan, whether provided on a group or individual basis, which:
 - (1) Meets one or more of the conditions set forth in subdivisions a, b, and c of subsection 1 of North Dakota Century Code section 26.1-36.3-02;
 - (2) Provides coverage to three or more employees of a small employer located in this state, without regard to whether the policy or certificate was issued in this state; and
 - (3) Is in effect on or after August 1, 1994.
- b. The provisions of the Act and this chapter do not apply to an any individual health insurance policy policies delivered or issued for delivery prior to August 1, 1994. Subject to the applicability provisions of this rule and the provisions of North Dakota Century Code section 26.1-36.3-02, the provisions of the Act and this chapter apply to certain individual health insurance policies delivered or issued for delivery on or after August 1, 1994.
2. a. A carrier that provides individual health insurance policies to three or more of the employees of a small

employer shall be considered a small employer carrier and is subject to the provisions of the Act and this chapter with respect to such policies if the small employer contributes directly or indirectly to the premiums for the policies and the carrier is aware or should have been aware of such contribution.

- b. In the case of a carrier that provides individual health insurance policies to three or more employees of a small employer, the small employer shall be considered to be an eligible small employer as defined in subdivision c of subsection 1 of North Dakota Century Code section 26.1-36.3-06 and the small employer carrier is subject to subdivision b of subsection 1 of North Dakota Century Code section 26.1-36.3-06, relating to guaranteed issue of coverage, if:
 - (1) The small employer has at least three employees;
 - (2) The small employer contributes directly or indirectly to the premiums charged by the carrier; and
 - (3) The carrier is aware or should have been aware of the contribution by the employer.
3. The provisions of the Act and this chapter apply to a health benefit plan provided to a small employer or to the employees of a small employer without regard to whether the health benefit plan is offered under or provided through a group policy or trust arrangement of any size sponsored by an association or discretionary group.
4. An individual health insurance policy is not subject to the provisions of the Act and this chapter solely because the policyholder elects a deduction under section 162(1) of the Internal Revenue Code.
5. a. If a small employer is issued a health benefit plan under the terms of the Act, the provisions of the Act and this chapter continue to apply to the health benefit plan in the case that the small employer subsequently employs more than twenty-five eligible employees. Within sixty days of becoming aware that the employer has more than twenty-five eligible employees but no later than the anniversary date of the employer's health benefit plan, a carrier providing coverage to such an employer shall notify the employer that the protections provided under the Act and this chapter shall cease to apply to the employer if such employer fails to renew its current health benefit plan or elects to enroll in a different health benefit plan.
- b. (1) If a health benefit plan is issued to an employer that is not a small employer as defined in the Act,

but subsequently the employer becomes a small employer, due to the loss or change of work status of one or more employees, the terms of the Act shall not apply to the health benefit plan. The carrier providing a health benefit plan to such an employer shall not become a small employer carrier under the terms of the Act solely because the carrier continues to provide coverage under the health benefit plan to the employer.

- (2) Within sixty days of becoming aware that the employer has twenty-five or fewer eligible employees, a carrier providing coverage to an employer described in paragraph 1 shall notify the employer of the options and protections available to the employer under the Act, including the employer's option to purchase a small employer health benefit plan from any small employer carrier.

6. a. (1) If a small employer has employees in more than one state, the provisions of the Act and this chapter shall apply to a health benefit plan issued to the small employer if:

- (a) The majority of eligible employees of such small employer are employed in this state; or

- (b) If no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

- (2) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in paragraph 1, the provisions of the subdivision shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

- b. If a health benefit plan is subject to the Act and this chapter, the provisions of the Act and this chapter shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

7. A carrier that is not operating as a small employer carrier in this state shall not become subject to the provisions of the Act and this chapter solely because a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

History: Effective August 1, 1994; amended effective September 12, 1994.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-36.3

TITLE 48
Board of Animal Health

FEBRUARY 1995

CHAPTER 48-09-01

48-09-01-02. Brand inspection. For the purpose of complying with North Dakota Century Code chapters 36-05, 36-09, and 36-22:

1. When cattle, horses, or mules are offered for sale at any brand inspection point, proof of ownership must be established by the shipper of the cattle, horses, or mules, either by a recorded brand, bill of sale, livestock market clearance, local inspection certificate, or an affidavit of ownership.
2. If any animal inspected bears the recorded brand of the shipper or seller and also bears a recorded brand or brands other than the recorded brand of the shipper or seller, then the said shipper or seller may be required, at the discretion of the brand inspector, to establish ownership of such animal by bills of sale, market clearance, local inspection certificate, or any other satisfactory evidence of ownership.
3. No claim for feed, pasture, or gathering shall be allowed at market. All such claims must be referred to and approved for payment from proceeds of sale by the North Dakota stockmen's association, unless payment is authorized in writing by the owner of the brand carried by such livestock.
4. Sales agency, packing plant, and buying stations where inspection is maintained must furnish necessary help without charge to assist the brand inspectors in handling cattle, horses, or mules to be inspected for brands.
5. All cattle, horses, or mules entering an inspection point shall be placed in pens assigned to individual sellers, and

shall be kept separate from all other cattle, horses, or mules until inspected by the brand inspector and released for sale or shipment.

6. No cattle, horses, or mules shall be inspected after dark or by artificial light or inspected when loaded in trucks; provided, however, that under emergency circumstances deemed by the brand inspector to warrant inspection by artificial light, such inspection may be made at places designated by the chief brand inspector as having lighting which meets the specifications required by the chief brand inspector for inspection by artificial light. The chief brand inspector shall have authority to give approval to premises which meet such specifications, and to extend or remove such approval.
7. It shall be the responsibility of the North Dakota stockmen's association to provide a sufficient and competent force of brand inspectors at inspection points to carry on the brand inspection in an efficient and timely manner.
8. Brand inspectors may not inspect their own livestock or trade at a market where they conduct inspections.
9. A buying station is a point where cattle, horses, or mules are gathered for sale.
10. A bill of lading is required by railroads or motor carriers when livestock is going to out-of-state markets where inspection is maintained for North Dakota livestock.
11. The North Dakota stockmen's association shall, when determined advisable by the chief brand inspector, make an inspection of any butcher shop, buying station, locker plant, or custom meat cutting and processing establishment where cattle are slaughtered or processed for the owner for a fee. Authorized inspectors of the association, when directed to do so by the chief brand inspector, shall be authorized to go upon the premises of any such butcher shop, buying station, locker plant, or custom meat cutting establishment, for the purpose of making physical inspection on the premises as to the ownership or identity of animals or their carcasses that may be found therein.
12. A fee of fifty sixty cents per head on all cattle, horses, or mules subject to brand inspection at points where such inspection is maintained shall be paid by the owner of the cattle, horses, or mules, and when sold by a commission firm, sales agency, or when purchased by a buying station operator or packing plant, it shall be the obligation of the commission firm, sales agency, buying station operator, or packing plant company to collect and withhold from the proceeds of such sale the inspection fee and to pay over to the association upon demand the amounts so collected without any deductions

whatsoever. Whenever a brand inspector is required to travel to points other than the inspector's official stations to perform local brand inspection, the inspector shall be paid mileage by the shipper, owner, or consignor, at the same rate per mile [1.61 kilometers] paid state officials in addition to the regular brand inspection fee. A permanent transportation inspection permit may be obtained, for horses and mules only, by payment of a ten dollar inspection fee.

13. The following terminal markets and auction markets outside the state of North Dakota are designated official brand inspection markets for North Dakota cattle, horses, and mules by the North Dakota stockmen's association: Mobridge livestock auction, Mobridge, South Dakota; McLaughlin sales, inc., McLaughlin, South Dakota; Lemmon livestock market, inc., Lemmon, South Dakota; Sisseton livestock sale co., Sisseton, South Dakota; Britton livestock sale co., Britton, South Dakota; hub city livestock sale co., Aberdeen, South Dakota; Aberdeen livestock sales, Aberdeen, South Dakota; Herreid livestock sale co., Herreid, South Dakota; Baker livestock auction, inc., Baker, Montana; Glendive livestock auction, Glendive, Montana; Sidney livestock market center, Sidney, Montana.

History: Amended effective April 1, 1980; July 1, 1982; June 1, 1983; April 1, 1988; September 1, 1988; July 1, 1995.

General Authority: NDCC 36-22-03

Law Implemented: NDCC 36-05-10, 36-09-15, 36-09-23, 36-22-02, 36-22-03

TITLE 51
Milk Stabilization Board

DECEMBER 1994

CHAPTER 51-03-02

51-03-02-15. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-02-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order number 68 butterfat differential based on \$.071 .053, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday, Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

Item	Hundredweight Factor	B.F. Factor
Whole Milk 1/2 Gallon	\$.0098900	\$(.0001075)
2 % Milk	.0099130	(.0006465)
1 % Milk	.0099130	(.0010775)
Skim Milk	.0099245	(.0012945)
Buttermilk	.0099245	(.0012945)
Whole Chocolate	.0094645	(.0001029)
2 % Chocolate	.0094875	(.0006188)
1 % Chocolate	.0094875	(.0010313)
Skim Chocolate	.0094990	(.0012390)

All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. Wholesale and retail price increases or decreases shall be adjusted for volume discounts. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization plan.

History: Amended effective August 1, 1983; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994.
General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)
Law Implemented: NDCC 4-18.1-07

CHAPTER 51-03-03

51-03-03-16. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-03-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order number 68 butterfat differential based on \$.071 .053, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday, Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

Item	Hundredweight Factor	B.F. Factor
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Skim Milk	.0099245	(.0012945)
Buttermilk	.0099245	(.0012945)
Whole Chocolate	.0094645	(.0001029)
2 % Chocolate	.0094875	(.0006188)
1 % Chocolate	.0094875	(.0010313)
Skim Chocolate	.0094990	(.0012390)

All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. Wholesale and retail price increases or decreases shall be adjusted for volume discounts. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization plan.

History: Amended effective November 1, 1983; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

CHAPTER 51-03-04

51-03-04-16. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-04-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order number 68 butterfat differential based on \$.071 .053, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday, Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

Item	Hundredweight Factor	B.F. Factor
Whole Milk 1/2 Gallon	\$.0098900	\$(.0001075)
2 % Milk	.0099130	(.0006465)
1 % Milk	.0099130	(.0010775)
Skim Milk	.0099245	(.0012945)
Buttermilk	.0099245	(.0012945)
Whole Chocolate	.0094645	(.0001029)
2 % Chocolate	.0094875	(.0006188)
1 % Chocolate	.0094875	(.0010313)
Skim Chocolate	.0094990	(.0012390)

All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. Wholesale and retail price increases or decreases shall be adjusted for volume discounts. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization plan.

History: Amended effective November 1, 1983; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

TITLE 56
Optometry, Board of

JANUARY 1995

CHAPTER 56-02-01

56-02-01-03. Waiver of practical examination. The board may waive the practical examination of an applicant for a license to practice optometry in this state, as provided by North Dakota Century Code section 43-13-18, if all of the following are met:

1. The applicant presents a certified copy or an original certificate of registration or license issued to the applicant by another state where the requirements for registration are equivalent to those of this state and where like privileges are accorded to holders of certificates issued in this state.
2. The applicant holds an original license obtained by examination in the state from which the applicant is applying for reciprocity and has practiced continuously for the immediate past five years in the state in which the applicant is licensed.
3. The applicant's educational requirements were equivalent to those of this state at the time the applicant commenced practice.
4. The applicant must not have previously ~~failed-the-examination~~ been denied a license by this state board.
5. The applicant must furnish a letter from the secretary of the state board of the other state and president of the district or regional optometric association, if such organization exists, attesting to the applicant's character and professional ethics. Each letter shall be transmitted by the

writer directly to the secretary of the North Dakota state board of optometry.

6. The applicant has remitted twenty-five dollars as the examination fee as set forth in North Dakota Century Code section 43-13-18.

~~7. The applicant has submitted an affidavit to the effect that the applicant intends to practice in this state upon receipt of the license.~~

History: Amended effective April 1, 1990; January 1, 1995.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-18

~~56-02-01-05. Waiver of license fee. The annual license fee will be waived for licensed optometrists on active duty in the armed forces of the United States until they are honorably discharged. Repealed effective January 1, 1995.~~

General Authority: NDCC-43-13-13

Law Implemented: NDCC-43-13-20

56-02-01-07. Licensure fees. The following fees must be paid to the board:

1. A fee of one hundred twenty-five dollars fixed by the board, not to exceed two hundred fifty dollars, must accompany an application for examination for a license to practice optometry.
2. A fee of one hundred twenty-five dollars fixed by the board, not to exceed five hundred dollars, must be paid by any optometrist to be licensed in this state by reciprocity.
3. A fee of one hundred thirty dollars fixed by the board, not to exceed five hundred dollars, must be paid annually for renewal of a license to practice optometry.

History: Effective April 1, 1990; amended effective January 1, 1995.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-17, 43-13-18, 43-13-20

CHAPTER 56-02-02

56-02-02-02. Compliance with educational requirements. The required number of hours of educational requirements may be obtained by one or more of the following methods:

1. ~~Educational programs and clinics sponsored by the North Dakota optometric association which programs and clinics would not require membership in the association as a prerequisite for attendance.~~
2. ~~Postgraduate study sessions, seminars, or classroom study at schools or colleges of optometry which are accredited by the council on optometric education of the American optometric association.~~
3. ~~Other educational~~ Educational programs, clinics, seminars, meetings, or study sessions without or within North Dakota that may be approved by the state board of optometry. A request for approval for a particular educational program, clinic, seminar, meeting, or study session must be made to the board at least thirty days prior to the educational meeting and the board shall either grant or deny its approval of such educational meeting within a reasonable period of time in advance of such educational meeting.
4. 2. In situations of extenuating circumstances and upon receipt by the board of satisfactory evidence of such circumstances, the board may approve specific home study educational material for part or all of such educational requirements.

History: Amended effective December 1, 1987; January 1, 1995.

General Authority: NDCC 43-13-20

Law Implemented: NDCC 43-13-20

56-02-02-04. Certificate of compliance. ~~Upon request, the secretary shall furnish all optometrists with certification forms. The forms must be filed with the secretary within fourteen days after any educational program, which meets the educational requirements, and must be filled out by the secretary or chairman of the organization sponsoring such educational program, the dean of an accredited school or college of optometry, or by a person acceptable to the board, in order that attendance will comply with the educational requirements.~~ All optometrists licensed in this state must file with the secretary a certification of educational program compliance with the optometrist's annual license fee on forms which shall be provided by the secretary. No more than twenty-five percent of the total hours certified may be in practice management. No more than twenty-five percent of the total hours certified may be by correspondence.

History: Amended effective December 1, 1987; January 1, 1995.
General Authority: NDCC 43-13-20
Law Implemented: NDCC 43-13-20

CHAPTER 56-02-04

56-02-04-02. Minimum examination requirements. The--minimum vision-or-eye-examination-which-an--optometrist--shall--perform--in--all cases-and-keep-a-permanent-record-thereof-shall-include-the-following:

- 1.--Obtaining-an-adequate-case-history.
- 2.--Visual-acuity.
- 3.--External-ocular-examination.
- 4.--Ophthalmoscopy-examination.
- 5.--Corneal---curvature--measurements--{for--those--offices--where contact-lenses-are-prescribed}.
- 6.--Retinoscopy-{objective-refraction-of-each-eye}.
- 7.--Subjective-refraction-for-distant-and-near-vision.
- 8.--Phoria-tests-at-the-far-point-{lateral-and-vertical}.
- 9.--Phoria-tests-at-the-near-point-{lateral-and-vertical}.
- 10.--Fusion,-convergence,-and-accommodation-tests.
- 11.--Lens-correction-prescribed-and-visual-acuity-attained.
- 12.--Visual--fields--and--tonometry--tests-as-professional-judgment dictates.
- 13.--Biomicroscope--{for--those--offices--where--contact-lenses-are prescribed-or-as-professional-judgment-dictates}.

The minimum care which an optometrist shall provide in all cases shall include the patient's case history, records, examination, diagnosis, and treatment as meet the generally accepted standard of care for the practice of optometry, but not less than required by law and these rules. An optometrist shall keep and maintain permanent records of each patient for a minimum of six years from the last contact with the patient documenting the care, case history, records, examination, diagnosis, and treatment of each patient.

History: Amended effective January 1, 1995.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-13, 43-13-13.2, 43-13-13.3

56-02-04-03. Minimum prescription and fee standards.

1. ~~North-Dakota-optometrists~~ Optometrists shall make available to their patients a copy of their spectacle (not contact lenses) prescription upon request. Every spectacle prescription shall have noted thereon an expiration date not to exceed thirty-six months.
2. Optometrists, in their sole discretion, may make available to their patients a copy of their contact lens prescription upon request. Every contact lens prescription shall have noted thereon an expiration date not to exceed twelve months and may only be released in written form.
3. Every licensed optometrist shall make available to the patient, upon request, information showing how the fee was calculated, including the amount charged for professional services rendered and for the laboratory cost of the ophthalmic materials used.

History: Amended effective December 1, 1987; January 1, 1995.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-22

CHAPTER 56-02-06

56-02-06-04. Disciplinary grounds. Without limiting the disciplinary powers of the board or grounds for discipline by the board, disciplinary action may be imposed against an optometrist upon any of the following grounds:

1. The use of any false, fraudulent, or forged statement, document, or information or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with the application for issuance or renewal of a license.
2. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate any provision of the law or the rules adopted by the board.
3. The willful or grossly negligent failure to comply with the provisions of federal, state, or local laws, rules, or regulations governing the practice of the profession.
4. The making of false or misleading statements about the optometrist's skill or the efficacy of any medicine, treatment, or remedy.
5. The making of or filing a report or record which an optometrist knows to be false; intentionally or negligently failing to file a report or record required by federal or state law or rules; willfully impeding or obstructing such filing; or inducing another person to do so. Such reports or records include only those which the optometrist is required to make or file as a licensed optometrist.
6. The submission of fraudulent billing or reports to a third-party payer or obtaining any fee by fraud, deceit, or misrepresentation.
7. Failing to maintain a patient record and a billing record for each patient which accurately reflects the evaluation or treatment of the patient and the bills charged to the patient. Unless otherwise provided, all patient records must be retained for at least six years from the last contact with the patient.
8. Knowingly making or signing any false certificate or other document relating to the practice of optometric care which falsely represents the existence or nonexistence of a state of facts.
9. The performance of any dishonorable, unethical, or unprofessional conduct which has or is likely to deceive,

defraud, or harm the public or endanger the public health, welfare, or safety.

10. Participation in any act of fraud or misrepresentation.
11. The publication or circulation of false, misleading, or otherwise deceptive statements concerning the practice of optometry.
12. The practice of optometry under a false name or under an unauthorized assumed name.
13. Conviction of a crime which is substantially related to the qualifications, functions, or duties of an optometrist.
14. Conviction of a felony or any offense involving moral turpitude, dishonesty, or corruption.
15. The commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as an optometrist or otherwise.
16. The inability to practice optometry with reasonable skill and safety by reason of illness, use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.
17. The violation of any state or federal statute or regulation relating to controlled substances.
18. The unlawful prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug.
19. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
20. The failure to transfer medical records to another optometrist or to supply copies thereof to the patient or to the patient's representative when requested to do so in writing by the patient or the patient's designated representative. A reasonable charge for record copies may be assessed.
21. The willful or negligent violation of the confidentiality between doctor and patient, except as required by law.
22. A continued pattern of inappropriate care.
23. Gross negligence in the practice of optometry.
24. The administration of treatment or the use of diagnostic or therapeutic procedures which are clearly excessive according to customary practices and standards.

25. Aiding or abetting the practice of optometry by an unlicensed, incompetent, or impaired person or the failure to properly monitor an assistant.
26. Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which a licensee knows or has reason to know that the licensee is not competent to perform, or performing without adequate consultation professional services which a licensee is authorized to perform only in consultation with a licensed optometrist or medical doctor, except in an emergency situation where a person's life or health is in danger.
27. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
28. Physical or verbal harassment, abuse, misconduct, or exploitation related to the licensee's practice of optometry.
29. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for optometric services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
30. The offering, delivering, receiving, or accepting of any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration as compensation or inducement for referring patients to any person.
31. The employment or use of persons known as cappers or steerers to obtain business.
32. Participation in agreements or arrangements with any person, corporation, limited liability company, partnership, association, firm, or others involving rebates, kickbacks, fee-splitting, or special charges in exchange for professional optometric services, including the giving, selling, donating, or otherwise furnishing or transferring, or the offer to give, sell, donate, or otherwise furnish or transfer money, goods, or services free or below cost to any person as compensation or inducement for placement of business with that optometric office or optometrist.
33. Advertising or soliciting for patronage that is not in the public interest, which includes:
 - a. Advertising or soliciting which is false, fraudulent, deceptive, or misleading.
 - b. Advertising or soliciting which guarantees any service or result.

- c. Advertising or soliciting which makes any claim relating to professional services or products or the cost or price thereof which cannot be substantiated by the licensee.
 - d. Advertising or soliciting which makes claims of professional superiority which cannot be substantiated by the licensee.
- 34. The violation of any action, stipulation, condition, or agreement imposed by the board.
 - 35. The failure to furnish the board, its investigators, or representatives information legally requested.
 - 36. The imposition by another state or jurisdiction of disciplinary action against a licensee based upon acts or conduct by the optometrist that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of disciplinary action taken by the other state or jurisdiction is conclusive evidence of that action.

History: Effective January 1, 1995.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-21.1, 43-13-22, 43-13-26.1

56-02-06-05. Disciplinary reports. Every optometrist shall promptly report to the secretary of the board any disciplinary action brought against such optometrist by any state or federal board or agency.

History: Effective January 1, 1995.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-22

TITLE 59.5
State Personnel Board

JULY 1995

**CHAPTER 59.5-03-01
APPLICATION APPEALS - MERIT SYSTEM**

[Repealed effective August 1, 1995]

TITLE 61.5

Physical Therapists, Examining Committee for

DECEMBER 1994

CHAPTER 61.5-01-02

61.5-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "A school of physical therapy or a program of physical therapist assistant training approved by the committee" is a curriculum approved by the American medical association or the American physical therapy association.
2. "Athletic trainer" is a person who meets certification requirements established by the national athletic trainers association board of certification, and the North Dakota board of athletic trainers. An athletic trainer is affected by these rules only when working under the direction of a physical therapist as supportive personnel.
3. "Committee" means the North Dakota state examining committee for physical therapists.
- 3.--"~~Direct--or--onsite--supervision~~"--means--personal--direction--or--observation,--and--requires--that--the---registered---physical therapist--must--be--present--on--the--premises--at--the--time--of treatment.
4. "Direction" means the requirement that the physical therapist maintain continuous verbal and written contact with the ~~physical--therapist--assistant~~ supportive personnel, including onsite supervision as required by these rules and instruction adequate to ensure the safety and welfare of the patient.

5. "National examination" or "examination" means the examination adopted by the American physical therapy association or the federation of state boards of physical therapy.
6. ~~"Passing--score-on-the-national-examination"--is-a-score-higher-than-1.5-standard-deviation-below-the-national--mean--for--the-examination---taken:~~ "Onsite supervision" means personal direction or observation and requires that the registered physical therapist must be present on the premises at the time of treatment.
7. "Physical therapist" means a person who applies physical therapy.
8. ~~"Physical therapist assistant" means a person-who-assists, under-the-onsite-direction-of-a-registered-physical-therapist, in--the--practice--of--physical--therapy-and-who-performs-such-delegated--procedures--commensurate---with---the---assistant's education--and--training,--No-more-than-two-physical-therapist assistants-may-be-supervised-by-one-physical-therapist~~ health care worker who assists the physical therapist in the provision of physical therapy. The physical therapist assistant must be a graduate of a physical therapist assistant associate degree program accredited by an agency recognized by the secretary of the United States department of education or the council on postsecondary accreditation. The physical therapist assistant must be licensed to practice in North Dakota.
9. "Physical therapy" means the art and science of a health specialty concerned with the prevention of disability and the physical rehabilitation for congenital or acquired disabilities resulting from, or secondary to, injury or disease. The practice of physical therapy means the practice of the health specialty, and encompasses physical therapy evaluation, treatment planning, instruction, and consultative services, including:
 - a. Performing and interpreting tests and measurements as an aid to physical therapy treatment.
 - b. Planning initial and subsequent treatment programs on the basis of test findings.
 - c. Administering treatment by therapeutic exercise, neurodevelopmental procedures, therapeutic massage, mechanical devices, and therapeutic agents which employ the physical, chemical, and other properties of air, water, heat, cold, electricity, sound, and radiant energy for the purpose of correcting or alleviating any physical or mental condition, or preventing the development of any physical or mental disability.

10. ~~"Physical therapy aides"--also--known--as--health-care-aides, orderlies, etc.,--constitute--the--category--of--personnel--not otherwise--defined--in--this--title--who--assist--the--physical therapy--service--as--supportive--personnel~~ aide" means a nonlicensed or noncertified worker who has been trained by a physical therapist, and who performs tasks commensurate with that training.
11. "Student" is an individual who is currently engaged in the fulfillment of a physical therapy or physical therapist assistant educational program approved by the committee.
12. "Supportive personnel" are persons other than registered physical therapists who function in a physical therapy setting and assist with physical therapy care.

History: Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-01, 43-26-04, 43-26-06, 43-26-07, 43-26-10, 43-26-11(12)

CHAPTER 61.5-02-02

61.5-02-02-02. Additional registration requirements for graduates of approved curricula.

1. Applicant must pay an examination fee for the national examination as established by the committee.
2. Applicant must pass the national examination (~~1.5-standard deviation-below-the-national-mean--is--considered--passing--in this-state~~).
3. The committee may waive the requirement to take the national examination if the applicant is currently licensed in another state and has satisfactorily passed the examination of the American registry of physical therapists.
4. If the applicant has not practiced physical therapy for five years or more, the applicant must take or retake the national examination.

History: Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05 43-26-01, 43-26-04, 43-26-06, 43-26-07, 43-26-10, 43-26-11(12)

61.5-02-02-05. Renewal of registration.

1. Registrations shall be renewed annually by January thirty-first.
2. If a registrant fails to receive the renewal notice, it is the responsibility of the registrant to contact the committee before the January thirty-first deadline.
3. Any registrant who fails to make application for renewal of registration by January thirty-first will, at the committee's discretion, pay a late renewal fee as prescribed in section 61.5-02-03-01.
4. A registration expires if not renewed by January thirty-first.
5. If a registration has expired for more than a year, the registrant is not eligible for renewal, but must apply for registration. However, registrants whose registrations have lapsed and who have been unregistered for more than one year but less than five years from the last renewal may not be required to take the national examination.

6. All licensed physical therapists may be required to file with the committee a notarized statement indicating they have read these administrative rules.

History: Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-01, 43-26-09, 43-26-11(12)

STAFF COMMENT: Article 61.5-05 contains all new material but is not underscored so as to improve readability.

ARTICLE 61.5-05

SUPERVISION OF SUPPORTIVE PERSONNEL

Chapter

61.5-05-01 Supervision of Supportive Personnel

CHAPTER 61.5-05-01

SUPERVISION OF SUPPORTIVE PERSONNEL

Section

61.5-05-01-01	Delegation of Responsibility
61.5-05-01-02	Physical Therapist Assistants
61.5-05-01-03	Athletic Trainers
61.5-05-01-04	Physical Therapy Aides
61.5-05-01-05	Supervision Ratios
61.5-05-01-06	Supportive Personnel Identification

61.5-05-01-01. Delegation of responsibility. When a physical therapist delegates patient care responsibilities to physical therapist assistants or other supportive personnel, the physical therapist holds responsibility for supervision of the physical therapy program. Physical therapists shall not delegate to a less qualified person any activity that requires the unique skills, knowledge, and judgment of the physical therapist. The primary responsibility for physical therapy care rendered by supportive personnel rests with the supervising physical therapist. Adequate supervision requires, at a minimum, that the supervising physical therapist perform the following activities:

1. Designate or establish channels of written and oral communication.
2. Interpret available information concerning the individual under care.
3. Provide initial evaluation.
4. Develop plan of care, including short-term and long-term goals.
5. Select and delegate appropriate tasks for plan of care.

6. Assess competence of supportive personnel to perform assigned tasks.
7. Direct and supervise supportive personnel in delegated tasks.
8. Identify and document precautions, goals, anticipated progress, and plans for reevaluation.
9. Reevaluate, adjust plan of care when necessary, perform final evaluation, and establish followup plan of care.

History: Effective December 1, 1994.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-09, 43-26-11

61.5-05-01-02. Physical therapist assistants. The physical therapist assistant shall perform specific physical therapy duties under the supervision of a physical therapist who is properly credentialed in the jurisdiction in which the physical therapist assistant practices.

1. Performance of service in general.
 - a. The physical therapist assistant may initiate or alter a treatment program only with prior evaluation by, and approval of, the supervising physical therapist.
 - b. The physical therapist assistant, with prior approval by the supervising physical therapist, may adjust the specific treatment procedure in accordance with changes in patient's status.
 - c. The physical therapist assistant may interpret data only within the scope of the physical therapist assistant's education.
 - d. The physical therapist assistant may respond to inquiries regarding a patient's status to appropriate parties within the protocol established by the supervising physical therapist.
 - e. The physical therapist assistant shall refer inquiries regarding patient prognosis to a supervising physical therapist.
 - f. Documentation other than the initial note and the discharge summary can be written by a physical therapist assistant.
2. Service in home health, long-term care, and school settings.
 - a. A qualified physical therapist must be accessible by communication to the physical therapist assistant at all

times while the physical therapist assistant is treating the patient.

- b. An initial visit must be made by a qualified physical therapist for evaluation of the patient and establishment of a plan of care.
 - c. A joint visit by the physical therapist and physical therapist assistant or a conference between the physical therapist and physical therapist assistant must be made prior to or on the first physical therapist assistant visit to the patient. The physical therapist must complete the initial evaluation.
 - d. At least once every sixth physical therapist assistant visit or at least once every thirty calendar days, whichever occurs first, the physical therapist must visit the patient. Following each onsite visit by a physical therapist, the medical/education record must reflect a documented conference with the physical therapist assistant outlining treatment goals and program modification. The physical therapist must make the final visit to terminate the plan of care.
 - e. A supervisory onsite visit must include:
 - (1) An onsite functional assessment.
 - (2) Review of activities with appropriate revisions or termination of plan of care.
 - (3) Assessment of utilization of outside resources.
3. Service in hospitals or other clinical settings require constant onsite supervision.
- a. All duties must conform with section 61.5-05-01-01.
 - b. A joint treatment with the physical therapist and physical therapist assistant or a conference between the physical therapist and physical therapist assistant must occur at least once per week.

History: Effective December 1, 1994.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-09, 43-26-11

61.5-05-01-03. Athletic trainers. The athletic trainer who works in physical therapy settings shall practice only under the onsite supervision of a physical therapist and is classified as supportive personnel.

1. The athletic trainer may initiate a treatment program established by a physical therapist after consultation with the supervising therapist. The physical therapist must complete the initial evaluation.
2. The athletic trainer, after consultation with the supervising physical therapist, may adjust the specific treatment procedure in accordance with changes in a patient's status.
3. The athletic trainer may interpret data only within the scope of the athletic trainer's education.
4. The athletic trainer may respond to inquiries from appropriate parties regarding a patient's status, within the protocol established by the physical therapist and the athletic trainer.
5. A joint treatment with the physical therapist and athletic trainer or a conference between the physical therapist and athletic trainer must occur at least once per week.
6. The athletic trainer shall refer inquiries regarding patient prognosis to the supervising physical therapist.
7. Documentation written by the athletic trainer must be cosigned by the supervising physical therapist.

History: Effective December 1, 1994.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-09, 43-26-11

61.5-05-01-04. Physical therapy aides. The physical therapy aide may assist the physical therapist in the following activities:

1. Carry out established procedures for the care of equipment and supplies.
2. Prepare, maintain, and clean up treatment areas and maintain a supportive area.
3. Transport patients, records, equipment, and supplies in accordance with established policies and procedures.
4. Perform predetermined general office procedures.
5. Assemble and disassemble equipment and accessories.
6. Under the onsite supervision of a physical therapist, assist in preparation for and perform established treatment protocols as assigned.

History: Effective December 1, 1994.

General Authority: NDCC 43-26-10
Law Implemented: NDCC 43-26-09, 43-26-11

61.5-05-01-05. Supervision ratios. A physical therapist, at any one time, may supervise a maximum of three supportive personnel if no more than two of the supportive personnel are licensed.

History: Effective December 1, 1994.
General Authority: NDCC 43-26-10
Law Implemented: NDCC 43-26-09, 43-26-11

61.5-05-01-06. Supportive personnel identification. All supportive personnel shall wear an identification badge identifying them as a physical therapist assistant, certified athletic trainer, or physical therapy aide, as appropriate. Supportive personnel shall not use any term that implies they are licensed physical therapists.

History: Effective December 1, 1994.
General Authority: NDCC 43-26-10
Law Implemented: NDCC 43-26-09, 43-26-11

TITLE 66
Psychologist Examiners, Board of

FEBRUARY 1995

STAFF COMMENT: Article 66-03 contains all new material but is not underscored so as to improve readability.

ARTICLE 66-03

CONTINUING EDUCATION

Chapter
66-03-01 Continuing Education

**CHAPTER 66-03-01
CONTINUING EDUCATION**

Section	
66-03-01-01	Continuing Education
66-03-01-02	Continuing Education Reports
66-03-01-03	Board Approval
66-03-01-04	Categories of Continuing Education Programs and Credits
66-03-01-05	Verification of Continuing Education Credits and Programs
66-03-01-06	Failure to Comply With the Continuing Education Requirement
66-03-01-07	Agencies and Individual Licensure Exemptions

66-03-01-01. Continuing education. Every psychologist licensed to practice in this state as of January 1, 1992, under North Dakota Century Code chapter 43-32 shall, on or before November 1, 1994, and every two years thereafter, complete continuing education credits relevant to the practice of psychology. Continuing education credits earned after the first day of November of a reporting cycle may be applied to the next two-year reporting cycle. The reporting cycle for individuals licensed after January 1, 1992, begins on November first of the year in which they obtained their North Dakota license.

History: Effective February 1, 1995.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-08

66-03-01-02. Continuing education reports. Application for continuing education credits must be made on the form provided by the board and must include evidence of completion of at least forty credits of continuing education completed over the two-year period. At least twenty of the forty credits of continuing education must be completed within category A, formal programs described in subsection 1 of section 66-03-01-04. The application must be submitted to the board no later than December fifteenth following the completion of the two-year reporting cycle.

History: Effective February 1, 1995.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-08

66-03-01-03. Board approval. Any continuing education program relevant to psychology and to be applied as continuing education credits must receive prior board approval, except continuing education programs sponsored or approved by the American psychological association, the Canadian psychological association, the North Dakota psychological association, other state or provincial psychological associations, or any other scientific or professional organization whose continuing education program is clearly relevant to the needs of the specific psychologist. Each year with the notice for license renewal, the board shall provide a list of continuing education programs that are acceptable to the board as of the date of the mailing. Other programs may be approved at any time by the board.

History: Effective February 1, 1995.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-08

66-03-01-04. Categories of continuing education programs and credits. The board recognizes the following categories of continuing education programs or activities and established credit hours:

1. Category A formal activities, a minimum of twenty credits per reporting cycle.
 - a. Formal continuing education programs that may consist of courses, workshops, or institutes. The number of continuing education credits assigned by an association recognized by the board will be accepted. Otherwise the credits will be one credit per clock hour.
 - b. Attendance at conventions including national, international, regional, state or provincial, and substate associations of psychologists. If a convention other than a psychological convention is attended for credit, prior approval must be obtained from the board. One credit is allowed per each two clock hours of meeting. A maximum of ten credits is allowed per reporting cycle.
2. Category B other activities.
 - a. Regularly scheduled postgraduate courses offered by an accredited college or university which are relevant to the professional growth and development of the applicant. One quarter hour of academic credit constitutes ten continuing education credits. One semester hour of academic credit constitutes fifteen continuing education credits.
 - b. Writing or speaking, including a paper or other presentation at a formal professional meeting, a paper published in a professional journal, or a book or an original chapter in an edited book in the area of psychology or a related field. Credit will be granted for the year of publication or presentation in the case of a paper. Continuing education credits will be granted at the rate of five for each paper or presentation, ten for each chapter in a book, fifteen for editing a book, and twenty for the publication of a book.
 - c. Other areas of professional development not covered in the foregoing categories, but deemed by the board to be worthy of continuing education credit. Such a determination must be made on an individual basis, including the number of credits granted.
 - d. The board does not recognize correspondence courses, tapes, or independent readings, unless these are specifically approved by the board or by one of the associations recognized by the board.

History: Effective February 1, 1995.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-08

66-03-01-05. Verification of continuing education credits and programs.

1. At the end of the two-year reporting cycle, each licensee shall submit a signed statement on a form provided by the board attesting to satisfaction of the continuing education requirement.
2. The licensee may not submit the specific verification of each continuing education experience claimed, but must maintain a file of such verification for two years following the submission of the reporting form.
3. At each reporting period, the board will select a random sample of approximately ten percent of the licensees and require them to provide verification of the continuing education experiences claimed on the reporting form.

History: Effective February 1, 1995.

General Authority: NDCC 43-32-08

Law Implemented: NDCC 43-32-08

66-03-01-06. Failure to comply with the continuing education requirement. If, after the opportunity for a formal hearing, a psychologist does not satisfy the number of credits required for a two-year cycle, the board may exercise the following options:

1. Extension of time to complete the requirement. A psychologist may request an extension of time because of illness or serious extenuating circumstances amounting to good cause. The approval of an extension and the amount of time granted to complete the requirements are at the sole discretion of the board. In such cases the psychologist will be required to continue to fulfill the continuing education requirement for the next two-year cycle as well.
2. Suspension of a license until such time as the psychologist meets the requirements of the previous two-year cycle, but not to exceed a second two-year cycle.
3. Revocation of a license. In the event of license suspension for noncompletion of continuing education requirements, if the psychologist does not complete the requirements during the period of suspension, the license may be revoked.
4. Reinstatement. A psychologist whose license has been revoked for failing to satisfy the continuing education requirements must earn forty credits in continuing education, including at least twenty in category A, during the immediately preceding two-year period in order to apply to the board for reinstatement.

History: Effective February 1, 1995.
General Authority: NDCC 43-32-08
Law Implemented: NDCC 43-32-08

66-03-01-07. Agencies and individual licensure exemptions. All of the provisions of this chapter apply for renewal of exemptions that have been granted by the board with these exceptions:

1. The reporting cycle is one year, not two as in the case of licensed psychologists. The reporting cycle corresponds to the calendar year, beginning January 1, 1993, or January first of the year following the year in which the exemption was granted.
2. The total number of credits to be earned in the one year is twenty.
3. The minimum number of credits to be earned in category A during the reporting cycle is ten, at least five of which must be from activities described in subdivision a of subsection 1 of section 66-03-01-04.
4. The responsibility for insuring the completion of continuing education credits, reporting to the board, and maintaining a file of continuing education verification for the exemption employee is with the agency to which the exemption was granted.

History: Effective February 1, 1995.
General Authority: NDCC 43-32-08
Law Implemented: NDCC 43-32-08

TITLE 67
Public Instruction, Superintendent of

JANUARY 1995

CHAPTER 67-02-05

67-02-05-04. Middle school endorsement for grades five through eight.

1.--Single-subject-middle-school-endorsement.--This-endorsement-is available-for-a-secondary-teacher--certified--in--mathematics; science;-or-social-studies-who-completes-(or-shows-evidence-of having-completed)-a-minimum-of-eight--semester--credits--which includes:

a.--Adolescent-development;

b.--Learning-theory/educational-psychology;

c.--Foundations-of-middle-school;

d.--Reading-in-the-content-areas;

e.--Special--methods--(elementary--or--middle)--in-the-content area;

A--secondary--teacher--certified--in-English-must-complete-the above--plus--an---additional---eight---semester---credits---in reading/language--arts--coursework--at--the--elementary/middle level;

2.--Broad--field--middle--school-endorsement.--This-endorsement-is available-to-a-certified-elementary-or-secondary-teacher--upon completion---of---a--college-approved-middle--school--teacher preparation--program--that--includes--professional--education; subject-area-preparation;-and-student-teaching-

Endorsement for teaching in a middle school is available on a voluntary basis to teachers certified to teach at the elementary or grades one through twelve levels. The middle school endorsement is mandatory for teachers certified for grades seven through twelve to qualify for work with grades five and six in the subject fields of their certification and voluntary for work with students in grades seven and eight. Middle school endorsement requires a minimum of ten semester hours of credit including all of the following:

1. Development of young adolescents.
2. Philosophy and curriculum (foundations) of middle school education.
3. Reading in the content areas.
4. A minimum of two semester hours of methods or strategies of teaching in the middle grades.

History: Effective March 1, 1988; amended effective January 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

TITLE 69
Public Service Commission

DECEMBER 1994

CHAPTER 69-10-02

69-10-02-18. Concrete hopper scales - Jurisdiction. A concrete hopper scale that is used for measuring a finished concrete product that is sold by a measurement other than weight, even though the quality of its composition (cement, sand, aggregate, and water) is determined by weight, shall be defined as a "batching scale" and is exempt from the provisions of this article.

History: Effective December 1, 1994.

General Authority: NDCC 64-02-03

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

FEBRUARY 1995

CHAPTER 69-06-08

69-06-08-02. Transmission facility corridor and route criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas shall be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
 - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
 - d. Areas critical to the lifestages of threatened or endangered animal or plant species.

- e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
2. **Avoidance areas.** The following geographical areas shall not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.
- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
 - c. Historical resources which are not specifically designated as exclusion or avoidance areas.
 - d. Areas which are geologically unstable.
 - e. Within five hundred feet [152.4 meters] of a ~~farmhouse~~, ~~rural~~ residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - f. Reservoirs and municipal water supplies.
 - g. Water sources for organized rural water districts.
 - h. Irrigated land. This criterion shall not apply to an underground transmission facility.
 - i. Areas of recreational significance which are not designated as exclusion areas.
3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an

acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

a. The impact upon agriculture:

- (1) Agricultural production.
- (2) Family farms and ranches.
- (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
- (4) Surface drainage patterns and ground water flow patterns.

b. The impact upon:

- (1) Noise sensitive land uses.
- (2) The visual effect on the adjacent area.
- (3) Extractive and storage resources.
- (4) Wetlands, woodlands, and wooded areas.
- (5) Radio and television reception, and other communication or electronic control facilities.
- (6) Human health and safety.
- (7) Animal health and safety.
- (8) Plant life.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices.

- a. Location and design.
- b. Training and utilization of available labor in this state for the general and specialized skills required.
- c. Economies of construction and operation.
- d. Use of citizen coordinating committees.
- e. A commitment of a portion of the transmitted product for use in this state.

- f. Labor relations.
- g. The coordination of facilities.
- h. Monitoring of impacts.
- i. Utilization of existing and proposed rights of way and corridors.
- j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

CHAPTER 69-09-01

69-09-01-30. Automatic adjustment clauses.

1. As used in this section, the term "automatic adjustment clause" means a tariff provision that provides for increases or decreases, or both, without prior hearing, in rates reflecting increases or decreases, or both, in gas supply costs incurred by a natural gas utility.
2. An automatic adjustment clause that does not conform to principles set out in this section may not be in the public interest. This section contemplates that the filing of a proposed tariff which includes a nonconforming automatic adjustment clause may result in suspension of all or part of the tariff.
3. The automatic adjustment clause must be in a form that provides for periodic adjustments per unit of sales equal to the difference between gas supply costs per unit of sales included in base rate schedules and gas supply unit of sales projected for the adjustment period.
4. Gas supply costs included under the adjustment clause must be set forth tariff approved by the commission.
5. The utility shall maintain a balancing account in which the difference between the actual gas supply cost and the amount collected through the adjustment cause is recorded. The balancing account must accrue interest monthly at a rate equal to the utility's rate of return on rate base last authorized by the commission.
6. An automatic adjustment clause must include a balancing surcharge, which must be recalculated at least annually. The amount of the surcharge must equal the amount in the balancing account at the time of the proposed change that results from the recalculation divided by projected weather normalized sales volumes for the following twelve months.
7. Notice of change in the adjustment must be filed with the commission prior to billing. The notice must include:
 - a. Workpapers calculating the adjustment;
 - b. Copies of applicable pipeline tariffs and an explanation of regulatory approval status;
 - c. A history of the balancing account since the last surcharge update; and

- d. To the extent possible, an explanation of market and other factors causing the change.
8. If a current price is in litigation or otherwise being collected subject to refund the utility shall so advise the commission, inform the commission of the final outcome, and record the outcome in the balancing account.
9. If a particular circumstance prevents the use of a standard provided in this section, or its use would result in an undue burden, the commission may permit deviation from the standard.
10. The commission may review an automatic adjustment clause at any time to ensure the maximum economies in those operations and purchases which affect the rates to which the clause applies. The commission's review may include an evidentiary hearing. In making its review, the commission may examine and, if appropriate, cause to be audited, the practices of a utility relating to costs subject to an automatic adjustment clause, and may require any filings and reports that may be necessary to carry out the review, including volumes, prices, and contracts for each supply source and a disclosure of any affiliation between the utility and the seller of natural gas or other items to the utility.
11. Each utility shall cause an independent audit of its automatic adjustment clause to be performed annually. A copy of the auditor's report must be filed annually with the commission.

History: Effective February 1, 1995.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

CHAPTER 69-09-02

69-09-02-39. Automatic adjustment clauses.

1. As used in this section, the term "automatic adjustment clause" means a tariff provision of a rate schedule which that provides for increases or decreases, or both, without prior hearing, in rates reflecting increases or decreases, or both, in energy costs incurred by an electric utility. ~~The term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate.~~
2. ~~Automatic~~ An automatic adjustment clauses which are clause that does not in conformity with conform to the principles set out in this section are may not be in the public interest. This section contemplates that the filing of a proposed rate schedules--which--embody tariff that includes a nonconforming automatic adjustment clauses--failing--to--conform--to--these principles clause may result in suspension of these parts all or part of such rate schedules the tariff.
3. The automatic adjustment clause shall-be-uniformly-applied-by all-utilities-subject-to--commission--jurisdiction--and--shall must be of-the in form that provides for periodic adjustments per kilowatt-hour of sales equal to the difference between the energy cost per kilowatt-hour of sales in the base period and in the current period in accordance with the following formula:

$$\text{Adjustment Factor} = (F_m - S_m) \div (F_b - S_b)$$

For the purposes of this formula: "Fm" is the expense of fossil and nuclear fuel in the current period; "Fb" is the expense of fossil and nuclear fuel in the base period; "Sm" is the kilowatt-hour sales in the current period; and "Sb" is the kilowatt-hour sales in the base period. The energy costs per kilowatt-hour for the current period shall be calculated from data covering actual costs from the most recent four-month period as follows: Energy costs for actual months 1, 2, 3, and 4 plus unrecovered (or less overrecovered) prior cumulative energy costs divided by kilowatt-hour sales for actual months 1, 2, 3, and 4 = equals the energy cost adjustment for month 6. ~~The effective date for application of this formula is September 1, 1980. Any amounts overrecovered or underrecovered in a utility's existing automatic adjustment clause as of March 31, 1980, shall not be carried forward for the initial automatic adjustment clause computation.~~

4. Energy costs (f E) shall-be are the cost of:

- a. ~~Fossil-and-nuclear-fuel~~ Fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants;
 - b. The actual identifiable ~~fossil--and--nuclear~~ fuel costs associated with energy purchased for reasons other than those identified in subdivision c;
 - c. The net energy cost of energy purchases, exclusive of capacity or demand charges, irrespective of the designation assigned to such transaction, when such energy is purchased on:
 - (1) On an economic dispatch basis. Included therein may be such costs as the charges for economic energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the buyer to substitute for its own higher cost energy; and--less
 - (2) From a renewable energy source, including hydropower, wood, windpower, and biomass; and
 - (3) From a qualifying facility as defined in 18 CFR part 292;
 - d. The Less the cost of ~~fossil-and-nuclear~~ fuel recovered through intersystem sales including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.
5. Sales (S) ~~shall--be~~ are all kilowatt-hours sold, excluding intersystem sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of:
- a. Generation;
 - b. Purchases;
 - c. Interchange-in; less
 - d. Energy associated with pumped storage operations; less
 - e. Intersystem sales referred to in subdivision d of subsection 4; less
 - f. Total system losses.
6. The adjustment factor developed according to this procedure ~~shall~~ must be modified to properly allow for losses (estimated if necessary) associated only with wholesale sales for resale.

7. The cost of fossil fuel shall other than nuclear may include no only those items ~~other than these~~ listed in Account 151 of the Uniform System of Accounts for Public Utilities and Licensees. The cost of nuclear fuel shall be is that as shown in Account 518, except to the extent that if ~~Account 518 also~~ contains any expense for fossil fuel which the cost has not already been included in the cost of fossil other fuel, ~~it shall be deducted from this account.~~
8. ~~Where the cost of fuel includes fuel from company-owned or controlled sources, that fact shall be noted and described as part of any filing. Where the utility purchases fuel from a company-owned or controlled source, the price of which is subject to the jurisdiction of a regulatory body, such cost shall be deemed to be reasonable and includable in the adjustment clause. If the current price, however, of fuels is in litigation and is or otherwise being collected subject to refund, the utility shall so advise the commission and shall keep a separate account of such amounts paid which that are subject to refund, and shall advise the commission of the final disposition of such matter by the regulatory body having jurisdiction outcome. With respect to the price of fuel purchases from company-owned or controlled sources pursuant to contracts which are not subject to regulatory authority, the utility company shall file such contracts and amendments thereto with the commission for its acceptance at the time it files its fuel clause or modification thereof. Any subsequent amendment to such contracts shall likewise be filed with the commission. Fuel charges by affiliated companies which do not appear to be reasonable may result in the suspension of the automatic adjustment clause or cause an investigation thereof to be made by the commission on its own motion.~~
9. ~~Whenever particular circumstances prevent the use of the standards provided for herein, or the use thereof would result in an undue burden, the commission may, upon application and for good cause shown, permit deviation from this section. Notice of change in the adjustment must be filed with the commission prior to billing. The notice must include:~~
- ~~a. Workpapers calculating the adjustment; and~~
 - ~~b. To the extent possible, an explanation of market and other factors causing the change.~~
10. ~~The commission shall conduct an evidentiary hearing for each utility subject to commission jurisdiction not less often than every four years, which may be consolidated with an existing rate proceeding for the affected utility, to determine whether the automatic adjustment clause of the utility provides for the maximum economies in those operations and purchases which affect the rates to which the clause applies. If a particular circumstance prevents the use of a standard or its use would~~

result in an undue burden, the commission may for good cause shown, permit deviation from a standard.

11. The commission shall ~~may~~ review an automatic adjustment clause of an electric utility not less often than every two years at any time to ensure the maximum economies in those operations and purchases which affect the rates to which the clause applies. The commission's review may include an evidentiary hearing. In making this review, the commission shall ~~may~~ examine and, if appropriate, cause to be audited, the practices of an electric utility relating to costs subject to an automatic adjustment clause, and shall ~~may~~ require such any filings and reports as that may be necessary to carry out the review, including volumes, prices, and contracts for all fuel and electric energy from all sources and a disclosure of any ownership--or--corporate-relationship affiliation between the electric utility and the seller of fuel, electric energy, or other items to the utility.
12. Each utility shall cause an independent audit of its automatic adjustment clause to be performed annually. A copy of the auditor's report must be filed annually with the commission.

History: Effective October 1, 1980; amended effective February 1, 1995.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

CHAPTER 69-09-05

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

- a. "End user" means a person who uses telecommunications service for his the person's own use.
- b. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).
- c. "Prepayment" means payments made by customers of a reseller in advance of receiving service.
- d. "Resale" means the subscription to local or long distance telecommunications services and facilities by one entity, and reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.
- e. "Reseller" means a person reselling local or long distance telecommunications services. The definition does not include pay telephone providers, but does include cellular services.
- f. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.
- g. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. Resellers shall:

- a. Obtain a certificate of registration from the commission authorizing the provision of local resale or long-distance resale services in the state of North Dakota.
- b. If they require prepayment for service:

- (1) Submit a performance bond in an amount specified by the commission; or
- (2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data.
- (3) The requirements of paragraphs 1 and 2 are waived for any company that has provided cellular service in North Dakota for one year without a formal complaint having been filed against it. The commission may revoke the waiver after notice and opportunity for hearing if necessary to protect the public interest.

~~6. File annual reports.~~

3. ~~Resale of local exchange service, except cellular service, is restricted to provision of service to a building complex on the same continuous property, or to other parties having a community of interest with the reseller. A reseller may not appear on an equal access ballot without a certificate of registration from the commission.~~
4. ~~The commission will analyze each local exchange reseller's application to determine if the reseller serves parties having a community of interest.~~
5. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the local exchange.
6. 5. Shared A shared tenant service providers provider shall allow the tenant to use the shared tenant service providers provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.
7. 6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 49-02-11, 49-21

69-09-05-04.1. Equal access ballot placement. A local exchange company may not place a reseller on that company's equal access ballot for intrastate calling unless the reseller has a certificate of registration from the commission.

History: Effective February 1, 1995.
General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 49-02-11, 49-21

JULY 1995

CHAPTER 69-05.2-04

69-05.2-04-07. Areas unsuitable for mining - Data base and inventory system for designating lands unsuitable.

1. The commission will develop a data base and inventory system to evaluate if reclamation is feasible in areas covered by petitions.
2. The commission will include in the system information relevant to the criteria in North Dakota Century Code section 38-14.1-05 from appropriate state and federal agencies.
3. The commission will add to the data base and inventory system information:
 - a. On potential coal resources of the state, demand for those resources, the environment, the economy, and the supply of coal, sufficient to enable the commission to prepare the statements required by subsection 3 of section 69-05.2-04-05 North Dakota Century Code section 38-14.1-05; and
 - b. That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

CHAPTER 69-05.2-05

69-05.2-05-09. Permit applications - Permit monitoring plans - Consolidation for multiple permit operations. The commission will allow monitoring plans required by this article and North Dakota Century Code chapter 38-14.1 to be consolidated by the permittee into one single monitoring plan for each surface coal mining and reclamation operation subject to the following requirements:

1. Each consolidated monitoring plan is subject to the approval procedures established for permit revisions.
2. Each mining permit must be revised to describe the specific monitoring plans to be consolidated into a single monitoring plan covering the entire surface coal mining and reclamation operation under permit.
3. Each consolidated monitoring plan is subject to review by the commission at the time of midterm review or renewal for each permit covered by the consolidated monitoring plan, in accordance with section 69-05.2-11-01.
4. A permittee may propose modifications to a consolidated monitoring plan by filing a permit revision application relating to the most recently issued permit covered by the consolidated monitoring plan.

History: Effective July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-13

CHAPTER 69-05.2-06

69-05.2-06-01. Permit applications - Identification of interests.

1. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each application must contain:
 - a. The names and addresses of the owner of record of surface and coal subsurface rights contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.
 - b. The mine name and the mine safety and health administration identification number.
 - c. A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.
 - d. The name, address, telephone number, and, as applicable, social security number and employer identification number of the:
 - (1) Applicant.
 - (2) Applicant's resident agent.
 - (3) Person who will pay the abandoned mine land reclamation fee.
 - e. For each person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls", as applicable:
 - (1) The person's name, address, social security number, and employer identification number.
 - (2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in the organizational structure.
 - (3) The title of the person's position, date position was assumed, and, when submitted under subdivision e of subsection 3 of section 69-05.2-10-05, the date of departure from the position.
 - (4) Each additional name and identifying number, including employer identification number, federal or state permit number, and mine safety and health

administration number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application.

- (5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.
- f. For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls", the operation's:
- (1) Name, address, identifying numbers, including employer identification number, federal or state permit number and mine safety and health administration number, the date of issuance of the mine safety and health administration number, and the regulatory authority.
 - (2) Ownership or control relationship to the applicant, including percentage of ownership and location in the organizational structure.
2. After notification that the application is approved deemed ready for approval but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subdivisions d through f of subsection 1.
 3. The applicant shall submit information required by this section in any format prescribed by the office of surface mining reclamation and enforcement.
 4. The submission of a social security number in subdivisions d and e of subsection 1 is voluntary.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-06-02. Permit applications - Compliance information. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each application must contain:

1. A statement of any current or previous coal mining permits in any state held during the five years prior to application and by any person identified in paragraph 3 of subdivision e of subsection 1 of North Dakota Century Code section 38-14.1-14, and of any pending application to conduct operations in any state. The information must be listed by permit and pending application number for each.
2. The explanation required by subdivision h of subsection 1 of North Dakota Century Code section 38-14.1-14 including:
 - a. Identification number and permit issue date or date and amount of bond or similar security.
 - b. Identification of the authority that suspended or revoked a permit or forfeited a bond and the reasons for that action.
 - c. The current status of the permit, bond, or security.
 - d. The date, location, type, and current status of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.
3. A list of all violation notices as required by subdivision g of subsection 1 of North Dakota Century Code section 38-14.1-14 including violations received by any person who owns or controls the applicant.
4. A list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.
5. The lists required by subsections 3 and 4 must include, as applicable:
 - a. Any identifying numbers for the operation, including the federal or state permit number and mine safety and health administration number, the date of issuance of the violation notice and mine safety and health administration number, the name of the person to whom the violation was issued, and the identity of the issuing authority, department, or agency.
 - b. A brief description of the violation alleged.
 - c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by the applicant or by any person who owns or controls the applicant, to obtain administrative or judicial review.

- d. The current status of the proceedings and violation notice.
 - e. Any actions taken by the applicant or by any person who owns or controls the applicant to abate the violation.
 - f. Any final resolution of each notice.
6. After notification that the application is approved deemed ready for approval but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections 3 through 5.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

CHAPTER 69-05.2-10

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

1. The commission will not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation, or if any of the following are outstanding:
 - a. Delinquent civil penalties under North Dakota Century Code sections 38-12.1-08 and 38-14.1-32, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation.
 - b. Bond forfeitures where violations upon which the forfeitures were based have not been corrected.
 - c. Delinquent abandoned mine reclamation fees.
 - d. Unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining and reclamation operation.
 - e. Unresolved federal and state failure-to-abate cessation orders.
 - f. Unresolved imminent harm cessation orders.
2. If a current violation exists, the commission will require the applicant or person who owns or controls the applicant, before the permit is issued, to:
 - a. Submit proof that the violation has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation; or
 - b. Establish that the applicant, or any person owned or controlled by either the applicant or any person who owns

or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial authority either denies a stay applied for in the appeal or affirms the violation, then any operations being conducted under a permit issued under this section must immediately cease, until the provisions of subdivision a are satisfied.

3. Any permit issued on the basis of proof submitted under subdivision a of subsection 2 that a violation is being corrected, or pending the outcome of an appeal under subdivision b of subsection 2, will be conditionally issued.
4. The commission will not issue a permit if it finds the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.], or any state or federal program approved under the Surface Mining Control and Reclamation Act of 1977, of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws, rules, or programs. The applicant, anyone who owns or controls the applicant, or the operator must be given an opportunity for hearing on the determination under North Dakota Century Code section 38-14.1-30.
5. After an application is approved deemed ready for approval, but before the permit is issued, the ~~commission~~ will reconsider--its commission's decision to approve or disapprove the application will be made, based on the compliance review required by subsection 1, in light of any new information submitted under subsection 2 of section 69-05.2-06-01 and subsection 6 of section 69-05.2-06-02.
6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit or significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:
 - a. The permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or the area has met the application review procedures of section 69-05.2-04-01.
 - b. For alluvial valley floors:

- (1) The applicant has obtained either a negative determination; or
- (2) If the permit area or adjacent area contains an alluvial valley floor:
 - (a) The operations would be conducted according to chapter 69-05.2-25 and all applicable requirements of North Dakota Century Code chapter 38-14.1.
 - (b) Any change in the use of the lands covered by the permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.
- (3) The significance of the impact of the operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the commission as suitable for site-specific protection of agricultural activities in alluvial valley floors.
- (4) Criteria for determining whether a mining operation will materially damage the quantity or quality of waters include:
 - (a) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor to levels above the threshold value at which crop yields decrease, based on crop salt tolerance research studies approved by the commission, unless the applicant demonstrates compliance with subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21.
 - (b) The increases in subparagraph a will not be allowed unless the applicant demonstrates, through testing related to local crop production that the operations will not decrease crop yields.
 - (c) For types of vegetation specified by the commission and not listed in approved crop tolerance research studies, a consideration must be made of any observed correlation between total dissolved solids concentrations in water and crop yield declines.

- (d) Potential increases in the average depth to water saturated zones (during the growing season) within the root zone that would reduce the amount of subirrigated land compared to premining conditions.
 - (e) Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions.
 - (f) Potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased root zone saturation.
- (5) For the purposes of this subsection, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage [hectarage] and boundaries in existence prior to July 1, 1979, or, if established after July 1, 1979, with boundaries based on enhancement of the farm's agricultural productivity not related to mining operations.
- (6) If the commission determines the statutory exclusions of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply and that any of the findings required by this section cannot be made, the commission may, at the applicant's request:
 - (a) Determine that mining is precluded and deny the permit without the applicant filing any additional information required by this section; or
 - (b) Prohibit surface coal mining and reclamation operations in all or part of the area to be affected by mining.
- c. The applicant has, with respect to prime farmland, obtained either a negative determination or if the permit area contains prime farmlands:
 - (1) The postmining land use will be cropland.
 - (2) The permit specifically incorporates the plan submitted under section 69-05.2-09-15 after consideration of any revisions suggested by the United States soil conservation service.
 - (3) The operations will be conducted in compliance with chapter 69-05.2-26 and other standards required by

this article and North Dakota Century Code chapter 38-14.1.

- d. The operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.
 - e. The applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid.
 - f. The applicant has, if applicable, satisfied the requirements for approval of a cropland postmining land use under section 69-05.2-22-01.
7. The commission may make necessary changes in the permit to avoid adverse effects on finding that operations may adversely affect any publicly owned park or places included on the state historic sites registry or the national register of historic places. Operations that may adversely affect those parks or historic sites will not be approved unless the federal, state, or local governmental agency with jurisdiction over the park or site agrees, in writing, that mining may be allowed.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-33

CHAPTER 69-05.2-11

69-05.2-11-03. Permit renewals - Applications.

1. Successive renewal is available only for lands within permit boundaries and for incidental boundary changes approved under section 69-05.2-11-02.
2. Obligations established under a surface coal mining and reclamation operations permit continue until completion of all operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.
3. A permittee need not renew a permit for surface coal mining and reclamation operations if no surface coal mining operations remain to be conducted and only reclamation remains to be done.
4. Permits for areas released from all bond will not be renewed.
5. Renewal applications must be in a form required by the commission, and include:
 - a. The name and address of the permittee, the term of the renewal requested, the permit number, and a description of any acreage [hectarage] changes or other changes to the original permit application or prior renewal.
 - b. The reasons for requesting renewal.
 - c. A copy of the text of the newspaper notice prepared according to requirements in subsection 3 6. The applicant shall furnish proof of publication to the commission after the last required publication date.
 - d. Evidence that adequate liability insurance will be provided for the proposed renewal period.
 - e. Evidence that bond is sufficient and will continue in full force for the proposed renewal period.
6. Complete renewal applications are subject to the public notification requirements in section 69-05.2-10-01 and North Dakota Century Code section 38-14.1-18.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

69-05.2-11-06. Transfer, sale, or assignment of rights granted under permit.

1. Any person seeking to succeed by transfer, sale, or assignment to the rights granted by a permit shall, prior to transfer, sale, or assignment:
 - a. Obtain the performance bond coverage of the original permittee by:
 - (1) Obtaining transfer of the original bond;
 - (2) Obtaining a written agreement with the original permittee and all subsequent successors in interest that the bond will continue in force and be supplemented as the commission requires. If agreement is reached, the commission may authorize release of bond in excess of that required by the agreement; or
 - (3) Providing sufficient bond or acceptable alternative to cover the original permit in its entirety from inception to completion of reclamation operations.
 - b. Provide the commission with an application for approval of proposed transfer, sale, or assignment, including:
 - (1) The name and address of the existing permittee;
 - (2) The name and address of the person proposing to succeed by transfer, sale, or assignment and the name and address of that person's resident agent;
 - (3) A brief description of the proposed action requiring approval; and
 - (4) The information required by sections 69-05.2-06-01, 69-05.2-06-02, and 69-05.2-06-03 and subdivisions c, e, and h of subsection 1 and subsection 3 of North Dakota Century Code section 38-14.1-14.
 - c. Obtain the commission's written approval for transfer, sale, or assignment of rights, according to subsection 2 4.
2. The person applying for approval of transfer, sale, or assignment of rights granted by a permit shall advertise the filing of the application according to section 69-05.2-10-01 and North Dakota Century Code section 38-14.1-18, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent.

3. Any person whose interests are or may be adversely affected, including the head of any local or state government agency, may submit written comments to the commission on the application under the procedures in chapter 69-05.2-10.
4. The commission may, based on the applicant's compliance with subsections 1 and 2, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:
 - a. The applicant will conduct the operations in accordance with North Dakota Century Code chapter 38-14.1 and this article.
 - b. The applicant has submitted a bond or other guarantee at least equivalent to the original.
 - c. The applicant will continue to conduct operations in compliance with the terms and conditions of the original permit, until it has obtained a new permit under section 69-05.2-11-07.
 - d. The applicant is eligible to receive a permit under section 69-05.2-10-03.
5. The commission will notify the permittee, successor, commentors, and the office of surface mining reclamation and enforcement of its findings.
6. The successor shall immediately notify the commission of the consummation of the transfer, assignment, or sale of permit rights.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

CHAPTER 69-05.2-12

69-05.2-12-09. Performance bond - Period of liability.

1. The bond liability period is the time necessary to meet the requirements of North Dakota Century Code chapter 38-14.1, this article, and the permit and shall continue a minimum of ten years as specified in subsection 2 of section 69-05.2-22-07. The period of extended responsibility begins again whenever augmented seeding, fertilization, irrigation, or other work is required or conducted on the site prior to bond release, unless the management practice conducted is a part of normal management for that particular land use and is approved by the commission.
2. If the commission approves a long-term postmining land use of developed water resources, recreation, residential, industrial, or commercial, the commission may approve a liability period of less than ten years if the other requirements of this subsection and the requirements of subdivision j of subsection 5 4 of section 69-05.2-22-07 are met prior to the final release of bond.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

CHAPTER 69-05.2-15

69-05.2-15-02. Performance standards - Suitable plant growth material - Removal.

1. Timing. Suitable plant growth material must be removed after vegetative cover that would interfere with its use is cleared from the areas to be disturbed. To prevent suitable plant growth materials from becoming contaminated by other materials, all suitable plant growth materials to be saved must be separately removed and segregated as required by subsection 2 prior to any further surface disturbance.
2. Materials to be removed and saved.
 - a. The suitable plant growth materials, commonly referred to as topsoil (first lift suitable plant growth material) and subsoil (second lift suitable plant growth material) as identified by the soil survey required by section 69-05.2-08-10 must be removed and segregated in two separate operations, unless otherwise approved by the commission. The topsoil removal operation for an area must be completed ~~and approved by the commission~~ before subsoil removal begins or before any other disturbances occur in that area. If use of other suitable strata is approved as a supplement to suitable plant growth material, all such materials to be saved must be removed and segregated. Further disturbances which significantly alter an area must not begin until the subsoil and other suitable strata removal operations for that area have been completed and approved by the commission.
 - b. (1) All topsoil must be removed from all areas to be disturbed, except in situations as provided by subsection 4.

(2) Sufficient subsoil must be removed from all areas to be disturbed to satisfy the redistribution requirements of subsection 4 of section 69-05.2-15-04.
3. Materials to be removed in shallow suitable plant growth material situations. If the thickness of suitable plant growth materials averages less than six inches [15.24 centimeters], the commission may specify other suitable strata to be removed and treated as suitable plant growth material.
4. Suitable plant growth material removal will not be required for minor disturbances which occur at the site of small structures, such as power poles, signs, or fence lines.

5. Suitable plant growth material supplements and substitutes.

- a. Topsoil supplements. Selected subsoil or other suitable strata may be used as a supplement to topsoil if the permittee or operator demonstrates that the resulting soil medium is equal to or more suitable for sustaining vegetation than the available topsoil. This demonstration must include the vertical and areal extent of supplemental materials and determinations of pH, electrical conductivity, sodium adsorption ratio, percent coarse fragments, percent organic matter, texture, and other chemical or physical analyses as required by the commission. The operator may be required by the commission to include the results of any field trials or greenhouse tests to demonstrate the feasibility of using a mixture of such materials. The permittee or operator shall also demonstrate that the resulting medium is the best available soil medium in the permit area to support revegetation.
- b. Subsoil supplements. The permittee or operator may be required to use other suitable strata to supplement subsoil materials if the commission determines additional suitable materials for spreading over affected areas are necessary to meet the redistribution requirements of subdivision a of subsection 4 of section 69-05.2-15-04, provided other suitable strata are available. Samples of the strata to be saved must be taken at sufficient locations to determine the areal extent of the suitable strata. The sampling locations must be approved by the commission. Chemical and physical analyses of the samples taken must include pH, electrical conductivity, sodium adsorption ratio, and textural analysis as required by the commission.
- c. Subsoil substitutes. Selected overburden materials may be substituted for subsoil if the operator demonstrates to the commission that the resulting soil medium is equal to or more suitable than the available subsoil for sustaining vegetation. Overburden sampling and chemical and physical analyses must be provided by the operator as required by the commission.
- d. Supplemental and substitute materials must be removed, segregated, and redistributed according to the applicable requirements for suitable plant growth material in this chapter.

History: Effective August 1, 1980; amended effective June 1, 1983; January 1, 1987; May 1, 1990; January 1, 1993; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-16

69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

1. General requirements. Sedimentation ponds must be used individually or in series and:
 - a. Be constructed before any disturbance of the undisturbed area to be drained into the pond.
 - b. Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the commission.
 - c. Meet all the criteria of this section.
2. Sediment storage volume. Sedimentation ponds must provide adequate sediment storage volume. Sediment storage volume must be determined using the universal soil loss equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the commission.
3. Detention time. Sedimentation ponds must provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten-year, twenty-four-hour precipitation event (design event). The theoretical detention time must be sufficient to achieve and maintain applicable effluent standards. The calculated theoretical detention time and all supporting materials must be included in the permit application.
4. Dewatering. The stored water must be removed by a nonclogging dewatering device or a conduit spillway approved by the commission, and have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device may not be lower than the maximum elevation of the sediment storage volume.
5. Each operator shall design, construct, and maintain sedimentation ponds to prevent short circuiting to the extent possible.
6. The design, construction, and maintenance of a sedimentation pond or other sediment control measures do not relieve the operator from compliance with applicable effluent limitations.
7. There For sedimentation ponds designed to contain the runoff from a ten-year, twenty-four-hour precipitation event (design

event), there must be no spillway outflow through--the emergency--spillway--from---the---ten-year,---twenty-four-hour precipitation as a result of runoff from the design event or lesser runoff events, unless multiple runoff events occur before the pond can be dewatered in accordance with approved plans in the permit.

8. Sediment must be removed from sedimentation ponds on a periodic basis in order to maintain an adequate storage volume for the design event.
9. An appropriate combination of principal and emergency spillways or a single spillway must be provided to safely discharge the runoff from a twenty-five-year, six-hour precipitation event for a temporary impoundment, a fifty-year, six-hour precipitation event for a permanent impoundment, or a larger event specified by the commission. The spillways must be capable of safely discharging the required event when the impoundment is at high water elevation. Commission approval of open channel spillway grades and allowable velocities must be obtained and velocities must be nonerosive. Earth or grass lined spillways may be used only where sustained flows are not expected.
10. The minimum elevation at the top of the settled embankment must be one foot [30.48 centimeters] above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this minimum elevation requirement applies at all times.
11. The constructed height of the dam must be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the commission that the material used and the design will ensure against settlement.
12. The minimum top width of the embankment may not be less than the quotient of $(H+35)/5$, where H is the height, in feet, or $(H+10.7)/5$, where H is the height, in meters, of the embankment as measured from the upstream toe of the embankment.
13. The upstream side slope of the settled embankment may not be steeper than a horizontal to vertical ration of 3:1 and the downstream side slope of the settled embankment may not be steeper than a horizontal to vertical ration of 2:1.
14. The foundation area must be cleared of all organic matter, all surfaces sloped to no steeper than a horizontal to vertical ration of 1:1, and the entire foundation surface scarified. Cutoff trenches must be installed if necessary to ensure stability.

15. The fill material must be free of sod, large roots, other large pieces of vegetative matter, and frozen soil, and in no case shall coal processing waste be used.
16. The placing and spreading of fill material must be started at the lowest point of the foundation. The fill must be brought up in horizontal layers in the thicknesses required to facilitate compaction and meet the design requirements of this section. Fill adjacent to structures, pipe conduits, and drainfill or antiseep collars must be compacted to a density equal to that of the surrounding fill by hand tamping or by using manually directed power tampers or plate vibrators. Compaction must be conducted as specified in the approved design. In lieu of the specific design requirements of this subsection and subsections 11 through 14, the operator may demonstrate that the design of the structure has a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.
17. If a proposed impoundment can meet the size and other criteria of 30 CFR 77.216, or is located where failure would be expected to cause loss of life or serious property damage, the following additional requirements must be met:
 - a. An appropriate combination of principal and emergency spillways must be provided to safely discharge the runoff from a one-hundred-year, six-hour precipitation event, or a larger event as specified by the commission.
 - b. The embankment must be designed and constructed with a seismic safety factor of 1.2 and a static safety factor of at least 1.5 for a normal pool with steady state seepage saturation conditions, or a higher safety factor as designated by the commission.
 - c. Appropriate barriers must be provided to control seepage along conduits that extend through the embankment.
 - d. The criteria of the mine safety and health administration as published in 30 CFR 77.216 must be met, and a copy of the plan sent to the district manager of the United States mine safety and health administration under that title submitted to the commission as part of the permit application.
18. Impoundment inspections.
 - a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b of this subsection. The registered professional engineer and specialist must be experienced in the construction of impoundments.

- b. Inspections must be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.
 - c. After each inspection the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.
 - d. A copy of the inspection reports must be maintained at or near the minesite.
19. The embankment, including the surrounding areas and diversion ditches disturbed or created by construction, must be stabilized with respect to erosion and sudden drawdown by a vegetative cover or other means immediately after the embankment is completed. The active upstream face where water will be impounded may be riprapped or otherwise stabilized to protect the embankment from erosion and sudden drawdown. Areas where the reestablishment of vegetation is not successful or where rills and gullies develop must be repaired and revegetated according to section 69-05.2-15-06.
20. In addition to the requirements of subsection 18, all impoundments meeting the criteria of subsection 17, must be examined according to 30 CFR 77.216-3. Other impoundments must be examined at least semiannually quarterly by a qualified person for appearance of erosion, structural weakness, and other hazardous conditions. The annual inspection required by subsection 18 will be considered one of the examinations required by this subsection.
21. Plans for any enlargement, reduction, reconstruction, or other modification of dams or impoundments must be submitted to the commission. Commission approval of these plans is required before modification begins, unless a modification is necessary to eliminate a hazard to public health, safety, or the environment.
22. Sedimentation ponds may not be removed until authorized by the commission and the disturbed area has been stabilized and revegetated. The structure may not be removed sooner than two years after the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling erosion. When the pond is removed, the affected land must be

reclaimed, unless the pond has been approved by the commission for retention. If the commission approves retention, the pond must meet all the requirements for permanent impoundments of section 69-05.2-16-12.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-21

69-05.2-21-01. Performance standards - Backfilling and grading - Timing requirements.

1. **Area surface mining with thin overburden.** Rough backfilling and grading must occur according to the time schedule approved by the commission on the basis of the materials submitted under subsection 3 of section 69-05.2-09-11.
2. **Area surface mining.** Rough backfilling and grading must be completed within one hundred eighty days following coal removal and may not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The commission may grant additional time or distance for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under subsection 3 of section 69-05.2-09-11, that additional time or distance is necessary.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-28

69-05.2-28-03. Inspection and enforcement - Cessation order - Affirmative relief - Modification - Vacation - Termination - Notice to owners and controllers.

1. If a cessation ordered under subdivision a of subsection 1 of North Dakota Century Code section 38-14.1-28 will not completely abate the imminent danger or harm as quickly as possible, the commission or its authorized representative will impose affirmative obligations on the operator or permittee to abate the condition, practice, or violation. The cessation order will specify the timetable for abatement and any interim steps. The cessation order may also require the use of existing or additional personnel and equipment.
2. Reclamation operations and related activities must continue while a cessation order is in force unless otherwise provided in the order.
3. The commission or its authorized representative may modify, terminate, or vacate a cessation order for good cause and may extend the time for abatement if failure to abate was not caused by lack of diligence by the permittee or operator.
4. The commission or its authorized representative will terminate a cessation order by written notice when all conditions, practices, or violations listed in the order are abated.
5. Termination of a cessation order does not affect the commission's right to assess civil penalties for the violation, condition, or practice for which the order was issued.
6. Surface coal mining and--reclamation operations conducted without a valid permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, unless the operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting them has filed a timely and complete permit application.
7. Within sixty days after issuing a cessation order, the commission will notify in writing any person identified under subsection 3 of section 69-05.2-10-05 and subdivisions e and f of subsection 1 of section 69-05.2-06-01 as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

History: Effective August 1, 1980; amended effective May 1, 1990;
May 1, 1992; July 1, 1995.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-28

TITLE 75

Department of Human Services

NOVEMBER 1994

CHAPTER 75-03-18

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code chapter 75-03-18, Procedures for Review of Child Abuse and Neglect Investigations and North Dakota Administrative Code chapter 75-03-19, Investigation of Child Abuse and Neglect Reports.

A public hearing was conducted on June 8, 1994, concerning proposed amendments to North Dakota Administrative Code chapter 75-03-18, Procedures for Review of Child Abuse and Neglect Investigations, and North Dakota Administrative Code chapter 75-03-19, Investigation of Child Abuse and Neglect Reports.

The amendments to chapter 75-03-18 define who may file for review of the conduct of the investigation and of the investigation's findings, the manner for filing a request for review, and the standard of review. The amendments also define the evidentiary boundaries for the formal hearings, and set out the limits for the recognition of privileged communications. The amendments state that an appeal of an investigation's conduct or its finding does not suspend any legal ramifications the determination may have. But, if the appeal does overturn the case determination, the action will be recorded in the record.

The amendments to chapter 75-03-19 clarify the definition of "investigation", to correct a typographical error, and clarify investigatory procedures.

Statutory changes to North Dakota Century Code chapter 50-25.1 passed during the 1993 legislative session initiated these changes.

75-03-18-01. Definitions.

1. "Department" means the North Dakota department of human services.
2. "Determination" means the decision that probable cause does or does not exist to believe that child abuse or neglect is indicated.
3. "Director" means the executive director of the North Dakota department of human services, or the executive director's designee.
- 3- 4. "Investigating agency" means the county social service board in the county where the report of suspected abuse or neglect was investigated, or, in certain instances, a regional human service center.
- 4- 5. "Regional human service center" means a facility ~~which is~~ established according to the provisions of North Dakota Century Code section 50-06-05.3.
6. "Subject" means any person investigated who is suspected as having been abused or neglected during childhood, and any person investigated who is suspected as having abused or neglected any child.

History: Effective September 1, 1990; amended effective November 1, 1994.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-02. Who may file request for review.

1. The following subjects of a report of suspected child abuse or neglect who are aggrieved by the conduct or result of the investigating--agency's investigation of the a probable cause finding of suspected child abuse or neglect may file a complaint an appeal and request a review of the investigation:
 - 1- a. A child's parent, guardian, foster parent, an employee of a public or private school or nonresidential child care facility, an employee of a public or private residential home, institution or agency, or other person responsible for the child's health and welfare in a residential setting who is a subject of a report of suspected child abuse or neglect as the alleged perpetrator; or
 - 2- b. A child who is a subject as a suspected victim of a report of suspected abuse or neglect may file a request for review directly or such a request for review may be made on behalf of such a child by a parent;--guardian;--legal representative;--~~or other relative~~ or legal guardian acting on behalf of and in the best interests of such a child.

2. A staff member of child protective services will notify the alleged perpetrator of the findings of the probable cause investigation. At the time of the initial interview, the staff member will provide to the alleged perpetrator written appeal procedures for the conduct of the investigation, the outcome of the investigation, or both. Written appeal procedures are available from the department upon request.

History: Effective September 1, 1990; amended effective November 1, 1994.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-03. Request for review appeal to be in writing - Where filed - Content --Time-for-filing. A request for a review an appeal of an investigation must be in writing on forms developed and provided by the department. It must contain a succinct statement of the reasons why the subject is aggrieved by the conduct of the investigation. The request for review may be filed no sooner than the date of notification of a case determination and no later than ninety days from the date of the case determination. A review must normally be initiated within fifteen days from the date of receipt of the written request for the review, but such time may be extended for a further reasonable period in the discretion of the investigating agency. The complaining subject must submit the written request for an appeal and formal hearing to:

Appeals Supervisor
North Dakota Department of Human Services
State Capitol - Judicial Wing
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250

The written request must include:

1. A succinct statement by the subject as to why the subject disagrees with the conduct of the investigation or a probable cause finding;
2. All reasons or grounds the subject disagrees with must be included in a single request for appeal, either as to the conduct of the investigation, the result of the investigation, or both; and
3. A statement of the relief sought by the subject.

History: Effective September 1, 1990; amended effective November 1, 1994.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-04. Where request for review to be filed Time for filing request for appeal - Standard for review. The written request for review of a child abuse and neglect investigation must be filed with the director, or director's designee, of the county social service board wherein the investigation took place. In the event that the investigation was conducted by a regional human service center, the written request for review must be filed with the director of the regional human service center, or the director's designee.

1. An appeal may not be filed before the date of a case determination and must be filed within thirty days after the documented date of the subject notification of the determination in accordance with procedures in chapter 75-01-03.
2. Probable cause findings issued before July 31, 1993, are not subject to appeal. The decision of the investigating agency must be affirmed unless the investigating agency acted arbitrarily, capriciously, or unreasonably in making its decision.

History: Effective September 1, 1990; amended effective November 1, 1994.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-05. Informal meeting.

1. The agency which conducted the investigation under review shall schedule an informal meeting with the complaining subject. The meeting must normally be held within twenty days of the receipt of the written request for review, but such time period may be extended for a further reasonable time in the discretion of the investigating agency. The purpose of this meeting is to resolve the concerns addressed in the written request for review.
2. The agency which has conducted the investigation and held the informal meeting shall render a written decision on the complaint. The written decision must be submitted to the complaining subject.
3. If a decision is made that the investigation was incomplete or the requirements of the department were not met, the investigating agency may determine any appropriate corrective or other action to be taken. Nothing in this chapter shall be construed to forbid any informal, mutually consensual meetings or discussions between the subject and the department, director, investigating agency, or regional human service center. Such informal review will not suspend or extend the time for filing an appeal pursuant to section 75-03-18-04.

History: Effective September 1, 1990; amended effective November 1, 1994.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-06. Request for formal hearing. If the complaining subject of a report does not agree with the decision made by the investigating agency, the complaining subject may submit a written request for a formal hearing to appeals supervisor, North Dakota department of human services, state capitol judicial wing, 600 east boulevard avenue, Bismarck, ND 58505-0250. This request must be received by the appeals supervisor on or before 5:00 p.m. on the thirty-first day after the date of mailing of the written decision of the informal meeting. The written request must include the following:

1. A copy of the written decision of the investigating agency with which the subject disagrees; and
2. A succinct statement by the subject as to why the subject disagrees with the written decision of the investigating agency. Repealed effective November 1, 1994.

History: Effective September 1, 1990.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-07. Formal hearing -- Notice.

1. The office of the appeals supervisor shall mail or deliver to the complaining subject and the investigating agency a written notice of the time and place of the hearing at least ten days before the hearing date.
2. The investigating agency shall provide the appeals supervisor with pertinent files and records for review by the appeals supervisor.
3. The appeals supervisor, or the appeals supervisor's designee, shall conduct the hearing, swear witnesses, and maintain order. The appeals supervisor's designee may be a hearing officer provided by the hearings officer division, attorney general's office.
4. Testimony taken at the hearing must be preserved by a suitable recording device. A party may receive a transcribed copy of the testimony upon request and payment of the transcription costs; provided, that the request is received within ninety days of the hearing.
5. The statements received at the hearing must be limited to those probative of the complaints under review. The formal

hearing must be conducted in substantial conformity with applicable provisions of chapter 75-01-03.

2. The hearing must be conducted according to any fair treatment standards adopted by the legislative assembly or the supreme court for the protection of witnesses or children in court proceedings.

History: Effective September 1, 1990; amended effective November 1, 1994.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-08. Hearing decision. ~~The--appeals--supervisor--or designee--shall,--within--thirty--days--of--the--close--of--the--formal--hearing, prepare--written--findings--and--conclusions--based--upon--the--files,--records, and--testimony--received--at--the--hearing,--and--present--it--to--the--director for--a--decision--in--conformity--with--chapter--75-01-03,--The--director's decision--constitutes--the--final--determination--of--the--complaint--concerning the--investigation,--The--written--findings,--conclusions,--and--decision--must be--sent--to--the--complaining--subject--and--the--investigating--agency.~~
Repealed effective November 1, 1994.

History: Effective September 1, 1990.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-09. Probable cause finding not directly reviewable. ~~The review--processes--outlined--in--this--chapter--are--not--intended--as--mechanisms for--directly--reviewing--the--findings--of--probable--cause,--As--a--result--of the--review--of--the--conduct--of--an--investigation,--the--agency--only--may--elect to--amend--or--alter--the--probable--cause--determination,--The--outcome--of--the investigation--under--review--may--or--may--not--differ--from--the--outcome--of--the original--investigation.~~
Repealed effective November 1, 1994.

History: Effective September 1, 1990.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-10. Confidentiality. Information furnished at the any informal meeting and formal hearing is confidential and subject to the provisions of North Dakota Century Code ~~section~~ sections 50-06-15, 50-25.1-11, and 50-25.1-14. The identity of a reporter of any incident of suspected abuse and neglect may not be disclosed at the any informal meeting or at any formal hearing conducted under this chapter.

History: Effective September 1, 1990; amended effective November 1, 1994.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4, 50-06-15, 50-25.1-11, 50-25.1-14

75-03-18-11. Evidence.

1. Any privilege of communication between husband and wife or between any professional person and that person's patient or client, except between attorney and client or involving members of the clergy acting as spiritual advisers, does not constitute grounds for the exclusion of evidence during an investigation of reported suspected child abuse or neglect, or during an appeal under this chapter or under North Dakota Century Code chapter 28-32.
2. Any statement, relied upon by the director or the director's designee, made by a child who is a subject as a suspected victim of a report of suspected child abuse or neglect or who is a witness to the suspected abuse or neglect of another child may be introduced into evidence.
3. Copies of any statements or any records sought to be entered into evidence shall be redacted to protect any statutory confidentiality requirements.

History: Effective November 1, 1994.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-03, 50-25.1-05.4

75-03-18-12. Effect of appeal. Neither a request for appeal under this chapter nor an appeal from that decision under North Dakota Century Code chapter 28-32 shall be construed to suspend the legal effect of a case determination during the time of the appeal until such time as a final decision overturning the case determination has been made and not appealed.

History: Effective November 1, 1994.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-13. Effect of overturn of case determination or appeal. If a case determination is reversed on appeal under this chapter or under North Dakota Century Code chapter 28-32, a notation of the fact that the finding was overturned must be added to the record.

History: Effective November 1, 1994.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

CHAPTER 75-03-19

75-03-19-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-25.1, except:

1. "Determination" means the decision that probable cause does or does not exist to believe that child abuse or neglect is indicated.
2. "Investigation" is the factfinding process designed to provide information which enables a determination to be made that probable cause does or does not exist to believe child abuse or neglect is indicated. An investigation is a proceeding under North Dakota Century Code section 50-25.1-10.

History: Effective September 1, 1990; amended effective November 1, 1994.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05

75-03-19-03. Time for initiating investigations - Emergencies. All nonemergency child abuse or neglect investigations must be initiated no later than seventy-two hours after receipt of a report by the investigating agency unless the department shall prescribe a different time in a particular case. In emergency cases involving a serious threat or danger to the life or health of a child, the investigation and any appropriate protective measures must commence immediately upon receipt of a report by the ~~investing~~ investigating agency. An investigation is initiated by an interview with a subject of the report or with a collateral contact.

History: Effective September 1, 1990; amended effective November 1, 1994.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05

75-03-19-06. Investigation procedures. Investigations of reports of suspected child abuse or neglect must be conducted by the department or by its designee in substantial conformity with the policies and ~~procedures-contained-in-North-Dakota-department-of-human-services-manual chapter-640,--to--the--extent--such--policies--and--procedures--are--not--in conflict-with--any--provisions--of--this--chapter,~~ of the department. Investigations of reports of suspected child abuse or neglect must reflect:

1. An assessment process designed to collect sufficient information to determine if probable cause does or does not

exist to believe child abuse or neglect is indicated and to assess the risk of future harm to children;

2. Assessment techniques that include interviewing and observing subjects and other interested or affected persons and documenting those interviews and observations;
3. Conclusions and a summary based on information gathered by assessment techniques described in subsection 2; and
4. Development of a treatment and prevention plan based on goals and objectives established by the department or its designee and the family of the subject.

History: Effective September 1, 1990; amended effective November 1, 1994.

General Authority: NDCC 50-25.1-05, 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05, 50-25.1-05.4

JANUARY 1995

CHAPTER 75-02-04.1

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code chapter 75-02-04.1, Child Support Guidelines

Public hearings were conducted in Grand Forks on June 14, 1994, and in Bismarck on June 15, 1994, concerning proposed amendments to North Dakota Administrative Code chapter 75-02-04.1, Child Support Guidelines.

The proposed amendments are intended to comply with state and federal law requiring the department to establish child support guidelines. Some judicial decisions had the effect of requiring amendments to assure the guidelines cover all cases. Though not required by statute or judicial decision, the department has also concluded that improvements and refinements of this chapter were necessary. The most significant of these changes provides a means of recognizing all of the obligor's child support duties in determining the obligation in each case. Other significant changes include a means of imputing income based on earning capacity. Many minor and technical changes were also made. No change to the schedule of child support amounts was made except to correct calculation errors, to identify guideline amounts for persons with monthly net incomes below \$400, to provide application for families with seven or more children, and to provide application for persons with monthly net incomes in excess of \$10,000.

75-02-04.1-01. Definitions.

1. "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.

2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.
3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from means tested public assistance programs.
4. "Custodial parent" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of custody descriptions such as "shared" or "joint" custody given in relevant judgments, decrees, or orders.
- 2- 5. "Gross income" means income from any source, including in any form, but does not mean benefits received from means tested public assistance programs such as aid to families with dependent children, supplemental security income, and food stamps. Gross income includes salaries, wages, overtime wages, commissions, bonuses, deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, retirement benefits, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent each exceeds one thousand dollars in value, spousal support payments received, cash value of in-kind income received on a regular basis, children's benefits, income imputed from--assets based upon earning capacity, military subsistence payments, and net income from self-employment;--but-excluding--benefits--received from--means--tested--public-assistance-programs-such-as-aid-to families--with--dependent-children;---supplemental---security income;--and-food-stamps.
- 3- 6. "In-kind income" means the receipt of any valuable right, property or property interest, other than money or money's worth, including;--but--not--limited--to; forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the customary charge, and the use of consumable property at no charge or less than the customary charge.
- 4- 7. "Net income" means total gross monthly income less:
- a. Federal income tax obligation based on application of standard deductions and tax tables;
 - b. State income tax obligation based on application of standard deductions and tax tables;

- c. Federal Insurance Contributions Act (FICA) and medicare deductions or obligations, whichever is less;
- d. That A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, intended to afford coverage for the child or children for whom support is being sought, and--payments determined by dividing the payment by the total number of persons covered and multiplying the result times the number of such children;
- e. Payments made on actual medical expenses of the child or children for whom support is being sought;
- e.--~~Payments--actually-made-pursuant-to-a-child-support-order, issued-by--a--court--or--other--governmental--agency--with authority--to--issue--such-orders,-with-respect-to-a-child for-whom-support-is-not-being--sought--in--the--proceeding before-the-court.~~
- f. Union dues where required as a condition of employment;
- g. Employee retirement contributions, deducted from the employee's compensation, other than FICA, where required as a condition of employment; and
- h. Employee expenses for special equipment or clothing required as a condition of employment or for lodging expenses incurred when engaged in travel required as a condition of employment (limited to thirty dollars per night or actual lodging costs, whichever is less), incurred on a regular basis, but not reimbursed by the employer;~~--for-special-equipment-or-clothing-required-as-a condition-of-employment.~~

5. 8. "Net income from self-employment" means gross income of any organization or entity which employs the obligor, but which the obligor is to a significant extent able to control, less actual expenditures attributable to the cost of producing income to that organization or entity.

6. 9. "Obligee" includes, for purposes of this chapter, an obligee as defined in subsection 8 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support.

7. 10. "Obligor" includes, for purposes of this chapter, an obligor as defined in subsection 9 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.

- 8- 11. "Split custody" means a situation where the parents have more than one child in common, and where each parent has sole custody of at least one child.

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-02. Determination of support amount - General instructions.

1. Calculations of child support obligations provided for under this chapter consider and assume that one parent acts as a primary caregiver and the other parent contributes a payment of child support to the child's care.
2. Calculations assume that the care given to the child during temporary periods when the child resides with the obligor or the obligor's relatives do not substitute for the child support obligation.
3. Net income received by an obligor from all sources must be considered in the determination of available money for child support.
4. The result of all calculations which determine a monetary amount ending in fifty cents or more must be rounded up to the nearest whole dollar, and must otherwise be rounded down to the nearest whole dollar.
5. In applying the child support guidelines, and an obligor's monthly net income amount ending in fifty dollars or more must be rounded up to the nearest one hundred dollars, and must otherwise be rounded down to the nearest one hundred dollars.
6. The annual total of all income considered in determining a child support obligation must be determined and then divided by twelve in order to determine the obligor's monthly net income.
7. Income must be documented through the use of tax returns, current wage statements, and other information sufficiently to fully apprise the court of all gross income. Where gross income is subject to fluctuation, particularly in instances involving self-employment, information reflecting and covering a period of time sufficient to reveal the likely extent of fluctuations must be provided.
8. Calculations made under this chapter are ordinarily based upon recent past circumstances because past circumstances are typically a reliable indicator of future circumstances, particularly circumstances concerning income. If

circumstances that materially affect the child support obligation are very likely to change in the near future, consideration may be given to the likely future circumstances.

9. Determination of a child support obligation is appropriate in any matter where the child and both of the child's parents do not reside together.
10. Each child support order must include a statement of the net income of the obligor used to determine the child support obligation, and how that net income was determined.
11. A payment of children's benefits made to or on behalf of a child who is not living with the obligor must be credited as a payment toward the obligor's child support obligation in the month (or other period) the payment is intended to cover, but may not be credited as a payment toward the child support obligation for any other month or period.

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-05. Determination of net income from self-employment.

1. Expenses attributable to the cost of producing income vary from business to business. Deducting expenses from the gross income of the business determines the adjusted gross income, according to internal revenue service terminology. Business expenses--may--include:---rent--on--business--property;--taxes; repairs;--insurance;--legal--and--professional--fees;--interest--on borrowing;--real-estate--taxes;--insurance;--utilities--such--as--gas and--electricity;--heating--costs;--repairs--and--maintenance;--and salaries--or--wages--paid--to--employees. If the latest tax return is not available or does not reasonably reflect the income from the business because--the--business--has--not--been--in operation--for--a--full--year;--because--the--business--has--been substantially--reduced--because--of--economic--hardship;--sale--of assets;--or--termination--of--part--of--the--business;--or--because--the business--has--been--substantially--increased--because--of--economic boom;--increased--assets;--or--expansion--of--business--operation, a profit and loss statement which will ~~most~~ more accurately reflect the current status of the business must be used.
2. After adjusted gross income from self-employment is determined, all business expenses which--may--be allowed for taxation purposes, but which do not require actual expenditures, such as depreciation and--net--operating--losses, must be added to determine net income from self-employment. Business costs which--are--actually incurred and paid, but which may not be expensed for internal revenue service purposes, such as principal payments on business loans (to the extent

there is a net reduction in total principal obligations incurred in purchasing depreciable assets), may be deducted to determine net income from self-employment.

3. Farm businesses experience significant changes in production and income over time. To the extent that information is reasonably available, the average of the most recent five years of farm operations, if undertaken on a scale substantially similar to--farm--operations-of-a-party-to-the child-support-proceeding scale, should be used to determine farm income.
4. Landcosts are a significant part of farm expenses. Because farmlands are used both for the production of income and for investment purposes, for the purpose of making determinations under this section, deduction of business costs relating to the purchase of land is limited to the lesser of:
 - a. The fair rental value of the land being purchased; or
 - b. The total principal and interest payments actually made toward the purchase of the land.

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-09{12} 50-09-02(12); 42 USC 667

75-02-04.1-06. Consideration-of-hardship Determining the cost of supporting a child living with the obligor. Situations-occur-over-which the-obligor-has-little-or-no-control,-and-which-may-substantially-reduce the-ability-to-pay-child-support-for-a-prolonged-time---If--a--continued or--fixed-expense,-other-than-the-obligor's-living-expenses,-is-actually incurred-and-paid,-such-as-payments-to-restore-a-major-casualty-loss--of property--essential--to--living--or-to-earning-a-livelihood,-the-amounts paid-may-be-deducted-from-gross-income-to-arrive--at--net--income. The cost of supporting a child living with the obligor, who is not also a child of the obligee, may be deducted from net income under subsection 4 of section 75-02-04.1-06.1 if this section is followed.

1. When the other parent of a child living with the obligor does not live with the obligor, the cost of supporting that child is determined by:
 - a. Applying the obligor's net income and the total number of children to whom the obligor owes a duty of support, to section 75-02-04.1-10;
 - b. Dividing the amount determined under subdivision a by the total number of children to whom the obligor owes a duty of support; and

- History:** Effective February 1, 1991; amended effective January 1, 1995.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-09(12) 50-09-02(12); 42 USC 667

1. This section must be used to determine the child support amount presumed to be the correct amount of child support in all cases involving an obligor who:

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- b. Owes a duty of support to at least one obligee and also owes a duty of support to a child living with the obligor who is not also the child of that obligee.
2. If a court consolidates proceedings involving an obligor and two or more obligees, the court must determine all obligations that may be determined in the consolidated proceeding without regard to whom the initial moving party may be.
3. A hypothetical amount that reflects the cost of supporting children living with the obligor, as determined under section 75-02-04.1-06, and a hypothetical amount due to each obligee under this chapter must first be determined for the children living with the obligor and each obligee, whether or not the obligee is a party to the proceeding, assuming for purposes of that determination:
- a. The obligor has no support obligations except to the obligee in question; and
- b. The guidelines amount is not rebutted.
4. A hypothetical amount due to each obligee under this chapter must next be determined for each obligee who is a party to the proceeding, assuming for purposes of that determination:
- a. The obligor's net income is reduced by:
- (1) The amount of child support due to all other obligees, as determined under subsection 3; and
- (2) The cost of supporting a child living with the obligor, who is not also the child of that obligee, as determined under section 75-02-04.1-06;
- b. The guidelines amount is not rebutted; and
- c. Any support amount otherwise determined to be less than one dollar is determined to be one dollar.
5. For each obligee before the court, the support obligation presumed to be the correct amount of child support is equal to one-half of the total of the two amounts determined, with respect to that obligee, under subsections 3 and 4.
6. The fact, if it is a fact, that the obligor is required to pay, or pays, a different amount than the hypothetical amounts determined under subsections 3 and 4 is not a basis for deviation from the procedure described in this section.

History: Effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-07. Imputing income from--assets based on earning capacity. All--assets,--other--than--property--claimable--as--a--homestead under--North--Dakota--Century-Code-section-47-18-01,--necessary-household goods--and--furnishings,--and--one--motor-vehicle--in--which--the--parent--owns--an equity--not--in--excess--of--fifteen--thousand--dollars--must--be--considered--for the--purpose--of--imputing--income.---Annual--net--property--income--equal--to--six percent--of--the--parent's--equity--interest--in--all--such--property--which--does not--produce--at--least--six--percent--return--on--equity,--reduced--by--the--actual net--property--income,--must--be--imputed.

1. For purposes of this section:

a. "Community" includes any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; and

b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than prevailing amounts earned in the community by persons with similar work history and occupational qualifications.

2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than six-tenths of prevailing amounts earned in the community by persons with similar work history and occupational qualifications.

3. Except as provided in subsections 4 and 5, monthly gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.

a. An amount equal to one hundred sixty-seven times the hourly federal minimum wage.

b. An amount equal to six-tenths of prevailing gross monthly earnings in the community of persons with similar work history and occupational qualifications.

c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve months beginning on or after thirty-six months before commencement of the proceeding before the court, for which reliable evidence is provided.

4. Monthly gross income based on earning capacity may be imputed in an amount less than would be imputed under subsection 3 if the obligor shows:

a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child:

(1) Who is in the physical custody of the obligor;

- (2) Who is under the age of fourteen; and
- (3) For whom there is no other adult caretaker in the parent's home available to meet the child's needs during absence due to employment.
- b. The obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
 - c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
- 5. Gross income based on earning capacity may not be imputed if the obligor shows that the obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.
- 6. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable in the community, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.
- 7. If the obligor fails, upon reasonable request made in any proceeding to establish a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, income based on earning capacity equal to the greatest of subdivisions a through c of subsection 3 must be imputed.
- 8. If the obligor fails, upon reasonable request made in any proceeding to review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, income must be imputed based on the greatest of:
 - a. Subdivisions a through c of subsection 3; or
 - b. The obligor's income, at the time the child support order was entered or last modified, increased at the rate of ten percent per year.

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-09{12} 50-09-02(12); 42 USC 667

75-02-04.1-08. Income of spouse. The income and financial circumstances of the spouse of an obligor should not be considered as income for child support purposes unless the spouse's income and financial circumstances are, to a significant extent, subject to control by the obligor as, ~~for instance,~~ where the obligor is a principal in a business employing the spouse. ~~The value of in-kind income contributed by the spouse to the obligor must be considered, as where the obligor's spouse meets the cost of providing living quarters or transportation used by the obligor, or otherwise allows the obligor to avoid ordinary living expenses.~~

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-09{12} 50-09-02(12); 42 USC 667

75-02-04.1-09. Factors--considered---Not-considered Criteria for rebuttal of guideline amount.

1. The child support amount and ~~the calculations~~ provided for under this chapter ~~consider all factors described or applied in this chapter, except those described in subsection 2 and, in addition, consider, except for subsection 2, is presumed to be the correct amount of child support. No rebuttal of the guidelines may be based upon evidence of factors described or applied in this chapter, except in subsection 2, or upon:~~
 - a. The subsistence needs, work expenses, and daily living expenses of the obligor; and or
 - b. The income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a custodial parent.
2. ~~The child support guidelines schedule and the calculations provided for under this chapter do not consider~~ The presumption that the amount of child support that would result from the application of this chapter, except for this subsection, is the correct amount of child support is rebutted only if a preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the supported children and:
 - a. The increased need ~~in cases where~~ if support for more than six children is sought in the matter before the court;

- b. The increased ability of an obligor, with a monthly net income which exceeds ten thousand dollars, to provide child support;
- c. The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;
- d. The increased needs of children with handicapping disabling conditions or chronic illness;
- e. The increased needs of children age twelve and older;
- f. The ~~full~~ increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;
- g. ~~The value--of--the--income--tax--exemption--for--supported children~~ increased ability of an obligor, who is able to secure additional income from assets, to provide child support; and
- h. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;
- i. The reduced ability of the obligor to provide support due to travel expenses incurred solely for the purpose of visiting a child who is the subject of the order;
- j. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed expense for other than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection; or
- k. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:
 - (1) Exceed ten percent of the obligor's gross income;
 - (2) Have been incurred and are reasonably certain to continue to be incurred by the obligor;
 - (3) Are not subject to payment or reimbursement from any source except the obligor's income; and

(4) Are necessary to prevent or delay the death of the obligor or to avoid a significant loss of income to the obligor.

3. Assets may not be considered under subdivisions g and h of subsection 2, to the extent they:

a. Are exempt under North Dakota Century Code section 47-18-01;

b. Consist of necessary household goods and furnishings; or

c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.

4. For purposes of subdivision h of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:

a. The transaction occurred after the birth of a child entitled to support;

b. The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and

c. The obligor's income is less than it likely would have been if the transaction had not taken place.

5. For purposes of subdivision j of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of discretionary purchases or illegal activity.

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-09(12) 50-09-02(12); 42 USC 667

75-02-04.1-10. Child support amount. The amount of child support payable by the obligor is determined by the application of the following schedule to the obligor's monthly net income and the number of children for whom support is being sought in the matter before the court.

Obligor's Monthly Net Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
below-\$400			a-reasonable-amount-greater-than-\$10			
<u>100</u>	<u>14</u>	<u>17</u>	<u>20</u>	<u>22</u>	<u>24</u>	<u>26</u>

or less

<u>200</u>	<u>28</u>	<u>34</u>	<u>40</u>	<u>44</u>	<u>48</u>	<u>52</u>
<u>300</u>	<u>42</u>	<u>51</u>	<u>60</u>	<u>66</u>	<u>72</u>	<u>78</u>
<u>400</u>	<u>56</u>	<u>68</u>	<u>80</u>	<u>88</u>	<u>96</u>	<u>104</u>
500	75	90	105	120	130	140
600	102	126	144	162	174	192
700	133	161	189	210	231	252
800	168	200	232	264	288	320
900	207	252	288	324	360	387
1000	250	300	350	390	430	470
1100	266	328	384	428	470	511
1200	282	356	418	465	510	553
1300	298	385	452	503	550	594
1400	314	412	486	540	590	635
1500	330	441	520	578	630	677
1600	346	469	554	616	669	718
1700	362	497	588	653	709	759
1800	378	526	622	691	749	800
1900	394	554	656	728	789	842
2000	411	582	690	766	829	883
2100	427	610	724	804	869	924
2200	443	638	758	841	909	966
2300	459	667	792	879	949	1007
2400	475	695	826	916	989	1048
2500	492	723	860	954	1029	1090
2600	508	751	893	992	1068	1131
2700	524	779	927	1029	1108	1172
2800	540	808	961	1067	1148	1213
2900	556	836	995	1104	1188	1255
3000	572	864	1029	1142	1228	1296
3100	588	892	1063	1180	1268	1337
3200	604	920	1097	1217	1308	1379
3300	620	949	1131	1296	1348	1420
3400	636	977	1165	1292	1388	1461
3500	653	1005	1199	1330	1428	1503
3600	669	1033	1232	1368	1467	1544
3700	685	1061	1266	1405	1507	1585
3800	701	1090	1300	1443	1547	1626
3900	717	1118	1334	1480	1587	1668
4000	733	1146	1368	1518	1627	1709
4100	749	1174	1402	1556	1667	1750
4200	765	1202	1436	1593	1707	1792
4300	781	1231	1470	1631	1747	1833
4400	797	1259	1504	1668	1787	1874
4500	814	1287	1538	1706	1827	1916
4600	830	1315	1571	1744	1866	1957
4700	846	1343	1605	1781	1906	1998
4800	862	1372	1639	1819	1946	2039
4900	878	1400	1673	1856	1986	2081
5000	894	1428	1707	1894	2026	2122
5100	910	1456	1741	1932	2066	2163
5200	926	1484	1775	1969	2106	2205
5300	942	1513	1809	2007	2146	2246

5400	958	1541	1843	2044	2186	2287
5500	975	1519 1569	1877	2082	2226	2329
5600	991	1597	1910	2120	2265	2370
5700	1007	1625	1944	2157	2305	2411
5800	1023	1654	1978	2195	2345	2453
5900	1039	1682	2012	2232	2385	2494
6000	1055	1710	2046	2270	2425	2535
6100	1071	1738	2080	2308	2465	2576
6200	1087	1766	2114	2345	2505	2618
6300	1103	1795	2148	2383	2545	2659
6400	1119	1823	2182	2420	2585	2700
6500	1136	1851	2216	2458	2625	2742
6600	1152	1879	2249	2496	2664	2783
6700	1168	1907	2283	2533	2704	2824
6800	1184	1936	2317	2571	2744	2865
6900	1200	1964	2351	2608	2784	2907
7000	1216	1992	2385	2646	2824	2948
7100	1232	2020	2419	2684	2864	2989
7200	1248	2048	2453	2721	2904	3031
7300	1264	2077	2487	2759	2944	3072
7400	1280	2105	2521	2796	2984	3113
7500	1297	2133	2555	2834	3024	3155
7600	1313	2161	2588	2872	3063	3196
7700	1329	2189	2322 2622	2909	3103	3237
7800	1345	2218	2656	2947	3143	3278
7900	1361	2246	2690	2984	3183	3320
8000	1377	2274	2724	3022	3223	3361
8100	1393	2302	2758	3060	3263	3402
8200	1409	2330	2792	3097	3303	3444
8300	1425	2359	2826	3185 3135	3343	3485
8400	1441	2387	2860	3172	3383	3526
8500	1458	2415	2894	3210	3423	3568
8600	1474	2443	2927	3248	3462	3609
8700	1490	2471	2961	3285	3502	3650
8800	1506	2500	2995	3323	3542	3691
8900	1522	2528	3029	3360	3582	3733
9000	1538	2556	3063	3398	3622	3774
9100	1554	2584	3097	3436	3662	3815
9200	1570	2612	3131	3473	3702	3857
9300	1586	2641	3165	3511	3742	3898
9400	1602	2669	3199	3548	3782	3939
9500	1619	2697	3233	3586	3822	3981
9600	1635	2725	3266	3624	3861	4022
9700	1651	2733 2753	3300	3661	3901	4063
9800	1667	2782	3334	3699	3941	4104
9900	1683	2809	3368	3736	3981	4146
10000	1699	2838	3402	3774	4021	4187

or more

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-09(12) 50-09-02(12); 42 USC 667

75-02-04.1-11. Parental responsibility for children in foster care. It is important that parents maintain a tie to and responsibility for their child when that child is in foster care. Financial responsibility for the support of that child is one component of the maintenance of the relationship of parent and child.

1. In order to determine monthly net income, it is first necessary to identify the parent or parents who have financial responsibility for any child entering foster care, and to determine the net income of those financially responsible parents. If the child's parents live in separate households, each parent's financial responsibility must be separately determined. Net income for each parent must be adjusted upward to reflect any income, not received from that parent, which is directly attributable to and furnished on behalf of a child for whom that parent is financially responsible. If the parents of a child in foster care reside together, and neither parent has a duty to support any child who does not either reside with the parents or receive foster care, the income of the parents must be combined and treated as the income of the obligor. In all other cases, each parent is treated as an obligor, and each parent's support obligations must be separately determined.
2. The number of children to be counted, when applying section 75-02-04.1-10, is the number of children under age eighteen, including the child or children entering foster care, who are living in the household of a parent of a child entering foster care, and for whom that parent is financially responsible. Each child in foster care is treated as an obligee, and support obligations must be separately determined for each such child.
3. The net income and number of children are applied to section 75-02-04.1-10 to determine the amount of net income available for child support. That amount is divided by the number of children in the household, for whom the parent is financially responsible, to determine the amount of child support per child in foster care. If the support obligations determined under this section for a child or children in foster care exceed the cost of foster care, the support obligations must be reduced (proportionately if there is more than one obligor) to an amount equal to the cost of foster care.
4. If a child in foster care is entitled to receive income or benefits in his or her own right, such as social security or supplemental security income, the full amount of the child's income or benefits must be applied to the cost of foster care. The amount of payment required from the responsible parents may not exceed the cost of foster care less the amount of the child's income or benefits.

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-09(12) 50-09-02(12); 42 USC 667

75-02-04.1-13. Application. The child support guideline schedule amount is rebuttably presumed to be the correct amount of child support in all child support determinations, including both temporary and permanent determinations, and including determinations necessitated by actions for the support of children of married persons, actions seeking domestic violence protection orders, actions arising out of divorce, actions arising out of paternity determinations, actions based upon a claim for necessities, actions arising out of juvenile court proceedings, and--actions-seeking-the-reciprocal-enforcement-of-support interstate actions for the support of children in which a court of this state has the authority to establish or modify a support order, and actions to modify orders for the support of children. The fact that two or more such actions may be consolidated for trial or otherwise joined for convenient consideration of facts does not prevent the application of this chapter to those actions.

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-09(12) 50-09-02(12); 42 USC 667

CHAPTER 75-03-16

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code chapter 75-03-16, Licensing of Group Homes and Residential Child Care Facilities

A public hearing was conducted on July 27, 1994, concerning proposed amendments to North Dakota Administrative Code chapter 75-03-16, Licensing of Group Home and Residential Child Care Facilities, concerning new regulations on out-based programming endorsement for foster children in group homes and residential child care facilities.

The amendment to section 75-03-16-01 adds the definitions of an "out-based program", "participant", and "solo activity". The proposed amendments establish, in 29 sections, regulations governing out-based programming offered in group homes and residential child care facilities. To obtain the out-based programming endorsement, a currently licensed group home or residential child care facility may apply if the home or facility complies with departmental application requirements. The ramifications of program violations is established. Out-based program activities and eligible participants are defined.

The rules outline administration and organization requirements and participant admission, discharge, and orientation guidelines. Case plans and ongoing records of participation are described. Guidelines for mail delivery, discipline and behavior management, health and medical care are provided. Staffing ratios and staff qualifications are outlined. If the out-based program is mobile, the rules establish communication standards for base station and regulatory agencies in the area where the out-based program operates. The rules provide for the maintenance of a daily log and the development of emergency and safety procedures. Transportation standards, minimum toileting, sanitation, nutrition, clothing, personal needs, sleeping shelters, equipment requirements, and limitations on hiking, backpacking, and solo activities are established.

75-03-16-01. Definitions. As used in this chapter:

1. "Department" means the North Dakota department of human services.
2. "Facility" means a residential child care facility or group home.
3. "Out-based program" means a sequence of planned activities designed to provide therapeutic outdoor physical, environmental educational, athletic, or other activities which:

- a. Involve physical and psychological challenges;
 - b. Are designed to:
 - (1) Stimulate competence and personal growth;
 - (2) Expand individual capabilities;
 - (3) Develop self-confidence and insight; or
 - (4) Improve interpersonal skills and relationships; and
 - c. Take place in a setting of twenty-four-hour participant supervision.
4. "Participant" means a child participating in an out-based program.
5. "Solo activity" means an experience in which an individual cares for himself or herself in a solitary setting away from others, but under staff supervision.

History: Effective July 1, 1987; amended effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-31. [Reserved]

75-03-16-32. [Reserved]

75-03-16-33. [Reserved]

75-03-16-34. [Reserved]

75-03-16-35. [Reserved]

75-03-16-36. [Reserved]

75-03-16-37. [Reserved]

75-03-16-38. [Reserved]

75-03-16-39. [Reserved]

75-03-16-40. [Reserved]

75-03-16-41. Other rules applicable to out-based programs.

- 1. All provisions of this chapter apply to out-based programs unless expressly specified to the contrary or unless specifically superseded by sections applicable only to out-based programs.**
- 2. Sections 75-03-16-41 through 75-03-16-70 apply only to facilities which operate an out-based program.**

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-42. Participation by foster children in out-based programs - Time limits.

- 1. A facility may not permit children in foster care to participate in any out-based program other than one operated by a facility that holds a valid endorsement issued pursuant to this chapter.**
- 2. A participant may not spend more than forty-five consecutive days in an out-based program expedition. A participant may not spend more than sixty total days in an out-based program in any calendar year.**

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-43. Eligibility for endorsement to operate out-based program - Effect of endorsement.

- 1. An application for an endorsement to operate an out-based program may be made only by a group home or residential child care facility currently licensed under this chapter, and which has been licensed and has actually had children in care for at least one year prior to the date the application for endorsement is received by the department.**
- 2. An endorsement to operate an out-based program may be issued only if:**
 - a. The facility declares in its written statement of purpose and philosophy that the out-based program is an integral component of the facility's total program; and**

- b. The facility operates the program without subcontracting or otherwise using another entity to supply staff services, physical facilities, or equipment.
3. An applicant shall submit an application on the forms and in the manner prescribed by the department.
4. The department shall issue an endorsement to operate an out-based program upon a finding that an applicant has complied with the provisions of this chapter. The endorsement must be made in writing in a manner prescribed by the department.
5. An endorsement to operate an out-based program is in force and effect for a period of one year, or until the expiration of the facility's license to operate a group home or residential child care facility, whichever is shorter. If the facility's license to operate a group home or residential child care facility is revoked, the endorsement is also revoked as of the date and time of the license revocation.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-44. Contents of application for endorsement. A facility that seeks to operate an out-based program shall submit to the department a proposed program description consisting of the following information, with supporting documentation as indicated:

1. Specifically identified program objectives and activities;
2. Criteria and procedures for admission of participants to the program;
3. A description of the number and types of individuals to be served, including age, sex, and significant emotional or behavior characteristics;
4. Criteria for assigning participants to a program or grouping them within a program, including age, sex, or other characteristics;
5. The number and qualifications of staff responsible for providing program services, including identification of the person responsible for administering the program;
6. The degree and method of family involvement in the program;
7. Other professional services available to participants, such as psychological or psychiatric services, if any;

8. The extent to which services stated to be available are in fact available, including number of staff available to provide the service and time the service is available;
9. Statement of policies regarding supervision of participants and behavior management policies and techniques;
10. Emergency and safety procedures; and
11. A description of staff training to be provided as required by this chapter, including subject matter and time devoted to staff training.

The department may require other information or documentation as it deems necessary or appropriate.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-45. Effect of single serious violation. Due to the difficulty of monitoring out-based programs and the inherent dangers of the wilderness, a single violation of health or safety standards, as established by this chapter, which creates a serious threat to human life or well-being, may result in any of the following:

1. Immediate revocation of the facility's out-based program endorsement;
2. Immediate revocation of the facility's license to provide foster care;
3. Removal of participants; or
4. Removal of children in foster care.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-46. Out-based program activities.

1. Activities must be led by staff who have demonstrated proficiency in the skills required for the activity, as determined by the facility's governing body and expressed in written policy and procedure.
2. Activities must be conducted in such a manner as to minimize any adverse effect on the environment.

3. Activities requiring or involving firearms are prohibited. No person may possess a firearm during any out-based program activity.
4. Airborne activities, including bungee jumping, hang gliding, and parachuting are prohibited.
5. A facility may not allow children or staff to participate in any test of new products by a manufacturer or other entity.
6. Activities must be graduated in the level of difficulty and matched to the level of skills or capabilities of the participants. The facility shall ensure that techniques and skills are taught progressively.
7. An activity's pace must be set according to the capabilities of the least able or fit member of the group, take into account previous illness or injury, and be designed to prevent the occurrence of accidents or illness.
8. A facility may not conduct any out-based program activity which has not been disclosed to the department in the facility's application for an endorsement.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-47. Voluntary participation.

1. A facility may not physically force any child to participate in an out-based program, but may require a child to attend an orientation by means of lecture, video, or other description of the program designed to assist the child in overcoming fear or to foster an interest in participation.
2. A facility shall provide safe escort back to the facility for any participant who leaves a program at a location away from the facility. The facility may provide safe escort elsewhere, as appropriate, to meet the personal treatment needs of the participant.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-48. Administration and organization for out-based programs.

1. The facility shall maintain a current organization chart showing the administrative structure, including the lines of

authority. The facility shall provide the chart to the department upon request.

2. Any substantial change of program purpose, philosophy, or policies regarding personnel, admission, or program services may be made only upon thirty days' advance notice to the department and upon departmental approval.
3. The facility shall notify the department within ten days of any change in the identity of the out-based program field director.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-49. Out-based program admission - Policies on discharge.

1. Eligibility to participate in a facility's out-based program is limited to children who are residents in the facility and who belong to the population for whom the facility is licensed to provide foster care. Activities for children under age thirteen must be adapted to be age appropriate.
2. Notwithstanding any admission criteria established by a facility, participants in an out-based program shall have a physical exam within one hundred twenty days prior to commencement of the program. Documentation of the exam shall be made on a form provided by the facility, signed by a licensed medical professional, and submitted to the facility prior to commencement of participation. The physical exam form must clearly state a description of the physical demands and environment of the program and require a statement of any limitations on a child's participation in the program.
3. Potential participants who have a history of chronic psychological disorders shall undergo a psychological evaluation by a licensed clinical psychologist within ninety days prior to the commencement of a program. Documentation of the evaluation must be made on a form provided by the facility, signed by the evaluator, and submitted to the facility prior to commencement of participation. The evaluation form shall clearly state a description of the physical demands and environment of the program and require a statement of any limitations on a child's participation in the program.
4. The facility shall adopt written policies describing the circumstances under which a participant may withdraw or may be discharged from a program prior to the termination of the program.

History: Effective January 1, 1995.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-03

75-03-16-50. Out-based program orientation.

1. Prior to the start of out-based program activities, the facility shall describe to the participant the nature of the program's activities. The facility shall explain the anticipated benefits of the program, describe in an age-appropriate manner the potential risks of activities undertaken in the program, and explain precautions taken to minimize risks. The facility shall document the date and content of orientation in the participant's record. The facility shall make reasonable efforts to describe the nature of program activities to the participant's parent or legal custodian.
2. The facility shall provide to each participant and the participant's parent or legal custodian a written statement of policies governing the care of participants, including rules governing conduct in the field and other discipline policies. The statement must clearly enumerate maximum consequences for violation of the rules. The participant shall sign an acknowledgment that the participant has received the written statement and been informed of its content. If the participant refuses to sign, a representative of the facility may sign the statement, in which case the participant's refusal to sign must be noted on the statement.

History: Effective January 1, 1995.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-03

75-03-16-51. Case plan. For each participant in an out-based program, the facility shall maintain in the participant's case plan documentation of:

1. Any restrictions placed on the participant's communication with family or others during the program, including mail;
2. A plan for staff reporting on the participant's status to the parent or legal custodian;
3. The intended likely benefits to the individual participant, based on the individual's needs;
4. The means by which the program will promote transference of learning by the individual participant to life after the program; and

5. A copy of the court order which establishes the authority of the legal custodian, in cases where such an order has been entered.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-52. Records of participation in out-based program.

1. A facility shall establish and maintain a record of each child who participates in an out-based program. The record must include the:
 - a. Participant's acknowledgment that the participant was given a written statement of program policies, including discipline;
 - b. Licensed health professional's report on physical exam for admission to program;
 - c. Report on psychological evaluation, if any;
 - d. Documentation by staff that participant and parent or custodian were given orientation as to the anticipated benefits, risks, and precautions of program activities;
 - e. Dates of participation in program; and
 - f. A copy of any documentation made as a result of any incident for which this chapter requires a written report or documentation of an oral report.
2. The records shall be maintained for a minimum of six years after the child's participation in the program.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-53. Mail to and from participants in out-based programs.

1. Incoming mail must be delivered in as prompt a manner as location and circumstances allow.
2. Unless contraindicated for treatment purposes, a facility may not withhold, read, censor, or otherwise restrict incoming mail from parents, custodians, or legal representatives of a participant. A facility may restrict other incoming mail only upon written instruction of the participant's parent or legal custodian, except in case of emergency.

3. A facility may require that all incoming mail be opened in the presence of staff. Participants are entitled to be present when incoming mail is opened. The facility may not allow participants to take possession of illegal or otherwise prohibited items.
4. A facility may not read, censor, or otherwise restrict outgoing mail to a participant's parent, legal guardian, or legal representative. A facility may restrict other outgoing mail only upon written instruction by the participant's parent or legal custodian.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-54. Discipline and behavior management for out-based programs.

1. The provisions of this section apply to out-based programs in addition to any other provisions of this chapter regarding discipline or behavior management.
2. The facility shall adopt written policies for discipline and behavior management, including definitions of inappropriate behaviors of participants and acceptable staff responses to inappropriate behaviors.
3. The facility shall give all program staff training in behavior management, including review of facility policies, annually or more often as appropriate.
4. No staff member may use or permit the use of any method to control the behavior of participants which a reasonable person would find humiliating, frightening, demeaning, or punitive. Staff may not require extreme physical activities by participants as a method to control behavior. Staff may not deny participants food, clothing, shelter, rest, medical care, prescribed therapeutic activities, or contacts with family or legal representatives as a means to control behavior.
5. Staff may require participants to engage in activities necessary to the health and safety of the group. A participant may bring a grievance based on required participation after the program is completed.
6. If a participant refuses food, clothing, shelter, rest, medical care, prescribed therapeutic activities, contacts with family or legal representatives, or other services, staff shall document the refusal in the daily log and in additional places as the facility deems appropriate.

History: Effective January 1, 1995.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-03

75-03-16-55. Health and medical care - Consent to medical care.

1. A facility operating an out-based program shall adopt a comprehensive written plan of preventive, routine, emergency, and followup health and medical care for all participants. The plan must include policies and procedures designed to prevent infectious and communicable diseases and to address acclimatization of participants and staff.
2. All participants shall have access at all times to a staff member trained to administer first aid and cardiopulmonary resuscitation.
3. Staff shall provide first-aid treatment, including first aid for injury, allergic reactions, disease, and venomous bites.
4. The facility shall provide first-aid kits during all field activities. Kits must include sufficient supplies appropriate for the activity, location, and environment in which they may be used.
5. The facility shall secure medical treatment by qualified medical personnel as needed for all participants, staff, and volunteers as promptly as circumstances allow.
6. Mobile program expedition groups shall bring executed medical treatment consent forms for all staff and participants on the expedition.

History: Effective January 1, 1995.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-03

75-03-16-56. Out-based program staff - Participant ratio.

1. In a program with both male and female participant, there shall be at least one female staff member and one male staff member notwithstanding any other requirements for staff-to-participant ratios set forth in this chapter.
2. The facility shall provide sufficient staff to meet participant needs under the prevailing conditions of program activities. In any event, all programs shall have at least two staff members on duty at all times. There shall be at least one staff member for every five participants.

3. An expedition group may not exceed fifteen people, including staff, participants, interns, and volunteers.
4. The facility shall identify all skills required by the program's activities and shall identify the staff member who has demonstrated proficiency in that skill. Staff who accompany participants in the field must include at least one staff member who has demonstrated proficiency in each skill required for the program's activities.
5. All staff accompanying participants in the field shall have training as required by this chapter and be at least twenty-one years of age.
6. The facility shall maintain documentation of any demonstration of proficiency required by this section in its personnel files.
7. A facility which operates an out-based program of more than fourteen consecutive days' duration shall provide the opportunity for participant contact with social service staff a minimum of once every fourteen days. Additional opportunities for contact must be provided on the basis of individual need.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-57. Staff, interns, and volunteers for out-based programs.

1. Each program shall designate a staff member as "field director" who coordinates field operations and supervises field staff. The field director shall be at least twenty-five years of age and shall have a minimum of thirty semester or forty-five quarter hours education in recreational therapy or related field, or one year of out-based program field experience.
2. A program may have interns who are individuals learning program practices while completing education requirements. Interns must be supervised by program staff.
3. A program may have volunteers. Volunteers must be directly supervised by program staff at all times.
4. Staff shall meet all applicable local, state, and federal regulations and professional licensing requirements.
5. All field staff, interns, and volunteers shall have an annual physical examination by a qualified licensed medical

professional. The facility shall maintain documentation of the physical examination in its personnel files.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-58. Staff training for out-based programs.

1. The facility shall provide initial staff training consisting of an academic curriculum and practicum or field training.
2. The initial staff training and field course training shall be provided by qualified individuals and shall include instruction in the following topics:
 - a. Water, food, and shelter procurement, preparation, and conservation;
 - b. Low impact wilderness expedition and environmental conservation skills and procedures;
 - c. Instruction in safety procedures and safe equipment use;
 - d. Instruction in emergency procedures;
 - e. Sanitation procedures;
 - f. Specialty instruction as required;
 - g. Navigation skills, including map and compass use, contour, and celestial navigation;
 - h. Counseling, teaching, and supervising participants;
 - i. Report writing, including development and maintenance of logs and journals;
 - j. Federal, state, and local regulations as applicable to the program activity, such as department of human services, bureau of land management, United States forest service, national parks service, North Dakota state game and fish department regulations; and
 - k. All written policies a facility is required to adopt under this chapter.
3. All out-based program staff must be recertified annually in cardiopulmonary resuscitation and standard first aid.
4. The facility shall maintain documentation of all staff training in its personnel files.

History: Effective January 1, 1995.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-03

75-03-16-59. Operation of out-based programs outside North Dakota.

1. All mobile program expeditions must originate and terminate in North Dakota. All orientation, emergency instruction, and other activities required under this chapter to take place prior to the program must occur in North Dakota. A facility may not permit participants to join an expedition without receiving orientation, emergency, and other preprogram instruction in North Dakota as required under this chapter. A facility may not permit participants to join an expedition after the expedition leaves North Dakota. A facility may not discharge or otherwise separate participants from a program expedition outside North Dakota except in case of emergency, or as provided by the participant's case plan.
2. Out-based programs may not take participants outside the territory of the United States without prior written authorization by the legal custodian.
3. Out-based programs shall follow the standards established by this chapter wherever program activities take place. The facility is responsible for meeting any additional standards imposed by a jurisdiction in which an activity takes place.
4. A facility shall communicate, to the extent required by law, with regulatory agencies in jurisdictions, including county, state and federal, other than North Dakota in which program activities take place.
5. A facility may not take participants outside North Dakota for more than thirty consecutive days.

History: Effective January 1, 1995.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-03

75-03-16-60. Daily schedule and log.

1. The facility shall approve and maintain a written description of program activities, including a daily schedule.
2. Field staff shall maintain a common, signed, daily log in a bound volume with preprinted page numbers and lined pages. The log must contain information on accidents, injuries, medications, behavioral problems, and all unusual occurrences. All log entries must be recorded in permanent ink with no

lines skipped. The facility shall keep the log as a permanent record.

3. For mobile programs, staff shall record in the log travel times and miles traveled in addition to other information required by this chapter.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-61. Emergency and safety procedures - Communications.

1. The facility shall establish a written emergency plan for responding to potential natural, manmade, and health emergencies, including flood, avalanche, fire, severe weather, loss of water or food supplies, intruders, and lost participants or staff. The plan must include:
 - a. Designation of authority and staff assignments;
 - b. Plan for evacuation, including transportation and relocation of participants when necessary and evacuation of injured persons; and
 - c. Supervision of participants after evacuation or relocation.
2. All out-based programs shall provide firefighting equipment appropriate to the location and nature of program activities and shall maintain all such equipment in good repair. At a minimum, such equipment must include a shovel and water receptacle.
3. The facility shall give all program participants training in fire prevention, fire safety, and precautions in case of severe weather. The facility shall give safety training in the following additional areas as may be applicable to program activities: dehydration, frostbite, heat exhaustion, hyperthermia, hypothermia, poisoning from plants or animals, snow blindness, drowning.
4. Any mobile program expedition group shall maintain the capability of contacting the facility at all times by means of a system that includes, at a minimum, reliable two-way radio or telephone communication devices plus a backup means of contact in the event of radio or telephone failure. An expedition group may substitute the capability of contacting a sheriff's office or other emergency response entity only upon prior approval by the department.

5. A mobile program expedition group shall contact the facility by radio, telephone, or other verbal means at least once every forty-eight hours.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-62. Transportation for out-based programs.

1. The facility shall adopt written policies for the transportation of participants in an out-based program.
2. Any vehicle or vessel used to transport out-based program participants or staff must be equipped with the following emergency accessories: flares, flashlight, jack, spare tire, and fire extinguisher. Vessels for water transport must be equipped with personal flotation devices for all passengers.
3. When transporting one or more program participants, two staff members shall be present at all times, at least one of whom shall be of the same sex as the participant, except in case of emergency.
4. All passengers shall wear seatbelts in vehicles so equipped at all times while the vehicle is moving.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-63. Mobile program travel plan - Predeparture procedures.

1. Prior to the departure of a mobile program expedition group, the facility shall develop a travel plan which includes an itinerary and a preestablished check-in time. The facility shall keep a copy of the travel plan at the facility.
2. For mobile programs, the facility shall file a copy of the program's itinerary with the sheriff of every county in which program activities take place.
3. The facility shall initiate its preestablished emergency and safety plan as provided for in section 75-03-16-61 upon the failure of a traveling group to check in on time.
4. The travel plan must:
 - a. Include a map of all activity areas;

- b. Identify appropriate sources or locations of water, food, laundry facilities, bathing, and liquid and solid waste and garbage disposal;
 - c. Provide daily periodic rest stops and opportunities for relaxation, exercise, and personal time;
 - d. Provide that vehicle travel not exceed five consecutive days of eight or more hours without a minimum of one intervening nontravel day, except in case of emergency travel; and
 - e. Specify routes to be traveled, including daily mileage, dates and times of departure and arrival, location of overnight stops, and planned activities.
5. Prior to departure, all participants and staff shall receive instruction in the proper and safe use of vehicles and equipment, in safety and emergency procedures, and in transportation to emergency facilities.
6. When a program's itinerary includes use of land regulated by a public agency, the facility shall comply with all regulations of the public agency, including the obtaining of permits.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-64. Out-based program participants' clothing and personal needs.

- 1. Participants shall have their own clothing, which shall meet the participant's needs and be of proper size.
- 2. Clothing shall be suited to the existing climate and seasonal conditions. Participants shall have regular clean clothing changes at least twice weekly.
- 3. Each participant shall be provided adequate protective equipment to afford reasonable insulation from insects, effects of weather, and irritating plant life. Equipment must include the following, as conditions require: rain gear, footwear, insect repellent, and sun screen. Staff shall ensure appropriate usage of protective equipment by participants.
- 4. Participants shall be allowed reasonable personal grooming items and supplies, including feminine hygiene supplies, which the participant may keep in the participant's personal possession.

5. Each participant shall have time during each day for the purpose of rest and reflection.
6. If program activities cause a participant to be absent from regular schooling more than fourteen days in a school year, the facility shall provide the means to continue the participant's individual education plan during the program.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-65. Out-based program toilet facilities - Bathing.

1. When program activities are conducted away from a permanent site, the facility shall provide instruction in sanitary practices that respect individual privacy as well as health and environmental concerns.
2. The following requirements apply to permanent program sites:
 - a. The program shall provide outdoor toilet facilities that allow for individual privacy. Toilet facilities shall be constructed, located, and maintained in compliance with any existing codes or health regulations, and in any event so as to prevent any nuisance, noxious odors, or public health hazard.
 - b. Toilets, outhouses, and portable toilets must be cleaned and disinfected at least daily. Portable toilets must be emptied daily in an approved dump station.
 - c. Handwashing facilities must be located adjacent to the toilet area and must be separate and apart from sinks and areas used for food preparation and dishwashing. Soap and handdrying devices must be made available.
 - d. The facility shall provide at least one warm shower or warm water for full body sponge bath to each participant no less than every other day.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-66. Water and nutritional requirements for out-based programs.

1. The facility shall make available a minimum of six quarts [5.68 liters] of potable water per day per person for

drinking, personal hygiene, and cooking, plus one additional quart for each five miles [8.05 kilometers] hiked.

2. The facility shall make available to all participants a means for electrolyte replacement.
3. All water from natural sources shall be treated for sanitation to eliminate health hazards.
4. The facility shall maintain a written menu describing food supplied to the participants to ensure that the nutritional requirements of each participant are met by means of balanced meals. The menu must adjust to meet increased dietary needs as exercise or weather conditions dictate.
5. A facility may use foraging as a program activity if the facility provides nonforaged food in compliance with nutritional requirements stated in this chapter. Forage items may not be included in determining whether nutritional requirements are being met. A facility may not use fasting as a program activity.
6. Food storage practices must meet standards established by state or local health authorities.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-67. Program and campsites - Permits - Sleeping shelters and equipment.

1. The facility shall conduct out-based programs on sites appropriate to the participants' health, safety, case plans, and program goals.
2. Campsites must be located on land that is drained sufficiently for participant health and safety. Campsites may not be located in a riverbed or desert washes, or other areas where flash flooding may occur.
3. Any tent or other shelter used for sleeping and living purposes, which remains in one location for more than two weeks, must have a floor that is smooth, in clean condition, and in good repair.
4. All tents, tepees, or other sleeping shelters made of cloth must be fire retardant, of the fiber-impregnated flame retardant variety. A facility may not use plastic sleeping enclosures of any type.

5. Sleeping shelters must be easily cleanable and in good repair, must be put up and maintained in safe condition, and must afford adequate protection against inclement weather.
6. Tents or other temporary shelters must provide sleeping space of not less than fifteen square feet [1.39 square meters] per person.
7. A facility may not permit campfires or open flames of any type in or within forty feet [12.19 meters] of any sleeping shelter. Tent heaters may be used only if they are of a type intended for use in tents and are adequately vented.
8. The facility may not permit smoking within any sleeping shelter.
9. Sleeping shelters must have an unobstructed exit at all times.
10. Sleeping equipment must be clean, nontoxic, and fire retardant.
11. Sleeping equipment must provide reasonable insulation from cold and dampness. The facility shall provide insulation from the ground such as a waterproof ground cloth or air or foam mattress in addition to sleeping bag or blankets.
12. All sleeping equipment must be laundered, drycleaned, or otherwise sanitized between assignment to different participants or staff. All sleeping equipment must be aired at least once every two days and laundered, drycleaned, or sanitized at least once every thirty days of use. Cleaning of sleep equipment must not affect the equipment's fire retardant features.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-68. Sanitation for out-based programs.

1. When program activities are conducted away from a permanent site, the facility shall provide for solid and liquid waste disposal in a manner which promotes health and minimizes impact on the environment.
2. Personal hygiene supplies must be made of biodegradable materials.
3. At permanent sites, garbage and rubbish must be stored securely in durable, noncombustible, leakproof, nonabsorbent containers covered with tight-fitting lids. Containers must be lined with a waterproof liner or thoroughly cleaned after

each emptying. Garbage and rubbish storage must be away from living and sleeping areas. Solid wastes must be disposed of regularly in an approved sanitary landfill or similar disposal facility.

4. The facility shall provide for the timely control of insects and rodents in a safe manner which avoids harmful effects to human beings and to the environment.
5. If any temporary shelter for animals, corral, tie-rail, or hitching post is used, it must be located more than fifty feet [15.24 meters] from any area where food is prepared, cooked, or served. Preventive measures such as insect repellent and daily removal of manure must be used to prevent such a location from becoming an attraction for or breeding place for flies or other insects.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-69. Hiking and backpacking.

1. Hiking shall not exceed the physical capability of the weakest member of the group. Hiking is prohibited when conditions pose a threat to the health of the participants. Staff shall monitor hikers at frequent regular intervals when the outdoor temperature is ninety-five degrees Fahrenheit [35 degrees Celsius] or higher, or is minus ten degrees Fahrenheit [-23.33 degrees Celsius] or lower, and shall adjust activities accordingly to ensure each participant's health and safety.
2. The facility shall furnish a frame backpack to participants when the weight to be carried by any participant exceeds twenty percent of the participant's body weight. The facility may not require participants to carry a load that is excessive given the participant's experience and the terrain, duration, and environmental conditions of the trip.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-70. Solo activities.

1. Solo activities may not exceed seventy-two consecutive hours' duration, exclusive of preparation time.
2. Only individuals in good physical and mental condition and who are able to care for themselves without assistance, which has been determined prior to the individual's departure from the

facility as provided for in subsections 2 and 3 of section 75-03-16-49, may participate in solo activities.

3. Prior to any solo activity, the facility shall instruct participants in safety and emergency procedures and in the boundaries of the solo activity location.
4. The facility shall furnish each solo activity participant with the following equipment and supplies: whistle, shelter, water, and food as required by this chapter; and at least one change of clothing appropriate to weather conditions.
5. Solo activities are prohibited in areas containing moving water with a strong current.
6. Staff shall observe a solo activity participant at least every two hours during the solo activity. Staff shall adjust the duration of proximity of supervision to the participant's needs, the terrain, and environmental conditions. Staff must be available for sight or sound contact by the participant at all times.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

AGENCY SYNOPSIS: Regarding proposed new amendments to North Dakota Administrative Code chapter 75-03-22, Transitional Living

A public hearing was conducted on July 27, 1994, concerning proposed new North Dakota Administrative Code chapter 75-03-22, Transitional Living.

The proposed new chapter establishes, in 5 sections, a request for proposal process for licensed child placing agencies to provide transitional living services. The chapter provides the eligibility criteria for persons to receive transitional living services, for the provision of transitional living services, and the means for the licensed child placing agency to be authorized to provide transitional living services.

STAFF COMMENT: Chapter 75-03-22 contains all new material and is not underscored so as to improve readability.

CHAPTER 75-03-22 TRANSITIONAL LIVING

Section	
75-03-22-01	Definitions
75-03-22-02	Eligibility to Receive Transitional Living Services
75-03-22-03	Provision of Transitional Living Services
75-03-22-04	Authorization to Provide Services
75-03-22-05	Departmental Authorization

75-03-22-01. Definitions. As used in this chapter:

1. "Child placing agency" has the meaning given in North Dakota Century Code chapter 50-12.
2. "Department" means the North Dakota department of human services.
3. "Licensed child placing agency" means a child placing agency licensed under North Dakota Century Code chapter 50-12.
4. "Transitional living services" has the meaning given in North Dakota Century Code chapter 50-06-05.1.

History: Effective January 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1

75-03-22-02. Eligibility to receive transitional living services.
Transitional living services may be provided to persons who:

1. Are at least seventeen years old but not more than twenty years old;
2. Have received foster care services in the past at any time;
3. Are not in foster care at the time transitional living services are to be provided;
4. Have not demonstrated irresponsible behavior, which includes:
 - a. Having been charged or convicted of any offenses listed in North Dakota Century Code chapter 12.1-20 and failure to complete the prescribed treatment; or
 - b. Documented chemical dependency and failure to complete the prescribed treatment; and
5. Are not the subject of an existing court order removing custody from the person's parents; except that transitional living services may be provided to otherwise eligible persons who are the subject of a court order terminating parental rights.

History: Effective January 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1

75-03-22-03. Provision of transitional living services.
Transitional living services may be provided by a licensed child placing agency licensed under North Dakota Century Code chapter 50-12 if the child placing agency has been authorized by the department to provide transitional living services.

History: Effective January 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1

75-03-22-04. Authorization to provide services.

1. A licensed child placing agency may make a proposal to the department to provide transitional living services. The proposal must be made in the form and manner prescribed by the department. The proposal must include:
 - a. Identification of the site where services will be provided;
 - b. Number of persons who may receive services at the site;

- c. Description of specific services to be provided;
 - d. Description of staff credentials;
 - e. Documentation that the licensed child placing agency has general comprehensive liability insurance; and
 - f. Time period during which services will be provided.
- 2. The licensed child placing agency shall certify that the site is safe for habitation.
 - 3. The licensed child placing agency shall certify compliance with all applicable city, county, and state building and safety and fire codes.
 - 4. The licensed child placing agency shall certify that the proposed services have been selected by the local planning board as being part of the regional multiagency plan for serving children and families at risk.

History: Effective January 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1

75-03-22-05. Departmental authorization. The department may issue an authorization to provide transitional living services based upon the proposal and certifications submitted by the licensed child placing agency. The authorization is valid for the period of time indicated in the authorization.

History: Effective January 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1

FEBRUARY 1995

CHAPTER 75-01-03

AGENCY SYNOPSIS: Chapter 75-01-03 Appeals and Hearings and the repeal of North Dakota Administrative Code section 75-02-06-19 Appeals from Facility Transfers or Discharges.

A public hearing was conducted on September 14, 1994, in Bismarck, concerning proposed amendments to North Dakota Administrative Code chapter 75-01-03, Appeals and Hearings, and the repeal of North Dakota Administrative Code section 75-02-06-19, Appeals from Facility Transfers or Discharges.

The amendments to chapter 75-01-03 extensively revise and update the provisions governing administrative hearings conducted by the department.

The repeal of section 75-02-06-19 is to avoid duplication. The material in that section also appears in the amendments to chapter 75-01-03.

75-01-03-01. Definitions. In this chapter, ~~unless the context or subject matter requires otherwise:~~

1. ~~"Administrative----disqualification----hearing"----means----an administrative--procedure--established--pursuant--to---federal regulation-[7-CFR-273.16]-and-to-subsection-18-of-North-Dakota Century--Code--section--50-06-05.1,--providing--a--manner---of determining-whether-an-individual-has-committed-an-intentional program-violation.~~
2. "Appeal" means a specific request for departmental review, by a dissatisfied applicant, recipient, provider, resident, registrant, or licensee concerning a decision made by a county

agency ~~or--by--a~~, division of the department, or nursing facility.

2. "Appeal hearing" means an administrative procedure by which the department reviews a decision by considering evidence and argument presented by a claimant, by the entity that made the decision appealed from, or by representatives of either.
3. ~~"Appeals--referee"--means-a-person-designated-by-the-executive director-of--the--department--to--conduct--fair--hearings--and administrative--disqualification--hearings--and--to--prepare recommendations-~~
4. "Appeals referee supervisor" means the official designated by the department to be responsible for the administration of this chapter.
5. ~~"ATP"--means--authorization--to--participate--and--refers-to-a document-issued-to-a-household-for-the-allotment-of-feed-stamp coupons-~~
6. 4. "Authorized representative" means an individual, including an attorney at law, who has been authorized by the claimant to act for and represent the claimant in any and all aspects of a hearing. The claimant need not designate an authorized representative, and may represent oneself at a hearing.
7. 5. "Claimant" means a person who has requested a fair hearing and is either:
 - a. ~~An applicant for aid, services, registration or licensing;~~
 - b. ~~A recipient of aid or services;~~
 - c. ~~A holder of a registration certificate or license; or~~
 - d. ~~A representative or heir of a deceased applicant or recipient~~ perfected an appeal.
8. 6. "County agency" means a county social service board.
9. 7. "Date of action" means the date upon which an action is intended to become effective.
10. 8. "Department" means the North Dakota department of human services.
9. "Facility" means a nursing facility taking an action to transfer or discharge a resident.
11. 10. "Fair hearing" means an administrative--procedure appeal hearing, established pursuant to federal--regulations--[42 U.S.C. 8624(b)(13), 7 CFR 273.15, 42 CFR part 431, subpart D,

and 45 CFR 205.10]-and-to-North-Dakota--Century--Code--chapter 28-32,--providing, 45 CFR 250.36(c), 45 CFR 255.2(h), 45 CFR 256.4(d), or any other federal law or regulation that specifically requires the department to provide a dissatisfied claimant an opportunity to-present-the-claimant's-case-to--the department--for--formal--decision for a hearing that meets the requirements for due process of law imposed under Goldberg v. Kelly, 397 U.S. 254 (1970).

- 12- 11. "Filing date" of the claimant's request-for-a-fair-hearing appeal, in all cases except food stamp appeals, means the postmark date the--claimant-mails-or-delivers-the-request-to the-office-of-the-executive--director--of--the--department of mailed appeals, the delivery date of delivery appeals, the date of transmission of appeals made by facsimile transmission, or, if an oral appeal is permitted, the date of an oral appeal. The filing date of a request for fair hearing or administrative disqualification hearing in food stamp matters means the date the request is received in the office of the executive director of the department.
12. "Hearing officer" means any person assigned, appointed, or designated to preside in the hearing of an appeal or in an intentional program violation hearing under this chapter.
13. Household" means an individual or group of individuals receiving or applying for food stamp benefits.
14. "Intentional program violation" means any:
- a. Intentionally made false or misleading statement, or misrepresented, concealed, or withheld fact; or
 - b. Intentionally committed act that constitutes a violation of the Food Stamp Act [7 U.S.C 2011-2027], the food stamp program regulation [7 CFR parts 270-282], or any provision of the North Dakota Century Code or North Dakota Administrative Code relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or-ATPs; or
 - c. Action by an individual, for the purpose of establishing or maintaining a family's eligibility for aid to families with dependent children or for increasing or preventing a reduction in the amount of the grant, which is intentionally:
 - (1) A false or misleading statement or misrepresentation, concealment, or withholding of facts; or
 - (2) Any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

15. "Regional office" means regional human service center. "Intentional program violation hearing" means a hearing conducted for individuals or households accused of intentional program violations, who do not waive their rights to such a hearing, to determine if the individuals or household members committed, and intended to commit, intentional program violations.
16. "Request for administrative review" means a clear expression of dissatisfaction with a decision of the division of vocational rehabilitation which sets forth the reasons for dissatisfaction and which is filed with the director of a regional human service center in the manner provided for such requests. Such a request must be made and acted upon before a request for a fair hearing can be accommodated. "Regulation", as used in 42 CFR 431.210, 431.244, and 435.912, and 45 CFR 205.10(a)(4)(i)(B), includes any written statement of federal or state law or policy, including federal and state constitutions, statutes, regulations, rules, policy manuals or directions, policy letters or instructions, and relevant controlling decisions of federal or state courts.
17. "Request for an intentional program violation hearing" means a written statement from a county agency, filed at the office of the appeals referee supervisor, which contains the name, mailing address, and telephone number (if any) of the charged household members or individuals, a detailed statement of charges against household members or individuals, and copies of all available evidence.
18. "Request for fair hearing" means a specialized appeal consisting of any clear written expression or in the case of a request in a food stamp matter under 7 CFR 273.15, any clear oral expression, from a claimant, or the claimant's duly authorized representative, filed in the office of the executive director of the department appeals supervisor, that the claimant wants the department to conduct a fair hearing to take action concerning the claimant's expressed reasons for dissatisfaction.
19. "Timely notice period" means that period beginning on the date a timely notice is mailed and concluding on the date of action.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1, 50-06-16

Law Implemented: NDCC 50-06-01, 50-06-05.1, 50-09-01, 7-CFR-271-2, 7-CFR-273-15, 7-CFR-273-16, 34-CFR-361-48, 45-CFR-205-10

75-01-03-02. Division of vocational Vocational rehabilitation determinations - Administrative review procedures - Appeals.

1. "Request--for--administrative--review"--forms--are--to--be--kept available--in--each--regional--office.--This--form--will--be--given--to any--client--or--applicant--that--indicates--a--desire--to--appeal--a decision.--If--the--request--results--from--a--dissatisfaction--over a--decision,--the--appeal--must--be--filed--within--thirty--days--of--the receipt--of--written--notice--of--such--decision.--However,--appeals can--be--made--because--of--a--delay--in--decision--at--any--time. As used in this section:
 - a. "Claimant" means an applicant or eligible individual who is dissatisfied with any determination made by a vocational rehabilitation counselor or coordinator concerning the furnishing or denial of vocational rehabilitation services and who has made a timely request for review of the determination.
 - b. "Division" means the vocational rehabilitation division of the department.
 - c. "Party" or "parties" refers to the division and to a claimant.
 - d. "Request for review" means an appeal or a request for informal resolution made under this section.
2. It--is--the--duty--of--the--regional--office--to--assist--the--client--in the--preparation--of--this--form--if--requested--to--do--so.--If--so requested,--the--information--which--the--client--desires--to--have reported--on--the--form--as--the--grounds--for--appeal--should--be reported--thereon--as--the--client--desires--to--have--it--reported. A request for review is timely if the filing date of the request is no more than thirty days after notice of the determination with which the claimant is dissatisfied.
3. Upon--the--client's--request--for--the--form--on--which--the--client--may request--administrative--review,--the--client--should--be--furnished three--copies--of--the--form.--The--client--retains--one--copy--and files--the--original--and--one--copy--with--the--regional--office.--The regional--office,--upon--receipt--of--the--original--and--one--copy--of the--form--from--the--client,--will--send--a--copy--to--the--state office. Informal resolution may be requested by a claimant. Informal resolution may be provided if it appears likely to be achieved within twenty days or if the parties agree to a delay in the hearing of the claimant's appeal. If informal resolution is not achieved and the parties do not agree to a delay, the hearing of the claimant's appeal must be conducted within forty-five days of the filing date of the claimant's request for review. An informal resolution is achieved when the parties so agree in writing.
4. Upon--receipt--of--the--request--for--administrative--review,--an immediate--acknowledgment--shall--be--sent--to--the--client--by--the regional--director--advising--the--client--of--the--date,--place,--and

~~hour set for the review. If possible, this notice should be preceded by a telephone call to the client to determine time and place convenient to the client.~~ A hearing officer must be selected:

- a. From a pool of qualified, impartial hearing officers identified jointly by the department and the rehabilitation advisory council; and
 - b. (1) On a random basis; or
(2) By agreement of the parties.
5. ~~The review is attended by the client or the client's representative and any witnesses the client may request to have present who are able to provide pertinent information concerning the facts in question and by representatives of the regional office and the state office who may have been concerned with the case.~~ The hearing officer must conduct an appeal hearing within forty-five days of the filing date of the claimant's request for review, unless informal resolution is achieved or the parties agree to a delay.
6. ~~The purpose of the review is to provide an opportunity for all persons who have pertinent information to be heard as promptly as possible.~~
- a. Except as provided in subdivision b, the division may not suspend, reduce, or terminate services provided under an individual written rehabilitation program pending final determination of the claimant's request for review.
 - b. The division may suspend, reduce, or terminate services provided under an individual written rehabilitation program:
 - (1) If the claimant so requests; or
 - (2) The agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the claimant.
7. ~~The regional director shall advise the director of the division of vocational rehabilitation of all reviews conducted by the regional director and the outcome of each review. Upon a determination that the client is satisfied with the review or that the client will not be requesting a fair hearing, the director of the division of vocational rehabilitation shall be furnished a record of the administrative review. This record must include date, time, place, who was present, and all pertinent information developed as well as the regional division's decision.~~ The hearing officer shall recommend a decision based on the provisions of the Vocational

Rehabilitation Act of 1973, as amended [29 U.S.C. 701, et seq.], the approved vocational rehabilitation state plan, federal and state vocational rehabilitation regulations and policies, and article 75-08, and shall provide to the claimant or, where appropriate, the claimant's representative, and to the director of the division, a full written report of the findings and grounds for the decision within thirty days of the completion of the hearing. The recommendation of the hearing officer becomes the decision of the division unless, within twenty days of issuance of the hearing officer's recommended decision, the director of the division notifies the claimant, in writing, of the director's intent to review the recommendation.

8. The--client--will--promptly--be--notified--in--writing--of--the regional-director's--decision--Information-is-to--be--included in--the--letter--that--further--review--will--be--carried--out--by--the state-director--The-client-is-to--be--informed--of--the--client's right--to--a--fair--hearing--before--the--director--of--vocational rehabilitation--or--the--director's--designee--if--the--client--is--not satisfied. Prior to deciding to review the hearing officer's recommended decision under subsection 7, the director may secure assistance or advice from staff assistants without the communication of advice or assistance being treated as ex parte communication in violation of North Dakota Century Code section 28-32-12.1, if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
9. If--a--client--decides--to--withdraw--a--review--request--a--written withdrawal--should--be--signed--by--the--client---The--client's acknowledgment--of--satisfactory--adjustment--or--other--reasons--for withdrawal--should--be--stated. If the director decides to review the hearing officer's recommended decision under subsection 7, the director must first afford each party an opportunity to submit additional evidence and information relevant to a final decision. Any party who wishes to submit additional relevant evidence and information must transmit that evidence and information, or an abstract thereof, to the other party and to the director within five days after notice of the director's intent to review the hearing officer's recommended decision. Each party may, within five days after mailing or delivery of the evidence, information, or abstract provided by the other party, request an opportunity to provide the party's own evidence or information in a hearing to be called on at least ten days' notice, all pursuant to North Dakota Century Code section 28-32-07.
10. Upon--completion--of--administrative--review--the--client--is entitled--to--a--fair--hearing--by--the--director--of--the--division--of vocational--rehabilitation. The director may overturn or modify a hearing officer's recommendation that supports the position of the claimant if the director concludes, based on clear and convincing evidence, that the recommendation is

clearly erroneous because it is contrary to the Vocational Rehabilitation Act of 1973, as amended [29 U.S.C. 701, et seq.], the approved vocational rehabilitation state plan, federal or state vocational rehabilitation regulations and policies, or article 75-08.

11. Within thirty days of providing notice of intent to review the hearing officer's recommended decision, the director must make and provide to the parties a notice of decision.
12. The hearing officer or the director may grant reasonable extensions of time for good cause shown by either party, except that:
 - a. The hearing officer may extend the time for conducting an appeal hearing beyond forty-five days of the filing date of the claimant's request for review only if the parties are engaged in informal resolution and agree to the extension;
 - b. The twenty-day period, within which the director must notify the claimant of the director's intent to review the hearing officer's recommended decision, may not be extended; and
 - c. The thirty-day period, within which a dissatisfied claimant may request review, may not be extended.
13. The director may not delegate responsibility to make any final decision to any other person.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1, 50-06.1-04

Law Implemented: NDCC 50-06-16, 50-06.1-10; 34-6FR-361-48

75-01-03-03. ~~Right-to-fair~~ Fair hearing - Who may receive.

1. An opportunity for a fair hearing is available to any applicant; ~~for or recipient; registrant; or licensee~~ of food stamps; aid to families with dependent children; job opportunities and basic skills training program; employment, education, or training-related child care; transitional child care; medicaid; or low income home energy assistance program benefits who requests a hearing in the manner set forth in this chapter and who is dissatisfied:
 - a. Because an application was denied or not acted upon with reasonable promptness; or

b. Because county agency or department action has resulted in the suspension, reduction, discontinuance, or termination of assistance; benefits.

~~e. With any action of the department or a division thereof relating to an application for or receipt of aid, services, registration or licensing; or~~

~~d. With a determination in a vocational rehabilitation matter made in an administrative review.~~

2. An opportunity for a fair hearing is available to any resident who believes a facility has erroneously determined that the resident must be transferred or discharged.

3. An opportunity for a fair hearing is available to any individual who requests it because the individual believes the department has made an erroneous determination with regard to the preadmission and annual review requirements of 42 U.S.C. 1396r(e)(7).

4. The department may, on its own motion, review individual cases and make determinations which are binding upon the a county agency. An applicant or recipient aggrieved by such determination shall upon request be afforded the opportunity for a fair hearing. All references in this chapter to appeals from decisions of county agencies shall must be understood to include appeals taken from determinations made by the department.

3- 5. A fair hearing request may be denied or dismissed where the sole issue is one of state or federal law requiring automatic grant benefit adjustments for classes of recipients unless the reason for an individual appeal is incorrect benefit computation.

4- 6. The claimant may first seek corrective action from the department or claimant's county agency before filing a request for a fair hearing with--the--executive--director--of--the department--A dissatisfied claimant of the--services--of--the division--of--vocational rehabilitation must request and obtain an administrative review before the request for a fair hearing can be accommodated--A dissatisfied claimant is not otherwise required to seek--any--corrective--action--before--filing--the request for a fair hearing.

5- 7. If a claimant dies after a request for a fair hearing has been filed by the claimant, and before the decision of the department has been rendered in the case, the proceedings may be continued on behalf of the claimant's estate, or by an heir any successor, as that term is defined in North Dakota Century Code section 30.1-01-06, of the claimant if a legal representative of the estate has not been duly appointed.

6- 8. If a dissatisfied claimant dies before the claimant can file a request for a fair hearing, the duly appointed representative of the claimant's estate, or any heir successor, as that term is defined in North Dakota Century Code section 30.1-01-06, of the claimant if no representative of the estate has been appointed, may file such request when the claimant was dissatisfied with the denial of the claimant's application for assistance, or was dissatisfied with the amount--of--the assistance benefits the claimant was receiving prior to the claimant's death.

9. A fair hearing under this section is available only if:

- a. Federal law or regulation requires that a fair hearing be provided; and
- b. The dissatisfied claimant timely perfects an appeal.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: NDCC 50-09-14, ---50-11-08, ---50-11.1-10, ---50-12-12, 50-19-13; -7-CFR-273.15; -45-CFR-205.10 50-06-05.1

75-01-03-03.1. Hearing rights - Fair hearings and intentional program violation hearings. An individual or household member, or a representative, who requests a fair hearing or with respect to whom a notice of intentional program violation hearing has been issued, shall have adequate opportunity to:

1. Examine the contents of the individual's or household's case file and all documents and records to be used by the department, county agency, or nursing facility at the hearing, at a reasonable time before the date of the hearing, and during the hearing;
2. Present the case or have it presented by legal counsel or other person;
3. Bring witnesses;
4. Establish all pertinent facts and circumstances;
5. Advance arguments without undue interference; and
6. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-03.2. Appeals from determinations of the department.

1. A claimant aggrieved of a ratesetting decision of the department may perfect an appeal only if it is accompanied by written documents including all of the following information:
 - a. A copy of the letter received from the department advising of the department's decision on the claimant's request for reconsideration;
 - b. A statement of each disputed item and the reason or basis for the dispute;
 - c. A computation and the dollar amount that reflects the facility's claim as to the correct computation and dollar amount for each disputed item;
 - d. The authority in statute or rule upon which the facility relies for each disputed item; and
 - e. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.
2. A claimant aggrieved by a licensing determination made by any unit of the department may perfect an appeal only if it is accompanied by written documents including all of the following information:
 - a. A copy of the letter received from the department advising of the department's decision on the claimant's request for reconsideration;
 - b. A statement of disputed facts, if any;
 - c. The authority in statute or rule upon which the claimant relies for each disputed item; and
 - d. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.
3. A claimant not entitled to a fair hearing, whose appeal is not described in subsection 1 or 2 of this section, may perfect an appeal from a determination of a unit of the department only if a statute or rule of the department specifies that such a claimant may appeal to the department and only in the manner provided for such an appeal.
4. A claimant entitled to a fair hearing of a food stamp matter under 7 CFR 273.15 may perfect an appeal by making a timely oral or written request for fair hearing.

5. A claimant entitled to a fair hearing concerning any matter except a food stamp matter under 7 CFR 273.15 may perfect an appeal by making a timely written request for a fair hearing.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-04. Withdrawal of request-for-fair-hearing appeal before decision.

1. The claimant may withdraw ~~the--request-for-fair-hearing an~~ appeal at any time before a decision is made by the department.
2. In cases where there appears to be a possibility for corrective action without further ~~fair---hearing~~ appeal proceedings, the claimant may file a conditional withdrawal of the ~~request-for-a-fair-hearing~~ appeal. Such ~~The~~ conditional withdrawal ~~will--not--prohibit~~ does not prevent the claimant from filing a new ~~request-for-a-fair--hearing~~ appeal if the claimant remains dissatisfied with any such corrective action. No hearing shall be delayed or canceled because of this possibility unless the claimant consents to such the delay.
3. ~~The---county---agency---shall---provide---the---claimant---with---all information---and---assistance---regarding---this---withdrawal procedure.~~

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: 7-CFR-273.15(j)(2);-----45-CFR-205.10(a)(5)(v) NDCC 50-06-05.1

75-01-03-05. Claimant responsibility.

1. The claimant must ~~request--a-fair-hearing~~ appeal in writing unless the request concerns a food stamp program decision. A claimant may ~~request-a-fair-hearing-concerning~~ appeal a food stamp program decision either orally or in writing. Oral requests must be clear expressions, made by the claimant or the claimant's authorized representative, to an employee of a county agency or the state-agency department to the effect that the claimant wishes to appeal a decision. The employee hearing such a request shall promptly reduce the request to writing and file it as provided by this ~~section~~ chapter. The ~~request--may--be--filed--on--the-back-of-a-form-599-which-gave notice-of-the-proposed-action--which--the--claimant--disputes;~~ however, ~~--the--request~~ An appeal need not be in any particular form. The county agency, division of the department, or

nursing facility, which issued a decision with respect to which a claimant is entitled to, and requests, a fair hearing, shall assist the claimant in filing the claimant's request-for a-fair-hearing appeal.

2. For the purpose of prompt action, the claimant shall may be informed by-the-county-agency that the claimant's request--for a-fair-hearing appeal should identify the aid program involved as well as the reason for the claimant's dissatisfaction with the particular action involved in the case.

History: Effective September 1, 1979; amended effective July 1, 1980; January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, ~~50-06-05.1~~ 50-06-16

Law Implemented: NDCC 28-32-05 50-06-05.1

75-01-03-06. Time limit on request-for-fair-hearing appeals.

1. The request for fair hearing by a household aggrieved by any action of a county agency that affects participation in the food stamp program must be filed within ninety days after the order or action with which the claimant is dissatisfied. In all other cases, the an appeal or a request for a fair hearing must be filed within thirty days after the order or action with which the claimant is dissatisfied unless a different limitation is specified in state or federal law for a particular class of cases.
2. The date of the order or action on which the appeal or request for fair hearing is based shall-be is the date on which notice of such the order or action was mailed to the claimant with the-following-exceptions except:
 - a. Where requests for a fair hearing concern the return of erroneous repayments, the date of collection or the date of the last installment payment is the determining date; and
 - b. Where requests for a fair hearing concern the amount of the grant, the request must be filed within thirty days, but the period of review will extend back only to the first of the month on which the first day of the thirty-day period occurred.
 - c. ~~When--the--claimant--is--aggrieved--by--an--action--of--the--division--of--vocational--rehabilitation;--the--date--in--which--the--final--decision--of--the--regional--director--on--the--claimant's--request--for--administrative--review--is--mailed--to--the--claimant--shall--be--the--determining--date.~~
3. ~~In--computing--any--period--of--time--prescribed--or--allowed--by--this--chapter;--the--day--of--the--act;--event;--or--determination--from~~

~~which-the-designated-period-of-time-begins-to-run-shall-not-be included.--The-last-day-of-the-period--so--computed--shall--be included;--unless--it--is--a--Saturday;--a--Sunday;--or--a--legal holiday.--When-the-period-of-time--prescribed--or--allowed--is less--than--seven--days;--intermediate-Saturdays;--Sundays;--and legal-holidays-shall-be-excluded-from-the-computation.~~

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: 42-CFR-431-205(d);-----45-CFR-205.10(a){1}{ii} NDCC 50-06-05.1

75-01-03-06.1. Computation of time. In computing any period of time prescribed or allowed by this chapter, the day of the act, event, or determination from which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-06.2. Giving of notice.

1. Any notice required to be given by this chapter may be given by first-class mail or personal delivery unless some provision of law specifically requires notice to be given in another manner.
2. Any notice required to be given by certified or registered mail may be so given without requesting a return receipt unless some provision of law specifically requires a return receipt to be requested.
3. Any notice given by certified or registered mail, return receipt requested, is deemed to be effectively given if delivered or if refused.
4. Any notice required to be given by certified or registered mail, return receipt requested, if returned undelivered but not refused, may be supplemented by a notice given by first-class mail. A notice given by first-class mail, in supplementation of such a return notice, is deemed to have been received unless it is shown, by a preponderance of the evidence, that:
 - a. The mail was not properly addressed;

- b. The mail containing the notice was returned by the postal service; and
- c. The mailing of the notice cannot be shown by an affidavit.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 31-11-03(24), 50-06-05.1

75-01-03-07. Explanation of right to fair hearing.

1. ~~The county agency or regional office must explain the right to request a fair hearing, as well as the right to be represented and assisted by an authorized representative, including legal counsel and an interpreter, to every applicant at the time of the applicant's application for assistance, and thereafter at any time when further county action respecting aid or services is taken. Such explanation shall be given in such manner as to be fully understood by the claimant.~~
2. ~~Written notice of the right to a fair hearing shall be included in every notification to the applicant or recipient of the granting, denial, decrease, discontinuance, suspension or increase in aid, or request for repayment, or where there is a change in a prior determination regarding aid. In all cases, the notice shall be prepared and mailed to the claimant or recipient in language understandable to the person receiving such notification.~~
3. ~~The county agency or regional office must help the claimant to submit and process the claimant's request for a fair hearing.~~ The county agency, the department, if the action is taken by the department, or the facility, if action is taken to transfer or discharge a resident of the facility, must, at the times specified in subsection 2, inform the individual in writing:
 - a. Of the individual's right to a fair hearing;
 - b. Of the method by which the individual may obtain a fair hearing; and
 - c. That the individual may represent him or herself or may use legal counsel, a relative, a friend, or other spokesperson.
2. The information described in subsection 1 must be provided:
 - a. At the time the individual applies for benefits administered by the county agency under the direction and supervision of the department;

- b. At the time of any action to grant, terminate, suspend, discontinue, or reduce such benefits, change the manner or form of an aid to families with dependent children payment to a protective vendor, or two-party payment, or reduce covered medicaid services;
- c. At the time a facility notifies a resident of the facility that the resident is to be transferred or discharged; and
- d. At the time an individual receives an adverse determination by or on behalf of the department with regard to the preadmission screening and annual resident review requirements of 42 U.S.C. 1396r(e)(7).

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: 7-CFR-273.15(f); -45-CFR-205.10(a)(3) NDCC 50-06-05.1

75-01-03-08. Timely and adequate notice - Assistance pending hearing.

1. ~~Except as provided in subsections 3 and 4, where county agency action would result in a discontinuance, termination, suspension, withholding, or reduction of program benefits, the county must mail to the person affected a timely and adequate written notice which will include~~ A notice is adequate if it includes:
 - a. An explanation of the type of proposed action;
 - b. An explanation of the reason for the proposed action; and the ~~manual provision, rule,~~ regulation or law upon which the action is based; and
 - c. An explanation of the person's right to request corrective action from the county agency and the department, the person's right to request a fair hearing, and the circumstances under which assistance will be continued if a fair hearing is requested.
2. A notice is timely if mailed at least five days prior to the date of action based on ~~suspected fraud~~ subsection 3, and at least ten days prior to the date of any other action.
3. ~~Except in food stamp cases when the county obtains, if facts indicating~~ indicate that assistance should be discontinued, suspended, terminated, or reduced because of the ~~probable intentional program violation of~~ suspected fraud by the recipient, and, where possible, such facts have been verified through collateral sources, notice of such a benefit adjustment shall ~~be~~ is timely if mailed at least five days

prior to the effective date of the proposed action. The notice--shall--be--written--and--shall--include--information--which would--comply--with--subdivisions--a,--b,--and--c--of--subsection--1.

4. ~~Timely--notice--is--not--required--in--the--following--instances, although--the--county--shall--send--notice--meeting--the--requirements of--subsection--1~~ If county agency or department action results in a denial of medicaid, aid to families with dependent children, food stamp, or low income home energy assistance program benefits, an adequate written notice must be sent to the person affected.
5. Except as provided in subsection 6, if county agency or department action results in a discontinuance, termination, suspension, withholding, or reduction of medicaid, aid to families with dependent children, food stamp, or low income home energy assistance program benefits, a timely and adequate written notice must be sent to the person affected.
6. If county agency or department action results in a discontinuance, termination, suspension, withholding, or reduction of medicaid, aid to families with dependent children, food stamp, or low income home energy assistance program benefits, an adequate written notice must be sent to the person affected no later than the date of action if:
 - a. The county agency or department has factual information confirming the death of the person affected;
 - b. The county agency or department receives a clear written statement signed by the person affected that the person no longer wishes assistance; or that gives information which requires discontinuance or reduction of assistance and the person has indicated, in writing, that the person understands that this must be the consequence of supplying such information;
 - c. The person affected has been admitted or committed to an institution, and further payments to that individual do not qualify for federal financial participation under the state plan;
 - d. The person affected has been placed in skilled-nursing care,--intermediate--care, a nursing facility or is receiving long-term hospitalization;
 - e. The whereabouts of the person affected are unknown and county mail directed to the person has been returned by the post office indicating no known forwarding address. The person's aid payment must, however, be made--available to him--if--the--person's--whereabouts--become--known--during--the payment--period--covered--by--the--returned--check;

- f. An aid to families with dependent children child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by the child's parent or legal guardian;
- g. The person affected has been accepted for assistance in new jurisdiction and that fact has been established by the county previously providing assistance;
- h. A change in level of medical care is prescribed by the recipient patient's physician or other practitioner of the healing arts;
- i. A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;
- j. The state or federal government initiates a mass change which uniformly and similarly affects all similarly situated applicants, recipients, and households;
- k. A determination has been made, based on reliable information, that all members of a household have died;
- l. A determination has been made, based on reliable information, that the household has moved from the project area;
- m. The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate;
- n. The household's allotment varies from month to month within the certification period to take into account changes ~~which---were~~ anticipated at the time of certification, and the household was so notified at the time of certification;
- o. The household jointly applied for public assistance and food stamp benefits and has been receiving food stamp benefits pending the approval of the public assistance grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the public assistance grant;
- p. A household member is disqualified for an intentional program violation, or the benefits of the remaining household members are reduced or terminated, to reflect the disqualification of that household member;

- q. The household contains a member subject to a lockout or strike or signs a waiver of its right to notice of adverse action for purposes of receiving a longer certification period than is otherwise allowed for such households;
 - r. The state county agency or department has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the state county agency or department may act on the verified information without further notice;
 - s. The action is based upon information the recipient furnished in a monthly report; or
 - t. The action is taken because the recipient has failed to submit a complete or timely monthly report without good cause.
- 5- 7. In any case where assistance has been discontinued, suspended, withheld, or reduced without timely notice, if the person affected requests a fair hearing within ten days of the mailing of the notice of action, assistance shall must be reinstated retroactively and the provisions of subsection 79 shall apply.
- 6- 8. If, within the timely notice period, the person affected indicates a wish for a conference, that person or that person's authorized representative will be given an opportunity by the county to discuss the problems, and will be given an explanation of the reasons for the proposed action, and will be permitted to show that proposed action is incorrect.
- a. During this conference, the person affected will be permitted to ~~spea--for--oneself~~ represent himself or herself or be represented by legal counsel or by a friend or other spokesman.
 - b. The conference will does not ~~in--any-way~~ diminish the person's right to a fair hearing.
- 7- 9. Where the person affected is a recipient ~~of aid or services~~ and has filed a request for a fair hearing within the timely notice period, ~~excepting those households whose certification period has expired,~~ the assistance will be continued without implementation of the proposed action, until the fair hearing decision is rendered, unless ~~prior~~:

- a. Prior thereto the claimant unconditionally withdraws or abandons the fair hearing request or the;
- b. Prior thereto the department reverses the proposed action without a hearing;
- c. The department determines, based upon the record of the claimant's fair hearing, that the issue involved in such hearing is one of state or federal law or change in state or federal law and not one of incorrect benefit computation;---Any--assistance--so--continued--is--subject--to--recovery--if--the--claimant--does--not--prevail---in---the--claimant's--appeal;;
- d. A change affecting the recipient's benefits occurs before the decision on the request for fair hearing and the recipient fails to file a timely request for a fair hearing after notice of such change; or
- e. A food stamp household's certification period expires.

8. ~~Where a change affecting the recipient's benefits occurs during the hearing process and the recipient fails to file a timely fair hearing request after notice of such change, the county may implement its proposed action based upon the change.~~

10. Any assistance continued under subsection 9 is subject to recovery if the claimant does not prevail in the claimant's appeal.

11. Any notice that is the subject of a request for fair hearing may be supplemented at any time before the conclusion of the hearing. The information in any supplemental notice must be considered in determining the adequacy of the notice unless the claimant shows that the claimant is prejudiced by that consideration.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: 7-CFR-273.15(d); ---7-CFR-273.15(k); ---42-CFR-431.211; 42-CFR-431.214; -42-CFR-431.230; -45-CFR-205.10(a)(4); -45-CFR-205.10(a)(6) NDCC 50-06-05.1

75-01-03-08.1. Notice of facility's intention to transfer or discharge a resident.

1. For purposes of this section:

a. "Discharge" means movement from a facility to a noninstitutional setting when the discharging facility

ceases to be legally responsible for the care of the resident.

b. "Resident" includes a person who has been admitted and any legal representative of the resident.

c. "Transfer" means movement from a facility to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving institutional setting.

2. Except as provided in subsection 4, a facility shall issue a written notice of involuntary transfer or discharge, which meets the requirements of subsection 3, at least thirty days before the date of intended transfer or discharge. The first day of that thirty-day period is the day after the date of issuance. The date of issuance is the day notice is delivered or mailed to the resident.

3. The notice provided by the facility must contain:

a. A statement that the facility intends to transfer or discharge the resident, as the case may be;

b. The reason for the transfer or discharge;

c. The effective date of the transfer or discharge;

d. The location to which the resident is to be transferred or discharged;

e. The specific provision of section 33-07-03.1-37 that authorizes the transfer or discharge, or the change in federal or state law that requires the action;

f. A statement that the resident has the right to appeal the intended transfer or discharge to the department, and the mailing address to which an appeal must be sent;

g. The name, address, and telephone number of the state long term care ombudsman;

h. If the resident is developmentally disabled or mentally ill, the address and telephone number of the committee on protection and advocacy office that serves the area in which the resident resides;

i. If the medicaid program is paying for some or all of the cost of services furnished to the resident by the facility, a statement that those medicaid payments will continue until after the hearing unless:

- (1) The sole issue at the hearing is one of state or federal law or policy and the resident is so informed in writing; or
 - (2) Some change in circumstances affects the resident's eligibility for medicaid benefits and the resident is so notified in writing.
 - j. A statement that the transfer or discharge will be delayed, if a request for fair hearing is filed before the effective date of the transfer or discharge:
 - (1) In the case of a discharge for nonpayment of facility charges, at least until the hearing officer recommends a decision that the charges were due and unpaid at the time the facility issued a notice of discharge; and
 - (2) In all other cases, until the fair hearing decision is rendered.
 - k. A statement that the resident may represent himself or herself at the hearing or may use legal counsel, a relative, a friend, or other spokesperson.
- 4. a. A facility need not provide a notice under subsection 2 if the resident:
 - (1) Provides a clear written statement, signed by the resident, that the resident does not object to a proposed transfer or discharge; or
 - (2) Gives information that requires a transfer or discharge and indicates that the resident understands that a transfer or discharge will result.
- b. A facility must issue a notice that meets the requirements of subsection 3, as soon as practicable before an involuntary transfer or discharge, when:
 - (1) The safety of individuals in the facility would be endangered;
 - (2) The health of individuals in the facility would be endangered;
 - (3) The transfer or discharge is appropriate because the resident's health has improved sufficiently to allow a more immediate transfer or discharge;
 - (4) An immediate transfer or discharge is required by the resident's urgent medical needs which cannot be met in the facility; or

(5) The resident has not resided in the facility for thirty days.

5. A resident of a facility may appeal a notice from the facility of intent to discharge or transfer the resident. A resident has appeal rights when the resident is transferred from a certified bed to a noncertified bed or from a bed in a certified facility to a bed in a facility certified as a different provider. A resident has no appeal rights when the resident is moved from one bed in a certified facility to another bed in the same certified facility. A resident has no appeal rights if the transfer or discharge has taken place and the resident did not appeal within thirty days after the date of issuance of a notice that meets the requirements of subsection 3.

6. If a resident with appeal rights files an appeal before the effective date of the transfer or discharge, the resident shall not be transferred or discharged:

a. In the case of a discharge for nonpayment of facility charges, earlier than the date a hearing officer recommends a decision that the charges were due and unpaid at the time the facility issued a notice of discharge; and

b. In all other cases, until the fair hearing decision is rendered.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-08.2. Notice of preadmission screening and annual resident review determinations.

1. An individual dissatisfied with an adverse determination made with regard to the preadmission screening and annual resident review requirements of 42 U.S.C. 1396r(e)(7)(A) or (B) may request a fair hearing in review of that decision.

2. The right to request a fair hearing under subsection 1 arises upon receipt of a notice under subsection 3.

3. If the department's action in administering preadmission screening and annual resident review is adverse to an individual, the department shall provide to the individual a written notice which conforms to section 75-01-03-07 and which includes:

a. A statement of the adverse determination;

b. The reason for the adverse determination;

- c. The date of the adverse determination; and
 - d. A statement that 42 U.S.C. 1396r(f)(7) requires the department to make such determinations.
4. For purposes of this section and sections 75-01-03-07 and 75-01-03-09.2, "adverse determination" means a determination made in accordance with 42 U.S.C. 1396r(b)(3)(F) or 42 U.S.C. 1396r(e)(7)(B), through the application of section 75-02-02-09, that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services, but does not mean a determination, made under 42 CFR 483.128, that an individual is not suspected of having mental illness or mental retardation.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-08.3. Notice of intentional program violation hearing.

1. A written notice of an intentional program violation hearing must contain:
- a. The date, time, and place of the hearing;
 - b. The charge against the individual or household member;
 - c. A summary of the evidence, and how and where the evidence can be examined;
 - d. A warning that the decision will be based solely on evidence provided by the department or county agency if the individual or household member fails to appear at the hearing;
 - e. A statement that the individual or household member may request a postponement of the hearing, provided that the request for postponement is made at least ten days in advance of the scheduled hearing.
 - f. A statement that the individual, household member, or representative will have ten days from the date of the scheduled hearing to represent good cause for failure to appear in order to receive a new hearing.
 - g. A description of the penalties that can result from a determination that the individual or household member has committed an intentional program violation and a statement of which penalty the department or county agency believes applicable to the case;

- h. A listing of the rights of the individual or household member, as set forth in section 75-01-03-03.1;
- i. A statement that the hearing does not preclude the state or federal government from prosecuting the individual or household member for an intentional program violation in any civil or criminal action, or from collecting overissuances or overpayments;
- j. A listing of individuals or organizations that provide free legal representation to individuals or household members alleged to have committed intentional program violations and that have authorized the department to include their name, address, and telephone number on such list;
- k. An explanation that the individual or household member may waive the individual's or household member's right to appear at an intentional program violation hearing;
- l. A statement of the accused individual or household member's right to remain silent concerning the charge, and that anything said or signed by the individual concerning the charge may be used against the individual in a court of law; and
- m. A statement that the individual or household member may waive the right to appear at an intentional program violation hearing that includes:
 - (1) The date the signed waiver must be received by the department or county agency to avoid the holding of a hearing;
 - (2) A signature block for the accused individual, along with a statement that the head of or caretaker relative must also sign the waiver if the accused individual is not the head of household or caretaker relative, with an appropriately designated signature block;
 - (3) The fact that a waiver of the right to appear at the intentional program violation hearing will result in a disqualification penalty and a reduction in benefits or assistance payment for the appropriate period, even if the accused individual does not admit to the facts presented by the department or county agency;
 - (4) An opportunity for the accused individual to specify whether the individual admits to the facts as presented by the department or county agency; and

(5) In food stamp matters, a telephone number to contact for additional information and a statement that remaining household members, if any, will be held responsible for repayment of the resulting claim.

2. All notices alleging an intentional program violation concerning the food stamp program must either:

a. Have attached a copy of the department's published hearing procedures; or

b. Inform the household of its right, upon request, to obtain a copy of the department's published hearing procedures.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-09. County agency and--regional-office responsibility prior to fair hearing concerning assistance or benefits.

1. Preliminary---review---and---report--to--the--appeals--referee supervisor-is-required-as-follows:

a. Upon receipt of the notice from the appeals referee supervisor that a recipient has filed a request for a fair hearing with the supervisor's office, the county agency or regional-office shall immediately ascertain whether the request for fair hearing was filed within the timely notice period. If the request was not filed within that period, the county agency shall neither reinstate nor continue aid except that households appealing adverse food stamp program actions may have benefits continued if they the household can show good cause for the failure to file a request within ten days.

b. 2. Upon receipt of notice of a request for fair hearing filed in accordance with--subsection--4--of--section--75-01-03-01, the county agency or--regional--office shall, no later than the fifth day after receiving the request, provide the office of the appeals referee supervisor with all information pertinent to such the request. A-copy--of--this--information--shall--be provided-to-the-person-requesting-the-fair-hearing.

2. 3. Prior to the fair hearing, the county agency or-regional office shall:

a. Review the applicable statutes, regulations, rules, and policies in light of the evidence. When assistance of the department is required to clarify any question, such assistance shall be sought without delay;:

- b. Organize all oral and written evidence and plan for its presentation at the hearing ~~to avoid unnecessary delay or duplication.---The county agency or regional office shall prepare a written basis of action statement setting forth its position on the issues to be heard for submission into the fair hearing record.---Where policy directives or instructions are involved in the matter, copies of those documents shall be presented at the hearing.~~
- c. Prepare copies of all written evidence and relevant statutes, regulations, rules, and policies for presentation at the hearing;
- d. Arrange for the attendance of all necessary witnesses and the availability of all documents necessary for the presentation of the case of the county agency or regional office, including notification to the;
- e. Notify the appeals referee supervisor of any communication problem which the claimant may have;
- f. Notify the appeals supervisor of any hearing site access problem the claimant may have;
- d. g. Prepare a complete final budget computation, month by month, for the period subject to review, and up to the date of hearing, if the issue is:
 - (1) Amount of aid;
 - (2) Grant adjustment; or
 - (3) Demand for repayment.
- e. h. Remain in touch with the claimant, and report without delay to the appeals referee supervisor any change in the claimant's address or in any other circumstances which that might affect the necessity for or conduct of the hearing.---The responsibility to report changes in the claimant's circumstances continues after the hearing until a decision is rendered;
- f. i. Arrange to have present at the hearing a county agency or regional office representative with full authority to make binding agreements and factual stipulations on behalf of the county agency or regional office.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: NDCC 50-01-09 50-06-05.1

75-01-03-09.1 Facility responsibility prior to fair hearing concerning transfer or discharge.

1. Upon receipt of notice of a request for fair hearing, the nursing facility, no later than the fifth day after receiving the request, shall provide the appeals supervisor with all information pertinent to the request.
2. Prior to the fair hearing, the nursing facility shall:
 - a. Review the applicable statutes, regulations, rules, and policies in light of the evidence;
 - b. Organize all oral and written evidence and plan for its presentation at the hearing;
 - c. Prepare copies of all written evidence and relevant statutes, regulations, rules, and policies for presentation at the hearing;
 - d. Arrange for the attendance of all witnesses necessary for the presentation of the nursing facility's case;
 - e. Notify the appeals supervisor of any communication problem or hearing facility access problems the resident may have;
 - f. Notify the appeals supervisor of any hearing site access problem the resident may have;
 - g. Notify the appeals supervisor of any change in the resident's circumstances that may affect the necessity for or the conduct of the hearing; and
 - h. Arrange to have present at the hearing a nursing facility representative with full authority to make binding agreements and stipulations.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-09.2. Department responsibility prior to fair hearing concerning preadmission screening and annual resident review.

1. Upon receipt of a request for fair hearing, the unit of the department that made the adverse determination, no later than the fifth day after receiving the request, shall provide the appeals supervisor with all information pertinent to the request.
2. Prior to the fair hearing, the unit of the department that made the adverse determination shall:

- a. Review the applicable statutes, regulations, rules, and policies in light of the evidence;
- b. Organize all oral and written evidence and plan for its presentation at the hearing;
- c. Prepare copies of all written evidence and relevant statutes, regulations, rules, and policies for presentation at the hearing;
- d. Arrange for the attendance of all witnesses necessary for the presentation of the unit's case;
- e. Notify the appeals supervisor of any communication problem the claimant may have;
- f. Notify the appeals supervisor of any hearing site access problem the claimant may have;
- g. Notify the appeals supervisor of any change in the claimant's circumstances that may affect the necessity for or the conduct of the hearing; and
- h. Arrange to have present at the hearing a unit representative with full authority to make binding agreements and factual stipulations.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-09.3. Department responsibility prior to appeal hearing.

1. Upon receipt of notice of an appeal, which does not involve a request for a fair hearing, the unit of the department that made the adverse determination, no later than the fifth day after receiving the notice of appeal, shall provide the appeals supervisor with all information pertinent to the appeal.
2. Prior to the hearing of the appeal, the unit of the department that made the adverse determination shall:
 - a. Review the applicable statutes, regulations, rules, and policies in light of the evidence;
 - b. Organize all oral and written evidence and plan for its presentation at the appeal hearing;
 - c. Prepare copies of all written evidence and relevant statutes, regulations, rules, and policies for presentation at the appeal hearing;

- d. Arrange for the attendance of all witnesses necessary for the presentation of the unit's case;
- e. Notify the appeals supervisor of any change in the resident's circumstances that may affect the necessity for or the conduct of the appeal hearing; and
- f. Arrange to have present at the appeal hearing a unit representative with full authority to make binding agreements and factual stipulations.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-10. Hearing in county other than county responsible for aid - Procedure. ~~If the hearing is to be held in a county other than the responsible county, the social service board of the latter county may elect any of the following procedures:~~

- 1. ~~Send a county social service board representative, with the case record, to the hearing.~~
- 2. ~~Send the case record, containing all relevant information in the county social service board's possession, to the social service board of the county in which the claimant is living or where the hearing is to be held with the request that the second county social service board represent the responsible county at the hearing. Such request should be made in sufficient time to allow the second county social service board to arrange such representation or notify the county social service board of its inability to act. The first county social service board would then, necessarily, follow one of the other two procedures.~~
- 3. ~~Submit, prior to the hearing, a written statement to the office of the appeals referee supervisor summarizing its action including all of the information in its possession regarding the point or points at issue, both supporting and opposing its action, together with relevant dates and any arguments the county desires to make and include in the statement that the county rests its case on the summary statement and materials submitted. The summary statement must be signed under penalty of perjury and contain a waiver of procedural defects of proceeding with the hearing in the absence of a county representative. Pertinent documents must be attached.~~

~~A hearing on this basis may be continued for further hearing if the claimant raises an objection or the referee determines that a substantial defect will result by proceedings.~~
Repealed effective February 1, 1995.

History: Effective-September-1,-1979.
General Authority: NDCC-28-32-02,-50-06-05.1
Law Implemented: NDCC-50-01-09

75-01-03-11. Group hearings.

1. The appeals referee supervisor may schedule a series of ~~individual-requests-for--fair--hearing~~ appeals for a group hearing when the sole issue set forth in the request is one involving state or federal law or policy or changes in state or federal law, as the supervisor may deem appropriate.
2. In all group hearings, each individual ~~claimant-shall-be permitted-to~~ claimants may present ~~his~~ their own ~~case~~ cases, and ~~shall--be--permitted--to~~ each may be represented by any person the claimant may desire.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.
General Authority: NDCC 28-32-02, 50-06-16
Law Implemented: 7-CFR-273.15(e);-----45-CFR-205.10(a)(5)(iv) NDCC 50-06-05.1

75-01-03-12. Compliance with department decisions. Immediately upon receipt of notice of the a decision, the county agency shall comply with the decision.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.
General Authority: NDCC 50-06-05.1 28-32-02, 50-06-16
Law Implemented: NDCC 50-01-09,-50-09-14 50-06-05.1

75-01-03-13. Acknowledgment of request-for-fair-hearing appeal.

1. ~~A--request--for-fair-hearing-filed-with-the-executive-director~~ shall An appeal must be acknowledged by a written communication to the claimant and to the county agency, nursing facility, or unit of the department that made the determination under appeal.
2. The claimant who is entitled to a fair hearing shall also be provided with a list of all free legal service organizations ~~which--may--be~~ available to the claimant and ~~which~~ that have authorized the department to include their name, address, and telephone number on such list.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.
General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16
Law Implemented: 7-CFR-273.15(h);-45-CFR-205.10(a)(5) NDCC 50-06-05.1

75-01-03-14. Hearing - Place and notification.

1. The hearing shall of the appeal may be held in the county seat of the county in which the claimant is living at the time of the hearing, at the regional office serving such county, at any public building convenient to the parties, or at any other location which--is agreeable to the parties. If the claimant is unable to travel to the hearing site because of the claimant's health, transportation problems, or other reasons, the claimant shall promptly notify the county agency, nursing facility, or unit of the department that made the determination under appeal. The hearing shall be conducted at a reasonable time, date, and place to be set by the appeals referee-supervisor office of administrative hearings.
2. The office of ~~the-appeals-referee-supervisor~~ administrative hearings shall mail or deliver to the claimant, the claimant's authorized representative, if any, and the county, agency, nursing facility, or unit of the department, whichever made the determination under appeal, a written notice of the time and place of the hearing. In all food stamp appeals, the notice shall must be sent not less than ten days prior to the hearing unless the household should, in writing, request less advance notice to expedite the scheduling of the hearing.
3. The office of ~~the-appeals-referee-supervisor~~ administrative hearings shall mail or deliver to the household and its authorized representative, if any, the individual (in a proceeding involving aid to families with dependent children), and the county, agency a written notice of the-time-and-place of--a--food--stamp--disqualification an intentional program violation hearing, that conforms to the requirements of section 75-01-03-08.3, not less than thirty days prior to the hearing, unless the hearing is combined with a fair hearing and the individual or household member requests that the thirty-day period be waived.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05, 1 50-06-16

Law Implemented: 7-CFR-273.15(1), -7-CFR-273.16(e)(3) NDCC 50-06-05.1

75-01-03-14.1. Consolidation of intentional program violation hearing with fair hearing. A fair hearing and an intentional program violation hearing may be combined into a single hearing if the factual issues arise out of the same or related circumstances and the individual or household receives advance notice that the hearings will be combined. The times for conducting an intentional program violation hearing will apply when there is a single hearing, but the individual or household is entitled to a waiver of the thirty-day advance notice period upon its request.

History: Effective February 1, 1995.
General Authority: NDCC 28-32-02, 50-06-16
Law Implemented: NDCC 50-06-05.1

75-01-03-15. Hearing - General rules and procedure.

1. Attendance at the hearing shall be limited to those directly concerned, namely, the claimant and; the claimant's representative, if any; an interpreter, if any;--and; witnesses; representatives of the county agency, nursing facility, or unit of the department that made the determination under appeal; representatives of the department, if any; and the referee hearing officer. The appeals-referee hearing officer shall exclude unauthorized persons from the a fair hearing unless both principals agree to their presence. The appeals-referee may hearing officer may exclude persons whose actions cause substantial disruption of the hearing. Appearance by the claimant (in person or by representative) is required at a fair hearing unless the hearing is processed by questionnaire pursuant to section 75-01-03-16.--County--agency representation Representation by the county agency, nursing facility, or unit of the department that made the determination under appeal is also required.
2. ~~The hearings~~ Hearings may be conducted by telephone unless the person requesting the hearing demands to appear personally before the referee hearing officer. In all food stamp telephone hearings, except food stamp intentional program violation hearings, the person requesting the hearing must shall be present at the county office or at the regional human center---in the same location as the county agency representative. This provision may be expressly waived by the person---requesting---the--hearing department when illness, disability, travel difficulty, or other reason, makes attendance of the person requesting the hearing, or that person's representative, at the location of the county or regional-center agency representative impracticable.
3. The hearing shall--must be conducted in an impartial manner. All testimony shall must be submitted under oath or affirmation.
4. The proceedings at the hearing shall must be reported or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.
5. The appeals--referee--shall--not--be--bound--by--the--rules--of procedure or evidence applicable in courts--but--may--exclude evidence--determined--to--be--irrelevant--or--unduly--repetitive hearing officer shall consider if the parties or their representatives are familiar with the North Dakota Rules of Evidence and shall waive application of those rules unless all

parties to the proceeding or their representatives are familiar with the North Dakota Rules of Evidence. The waiver, if necessary, must be stated prior to or at any hearing.

6. ~~The claimant or the claimant's authorized representative shall, upon request, be given the opportunity to examine at any time before and during the hearing, the claimant's entire case file and all evidence used by the county agency to support its decision and all documentary evidence that will be used at the hearing.~~

7. ~~Before the hearing has commenced, the appeals referee supervisor or the supervisor's designee, shall, upon the request of the claimant or the claimant's duly authorized representative, or the county agency, issue a subpoena requiring the presence of any witness whose expected testimony has been shown to be necessary and material to the case, without being unduly repetitious, or a subpoena duces tecum requiring the production of documents shown to be relevant and material. After the hearing has commenced, the appeals referee assigned to the case shall issue such subpoenas as the referee may deem necessary and proper. The party requesting the subpoena is responsible for service of such document and all other fees and costs associated with the issuance of the subpoena.~~

8. 6. An interpreter shall be provided by the state if the appeals referee hearing officer determines this necessary.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: NDCC 50-06-15; ~~7-6FR-273.15{e}~~; ~~7-6FR-273.15{p}~~; ~~7-6FR-273.16{d}~~; ~~45-6FR-205.10{a}~~ 50-06-05.1

75-01-03-15.1. Intentional program violation hearing - Procedure.

1. The department or the county agency has the burden of proving an intentional program violation by clear and convincing evidence.
2. The hearing officer shall advise the individual or household member that he or she may refuse to answer questions during the hearing.
3. If the individual or household member, or a representative, cannot be located or fails to appear at the hearing without good cause, as determined by the hearing officer or by the appeals supervisor, the hearing shall be conducted as scheduled, without the household's representation.

4. The hearing shall be conducted, the decision arrived at, and the individual or household member and the county notified of the decision within ninety days of the date the household member is notified in writing that the hearing has been scheduled.
5. The hearing officer's recommended decision must specify the reasons for the decision, identify the supporting evidence, identify the pertinent regulations, and respond to reasoned arguments made by the individual, household member, or representative.
6. If a hearing has been conducted without the individual, household member, or representative present, and the individual or household member is determined to have committed an intentional program violation, the individual or household member has ten days from the date of the scheduled hearing to present reasons indicating good cause for failure to appear. If a hearing officer or the appeals supervisor later determines there was good cause for the failure to appear, a new hearing must be conducted.
7. There is no further administrative appeal after the intentional program violation hearing. A subsequent fair hearing procedure cannot reverse a determination of an intentional program violation arising out of an intentional program violation hearing.

History: Effective February 1, 1995.

General Authority: NDCC 28-32-05, 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-16. Claimant Economic assistance claimant living outside of North Dakota.

1. When a request for fair hearing is received from a person an applicant for or recipient of medicaid, aid to families with dependent children, food stamps, or low income home energy assistance program benefits, who is living outside of the state, it shall must be acknowledged and reported in the same manner as other requests for fair hearing. Unless the claimant ~~voluntarily offers to return~~ returns to North Dakota for the hearing or authorizes a representative in North Dakota, ~~the county agency shall be advised that~~ the hearing will be ~~processed by questionnaire~~ conducted by telephone.
2. ~~A questionnaire consists of a written series of questions to be answered by claimant in writing and sworn to before a notary. The completed questionnaire properly attested and submitted shall constitute the claimant's appearance and testimony in the hearing. The questions to be included in the questionnaire are to be prepared jointly by the county agency~~

and--the--department.---It--shall--be--the--responsibility--of--the
department--to--initiate--discussion--with--the--county--agency
regarding--preparation--of--the--questions--to--be--included.---The
county--agency--shall--submit--the--questions--it--wants--answered.

- 3.---The--claimant--may--prepare--a--questionnaire--for--submission--to--the
county.---The--county--shall--answer--all--questions--which,--if
answered,--would--furnish--relevant,--nonrepetitive--evidence--in
the--hearing.---The--county's--response--shall--be--sworn--and--may--be
made--in--writing--or--orally--during--the--hearing.

History: Effective September 1, 1979; amended effective January 1,
1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-17. Continuance for additional evidence.

1. If, after a hearing has begun, the appeals-referee hearing officer conducting the hearing determines that additional evidence not available at the hearing is necessary for the proper determination of the case, the referee hearing officer may:

1.---Continue continue the hearing to a later date. In connection therewith, the referee hearing officer may order further investigation and may direct either party to produce the additional evidence.

2. In order to permit the reception of additional documentary evidence or written argument, the hearing officer may close the hearing and hold the record open for a stated period, ~~not to exceed thirty days~~, if the request for additional time is accompanied by a written waiver of the requirement that a decision be made within ninety days, as found at 7 CFR 273.16(e)(2)(iv), 42 CFR 431.244(f), and 45 CFR 205.10(a)(16) or sixty days, as found at 7 CFR 273.15(c)(1). If the request for additional time is not accompanied by such a written waiver, the record shall be held open for no more than three additional days. If an expedited hearing has been requested, no additional time may be granted unless a written withdrawal of the request for an expedited hearing accompanies the request for additional time.

History: Effective September 1, 1979; amended effective January 1,
1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: NDCC 50-06-05.1

75-01-03-18. Withdrawal or abandonment.

1. ~~A request for a fair hearing shall~~ An appeal may not be dismissed without hearing unless the:
 - a. The claimant withdraws or abandons the request appeal;
 - b. The department reverses the decision appealed from without a hearing; or
 - c. Informal resolution of a vocational rehabilitation request for review is achieved.
2. A withdrawal occurs when the referee hearing officer is notified by the claimant that the claimant no longer wishes a hearing.
3. An abandonment occurs when:
 - a. The claimant or the claimant's authorized representative fails to appear at the hearing without good cause; or
 - b. The claimant cannot be located through the claimant's last address of record, or through the claimant's authorized representative, and such inability to locate the claimant precludes the scheduling of a fair hearing.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: NDCC 50-06-05.1; 7-6FR-273.15(j); 45-6FR-205.10(a)(5)(v)

75-01-03-19. Disposition of fair hearing matters Errors or delays by officials. ~~All fair hearing matters will be set for hearing, heard, decided, and the decision implemented, within ninety days from the date of the request for fair hearing or if the fair hearing request concerns food stamp matters, within sixty days from the date of receipt of the request for fair hearing, except in those cases where the claimant withdraws or abandons a request for hearing, the matter is continued pursuant to subsection 2 of section 75-01-03-17, or the parties stipulate to a continuance and the stipulation includes a written waiver of the type described in subsection 2 of section 75-01-03-17. The overall time limits shall be extended only for the period of the continuance.~~ Errors made by public officials or delays caused by public officials may not form the basis for an award of any benefit to an adversely affected applicant or recipient who would not have been eligible to receive that benefit in the absence of the error or delay.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: 7-6FR-273.15(e); 45-6FR-205.10(a)(16) NDCC 50-06-05.1

75-01-03-20. Review---of Appeals concerning determinations affecting skilled nursing facilities and intermediate-care-facilities.

1. Whenever a skilled nursing facility ~~or an intermediate-care facility~~ appeals a decision by the department regarding the denial, termination, or nonrenewal of the facility's provider agreement under the medicaid program, the department shall provide the facility with an opportunity for an informal reconsideration of the decision before the effective date of such decision.
2. The informal reconsideration shall must include:
 - a. Written notice to the facility of the denial, termination, or nonrenewal of the provider agreement and the findings upon which such the denial, termination, or nonrenewal is based;
 - b. An opportunity for the facility to refute, in writing, the department's finding; and
 - c. Written affirmation or reversal of the denial, termination, or nonrenewal of the facility's provider agreement.
3. If, after the informal consideration, the facility is still dissatisfied with the department's decision, the facility may, within thirty days, ~~request a full evidentiary hearing on~~ appeal the denial, termination, or nonrenewal of the facility's provider agreement. ~~A request by a facility for a full evidentiary hearing~~ An appeal will not delay or suspend the effective date of the proposed action concerning the provider agreement.
4. ~~If a facility requests a full evidentiary hearing on the denial, termination, or nonrenewal of its provider agreement,~~ The department shall conduct a full evidentiary hearing prior to determining its action on the appeal. The full evidentiary hearing shall must be completed within one hundred twenty days after the effective date of the action in question. The procedures for a full evidentiary hearing must include;
 - a. Timely written notice to the facility of the basis for the decision as well as disclosure of the evidence on which the decision was made;
 - b. An opportunity for the facility or its representatives to appear before ~~an appeals referee~~ a hearing officer to refute the basis for the decision;

- c. An opportunity for the facility to be represented by counsel or another representative;
 - d. An opportunity for the facility or its representatives to be heard in person, to call witnesses, and to present documentary evidence;
 - e. An opportunity for the facility or its representatives to cross-examine witnesses; and
 - f. A written decision by the department setting forth the reasons for the decision and the evidence upon which the decision is based.
5. If the department's action to deny, terminate, or not renew a provider agreement is based on the fact that the facility has been denied, terminated, or not renewed for participation in the medicare program, the department shall advise the facility that the facility is entitled to the review procedures for medicare facilities set forth in 42 CFR 405, ~~subpart--0~~ 498, which shall be in lieu of the procedure set forth in this section. A final decision entered under the medicare review procedures ~~will--be~~ is binding on the department and the facility for purposes of medicaid participation.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, ~~50-06-05.1~~ 50-06-16

Law Implemented: ~~42-CFR-431.151~~ NDCC 50-06-05.1

75-01-03-21. Submission of proposed decision. After the hearing has been closed, the ~~appeals--referee~~ hearing officer shall issue a recommended decision for review by the appeals referee supervisor and submission to the executive director, the executive director's designee, or the director of ~~the--division--of~~ vocational rehabilitation. The recommended decision must include a statement of the facts and of the statutes, regulations, rules, or policies involved and the reasoning that supports the recommended decision.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, ~~50-06-05.1~~ 50-06-16

Law Implemented: NDCC 50-06-05.1; ~~45-CFR-205.10(a)~~

75-01-03-22. Decision by department.

- 1. The decision of the department shall must be made by the executive director, or the executive director's designee, except in appeals from vocational rehabilitation decisions. In vocational rehabilitation matters, the decision shall must be made by the director of ~~the--division--of~~ vocational

rehabilitation, who shall notify the executive director of the decision.

2. The executive director, or the executive director's designee ~~{or-director-of-the-division-of-vocational--rehabilitation--in vocational---rehabilitation---matters}~~, after receiving the referee's hearing officer's recommended decision may:
 - a. Adopt the recommended decision in its entirety;
 - b. Decide the matter on the record, ~~with-or-without-taking additional-evidence;~~ or
 - c. Order another hearing to be conducted ~~by-the-same-or another--referee,--if---overall---time---limitations---for disposition-of-fair-hearing-matters-permit.~~
3. Prior to taking action under subsection 2, the executive director, or the executive director's designee, may secure assistance or advice from staff assistants:
 - a. Without the communication of advice or assistance being treated as an ex parte communication in violation of North Dakota Century Code section 28-32-12.1, if the assistants do not furnish, augment, diminish, or modify the evidence in the record; or
 - b. After transmitting the relevant information or evidence, or an abstract thereof, to each party of record in the appeal, and affording each party an opportunity to examine the information, evidence, or abstract, and to present the party's own information or evidence in a hearing to be called on at least ten days' notice, all pursuant to North Dakota Century Code section 28-32-07, if the communication of advice or assistance furnishes, augments, diminishes, or modifies the evidence in the record.
4. For purposes of this section, staff communications that analyze the correct application of law, rule, regulation, or policy to the evidence in the record do not furnish, augment, diminish, or modify the evidence in the record and do not constitute relevant information or evidence that require notice of an ex parte communication pursuant to North Dakota Century Code section 28-32-12.1 or furnishing a copy of the advice or assistance to each party of record in the proceeding pursuant to North Dakota Century Code section 28-32-07.
5. The decision rendered for the department must be in writing. It must include a statement of the facts and of the statutes and, regulations, rules, or policies involved and the reasoning which supports the decision.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: NDCC 28-32-13; 34-CFR-361.48 50-06-05.1

75-01-03-23. Notice of decision.

1. After a decision is rendered by the director of the division of vocational rehabilitation or the executive director, the office--of-the appeals referee supervisor shall mail a copy to the claimant and the county agency, nursing facility, or unit of the department that made the determination under appeal. The notice of decision shall must also contain a statement explaining the right to request a rehearing or reconsideration unless the decision is itself a decision on rehearing or reconsideration.
2. The notice may be mailed by certified mail, return receipt requested, by certified mail, or by regular mail. If notice is given by certified mail without return receipt or by regular mail, an affidavit of mailing indicating to whom the order was mailed must be prepared.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: NDCC 28-32-13 50-06-05.1

75-01-03-24. Preservation of record. The verbatim record of the testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the referee's hearing officer's recommended decision shall, and the department's decision constitute the exclusive record for decision and shall must be available to the claimant and--the county parties to the appeal at any reasonable time for three years after the date of the department's decision in all food stamp cases, and for ninety days after the date of the department's decision in all other cases. A transcribed copy of recorded testimony requested within ninety days after the date of the department's decision shall must be made available to the claimant or the a county agency upon payment of a reasonable transcription fee.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, 50-06-05.1 50-06-16

Law Implemented: NDCC 28-32-12; --7--CFR--273.15(a); --45--CFR-205.10(a) 50-06-05.1

75-01-03-25. Rehearing and reconsideration.

1. A request for a rehearing or for reconsideration must be filed with the office of the executive-director appeals supervisor within fifteen days after a decision is issued by the executive director. The request must be based upon new evidence indicating that an unjust or invalid determination has been made, or upon an allegation that the director has incorrectly interpreted relevant statutory or case law.
2. If the request for rehearing is to permit presentation of additional evidence, the request shall must:
 - a. Describe the additional evidence-;
 - b. Show why it was not previously introduced-; or
 - c. Explain its materiality.
3. The executive director may order a rehearing, or may reconsider, on the director's own motion.
4. The grant of a rehearing or reconsideration, either upon request or upon the director's own motion, is a matter for the director's discretion.
5. If a request for a rehearing or reconsideration is granted, the director may:
 - a. Order reconsideration of the decision on the basis of the evidence in the record-;
 - b. Order the taking of additional evidence-; and
 - c. Order an entire new hearing.
6. A decision issued upon a request for rehearing or for reconsideration shall must not be subject to further hearing.
7. Notice of a decision upon a request for rehearing or for reconsideration must be given as provided for in section 75-01-03-23.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.

General Authority: NDCC 28-32-02, ~~50-06-05.1~~ 50-06-16

Law Implemented: NDCC 28-32-14 50-06-05.1

CHAPTER 75-02-06

75-02-06-19. Appeal from facility transfer or discharge.

1.--For purposes of this section:

- a.--"Discharge" means movement from a facility to a noninstitutional setting when the discharging facility ceases to be legally responsible for the care of the resident;
- b.--"Resident" includes a resident as defined in section 75-02-06-01 and any legal representative of the resident;
- c.--"Transfer" means movement from a facility to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving institutional setting;

2.--Except as provided in subsection 4, a facility must issue a written notice of involuntary transfer or discharge, which meets the requirements of subsection 3, at least thirty days before the date of intended transfer or discharge. The first day of that thirty-day period is the day after the date of issuance. The date of issuance is the day notice is delivered or mailed to the resident.

3.--The notice provided by the facility must contain:

- a.--A statement that the facility intends to transfer or discharge the resident, as the case may be;
- b.--The reason for the transfer or discharge;
- c.--The effective date of the transfer or discharge;
- d.--The location to which the resident is to be transferred or discharged;
- e.--The specific provision of section 33-07-03, 1-37 that authorizes the transfer or discharge, or the change in federal or state law that requires the action;
- f.--A statement that the resident has the right to appeal the intended transfer or discharge to the department, and the mailing address to which an appeal must be sent;
- g.--The name, address, and telephone number of the state long-term care ombudsman;

- h. -- If the resident is developmentally disabled or mentally ill, the address and telephone number of the protection and advocacy office;
 - i. -- If the medicaid program is paying for some or all of the cost of services furnished to the resident by the facility, a statement that those medicaid payments will continue until after the hearing unless:
 - (1) -- The sole issue at the hearing is one of state or federal law or policy and the resident is so informed in writing; or
 - (2) -- Some change in circumstances affects the resident's eligibility for medicaid benefits and the resident is so notified in writing;
 - j. -- A statement that the transfer or discharge will be delayed, if a request for fair hearing is filed before the effective date of the transfer or discharge:
 - (1) -- In the case of a discharge for nonpayment of facility charges, at least until the hearing officer recommends a decision that the charges were due and unpaid at the time the facility issued a notice of discharge; and
 - (2) -- In all other cases, until the fair hearing decision is rendered; and
 - k. -- A statement that the resident may represent oneself at the hearing, or may use legal counsel, a relative, a friend, or other spokesperson;
4. -- a. -- A facility need not provide a notice under subsection 2 if the resident:
- (1) -- Provides a clear written statement, signed by the resident, that the resident does not object to a proposed transfer or discharge; or
 - (2) -- Gives information that requires a transfer or discharge and indicates that the resident understands that a transfer or discharge will result;
- b. -- A facility must issue a notice that meets the requirements of subsection 3, as soon as practicable before an involuntary transfer or discharge, when:
- (1) -- The safety of individuals in the facility would be endangered;

{2}--The--health--of--individuals-in-the-facility-would-be endangered;

{3}--The--transfer-or-discharge-is-appropriate-because-the resident's-health-has-improved-sufficiently-to--allow a-more-immediate-transfer-or-discharge;

{4}--An-immediate-transfer-or-discharge-is-required-by-the resident's-urgent-medical-needs-which-cannot--be-met in-the-facility;-or

{5}--The--resident--has--not--resided--in-the-facility-for thirty-days.

5.--A-resident-of-a-facility-may-appeal-a-notice-from-the-facility of-intent-to-discharge-or-transfer-the-resident.---A--resident has--appeal--rights--when--the--resident-is-transferred-from-a certified-bed-to-a--noncertified--bed--or--from--a--bed--in--a certified-facility-to-a-bed-in-a-facility-that-is-certified-as a-different-provider.---A-resident-has-no--appeal--rights--when the--resident-is-moved-from-one-bed-in-a-certified-facility-to another-bed-in-the-same-certified-facility.---A-resident-has-no appeal-rights-if-the-transfer-or-discharge-has-taken-place-and the-resident-did-not-appeal-within-thirty-days-after-the--date of--issuance--of--a--notice--that--meets--the--requirements-of subsection-3.

6.--If--a--resident--with-appeal-rights-files-an-appeal-before-the effective-date-of-the-transfer-or-discharge;-the-resident--may not-be-transferred-or-discharged:

a.--In--the--case--of--a--discharge-for-nonpayment-of-facility charges;--earlier--than--the--date---a---hearing---officer recommends-a-decision-that-the-charges-were-due-and-unpaid at-the-time-the-facility-issued-a-notice-of-discharge;-and

b.--In--all--other--cases;--until-the-fair-hearing-decision-is rendered. Repealed effective February 1, 1995.

History: Effective-May-1,-1992;-amended-effective-November-22,-1993.

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

Law Implemented: NDCC-50-24.4;-42-GFR-Part-483,-subpart-E

CHAPTER 75-02-10

[Reserved]

STAFF COMMENT: Chapter 75-02-11 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS: Chapter 75-02-11 Food Stamp Program.

A public hearing was conducted on July 28, 1994, in Bismarck, concerning proposed North Dakota Administrative Code chapter 75-02-11, Food Stamp Program.

The purpose of chapter 75-02-11 is to incorporate federal Food Stamp eligibility requirements into the North Dakota Administrative Code. Those federal requirements allow limited flexibility in the administration of the Food Stamp program. The new chapter also describes the policy to be implemented in areas where such flexibility permits choices.

The department proposed rules amending North Dakota Administrative Code chapter 75-01-03, Appeals and Hearings, conducted a public hearing on those rules on September 14, 1994, and received written comment on those proposed rules until the end of the day on Friday, October 14, 1994. The department has determined that material proposed for inclusion in chapter 75-02-11 should in fact be included in chapter 75-01-03. Therefore, material originally proposed for inclusion in North Dakota Administrative Code sections 75-02-11-29, Consolidation of Administrative Disqualification Hearing with Fair Hearing; 75-02-11-30, Administrative Disqualification Hearing - Notice; and 75-02-11-31, Administrative Disqualification Hearing - Procedure, have been deleted from this chapter and inserted in chapter 75-01-03 with changes appropriate to conform those sections to the terminology, definitions, and structure of chapter 75-01-03. Consistent with that change, other technical changes, including renumbering, have been made to this chapter.

CHAPTER 75-02-11 FOOD STAMP PROGRAM

Section	
75-02-11-01	Definitions
75-02-11-02	Use of Federal Methods and Rules
75-02-11-03	Applying for Benefits - Combined Application Form for Food Stamps and Public Assistance - Applying Through Social Security Administration Office - Interview - Verification
75-02-11-04	Eligibility Determination - Prospective Determination - National Standards - Residence
75-02-11-05	Income Eligibility - Determining Household Income

	- Aid to Families With Dependent Children Grant - Standard Utility Allowance - Telephone Standard
75-02-11-06	Verification of Questionable Information
75-02-11-07	Processing Standards - Delays - Expedited Service - Effect of Agency Errors
75-02-11-08	Benefit Determination - Proration of Initial Month's Benefit
75-02-11-09	Method of Coupon Issuance - Issuance of Supplemental Allotment
75-02-11-10	Change Reporting Requirements - Change Report Form
75-02-11-11	Increase in Benefits as Result of Reported Change
75-02-11-12	One-Month Case Suspension
75-02-11-13	Basic Employment Skills Training Program - Participants - Orientation Session - Employment Workshop - Network Center
75-02-11-14	Exemptions From Basic Employment Skills Training Program
75-02-11-15	Voluntary Participation in Basic Employment Skills Training Program
75-02-11-16	Responsibilities of Basic Employment Skills Training Program Participants - Disqualification From Food Stamp Program
75-02-11-17	Reimbursement for Participant in Basic Employment Skills Training Program - Deferment of Participation
75-02-11-18	Basic Employment Skills Training Program Conciliation Procedure
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75-02-11-20	Department to Establish Claim for Overissuance
75-02-11-21	Notice of Adverse Action
75-02-11-22	When Notice of Adverse Action Not Required
75-02-11-23	Notice of Decrease or Termination of Benefits When Advance Notice of Adverse Action Not Required
75-02-11-24	Agency Conference on Contested Decision - Expedited Service Denial - Participants in Agency Conference - Availability of Fair Hearing
75-02-11-25	Fair Hearing - Notice to Household of Right to Fair Hearing - Fair Hearing Procedure - Denial or Dismissal of Fair Hearing Request
75-02-11-26	Intentional Program Violation - Court Referral - Deferred Adjudication
75-02-11-27	Intentional Program Violation - Hearing - Informal Meeting - Waiver
75-02-11-28	Continuation of Benefits Pending Intentional Program Violation Hearing
75-02-11-29	County Administration

75-02-11-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Allotment" means the total value of coupons a household is authorized to receive during each month or other time period.
2. "Authorized representative" means a nonhousehold member who is eighteen years of age or older and who is designated in writing by the head of the household or spouse, or another responsible member of the household, to apply for certification or to obtain coupons, or to use coupons to purchase food, when the head of the household or spouse, or another responsible member of the household, is not able to do so.
3. "Certification period" means the definite time period, conforming to calendar months, assigned to an eligible household and during which coupons may be issued.
4. "County" means the county social service board.
5. "Department" means the North Dakota department of human services.
6. "Mass change" means a government-initiated change at the federal or state level that affects significant portions of the program caseload, such as adjustments to eligibility standards, allotments, deductions and utility standards, public assistance grants, or federal benefits.
7. "Month" means a calendar month for purposes of determining eligibility and level of benefits.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR 271.2, 7 CFR 273.9(d)(6), 7 CFR 273.10(a)(1)(i), 7 CFR 273.10(f), 7 CFR 273.16, 7 CFR 273.21(b)

75-02-11-02. Use of federal methods and rules. Unless otherwise specified in this chapter, eligibility to participate in the food stamp program is governed by federal food stamp regulations and the federal procedures embodied in relevant federal notices and policy memos. The program must conform to lawfully issued regulations and policies relating to the food stamp program. Terms used in this chapter have the same meaning as the same terms when used in federal food stamp regulations and policies, unless this chapter specifically provides otherwise.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1, 7 CFR 272.1(d)(1)

75-02-11-03. Applying for benefits - Combined application form for food stamps and public assistance - Applying through social security administration office - Interview - Verification.

1. A household may apply for food stamps by requesting an application form in person, in writing, or by telephone, and filing the form with the county in person, through an authorized representative, or by mail. The date the county receives the application is the date of filing. An incomplete application may be filed if the form contains the applicant's name and address and is signed by a responsible member of the household or the authorized representative.
2. A household in which all members are applying for public assistance may apply for food stamps at the same time by completing an application for aid to families with dependent children, food stamps, and medical assistance.
3. A household in which all members are in receipt of, or are applying for, supplemental security income may file a food stamp application with the social security administration office at the same time the household files its supplemental security income application.
4. The household shall be interviewed and certain information must be verified before the household is certified to participate in the program. The county shall conduct a single interview for a household that applies for both food stamps and public assistance. It is the responsibility of the household to provide information and verification sufficient to establish eligibility for each household member.
5. The household shall designate a member as the head of the household. If the household fails to designate a head of household or fails to designate a responsible household member as head of household, the county may designate the head of

household. Head of household designation will not be used to impose special requirements on the household.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.2(j)(1)(i), 7 CFR 273.2(k)(1), 75 CFR 273.1(d)(1)

75-02-11-04. Eligibility determination - Prospective determination - National standards - Residence.

1. A household's eligibility to participate in the program is to be determined prospectively each month for all months of the certification period. A household that meets the federal

limits on income and resources and is not otherwise ineligible to participate in the program may receive food stamps.

2. Federal food stamp eligibility requirements apply to all applicant households whether or not the household or a member of the household has applied for or is receiving public assistance or supplemental security income.
3. Each household member must have a social security number or must have applied for a social security number in order to qualify for participation in the program.
4. A household must be living in the county in which it files an application for participation in the program. There are no durational residency requirements, and a fixed residence or mailing address is not required.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR parts 273.3 through 273.7, 7 CFR 273.20, 75 CFR 273.22

75-02-11-05. Income eligibility - Determining household income - Aid to families with dependent children grant - Standard utility allowance - Telephone standard.

1. A household that contains an elderly or disabled member must meet the net income eligibility standards to participate in the program. A household that does not contain an elderly or disabled member must meet both the net income eligibility standards and the gross income eligibility standards to participate in the program. The net monthly income standards reflect one hundred percent of the federal poverty level. The gross monthly income standards reflect one hundred thirty percent of the federal poverty level. The monthly income limits are adjusted on October first of each year to reflect inflation.
2. A household's monthly income is determined prospectively, based on the best estimate of the household's income for the month for which eligibility and benefits are computed.
3. The entire amount of a household's aid to families with dependent children grant is considered unearned income.
4. A household billed for heating or cooling costs shall use a standard utility allowance in determining its shelter deduction unless the household verifies that its actual costs are in excess of the standard utility allowance. The amount of the standard utility allowance depends on the household size and is adjusted on October first of each year, using the same percent of change that the food and nutrition service

applies to the gross monthly income eligibility standards. A household that uses the standard utility allowance may not use the telephone standard.

5. A household not entitled to use the standard utility allowance but which incurs costs for a telephone in its home is allowed a telephone standard in determining its shelter deduction. Actual telephone costs are not allowed. The telephone standard is adjusted on October first of each year, based on a survey of the basic local service charges of telephone companies operating in North Dakota.
6. A household not entitled to use the standard utility allowance and which incurs utility expenses other than telephone costs shall claim actual verifiable utility expenses in determining its shelter deduction.
7. Limits on total shelter deductions may be set at amounts required by the food and nutrition service.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.9(a), 7 CFR 273.9(c)(12), 7 CFR 273.9(d)(6), 7CFR 273.21(b)

75-02-11-06. Verification of questionable information. In addition to information for which verification is mandated, the county shall verify other household eligibility information prior to certification when the information is questionable and affects the household's eligibility or benefit level. Information is questionable if information on the application is inconsistent with statements made by the applicant, with other information on the current application or on previous applications, or with information otherwise received by the county. A determination on whether information is questionable must be based on the individual household's circumstances.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.2(f)(2)(i)

75-02-11-07. Processing standards - Delays - Expedited service - Effect of agency errors.

1. An eligible household that completes the initial application process shall be provided with authorization to participate and the ability to obtain its allotment as soon as possible, but not later than thirty calendar days after its application is filed.

2. A household found to be ineligible shall be sent a notice of denial as soon as possible, but not later than thirty days following the date its application is filed.
3. Delays in processing a household's application must be handled as follows:
 - a. If the county does not determine a household's eligibility and provides an opportunity to participate within thirty days after the household's application is filed, the county shall determine the cause of the delay.
 - b. If the delay is caused by the household, the county shall send a notice of denial on the thirtieth day, but shall give the household an additional thirty days to complete the application process.
 - c. If the delay is caused by the county, the county shall take immediate corrective action and shall notify the household by the thirtieth day that the household's application is being held pending.
 - d. If the household is at fault for delays beyond sixty days after the application is filed, the household shall file a new application.
 - e. If the county is at fault for delays beyond sixty days after the application is filed and the case file is not complete enough to make an eligibility determination, the county shall deny the application and notify the household that it may file a new application with the possibility of retroactive benefits.
 - f. If the county is at fault for delays beyond sixty days after the application is filed and the case file is complete enough to reach an eligibility determination, the county shall process the application until an eligibility determination is made.
4. A household with very little income and few resources may qualify for expedited service. The county shall screen applicants at the time the household requests assistance in order to identify those households eligible for expedited service. Coupons must be made available to a household entitled to expedited service not later than the fifth calendar day after the application is filed. If a household is determined eligible for expedited service after the initial screening, coupons must be made available to the household not later than five calendar days from the date of determination.
5. Errors made by county or department officials, and delays caused by actions of county or department officials, do not

create eligibility for additional benefits for any member of a household who is adversely affected.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.2(h), 7 CFR 273.2(i), 75 CFR 273.2(g)

75-02-11-08. Benefit determination - Proration of initial month's benefit. Benefits are determined on a prospective basis. A household's benefit for the initial month of certification is based on the day the application is filed. The household's benefit is prorated from the date of application to the end of the calendar month.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.10(a)(1), 7 CFR 273.21(b)

75-02-11-09. Method of coupon issuance - Issuance of supplemental allotment.

1. A household's coupons must be issued by direct access or by mail.
2. When a household's benefit level increases as a result of the addition of a new household member who is not a member of another certified household or as a result of a decrease of fifty dollars or more in the household's gross monthly income, and the change is reported too late to adjust the following month's allotment, supplemental benefits will be issued by the tenth day of the following month or by the household's normal issuance cycle in the following month, whichever is later.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06.5.1; 7 USC 2017(c)(3)(A); 7 CFR 273.12(c)(1)(ii), 7 CFR 274.3(a)

75-02-11-10. Change reporting requirements - Change report form.

1. A household shall report to the county agency all changes related to its food stamp eligibility and benefits within ten days of the date the household knows of the change. A public assistance household that reports a change in circumstances to the public assistance worker is considered to have also reported the change for food stamp purposes.
2. A change report form must be provided to newly certified households and to all households at recertification if a new

form is needed or whenever a change report form is returned by the household. The county does not have to provide postage paid envelopes for the return of the change report forms.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR 272.3(c), 7 CFR 273.12(b)(1)

75-02-11-11. Increase in benefits as result of reported change.

The county shall act on a change that results in an increase in benefits, other than the addition of a new household member or a decrease of fifty dollars or more in gross monthly income, within ten days of the date it receives notice of the change. The increase is effective with the first issuance cycle following the ten-day period. If the increase results from the addition of a new household member who is not a member of another certified household or from a decrease of fifty dollars or more in the household gross monthly income, the county shall act on the change within ten days, but the change can take effect no later than the month following the month in which the change is reported.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.12(c)(1)

75-02-11-12. One-month case suspension. When a household's prospective ineligibility is the result of excess income from a recurring source of income and the ineligibility is expected to last for only one month, the county shall suspend the case for one month, and the

case will revert to open status the following month when the household's income returns to normal.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 272.3(c), 7 CFR 273.10(e)(2)

75-02-11-13. Basic employment skills training program - Participants - Orientation session - Employment workshop - Network center.

1. The food stamp basic employment skills training program assists participants in developing job seeking and job retention skills. The program operates in selected counties. All food stamp recipients in those counties are subject to this section.
2. All food stamp work registrants who do not meet the criteria for exemption from the basic employment skills training

program shall attend an employment communication orientation session.

3. An orientation session participant shall attend an employment communication workshop if the participant meets the following criteria:
 - a. The participant has received food stamps in at least six of the last twenty-four months;
 - b. The participant has had no meaningful work experience in the last twelve months;
 - c. The participant is not waiting for a regular seasonal job to begin;
 - d. The participant does not have a firm offer to start employment within the next thirty days; or
 - e. The participant has applied for unemployment or other benefits.
4. Within sixty days of attending an employment communication workshop, a workshop participant shall attend a minimum of five days at network center followup. Network center allows participants to continue job searches, reinforces skills learned in the workshop, and provides lessons on conflict management, budgets, time management, personal hygiene, and other employment retention skills. A workshop participant shall attend network center until the participant finds employment, moves, or is no longer required to participate.

History: Effective February 1, 1995

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.7(c)(3)

75-02-11-14. Exemptions from basic employment skills training program.

1. A person who is exempt from work registration is also exempt from mandatory participation in the basic employment skills training program.
2. A person who is required to register for work is not required to participate in the basic employment skills training program if the person meets any of the following criteria:
 - a. The person does not live in a county in which the basic employment skills training program operates;
 - b. The person is a migrant in the job stream;

- c. Adequate transportation to the employment communication workshop site is unavailable to the person;
 - d. The person lacks adequate child care, as determined by the county, for children between the ages of six and twelve;
 - e. The person suffers from a temporary disability such as a broken bone or an illness, based on observation by the county or on medical verification; or
 - f. The person is exempt for good cause as determined by the county on the basis of sound professional judgment.
3. All exemptions, other than those due to not living in a specified county or to being a migrant in the job stream, must be evaluated on a case-by-case basis at least once every three months from the date of exemption.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.7(c)(3)

75-02-11-15. Voluntary participation in basic employment skills training program. A food stamp recipient who is exempt from work registration or who is not required to participate in the basic

employment skills training program may participate in the program on a voluntary basis when workshop space is available.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.7(c)(3), 7 CFR 273.7(f)(4)

75-02-11-16. Responsibilities of basic employment skills training program participants - Disqualification from food stamp program.

- 1. A participant in the basic employment skills training program shall:
 - a. Attend the assignment employment communication orientation session;
 - b. Arrange with the person conducting the orientation session for attendance at another session if unable to attend the assigned orientation session;
 - c. Attend the employment communication workshop, if selected;
 - d. Attend and participate in the network center for a minimum of five days after participating in an employment communication workshop; and

- e. Cooperate with the network center coordinator and comply with the coordinator's reasonable requests.
2. The network center coordinator shall report to the county any mandatory participant in the basic employment skills training program who fails to comply with subsection 1. A mandatory participant who is reported for a failure to meet the responsibilities is subject to disqualification from participation in the food stamp program.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.7(c)(3)

75-02-11-17. Reimbursement for participant in basic employment skills training program - Deferment of participation.

1. Mandatory and voluntary participants in the basic employment skills training program are eligible for reimbursement of certain transportation, dependent care, and other costs. The reimbursements are excludable from income when determining program income eligibility limits.
2. A participant shall be reimbursed at a flat rate of five dollars per day, up to a maximum of twenty-five dollars per month, for transportation and other costs reasonably necessary and directly related to participation in the basic employment skills training program.
3. A participant fulfilling an obligation of the basic employment skills training program shall be reimbursed for the actual cost of all necessary dependent care expenses, up to a maximum equal to the applicable local market rate as determined by procedures with any such determination under the Social Security Act.
4. If participation in the basic employment skills training program would result in a dependent care expense in excess of the maximum reimbursement described in subsection 3, the person shall be deferred from participation in the basic employment skills training program until monthly dependent care expenses reimbursable by the program no longer exceed the maximum amount.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.7(c)(3)

75-02-11-18. Basic employment skills training program conciliation procedure. The following conciliation procedure applies only to a mandatory participant in the basic employment skills training

program who fails to comply with a requirement of subsection 1 of section 75-02-11-16. The purpose of the conciliation procedure is to determine the reasons for the participant's noncompliance and to provide an opportunity for compliance before issuance of a basic employment skills training program advance closing notice.

1. The conciliation procedure begins with the date the county learns of the noncompliance and continues for thirty calendar days. Within the thirty-day period, the county shall contact the noncomplying household and determine whether good cause for the noncompliance exists. The contact may be by mail, telephone, or face-to-face interview.
2. At the time of the contact, the county shall inform the noncomplying household member of what action is necessary to bring the household member into compliance and the date by which compliance must be achieved to avoid notice of case closing. The date must be within the thirty-day conciliation period.
3. If the noncomplying household member responds within the thirty-day conciliation period and the county determines that good cause for the noncompliance does not exist, the noncomplying household member shall perform a verifiable act of compliance to avoid issuance of an advance closing notice. A verifiable act of compliance includes attending the employment communication orientation session, the employment communication workshop, or the network center. A verbal commitment by the noncomplying household member is not sufficient unless the member is prevented from immediate compliance by circumstances beyond the member's control, such as the unavailability of a suitable component.
4. If the noncomplying household member refuses to comply and good cause for the noncompliance does not exist, the county shall issue the basic employment skills training program advance closing notice. If the advance closing notice is issued before the end of the thirty-day conciliation period and it is verified that the household member has complied, the county shall cancel the advance closing notice.
5. If the noncomplying household member does not respond within the thirty-day conciliation period, the county shall issue the basic employment skills training program advance closing notice at the end of the thirty-day conciliation period.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1;
273.7(g)(1)(ii)

7 CFR 273.3(c)(2),

7 CFR

75-02-11-19. Disqualification from basic employment skills training program - Notice - Appeal.

1. Failure to comply with the requirements of the basic employment skills training program will result in a two-month disqualification from the food stamp program for the household or for the noncomplying household member, unless good cause exists for the noncompliance. The county shall issue a notice of adverse action within ten days of a determination that good cause for the noncompliance does not exist. The disqualification period begins with the first month following the expiration of the advance notice period given in the notice of adverse action, unless a fair hearing is requested.
2. A noncomplying household member or a household shall request a fair hearing in accordance with the procedures of chapter 75-01-03, if the household member or the household believes that the finding of noncompliance is a result of an improper decision on matters such as loss of exemption status, type of requirement imposed, or refusal to find good cause for the noncompliance.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.7(c)(3), 7 CFR 273.7(g)(1)(i), 7 CFR 273.15(a)

75-02-11-20. Department to establish claim for overissuance. All adult household members are jointly and severally liable for the value of any overissuance of benefits to the household. The department shall establish a claim against any household that has received more program benefits than it is entitled to receive or against a household that contains an adult member who was an adult member of another household that received more program benefits than that household was entitled to receive. The department shall establish and collect the claim in accordance with the provisions of 7 CFR 273.18, except that the department shall not intercept unemployment compensation benefits.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.18

75-02-11-21. Notice of adverse action.

1. Except as provided in section 75-02-11-22, if action is taken to reduce, suspend, or terminate a household's program benefits within the certification period, the household shall be given a notice of adverse action at least ten days before the effective date of the proposed action. The notice must state:

- a. The action taken or that will be taken;
 - b. The reasons for the proposed action;
 - c. The household's right to request a fair hearing;
 - d. The name and phone number of a person to contact for additional information;
 - e. The availability of continued benefits;
 - f. The household's liability for any overissuance received while waiting for a fair hearing decision, if the decision goes against the household; and
 - g. The availability of organizations that may provide free legal representation.
2. If a fair hearing request is not made within the ten-day advance notice period, the benefits will be reduced or terminated effective with the first issuance period after the end of the advance notice period.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.13(a)

75-02-11-22. When notice of adverse action not required.
Individual notices of adverse action need not be provided when:

1. A mass change is initiated;
2. A determination is made, based on reliable information, that all household members have died;
3. A determination is made, based on reliable information, that the household has moved out of the county;
4. The household has been receiving restoration of lost benefits, restoration is complete, and the household was previously notified in writing of when the increased allotment would end;
5. The allotment varies from month to month during the certification period to account for changes anticipated at the time of certification, and the household was advised of this at the time of certification;
6. The household has filed a joint application for food stamps and public assistance, has received food stamps pending approval of the public assistance grant, and was advised at the time of application that food stamp benefits would be reduced upon receipt of a public assistance grant;

7. A household member is disqualified for intentional program violation, or the benefits of the remaining household members are reduced or terminated to reflect the household member's disqualification for intentional program violation;
8. The certification period expires;
9. Benefits revert to their original level because the household fails to provide verification of a reported change during the certification period;
10. A household is converted from a cash repayment or a coupon repayment, or a combination of cash and coupon repayment, of an intentional program violation claim to a benefit reduction repayment as a result of the household's failure to make a cash or coupon repayment;
11. A drug or alcoholic treatment center or a group living arrangement either loses its certification from the state department of health and consolidated laboratories or has its status as an authorized representative suspended as a result of being disqualified as a retailer. Residents of a group living arrangement who apply on their own behalf are still eligible to participate;
12. The household voluntarily requests termination of program participation, either in writing or in the presence of the program worker. If the household does not provide a written request, the department shall send the household a letter confirming the voluntary termination; or
13. A determination is made, based on reliable information, that the household will not be residing in the county and will be unable to obtain its next allotment.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.13(b)

75-02-11-23. Notice of decrease or termination of benefits when advance notice of adverse action not required.

1. Advance notice of adverse action is not required when the following conditions are met:
 - a. The household reports the information which results in the reduction or termination;
 - b. The reported information is in writing and signed by the household; and

- c. The household's allotment or ineligibility can be determined based solely on the information provided by the household.
2. If subsection 1 applies, the household shall be sent a notice that its benefits are being reduced or terminated. The notice must be received no later than the date the household receives or, if terminated, would have received, its allotment. The notice must show the effective date of the reduction or termination and state the general reason for the reduction or termination.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.13(a)(3)

75-02-11-24. Agency conference on contested decision - Expedited service denial - Participants in agency conference - Availability of fair hearing.

1. An agency conference permits a household to contest a decision and resolve the dispute informally before filing a request for a fair hearing or before completing the entire fair hearing appeal process. Use of the agency conference is optional and does not delay or replace the fair hearing process.
2. The county shall offer an agency conference to a household that wishes to contest a denial of expedited service or which is adversely affected by a county decision.
3. An agency conference on a denial of expedited service must be scheduled within two working days, unless the household requests a later time or states that it does not want to use the agency conference option.
4. The food stamp eligibility worker responsible for the contested decision may attend the agency conference. An eligibility supervisor or the county agency director, or both, shall attend the agency conference. The household or the household's representative, or both, shall attend the agency conference.
5. a. If the agency conference does not lead to an informal resolution of the dispute and the household has previously requested a fair hearing, the fair hearing must be held, unless the household makes a written withdrawal of its request for a fair hearing.
b. If the agency conference results in an informal resolution of the dispute, a fair hearing must be held unless the household makes a written withdrawal of its request for a fair hearing.

- c. If the agency conference does not result in an informal resolution of the dispute, the household has not previously requested a fair hearing, and the time for filing such a request has not expired, the household may request a fair hearing.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.15(d)

75-02-11-25. Fair hearing - Notice to household of right to fair hearing - Fair hearing procedure - Denial or dismissal of fair hearing request.

1. A fair hearing is available to any household aggrieved by any action of the county or the department that affects the household's participation in the program.
2. The food stamp application form and various other forms and notices used in the administration of the program must contain notice of the right to a fair hearing. A household shall be made aware of the right to a hearing whenever there is disagreement with a county action.
3. An aggrieved household may request a fair hearing, either orally or in writing. The employee who hears an oral request shall promptly reduce the request to writing. The request for a fair hearing must be filed within ninety days after the date of issuance of the order or of the action with which the aggrieved household is dissatisfied. A request for a fair hearing must be immediately forwarded to the appeals supervisor at the department.
4. The county shall explain the right to a fair hearing to the aggrieved household and shall help the aggrieved household submit and process the request for a fair hearing.
5. A fair hearing request may be denied or dismissed if the sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients, unless the reason for the appeal is an incorrect benefit computation under the law in question, or the misapplication or misinterpretation of federal law.
6. The hearing must be conducted, and a decision issued, in accordance with the procedures in chapter 75-01-03.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.15

**75-02-11-26. Intentional program violation - Court referral -
Deferred adjudication.**

1. Where there is sufficient documentary evidence to substantiate one or more acts of intentional program violation, a suspected case of intentional program violation may be referred for prosecution in a court of appropriate jurisdiction. A case may be referred for prosecution regardless of the accused individual's current program eligibility. If there is a court conviction, disqualification penalties will be imposed in accordance with the court order or, if no disqualification period is specified, in accordance with federal regulations.
2. A case of suspected intentional program violation referred for prosecution may result in a deferred adjudication if the accused individual meets the terms of a court order or the terms of an agreement with the state's attorney. In cases of deferred adjudication, a county may enter into an agreement with the state's attorney to allow the accused individual to sign a disqualification consent agreement after the individual has received advance written notice of the consequences of the consent. Disqualification penalties must be imposed in accordance with the consent agreement and federal regulations.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.16(a), 7 CFR 273.16(g), 7 CFR 273.16(h)

**75-02-11-27. Intentional program violation - Hearing - Informal
meeting - Waiver.**

1. An intentional program violation hearing procedure must be initiated where there is sufficient documentary evidence to substantiate that the individual has committed one or more acts of intentional program violation and any one of the following conditions apply:
 - a. The facts of the case do not warrant referral to a court of appropriate jurisdiction for criminal or civil prosecution;
 - b. The case was previously referred for prosecution, but the appropriate legal authority declines to accept the case; or
 - c. The case was previously referred for prosecution, but no action was taken within a reasonable period of time and the referral has been formally withdrawn.

2. An intentional program violation hearing procedure must be initiated regardless of the individual's current program eligibility. A hearing may not be initiated against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by a prosecutor or a court of appropriate jurisdiction, if the factual issues involved arise out of the same or related circumstances.
3. The county shall prepare a notice of suspected intentional program violation for the household member against whom it has evidence of a violation.
4.
 - a. After the county prepares the notice of suspected intentional program violation, the county shall contact the suspected violator to ask the individual to discuss the matter at the county office at a specified time.
 - b. If the suspected violator attends the scheduled meeting, the individual shall be informed of the availability of organizations that offer free legal assistance.
 - c. If the meeting results in a determination that no violation has occurred, the notice of suspected intentional program violation must be placed in the file with a summary explanation.
 - d. If the meeting results in a determination that a violation has occurred, the county shall both explain and provide written notification of the suspected violator's right to waive an administrative disqualification hearing and the consequences of signing a waiver.
 - e. If the suspected violator signs the waiver form, the individual receives a copy of the form and the original is forwarded to the appeals supervisor, along with a detailed explanation of the violation. The appeals supervisor, after reviewing and approving the signed waiver, shall notify the individual of the reason for the disqualification and the effective date of the disqualification.
 - f. If the suspected violator attends the meeting, but does not sign the waiver, the county shall explain that an administrative disqualification hearing must be held and that the hearing will be held by telephone unless the individual requests that the hearing officer be present. The county shall give the individual a copy of the unsigned notice of suspected intentional program violation and waiver form, and shall forward the original to the appeals supervisor, along with the required documentation.

- g. If the suspected violator fails to respond within two weeks to the request for a meeting, or agrees to a meeting, but fails to appear for the meeting or to provide a satisfactory explanation for the nonappearance, within three days of the scheduled meeting, the notice of suspected intentional program violation must be forwarded to the appeals supervisor, and a hearing will be scheduled.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.16(a), 7 CFR 273.16(f)

75-02-11-28. Continuation of benefits pending intentional program violation hearing. A household or a household member continues to participate in the program on the same basis as any other household member, including the reduction or termination of benefits, while awaiting the outcome of an intentional program violation hearing.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1; 7 CFR 273.16(e)(5)

75-02-11-29. County administration.

1. Except as provided in subsection 2, the county where the household is physically present is responsible for the administration of the program with respect to that household.
2. When a household receiving program benefits moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that household until the last day of the month after the month in which the household assumes residence in an incoming county.
3. The county shall be reimbursed in an amount equal to fifty percent of the county's cost of administration of the program if:
 - a. The county submits a claim verifying the cost of administration; and
 - b. The county administers the program in a manner consistent with the requirements of this chapter, federal requirements imposed under the program, and the direction and supervision of the department.
4. The department shall determine if the county is entitled to reimbursement under subsection 3.

History: Effective February 1, 1995.

General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06-05.1

CHAPTER 75-05-06

AGENCY SYNOPSIS: Chapter 75-05-06 Human Service Center Essential Client Services and Eligibility.

A public hearing was conducted on September 14, 1994, in Bismarck, concerning proposed new North Dakota Administrative Code chapter 75-05-06, Human Service Center Essential Client Services and Eligibility. Written comment period concluded on October 14, 1994.

The proposed new chapter provides the framework for defining and providing essential client services at the human service centers. The proposed new rules define the targeted population groups of individuals or families in emergency situations, vulnerable children and adolescents, and vulnerable adults and elderly. The chapter describes in general terms services that are available to the target population groups. Included are appropriate services for abused or neglected children, adults and elderly; victims of domestic violence; individuals with a diagnosis of mental retardation or mental illness; and substance abuse services.

STAFF COMMENT: Chapter 75-05-06 contains all new material but is not underscored so as to improve readability.

CHAPTER 75-05-06 HUMAN SERVICE CENTER ESSENTIAL CLIENT SERVICES AND ELIGIBILITY

Section	
75-05-06-01	Definitions
75-05-06-02	Eligibility Criteria
75-05-06-03	Individuals or Families in Emergency Situations
75-05-06-04	Vulnerable Children and Adolescents
75-05-06-05	Vulnerable Adults and Elderly
75-05-06-06	Right to Apply - Right to Appeal
75-05-06-07	Service Availability

75-05-06-01. Definitions. As used in this chapter:

1. "Appropriate services" means available essential client services, which, based upon the applicant's needs and the professional judgment of the human service center staff, constitute the proper course of treatment and conduct by the human service center on behalf of the individual.
2. "Eligibility" means existence of a condition as determined by professional assessment that causes an individual to be included in a targeted population group, qualifying the individual to receive appropriate services available through the human service center.

3. "Essential client services" means the general category of services designed to address the needs of those who are vulnerable or at risk. These services are intended to protect and promote safety, basic security, self-sufficiency, and emotional well-being.
4. "Targeted population groups" means groups of individuals sharing common characteristics that increase risk status and vulnerability.

History: Effective February 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03

75-05-06-02. Eligibility criteria. Human service centers determine an individual's eligibility for receipt of appropriate services based on problems or characteristics that cause the individual to be included in the targeted population groups of:

1. Individuals or families in emergency situations;
2. Vulnerable children and adolescents; and
3. Vulnerable adults and elderly.

History: Effective February 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03

75-05-06-03. Individuals or families in emergency situations. The existence of an individual or family crisis situation requiring immediate attention characterizes this population group. The overall goal of the appropriate service is to protect the individual and others from immediate harm, to stabilize functioning and resolve the immediate crisis situation, and to determine the need for ongoing appropriate services.

History: Effective February 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03

75-05-06-04. Vulnerable children and adolescents. This population group is characterized by a need to protect children from emotional and physical violence in the home, prevent further victimization, and diagnose and treat emotional disturbance, substance abuse, and other disabling conditions. The overall goal of the appropriate services provided is to increase the child's potential for a productive life and to preserve family unity.

1. Appropriate services for abused or neglected children are available to:
 - a. Children who are current subjects of an investigation of alleged abuse or neglect;
 - b. Children who are determined to be at risk of abuse or neglect, based on an investigation, or are subjects of a probable cause determination;
 - c. Children who are affected by the abuse or neglect of their siblings; or
 - d. Children who have been abused by a noncaretaker.
2. Appropriate services are available to noncaretaker perpetrators of child sexual abuse.
3. Appropriate services are available to children and adolescents involved in domestic violence who:
 - a. Are affected by physical or emotional violence in the home; or
 - b. Are perpetrators of physical or emotional violence in the home.
4. Appropriate services are available to emotionally disturbed children and adolescents who:
 - a. For purposes of evaluation only, appear to be emotionally disturbed;
 - b. For continuing services, are emotionally disturbed, and whose behavior exhibits one or more of the following:
 - (1) Gross impairment in communication;
 - (2) Some danger of hurting self or others;
 - (3) Occasional failure to maintain minimal personal hygiene;
 - (4) Behavior considerably influenced by delusions or hallucinations;
 - (5) Serious impairment in communication or judgment;
 - (6) Inability to function in almost all areas;
 - (7) Some impairment in reality testing or communication;

- (8) Major impairment in several areas, such as work, school, family relations, judgment thinking, or mood;
 - (9) Serious symptoms such as suicidal ideation or severe obsessional rituals;
 - (10) Serious impairment in social, occupational, or school functioning;
 - (11) Moderate symptoms, such as flat affect and circumstantial speech or occasional panic attacks;
 - (12) Moderate difficulty in social, occupational, or school functioning;
 - (13) Some mild symptoms, such as depressed mood or mild insomnia;
 - (14) Some difficulty in social, occupational, or school functioning, but generally functioning well and has some meaningful interpersonal relationships;
 - (15) Attention deficit disorder; or
 - (16) Disruptive behavior disorder; or
- c. Are involved in therapy as a part of the treatment plan for a family member.
5. Appropriate services are available to children and adolescents with a diagnosis of mental retardation made by a licensed or license exempt psychologist based on an individually administered standardized intelligence test and standardized measure of adaptive behavior, and who are:
- a. Children from birth through age two, for purposes of infant development services;
 - b. School age children in need of transition services from school to adult programs; or
 - c. Any child or adolescent who is determined in need of family support services or in need of intermediate care facility for mentally retarded placement.
6. Appropriate services are available to children and adolescents who have a condition other than mental illness, so severe as to constitute a developmental disability, which results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and who are:

- a. Children from birth through age two, for purposes of infant development services;
 - b. School age children in need of transition services from school to adult programs; or
 - c. Any child or adolescent who is determined in need of family support services or in need of intermediate care facility for mentally retarded placement.
7. Appropriate services are available to children and adolescents with physical and nondevelopmental disabilities who:
- a. Have a mental or physical disability that prevents them from obtaining, retaining, or preparing for employment; or
 - b. Are children from birth through age two, exhibiting developmental delays, but who are not determined to have developmental disabilities.
8. Appropriate services are available to children and adolescents involved in substance abuse who are:
- a. Charged with or adjudicated for an alcohol-related or drug-related offense;
 - b. Known or suspected of abuse of alcohol or other drugs; or
 - c. Affected by the alcohol or drug addiction of others.

History: Effective February 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03

75-05-06-05. Vulnerable adults and elderly. This population group is targeted in order to eliminate violence in the home and prevent further victimization, and to diagnose and treat emotional disturbance, developmental disability, addictive illness, and other disabling conditions. The overall goal of providing services is to enhance the social functioning and occupational productivity of the individual and family, and to stabilize and preserve family unity.

- 1. Appropriate services are available to adults and elderly involved in child abuse or neglect who are:
 - a. Parents and other adults involved in the protection and care of children who, based on investigation, are determined to be at risk of abuse or neglect or are subjects of a probable cause determination, including perpetrators, nonoffending spouses, and other significant adults; or

- b. Noncaretaker child sexual abuse perpetrators.
- 2. Appropriate services are available to adults and elderly with addiction-related disorders who:
 - a. Are abusing or are dependent upon alcohol or other drugs; or
 - b. Are affected by the alcohol or drug abuse or dependence of a significant other in the person's family of origin or present family.
- 3. Appropriate services are available to adults and elderly involved in domestic violence who are adult victims or perpetrators of physical or emotional violence in the home.
- 4. Appropriate services are available to adults and elderly with emotional disturbances who:
 - a. For evaluation only, appear to have emotional disturbances;
 - b. For continuing services, are emotionally disturbed, and whose level of impairment is characterized by one or more of the following:
 - (1) Gross impairment in communication;
 - (2) Some danger of hurting self or others;
 - (3) Occasionally fails to maintain minimal personal hygiene;
 - (4) Behavior considerably influenced by delusions or hallucinations;
 - (5) Serious impairment in communication or judgment;
 - (6) Inability to function in almost all areas;
 - (7) Some impairment in reality testing or communication;
 - (8) Major impairment in several areas, such as work, school, family relations, judgement thinking, or mood;
 - (9) Serious symptoms such as suicidal ideation or severe obsessional rituals;
 - (10) Serious impairment in social, occupational, or school functioning;

- (11) Moderate symptoms, such as flat affect and circumstantial speech or occasional panic attacks;
 - (12) Moderate difficulty in social, occupational, or school functioning;
 - (13) Some mild symptoms, such as depressed mood or mild insomnia; or
 - (14) Some difficulty in social, occupational, or school functioning, but is generally functioning well and has some meaningful interpersonal relationships; or
- c. Are involved in therapy as a part of the treatment plan for a family member.
- 5. Appropriate services are available to adults and elderly with mental retardation who are over age twenty-one. The diagnosis must be made by a licensed or license exempt psychologist based on an individually administered standardized intelligence test and standardized measure of adaptive behavior. Individuals age eighteen to twenty-one may be served in this category under special arrangements with the public education system.
 - 6. Appropriate services are available to adults and elderly who have a condition, other than mental illness, so severe as to constitute a developmental disability, which results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation. Individuals age eighteen to twenty-one may be served in this category under special arrangements with the public education system.
 - 7. Appropriate services to obtain, retain, or prepare for employment are available to adults and elderly with physical and nondevelopmental disabilities who have a mental or physical disability that prevents the person from obtaining, retaining, or preparing for employment.
 - 8. Appropriate services are available to seriously mentally ill adults and elderly who demonstrate a severe, debilitating, long-term mental illness that impairs the person's judgment, perception, ability to deal with stress, and ability to effectively attend to activities of daily living such as grooming and hygiene, cooking, money management, employment, and social skills.

History: Effective February 1, 1995.
General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-03

75-05-06-06. Right to apply - Right to appeal.

1. All individuals may apply for appropriate services. Eligibility determinations for appropriate services are a part of the admissions process. The human service center may conduct screening interviews, either in person or by telephone, in order to determine if an applicant meets the essential service eligibility criteria.
2. Individuals denied services may appeal. A request for an appeal of a denial of services must be in writing and contain a succinct statement as to why the denial of services was in error. The request for an appeal must be submitted to:

Appeals Supervisor
North Dakota Department of Human Services
State Capitol - Judicial Wing
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250

History: Effective February 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03

75-05-06-07. Service availability. The extent to which appropriate services are available to targeted population groups through each human service center is dependent upon community need and upon resources available to the human service center at the time application for services is made. Statements of service availability contained in sections 75-05-06-03 through 75-05-06-06 are superseded by this section to the extent that community needs and available resources are determined insufficient to allow service availability.

History: Effective February 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03

MAY 1995

STAFF COMMENT: Chapter 75-02-10 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code chapter 75-02-10, Aid to Vulnerable Aged, Blind, and Disabled Persons.

A public hearing was conducted on July 28, 1994, in Bismarck concerning proposed new North Dakota Administrative Code chapter 75-02-10, Aid to Vulnerable Aged, Blind, and Disabled Persons.

The purpose of North Dakota Administrative Code chapter 75-02-10 is to implement the requirements of North Dakota Century Code chapter 50-24.5, Aid to Aged, Blind, and Disabled Persons. That statute identifies some of the eligibility criteria for program benefits. Those criteria are restated in the proposed chapter. In addition, the proposed chapter establishes the standards to be applied in the functional assessment used to determine the need for benefits. The proposed chapter also describes the appeal rights of those receiving adverse decisions on applications.

The department proposed rules amending North Dakota Administrative Code chapter 75-02-10, Aid to Vulnerable Aged, Blind, and Disabled Persons, and conducted a public hearing on those rules on July 28, 1994, and received written comment on those proposed rules until the end of the day on Friday, August 29, 1994. The department has determined the use of "countable income", as used in North Dakota Administrative Code section 75-02-10-05, should be defined so as to ensure conformance to the expectation that applicants will actively seek and secure any other benefits for which they may be eligible. To that end, a new

subsection 4 has been added to North Dakota Administrative Code section 75-02-10-01.

**CHAPTER 75-02-10
AID TO VULNERABLE AGED, BLIND,
AND DISABLED PERSONS**

Section	
75-02-10-01	Definitions
75-02-10-02	Benefits Available Under This Chapter
75-02-10-03	Application and Redetermination
75-02-10-04	Applicant's or Guardian's Duty to Establish Eligibility
75-02-10-05	Eligibility Criteria
75-02-10-06	Functional Assessment
75-02-10-07	Decision and Notice
75-02-10-08	Disqualifying Transfers
75-02-10-09	Residency

75-02-10-01. Definitions. For purposes of this chapter, unless the context requires otherwise:

1. "Assisted living" means an environment where a person lives in an apartment-like unit and receives services on a twenty-four-hour basis to accommodate that person's needs and abilities to maintain as much independence as possible.
2. "Basic care facility" means a facility defined in North Dakota Century Code section 23-09.3-01, which is not owned or operated by the state.
3. "Congregate housing" means housing shared by two or more persons not related to each other which is not provided in an institution.
4. "Countable income" includes any income at the disposal of an applicant, recipient, or responsible relative; any income with respect to which an applicant, recipient, or responsible relative has a legal interest in a liquidated sum and the legal ability to make the sum available for support or maintenance; or any income an applicant, recipient, or responsible relative has the lawful power to make available or to cause to be made available. It includes any income that would be applied in determining eligibility for benefits under chapter 75-02-02.1, and also includes any annuities, pensions, retirement, and disability benefits to which an applicant or recipient may be entitled including veteran's compensation and pensions of any type, old age survivors, and disability

insurance benefits; railroad retirement benefits; and unemployment compensation.

5. "County agency" means the county social service board.
6. "Department" means the department of human services.
7. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to four or more persons who are not related to the proprietor.
8. "Living independently" includes living in congregate housing. The term does not include living in an institution.
9. "Necessary benefits" means those benefits:
 - a. Provided under this chapter;
 - b. Identified by the department (or a county agency under the direction and supervision of the department) as appropriate to the needs of an applicant or recipient; and
 - c. Which, when provided in coordination and conjunction with benefits available from any other source, represent the means least costly to the department of meeting the needs of the applicant or recipient.
10. "Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.
11. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.

History: Effective May 1, 1995.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

75-02-10-02. Benefits available under this chapter. To the extent that an eligible person lacks income sufficient to meet the cost of necessary benefits, the following benefits are available:

1. Supplementation of the income of users of adult family foster care services;
2. Supplementation of the income of users of basic care services;
3. Homemaker services;
4. Chore services;

5. Respite care;
6. Home health aide services;
7. Case management;
8. Family home care;
9. Adaptive assessment; and
10. Other services the department determines to be essential and appropriate to sustain a person in the person's home and community, and to delay or prevent institutional care.

History: Effective May 1, 1995.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

75-02-10-03. Application and redetermination.

1. a. All individuals wishing to make application for benefits under this chapter must have the opportunity to do so, without delay.

b. An application is a request made by a person desiring benefits under this chapter, or by a proper person seeking such benefits on behalf of another person, to a county agency. A proper person means any person of sufficient maturity and understanding to act responsibly on behalf of the applicant.

c. An application consists of an application for medicaid benefits and an application for services, which includes a functional assessment.

d. Application forms must be signed by the applicant if the applicant is physically and mentally able to do so. An application made on behalf of an applicant adjudged incompetent by a court must be signed by the guardian.

e. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who require it.

f. The date of application is the date an application, signed by an appropriate person, is received at a county agency.
2. A redetermination must be made within thirty days after a county agency has received information indicating a possible change in eligibility status, when a recipient enters a nursing facility, and, in any event, no less than annually. A

recipient or recipient's guardian has the same responsibility to furnish information during a redetermination as an applicant or an applicant's guardian has during an application.

History: Effective May 1, 1995.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

75-02-10-04. Applicant's or guardian's duty to establish eligibility. The applicant or guardian of the applicant shall provide information sufficient to establish eligibility for benefits, including a social security number and proof of age, identity, residence, blindness, disability, functional limitation, financial eligibility, and such other information as may be required by this chapter for each month for which benefits are sought.

History: Effective May 1, 1995.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

75-02-10-05. Eligibility criteria. A person may receive necessary benefits under this chapter if the person:

1. Is a resident of this state;
2. Is:
 - a. Sixty-five years of age or older; or
 - b. Eighteen years of age or older and disabled or blind;
3. Has applied for and been found eligible for medicaid benefits;
4. Has countable income which, when reduced by the cost of necessary benefits provided under:
 - a. Subsection 1 or 2 of section 75-02-07.1-02, does not exceed forty-five dollars; or
 - b. Section 75-02-07.1-02, except subsection 1 or 2, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381, et seq.], which the person would receive if the person had no income or assets;
5. Has not made an assignment or transfer of property for the purpose of rendering himself or herself eligible for assistance under this chapter; and

6. Based on a functional assessment made in accordance with this chapter, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating; and
 - a. Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or a licensed basic care facility; or
 - b. Is impaired in three of the following four instrumental activities of daily living:
 - (1) Preparing meals;
 - (2) Doing housework;
 - (3) Taking medicine; and
 - (4) Doing laundry.

History: Effective May 1, 1995.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

75-02-10-06. Functional assessment.

1. For purposes of this section:
 - a. "Activities of daily living" means those measurable activities that may be used to measure independence, including:
 - (1) Bathing;
 - (2) Dressing and undressing;
 - (3) Eating;
 - (4) Toileting;
 - (5) Continence;
 - (6) Transferring in or out of bed or chair; and
 - (7) Ability to get around inside the person's home.
 - b. "Instrumental activities of daily living" means those measurable activities that may not need to be done daily, but are important for independent living, including:
 - (1) Meal preparation;

- (2) Housework;
- (3) Laundry;
- (4) Shopping;
- (5) Taking medicine;
- (6) Ability to get around outside the person's home;
- (7) Transportation;
- (8) Money management; and
- (9) Use of a telephone.

c. "Multidimensional client assessment" means an instrument used to record basic demographic and medical information about a person, including age, date of birth, spoken language, marital status, persons residing with, emergency contacts, medical resources, health care coverage, and source and reason for referral; and to secure measurable information regarding:

- (1) Physical health;
- (2) Cognitive and emotional functioning;
- (3) Activities of daily living;
- (4) Instrumental activities of daily living;
- (5) Informal supports;
- (6) Need for twenty-four-hour supervision;
- (7) Social participation;
- (8) Physical environment;
- (9) Financial resources; and
- (10) Other information about the person's condition not recorded elsewhere.

2. An initial functional assessment, using an appropriate form determined by the department, must be completed as a part of the application for benefits under this chapter. An update of the person's functional assessment must be completed in conjunction with each medicaid eligibility redetermination that is anticipated to be completed at least six months after the initial functional assessment.

3. A functional assessment must include an interview with the person in the home where the person resides.

History: Effective May 1, 1995.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

75-02-10-07. Decision and notice.

1. A decision as to eligibility will be made promptly on applications, usually within forty-five days, except in unusual circumstances.
2. A decision as to eligibility on a redetermination will be made within thirty days.
3. Immediately upon an eligibility determination, whether eligibility can be found, ineligibility can be found, or eligibility cannot be determined, applicants or recipients must be notified by the county agency. A notice must be sent in advance of any decision terminating or reducing benefits under this chapter.
4. Notice must be timely and adequate, as provided under chapter 75-01-03.
5. Errors made by public officials and delays caused by the actions of public officials do not create eligibility and may not form the basis for the award of any benefit to an adversely affected applicant or recipient who would not otherwise be eligible to receive that benefit.

History: Effective May 1, 1995.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

75-02-10-08. Disqualifying transfers.

1. a. Except as provided in subsection 2, a person is ineligible for benefits under this chapter if the person or the spouse of the person disposes of assets or income for less than fair market value on or after the look-back date specified in subdivision b.
- b. The look-back date specified in this subdivision is a date that is thirty-six months, or, in the case of payments from a trust or portions of a trust that are treated as income or assets disposed of by a person, sixty months, before the date on which the person has applied for benefits under this chapter.

2. A person is not ineligible for benefits under this chapter by reason of subsection 1 to the extent that:
 - a. The assets transferred were a home, and title to the home was transferred to:
 - (1) The person's spouse; or
 - (2) The person's son or daughter who is under age twenty-one, blind, or disabled;
 - b. The income or assets:
 - (1) Were transferred to the person's spouse or to another for the sole benefit of the person's spouse; or
 - (2) Were transferred from the person's spouse to another for the sole benefit of the person's spouse;
 - c. The person makes a satisfactory showing that:
 - (1) The person intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the person had an objectively reasonable belief that fair market value or its equivalent was received;
 - (2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid or benefits under this chapter; or
 - (3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the person;
 - d. The individual shows that the total cumulative uncompensated value of all income and assets transferred for less than fair market value by the individual or the individual's spouse is less than the actual cost of services of a type provided as benefits under this chapter, provided after the transfer was made, for which payment has not been made and which are not subject to payment by any third party, provided that such a showing may only be made with respect to periods when the person is otherwise eligible for benefits under this chapter.
3. There is a presumption that a transfer for less than fair market value was made for purposes including the purpose of qualifying for benefits under this chapter:
 - a. In any case in which the person's assets and the assets of the person's spouse remaining after the transfer produce income which, when added to other income available to the

person and to the person's spouse totals an amount insufficient to meet all living expenses and medical costs reasonably anticipated to be incurred by the person and by the person's spouse in the month of transfer and in the thirty-five months, or fifty-nine months in the case of a transfer to a trust, following the month of transfer;

- b. In any case in which an inquiry about medicaid benefits or benefits under this chapter was made, by or on behalf of the person to any other person, before the date of the transfer;
 - c. In any case in which the person or the person's spouse was an applicant for or recipient of medicaid or benefits under this chapter before the date of transfer;
 - d. In any case in which a transfer is made by or on behalf of the person's spouse, if the value of the transferred income or asset, when added to the value of the person's other assets, would exceed asset limits; or
 - e. In any case in which the transfer was made, on behalf of the person or the person's spouse, by a guardian, conservator, or attorney in fact, to the guardian, conservator, or attorney in fact or to any spouse, child, grandchild, brother, sister, niece, nephew, parent, or grandparent, by birth, adoption, or marriage, of the guardian, conservator, or attorney in fact.
4. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid or benefits under this chapter must show that a desire to receive medicaid or benefits under this chapter played no part in the decision to make the transfer and must rebut any presumption arising under subsection 3. The fact, if it is a fact, that the person would be eligible for medicaid or benefits under this chapter had the person's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid or benefits under this chapter.
5. If the transferee of any income or asset is the child, grandchild, brother, sister, niece, nephew, parent, or grandparent of the person or the person's spouse, services or assistance furnished by the transferee to the person or the person's spouse may not be treated as consideration for the transferred income or asset unless the transfer is made pursuant to a valid written contract entered into prior to rendering the services.

6. A transfer is complete when the person, or the person's spouse, making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.
7. For purposes of this section:
 - a. Fair market value is received:
 - (1) In the case of an asset not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, when one hundred percent of apparent fair market value is received;
 - (2) In the case of an asset subject to reasonable dispute concerning its value, when seventy-five percent of estimated fair market value is received; and
 - (3) In the case of income, when one hundred percent of apparent fair market value is received.
 - b. "Uncompensated value" means the difference between fair market value and the value of any consideration received.
8. This section is applicable to all transfers whenever made.

History: Effective May 1, 1995.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

75-02-10-09. Residency. For purposes of this chapter:

1. A person is a resident of this state if:
 - a. The person is not living in an institution and is living in this state:
 - (1) With intent to remain in this state permanently or for an indefinite period; or
 - (2) Without intent if the person is incapable of stating intent.
 - b. The person is living in an institution outside this state and was receiving a benefit under North Dakota Century Code chapter 50-01 immediately before January 1, 1995.
 - c. The person was placed in an out-of-state institution by a county agency or the department while the person was incapable of indicating intent.

- d. The person is living in an in-state institution, has lived in that institution for at least thirty days, and was not placed in that institution by another state. A person placed in an institution by another state is a resident of the state making the placement. Any action beyond providing information to the person and the person's family constitutes arranging or making a state placement. The following actions do not constitute state placement:
 - (1) Providing basic information about this chapter and information about the availability of this chapter; or
 - (2) Assisting a person in locating an institution in this state, if the person is capable of indicating intent and independently decides to move.
- 2. A person who is a resident of this state is a resident of the county in which the person is a resident for purposes of receipt of benefits under North Dakota Century Code chapter 50-01.

History: Effective May 1, 1995.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

CHAPTER 75-03-21

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code chapter 75-03-21, Licensing of Family Foster Homes for Adults.

A public hearing was conducted on September 14, 1994, in Bismarck, concerning proposed amendments to North Dakota Administrative Code chapter 75-03-21, Licensing of Family Foster Homes for Adults. The proposed amendments make changes in definitions in conformity with amendments made to North Dakota Century Code chapter 50-11 by the 1993 legislative assembly concerning the provision of foster care to adults.

The amended rules require that an application contain a self-declaration of medical history, documentation of completion of a course related to fire prevention and safety, a fire safety self-declaration form, and documentation of competence in providing foster care for adults in conformity with amendments to and requirements of North Dakota Century Code chapter 50-11. If requested, a report of a physician's examination, psychological examination, or drug and alcohol evaluation are to be submitted.

The license is valid for a period of twenty-four-months, rather than twelve months. The amendments require an inspection of the heating and electrical system and provide that the department may at any time require inspection by a local fire inspector or the State Fire Marshal if the department suspects the home is not fire safe. Providers of adult foster care must furnish documentation of competence in providing foster care for adults.

An amendment to North Dakota Administrative Code section 75-03-21-10(3) provides that substitute caregivers may not be left in charge of the home for more than sixty calendar days for a twenty-four month period. For every day a substitute caregiver is left in charge of a foster home for more than four hours, that counts as a day toward the sixty calendar day limit, the substitute caregiver may be in charge of a foster home for adults.

A new rule provides for issuance of a provisional license to a licensee where a home does not comply with all applicable standards during the period the home is brought into compliance with standards not to exceed six months.

A new rule establishes time periods for correcting certain deficiencies identified in a correction order. A new rule provides for a schedule of fines for violation of certain rules if a notice of noncompliance with the correction order is issued which implements amendments to North Dakota Century Code chapter 50-11. A new rule also specifies what records must be kept and maintained with respect to each resident in the home.

75-03-21-01. Definitions.

1. "Abuse" means the willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation, or financial exploitation to or of a resident.
2. "Activities of daily living" means tasks of a personal nature that are performed daily and which involve such activities as bathing, dressing, toileting, transferring from bed or chair, continence, eating or feeding, and mobility inside the home.
3. ~~"Adult--family--foster--care--home"--means-a-licensed,-occupied private-residence-in-which-four-or-fewer--residents,-who--are not--related-by-blood-or-marriage-to-the-licensee-of-the-home, are-received,-kept,-and-provided-with-food,-shelter,-and--care on-a-twenty-four-hour-basis,-for-hire-or-compensation-~~
4. "Agency" means an organization which monitors adult family foster care homes for adults.
5. ~~4.~~ "Applicant" means the person or persons completing and submitting to the department an application to be licensed as ~~an--adult--family--foster-care-home~~ to provide foster care for adults.
6. ~~5.~~ "Care" means foster care for adults as defined by North Dakota Century Code section 50-11-00.1 and includes the provision of personal, nonmedical services provided to assist a resident with activities of daily living.
7. ~~6.~~ "Caregiver" means a qualified individual who gives provides care to an adult living in an-adult a family foster care home for adults.
8. ~~7.~~ "County agency" means the county social service board in the county where the adult family foster care home for adults is located.
9. ~~8.~~ "Department" means the North Dakota department of human services.
10. ~~9.~~ "Exploitation" means the act or process of a provider using the income, assets, or person of a resident for monetary or personal benefit, profit, gain, or gratification.
11. ~~10.~~ "Home" means adult a family foster care home for adults.
12. ~~11.~~ "License" means a document issued by the ~~North--Dakota department of--human--services~~ authorizing an applicant to operate an-adult a family foster care home for adults.

- 13- 12. "Licensed capacity" means maximum number of residents for which the adult family foster care home for adults is licensed.
- 14- 13. "Licensing study" means an assessment of the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11.
- 15- 14. "Mental anguish" means psychological or emotional damage that requires medical treatment or care, or is characterized by behavioral changes or physical symptoms.
- 16- 15. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with adult--family foster--care--home laws, rules, and standards pertaining to foster care for adults.
- 17- 16. "Neglect" means the failure of the provider to provide the goods or services which are necessary to avoid physical harm, mental anguish, or mental illness.
- 18- ~~"Physical--injury"--means--damage--to--bodily-tissue-caused-by nontherapeutic-conduct,--which--includes--fractures,--bruises, lacerations,--internal--injuries,--dislocations,--physical-pain, illness,--or-impairment-of-physical-function-~~
- 19- 17. "Provider" means the person--who--operates-a-licensed-adult family-foster-care-home primary caregiver in active charge of a family foster home for adults who has documented qualifications in providing foster care for adults.
- 20- 18. "Resident" means any adult who is receiving room,--board,--and foster care in an--adult a family foster care home for adultsfor compensation on a twenty-four-hour basis, but does not mean any other person who lives or stays in the home.
- 21- ~~"Room--and--board"--means-the-provision-of-meals-and-a-place-to sleep-~~
- 22- 19. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11.
- 23- 20. "Substantial functional impairment" means a substantial inability, determined through observation, diagnosis, evaluation, or assessment, to live independently or provide self-care resulting from physical limitations.
- 24- 21. "Substantial mental impairment" means a substantial disorder of thought, mood perception, orientation, or memory which grossly impairs judgment, behavior, or the ability to live independently, or provide for self-care, and which is

determined by observation, diagnosis, evaluation, or assessment.

25- 22. "Vulnerable adult" means an adult who has substantial mental or functional impairment.

26- 23. "Willfully" means willfully as defined in North Dakota Century Code section 12.1-02-02.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-02. Application.

1. An application for a license to operate a home must be made to the county agency in the county where the applicant proposes to provide ~~adult-family~~ foster care for adults.
2. An application must be made in the form and manner prescribed by the department.
3. A fee of twenty-five dollars must accompany the application for a license to operate a family foster home for adults. The fee will be retained by the county agency and used for training and education of the county agency staff who administer the license program.
- 4- 5. ~~A--new~~ An application for a license must be filed immediately upon change of provider or location.
 - a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 7 of section 75-03-21-06;
 - b. ~~Physician's--examination~~ A self-declaration of medical history and, when requested by the department, a report of a physician's examination;
 - c. ~~Psychological~~ A report of psychological examinations, when requested by the department;
 - d. Proof of age and relationship, when requested by the department;
 - e. Sanitation and safety inspection reports, when requested by the department;

- f. Completed application form;
- g. Drug and alcohol evaluation report, when requested by the department; and
- h. Licensing study report;:
- i. Documentation of completion of a course related to fire prevention and safety;
- j. Fire safety self-declaration form; and
- k. Evidence that all caregivers are properly qualified to provide foster care for adults as provided in subsection 8 of section 75-03-21-08.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-01-09(6), 50-06-16, 50-11-02, 50-11-03

75-03-21-03. License.

- 1. Issuance of a license to operate a home indicates compliance with the required standards, rules, and laws at the time of issuance.
- 2. A license ~~in~~ is nontransferable.
- 3. A license is valid only for the person or persons named and the premises described on the license.
- 4. A license is valid for no more than ~~twelve~~ twenty-four months after from the date issued.
- 5. A provider may obtain both an ~~adult~~ a license to operate a family foster care home license for adults and a license as a family foster care home for children, but may not provide care to both adults and children simultaneously without prior written approval from the department.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-04. Facility.

- 1. ~~The--home--must--conform--to--the--requirements--of--section--101--of--the--life-safety-code--published--by--the--national--fire-protection--association--~~
- 2. The home must be:

- a. Free of warped or damaged floors, loose or unsecured floor coverings, loose ~~titles~~ tiles, broken or damaged windows, loose or broken handrails, broken light bulbs, and other such hazards that would affect the safety of an adult residing in the home;
 - b. Maintained free of offensive odors, vermin, and dampness;
 - c. Maintained by a central heating system at a temperature of at least sixty-eight degrees Fahrenheit [20 degrees Celsius];
 - d. Maintained so as to prevent crawling and flying pests from entering the home through windows;
 - e. Equipped with handrails in all stairways;
 - f. Equipped with nonporous surfaces for shower enclosures; and
 - g. Equipped with safety mats or slip-preventing materials on the bottom of tubs and floors of showers.
- 3- 2. Bedrooms for all residents must be constructed as a bedroom with walls or partitions of standard construction which extend from floor to ceiling.
- 4- 3. Bedrooms occupied by one resident must have no less than seventy square feet [6.50 square meters] of usable floor space.
- 5- 4. Bedrooms occupied by two residents must have no less than one hundred twenty square feet [11.15 square meters] of usable floor space.
- 6- 5. Bedroom ceilings must be at least six feet and eight inches [203.20 centimeters] above the finished floor surface at the ceiling's lowest point.
- 7- 6. No more than two residents may be assigned to one bedroom.
- 8- 7. Bedrooms occupied by residents may not be located in a level of the home below grade level unless there are two means of egress, one of which leads to the outside of the home.
- 9- 8. At least one toilet and bathing facility must be available on the same floor as any bedroom occupied by a resident.
- 10- 9. The home must have a telecommunication device on the main floor available for use by residents.
- 11- 10. Mobile home units used as a home must:

- a. Have been constructed since 1976;
- b. Have been designed for use as a dwelling, rather than as a travel trailer;
- c. Meet the flame spread rate requirements; and
- d. Have a manufacturer's label permanently affixed stating the mobile home meets the requirements of the department of housing and urban development or the American national standards institute.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-06. Safety - Inspections.

1. Pets not confined in enclosures must not present a danger to a resident or the resident's guests based upon the size, temperament, or obedience of the pet.
2. The home must be located where a community or rural fire department is available.
3. Firearms must be stored, unloaded, in a locked cabinet. Any firearms cabinet must be located in an area of the home that is not readily accessible to residents.
4. Interior doors with a locking mechanism must be provided with a means to unlock the door from either side.
5. ~~Heating--units~~ The heating and electrical system must be inspected for operability and safety at the time of the initial license application and periodically thereafter if requested by the department.
6. Food preparation areas, equipment, and food storage areas must be clean, free of offensive odors, and in sound working condition.
7. The department may require that the home must be inspected by a local fire inspector or the state fire marshal at the time of initial license application and periodically thereafter if requested by the department;--If structural changes--are--made in suspects that the home, is not fire safe or when structural changes are made to the home must-be-reinspected.
8. Deficiencies noted during a--fire an inspection must be corrected within a reasonable time, but, in any event, must be corrected within sixty days after the issuance of the inspection report.

9. Any fees for the ~~fire-inspection~~ inspections required by the department or costs associated with correcting deficiencies noted during a ~~fire~~ an inspection are must be the responsibility of the applicant or provider.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-07. Insurance.

1. The provider ~~must~~ shall maintain adequate liability insurance, uninsured motorist coverage, and underinsured motorist coverage, according to the terms and conditions of North Dakota Century Code sections 39-16.1-11, 26.1-40-15.2, and 26.1-40-15.3, on all vehicles, operated by the provider or members of the provider's household, in which residents may be a passenger.
2. The provider ~~must~~ shall maintain a minimum household liability insurance coverage of one hundred thousand dollars and premises medical coverage of five hundred dollars per occurrence.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-08. ~~Personal--characteristics~~ Provider qualifications. The provider ~~must~~ shall:

1. Be twenty-one years of age or older;
2. Live in the home in which ~~is-licensed-for-adult~~ family foster care, for adults is provided;
3. Possess the physical health necessary to aid residents with activities of daily living;
4. Be literate and capable of understanding and following written and oral instructions and communicating in the English language;
5. Be free of communicable diseases;
6. Be in good physical health, emotionally and functionally stable, and not abusing drugs or alcohol;
7. Not be the spouse of a resident receiving care in the home;
8. Provide evidence of competence in:

- a. The generally accepted procedure for infection control and proper handwashing methods;
- b. The generally accepted procedure for handling and disposing of body fluids;
- c. The generally accepted procedure for tub, shower, and bed bathing techniques;
- d. The generally accepted procedure for hair care techniques, sink shampoo, and shaving;
- e. The generally accepted procedure for oral hygiene techniques of brushing teeth and cleaning dentures;
- f. The generally accepted procedure for caring for an incontinent resident;
- g. The generally accepted procedure for feeding or assisting a resident with eating;
- h. The generally accepted procedure for basic meal planning and preparation;
- i. The generally accepted procedure for assisting a resident with the self-administration of medications;
- j. The generally accepted procedure for changing a dressing on noninfected sores;
- k. The generally accepted procedures and techniques, which include dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;
- l. The generally accepted procedures in laundry techniques, which include mending, washing, drying, folding, putting away, ironing, and related work;
- m. The generally accepted procedure for assisting a resident with bill paying and balancing a check book;
- n. The generally accepted procedure for dressing and undressing a resident;
- o. The generally accepted procedure for assisting with toileting;
- p. The generally accepted procedure for routine eye care;
- q. The generally accepted procedure for proper care of nails and feet;

- r. The generally accepted procedure for caring for skin, including giving a back rub;
 - s. The generally accepted procedure for turning and positioning a resident in bed;
 - t. The generally accepted procedure for transfer using a belt, standard sit, bed to wheelchair;
 - u. The generally accepted procedure for assisting a resident with ambulation; and
 - v. The generally accepted procedure for making wrinkle free beds.
9. A physician, registered nurse, occupational therapist, physical therapist, or other person with a professional degree in specialized areas of personal care shall verify, in writing, on forms furnished by the department, that a provider is competent to perform each procedure specified in subsection 8. Verification that a provider is competent to perform a procedure is evidence of competence with respect to that procedure.
10. 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.
11. An applicant for licensure under this chapter who possesses an adult foster care license on January 1, 1995, may be presumed competent to perform the procedures listed in subsection 8, and may not be required to provide verification as provided for in subsection 9, or demonstrate competency as provided for in subsection 10. The presumption may be rebutted by evidence that the applicant is incompetent in any of the procedures listed in subsection 8.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-09. General practices. The provider shall:

- 1. Permit a representative of the department, county agency, or other agency serving a resident entry into the home without prior notice.

2. Provide information about the residents to the department, county agency, or other agency serving a resident with reasonable promptness.
3. Report illness, hospitalization, or unusual behavior of a resident to the agency serving the resident, or to the resident's representative, whichever is appropriate.
4. a. Not permit a person, except for a resident, to reside in the home or act as a caregiver in the home, if that person has been convicted of an offense, unless:
 - (1) The department determines the person has been sufficiently rehabilitated; and
 - (2) The person has not been convicted of an offense which has a direct bearing upon the health, morality, and well-being of persons cared for in the home or a person's ability to serve the public as a caregiver or occupier of in a home.
- b. ~~Completion~~ Deem completion of probation or parole, or of a period of five years after final discharge or release from any term of imprisonment, without subsequent conviction, is as prima facie evidence of sufficient rehabilitation.
- c. ~~Theft~~ Consider theft crimes involving the theft of entrusted property, crimes involving any assault, and any crimes against persons where the victim or intended victim was a minor, infirm, incompetent, unconscious, intoxicated or under the influence of drugs, or a ward or a resident of the perpetrator's living quarters are deemed ~~to have as~~ having a direct bearing on the health, morality, and well-being of persons cared for in the home or on a person's ability to serve the public as a caregiver or occupier of in a home.
5. Assure that information related to the resident shall be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, or as authorized by the resident.
6. Not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap.
7. Be willing to accept direction, advice, and suggestions concerning the care of residents from the department, county agency, or other agency representative serving a resident.

8. Assure that residents receiving care in the home are not subjected to physical abuse, sexual abuse, neglect, or exploitation.
9. Undergo a medical examination, psychological evaluation, or drug and alcohol evaluation when requested by the department or county agency when there is reason to believe that such an examination or evaluation is reasonably necessary.
10. Authorize the release of a report of any examination or evaluation, required under subsection 9, to the department or county agency.
11. Immediately report changes in the identity or number of persons living in the home to the department or county agency.
12. Immediately report an inability to carry out the parts of a care plan for which the provider is responsible to the monitoring agency and placing agency or person.
13. When requested by a supervising agency, aid the resident with activities of daily living.
14. Allow a representative of the department, or its designee, to enter the premises, examine the home and records maintained with respect to the residents, and interview the residents, provider, and caregivers in order to evaluate compliance with this chapter.
15. Cooperate with the department or county agency in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, county agency, ombudsman, or other authorized persons to the home and its residents.
16. Not retaliate against any resident, who has filed a complaint with the department or county agency, by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03, 50-11-04

75-03-21-10. Substitute caregiver qualifications.

1. A substitute caregiver must:
 - a. Be eighteen years of age or older;
 - b. Not be a resident of the home; and

- c. ~~Have--a--clear-understanding-of-job-responsibilities,-have knowledge-of-residents'-care-needs,-and-be-able-to-provide the--care--specified--for--each-resident's-needs.~~ Possess qualifications of a provider specified in subsections 3 through 7 of section 75-03-21-08.
2. The provider is responsible for the foster care of residents at all times, even though the duties or tasks of furnishing resident care have been delegated to a substitute caregiver.
3. Substitute caregivers may not be left in charge of the home for more than ~~thirty~~ sixty calendar days during the ~~twelve-month~~ twenty-four-month period immediately following the date of issuance of the license. For purposes of this section, whenever a substitute caregiver is left in charge of a family foster home for adults for more than four hours during a calendar day, a calendar day will be counted toward the sixty calendar-day limit a substitute caregiver may be in charge of a family foster home for adults.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-11. Meals and nutrition.

1. Three meals must be served daily.
2. There may be no more than fourteen hours between the conclusion of the evening meal and service of breakfast.
3. Each meal must be nutritious and well-balanced in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.
4. Adequate amounts of food shall must be available at all meals.
5. The special dietary needs of the residents must be considered in all menu planning, food selection, and meal preparation.
6. Consideration must be given to residents' cultural, ethnic, and religious backgrounds in food preparation.
7. Meals must be regularly and routinely prepared in the home where the residents live.
8. Charges imposed for resident meals provided by persons or facilities other than the provider must be paid by the provider unless the provider made a meal available at the home.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-12. Preadmission information and house rules. The provider ~~must~~ shall furnish each prospective resident, or the resident's conservator, guardian, relative, or other person responsible for placement, the following information prior to entering the home:

1. Any restrictions and limitations on the use of alcohol and tobacco-; i
2. Any restrictions and limitations on the use of the telephone-; i
3. Sample menus of meals served-; i
4. Procedure concerning the use and management of resident funds-; i
5. Procedure used for billing and collecting the charge for board, room, and care-; i
6. Policies concerning the furnishing of nonemergency resident transportation by the provider-; i
7. A statement of other relevant house rules with which the resident will be expected to comply-; and
8. Accurate and complete information regarding the extent and nature of the care available from the provider.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-13. Termination of care.

1. The provider shall terminate care of a resident when such care is no longer required or when the provider is no longer meets the--needs--and--the-best-interests-of-the-person qualified to provide the care needed by the resident receiving adult-family foster care.
2. The provider who anticipates the termination of care to a resident ~~must~~ shall provide the resident and the resident's representative, if any, with at least thirty days' written notice of the termination, and ~~must~~ shall refer or transfer the resident to a setting more appropriate to the resident's needs.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-16. Denial or revocation of license. An application for a license may be denied or a license may be revoked if:

1. The license application or supporting documents contain fraudulent or untrue representations or if the license was otherwise issued based upon fraudulent or untrue representations;
2. The provider or proposed provider is in violation of this chapter or is unwilling to conform to this chapter;
3. The home, or the premises proposed for the home, ~~fails to~~ conform is not being or will not be maintained according to this chapter;
4. The home, or the premises proposed for the home, is not in sanitary condition or properly equipped to provide good care for all residents who may be received;
5. The provider or proposed provider is not properly qualified to carry out the duties required;
6. The home, or the premises proposed for the home, is not being conducted or is not likely to be conducted for the public good in accordance with sound public policy and with due regard for the health, morality, and well-being of all residents cared for; or
7. The provider or proposed provider is not a reputable and responsible person.

History: Effective May 1, 1992; amended effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-02, 50-11-03

75-03-21-19. Provisional license. The department may issue a provisional license to an applicant who has previously held an unrestricted license.

1. Any provisional license issued must be accompanied by a written statement identifying in what respect the applicant or the home does not comply with North Dakota Century Code chapter 50-11 and rules governing the provision of foster care for adults, signed by the regional director of the human service center, or the director's designee, and, in writing, be acknowledged by the provider.

2. The applicant shall comply with North Dakota Century Code chapter 50-11 and the rules of the department within the period of time the provisional license is in effect.
3. A provisional license must:
 - a. Prominently state that the home has failed to comply with all applicable laws and rules of the department;
 - b. State that the items of noncompliance are set forth in a written statement available upon request made to the operator;
 - c. Expire on a set date, not to exceed six months from the date of issuance; and
 - d. Be replaced by an unrestricted license, if the applicant demonstrates compliance satisfactory to the department with all applicable laws and rules within the period of time the provisional license is in effect.
4. A provisional license must be issued only to an applicant who has, in writing, waived:
 - a. The right of a written statement of changes as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the denial of an unrestricted license either at the time of application or during the period of operation under a provisional license.
5. Subject to the exceptions contained in this section, a provisional license is equivalent to an unrestricted license.

History: Effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03

75-03-21-20. Time period for correcting deficiencies. The following time periods are established for correction of deficiencies identified in a correction order:

1. For a deficiency requiring a provider or substitute caregiver to provide written documentation of qualifications in providing foster care for adults, a period of up to sixty days must be allowed to correct the deficiency;
2. For a deficiency that requires an inspection for compliance with fire, safety, and sanitation, a period of up to sixty days must be allowed to correct the deficiency;

3. For a deficiency that requires obtaining and providing the results of a drug and alcohol evaluation, psychological evaluation, or a physical examination, a period of up to sixty days must be allowed to correct the deficiency;
4. For deficiencies that require building remodeling, renovation, or change, a period of up to sixty days must be allowed to correct the deficiency;
5. For all other deficiencies, a period of up to thirty days must be allowed to correct the deficiency;
6. All time periods must commence with the date the correction order is received by the provider; and
7. The department may grant extensions for a period of one-half the original allowable time to correct a deficiency upon demonstration by the provider that the need for an extension is created by circumstances beyond the control of the provider and that the provider has diligently pursued the correction of the deficiency.

History: Effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03

75-03-21-21. Penalties. A licensed operator, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions.

1. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of twenty-five dollars per day: subsections 1, 3, 4, 5, 7, and 9 of section 75-03-21-04; section 75-03-21-05; subsections 3, 4, 5, and 6 of section 75-03-21-06; subsection 8 of section 75-03-21-08; subsections 4, 5, 8, and 16 of section 75-03-21-09; subsection 1 of section 75-03-21-10; subsections 3 and 4 of section 75-03-21-11; and subsection 1 of section 75-03-21-13.
2. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of fifteen dollars per day: subsections 6, 8, and 10 of section 75-03-21-04; subsections 5 and 6 of section 75-03-21-08; subsections 9, 10, and 15 of section 75-03-21-09; and section 75-03-21-12.
3. A violation of any other provision of this chapter not noted in subsections 1 and 2 subjects the licensed operator to a fiscal sanction of five dollars per day.

History: Effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03

75-03-21-22. Records. The following records must be kept and maintained for each resident in the home:

1. The resident's full name and birth date;
2. The name, address, and telephone number of the resident's legal representative when one exists;
3. Names, addresses, and telephone numbers of persons who can assume responsibility or consent to health care under North Dakota Century Code section 23-12-13 for the resident if the legal representative cannot be reached immediately in an emergency;
4. The personal care needed and provided to the resident; and
5. A record of any matter required to be reported under subsection 3 of section 75-03-21-09 and of any accident resulting in injury to a resident.

History: Effective May 1, 1995.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03

JUNE 1995

STAFF COMMENT: Chapter 75-03-07.1 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS: Proposed new North Dakota Administrative Code chapter 75-03-07.1, Affidavit of Standard Compliance and Child Care Provider Certification Early Childhood Services.

A public hearing was conducted on December 14, 1994, in Fargo, and on December 16, 1994, in Bismarck, concerning proposed new chapter to North Dakota Administrative Code chapter 75-03-07.1, Affidavit of standard compliance and child care provider contract - Early childhood services. The proposed chapter establishes the standards for provider self-certification in compliance with the federal policy of enhanced parental choice in child care provision.

Section 75-03-07.1-01 provides for a fifteen dollar fee. Section 75-03-07.1-02 enumerates standard compliance certification standards. Section 75-03-07.1-03 requires that standard compliance ensures a smoke-free environment.

Section 75-03-07.1-04 restricts certification to one per household or address and states that the certification is not transferable. The appeals process is provided in section 75-03-07.1-05. Section 75-03-07.1-06 provides the procedure for revocation of standard compliance certification.

CHAPTER 75-03-07.1
AFFIDAVIT OF STANDARD COMPLIANCE AND
CHILD CARE PROVIDER CERTIFICATION
EARLY CHILDHOOD SERVICES

Section

75-03-07.1-01	Fees
75-03-07.1-02	Standard Compliance Certification Standards
75-03-07.1-03	Smoke-Free Environment
75-03-07.1-04	Standard Compliance Certification Restricted to One Per Household or Address - Nontransferability of Early Childhood Services Standard Compliance Certification
75-03-07.1-05	Appeals
75-03-07.1-06	Revocation of Standard Compliance Certification

75-03-07.1-01. Fees. A fee of fifteen dollars must accompany the affidavit for a standard compliance certification document. The fee will go to the county social service board for training and education of the county social service board for training and education of the county staff who administers the standard compliance certification program.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08, 42 CFR Part 98

Law Implemented: NDCC 50-11.1-08

75-03-07.1-02. Standard compliance certification standards.

1. An affidavit for a standard compliance certification document must be submitted to the county social service board in the county in which the applicant proposes to provide early childhood services. An affidavit must be made in the form and manner prescribed by the department. The affidavit must include the following sworn statement:

I am not required by North Dakota state law (Chapter 50-11.1) to be licensed to provide early childhood services.

- a. A license is required if care is provided for six or more children or for four or more infants.
 - b. An "infant" means a child who is less than twenty-four months of age.
2. Applicants for standard compliance certification document shall be directly responsible for the care, supervision, and guidance of the child or children and shall comply with the following standards, certifying:

a. That the applicant:

- (1) Is at least eighteen years of age;
- (2) Is mentally, physically, and emotionally able to provide adequate care for the children in the applicant's charge;
- (3) Is able to devote adequate time and attention to the children in the applicant's charge;
- (4) Will provide food of sufficient quantity and nutritious quality which satisfies the dietary needs of the children while in the applicant's charge;
- (5) Will provide proper health care and protection for children in the applicant's charge;
- (6) Will not use any drugs or alcoholic beverages except for medical purposes while children are in care;
- (7) Will not leave children without supervision;
- (8) Will provide care on a continuing basis for less than a twenty-four-hour period;
- (9) Will annually check the immunization records of the children in the applicant's care; and
- (10) Will be certified in cardiopulmonary resuscitation and first aid. If the provider is not certified at the time of initial standard compliance certification, the provider shall be certified in cardiopulmonary resuscitation and first aid at the time of subsequent standard compliance certification renewal.

b. That discipline will be constructive or educational in nature and may include diversion, separation from the problem situation, talk with the child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding. Children may not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or abuse to any child is grounds for denial or revocation of a standard compliance certification.

- (1) No child may be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by the caretaker or any other adult in the facility.

- (2) Authority to discipline may not be delegated to or be accomplished by children.
 - (3) Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances, and the child must be in a safe, lighted, well-ventilated room within hearing of an adult. No child may be isolated in a locked room or closet.
 - (4) No child may be physically punished for lapses in toilet training.
 - (5) Verbal abuse or derogatory remarks about the child, the child's family, race, religion, or profane, threatening, unduly loud, or abusive language is not to be used when addressing children or in the presence of children.
 - (6) No child may be force-fed unless medically prescribed and administered under a physician's care.
 - (7) Deprivation of meals may not be used as a form of discipline or punishment.
- c. That a working smoke detector will be installed on each floor used by children.
 - d. That a fire extinguisher that is inspected annually will be installed in locations used for child care.
 - e. That a working telephone will be available in the location used for child care.
 - f. That the child care location have a means of transporting children who are in care at the facility.
- 3. If the physical or mental health capabilities of a provider appear to be questionable, the department may request that the provider present evidence of capability to provide the required care based on a formal evaluation.
 - 4. A standard compliance certification is only effective for one year.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08, 42 CFR Part 98

Law Implemented: NDCC 50-11.1-06, 50-11.1-08

75-03-07.1-03. Smoke-free environment. Smoking is not permitted at any time in an early childhood care facility while a child receives care.

History: Effective June 1, 1995.

General Authority: NDCC 23-12-10, 50-11.1-02.2; 42 CFR Part 98

Law Implemented: NDCC 50-11.1-02.2

75-03-07.1-04. Standard compliance certification restricted to one per household or address - Nontransferability of early childhood services standard compliance certification.

1. Only one standard compliance certification per address shall be authorized by the department. Only one person residing in or representing an address will be allowed to self-certify as a provider of early child care services at any one time.
2. The standard compliance certification provider shall be on the premises at all times while children are present.
3. The standard compliance certification granted to a provider is nontransferable.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08; 42 CFR Part 98

Law Implemented: NDCC 50-11.1-04

75-03-07.1-05. Appeals. Applicants for a standard compliance certification or holders of a standard compliance certification have the right to appeal a decision to deny or revoke a standard compliance certification. The appeal must be filed in writing with the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing shall be conducted in the manner prescribed by chapter 75-01-03.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08; 42 CFR Part 98

Law Implemented: NDCC 50-11.1-09, 50-11.1-10

75-03-07.1-06. Revocation of standard compliance certification.

1. The right to provide early childhood services is dependent upon the provider's continuing compliance with the terms of the application affidavit as listed in section 75-03-07.1-02.
2. A fraudulent application is grounds for revocation or denial.
3. The applicant, standard compliance certification provider, or members of the household shall not have been found guilty or pled guilty of offenses which, in the view of the department, directly impact the ability of the registrant to serve the public as a child care provider. Conviction may be grounds for denial or revocation of the standard compliance certification. The applicant for standard compliance

certification shall not have been found guilty of or pled guilty to an offense contained in North Dakota Century Code chapters 12.1-11, perjury - falsification - breach of duty; 12.1-12, bribery - unlawful influence of public servants; 12.1-16, homicide; 12.1-17, assaults - threats - coercion; 12.1-18, kidnapping; 12.1-20, sex offenses; 12.1-21, damaging property or public services; 12.1-22, robbery - breaking and entering offenses; 12.1-23, theft and related offenses; 12.1-24, forgery and counterfeiting; 12.1-27.1, obscenity control; 12.1-27.2, sexual performances by children; 12.1-28, gambling and related offenses; 12.1-28, prostitution; and 12.1-31, disorderly conduct - usury - tobacco to minors.

4. The applicant shall be issued a standard compliance certification, even if the applicant has pled or been found guilty of an offense under subsection 2, if the applicant has been determined by the department to be sufficiently rehabilitated.
5. Standard compliance certification providers shall ensure care for the children receiving services in their facility. If there exists a probable cause determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 indicating that any child has been abused or neglected by the standard compliance certification provider or members of the household, the person shall furnish information to the department, from which the department can determine the provider's current ability to provide care that is free of abuse or neglect. The department shall furnish the determination of ability to the operator and to the regional director of the human service center or his designee for consideration and action on the standard compliance certification document. Appeal of departmental determinations are under chapters 75-01-03 and 75-03-18.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-09; 42 CFR Part 98

Law Implemented: NDCC 50-11.1-09

CHAPTER 75-03-11.1

AGENCY SYNOPSIS: Proposed new North Dakota Administrative Code chapter 75-03-11.1, School Age Child Care Center - Early Childhood Services.

A public hearing was conducted on December 14, 1994, in Fargo, and on December 16, 1994, in Bismarck, concerning proposed new chapter to North Dakota Administrative Code chapter 75-03-11.1, School Age Child Care Center - Early Childhood Services. The proposed chapter establishes the standards for licensure and enforcement of licensure standards for school age child care centers as required by statute. These facilities are required to be licensed by the state and must adhere to specific staffing, health, safety, and programming standards.

Section 75-03-11.1-01 sets forth definitions used throughout the chapter. Section 75-03-11.1-02 describes the effect of licensure and the requirements of the display of licensure. Sections 75-03-11.1-03 and 75-03-11.1-04 set forth the license application process and the license denial or revocation procedure. Section 75-03-11.1-05 defines provisional licenses and the circumstances for which the department will grant a provisional license. Section 75-03-11.1-06 sets forth licensure standards that must be adhered to for licensure issuance or renewal.

Section 75-03-11.1-07 sets forth the operator standards of conduct in relation to the facility and the department. Section 75-03-11.1-08 describes the minimum qualifications for director, including educational requirements. Section 75-03-11.1-09 defines the duties of the director. Section 75-03-11.1-10 describes the minimum qualifications of supervisor or site coordinator. Section 75-03-11.1-11 describes the minimum qualifications for a caregiver or a group leader. Section 75-03-11.1-12 describes the minimum qualifications for volunteers. Section 75-03-11.1-13 states the minimum health requirements for all caregivers.

Staffing requirements are set forth in section 75-03-11.1-14. Section 75-03-11.1-15 defines minimum standards for enrollee's records, while section 75-03-11.1-16 sets forth the confidentiality requirements for those records. Minimum provisions regarding emergency care are described in section 75-03-11.1-17, and minimum emergency evacuation and disaster plans are defined in section 75-03-11.1-18. The requirements for fire inspections are described in section 75-03-11.1-19. Minimum sanitation and safety requirements are listed in section 75-03-11.1-20. Minimum requirements regarding space are provided in section 75-03-11.1-21. Minimum requirements for lighting are defined in section 75-03-11.1-22. Section 75-03-11.1-23 provides minimum standards for food and nutrition.

Minimum program requirements are listed in section 75-03-11.1-24. Requirements for specialized types of care, such as night care, are delineated in section 75-03-11.1-25. Minimum requirements for care of children with special needs are provided for in section 75-03-11.1-26. The rules on discipline are listed under section 75-03-11.1-27. Minimum

standards for the provision of transportation are established in section 75-03-11.1-28.

Allowable time periods for correction of deficiencies noted in correction orders are listed in section 75-03-11.1-29. Provision for fiscal sanctions for noncompliance after the allowable time for correction of deficiencies ends is delineated in section 75-03-11.1-30. Requirements for a smoke-free environment are presented in section 75-03-11.1-31. Appeal procedures for applicants for a license or for holders of licenses are provided in section 75-03-11.1-32.

STAFF COMMENT: Chapter 75-03-11.1 contains all new material but is not underscored so as to improve readability.

**CHAPTER 75-03-11.1
SCHOOL AGE CHILD CARE CENTER
EARLY CHILDHOOD SERVICES**

Section	
75-03-11.1-01	Definitions
75-03-11.1-02	Effect of Licensing and Display of License
75-03-11.1-03	Denial or Revocation of License
75-03-11.1-04	Application Process for License
75-03-11.1-05	Provisional License
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75-03-11.1-07	Operator Standards of Conduct
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75-03-11.1-27	Discipline
75-03-11.1-28	Minimum Standards for Provision of Transportation
75-03-11.1-29	Allowable Time Periods for Correction of Deficiencies
75-03-11.1-30	Fiscal Sanctions
75-03-11.1-31	Smoke-Free Environment
75-03-11.1-32	Appeals

75-03-11.1-01. Definitions. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the facility.

2. "Caregiver or group leader" means any person whose responsibility is the direct provision of school age child care services in facilities subject to this chapter.
3. "Department" means the North Dakota department of human services.
4. "Director" means any person with the responsibility for overseeing and planning the day-to-day school age child care center activities.
5. "Operator" means the licensee who has the legal responsibility and the administrative authority for the school age child care center.
6. "Parent" means any person bearing the legal relationship of father or mother to a child enrolled in a school age child care center, including those persons who legally stand in place of such parent, such as legal guardians or custodians.
7. "School age child care center" means the location for adult supervised care of a school age child care program on a regular basis for more than nineteen children who are usually between the ages of five and twelve years old.
8. "School age child care center satellite" means the location for adult supervised care of a school age child care program on a regular basis for more than nineteen children who are usually between the ages of five and twelve years old in a building or location used at any time by the program other than the building or location listed as the main location on the license.
9. "School age child care program" means a school age child care center providing school age child care services exclusively to school age children before and after school, during school holidays, and during summer vacation.
10. "Supervisor or site coordinator" means any person with the responsibility for organizing and supervising daily program activities.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11.1-02. Effect of licensing and display of license.

1. The issuance of a license to operate a school age child care center is evidence of compliance at the time of licensure with the standards contained in this chapter.

2. The license must be on display in the facility in a conspicuous place.
3. The license must specify the maximum number of children who may be cared for by the school age child care center, which cannot be exceeded at any time.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-11.1-03. Denial or revocation of license.

1. The right to provide school age child care services in a school age child care center is dependent upon compliance with North Dakota Century Code chapter 50-11.1 and the required minimum standards of this chapter.
2. The department may revoke or deny a license to operate a school age child care center under North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
3. If an action to revoke a license is appealed, the licensee may continue to operate the facility pending the final administrative decision or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code section 50-11.1-12.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-09, 50-11.1-10

75-03-11.1-04. Application process for license.

1. An application for a school age child care center license must be made to the county social service board of the county in which the facility is located.
2. Application must be made in the form and manner prescribed by the department.
3. A new application for a license must be filed by a licensed school age child care center upon change of the operator or location.
4. The name, address, and telephone number of the operator and the name, address, and telephone number of the director must be provided to the department and the county social service board upon application for license and must be provided to the

parents of enrolled children when the school age child care center is in operation.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-11.1-05. Provisional license.

1. A school age child care center operator who applies for a license for a newly opened facility, or for a facility previously licensed, where the facility fails to comply with all applicable standards and regulations of the department, at the discretion of the regional director of the human service center or the regional director's designee, may be issued a provisional license.
2. A provisional license must:
 - a. Prominently state that the facility has failed to comply with all applicable standards and regulations of the department.
 - b. State that the items of noncompliance are set forth on a document available upon request made to the facility's operator or director.
 - c. Expire at a set date, not to exceed six months from the date of issuance.
 - d. Be exchanged for an unrestricted license, which must bear the same date as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and regulations.
3. A provisional license shall be issued only to an applicant who, in writing, has waived:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the regional director of the human service center or the regional director's designee and acknowledged in writing by the operator.

5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.
6. The department may not issue a provisional license if the facility is not in compliance with sections 75-03-11.1-19 or 75-03-11.1-20.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-11.1-06. Licensure standards. A license may not be issued or renewed unless the applicant files a sworn statement upon application showing the following standards:

1. The applicant for licensure has not been found guilty of, pled guilty to, or released from incarceration or probation for a felony within the last five years.
2. The applicant for licensure has not been found guilty of or pled guilty to an offense contained in North Dakota Century Code chapters 12.1-11, perjury - falsification - breach of duty; 12.1-12, bribery - unlawful influence of public servants; 12.1-16, homicide; 12.1-17, assaults - threats - coercion; 12.1-18, kidnapping; 12.1-20, sex offenses; 12.1-21, damaging property or public services; 12.1-22, robbery - breaking and entering offenses; 12.1-23, theft and related offenses; 12.1-24, forgery and counterfeiting; 12.1-27.1, obscenity control; 12.1-27.2, sexual performances by children; 12.1-28, gambling and related offenses; 12.1-29, prostitution; and 12.1-31, disorderly conduct - usury - tobacco to minors.
3. The applicant shall ensure care for the children receiving services in the applicant's facility. If there exists a probable cause determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19, indicating that any child has been abused or neglected by the applicant, the individual shall furnish information to the department from which the department can determine the applicant's current ability to provide care that is free of abuse or neglect. The determination of ability will be furnished to the operator and to the regional director of the human service center, or designee, for consideration and action on the application. Appeal of departmental determinations are set forth in chapters 75-01-03 and 75-03-18.
4. The applicant must be issued a license, even if the applicant has pled or been found guilty of an offense under subsection 2, if the applicant has been determined by the department to be sufficiently rehabilitated.

5. The premises to be used by the applicant for the school age child care center meet the local and state requirement regarding sanitation and safety as evidenced by an inspection report of the premises by the local health and fire department and conform to applicable federal and state statutes.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-06.1

75-03-11.1-07. Operator standards of conduct.

1. The operator shall establish the school age child care program.
2. The operator shall apply for a license for each school age child care center operated.
3. The operator shall outline a plan of operation for each school age child care center.
4. The operator shall notify the county social service board of any changes in its operation, its ownership, its governing body, and its staff.
5. The operator shall carry liability insurance for bodily injury and property damage for the school age child care center.
6. Written policies and procedures relating to children's activities and care, enrollment, and the responsibilities and rights of staff and parents must be developed by the operator and kept on file at the school age child care center. The personnel policies must include obtaining written references, employment histories, and a method of conducting staff performance evaluations.
7. Enrollment, attendance, health, financial, and other related records as required by statute or rule must be maintained by the operator.
8. The operator is responsible for submitting to the department the self-certification forms for all staff, volunteers, or others who provide services in the school age child care center and shall notify the department of new staff. The operator shall obtain authorization from each staff member and volunteer for the department to conduct the child abuse and neglect background check.
9. The operator shall maintain information to verify staff qualifications to ensure that care, free of abuse and neglect, is provided to the children in the school age child care center. If a caregiver or employee who has access to children

is employed or retained in the school age child care center when there has been a probable cause determination that the individual has abused or neglected a child, the caregiver or employee shall furnish information to the department for use in determining the caregiver or employee's current ability to provide care free of abuse or neglect. The determination of current ability will be furnished to the operator and to the human service center director, or the director's designee, for consideration and action on the license or license application.

10. The operator shall cooperate with the department and other appropriate agencies in all reasonable efforts to improve the quality of care and the competence of caregivers.
11. The operator shall designate a qualified director. The minimum qualifications for a director are set forth in section 75-03-11.1-08.
 - a. At no time shall a school age child care center be without a director or an acting director.
 - b. Any person designated as acting director for an ongoing period of less than thirty days must meet the qualifications of a supervisor under section 75-03-11.1-10.
 - c. Any person designated as acting director for an ongoing period of more than thirty days must meet the qualifications of a director under 75-03-11.1-08.
12. The operator shall inform the parents of enrolled children and other interested parties of the goals, policies, procedures, and content of the school age child care center's program. A written explanation of how accidents and illnesses will be dealt with must be provided as well as methods of discipline and child management techniques to be used. Information relating to service fees and significant changes in the services offered by the school age child care center must also be provided.
13. The operator must provide written notice to the parents and the county social service board of any significant changes in the effective date of the license, services offered, duration, scope, and impact on the school age child care center.
14. The operator shall maintain sufficient staff to provide physical care to each child for the benefit of their social competence, emotional well-being, and intellectual development.
15. The operator shall have qualified caregivers on call to substitute for regularly assigned staff who are sick, on

leave, or who are otherwise unable to be on duty. The minimum qualifications for caregivers are set forth in section 75-03-11.1-11.

16. Written agreements with the parents of each enrollee must specify the fees to be paid, the method of payment, and the policy regarding delinquent fees.
17. Written policies must be established by the operator, as described in section 75-03-11.1-17, which provide for emergency medical care; the care of children with special physical, emotional, or mental needs; and the treatment of illness.
18. Written policies must be established by the operator concerning the care and safeguarding of personal belongings brought to the school age child care center by enrollees or others on their behalf.
19. The operator shall provide parents with opportunities to observe the school age child care center at any time children are in care and to discuss their children's needs before enrollment. The operator shall regularly offer parents an opportunity to observe their children and to meet with caregivers to advise and comment on their children's needs.
20. Upon request, the operator shall give parents any progress reports on their individual child or children.
21. The operator shall make provisions for safe arrival and departure of all children that also allow for parent-staff interaction. The operator shall develop a system to ensure that children are released only as authorized by the parent or guardian.
22. The operator shall develop and follow a procedure for accountability when a child fails to arrive for the program.
23. The operator shall develop a system to ensure the safety of children whose parents have agreed to allow the children to leave the program without supervision. The system must include written agreements between parents and the operator, and consistent sign-out procedures for released children.
24. The operator shall report any suspected child abuse or neglect pursuant to North Dakota Century Code chapter 50-25.1 and shall develop a policy for staff to follow when reporting an incident.
25. The operator shall have a staff member on duty at all times when children are receiving care who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red

cross, or other similar cardiopulmonary resuscitation training programs approved by the department.

26. The operator shall have at least one staff member with first-aid training on duty at all times when children are receiving care.
27. The operator shall comply with the following training requirements:
 - a. The director and supervisors shall furnish documentation of thirteen hours of training annually to the department;
 - b. Caregivers working thirty to forty hours per week shall furnish documentation of thirteen hours of training annually;
 - c. Caregivers working twenty to thirty hours per week shall furnish documentation of eleven hours of training annually;
 - d. Caregivers working ten to twenty hours per week shall furnish documentation of nine hours of training annually;
or
 - e. Caregivers working less than ten hours per week shall furnish documentation of seven hours of training annually.
28. If the operator of the school age child care center is also the director, the operator shall meet the qualifications of the director under section 75-03-11.1-08.
29. Caregivers under the age of eighteen and all children in their care shall have adult supervision at all times.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03.1, 50-11.1-04(3)

75-03-11.1-08. Minimum qualifications of director.

1. The director shall be an adult in good mental and physical health, capable of mature judgment, and knowledgeable and experienced in management and interpersonal relationships.
2. The director shall furnish documentation of at least one of the following qualifications, in addition to those in subsection 1, being met:
 - a. A bachelor's degree in the field of elementary education with eight weeks experience in a child care center or similar setting;

- b. A bachelor's degree with twenty-four semester hours or thirty quarter hours in child development, child psychology or fields directly related to child psychology, and six months experience in a child care center or similar setting;
- c. An associate of arts degree in the field of early childhood development and six months' experience in a child care center or similar setting;
- d. A teaching certificate in elementary education with twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields;
- e. Certification as a child development associate or similar status where such a local, state, or federal certification program exists, and one year's experience in a child care center or similar setting;
- f. A bachelor's degree with twelve semester hours or fifteen quarter hours in child development, child psychology or fields directly related to child psychology, and one year's experience in a child care center or similar setting;
- g. Certification as a montessori teacher with one year's experience in a montessori school, child care center or similar setting, and twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields;
- h. Qualification under regulations in force and effect prior to July 1, 1989, and continuous employment as a director from that time, and at all times subsequent, at the same center; or
- i. A high school diploma with three years' experience as a licensed group child care supervisor and three positive reference letters from parents whose children were in the supervisor's care.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-09. Duties of director.

1. The director is responsible for program planning, supervision, and activity.

2. The director shall assist the operator in maintaining enrollment, health, attendance, financial, and other related records as required by this chapter.
3. The director is responsible for scheduling, supervision, and conduct of staff members.
4. The director shall designate a supervisor or onsite coordinator for each school age child care center.
5. The director shall assist the operator in efforts to improve the quality of care and the competence of caregivers.
6. The director shall be present at the center at least sixty percent of the time that the center is open. If the operation has satellite sites, the director shall be present an aggregate of sixty percent of the combined time that the director is present at all sites.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11.1-10. Minimum qualifications of supervisor or site coordinator.

1. The supervisor or site coordinator shall furnish documentation of compliance with at least one of the following qualifications:
 - a. An associate of arts degree in the field of early childhood development or elementary education, or a secondary degree with an emphasis on middle school or junior high training;
 - b. Certification as a child development associate or similar status where such local, state, or federal certification program exists;
 - c. Certification as a montessori teacher;
 - d. A high school diploma and one year's experience in a child care center or similar setting; or
 - e. High school equivalency and one year's experience in a child care center or similar setting.
2. The supervisor or site coordinator shall demonstrate the ability to work with children and the willingness to increase skills and competence through experience, training, and supervision.

3. The supervisor or site coordinator must be an adult in good mental and physical health so as to be able to provide adequate care for children in a child care center environment.
4. The supervisor or site coordinator must be certified in cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-11. Minimum qualifications for caregiver or group leader. Caregivers or group leaders must be at least sixteen years of age and must be mentally, physically, and emotionally able to provide adequate care for the children in their charge.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-12. Minimum qualifications for volunteers. If providing child care, volunteers shall meet qualifications of caregivers or group leaders, receive orientation as needed for all assigned tasks, and complete health self-certification forms.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-13. Minimum health requirements for all caregivers.

1. All caregivers shall furnish documentation, within five days of employment, that they do not have health problems that would interfere with their functioning as caregivers or endanger the health of the children or other staff. All staff and volunteers shall furnish documentation of a negative tuberculosis test before the first day of employment.
2. If the physical or mental health of the operator, director, supervisor, or any caregiver appears questionable, the department may require the individual to present evidence of such capabilities based on a formal evaluation. If appropriate, the department may arrange for an evaluation through the use of professional staff with the caregiver signing a release authorizing the use of evaluation results for licensing purposes. Any costs for evaluations needed are to be borne by the caregiver.

History: Effective June 1, 1995.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-14. Staffing requirements.

1. Staff and their use shall reflect program requirements, individual differences in the needs of the children enrolled, and permit flexible groupings where necessary. Service personnel engaged in housekeeping and food preparation are not counted in the children staff ratio for periods of time when they are so engaged. Children with special conditions requiring more than usual care and supervision must have provided to them adequate care and supervision without adversely affecting care provided to the remaining children in the facility.
2. Staff ratios.
 - a. The minimum required staff to child ratio is one staff person per fourteen or less children. With fifteen or more children, two staff persons are required.
 - b. Staff members meeting the qualifications of center director, site coordinator, group leader, assistant group leader, or caregiver over eighteen years of age may be counted in the required ratio only for the time they are directly responsible for a group of children.
 - c. Caregivers under the age of eighteen and all children in care must have adult supervision in the center at all times.
 - d. When more than eight children are taken off premises, the children shall be accompanied by at least two staff persons, one of whom is qualified group leader or caregiver who is eighteen years old or older. When eight or fewer children are taken off premises, the accompanying staff person must be a qualified group leader or caregiver who is eighteen years old or older.

History: Effective June 1, 1995.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-08

75-03-11.1-15. Minimum standards for enrollee's records.
Information must be kept and maintained in the records concerning each individual child enrolled in the school age child care center and must be updated as appropriate. The information must include:

1. The child's full name, birth date, current home address, name of the school the child attends, and the name of the classroom teacher;
2. A current photo of the child;
3. The names, addresses, and home and business telephone numbers of the parents or other persons legally responsible for the child;
4. The names and telephone numbers of persons who can assume responsibility for the child if the persons legally responsible for the child cannot be reached immediately in an emergency;
5. The written consent of a parent or legally responsible party for emergency care, first aid, and emergency transportation;
6. The names and telephone numbers of persons authorized to take the child from the school age child care center;
7. Written documentation that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health; and
8. A licensed health practitioner's statement based upon a health assessment or a health assessment statement completed by the parent. No more than six months must have elapsed between the date the health assessment was completed and the date of initial enrollment. The statement must indicate any special precautions for diet, medication, or activity. This statement serves as evidence that a child is physically able to take part in the child care program. The statement must be completed annually.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07

75-03-11.1-16. Confidentiality of child's records. Information pertaining to the admission, progress, health, or discharge of a child is confidential. Access is limited to staff, parents, authorized department representatives, and persons who possess a written authorization from the child's parent. The school age child care center shall have a release of information form available, and the form must be executed prior to the release of information.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07

75-03-11.1-17. Minimum provisions regarding emergency care.

1. The school age child care center must have a written policy which addresses all health aspects of the program, including staff responsibilities for emergency and preventive health measures. Each staff member must receive a copy of the policy and must be trained in the implementation of the policy during staff orientation. Parents must be notified of the policy prior to enrollment and provided a copy upon request.
2. The school age child care center shall conspicuously post emergency response procedures. All staff members shall receive training concerning emergency procedures. At least one staff member having cardiopulmonary resuscitation certification and a minimum of five hours of first-aid training related to the health and safety of young children shall be available at all times. The five hours of training may be applied to the individual's minimum hours of training annually only for the first year of licensing.
3. A first-aid kit approved by the state department of health must be maintained and kept in each major activity area so as to be inaccessible to children, yet readily accessible to staff.
4. The school age child care center must have a telephone immediately accessible to the staff with a list of emergency telephone numbers conspicuously posted adjacent to the telephone including fire, police, ambulance, and poison control.
5. The school age child care center shall inform parents in writing of any first aid administered to their child within twenty-four hours of the incident. Parents must be notified immediately of any injury which requires emergency care beyond first aid. Each injury report must be made a part of the child's record.
6. The school age child care center shall implement infection control measures to prevent the spread of communicable diseases. Regulations and recommendations set by the division of communicable disease control of the state department of health relating to serious illnesses, contagious diseases, and reportable diseases must be followed.
7. When health policies of the school age child care center allow ill children to be admitted or to remain in the school age child care center, medical consultation must be available regarding special care and medication.
8. If children in the school age child care center require medication, the following procedures must be observed:

- a. Written permission to dispense over-the-counter medication must be obtained from the parents with proper instructions as to the administration of the medicine.
 - b. Medication prescribed by a physician must be accompanied by the physician's written instructions as to its dosage and storage, and labeled with the child's name and dated.
 - c. A written record of the administration of medication to each child must be kept. Records must include the time and date of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.
 - d. All medication must be securely kept.
9. A supervised, temporary isolation area must be provided for a child who is too ill to remain in the group or who has an infectious or contagious disease. The following procedures must be followed when such signs or symptoms are observed:
- a. Parents must be notified immediately.
 - b. First aid must be provided and medical care must be sought, if necessary.
10. A source of emergency health services must be readily available to the center. Provisions must be made to provide emergency transportation. When a child is brought to another place for emergency care, the child must be accompanied by an adult who remains with the child until medical personnel assume the responsibility for the child's care or until the parent or responsible party arrives.
11. A school age child care center may provide information to parents, as needed, concerning child health and social services available in the community and shall assist parents in obtaining such services.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01

75-03-11.1-18. Minimum emergency evacuation and disaster plan.

- 1. Each school age child care center must have an approved disaster plan for the safety of the children in case of an emergency.
- 2. Fire evacuation drills must be performed in accord with local fire department guidelines.

History: Effective June 1, 1995.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-19. Fire inspections.

1. Annual fire inspections must be completed by local or state fire authorities. The operator shall timely correct fire code violations noted by the fire inspector and shall file the inspection report with the county social service board.
2. The school age child care center shall provide:
 - a. The local fire inspector's written statement of compliance with the local fire code;
 - b. The local fire inspector's written statement that the school age child care center was inspected and that the inspector is satisfied that the school age child care center meets minimum fire and safety standards; or
 - c. A written statement from an appropriate fire official that the school age child care center meets minimum fire and safety standards adopted by the state fire marshal.

History: Effective June 1, 1995.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-07

75-03-11.1-20. Minimum sanitation and safety requirements.

1. When food is prepared, the school age child care center shall be annually inspected by an environmental health practitioner for health and sanitation. The inspection report must be filed with the department and any problems found must be timely corrected.
2. The school age child care center's building, grounds, and equipment must be located, cleaned, and maintained to protect the health and safety of children.
3. The school age child care center group areas must be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, attractive nuisances, and other health and safety hazards.
4. Exterior play areas in close proximity to busy streets and other unsafe areas used by the school age child care center must be fenced or have natural barriers to protect the children.

5. Garbage must be kept away from areas used by children and kept in noncombustible containers with tight lids. Open burning is prohibited.
6. Wading pools used by the school age child care center must be strictly supervised and must be emptied and cleaned daily. All swimming pools must be approved by the state department of health division of water supply and pollution control. Operational practices as established by the state department of health must be followed.
7. All school age child care center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children might be present, must have such surfaces repainted or must submit evidence that such surfaces do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish lacquer, putty, plaster, or similar coating of structural material that contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter or in excess of five-tenths of one percent in the dried film or coating.
8. Indoor and outdoor equipment, toys, and supplies must be safe, strong, nontoxic, and in good repair. All toys must be cleaned on a routine basis.
9. Interior floors and steps must not be slippery or have splinters. All exterior steps and walkways must be kept free from accumulations of water, ice, or snow.
10. Elevated areas such as stairs or porches must have railings and approved safety gates where necessary to prevent falls.
11. Doors and pathways must not be blocked.
12. All light bulbs in areas used by children must be properly shielded or shatterproof.
13. Combustible materials must be kept away from light bulbs and other heat sources.
14. Adequate ventilation, heating, and proper humidity must be maintained. During the heating season when the center is occupied by children, the room temperature must not be less than 68 degrees Fahrenheit [20 degrees Celsius] and not more than 74 degrees Fahrenheit [23.33 degrees Celsius] measured three feet [91.44 centimeters] above the floor. All heating devices must be approved by the local fire department.
15. Bathrooms, tables, chairs, and floors must be cleaned daily. Cots and mats must be individually labeled, and cleaned and

sanitized weekly. If different children use the same cots or mats, the cots or mats must be thoroughly cleaned and sanitized between each use. Cots and mats must be constructed of easily cleanable materials. Separate storage must be provided for personal blankets or coverings and pillows.

16. Personal items such as combs and toothbrushes must be individually identified and stored in a sanitary manner.
17. Hazardous or potentially injurious or poisonous substances must be kept in locked storage in a space designed solely for this purpose and must be inaccessible to children. If medications are stored in a refrigerator, they must be stored collectively in a spillproof container.
18. Caregivers and staff members shall wash hands before preparing or serving meals, after using toilet facilities, and after any other procedure that contaminates their hands.
19. When food is prepared, served, or stored in a child care center, it must be done in a sanitary and safe manner with sanitary and safe equipment as indicated by the state department of health. The operator shall refrigerate sack lunches as required.
20. Water supply standards.
 - a. Drinking water must be from a source approved by the state department of health;
 - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups;
 - c. Hot and cold running water of sufficient pressure from a system approved by the state department of health must be available; and
 - d. A tempering valve must be provided to control the temperature of hot water supplied to lavatories and bathing facilities not to exceed 120 degrees Fahrenheit [49.2 degrees Celsius].
21. Bathroom facility standards.
 - a. Bathrooms must be provided and convenient to the areas used by the children and staff;
 - b. Bathrooms must meet requirements of the environmental health practitioner;

- c. With a minimum of one sink and one flush toilet provided per fifteen children, bathrooms must be located in rooms separate from those used for cooking, eating, and sleeping;
 - d. Separate bathrooms with partitions installed to separate toilets must be provided for both boys and girls six years of age and over;
 - e. One handwashing sink or its equivalent must be provided per toilet;
 - f. Sanitary hand drying equipment or materials must be provided near handwashing sink; and
 - g. Safe step stools must be provided to allow standard-sized toilets and sinks to be used by the children.
22. Sewage and wastewater disposal standards.
- a. A school age child care center shall meet the requirements of the state plumbing code as contained in North Dakota Administrative Code article 62-03; and
 - b. Any school age child care center not on a municipal or public water supply or wastewater system shall be approved by an environmental health practitioner.
23. Laundry standards.
- a. If the school age child care center provides laundry service for common use linens, towels, or blankets, it must have adequate space and equipment for safe and effective operation;
 - b. Soiled linens must be placed in closed containers or hampers during storage and transportation;
 - c. In all new or extensively remodeled premises, the handling, sorting, or washing of soiled linen or blankets must take place in a designated area separated from food preparation, serving, and kitchen areas by a permanent partition;
 - d. In existing centers where physical separation of laundry and kitchen areas is impractical, procedures must be developed to prohibit the washing or transportation of laundry while meals are being prepared or served;
 - e. The sorting of laundry in food preparation, serving, or kitchen areas is prohibited;

- f. The water temperature for washing laundry must be greater than 170 degrees Fahrenheit [77.2 degrees Celsius]; and
 - g. If water temperature is less than 170 degrees Fahrenheit [77.2 degrees Celsius], bleach must be used during the rinse cycle to achieve fifty parts per million of available hypochlorite at a temperature of at least 75 degrees Fahrenheit [24 degrees Celsius].
- 24. Operators shall keep the premises free of insects and rodents, and chemicals for pest control must not be applied in areas accessible to children when children are present:
- 25. The standards for pets.
 - a. All pets must be approved by an environmental health practitioner;
 - b. All pets must be properly restricted and maintained;
 - c. The feeding and care of pets must be performed only by nonfood preparation staff; and
 - d. Nondomestic animals such as skunks, opossum, or raccoons are prohibited.

History: Effective June 1, 1995.

General Authority: NDCC 23-01-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-21. Minimum requirements regarding space.

- 1. There must be a minimum of 35 square feet [3.25 square meters] of indoor activity area per child. Work areas, unused space, bathrooms, pantries, passageways leading to outdoor exits, areas not exclusively used for child care center purposes, and areas occupied by furniture or appliances that children do not or should not play under or on is not considered when computing minimum space. Every child must have daily access to at least 75 square feet [6.97 square meters] of outdoor play space. If available outdoor play space cannot accommodate the licensed capacity of the school age child care center at one time, the operator shall prepare a written schedule of outdoor play times that limits use of the play area to its capacity.
- 2. The school age child care center shall have sufficient space and appropriate furniture and equipment to provide for support functions necessary to the program.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11.1-22. Minimum requirements for lighting. The school age child care center must be properly lighted. The following technical requirements must be met:

1. Sixty-five foot-candles of light for all general use and play area;
2. Twenty-five foot-candles of light for all bathrooms;
3. Fifty foot-candles of light for kitchen, laundry, and office areas; and
4. Fifteen foot-candles of light for corridors and storage areas.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-23. Minimum standards for food and nutrition.

1. Meals and snacks must be planned to meet the child's nutritional requirements as recommended by the child care food program of the United States department of agriculture in proportion to the amount of time the child is in the program each day. The amount of food served is to be adjusted according to the age of the child.
2. Safe drinking water must be accessible to the children at all times.
3. The operator shall supplement sack lunches that children bring in order to provide nutritious and sufficient amounts of food for children.
4. A dietician or other food service professional must be used as a consultant if the services are available free of charge.
5. Children must be served a nutritious morning and afternoon snack, and if the parent does not provide a sack lunch, a nourishing lunch as outlined below:
 - a. Children in care for more than three hours shall receive either a snack or lunch, whichever is appropriate by the time of day;
 - b. Children in care during normal mealtime hours shall be served food appropriate for that time of day; and

- c. Children who are present for more than four hours or come directly to the center from a morning kindergarten class shall receive a meal.
- 6. When the operator is responsible for providing food to children, menus must be prepared on a weekly basis and made available to the parents, the department, or other appropriate persons.
- 7. Information provided by the children's parents as to eating habits, food preferences, or special needs must be considered in the feeding schedules and menus.
- 8. Children must be served in a manner commensurate with their age, using appropriate dishes and eating utensils.
- 9. Children must be encouraged to eat the food served, but coercion or forced feeding is prohibited.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-24. Minimum program requirements.

- 1. A school age child care center shall establish a planned program of developmentally appropriate activities that promote intellectual, social, emotional, and physical development, and enhance a child's cognitive, creative, and communicative skills.
- 2. The program must be based on the developmental needs of the children enrolled. The program must be flexible and subject to modification for individual child differences.
- 3. The program must be written and must be varied in order to promote the physical and emotional well-being of the children, to encourage the acquisition of information and knowledge, and to foster the development of language skills, concepts, self-discipline, and problem-solving activities. The program must describe how the activities planned will meet the children's developmental needs, including the special needs of children who are multilingual or handicapped. The written program must be available to parents.
- 4. Learning experiences must be conducted in consultation with parents in order to ensure harmony with the lifestyle and cultural background of the children.
- 5. The program must provide a balance of quiet and active indoor and outdoor group and individual activities. A time for

supervised child-initiated and self-selected activity must be included in each day's scheduled program.

6. If the children are allowed to assist in any food preparation, the activity must be limited to use of equipment and appliances that do not present a safety hazard. Children may not be allowed in the kitchen or laundry area unsupervised.
7. A variety of games, toys, books, crafts, and other activities and materials must be provided to enhance the child's intellectual and social development and to broaden the child's life experience. Each school age child care center shall have enough play materials and equipment so that each child can be individually involved.
8. The cultural diversity of the children must be reflected in the program through incorporation of their language, food, celebration, and lifestyles, where appropriate.
9. Equipment and furniture must be durable, safe, and adapted for children's use.
10. Sufficient space accessible to children must be provided for each child's personal belongings.
11. At the time of enrollment, staff shall discuss with the parents the children's habits, activities, and schedules while at home and in school and special concerns about past and future behavior and development. The schedule and activities in child care must be designed to complement and supplement the children's experiences at home and in school.
12. Parents shall be encouraged by staff to visit the facility, observe, and participate in the care of their children.
13. The staff shall contact parents to exchange information concerning the child and the child care program, as well as to offer them meaningful opportunities to participate in general program policymaking.
14. Personal hygiene practices appropriate for a child's age and development must be stressed.
15. Any concerns about the health, development, or behavior of any child on the part of staff must be communicated to the parent promptly.
16. Each child's cultural and ethnic background and primary language or dialect must be respected by staff.
17. Each school age child care center shall have a designated area where a child can sit quietly or lie down to rest. There must be sufficient cots or mats for the children who choose to nap

or rest. The floor may only be used when it is carpeted or padded, warm, free from drafts, and when individual blankets or coverings are used. Napping schedules must be set for children according to their ages and needs.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01

75-03-11.1-25. Specialized types of care.

1. Minimum standards for night care.

- a. Any school age child care center offering night care shall provide program modifications for the special needs of children and their parents during the night.
- b. In consultation with parents, special attention must be given by the caregiver to providing for a transition into this type of care appropriate to the child's emotional needs.
- c. When practical, children shall be left for care and picked up before and after their normal sleeping period so that there is minimal disturbance of the child during sleep, but consideration must be given to the parent's work schedule.
- d. Comfortable beds and cots complete with a mattress or pad must be available.
 - (1) Pillows and mattresses must have clean coverings.
 - (2) Sheets and pillowcases must be changed as often as necessary for cleanliness and hygiene, but not less than weekly. If beds are used by different children, sheets and pillowcases must be laundered before use by other children.
 - (3) Each bed or cot must have sufficient blankets available.
- e. The operator shall require each child in night care to have night clothing and a toothbrush marked for identification.
- f. During sleeping hours, the staff shall be awake and within listening distance in order to provide for the needs of children and for response to emergencies.

2. Minimum standards for drop-in centers.

- a. If a school age child care center serves drop-in children, the center shall be sufficiently staffed to effectively handle admission records and adequately explain school age child care center policies. Admission records secured must comply with all enrollment requirements contained in section 75-03-11.1-13.
- b. The program must reflect the special needs of the children who are provided drop-in service.
- c. Admittance procedures must provide for a period of individual attention for the child in order to acquaint the child with the school age child care center, its equipment, and the staff.
- d. No school age child care center shall receive drop-in or part-time children if it causes the center to exceed the total number of children for which it is licensed.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-26. Minimum requirements for care of children with special needs.

1. When children with special needs are enrolled, the responsible individual in the school age child care center shall consult with the child's parents, the child's source of professional health care, or, when appropriate, other health and professional consultants in order to provide care which meets the child's special needs.
2. The staff shall receive proper instructions as to the nature of the child's disability and potential for growth and development.
3. Where the nature of the special need or the number of children with special needs warrants added care, the school age child care center shall add sufficient staff as deemed necessary by the department to compensate for those needs.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-27. Discipline.

1. The school age child care center must have a written policy regarding the discipline of children that must be interpreted to staff members before the school age child care center

begins operation or before staff members begin working with children.

2. Discipline must be constructive or educational in nature, and may include such measures as diversion, separation from problem situations, talking with the child about the situation, or praise for appropriate behavior.
3. Children may not be subjected to physical harm, fear, or humiliation.
4. Children may not be punched, spanked, shaken, bitten, roughly handled, pinched, kicked, or subjected to any other physical punishment or ridicule.
5. Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances. The child must be within hearing and vision of a staff member, in a safe, lighted, well-ventilated area. Isolation in a locked room, bathroom, closet, or pantry is prohibited.
6. Discipline must not be associated with food, rest, or toileting. Food may not be denied to the child as a disciplinary measure. Punishment for toileting accidents is prohibited.
7. Verbal abuse and derogatory remarks are prohibited.
8. Authority to punish cannot be delegated to other children nor shall the center sanction one child punishing another child.
9. Disregard of this section or the use of any disciplinary measures that result in physical injury or abuse to any child is grounds for the suspension, denial, or revocation of the school age child care license.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08, 50-11.1-01

Law Implemented: NDCC 50-11.1-08

75-03-11.1-28. Minimum standards for provision of transportation.

1. The operator shall establish a written policy governing transportation, including emergency procedures, of children to and from the child care center, if the center provides transportation. The policy must specify the transportation provider and the procedure for obtaining parental permission for special field trips and related activities that occur outside the school age child care center. If the school age child care center provides transportation, the operator shall inform the parents of the insurance coverage on the vehicles. Any vehicle used for transporting children must be registered,

have liability coverage, be in safe operating condition, and be in compliance with state and local laws.

2. When transportation is provided by a school age child care center, the children shall be protected by adequate staff supervision, safety precautions, and liability and medical insurance.
 - a. Children to staff ratios must be maintained to assure the safety of the children while being transported. The department requires one bus driver per twenty children and one additional person for twenty-one children or more.
 - b. Children cannot be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver must be in compliance with all relevant state and local laws. Child restraints and seatbelts must be used.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-29. Allowable time periods for correction of deficiencies.

1. Deficiencies noted in a correction order must be made according to the following time periods:
 - a. For a deficiency requiring the hiring of a school age child care center director with those qualifications as set forth in section 75-03-11.1-07 or a child care supervisor with those qualifications as set forth in section 75-03-11.1-09, a period of sixty days to correct the deficiency is allowed.
 - b. For a deficiency that requires an inspection by a state fire marshal or local fire department authority under section 75-03-11.1-18, a period of sixty days to correct the deficiency is allowed.
 - c. For a deficiency that requires substantial building remodeling, construction, or change, a period of sixty days to correct the deficiency is allowed.
 - d. For all other deficiencies, a period of twenty days is allowed to correct the deficiency.
2. All time periods must commence with the date of receipt by the licensee of the correction order.

3. The regional supervisor of early childhood program licensing shall have the authority to grant extensions of additional time to correct deficiencies, up to a period of one-half the original allowable time allotted, to correct the deficiency. These extensions may be granted upon application by the licensee upon a showing that the need for the extension is created by unforeseeable circumstances and that the licensee has diligently pursued the correction of the deficiency.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-11.1-30. Fiscal sanctions.

1. A violation of subsections 3, 12, and 18 of section 75-03-11.1-19; subsection 2 of section 75-03-11.1-20 and section 75-03-11.1-26 results in the licensee being assessed a fiscal sanction of twenty-five dollars per day for noncompliance after the allowable time for correction of deficiencies end.
2. A violation of section 75-03-11.1-06, subsections 1, 2, 4, 5, 10, 16, and 19 of section 75-03-11.1-19; subsection 1 of section 75-03-11.1-20; subsections 3 and 10 of section 75-03-11.1-23; subdivision a of subsection 1 of section 75-03-11.1-24; and section 75-03-11.1-27 results in the licensee being assessed a fiscal sanction of fifteen dollars per day for noncompliance after the allowable time for correction of deficiencies ends.
3. A violation of any other section of this chapter not noted in subsection 1 or 2 results in the licensee or registrant being assessed a fiscal sanction of five dollars per day for noncompliance after the allowable time for correction of deficiency ends.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-07.4

75-03-11.1-31. Smoke-free environment. In any school age child care center, smoking is prohibited at any time while a child is receiving care.

History: Effective June 1, 1995.

General Authority: NDCC 23-12-10, 50-11.1-02.2

Law Implemented: NDCC 50-11.1-02.2

75-03-11.1-32. Appeals. Applicants for a license or holders of a license have the right to appeal a decision to deny or revoke a license, or to reject a corrective action plan. The appeal must be filed in writing with the division of the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, the department shall conduct an administrative hearing in the manner prescribed by chapter 75-01-03.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-09

AGENCY SYNOPSIS: Proposed new North Dakota Administrative Code chapter 75-03-23, Provision of Home and Community-Based Services Under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program.

A public hearing was conducted on December 21, 1994, in Bismarck, concerning proposed chapter, North Dakota Administrative Code Chapter 75-03-23, Provision of Home and Community-Based Services Under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program. The proposed chapter describes SPED eligibility criteria for the eligible and disabled.

Section 75-03-23-04 provides the eligibility criteria for the medicaid waiver program.

Section 75-03-23-05 lists and describes the services available under the SPED program that may be provided to a client. Those services are adult day care services, adult foster care, chore services, family home care services, home and community-based services case management, home health aid services, homemaker services, nonmedical transportation services, personal attendant care services, and respite care services.

Section 75-03-23-06 describes and lists the services available under the medicaid waiver program. Those services are adult day care services, chore services, home and community-based services case management, home health aide services, homemaker services, nonmedical transportation services, personal attendant care services, and respite care services.

Section 75-03-23-07 provides the qualifications a person needs to become a qualified service provider and the process for becoming a qualified service provider.

Section 75-03-23-08 outlines the process and reasons for removing the qualified service provider from the active provider list. Payment under the SPED program and the medicaid waiver program is provided for in section 75-03-23-09. Qualified service provider noncompliance with departmental policies and procedures is addressed in section 75-03-23-10.

Section 75-03-23-11 addresses denial and termination of services and the appeal process.

STAFF COMMENT: Chapter 75-03-23 contains all new material but is not underscored so as to improve readability.

**CHAPTER 75-03-23
PROVISION OF HOME AND COMMUNITY-BASED SERVICES
UNDER THE SERVICE PAYMENTS FOR ELDERLY AND DISABLED PROGRAM
AND THE MEDICAID WAIVER FOR THE AGED AND DISABLED PROGRAM**

Section	
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75-02-23-11	Denial and Termination of Services - Appeal

75-03-23-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-06.2, except:

1. "Activities of daily living" means the daily self-care personal activities that include bathing, dressing or undressing, eating or feeding, toileting, continence, transferring in and out of bed or chair or on and off the toilet, and getting around inside.
2. "Adaptive assessment" means an in-home evaluation to identify adaptive devices, equipment, or modifications that enhance the independence and functional capabilities of individuals who may otherwise be unable to remain in their home. An interdisciplinary team conducts the assessment and oversees implementation of recommendations.
3. "Aged" means a person who is sixty-five years of age or older.
4. "Client" means an individual who meets the eligibility requirements to have services reimbursed under this chapter.

5. "Congenital disability" means a disability that exists at birth or shortly thereafter, and is not attributable to a diagnosis of either mental retardation or a closely related condition of mental retardation.
6. "Department" means the North Dakota department of human services, or its designee.
7. "Disability due to trauma" means a disability that results from an injury or assault to the body by an external force.
8. "Disability that is acquired" means a disability that results from an assault that occurs internally within the body.
9. "Disabled" means a person under age sixty-five who has a congenital disability, a disability due to trauma, or an acquired disability.
10. "Functional assessment" means an evaluation process based on a person's ability to perform self-care activities and other skills necessary for independent living.
11. "Functional impairment" means the inability to perform, either by oneself or with adaptive aids or with human help, the specific activities or instrumental activities of daily living.
12. "Home and community-based services" means the array of services under the SPED program and medicaid waiver defined in the comprehensive human service plan and the other services the department determines to be essential and appropriate to sustain individuals in their homes and in their communities, and to delay or prevent institutional care.
13. "Instrumental activities of daily living" means tasks requiring cognitive ability or physical ability, or both. Tasks include preparing meals, shopping, managing money, housework, laundry, taking medicine, transportation, using the telephone, and mobility outside the home.
14. "Medicaid waiver program" means the federal medicaid waiver for the aged and disabled program, as defined in subpart G of 42 CFR 441, under which the department is authorized to provide specific home and community-based services to aged and disabled persons who are at risk of being institutionalized.
15. "Service payment" means the payment issued by the department to a qualified service provider for the provision of authorized home and community-based services to eligible aged and disabled persons.
16. "SPED program" means "service payments for elderly and disabled program", a state program which authorizes the

department to reimburse qualified service providers for the provision of covered home and community-based services to eligible aged and disabled persons.

17. "SPED program pool" means the list maintained by the aging services division of the department that contains the names of those individuals who meet the eligibility criteria to receive services under the SPED program and for whom SPED program funding is available when the individual's name is transferred from the SPED program pool to SPED program active status.

History: Effective June 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

75-03-23-02. Eligibility criteria.

1. An applicant shall be entered in the SPED program pool before service payments may be authorized. The department shall allow entry into the SPED program pool to occur:
 - a. When the county social service board of the county where the applicant resides or will receive services submits a form in the manner prescribed by the department; or
 - b. When the applicant meets the special circumstances provided in section 75-03-23-03.
2. An applicant's resources must not exceed fifty thousand dollars for the applicant to be eligible for services under the SPED program. For purposes of this section, resources are cash or similar assets that can be readily converted to cash and include residences owned by the applicant other than the applicant's primary residence.
3. An applicant eighteen years of age or older is eligible for the SPED program pool if:
 - a. The applicant has functional impairment in activities of daily living or in instrumental activities of daily living as specified by the department in policies and procedures to indicate applicant eligibility;
 - b. The applicant's functional impairment has lasted, or can be expected to last, three months or more;
 - c. The applicant's functional impairment is not the result of a mental illness or a condition of mental retardation, or a closely related condition;

- d. The applicant is living in a housing arrangement commonly considered a private family dwelling and not in an institution, dormitory, or congregate housing arrangement;
 - e. The applicant is not eligible for services under the medicaid waiver program.
 - f. The applicant would receive one or more of the covered services in accord with department policies and procedures for the specific service;
 - g. The applicant agrees to the plan of care developed for the provision of home and community-based services; and
 - h. The applicant is not responsible for one hundred percent of the cost of the covered service provided, in accord with the human service plan sliding fee scale based on family size and income.
4. An applicant under eighteen years of age is eligible for the SPED program pool if the applicant is determined to need nursing facility level of care as provided for in section 75-02-02-09 and the applicant's care need is not the result of a mental illness or the condition of mental retardation, or a closely related condition.
5. Applicants under eighteen years of age are subject to the following limitations or requirements in addition to the eligibility criteria in subsection 3.
- a. An applicant is not eligible for service payments unless care provided to the applicant by the applicant's parent or the applicant's spouse is provided under family home care.
 - b. An applicant is eligible for service payments if the caregiver:
 - (1) Had to terminate outside employment to care for the applicant;
 - (2) Needs to supplement the family income by outside employment if the SPED payments were not available; or
 - (3) Would be dependent on county poor relief for support with the service payment.
6. All applicants must be capable of directing self-care or have a legally responsible party to act in the applicant's behalf.
7. An applicant is not eligible for service payments if the care provided is court ordered.

History: Effective June 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5), 50-06.2-04(3)

75-03-23-03. Eligibility determination - Authorization of services.

1. The department shall provide written notice to the county social service board of the county where the applicant receives services as of the effective date of the applicant's eligibility for services funded under the SPED program.
2. A person transferred to active status from the SPED program pool shall continue to meet the eligibility criteria of section 75-03-23-02 in order to remain eligible for services funded under the SPED program.
3. The county social service board's home and community-based services case manager is responsible for:
 - a. Verifying that the person transferred to active status continues to meet the eligibility criteria for entry into the SPED program pool;
 - b. Developing a care plan; and
 - c. Authorizing covered services in accord with department policies and procedures.
4. A recipient of services under the medicaid waiver program, who becomes ineligible for the medicaid waiver program because evaluation shows that the recipient no longer requires a nursing facility level of care, shall not have to go through the SPED program pool to receive services through the SPED program as long as all eligibility criteria in subsections 2 through 5 of section 75-03-23-02 are met.

History: Effective June 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

75-03-23-04. Eligibility criteria for medicaid waiver program.
An applicant is eligible to receive services funded by the medicaid waiver program if:

1. The applicant is either aged or disabled, and, if disabled:
 - a. The disability must not be the result of mental illness as the primary diagnosis or the result of mental retardation, or a closely related condition; and

- b. The disability must meet the social security administration's definition of disability.
2. The applicant is receiving medicaid;
3. The applicant is evaluated to be in need of a nursing facility level of care;
4. The applicant's needs may be met by one or more of the covered services, as determined by an assessment conducted in accord with department policies and procedures;
5. The applicant's service provider is not the applicant's spouse, or, if the applicant is less than eighteen years old, the applicant's service provider is not the applicant's parent;
6. The applicant agrees to accept services provided under the medicaid waiver program instead of nursing home care; and
7. The applicant agrees to the plan of care developed for the provision of home and community-based services.

History: Effective June 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5), 50-06.2-03(6)

75-03-23-05. Services covered under the SPED program - Programmatic criteria. The following categories of services are covered under the SPED program and may be provided to a client.

1. Adult day care services may be provided to a client:
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
 - b. Who is able to function in an ambulatory care setting;
 - c. Who is able to participate in group activities; and
 - d. If the client does not live alone, the client's primary caregiver will benefit from the temporary relief of care giving.
2. Adult foster care may be provided to a client eighteen years of age or older:
 - a. Who requires care or supervision;
 - b. Who would benefit from a family environment; and

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

Care must be provided in a licensed adult foster care home. SPED program service payments may not be used to pay room and board costs for adult foster care.

- 3. Chore services may be provided to a client who is unable to perform intermittent or occasional home tasks such as heavy housework and periodic cleaning, minor home repair, and walk maintenance. The task must be the responsibility of the client and not the responsibility of the landlord. Chore services may also be used to install bathroom safety rails or other equipment that enables self-care.
- 4. Family home care services may be provided to a client:
 - a. Who lives in the same residence as the care provider on a twenty-four-hour basis;
 - b. Who agrees to the provision of services by the care provider; and
 - c. Who is the spouse of the care provider or by one of the following relatives, or the current or former spouse of one of the following relatives of the client: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew.
- 5. Home and community-based services case management services may be provided to a client who needs a comprehensive assessment and the coordination of cost-effective delivery issues. The case management services must be provided by a licensed social worker in accord with North Dakota Century Code section 43-41-04.
- 6. Home health aide services may be provided to a client who needs nonprofessional help with personal care tasks or activities on an intermittent or occasional basis.
- 7. Homemaker services may be provided to a client who needs assistance with environmental maintenance tasks including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis. Shopping assistance may be provided only if at least one other task is performed and no other shopping assistance is available through informal networks or other community providers.
- 8. Nonmedical transportation services may be provided to clients 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.

9. Personal attendant care services, which must be provided in the client's home, may be provided to a client:
 - a. Who is at least eighteen years of age;
 - b. Who lives alone or is alone due to the employment of the primary caregiver or the incapacity of other household members; and
 - c. Who needs nonprofessional care or supervision on a daily basis.
10. Respite care services may be provided to a client in the client's home, in the provider's home, in a nursing home, or in a hospital, if:
 - a. The client has a full-time primary caregiver;
 - b. The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
 - c. The primary caregiver's need for the relief is intermittent or occasional; and
 - d. The primary caregiver's need for relief is not due to the primary caregiver's employment.

History: Effective June 1, 1995.

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. The following services are covered under the medicaid waiver program and may be provided to a client.

1. Adult day care services may be provided to a client:
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
 - b. Who is able to function in an ambulatory care setting;
 - c. Who is able to participate in group activities; and
 - d. Whose primary caregiver, who shall reside with the client, will benefit from the temporary relief of care giving.

2. Chore services may be provided to a client who is unable to perform intermittent or occasional home tasks, including heavy housework and periodic cleaning, minor home repair, and walk maintenance. The task must be the responsibility of the client and not the responsibility of the landlord. Chore services may also be used to install bathroom safety rails or other equipment that enables self-care.
3. Home and community-based services case management services may be provided to a client who needs a comprehensive assessment and the coordination of cost-effective delivery of services. The case management services must be provided by a licensed social worker in accord with North Dakota Century Code section 43-41-04.
4. Home health aide services may be provided to a client who needs nonprofessional help with personal care tasks or activities on an intermittent or occasional basis.
5. Homemaker services may be provided to a client who needs assistance with environmental maintenance tasks, including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis. Shopping assistance may be provided only if at least one other task is performed and no other shopping assistance is available through informal networks or other community providers.
6. Nonmedical transportation services may be provided to clients 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.
7. Personal attendant care services, including adult foster care, may be provided to a client:
 - a. Who is at least eighteen years of age;
 - b. Who lives alone or is alone due to the employment of the primary caregiver or the incapacity of other household members; and
 - c. Who needs nonprofessional care or supervision on a daily basis.

Personal attendant care may be provided in the client's home or, if the client would benefit from a family environment, in the provider's home. If the care is provided in the provider's home, the provider must be licensed in accord with chapter 75-03-22. Medicaid waiver payments may not be used to pay room and board costs for adult foster care.

8. Respite care services may be provided to a client in the client's home, in the provider's home, in a nursing home, or in a hospital, if:
 - a. The client has a full-time primary caregiver;
 - b. The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
 - c. The primary caregiver's need for the relief is intermittent or occasional; and
 - d. The primary caregiver's need for relief is not due to the primary caregiver's employment.
9. Specialized equipment and supplies may be provided to a client who is at least eighteen years of age, if:
 - a. The specialized item's need is based on an adaptive assessment;
 - b. The specialized item directly benefits the client's ability to perform personal care or household tasks;
 - c. The specialized item will reduce the intensity or frequency of human assistance required to meet the client care needs;
 - d. The specialized item is necessary to prevent the client's institutionalization;
 - e. The specialized item is not available under the medicaid state plan; and
 - f. The client is motivated to use the specialized item.
10. Training for family caregivers may be provided to family members who provide care to a client.
 - a. The client shall be at least eighteen years of age.
 - b. The client and family member receiving the training shall be related by blood or marriage.
 - c. The family member shall provide primary care to the client.
 - d. The training must directly benefit the family member's ability to meet the care needs of the client.
 - e. The family member is motivated to learn and perform care techniques and therapies.

11. At a cost that is proportional to the benefit outcome, environmental modification may be provided to a client:
 - a. Who owns the home to be modified and owned it prior to making application for the modification;
 - b. Whose home is structurally sound;
 - c. For whom the modification will enable the client to complete the client's own personal care or to receive care; and
 - d. When no alternative community resource, such as housing grants, is available.

History: Effective June 1, 1995.

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. The individual or agency seeking designation as a qualified service provider shall complete and return the applicable forms supplied by the department in the form and manner prescribed. The qualified service provider shall meet all licensure and certification requirements applicable under state or federal law and departmental standards.
2. All providers shall:
 - a. Have the basic ability to read, write, and verbally communicate;
 - b. Not have been convicted of a offense in the last three years that has a direct bearing on the individual's fitness to be a direct care provider;
 - c. Not have infectious or contagious disease and shall be physically capable of performing the service; and
 - d. Practice confidentiality.
3. Evidence of competency must be provided in:
 - a. The generally accepted procedure for infection control and proper handwashing methods;
 - b. The generally accepted procedure for handling and disposing of body fluids;
 - c. The generally accepted procedure for tub, shower, and bed bathing techniques;

- d. The generally accepted procedure for hair care techniques, sink shampoo, and shaving;
- e. The generally accepted procedure for oral hygiene techniques of brushing teeth and cleaning dentures;
- f. The generally accepted procedure for caring for an incontinent resident;
- g. The generally accepted procedure for feeding or assisting a resident with eating;
- h. The generally accepted procedure for basic meal planning and preparation;
- i. The generally accepted procedure for assisting a resident with the self-administration of medications;
- j. The generally accepted procedure for changing a dressing on noninfected sores;
- k. The generally accepted procedures and techniques, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;
- l. The generally accepted procedures in laundry techniques, including mending, washing, drying, folding, putting away ironing, and related work;
- m. The generally accepted procedure for assisting a resident with bill paying and balancing a check book;
- n. The generally accepted procedure for dressing and undressing a resident;
- o. The generally accepted procedure for assisting with toileting;
- p. The generally accepted procedure for routine eye care;
- q. The generally accepted procedure for proper care of nails and feet;
- r. The generally accepted procedure for caring for skin, including giving a back rub;
- s. The generally accepted procedure for turning and positioning a resident in bed;
- t. The generally accepted procedure for transfer using a belt, standard sit, or bed to wheelchair;

- u. The generally accepted procedure for assisting a resident with ambulation; and
 - v. The generally accepted procedure for making wrinkle-free beds.
4. A physician, registered nurse, occupational therapist, physical therapist, or other person with a professional degree in specialized areas of in-home care shall verify, in writing, on forms furnished by the department, that a provider is competent to perform procedures specified in subsection 3. Verification that a provider is competent to perform a procedure is evidence of competence with respect to that procedure.
 5. 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.
 6. The department shall notify the individual or the agency of its decision on designation as a qualified service provider. If the decision is not favorable, the individual or agency shall be notified why the requirements for designation as a qualified service provider were not met. If the decision is favorable, the individual's or the agency's name shall be added to the qualified service provider list for each identified county, along with the specific services, endorsements, and unit rates.
 7. The county social service board shall maintain a list of qualified service providers. Once the client's need for services has been determined, the client selects a provider from the list and the county social service board issues an authorization to provide services to the selected qualified service provider.
 8. A service payment may be issued only to a qualified service provider who bills the department after the delivery of authorized services.

History: Effective June 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

75-03-23-08. Termination of qualified service provider status.
The department may remove a qualified service provider from a county social service board's list of approved providers if the qualified service provider:

1. Voluntarily withdraws from participation as a qualified service provider;
2. Is not in compliance with applicable state laws, state regulations, or program issuances concerning providers;
3. Is not in compliance with the terms of the provider agreement;
4. Is not in compliance with the provider certification terms on the claims submitted for payment;
5. Has assigned or otherwise transferred the right to payment of a program claim, except as provided in 42 U.S.C. 1396a(a)(32);
6. Has demonstrated a pattern of submitting inaccurate billings or cost reports;
7. Has demonstrated a pattern of submitting billings for services not covered under the SPED program or the medicaid waiver program;
8. Has been debarred or the provider's license or certificate to practice in the provider's profession or to conduct business has been suspended or terminated;
9. Has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals;
10. Is insolvent; or
11. Has been removed from a county's list of approved providers for other good cause.

History: Effective June 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

75-03-23-09. Payment under the SPED program and the medicaid waiver program.

1. The department shall establish provider rates for each home and community-based service in accord with a procedure that factors in:
 - a. Whether a provider is an individual or an agency;
 - b. The range of rates submitted by various providers; and
 - c. The average cost of county social service boards in delivering certain services.

2. The rate for a specific qualified service provider is established at the time the provider agreement is signed.
3. A request for a rate decrease must be accepted at any time and granted when the department receives a written request for the decrease from the qualified service provider.
4. A request for a rate increase must be granted in full or in part, or denied, when the department receives a written request for the rate increase from the qualified service provider.
5. The department shall determine the maximum amount allowable per client each month for a specific service.
6. The department shall establish the aggregate maximum amount allowable per client each month for all services. The aggregate maximum amount per client depends on whether the client is receiving services under the SPED program, under the medicaid waiver program, or under both programs.
7. The department or designee may grant approval to exceed the monthly service program maximum for a specific client who is only receiving SPED funds and no medicaid funds if:
 - a. The client has a special or unique circumstance;
 - b. The SPED client is not eligible for medicaid; and
 - c. The need for additional service program funds will not initially exceed three months.

Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.

8. The department may grant approval to exceed the monthly service program maximum for a specific client who is receiving SPED funds and medicaid funds or only medicaid funds if:
 - a. The client has a special or unique circumstance;
 - b. The need for additional service program funds does not exceed three months; and
 - c. The total need for service program funds per month must not exceed the aggregate monthly maximum amount for a client who receives services under both the SPED program and the medicaid waiver program, excluding home and community-based services case management.

Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.

9. The county social service board shall notify the client of the department's determination. If the department denies the request to exceed the monthly aggregate maximum, the county social service board shall inform the client in writing the reason for the denial, the right to appeal, and the appeal process, as provided for in chapter 75-01-03.
10. Providers are limited to a maximum of two hundred hours of care per month, unless an emergency or unusual circumstances is determined by the county social service board. The county social service board shall submit a written request to exceed the monthly aggregate maximum or the monthly service maximum before authorizing any service in excess of the maximum monthly amount. The department shall provide written notice of its decision to the county social service board and the qualified service provider.

History: Effective June 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

75-03-23-10. Department to recover funds upon establishment of noncompliance. A qualified service provider shall not submit a claim for payment or receive service payments for services that have not been delivered in accord with department policies and procedures. The department shall recover all payments received by a qualified service provider who fails to deliver the services in accord with the provider agreement or department policy and procedure.

History: Effective June 1, 1995.

General Authority: NDCC 50-06.2-03(6)

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

75-03-23-11. Denial and termination of services - Appeal.

1. A person who is determined to be ineligible for covered services or becomes ineligible while receiving services shall be informed in writing of the denial, the reasons for the denial, the right to appeal, and the appeal process as provided in chapter 75-01-03.
2. Clients shall receive ten calendar days' notice before termination of services occurs. The ten-day notice does not apply if the client enters a basic care facility, a nursing facility, or requests termination of services.
3. An applicant denied services or a client terminated from services should be given an appropriate referral to other public or private service providers and should be assisted in finding other resources.

4. For denial or termination of services, a review of the decision by the county social service board director or the designee may be requested. A request for review does not change the time within which the request for an appeal hearing must be filed.
5. Termination of all SPED program and medicaid waiver program services or immediate termination of a specific service must be considered by the department through its aging services division when continued service to the client presents an immediate threat to the health or safety of the client, the provider of services, or others. Examples of client behaviors that could lead to termination of services include physical abuse of the provider or contraindicated practices, like smoking while using oxygen. The county social service board shall inform the client in writing the reason for the termination, the right to appeal, and the appeal process, as provided for in chapter 75-01-03.

History: Effective June 1, 1995.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5), 50-06.2-03(6), 50-06.2-04(1), 50-06.2-04(3)

CHAPTER 75-04-05

AGENCY SYNOPSIS: Proposed amendments to North Dakota Administrative Code Chapter 75-04-05, Reimbursement for Providers of Services to Persons with Developmental Disabilities

A public hearing was conducted on July 20, 1994, in Bismarck, concerning proposed amendments to North Dakota Administrative Code Chapter 75-04-05, Reimbursement for Providers of Services to Persons with Developmental Disabilities. The proposed amendments to Chapter 75-04-05 update reimbursement criteria and procedures to reflect current auditing and funding requirements and include language changes to reflect departmental policy.

Section 75-04-05-01 contains additional definitions to facilitate and update the ratesetting process and to reflect new programs as it is contained in rule. "Extended services" is defined in addition to "facility based" and "family support services". Sections 75-04-05-03, 75-04-05-04, 75-04-05-05, 75-04-05-06, and 75-04-05-07 are repealed because they are no longer applicable.

Section 75-04-05-08 is amended to require service providers to use generally accepted accounting principles. Section 75-04-05-09 has been clarified to reflect new methods of calculating room and board charges to clients, rate calculations in general, and to allow a departmental waiver on enforcement of certain sections.

Section 75-04-05-11 is amended to reflect new definitions of "unit of service" and "production costs". Section 75-04-05-13 is amended, changing the procedures associated with "direct care staff" costs and production costs. Amended Section 75-04-05-16 contains changes to funded depreciation requirements. Section 75-04-05-24 contains the directions for applying Chapter 75-04-05 to supported employment extended services, individualized supported living arrangements, intermediate care facilities for the mentally retarded, and family support services.

75-04-05-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.

3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing services.
4. "Board" means all food and dietary supply costs.
5. "Census" means the number of days that the individual is enrolled in extended services, within the provider's fiscal year. The number of days are based on a five-day week, beginning with the start date of the individual service plan, the individual treatment plan, or the individual written rehabilitation program. The maximum number of days are two hundred sixty. This definition applies only to the supported employment extended service program.
6. "Clients" means eligible developmentally-disabled persons with developmental disabilities on whose behalf services are provided or purchased.
- 6- 7. "Consumer" means a developmentally--disabled person with developmental disabilities.
- 7- 8. "Consumer representative" means a parent, guardian, or relative, to the third degree of kinship, of a developmentally disabled person with developmental disabilities.
- 8- ~~"Continuing--service-provider"--means-a-legal-entity-subject-to licensure-by-the-department-who-is-and-has-been-under-contract authorizing--the--provision--of--a--service-eligible-for-state financial-participation.~~
9. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of an institution a providership are divided for purposes of cost assignment and allocations.
10. "Cost finding" means the process of analyzing the data derived from the accounts ordinarily kept by the provider to ascertain costs of the various types of services rendered; it is the determination of these costs by the allocation of direct costs and proration of indirect costs.
11. "Department" means department of human services.
12. "Documentation" means the furnishing of written records including, ~~but not limited to,~~ original invoices, contracts, timecards, and workpapers prepared to complete reports or for filing with the department.
13. "Extended services" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of

training, or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.

14. "Facility-based" means a workshop for persons with developmental disabilities licensed by the department to provide day services. This definition is not to be construed to include areas of the building determined by the department to exist primarily for nontraining or for production purposes.
15. "Fair market value" means value at which an asset could be sold in the open market in an arm's-length transaction between unrelated parties.
16. "Family support services" means a family centered support service contracted for a client based on the primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.
- 14- 17. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
- 15- 18. "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm's-length transaction between unrelated parties.
- 16---"~~Individual--service-plan-team~~"--means--an--interdisciplinary--and multiagency--individual--plan--development--team;--which--includes the--developmentally--disabled--individual--or--that--individual's representative;--or--both;--convened--to--identify--the--provision--of services--for--that--individual--
19. "Individual service plan" means an individual plan that identifies service needs of the eligible client and the services to be provided, and which is developed by the mental retardation-developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.
20. "Individualized supported living arrangements" means a residential support services option in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are

provided to a client in a residence rented or owned by the client.

~~17. -- "Initial--service--provider"--means-a-legal-entity,-subject-to licensure-by-the-department,-entering-into-its-first--contract authorizing--the--provision--of--a--service-eligible-for-state financial-participation-~~

18. 21. "Interest" means the cost incurred with the use of borrowed funds.

19. 22. "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.

20. 23. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

21. 24. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.

22. 25. "Room" means the cost associated with the provision of shelter and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of residents clients.

23. 26. "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.

24. 27. "Staff training" means an organized program to improve staff performance.

25. 28. "Units of service" for billing purposes means, in residential settings, one person served for one 24-hour day and in day service settings, one person served for one 8-hour day, Monday through Friday. The day of admission, but not the day of discharge, is treated as a day served.

29. "Units of service in infant development" means, for billing purposes, one child enrolled for service Monday through Friday.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01; 25-16-10, 50-24.1-01

75-04-05-02. Eligibility for reimbursement. Providers of service are eligible for reimbursement for the costs of rendered services contingent upon the following:

1. The provider, other than a state-owned or state-operated provider, holds, and is required to hold, a current valid license, issued pursuant to the provisions of chapter 75-04-01 authorizing the delivery of the service, the cost of which is subject to reimbursement.
2. The provider's clients have on file with the department a current individual service plan.
3. The provider has a current valid contract purchase of service agreement with the department authorizing the reimbursement.
4. The provider adopts and uses a system of accounting prescribed by the department.
5. The provider participates in the program audit and utilization review process established by the department.
6. The provider is in compliance with chapter 75-04-02.
7. Providers, as a condition of eligibility for reimbursement for the cost of services for developmentally-disabled persons with developmental disabilities, must accept, as payment in full, sums paid in accordance with the final rate of reimbursement.
8. Providers must obtain approval from the department for addition of square footage if the cost of the additional space is to be reimbursed by the department.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01; 25-16-10, 50-24.1-01

75-04-05-03. Startup costs. ~~Initial--service--providers--incur costs--incidental--to--the--preparation--of--a--program--of--services--prior--to the--admission--of--clients--These costs cannot be allocated to services as there is no client--to--receive--a--service---The--initial--service provider--may--be--eligible--for--state--financial--assistance--for--startup costs--incidental--to--program--establishment,--exclusive--of--the--cost--of construction,--reconstruction,--or--acquisition--of--property--and improvements.~~ Repealed effective June 1, 1995.

History: Effective July 1, 1984; amended effective June 1, 1985.

General Authority: NDCC 25-01.2-18; 50-06-16

Law Implemented: NDCC-25-15-01,-25-16-10,-50-24.1-01

75-04-05-04. Application for advancement of startup costs. The prospective-initial-service-provider--seeking--a--state--advancement--of funds--shall--provide-information-in-a-form-and-manner-prescribed-by-the department-sufficient-to-enable-the-department-to-determine:

- 1.--The-basic-service-proposed.
- 2.--The-number-of-clients-to-be-served.
- 3.--That--client-referrals-are-identified-in-sufficient-numbers-to verify-the-feasibility-of-the-service.
- 4.--That--a--facility--or-facilities-necessary-to-the-provision-of the-service-are-or-will-be-under-the-effective-control-of--the provider.
- 5.--The--estimated--startup--costs--for-the-period-ending-upon-the first-day-of-entry-by-eligible-clients-into-the-service.
6. That---the---service---proposed---is---consistent---with---the implementation-plan-of-the-department,-is-cost-effective,-and does-not-represent-an-unnecessary-duplication-of-services.
Repealed effective June 1, 1995.

History: Effective-July-1,-1984;-amended-effective-June-1,-1985.

General Authority: NDCC-25-01.2-18,-50-06-16

Law Implemented: NDCC-25-15-01,-25-16-10,-50-24.1-01

75-04-05-05. Allowable startup costs. The--department--shall determine,-upon-a-review-of-the-submissions-of-the-prospective-provider, those--costs--essential--to--the-completion-of-the-startup-phase.--These startup-costs-are-subject-to-audit. Repealed effective June 1, 1995.

History: Effective-July-1,-1984.

General Authority: NDCC-25-01.2-18,-50-06-16

Law Implemented: NDCC-25-15-01,-25-16-10,-50-24.1-01

75-04-05-06. Reimbursement requirements - Startup costs. Actual startup-costs-are-a-reimbursable-cost--that--will--be--included--in--the determination--of--the--payment--rate-for-the-first-year-of-a-facility's operation. Repealed effective June 1, 1995.

History: Effective-July-1,-1984.

General Authority: NDCC-25-01.2-18,-50-06-16

Law Implemented: NDCC-25-15-01,-25-16-10,-50-24.1-01

75-04-05-07. Grants-in-aid.

1.--Grants--may--be--approved--by--the--department;--subject-to-the availability-of-funds;--and-pursuant-to-the-rules-applicable-to the--advancement--of-funds;--to-reimburse-providers-for-startup costs.

2.--Grants--approved--for--applicants-for-the-purpose-of-accessing funds-from-nonstate-sources--to--achieve--a--state--goal--may; subject--to--the--approval--of--the-department;--be-exempt-from section--75-04-05-06;---and---the---prohibition---of---section 75-04-05-03---regarding---the---cost---of---construction; reconstruction;--or-acquisition--of--real--property. Repealed effective June 1, 1995.

History: Effective-July-1,-1984-

General Authority: NDCG-25-01-2-18,-50-06-16

Law Implemented: NDCG-25-15-01,-25-16-10,-50-24-1-01

75-04-05-08. Financial reporting requirements.

1. Records.

- a. The provider shall maintain on the premises the required 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. Where several programs are associated with a group and their accounting and reports are centrally prepared, additional fiscal information shall be submitted for costs, undocumented at the reporting facility, with the cost reporting-plan report or provided to--the--local program prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.
- c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit shall be retained until final resolution. Each provider shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

2. Accounting and reporting requirements.

- a. The accounting system must be double entry.
 - b. The basis of accounting for reporting purposes must be accrual in accord with generally accepted accounting principles. Ratesetting procedures will prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.
 - c. To properly facilitate auditing, the accounting system must be maintained in such a manner that will allow cost accounts will to be grouped by cost center and be readily traceable to the cost report.
 - d. The forms for annual reporting for reimbursement purposes must be the report forms designated by the department. The statement of budgeted costs must be submitted to the developmental disabilities division at least sixty days before the end of the facility's normal accounting year reflecting budgeted costs and units of service for establishing an interim rate in the subsequent year. The statement of actual costs must be submitted on or before the last day of the third month following the end of the facility's normal accounting year. The cost report must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate.
 - e. The mailing of cost reports by registered mail, return receipt requested, will ensure documentation of the filing date.
 - f. Costs reported must include all actual costs and adjustments for nonallowable costs. Adjustments made by the audit unit, to determine allowable cost, though not meeting the criteria of fraud or abuse on their initial identification, may could, if repeated on future cost filings, be considered as possible fraud or abuse. The audit unit will forward all such items identified to the appropriate investigative unit.
3. **Auditing.** In order to properly validate the accuracy and reasonableness of cost information reported by the service provider, the department will provide for audits as necessary.
4. **Penalties.**
- a. If a provider fails to file the required statement of budgeted costs and cost report on or before the due date, the department may invoke the following provisions:
 - (1) After the last day of the first month following the due date, there will be a nonrefundable penalty of ten percent of any amount claimed for reimbursement.

- (2) The penalty continues through the month in which the statement or report is received.
- b. At the time of audit and final computation for settlement, the department may invoke a penalty of five percent of a provider's administrative costs for the period of deficiency if:
 - (1) Poor or no daily census records are available to document client units. Poor census records exist if those records are insufficient for audit verification of client units against submitted claims for reimbursement.
 - (2) After identification and notification through a previous audit, a provider continues to list items exempted in audit as allowable costs on the cost report.
 - (3) For intermediate care facilities for the developmentally--disabled mentally retarded, the provider fails the certification requirements one hundred twenty days after the initial startup date or is decertified after having been previously certified.
- c. Penalties may be separately imposed for each violation.
- d. A penalty may be waived by the department upon a showing of good cause.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01; 25-16-10, 50-24.1-01

75-04-05-09. Rate payments.

1. Except for intermediate care facilities for the developmentally--disabled mentally retarded, payment rate limits will be established for services, room, and board.
2. Interim rates based on budgeted data, as approved, will be used for payment of services during the year.
3. Room--and-board-rates-will-be-established-by-the-department-at a-rate-no-higher-than-the-maximum-supplemental-security-income payment--less--twenty-five-dollars-for-the-personal-incidental expenses-of-the-resident,-plus-the--average--dollar--value--of food-stamps-to-the-eligible-clientele-in-the-facility.--If-the interim-room-and-board-rate-exceeds-the-final-room--and--board rate,--the--provider--shall--reimburse--clients--in--a--manner

approved-by-the-department. Room and board charges to clients may not exceed the maximum supplemental security income payment less twenty-five dollars for the personal incidental expenses of the client, plus the average dollar value of food stamps to the eligible clientele in the facility. If the interim room and board rate exceeds the final room and board rate, the provider shall reimburse clients in a manner approved by the department.

4. In residential facilities where rental assistance is available to individual ~~residents~~ clients or the facility, the rate for room costs chargeable to individual ~~residents~~ clients will be established by the governmental unit providing the subsidy.
5. In residential facilities where energy assistance program benefits are available to individual ~~residents~~ clients or the facility, room and board rates will be reduced to reflect the average annual dollar value of such benefits.
6. Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of 29 CFR 525.
7. The final rate established is payment of all allowable, reasonable, and actual costs for all elements necessary to the delivery of a basic service to eligible clients subject to limitations and cost offsets of this chapter.
8. No payments may be solicited or received by a provider from a client or any other person to supplement the final rate of reimbursement.
9. The rate of reimbursement established must be no greater than the rate charged to a private payor for the same or similar service.
10. The department will determine interim and final rates of reimbursement for continuing contract providers based upon cost data from the:
 - a. Submission requirements of section 75-04-05-02; and
 - b. Field and desk audits.
11. Rates of continuing service providers, except for those identified in subdivision f of subsection 3 of section 75-04-05-10, will be based on the following:
 - a. Rate for continuing contract providers, who have had no increase in the number of clients the provider is licensed to serve, will be based upon ninety-five percent of the

rated occupancy established by the department or actual occupancy, whichever is greater.

b. Rates for continuing service providers, who have an increase in the number of clients the provider is licensed to serve in an existing service, will be based upon:

- (1) Subdivision a of subsection 11 of section 75-04-05-09 for the period until the increase takes effect; and
- (2) Ninety-five percent of the projected units of service for the remaining period of the fiscal year based upon an approved plan of integration or actual occupancy, whichever is greater.

c. When establishing the final rates, the department may grant nonenforcement of subdivisions a and b of subsection 11 of section 75-04-05-09 when it determines the provider implemented cost containment measures consistent with the decrease in units, or when it determines that the failure to do so would have imposed a detriment to the well-being of its clients.

(1) Acceptable cost containment measures include a decrease in actual salary and fringe benefit costs from the approved salary and fringe benefits costs for the day service or group home proportionate to the decrease in units.

(2) Detriment to the well-being of clients includes a forced movement from one group home to another or obstructing the day service movement of a client in order to maintain the ninety-five percent rated occupancy requirement.

12. ~~The--final-rate-of-reimbursement-for-initial-service-providers shall-be-established-by-review-of-cost-reports-upon-completion of--the--initial--contract--period-and-a-field-audit.--Interim rates-of-reimbursement--for--the--initial--contract--shall--be calculated---based---upon--one--hundred--percent--of--licensed capacity.~~

13. ~~Payments--to--initial--service--providers--may-be-disbursed-in equal-monthly-installments-for-the--duration--of--the--initial period-of-operation.~~

14. ~~The--rate-of--payment--will--be-sufficient-to-provide-for-the conversion-of-the-initial-service-provider-to-a--reimbursement schedule-upon-completion-of-the-initial-period-of-operation.~~

15. ~~The--initial--service--provider--must--project-the-anticipated units-of-service,-subject-to-the-approval-of--the--department,~~

which--will--be-used-in-establishing-the-rate-of-reimbursement
for-the-purpose-of-determining-monthly-payments.

16--If--vacancies--continue--to-exist-sixty-days-after-the-date-of
occupancy,--the-department-may-notify-the-service--provider--of
its--intent--to--place--developmentally--disabled-persons-into
these-vacancies.--The-provider-must,--within-ten-days--of--such
notification,--either--demonstrate,--to-the-satisfaction-of-the
department,--that--the--department--should--not---invoke---its
authority-under-this-provision,--or-accept-referred-clients.

17. Adjustments and appeal procedures are as follows:

- a. Rate adjustments may be made to correct errors.
- b. A final adjustment will be made for those facilities which have terminated participation in the program and have disposed of all its depreciable assets. Federal medicare regulations pertaining to gains and losses on disposable assets will be applied.
- c. Any requests for reconsideration of the rate must be submitted in writing to the developmental disabilities division within ten days of the date of the rate notification of the final rate determination. The department may redetermine the rate on its own motion.
- d. A provider may appeal a decision ~~by requesting a fair hearing~~ within thirty days after mailing of the rate notification--or--the written notice of the decision on a request for reconsideration of the final rate.

History: Effective July 1, 1984; amended effective June 1, 1985;
June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-10. Reimbursement. Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system.

1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. The determination of a final rate for all services begins with the reported cost of the provider's operations for the previous fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client-related, those costs are compared to the reimbursements received through the interim rate.

2. a. Settlements will be made through a rate--reduction recoupment or refund to the department for an overpayment, or an additional payment to the provider for an underpayment.
 - b. Interprovider settlements between intermediate care facilities for the developmentally--disabled mentally retarded and day services will be made through a rate reduction recoupment or refund to the department from the day service provider to correct an overpayment; or a payout to the intermediate care facilities for the developmentally--disabled mentally retarded, for the day service provider, to correct an underpayment.
3. Limitations.
 - a. The department will accumulate and analyze statistics on costs incurred by providers. These statistics may be used to establish reasonable ceiling limitations for efficiency and economy based on a determination of the standards of operations necessary for efficient delivery of needed services. These limitations may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement such ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, or statutes concerning title XIX of the Social Security Act.
 - b. Providers, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider will be notified of the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agreement. The provider must, within ten days of such notification, demonstrate, to the satisfaction of the department, that the department should not invoke its authority under this provision, or accept the department's finding.
 - c. Providers will not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.
 - d. Providers of residential services must offer services to each ~~resident~~ client three hundred sixty-five days per year, except for leap years in which three hundred sixty-six days must be offered. Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers will not

be reimbursed for those days in which services are not offered to ~~residents~~ clients.

- e. Providers of day services must offer services to each client two hundred sixty days per year, except for leap years in which two hundred sixty-one days may must be offered. Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers will not be reimbursed for those days services are not offered to the clients. State recognized holidays will be treated as days in which services are offered.
- f. Services exempted from the application of subdivisions d and e are:
 - (1) Emergency services.
 - (2) Respite-care.
 - ~~{3}--Extended-respite-care.~~
 - ~~{4} Infant development.~~
 - ~~{5}--Vocational-evaluation.~~
 - ~~{6} (3) Family subsidy.~~
 - ~~{7} (4) Supported living.~~
 - ~~{8}--Technical-employment.~~
 - ~~{9}--On-the-job-training.~~
- g. (1) Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred thirty-five days per year per ~~resident~~ client. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability ~~coordinator~~ program administrator determines that a failure to meet the minimum was justified.
- (2) Days of services in facilities subject to the application of subdivision e must be provided for a minimum of two hundred forty days per year per client. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability ~~coordinator~~ program administrator determines that a failure to meet the minimum was justified.

- (3) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the resident-or client will be counted towards meeting the minimum.
- h. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:
 - (1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;
 - (2) Comparable salaries and benefits for comparable positions in state government;
 - (3) Comparable salaries and benefits for comparable positions in the community served by the provider; or
 - (4) Data from paragraphs 1, 2, and 3, taken in combination.

By using private funds, providers may establish higher salaries and benefit levels than those established by the department.

- i. Management fees and costs may not exceed the lesser of two percent of administrative costs or the price of comparable services, facilities, or supplies purchased elsewhere, primarily in the local market.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-11. Cost report.

1. The cost report provides for the identification of the allowable expenditures and basic services subject to reimbursement by the department. Where costs are incurred solely for a basic service, the costs must be assigned directly to that basic service. Where costs are incurred jointly for two or more basic services, the costs will be allocated as follows:
 - a. Personnel. The total cost of all staff identified in payroll records must be listed by position title and distributed to basic services subject to the approval of staff client ratios by the department. Time studies may be performed for one week at least quarterly for allocation. Where no time studies exist, the applicable

units must be used for allocation. Where there is no definition of a unit of service, the department will use the unit of service for billing purposes for residential settings.

- b. Fringe benefits. The cost of fringe benefits must be allocated to basic services based on the ratio of the basic service personnel costs to total personnel costs. Personnel costs on which no fringe benefits are paid will be excluded.
- c. Equipment. The total cost of all equipment, whether rented, leased, purchased, or depreciated, must be distributed to basic service based on usage or applicable units.
- d. Real property expense. The total of all property costs, whether rented, leased, purchased, or depreciated, must be allocated based on direct square footage. Where multiple usage of direct use area occurs, the allocation will first be done by square footage and then by applicable units.
- e. Travel. The total of all unassigned travel costs, which must not exceed the state rate of reimbursement, must be included in administrative costs.
- f. Supplies. The total of all unassigned supply costs must be included with administrative costs.
- g. Food services. The total of all food costs should be allocated based on meals served. Where the number of meals served has not been identified, applicable units must be used.
- h. Insurance and bonds. The total of all such costs except insurance costs representing real property expense must be included as administrative costs.
- i. Contractual services. The total of all contractual costs must be allocated based upon applicable units or, if appropriate, included as part of the administrative costs.
- j. Production costs. Total expenses for day-activity, work activity, vocational development, and extended employment facility-based day and work activity must be allocated in part to production using the facility-based mean productivity percentage for each service where production occurred. If the provider's records do not identify total expenses for nonfacility-based activities from total expenses for facility-based activities, the department will use total expenses and total mean productivity percentage for each service where production occurred.

- k. General client costs. Total general client expenses must be allocated to service categories, exclusive of production, room, board, and extended-employment supported living arrangements based on actual census days.
 - l. Administrative costs. Total administrative expenses must be allocated to all service categories, exclusive of room, board, and production, based upon the ratio of the basic service cost to total cost excluding administrative and production costs. The percentage calculated for residential services must be based on total costs for training, room, and board for the specific residential service with the allocation made only to training.
 - m. Administrative costs to production. A portion of the administrative expense allocated to day--activity,--work activity,--vocational-development,-and-extended-employment facility-based day and work activity must be allocated to production based upon the facility-based mean productivity percentage for each service wherein production occurred. If the provider's records do not identify total expenses for nonfacility-based activities from total expenses for facility-based activities, the department will use total expenses and total mean productivity percentage for each service where production occurred.
2. Identification of the means of financing is to be as follows:
- a. Budget reports require the disclosure of all revenues currently used to finance costs and those estimated to finance future costs, inclusive of the provider's estimate of state financial participation.
 - b. Revenues must be distributed on the appropriate budget report by program. Where private contributions are used to supplement or enrich services, the sum may be distributed accordingly. Where contributions are held in reserve for special purposes, it may be described by narrative.
 - c. The disclosure of contract income and production costs is required to establish a rate of reimbursement supplemental to, and not duplicative of, these revenues and costs.
 - d. State financial participation in the habilitative costs associated with facility-based production activities where contract income is realized shall not exceed the percentage difference between the mean productivity of the clients, as determined pursuant to 29 CFR 525, and one hundred percent.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16
Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-12. Adjustment to cost and cost limitation.

1. Providers under contract with the department to provide services to ~~developmentally---disabled~~ persons with developmental disabilities must submit no less than annually, a statement of costs, both current and estimated, on the cost report.
2. Providers must disclose all costs and all revenues.
3. Providers must identify income to offset costs where applicable in order that state financial participation not supplant or duplicate other funding sources. These sources, and the cost to be offset, must include; ~~but are not limited to~~, the following:
 - a. Fees, the cost of the service or time for which the fee was imposed excluding those fees based on cost as established by the department.
 - b. Insurance recoveries income, costs reported in the current year to the extent of costs allowed in the prior or current year for that loss.
 - c. ~~Purchase--discounts, cost of items or services discounted.~~
 - d. ~~Rebates--and--refunds, cost of items or services reduced in cost.~~
 - e. Rental income, cost of space in facilities or for equipment included in the rate of reimbursement.
 - f. d. Telephone and telegraph income from clients, staff, or guests, cost of the service.
 - g. e. Rental assistance or subsidy when not reported as third party income, total costs.
 - h. f. Interest or investment income, interest expense.
 - i. g. Medical payments, cost of medical services included in the rate of reimbursement as appropriate.
 - j. h. Respite care income when received for a reserved bed, room, board, and staff costs.
 - k. i. Other income to the provider from local, state, or federal units of government may be determined by the department to be an offset to cost.

4. Payments to a provider by its vendor will be considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant, and as such will not be offset against costs. Examples include, ~~but are not limited to~~, when:
 - a. Payments are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited.
 - b. Payments are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider and the vendor.
 - c. The volume or value of purchases is so nominal that no relationship to the contribution can be inferred.
 - d. The contributor is not engaged in business with the provider or a facility related to the provider.
5. Where an owner or other official of a provider directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
6. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates should be credited to the costs of the provider in accordance with the instructions above. These should not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
7. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased. They should be used to reduce the specific costs to which they apply. If possible, they should accrue to the period to which they apply. If not, they will reduce expenses in the period in which they are received. The reduction to expense for supplies or services must be used to reduce the total cost of the goods or services for all clients without regard to whether the goods or supplies are designated for all clients or a specific group.
 - a. "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or

paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.

- b. Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
- c. Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or return purchases.
- d. Rebates represent refunds of a part of the cost of goods or services. Rebates differ from quantity discounts in that it is based on dollar value of purchases, not quantity of purchases.
- e. "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.

History: Effective July 1, 1984; amended effective June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-13. Nonallowable costs. Nonallowable costs include, ~~but are not necessarily limited to:~~

- 1. Advertising to the general public exclusive of procurement of personnel and yellow page advertising limited to the information furnished in the white page listing.
- 2. Amortization of noncompetitive agreements.
- 3. Bad debt expense.
- 4. Barber and beautician services.
- 5. Basic research.
- 6. Capital improvements by the provider to the buildings of a lessor.
- 7. Compensation of officers, directors, or stockholders other than reasonable and actual expenses related to client services.
- 8. Concession and vending machine costs.
- 9. Contributions or charitable donations.

10. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
11. The---cost---of---direct-care---staff---in---residential---settings,
incurred-before-October-1,-1988,-for-eight-hours---each---night,
except---where---the---provider---has---demonstrated,--to--the
satisfaction-of-the-department,-that:
 - a.---The---clients---served---have---been---determined---incapable-of
taking-action-for-self-preservation;--provided,--that--the
records---of---the---facility---demonstrate-planning,-and-plan
execution,-which-is-intended-to-develop,-in-each--resident
who-has-the-capacity-for-such-development,-the-capacity-of
taking-action-for-self-preservation;
 - b.---The---clients---require---the---supervision---of---a---medical
practitioner-without-which-a-serious-threat-to-health-may
occur;
 - c.---The---clients---of-a-residence-have-contracted-an-infectious
or-contagious-disease-resulting-in-quarantine;
 - d.---A--resident--manifests-maladaptive-behavior-representing-a
threat-to-the-health--or--safety--of--himself--or--another
resident;--provided,--that--the--records--of--the-facility
demonstrate--planning,--and--plan--execution,---which---is
intended--to--limit--such--behavior--in--each-resident-who
manifests-it;
 - e.---There--has--occurred--a--calamity,-natural--disaster,--or
emergency-of-such-gravity-that-continuous--supervision--is
required---to--maintain--the--health--and--safety--of--the
residents;
 - f.---A-single-building-is-of-sixteen-or-more-licensed-beds;-or
 - g.---Staff--are--awakened--by-the-residents-and-are-compensated
for--these--specified--time--periods,---subject---to---the
applicable--requirements-of-the-department-of-labor-29-CFR
section-785,-et-seq.
12. Costs for which payment is available from another primary third-party payor or for which the department determines that payment may lawfully be demanded from any source.
13. 12. Costs of functions performed by clients in a residential setting which are typical of functions of any person living in their own home, such as keeping the home sanitary, performing ordinary chores, lawnmowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program plan consistent with the client's level of function.

- 14- 13. Costs of participation in civic, charitable, or fraternal organizations.
- 15- 14. Costs, including, by way of illustration and not by way of limitation, 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 hospital or facility~~ the vendor.
- 16- 15. Costs ~~which are~~ incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which becomes an element in the subcontractor's or lessor's charge to the provider, if such costs would have not been allowable under this section had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property.
- 17- 16. Costs, exceeding the amounts budgeted as "salaries and fringes", "board expenses", "property expenses", "production expenses", or "other costs", unless the written prior approval of the department has been received.
- 18- 17. Depreciation on assets acquired with federal or state grants.
- 19- 18. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred for a client, defined as an ~~"exceptional child"~~ a "child with disabilities" by subsection 1 2 of North Dakota Century Code section 15-59-01, who is no longer enrolled in a school district pursuant to an interdepartmental plan of transition.
- 20- 19. Education or training costs, for provider staff, which exceed the provider's approved budget costs.
- 21- 20. Employee benefits not offered to all full-time employees.
- 22- 21. Entertainment costs.
- 23- 22. Equipment costs for any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates to the satisfaction of the department that any particular use of the equipment was related to client services. Equipment used for client services, other than developmental disabilities contract services, will be allocated by time studies, mileage, client census, percentage of total operational costs, or otherwise as determined appropriate by the department.
- 24- 23. Expense or liabilities established through or under threat of litigation against the state of North Dakota or any of its

agencies; provided, that reasonable insurance expense shall not be limited by this subsection.

- 25- 24. Federal and other governmental income taxes.
- 26- 25. Fringe benefits exclusive of Federal Insurance Contributions Act, unemployment insurance, medical insurance, workers compensation, retirement, and other benefits which have received written prior approval of the department.
- 27- 26. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
- 28- 27. Funeral and cemetery expenses.
- 29- 28. Goodwill.
- 30- 29. Home office costs when unallowable if incurred by facilities in a chain organization.
- 31- 30. Housekeeping staff or service costs.
- 32- 31. In-state travel not directly related to industry conferences, state or federally sponsored activities, or client services.
- 33- 32. Interest cost related to money borrowed for funding depreciation.
- 34- 33. Items or services, such as telephone, television, and radio, ~~which are located in a client's room and which are furnished solely~~ primarily for the convenience of the clients.
- 35- 34. Key man insurance.
- 36- 35. Laboratory salaries and supplies.
- 37- 36. ~~Matriculation~~ Staff matriculation fees and fees associated with the granting of college credit.
- 38- 37. Meals and food service in day service programs.
- 39- 38. Membership fees or dues for professional organizations exceeding five hundred dollars in any fiscal year ~~or where the facility has not demonstrated an effort to maximize the professional development of its staff.~~
- 40- 39. Miscellaneous expenses not related to client services.
- 41- 40. Out-of-state travel expense which is not directly related to client services or which has not received written prior approval by the department.

- 42- 41. a. Except as provided in subdivisions b and c, payments to members of the governing board of the provider, the governing board of a related organization, or families of members of those governing boards, including spouses and persons in the following relationship to those members or to spouses of those members: parent, stepparent, child, stepchild, grandparent, step-grandparent, grandchild, step-grandchild, brother, sister, half brother, half sister, stepbrother, and stepsister.
- b. Payments made to a member of the governing board of the provider to reimburse that member for allowable expenses incurred by that member in the conduct of the provider's business may be allowed.
- c. Payments for a service or product unavailable from another source at a lower cost may be allowed except that this subdivision may not be construed to permit the employment of any person described in subdivision a.
- 43- 42. Penalties, fines, and related interest and bank charges other than regular service charges.
- 44- 43. Personal purchases.
- 45- 44. Pharmacy salaries.
- 46- 45. Physician and dentist salaries.
- 47- 46. Production costs, such as the cost of the finished goods or products that are assembled, altered, or modified, square footage that the department determines is primarily for nontraining or production purposes, and property, equipment, supplies, and materials used in nonfacility-based day and work activity.
- 48- 47. Religious salaries, space, and supplies.
- 49- 48. Room and board costs in residential services other than an intermediate care facility for the ~~developmentally--disabled~~ mentally retarded, except when such costs are incurred on behalf of persons who have been found not to be disabled by the social security administration, but who are certified by the department as indigent and appropriately placed. Allowable room and board cost shall must not exceed the room and board rate established pursuant to subsections 2 and 3 of section 75-04-05-09. Services offering room and board temporarily, to access medical care, vocational evaluation, respite care, or similar time limited purposes are or may be exempt from the effect of this provision.
- 50- 49. Salary costs of employees determined by the department to be inadequately trained to assume assigned responsibilities, but

where an election has been made to not participate in appropriate training approved by the department.

- 51- 50. Salary costs of employees who fail to meet the functional competency standards established or approved by the department.
- 52- 51. Travel of clients visiting relatives or acquaintances in or out of state.
- 53- 52. Travel expenses in excess of state allowances.
- 54- 53. Undocumented expenditures.
- 55- 54. Value of donated goods or services.
- 56- 55. Vehicle and aircraft costs not directly related to provider business or client services.
- 57- 56. X-ray salaries and supplies.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 1989; August 1, 1992; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-15. Depreciation.

1. The principles of reimbursement for provider costs require that payment for services should include depreciation on depreciable assets that are used to provide allowable services to clients. This includes assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. Depreciation is recognized as an allocation of the cost of an asset over its estimated useful life. If any depreciated asset is sold or disposed of for an amount in excess of its undepreciated value, the excess represents an overstatement of the cost of the asset to the facility.
2. Depreciation methods are as follows:
 - a. The straight-line method of depreciation must be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation

different than that submitted on the cost report, a reconciliation must be prepared.

- b. Depreciation will be computed using a useful life of ten years for all items except vehicles, which shall must be four years, and buildings, which shall must be twenty-five years or more. A different useful life may be used; however, when the useful life selected differs significantly from that established by the guidelines, the deviation must be based on convincing reasons supported by adequate documentation, generally describing the realization of some unexpected event.
3. Acquisitions are treated as follows:
- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least three hundred dollars, or if it is acquired in quantity and the cost of the quantity is at least five hundred dollars, its cost must be capitalized and depreciated in accordance with subdivision b of subsection 2. Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.
 - b. Major repair and maintenance costs on equipment or buildings must be capitalized if they exceed five thousand dollars and will be depreciated in accordance with subdivision b of subsection 2.
4. Proper records will provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable client-related cost.
5. The basis for depreciation is as follows:
- a. The amount of historical costs shall must not exceed the lower of:
 - (1) Current reproduction costs less straight-line depreciation over the life of the asset to the time of purchase; or
 - (2) Fair market value at the time of purchase.
- In the case of a trade-in, the historical cost will consist of the sum of the book value of the trade-in plus the cash paid.
- b. For depreciation and reimbursement purposes, donated depreciable assets may be recorded and depreciated based on their fair market value. In the case where the

provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. An appraisal made by a recognized appraisal expert will be accepted for depreciation.

- c. No provision shall be made for increased costs due to the sale of a facility.
6. Providers which finance facilities pursuant to North Dakota Century Code chapter 6-09.6, subject to the approval of the department, may elect to be reimbursed based upon the mortgage principle payments rather than depreciation. Once an election is made by the provider, it may not be changed without department approval.
7. Recapture of depreciation.
 - a. At any time that the operators of a facility sell an asset, or otherwise remove that asset from service in or to the facility, any depreciation costs asserted after June 1, 1984, with respect to that asset, are subject to recapture to the extent that the sale or disposal price exceeds the undepreciated value. If the department determines that a sale or disposal was made to a related party, or if a facility terminates participation as a provider of services in a department program, any depreciation costs asserted after June 1, 1984, with respect to that asset or facility, are subject to recapture to the extent that the fair market value of the asset or facility exceeds the depreciated value.
 - b. The seller and the purchaser may, by agreement, determine which shall pay the recaptured depreciation. If the parties to the sale do not inform the department of their agreement, the department will offset the amount of depreciation to be recaptured against any amounts owed, or to be owed, by the department to the seller and buyer. The department will first exercise the offset against the seller, and shall only exercise the offset against the buyer to the extent that the seller has failed to repay the amount of the recaptured depreciation.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-16. Interest expense.

1. In general:
 - a. To be allowable under the program, interest must be:

- (1) Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;
 - (2) Identifiable in the provider's accounting records;
 - (3) Related to the reporting period in which the costs are incurred;
 - (4) Necessary and proper for the operation, maintenance, or acquisition of the provider's facilities used therein;
 - (5) Unrelated to funds borrowed to purchase assets in excess of cost or fair market value; and
 - (6) When representative of borrowing for the purpose of making capital expenditures for assets that were owned by any other hospital, facility, or service provider on or after July 18, 1984, limited to that amount of interest cost which such hospital, facility, or service provider may have reported, for ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership.
- b. In such cases where it was necessary to issue bonds for financing, any bond premium or discount shall be accounted for and written off over the life of the bond issue.
2. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost except when interest expense is incurred subject to North Dakota Century Code chapter 6-09.6.
 3. A provider may combine or "pool" various funds in order to maximize the return on investment. Where funds are pooled, proper records must be maintained to preserve the identity of each fund in order to permit the earned income to be related to its source. Income earned on gifts and grants does not reduce allowable interest expense.
 4. Funded depreciation requirements are as follows:
 - a. Funding of depreciation is the practice of setting aside cash or other liquid assets to be used for replacement of the assets depreciated or for other capital purposes. ~~The deposits are, in effect, made from the cash generated by the noncash expense depreciation.~~ This provision is recommended as a means of conserving funds for the replacement of depreciable assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a

reduction of allowable interest expense provided such revenues remain in the fund.

- b. The deposits are, in effect, made from the cash generated by the noncash expense depreciation and do not include interest income. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funding depreciation, the minimum deposits to the account must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense. ~~This provision is recommended as a means of conserving funds for the replacement of depreciable assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense provided such revenues remain in the fund.~~
- c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on client-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
- d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis.
- e. The provider may not use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment replacement or acquisition related to client services.
- f. Existing funded depreciation accounts must be used for all capital outlays in excess of three hundred dollars except with regard to those assets purchased exclusively with donated funds or from the operating fund, provided no amount was borrowed to complete the purchase. Should funds be borrowed, or other provisions not be met, the entire interest for the funded depreciation income account

will be offset up to the entire interest expense paid by the facility for the year in question.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01; 25-16-10, 50-24.1-01

75-04-05-20. Personal incidental funds.

1. Each client is allowed to retain a specific monthly amount of income for personal needs. These personal needs include such items as clothes, tobacco, or other day-to-day incidentals. This monthly allowance is not to be applied toward the resident's client's cost of care. Generally, the source of income for personal needs is from social security, veterans benefits, private income, economic assistance, or supplemental security income (SSI).
2. Providers managing client funds must maintain a current client account record in a form and manner prescribed by the department. Copies of the client account record must be provided to the client without charge.
3. The department may conduct audits of client account records in conjunction with regular field audits.
4. Adult client funds may be disbursed with the client's permission in the absence of a guardian or declaration of incompetency.
5. The department uses the amount of a resident's client's income to determine:
 - a. Eligibility for medical assistance benefits.
 - b. Amount of income and other resources which must be applied toward the resident's client's care.
 - c. Amount of income and other resources which can be retained by the resident client.
6. The following personal incidental items, supplies, or services furnished as needed or at the request of the resident client, may be paid for by the resident client from his the client's personal incidental allowance or by outside sources, such as relatives and friends:
 - a. Outside barber and beautician services, if requested by the resident client for regular shaves, haircuts, etc.

- b. Personal supplies, such as toothbrushes, toothpaste or powder, mouthwashes, dental floss, denture cleaners, shaving soap, cosmetic and shaving lotions, dusting powder, cosmetics, personal deodorants, hair combs and brushes, and sanitary pads and belts for menstrual periods.
 - c. Drycleaning of personal clothing.
 - d. Recliner chairs, standard easy chairs, radios, television sets, etc., that the resident client desires for his the client's personal use.
 - e. Special type wheelchairs, e.g., motorized, permanent leg support, hand controlled, if needed by resident client, recommended by his client's attending physician, and if no other payment resource is available.
 - f. Personal clothing, including robes, pajamas, and nightgowns, except for clothing at distinct parts of the state institution for persons with developmental disabilities certified as intermediate care facilities for the mentally retarded, when the ownership of the clothing is retained by the facility or the clothing is included as a part of the individual's plan of care.
 - g. Miscellaneous items, such as tobacco products and accessories, beverages and snacks served at other than mealtime except for supplemental nourishment, television rental for individual use, stationery supplies, postage, pens and pencils, newspapers and periodicals, cable television, and long-distance telephone services. Nonprescription vitamins or combinations of vitamins with minerals may be paid when ordered by the attending physician and the resident client, parent, guardian, or responsible relative approves such use of the resident's client's funds.
7. Charges by the program for items or services furnished clients will be allowed as a charge against the client or outside sources, only if separate charges are also recorded by the facility for all clients receiving these items or services directly from the program. All such charges must be for direct, identifiable services or supplies furnished individual clients. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., will not be allowed. Charges may be made only after services are performed or items are delivered, and charges are not to exceed charges to all classes of clients for similar services.
8. Residents: A client's private property must be clearly marked with his by name. The facility must keep a record of private

property. If items are lost, the circumstances of disappearance must be documented in the facility's records.

9. If client funds are deposited in a bank, they must be deposited in an account separate and apart from any other bank accounts of the facility. Any interest earned on this account will be credited to the applicable ~~resident~~ client's accounts.
10. ~~Residents-~~ A client's funds on deposit with the facility must be available to residents a client on their the client's request. No funds may be withdrawn from accounts of residents a client capable of managing their the client's own funds without their the client's permission.
11. Should a disagreement exist as to whether a ~~resident~~ client is capable of managing the ~~resident's~~ client's own funds, a joint determination will be made by the individual service plan team, parent, guardian, or responsible relative in settling this dispute. The decision must be documented in the provider's records.
12. On discharge, the facility must provide the ~~resident~~ client with a final accounting of personal funds, and remit any balance on deposit with the facility.
13. Upon death, the balance of a ~~resident's~~ client's personal incidental funds along with name and case number, will be maintained in an interest-bearing account for disposition by the ~~resident's~~ client's estate. Personal property, such as television sets, radios, wheelchairs, and other property of more than nominal value, will be maintained for disposition by the ~~resident's~~ client's estate.
14. Upon sale or other transfer of ownership interest of a facility, both transferor and transferee must transfer client's personal incidental funds moneys and records in an orderly manner.
15. Failure to properly record the receipt and disposition of personal incidental funds will may constitute grounds for suspension of provider payments.
16. Client personal incidental funds must not be expended by the provider for the purchases of meals served in licensed day service programs nor may the purchase of such meals be a condition for admission to such programs.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-~~15-01~~; 25-16-10, 50-24.1-01

75-04-05-21. Transfer, discharge, and expulsion of clients.

1. Movement of clients between levels of service by a provider or between providers must be pursuant to a determination by an individual habilitation team. Reimbursement for the cost of the a new service must be contingent upon the timely submission to the department of a--revised an individual service plan.
2. Movement of clients must be subject to the policies and procedures of the North Dakota case management system and the approval of the department.
3. Any emergency movement may be initiated by the provider only with immediate notification of the department, parent, guardian, and advocate. The movement will be subject to the subsequent review by the department which will determine if:
 - a. An emergency existed;
 - b. The rights of the client were protected and preserved;
 - c. Documentation exists in support of the provider's action;
 - d. A prognosis of the client's potential for returning has been made; and
 - e. Services required to maintain the client in a habilitative setting least restrictive of liberty have been provided prior to movement.
4. The department will determine whether a payment should be stopped as a consequence of the vacancy caused by movement of a client.
5. Upon a finding, by the department, that movement of a client constituted a violation of any right secured to the client by North Dakota Century Code chapter 25-01.2, the department may withhold payment for services provided during the period of time that the violation existed.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-22. Staff to client ratios. The following overall direct-care staff to client ratios shall form the basis for the determination of the rate of reimbursement for providers of service to developmentally--disabled persons with developmental disabilities. Additional staff may be necessary to meet the needs of the clients and may be added subject to the approval of the department.

1. Intermediate care facilities for the developmentally-disabled mentally retarded shall be subject to the direct-care direct contact staffing requirements of 42 CFR 442.445 483.430.
2. Transitional community living facility shall maintain a one to eight direct-care staff to client ratio during those periods when the clients are awake and on the premises, and one direct-care direct contact staff when clients are asleep.
3. Minimally supervised living arrangements and providers of congregate care for the aged shall maintain one direct-care direct contact staff onsite when clients are present when required by the department.
4. In minimally supervised apartment living arrangements, one direct-care direct contact staff shall be onsite when clients are present when required by the department.
5. Supported living arrangements shall maintain a direct-care direct contact staff to client ratio of one to twenty.
6. Developmental day activity shall maintain a direct-care direct contact staff to client ratio of one to five.
7. Developmental and prevocational work activity shall maintain a direct-care direct contact staff to client ratio of one to five for the first fifteen clients and one to ten for additional clients.
8. Vocational--development--shall-maintain-a-direct-care-staff-to-client-ratio-of-three-to-twenty-for-the-first--twenty--clients and-one-to-ten-for-additional-clients.
- 9.--Vocational--evaluation--shall--maintain-one-work-evaluator-for sixty-evaluations-per-annum.
10. Infant development shall maintain one therapist service coordinator for every fifteen eleven children.
11. 9. Adult day care shall maintain a direct-care direct contact staff to client ratio of one to eight.
- 12.--On-the-job--training--and-extended-employment-shall-maintain-a staff-to-client-ratio-of-one-to-twenty.
- 13.--Congregate--living--arrangements-for-children-shall-maintain-a direct-care-staff-to-client-ratio-of-one-to-four.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-24. Application.

1. This chapter will be applied to providers of services to ~~developmentally---disabled~~ persons with developmental disabilities, except distinct parts of state institutions for ~~the-mentally-retarded~~ persons with developmental disabilities which are certified as intermediate care facilities for the mentally retarded, starting the first day of a facility's first fiscal year which begins on or after July 1, 1985; provided, however, that neither this section, nor the effective date, shall preclude the application and implementation of some or all of the provisions of this chapter through contract or through official statements of department policy. ~~Effective July 1, 1987, or at such earlier time--as-the-director-of-institutions-might,-in-writing,-agree to,-this-chapter,-except-for-subsections-2-and-3--of--section 75-04-05-02;---subsection-4---of---section---75-04-05-08;--and subsections-13,-31,-36,-39,-45,-46,--48,--and--57--of--section 75-04-05-13;~~ Specific sections of this chapter will be applied to services provided in distinct parts of state institutions for ~~the---mentally---retarded~~ persons with developmental disabilities which are certified as intermediate care facilities for the mentally retarded. The applicable sections of this chapter that apply are section 75-04-05-01; subsections 1, 4, 5, 6, and 7 of section 75-04-05-02; subsections 1, 2, and 3 of section 75-04-05-08; sections 75-04-05-09, 75-04-05-10, 75-04-05-11, and 75-04-05-12; subsections 1 through 11, 13 through 22, 24 through 34, 36 and 37, 39 through 43, 46, and 48 through 55 of section 75-04-05-13; sections 75-04-05-14, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, 75-04-05-19, 75-04-05-20, 75-04-05-21, 75-04-05-22, and 75-04-05-23; and subsection 1 of section 75-04-05-24.
2. This chapter will be applied to providers of supported employment extended services to individuals with developmental disabilities, mental illness, traumatic brain injury, and other severe disabilities, except as operated through the human service centers; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, subsections 1, 2, 4, 6, 10 through 14, 16, 18 through 20, 22 through 25, and 28 of section 75-04-05-01; section 75-04-05-02; subsection 1, subdivisions a through c and e through f of subsection 2, subsection 3, subdivision a of subsection 4, paragraphs 1 and 2 of subdivision b of subsection 4, and subdivisions c and d of subsection 4 of section 75-04-05-08; subsections 2, 6 through 10, and subdivisions a, b, and d of subsection 12 of section 75-04-05-09; subsection 1, subdivision a of subsection 2, and subdivisions a, h, and i of subsection 3 of section 75-04-05-10; subdivisions a through f, h, and i of

subsection 1, and subdivisions a through c of subsection 2 of section 75-04-05-11; subsections 1 and 2, subdivisions a through d, f, and i of subsection 3, and subsections 4 through 7 of section 75-04-05-12; subsections 2 through 11, 14 through 56 of section 75-04-05-13; sections 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; and subsections 1, 2, and 5 of section 75-04-05-21 of this chapter will be applied to supported employment extended services, with the following conditions:

- a. Nonallowable costs include costs of participation in charitable or fraternal organizations;
 - b. Report forms designed by the department must be used for annual reporting for reimbursement. The statement of budgeted costs must be submitted to the vocational rehabilitation division at least sixty days before the end of the facility's normal accounting year reflecting budgeted costs and units of service for establishing an interim rate in the subsequent year. The statement of actual costs must be submitted on or before the last day of the third month following the end of the facility's normal accounting year. The report must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate;
 - c. Requests for reconsideration of the final rate of reimbursement established must be submitted in writing to the vocational rehabilitation division within ten days of the date of the rate notification;
 - d. "Units of service" means one person served for one hour of intervention for billing purposes.
3. This chapter will be applied to providers of individualized supported living arrangements services; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to the providers of individualized supported living arrangements services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and l of subsection 1, and subdivisions a and b of subsection 2 of section 75-04-05-11; sections 75-04-05-12; subsections 1 through 11, 13 through 15, 17 and 18, and 20 through 56 of section 75-04-05-13; sections 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7 and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the

providers of individualized supported living arrangements services:

- a. Each provider of individualized supported living arrangements shall maintain separate revenue records for direct service reimbursements and for administrative reimbursement. Records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:
 - (1) Direct service reimbursements from the department;
 - (2) Interest income from excess department direct service payments as provided for by section 18 of article X of the Constitution of North Dakota. If no interest has been earned on the overpayment amount, then no return of interest will be required; and
 - (3) Intended to cover direct service costs.
 - b. Each provider of individualized supported living arrangements shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client revenues and cost records are to be separately maintained from revenue and cost records whose payment source is the department.
 - c. When direct service reimbursements from the department exceed direct service costs attributable to the department by the margin established by department policy, payback to the department is required. In these situations, the entire overpayment must be refunded.
 - d. A provider may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.
4. This chapter will be applied to providers of family support services; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to providers of family support services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and l of subsection 1, and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 11, 13 through 15, 17 and 18, and 20 through 56 of section 75-04-05-13; sections 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7, and 9 through 16 of

section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the providers of family support services:

a. Each provider of family support services shall maintain separate revenue records for direct service reimbursements and for administrative reimbursements. These cost records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:

(1) Direct service reimbursements from the department;

(2) Interest income from excess department direct service payments as provided for by section 18 of article X of the Constitution of North Dakota. If no interest has been earned from the overpayment amount, then no return of interest will be required; and

(3) Parental financial responsibility as documented on the family support service contract which will be determined using the following guidelines:

(a) Respite care parental financial responsibility for a nonmedicaid eligible minor under the age of eighteen shall be determined by the sliding fee scale that is established by and administered by the human service centers as provided for in North Dakota Century Code section 50-06.3-03. Copies of the "monthly income billing rate schedule", which may be updated from time to time, are available from the department upon request.

(b) Family care options parental financial responsibility for services for a minor under the age of eighteen who is receiving supplemental security income shall be determined by the following method:

[1] Subtract forty-five dollars from the supplemental security income check for personal needs and extraordinary expenses determined by the parents and the agency; and

[2] Divide the amount by thirty to determine the daily rate.

(c) Family care options parental financial responsibility for services for a minor under the age of eighteen who is not receiving supplemental security income shall be determined by the following method:

- [1] Determine the net monthly income;
 - [2] Determine the number of children under eighteen living in the household;
 - [3] Apply the scale of suggested minimum contribution percentages from the "North Dakota child support guidelines scale of suggested minimum contributions", which may be updated from time to time and is available upon request from the department;
 - [4] Divide the suggested contribution by the number of children to derive the per child contribution; and
 - [5] Divide the per child contribution by thirty to determine the daily rate.
- b. Each provider of family support services shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client cost records are to be separately maintained from cost records for clients whose payment source is the department.
- c. Payback in the form of a refund is required when direct service revenues from the department exceed direct service costs attributable to the department.
- d. A provider may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.

History: Effective July 1, 1984; amended effective July 1, 1984; June 1, 1985; June 1, 1995.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01; 25-16-10, 50-24.1-01; 34 CFR 363

CHAPTER 75-04-07

AGENCY SYNOPSIS: Proposed new North Dakota Administrative Code Chapter 75-04-07, Individualized Supported Living Arrangements for Persons with Mental Retardation-Developmental Disabilities

A public hearing was conducted on July 20, 1994, in Bismarck, concerning proposed new North Dakota Administrative Code Chapter 75-04-07, Individualized Supported Living Arrangements for Persons with Mental Retardation-Developmental Disabilities. The proposed new Chapter 75-04-07 establishes provider and client criteria for the provision of services.

Section 75-04-07-01 provides definitions for programmatic terms used throughout the chapter. Section 75-04-07-02 defines and establishes conditions for client participation in the program. Section 75-04-07-03 establishes minimum requirements for provider participation in the program.

Section 75-04-07-04 provides for discontinuation, termination, and nonrenewal of individualized supported living arrangements, contracts, or services. Section 75-04-07-05 catalogues the services available in the individualized living arrangements program. Section 75-04-07-06 provides appeal procedures.

STAFF COMMENT: Chapter 75-04-07 contains all new material but is not underscored so as to improve readability.

**CHAPTER 75-04-07
INDIVIDUALIZED SUPPORTED LIVING ARRANGEMENTS FOR PERSONS
WITH MENTAL RETARDATION - DEVELOPMENTAL DISABILITIES**

Section	
75-04-07-01	Definitions
75-04-07-02	Conditions of Client Participation
75-04-07-03	Conditions of Provider Participation
75-04-07-04	Discontinuation, Termination, and Nonrenewal of Individualized Supported Living Arrangements Contracts or Services
75-04-07-05	Services Available in the Individualized Supported Living Arrangements Program
75-04-05-06	Appeals

75-04-07-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Administrative reimbursement" means a flat fee intended for reimbursement toward administrative costs and management incentive.
2. "Ancillary services" means consultative services from a psychologist, physical therapist, nurse, audiologist, dietician, speech pathologist, or orthotic and prosthetic specialist. Consultative services must be necessary to provide training to staff for completion of behavioral or service objectives for a particular client, or necessary to maintain or restore functioning level for a client. This subsection may not be construed to allow the purchase of durable medical equipment. This definition of "ancillary services" applies only to the individualized supported living arrangements program.
3. "Clients" means eligible persons with developmental disabilities on whose behalf services are provided or purchased.
4. "Cost-effective" means a daily rate for residential support which is equal to or less than that of a residential program the client was in prior to being referred to an individualized supported living arrangements program. An assessment of cost effectiveness of a prospective contract may include

environmental considerations for others that are affected by the client's current or proposed placement in the individualized supported living arrangements program.

5. "Department" means the department of human services.
6. "Division" means the developmental disabilities division of the department.
7. "Failure to cooperate" means refusal of a client in individualized supported living arrangements to participate in support, training, or therapeutic services designed to increase the client's capacity for independent functioning or perform self-care or activities of daily living which the client has been found to have the skills or adaptive methods to competently perform. A determination of the skills or adaptive methods to competently perform may be made based on assessments made by the individual plan program team.
8. "Family member" means relatives or a client to the second degree of kinship.
9. "Generic service" means services that are available to any member of the population and are not specific to meeting specialized needs of individuals with mental retardation-developmental disabilities.
10. "Individual program plan team" means a multiagency, interdisciplinary team consisting of the client, significant others, advocates, direct contact workers, and others necessary to design a written plan of specific program intervention and action to meet the client's needs as identified in the client's individual service plan. The individual program plan team must be developed in accord with the accreditation council standards pursuant to chapter 75-04-01.
11. "Individual service plan" means an individual plan which identifies services required by the eligible client and the services to be provided. The individual service plan is developed by the mental retardation-developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.
12. "Individualized supported living arrangements" means residential support services options in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
13. "Less intrusive" means a residential situation for a client allowing levels of direct supervision or intervention lower

than other residential service program arrangements, yet meets the client's basic needs.

14. "Less restrictive" means a residential situation allowing less control over a client's personal choices, movement, and activities, yet meets the person's basic needs.
15. "Mental retardation-developmental disability related condition" means a condition that results in the person being eligible pursuant to chapter 75-04-06.
16. "Personal independence development" means intervention strategies, supports, and adaptations which have the effect of reducing a client's dependence on external support and assistance to meet basic needs.
17. "Primary caregiver" means a person who has assumed responsibility for supervision and assistance in meeting the needs of the client and who is not employed by or working under contract of a provider licensed pursuant to chapter 75-04-01.
18. "Related organization" means an organization that a provider is, to a significant extent, controlled by, associated with, affiliated with, or able to control, and which furnishes services, facilities, or supplies to the provider. Control exists when an individual or an organization has the power, directly or indirectly, to significantly influence or direct the action or policies of an organization or institution.
19. "Similar benefits" means services, supports, or benefits a client may be eligible for through services other than a developmental disabilities division purchased service.
20. "Twenty-four-hour staffing" means continuous and ongoing direct staff supervision by paid staff for all hours of a day which may be inclusive of a day service or employment program.

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-02. Conditions of client participation. A client may be eligible to receive services in an individualized supported living arrangements setting if:

1. The client has been determined eligible for mental retardation-developmental disabilities case management pursuant to chapter 75-04-06;
2. The client has been recommended for individualized supported living arrangements by an individual service plan;

3. The client's need for residential support is primarily the result of mental retardation or a closely related condition;
4. The client's needs cannot be more appropriately met by a generic service or service including hospitals, clinics, human service centers, nursing facilities, or correctional facilities;
5. The client's needs can be expected to be met by the supports and services provided for in this chapter;
6. Service through the individualized supported living arrangements program is cost effective in meeting the client's needs;
7. An individualized supported living arrangements program is expected to be a less intrusive and less restrictive residential living alternative;
8. The client is at least twenty-one years of age or the client has completed all educational programming to which the client is entitled under state and federal laws and will reach the age of twenty-one years by the next September first, unless the client is participating during the last semester of education and the participation is part of a formal transition plan;
9. The client is living in the client's own residence, independent of a primary caregiver, or lives in a residence meeting the licensing requirements pursuant to chapter 75-03-21;
10. A licensed qualified provider is willing to provide necessary services;
11. The client has an individualized supported living arrangements contract with terms approved by the provider, the regional developmental disabilities program administrator, and the division, and which terms may:
 - a. Reflect individual service plans and individual program plan assessments of need and their respective recommendations;
 - b. Reflect the considerations of the client's legal rights and responsibilities; and
 - c. Reflect the efficient use of public resources.
12. The client's service needs remain compatible with the available services listed in section 75-04-07-05; and

13. When the client receives services in the home of a family, the home is licensed pursuant to chapter 75-03-21.

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-03. Conditions of provider participation.

1. Individualized supported living arrangement services shall be purchased by the department through the developmental disabilities division by individual contract from providers licensed pursuant to chapter 75-04-01.
2. As a condition of participation in the program, a licensed service provider shall include its individualized supported living arrangements program in the accreditation council on services for people with disabilities survey process.
3. In the event of discontinuation, termination, or nonrenewal of a contract or service, the provider shall cooperate in the referral and transition of the client to alternative services.
4. The provider shall make copies of all client records available to the department upon request.
5. For audit purposes, providers participating in the program shall maintain records of revenue and cost pursuant to chapter 75-04-05.
6. At the client's request, the department may negotiate contracts between providers of services and clients who pay the entire cost of the contract from their own financial resources. After negotiations are completed, the department shall have no further participation in the costs or payment of the contract provisions.
7. Each provider shall compile written job descriptions for their employees that include provisions for participation in ongoing training and requirements for education, experience, and skills. Provision must also be made for at least one performance evaluation per year.

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-04. Discontinuation, termination, and nonrenewal of individualized supported living arrangements contracts or services.

1. Individualized supported living arrangement services to a client must be discontinued at the expiration of an executed contract when:
 - a. A client with legal capacity fails to cooperate with the delivery of services;
 - b. Based on the assessment of available material, the continued provision of services to the client presents a threat to the health and safety of the client or others; or
 - c. Based on the assessment of available material, it is determined that the needs of the client are no longer being met by the individualized supported living arrangements program or that continued services will not bring satisfactory results.
2. Nonrenewal of a service contract with a provider for a client must be considered by the department for reasons that include:
 - a. The client exhibits a lack of progress, assessed by the developmental disabilities case management utilization review process, in development of independent functioning consistent with the client's potential, unless barriers to development of independent functioning exist that cannot reasonably be expected to be controlled or ameliorated through available services;
 - b. The provider fails to deliver the levels and types of services specified in the contract, to provide qualified staff, or to provide resources necessary to meet the individual's needs which have not decreased during the term of the contract;
 - c. The provider, regional developmental disabilities office, and the division fail to agree on contract renewal terms;
 - d. The provider fails to develop and activate an individual program plan within thirty days of admission or annual program plan development;
 - e. Misrepresentation of the client's needs;
 - f. The provider fails to give the client a reasonable opportunity to participate in selection of ancillary service providers and direct service staff; or
 - g. The housing occupied by the client is owned or controlled by the provider of service and service to the client is contingent upon the client remaining in that housing or lease or rental agreement, which is less favorable to the

renter than that normally used in the local real estate market.

3. Immediate termination of a current contract for a client with a specific provider, or termination of services through the individualized supported living arrangements program, must be considered by the department based on available information and assessments through its developmental disabilities division for reasons that include:
 - a. An individual service plan has been completed, which would terminate individualized supported living arrangements services or authorize an alternative residential service;
 - b. Substantiated abuse, neglect, or exploitation of the client by an employee or agent of the provider;
 - c. Institutionalization, incarceration, or alternative placement of the client, except as provided in subdivision g of subsection 1 of section 75-04-07-05;
 - d. Death of the client with the contract terminating on the date of death;
 - e. The client establishes a residence out of state;
 - f. The client refuses to cooperate in the provision of services; or
 - g. Continued service to the client presents an immediate threat to the health or safety of the client or others.

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-05. Services available in the individualized supported living arrangements program.

1. Services and supports available for reimbursement in individualized supported living arrangements contracts:
 - a. Temporary room and board subsidies;
 - b. Ancillary services as defined in subsection 2 of section 75-04-07-01;
 - c. Service coordination and individual program plan development and monitoring, including:
 - (1) Qualified mental retardation or mental health professional allowance; and

- (2) Internal case management allowance;
- d. Direct contact staff time for personal supports, including:
 - (1) Safety and health monitoring and maintenance;
 - (2) Personal hygiene and grooming;
 - (3) Management of personal affairs related to daily living needs;
 - (4) Food preparation and storage;
 - (5) Housekeeping and home maintenance;
 - (6) Clothing care and maintenance; and
 - (7) General supervision for health and safety;
- e. Direct contact staff time for personal independence development strategies, including:
 - (1) Development of natural supports;
 - (2) Activities and strategies to promote community inclusion;
 - (3) Support and adaptive strategies to enhance client control and independence over the individual's environment, resources, activities, self-care, and self-control; and
 - (4) Training:
 - (a) Modeling;
 - (b) Demonstration;
 - (c) Experiential activities;
 - (d) Reinforcement; and
 - (e) Structured learning;
- f. Administrative reimbursement;
- g. Only an administrative reimbursement and service coordination allowance are available for the time a client is absent from the service setting and out of the provider's sphere of direct service responsibility for a time period that exceeds thirty consecutive days;

- h. Relief staff time;
 - i. Direct contact staff training time; and
 - j. Fringe benefits for subdivisions c, d, e, and h of subsection 1 of section 75-04-07-05.
2. Services not available for reimbursement in individualized supported living arrangements contracts include:
- a. Room and board subsidies when:
 - (1) The housing occupied by the client does not meet local codes for occupancy;
 - (2) The housing occupied by the client is owned or controlled by the provider or a related organization, except when no other lessor is willing to rent to the client at a comparable rate due to credit, behavioral, or other factors attributable to the client;
 - (3) The client resides in a residential unit that has more than one bedroom per resident, except where the department determines standby, overnight staffing is a necessity for the protection of others;
 - (4) The client fails to apply for or accept maintenance benefits when eligible;
 - (5) The client resides in a building where more than twenty-five percent of the total bedrooms are occupied by individuals currently eligible for developmental disabilities-mental retardation case management services; or
 - (6) The client's income exceeds basic need expenses by more than the personal spending allowance level for a resident of an intermediate care facility for the mentally retarded;
 - b. Financial assistance to purchase real property or motor vehicles;
 - c. Direct supervision in excess of what is necessary for health and safety with determination based on available assessments;
 - d. Personal support and assistance to complete daily living tasks a client is unwilling to perform, but capable of performing, unless assistance is necessary to avert threats to the client's safety with determination based on available assessments;

- e. Personal support for maintenance of housing that does not meet local dwelling codes;
 - f. Support staffing for the care of pets or livestock;
 - g. Assistance for maintenance of property other than the client's immediate residence and personal property;
 - h. Services available to the client under entitlement programs or generic services;
 - i. Supports or services to address personal preferences unless accommodation is cost neutral or is instrumental in developing the client's personal independence and will result in decreased need for paid support;
 - j. Services provided to a client by a family member or in the home of a family member;
 - k. Services provided to a client prior to execution of a contract;
 - l. Direct support for travel for a client outside the client's community of residence unless support needs would be the same during the time of travel as at home or the travel is necessary for medical needs, emergency, or obtaining basic necessities not available in the client's home community;
 - m. Purchase of real property or maintenance of income-producing property;
 - n. Fees for guardianship, conservatorship, legal services, or financial management of investments, trusts, or estates;
 - o. Replacement of institutional-based services when the client's needs are predominantly due to a condition not related to mental retardation or a developmental disabilities case management eligible condition;
 - p. Material or financial reinforcers for behavior management plans; and
 - q. Continuous or twenty-four-hour supervision by paid staff on a one-to-one basis within the individualized supported living arrangements program for a client unless a shared staffing arrangement would create a safety threat to the client or others.
3. Excluding the qualifying mental retardation-developmental disability, individualized supported living arrangements support or treatment is not available for any condition whose general medical protocol or generally accepted medical

practices for treatment for the general population requires institutional care. Individualized supported living arrangements allow support services for management of medical conditions that are not attributable to the qualifying mental retardation-developmental disability, if the qualifying mental retardation-developmental disability causes the client to be unable to perform self-care that is normally expected by the general population medical protocol and generally accepted medical practices.

4. Services authorized by contract may include those in this section, but cost ceilings may be established by the department for rates of reimbursement for those services.

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-06. Appeals. A client may perfect an appeal if the client has been denied services or has had services discontinued based on subsections 3, 4, 5, 6, 7, 9, and 12 of section 75-04-07-03, subdivisions a, b, and c of subsection 1, and subdivisions f and g of subsection 3 of section 75-04-07-04. An appeal under this section is timely perfected only if made in writing on forms developed and provided by the department. The complaining subject must submit the written request for an appeal and formal hearing to:

Appeals Supervisor
North Dakota Department of Human Services
State Capitol - Judicial Wing
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

ARTICLE 75-09

AGENCY SYNOPSIS: Proposed article North Dakota Administrative Code Article 75-09, Alcohol and Drug

A public hearing was conducted on December 21, 1994, in Bismarck, concerning proposed article to North Dakota Administrative Code Article 75-09, Alcohol and Drug. The proposed article addresses the licensure of alcohol and drug rehabilitation programs in North Dakota.

Written comments were received from sixteen commentors within the comment period. Three comments were received at the public hearing.

These proposed rules provide licensure standards for North Dakota's alcohol and drug education and rehabilitation programs. Statutory changes to North Dakota Century Code chapters 23-17.1 and 57-38 as well as general policy changes within the department initiated these changes.

The proposed new article sets forth the organizational standards (chapter 75-09-01) and program standards (chapter 75-09-02) that apply to all alcohol and drug programs. Chapter 75-09-03 describes the specific standards for social detoxification programs. Chapter 75-09-04 presents specific standards for intensive outpatient treatment programs; chapter 75-09-05 covers day treatment; chapter 75-09-06 applies to medically supervised intensive inpatient care; chapter 75-09-07 presents long-term residential care services; and chapter 75-09-08 describes DUI seminars.

STAFF COMMENT: Article 75-09 contains all new material but is not underscored so as to improve readability.

ARTICLE 75-09

ALCOHOL AND DRUG

Chapter	
75-09-01	Organizational Standards
75-09-02	Program Standards
75-09-03	Social Detoxification Program
75-09-04	Intensive Outpatient Treatment
75-09-05	Day Treatment Programs
75-09-06	Medically Supervised Intensive Inpatient Care
75-09-07	Long-term Residential Care Services
75-09-08	DUI Seminar

CHAPTER 75-09-01 ORGANIZATIONAL STANDARDS

Section	
75-09-01-01	Governing Body and Governance
75-09-01-02	Information Management
75-09-01-03	Program Evaluation
75-09-01-04	Personnel Administration
75-09-01-05	Fiscal Management
75-09-01-06	Physical Facilities, Health, and Safety
75-09-01-07	Health and Safety Program
75-09-01-08	Physical Plant
75-09-01-09	Transportation
75-09-01-10	Accreditation as a Basis for Licensure
75-09-01-11	Sanctions
75-09-01-12	Effective Date

75-09-01-01. Governing body and governance.

1. A program must have a governing body legally responsible for the conduct of the program. A governing body may consist of either an individual or group of individuals.
2. The governing body shall develop a written philosophy and mission for the program.

3. The governing body shall develop written goals and objectives for the program consistent with the philosophy and mission.
4. The governing body shall document its governance authority and the delegation of governance.
5. The governing body shall develop written policies and procedures governing the operations of the program. Areas to be covered include admissions, discharges, scope of service, treatment plans, staffing patterns, outside referrals, continued or followup treatment, and outcome evaluations.
6. The organization shall conform with applicable legal requirements and regulations of all governmental and legally authorized agencies under whose authority it operates, to include accessibility, affirmative action, equal employment opportunity, health and safety, and licensure.
7. The governing body shall be responsible for providing qualified personnel, facilities, and equipment needed to carry out the goals and objectives and meet the needs of clients.
8. The governing body shall name an administrator and establish a written job description providing the qualifications and the responsibility of the position.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-02. Information management.

1. Organizations shall have a system of information collection, dissemination, and utilization.
2. Information gathered must include data collection as described by the department and fiscal information such as fee structure.
3. Appropriate safeguards must be applied to protect confidential administrative records, whether they are electronically or manually maintained. These safeguards must include:
 - a. Record access limited to authorized individuals;
 - b. Record indexing and filing system suitably maintained;
 - c. Essential record location known at any time;
 - d. Records secured and reasonably protected against fire, water damage, and other hazards; and

- e. Electronic records routinely protected with a backup file.
- 4. A policy must be maintained so that files are not needlessly retained or prematurely discarded. The retention of records of clients and administrative records must be guided by professional and state research, administrative, and legal requirements.
- 5. Minimum client information will be released to satisfy federal, state, and grant statistical requirements.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-03. Program evaluation.

- 1. The program must have an evaluation system that meets the following criteria:
 - a. Measures outcomes of programs and services;
 - b. Includes all clients or a representative sample;
 - c. Regularly measures the progress of the clients in relation to program goals for those programs in which they remain for six months or more; and
 - d. Evaluates postdischarge information.
- 2. The program evaluation system must include at least:
 - a. Admission criteria;
 - b. A listing of services offered;
 - c. Measurable objectives;
 - d. A specification of the time for which each measure is applied;
 - e. A priority ranking or weighing of the objectives;
 - f. Measures of effectiveness and efficiency; and
 - g. Measures of the satisfaction of the client by the program.
- 3. The system must track and maintain at least:
 - a. Characteristics of clients, e.g., diagnoses such as pregnancy, HIV positive, tuberculosis, functional limitations, types of disabilities;

- b. Services received;
 - c. Dates of service, such as admission and discharge; and
 - d. Demographic data such as age, race, and sex.
4. Program evaluation management reports must reflect:
- a. Measures of effectiveness, e.g., benefits achieved by the clients;
 - b. Measures of efficiency, e.g., time, costs, utilization;
 - c. Measures of the satisfaction of the client with the program;
 - d. Characteristics of clients; and
 - e. Interpretation of results.
5. Program evaluation information must be made available in an understandable fashion and must be communicated in a timely manner to the governance authority, personnel, and the organization's various publics, including clients, purchasers of services, contributors, and supporters.
6. The organization shall portray itself and its services in an accurate manner. What the organization claims as client outcomes in brochures, advertisements, and other methods must be consistent with the results shown in the organization's program evaluation system.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-04. Personnel administration.

- 1. The organization shall employ sufficient and qualified staff members to meet the needs of the clients in a manner consistent with the purposes and objectives of the organization.
- 2. Written standards of qualifications for all staff members, consultants, trainees, interns, and volunteers must be established and maintained.
- 3. The organization shall have written policies and procedures to verify the backgrounds and credentials of staff members, volunteers, and consultants, and to act upon the results of the information received.

4. The nature and extent of the actual involvement of individuals used through consultation and affiliation arrangements must be documented and must meet organizational and legal requirements.
5. Written job descriptions must be established that:
 - a. Address all staff members, including volunteers, trainees, and interns;
 - b. Set forth the qualifications, the reporting supervisor, the positions supervised, and the duties of each position;
 - c. Are dated and regularly reviewed for continuing appropriateness; and
 - d. Are provided to the individual involved.
6. The role and responsibilities of volunteers, consultants, trainees, and interns must be described in writing.
7. When the organization employs personnel, including volunteers, trainees, and interns, written personnel policies must be established and maintained which:
 - a. Are approved by the governance authority;
 - b. Are readily available in written form;
 - c. Are provided to all staff members in an employee handbook or by other suitable means; and
 - d. Are reviewed at least annually.
8. The organization shall have written personnel policies and procedures that:
 - a. Meet all current legal requirements;
 - b. Outline hiring and termination practices;
 - c. Outline disciplinary procedures;
 - d. Clarify what the organization expects from staff, including volunteers, trainees, and interns;
 - e. Clarify what the staff, including volunteers, trainees, and interns, may expect from the organization; and
 - f. Outline an appeals procedure.
9. The organization shall have written policies and demonstrated actions related to nondiscrimination with regard to

employment, pay, place of work, or promotion because of age, creed, disability, gender, national origin, or race.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-05. Fiscal management.

1. The organization shall operate on an annual or biennial budget.
2. An independent examination of the organization's financial status by a certified public accountant must be obtained. The scope of this independent review will vary based on the accountability requirements placed on the organization. This independent review may range from a compilation report to a full audit.
3. Fiscal records, including payroll, purchasing, and financial statements, must be maintained.
4. When fees for services are charged, the organization shall have an established schedule of fees:
 - a. Available in printed form; and
 - b. Applied equitably to each client.
5. The organization shall employ a policy that prohibits fee splitting with other agencies or individuals as consideration for referral of the client to be served.
6. If the organization is responsible for funds or personal possessions belonging to clients, the organization shall have a procedure for identification and accountability for any expenditure of those funds.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-06. Physical facilities, health, and safety.

1. All locations owned, rented, or leased by the organization must meet standards of the state fire marshal or an equivalent code.

2. Inspections of all locations must be made by external authorities, who are approved by the department.
3. Documentation of all inspections, including areas covered and recommendations, must be obtained and retained.
4. The organization shall implement and document corrective action taken with respect to inspection reports and recommendations.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-07. Health and safety program. The organization shall maintain, or be an active part of, an organized health and safety program.

1. The organization shall develop written emergency plans and procedures that address, at a minimum, provisions for dealing with bomb threats, fires, medical emergencies, natural disasters, and power failures.
2. First aid facilities, equipment, and supplies must be readily available. The organization shall have:
 - a. At least one staff member certified in basic first aid and in basic cardiac life support, e.g., cardiopulmonary resuscitation. Personnel certified in cardiopulmonary resuscitation must be present in the facility during all hours of program operations. The number of other certified individuals present must be based on the needs of the clients and the type of services provided; and
 - b. A written plan must be developed to assist the client in receiving additional care beyond first aid when it is needed. An outline of the plan must be posted where first aid supplies are kept and at other appropriate places in the physical plant.
3. Designated managerial and supervisory staff members shall be responsible for the safety of the clients and personnel under their supervision.
4. The organization shall have procedures that are reviewed annually for ready access to current information contained in personnel files, records of clients, or other sources that would be needed during emergency situations.
5. The organization shall have a written plan for reporting all incidents, including serious illnesses, injuries, and alleged cases of abuse or neglect. Such reporting and investigation

must be performed whether or not the incidents give rise to injuries requiring medical treatment. The plan must provide for:

- a. Prompt emergency care;
 - b. Prompt reporting of the incident to appropriate staff;
 - c. Recording of the essential facts surrounding the incident; and
 - d. Review of reports to formulate recommendations and actions.
6. A written policy must be developed that addresses the use of smoking products. The policy must address the needs of the clients, personnel, visitors, and comply with local, state, and federal laws.
 7. Written policies and procedures must be developed in conformance with applicable legal requirements to govern the safe administration, handling, storage, and disposal of medications. Appropriate training of personnel must be documented according to North Dakota Century Code chapters 23-16, 43-12.1, 43-17, and 43-45.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-08. Physical plant.

1. The location of the program in the community must be readily accessible to the clients, to personnel, and to visitors. There must be adequate parking, dining areas, and other common services if these are provided by the organization.
2. The size and design of the physical plant and equipment and materials used must:
 - a. Be adequate to promote efficiency and flexibility of service delivery;
 - b. Be equipped to meet established standards for all professional, industrial, or general services provided;
 - c. Reflect appropriate professional and legal requirements of safe and efficient operations;
 - d. Promote the dignity and self-worth of clients; and
 - e. Be age-appropriate for clients.

3. A suitable location must be designated within the physical plant for such activities as interviews, dictation, staff conferences, and psychometric testing to provide for confidentiality of information about the client.
4. Adequate toilet and lavatory facilities and water suitable for drinking with no objectional odor must be available.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-09. Transportation. If the organization provides client transportation services, whether by volunteers or by contract, the organization shall ensure that:

1. For volunteers or paid staff, the organization provides sufficient insurance to meet state minimum liability requirements;
2. For paid contracts, the contractor provides assurances that licensure and liability requirements are satisfied.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-10. Accreditation as a basis for licensure. The department recognizes "deemed status" for those providers who have accreditation of nationally recognized bodies who review and certify providers of drug and alcohol services. When applying for licensure or renewal licensure, proof of accreditation or "deemed status" in the form of the accreditation agency's most recent review and certification must be submitted to the department. "Deemed status" means status conferred on a program accredited by a national accreditation body based on standards that exceed the standards set forth in these licensure rules.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-11. Sanctions.

1. A violation of section 75-09-01-01, 75-09-01-03, 75-09-01-05, 75-09-01-06, or 75-09-01-09, or violations of any combination of two of the preceding sections, results in a letter to the provider outlining corrective action. The provider has one year to correct the deficiency, and may be issued a one-year provisional license specifying the area of noncompliance. Violations of any combination of three of the preceding

sections must be considered a subsection 2 violation and subject to the sanctions in subsection 2.

2. A violation of section 75-09-01-04 or 75-09-01-08, or a violation of a combination of any three of the sections in subsection 1, will result in a correction order with sixty days allowed for corrective action. If corrective action does not occur within the sixty days allowed, a ninety-day suspension will be imposed. At the end of the ninety-day suspension, and if the cited violation has been corrected, a one-year provisional license may be issued to the facility. If the facility has not corrected the deficiency, the provider's license will be revoked immediately.
3. A violation of section 75-09-01-02 or 75-09-01-07, habitual noncompliance with subsections 1 and 2, or any illegal act or act that threatens the health and safety of the clients will result in immediate license revocation.
4. For one hundred eighty days following a license revocation for any reason, a provider who has been the subject of a license revocation is prohibited from submitting a new application to the department for consideration for a new license for any facility or program.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-01-12. Effective date. These rules shall apply uniformly to all programs licensed by the department of human services. The effective date of this section is December 31, 1995.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

**CHAPTER 75-09-02
PROGRAM STANDARDS**

Section	
75-09-02-01	Intake and Orientation
75-09-02-02	Standardized Assessment
75-09-02-03	Individual Treatment Plan
75-09-02-04	Referral, Discharge, and Followup
75-09-02-05	Client Records
75-09-02-06	Quality Assurance
75-09-02-07	Client Rights
75-09-02-08	Infection Control
75-09-02-09	Accreditation as a Basis for Licensure
75-09-02-10	Sanctions
75-09-02-11	Continued Stay

75-09-02-01. Intake and orientation.

1. The program must have clearly written criteria and policies for client admission.
2. Policies and procedures for orientation of the client and, when appropriate, the family, must be established.
3. A list of rights and responsibilities of persons served and corresponding grievance and appeal procedures must be explained and posted in a manner that can be understood by the client.
4. The organization must have a written policy regarding provision of services for clients who do not have the ability to pay.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-02-02. Standardized assessment.

1. When conducting assessments, the organization shall administer diagnostic instruments preapproved by the department.
2. Previous diagnostic, medical, treatment, and training reports that impact the development of the individual plan must be:
 - a. Obtained from appropriate current or previous service providers and referral sources; and
 - b. Integrated into the assessment process.

3. Reports from the assessment process must clearly describe the findings and recommendations.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-02-03. Individual treatment plan.

1. Policies and procedures must be written and implemented to ensure that the services provided to each client are coordinated and integrated and address goals that reflect the client's informed choice.
2. Based on referral and assessment information about the client's strengths, abilities, needs, and preferences, a comprehensive, coordinated, individualized plan must be developed for each client.
3. Comprehensive individual treatment plans must be developed and documented in the client's record by the end of the tenth working day from admission.
4. The organization shall have a written policy that specifies instances in which signed, informed consent for services must be obtained and retained. The policy must be guided by professional and legal requirements.
5. The client's progress towards the accomplishment of goals must be analyzed regularly with the active involvement of the client, with goals and services modified as needed.
6. Services must be provided by the appropriate registered, certified, licensed, or degreed personnel or must be performed under their close, frequent supervision. Licensing standards for personnel are provided in North Dakota Century Code chapters 43-12.1, 43-15, 43-17, 43-32, 43-41, 43-44, and 43-45.
7. Services essential to the attainment of the client's goals and objectives must be provided, either through staff members or through formal affiliation or consultation arrangements with appropriate agencies or individuals.
8. A single appropriately licensed addiction counselor must be designated for each client. The provision of services to each client must be organized through the client's appropriately licensed addiction counselor.
9. Clinical staff and consultants must have the opportunity to recommend to the licensed addiction counselor other services that the client may need to request.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-02-04. Referral, discharge, and followup.

1. For client services not available through the organization, written procedures for referral and recommendations for other services must be developed and implemented.
2. The organization must have written policy and procedures that verify appropriate referral during and after treatment.
3. The client or the client's legal representative shall authorize any release of information and materials.
 - a. Any information released must be limited to that necessary for the individual or agency requesting the information, and a release must be obtained from the client or the guardian.
 - b. Any further disclosure or redisclosure of information is prohibited unless it is authorized by the client or the client's legal representative.
 - c. Release forms must conform to applicable federal and state laws and, at least, must identify:
 - (1) The content to be released;
 - (2) The form in which the information is to be released, e.g., written, verbal, audio, video, electronic;
 - (3) To whom the information is to be released;
 - (4) For what purpose the information is to be released;
 - (5) The name of the client and date of birth about whom information is to be released;
 - (6) The date on which the release is signed;
 - (7) The length of time for which the release is authorized; and
 - (8) The signature of the client or legal representative.
 - d. The client or the client's legal representative shall be given a copy of the signed release form.
4. The organization shall establish written procedures and implement mechanisms for discharge and followup of the

clients. Followup must be conducted when the client leaves the program, is discharged from the program, transfers from the program to a supportive service, or is placed in an inactive status.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16; 42 CFR 2

75-09-02-05. Client records.

1. For each client admitted to a program, a single record must be prepared and either electronically or manually maintained so as to communicate the appropriate case information. This information must be in a form that is clear, concise, complete, and current.
2. The program must adopt a written policy addressing the process by which the client may gain access to the client's own record.
3. If duplicates of information or reports from the single record of the client exist or if working materials are maintained, such material must:
 - a. Not be a substitute for the single record;
 - b. Be secondary to the recording of information, with the single record of the client receiving first priority; and
 - c. Record information of value to the specific service, such as daily attendance, raw scores of tests, and similar data.
4. Appropriate safeguards to protect active and closed confidential written, electronic, and audiovisual records and to minimize the possibility of loss or destruction must be applied.
 - a. The information in active and closed individual records must be organized in a systematic fashion.
 - b. Manual systems must provide for affixing active records to record jackets.
 - c. The location of the records of clients and the nature of the information contained therein must be controlled from a central location.
 - d. A designated staff member shall be responsible for the control of records of clients and for the implementation

of the policies and procedures pertaining to records of clients.

- e. Access to records of clients and electronically generated documents must be limited to the members of the professional staff who are providing direct services to the client, plus such other individuals as may be administratively authorized.
- f. An indexing and filing system must be maintained for all manual and electronic records of clients.
- g. The organization shall develop and implement written policies and procedures that ensure the protection and confidentiality of electronic records.
- h. Records must be secured and reasonably protected against fire, water damage, and other hazards.
- i. A routine procedure for backup of data files must be followed for electronic systems.
- j. A policy must be developed that defines file access control procedures.

5. Client records must include:

- a. Identification data;
- b. The name and address of the legal representative, conservator, guardian, and representative payee, if one has been appointed, for the client;
- c. Pertinent history, diagnosis or disability, presenting need or functional limitation, and desired outcomes and expectations;
- d. Prescribed medications and name and phone number of prescribing physician;
- e. Relevant medical information, e.g., allergies, seizure disorders;
- f. Reports of assessment and individual planning;
- g. Reports from referring sources;
- h. Reports of service referrals;
- i. Reports from outside consultants;
- j. Designation of the licensed addiction counselor for the client;

- k. Evidence of the direct involvement of the client in the decisionmaking process related to the client's program;
 - l. Reports of team conferences;
 - m. Reports of family conferences, if held;
 - n. The individual plan of the client, including the overall plan and the plans for specific services and signature of client;
 - o. References to audiovisual records;
 - p. Signed and dated service and progress reports;
 - q. Correspondence pertinent to the client;
 - r. Release forms;
 - s. Discharge summary;
 - t. Followup reports; and
 - u. If admission, ongoing care, or discharge criteria as described by the department has not been met, the provider must document the grounds for placement, ongoing care, or discharge decisions.
6. The organization shall develop a written policy that specifies timeframes for entries into the records of clients, such as clinical information, critical incidents or interactions, progress notes, and discharge summaries. Progress notes will be entered into client records on the following schedule:
- a. Weekly entries for outpatient clients;
 - b. Daily entries for day treatment clients; and
 - c. Shift entries for inpatient clients.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-02-06. Quality assurance.

- 1. The organization shall have an established written system that provides for internal, professional review of the quality and appropriateness of the program of services for the client.
- 2. The organization shall develop a written quality assurance plan and designate a staff member to coordinate that plan.

3. The provider shall have written policies and procedures for peer review.
4. The system must provide for the review process to occur at least quarterly.
5. The review must involve a representative sampling of clients currently served.
6. The review must be conducted irrespective of sources of funding for the clients.
7. The documented results of the review must:
 - a. Produce a documented list of areas needing improvement and actions taken;
 - b. Be integrated into the individual planning, plan evaluation, and program management activities for the client;
 - c. Be administratively used, in conjunction with the results of consumer satisfaction surveys, in program evaluation activities, and in organizational planning; and
 - d. Be reviewed at least annually by the organization's administration.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 50-06-01.4, 54-38

75-09-02-07. Client rights.

1. All approved treatment programs must assure the right of each client to:
 - a. Be treated with respect and dignity;
 - b. Be treated without regard to physical or mental disability;
 - c. Be treated without regard to race, creed, national origin, sex, or sexual preference;
 - d. Have all information handled confidentially in accord with standards of confidentiality.
 - e. Receive notice of federal confidentiality requirements;
 - f. Not be subject to physical, emotional, or sexual abuse or harassment by the staff or another client;

- g. Have services for male or female clients reflecting the special needs of each gender and to be provided equivalent, clearly defined, and well-supervised sleeping quarters and bath accommodations for male and female clients;
 - h. Be provided a reasonable opportunity to practice the religion of their choice, insofar as the practice does not interfere with the rights of other clients or the treatment program;
 - i. The right to be excused from any religious practice;
 - j. Have access to an established client grievance procedure; and
 - k. Be informed of client rights in a language the client understands.
- 2. The organization shall protect the fundamental human, civil, constitutional, and statutory rights of each client.
 - 3. The organization shall have a written plan or policy and procedure that describes the rights of clients, as in subsections 1 and 2, and the means by which these rights are protected and exercised.
 - 4. As appropriate, the client, the client's family, or the client's legal guardian shall be fully informed of the client's status if authorized by a client who is fourteen years of age or older.
 - 5. The organization shall evaluate for appropriateness any restrictions placed on the rights of clients.
 - 6. The organization shall have a written procedure stating the form and manner for the filing of a client's grievance or a client's appeal of a decision of one of the organization's staff members or a decision of the interdisciplinary team. The procedure must be written in language that is understandable to the client, and must be provided to the client in a timely manner.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-02-08. Infection control.

- 1. The organization shall have an infection control program that complies with any federal statute and regulations that apply. Written policies and procedures pertaining to the operation of

the infection control program must be established, reviewed at least annually, and when necessary. Program and policy must provide screening or referral procedures and must include verbal assessment of high risk behaviors for tuberculosis and HIV.

2. The organization shall a practical system developed for reporting, evaluating, and maintaining records of infections among clients and personnel.
3. The program shall have a written plan for the instruction for new employees in the importance of infection control and personal hygiene and in their responsibility in the infection control program.
4. The program shall take universal precautions in the handling of all bodily fluids and develop written policies for the handling.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-02-09. Accreditation as a basis for licensure. The department recognizes "deemed status" for those providers who have accreditation of nationally recognized bodies who review and certify providers of drug and alcohol services. When applying for licensure or renewal licensure, proof of accreditation or "deemed status" in the form of the accreditation agency's most recent review and certification must be submitted to the department. "Deemed status" means status conferred on a program accredited by a national accreditation body based on standards that exceed the standards set forth in these licensure rules.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-02-10. Sanctions.

1. A violation of section 75-09-02-01, 75-09-02-03, or 75-09-02-06 will result in a corrective order with sixty days allowed for corrective action. If corrective action does not occur within the sixty days allowed, a ninety-day suspension will be imposed. At the end of the ninety-day suspension, and if the cited violation has been corrected, a one-year provisional license may be issued to the facility. If the facility has not corrected the deficiency, the provider's license will be revoked immediately.
2. A violation of section 75-09-02-02, 75-09-02-04, 75-09-02-05, 75-09-02-07, or 75-09-02-08, habitual noncompliance with

subsection 1, or any illegal act or act that threatens the health and safety of the clients will result in immediate license revocation.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-02-11. Continued stay. Program criteria must define maximum treatment length for all client treatment programs. The length of client treatment time in each program may be extended beyond the defined maximum based on individual client need. The rationale for a client's continued stay must be fully documented in the client's treatment record.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

CHAPTER 75-09-03
SOCIAL DETOXIFICATION PROGRAM

Section	
75-09-03-01	Definitions
75-09-03-02	Application for Licensure - Licensure
75-09-03-03	Organizational and Programming Standards
75-09-03-04	Program Criteria
75-09-03-05	Provider Criteria
75-09-03-06	Criteria for Client Admission and Maintenance
75-09-03-07	Criteria for Immediate Referral to Acute Care Setting
75-09-03-08	Criteria for Determination That Social Detoxification is not Necessary
75-09-03-09	Ongoing Care Criteria
75-09-03-10	Client Transfer and Discharge Criteria
75-09-03-11	Sanctions

75-09-03-01. Definitions.

1. "Detoxification" means the condition of recovery from the effects of alcohol and the treatment required to rid the client of alcohol and to promote the recovery from its effects.
2. "Social detoxification" means detoxification in a residential, nonmedical setting, providing a safe, well-monitored environment for clients to achieve initial recovery from the effects of alcohol or other drugs.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03-02. Application for licensure - Licensure.

1. An application for a social detoxification license must be made with the department in the form and manner prescribed.
2. A new application for a license must be filed by a facility upon change of operator, location, management, or programming philosophy.
3. The department may declare an application withdrawn if an applicant fails to submit all required documentation within thirty days of notification of incompleteness.
4. The issuance of a license to operate a social detoxification program is evidence of compliance at the time of licensure with the standards contained in this chapter.

5. The license must be on display in the facility in a conspicuous place.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03-03. Organizational and programming standards. Social detoxification treatment programs must comply with all provisions of chapters 75-09-01 and 75-09-02 in addition to those in this chapter.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03-04. Program criteria. A social detoxification program must provide:

1. Hospital affiliation twenty-four-hour medical backup;
2. A trained staff member familiar with complications associated with alcohol use and with community resources;
3. A quiet, positive atmosphere;
4. Use of detoxification time as preparation for referral to another level of care; and
5. Recognition of the disease concept and the fact that some clients will require multiple admissions.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03-05. Provider criteria.

1. The provider shall maintain a safe, comfortable, positive environment in a residential setting.
2. The provider shall have an agreement with local medical providers that ensures readily accessible emergency care when needed.
3. There must be awake staff twenty-four hours a day to monitor clients' conditions.
4. Staff shall be trained in admission, monitoring skills, supportive care, basic cardiopulmonary resuscitation technique, assessment, and referral procedures.

5. The service must include close observation, supportive staff-client interaction, provision for proper fluid and nutritional components, and provision for client space that offers low to moderate sensory stimulation.
6. The provider shall develop clearly defined policies and procedures for admission, care, discharge, and transfer of clients to another level of care.
7. The provider shall develop methods of documentation of care and shall train staff in documentation procedures.
8. The provider shall develop linkage with providers of other levels of care so the client may begin a therapeutic process as soon as the client is physically and mentally able to do so.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03-06. Criteria for client admission and maintenance.

Admission to a social detoxification program will be made upon a clinical institute withdrawal assessment score greater than ten, but less than nineteen, and the presence of any of the following:

1. Diffuse, mild central nervous system symptoms:
 - a. Cerebral: Slow responses to questions, difficulty in following complicated instructions, mild impairment of immediate memory, slurred speech, and mild disorientation to time (but not place or client);
 - b. Coordination: Mild abnormality in movement or gait, difficulty in finger-to-nose or finger-to-finger testing and rapid movements;
 - c. Reflexes: Normal or slightly depressed but symmetrical; or
 - d. Motor: Normal or slightly depressed but symmetrical.
2. Onset of any stated symptoms listed in subsection 1 over a few hours;
3. Intoxication;
4. The absence of other more serious symptoms, including medical or psychiatric histories of significant problems, and absence of suicidal ideations; or
5. Presence of the following physical findings:

- a. Temperature: 97 degrees to 100 degrees Fahrenheit [36.1 to 37.8 degrees Celsius] orally.
- b. Pulse rate: Tachycardia up to one hundred twenty per minute.
- c. Blood pressure: Up to one hundred sixty over one hundred twenty at rest.
- d. Respiration: Twelve to twenty-six per minute.
- e. Skin color: Flushed.
- f. Pupils: Sluggish reaction to light.
- g. Other: Alcohol smell on breath.

6. Ability to comprehend and function in ambulatory setting.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03-07. Criteria for immediate referral to acute care setting. A client will be referred to an acute care facility upon a score greater than nineteen on clinical institute withdrawal assessment score scale or any one or more of the following symptoms:

1. Seizures: History or current;
2. Current persistent vomiting or vomiting of blood;
3. Aspiration: Current ingestion of vomiting into lungs;
4. Clouded sensorium: Gross disorientation or hallucination;
5. Fever: Temperature higher than 100.5 degrees Fahrenheit [38.1 degrees Celsius] orally;
6. Abnormal respiration: Shortness of breath or rate greater than twenty-six per minute;
7. Elevated pulse: Heart rate greater than one hundred twenty or arrhythmia;
8. Hypertension: Blood pressure greater than one hundred sixty over one hundred twenty;
9. Pain: Sudden chest pains or severe abdominal pain;
10. Trauma: Recent head injury, any trauma other than minor;

11. Unconscious: Unconscious and not arousable; or
12. Other: Jaundice, diabetes, liver disease, severe allergic reaction, progressively severe antabuse reaction, poisoning, shaking, chills, severe agitation, exposure, internal bleeding, shock, severe illness of any sort, uncontrollable violence, suicidal, or homicidal ideations.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03-08. Criteria for determination that social detoxification is not necessary. Social detoxification will not be necessary if:

1. No medical complications are present;
2. Nutritional status is moderate to good;
3. The client has a relative, friend, or other support system who can stay with the client for a few days; or
4. The client prefers outpatient detoxification.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03-09. Ongoing care criteria.

1. The client shall be assessed and provided care appropriate for needs.
2. As the client is able, the client will begin involvement in further assessment evaluation as a beginning point for determining need for continuing care.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03-10. Client transfer and discharge criteria. For client discharge or transfer to another level of care, the client:

1. Shall show consistent stabilization of physical symptoms for a minimum of twenty-four hours;
2. Shall have been assessed for the need for continuing care and the appropriate level of care;

3. Shall be informed of various options, necessity, and recommendations for further care; and
4. Shall have an initial treatment plan established to facilitate the client's movement from social detoxification into another level of care.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03-11. Sanctions. If the facility violates this chapter or performs any illegal act, or threatens the health and safety of the clients, immediate license revocation may result.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

CHAPTER 75-09-04
INTENSIVE OUTPATIENT TREATMENT

Section	
75-09-04-01	Definition
75-09-04-02	Application for Licensure - Licensure
75-09-04-03	Organizational and Programming Standards
75-09-04-04	Provider Criteria
75-09-04-05	Program Criteria
75-09-04-06	Client Admission Criteria
75-09-04-07	Ongoing Care Criteria
75-09-04-08	Client Discharge and Transfer Criteria
75-09-04-09	Sanctions

75-09-04-01. Definition. "Intensive outpatient treatment" means treatment provided to clients requiring a primary treatment program, and who are able to establish abstinence and recovery within the context of the client's usual environment and daily activities. This level of care will normally be offered in the evening hours to facilitate the client's ability to maintain the usual daily activity.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-04-02. Application for licensure - Licensure.

1. An application for an intensive outpatient treatment license must be made with the department in the form and manner prescribed.
2. A new application for a license must be filed by a facility upon change of operator, location, management, or programming philosophy.
3. The department may declare an application withdrawn if an applicant fails to submit all required documentation within thirty days of notification of incompleteness.
4. The issuance of a license to operate an intensive outpatient treatment program is evidence of compliance at the time of licensure with the standards contained in this chapter.

5. The license must be on display in the facility in a conspicuous place.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-04-03. Organizational and programming standards. Intensive outpatient treatment programs must comply with all provisions of chapters 75-09-01 and 75-09-02 in addition to those in this chapter.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16; 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-04-04. Provider criteria.

1. The provider shall offer no less than eight hours and no more than twenty hours of programming per week.
2. The provider shall offer no less than four weeks, but no more than ten weeks to provide for the accomplishment of treatment goals and objectives.
3. The provider shall be appropriately licensed as an addiction treatment program in North Dakota and shall provide care by appropriately licensed addiction counselors.
4. The provider shall develop and implement a treatment plan based on client needs that must be updated and reviewed every two weeks.
5. The provider shall document progress or lack of progress in reference to the treatment plan.
6. The assessment process must include thorough evaluation of the client's use and abuse of alcohol, tobacco, and any other mind altering substance.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-04-05. Program criteria. In addition to program requirements of chapter 75-09-02, intensive outpatient treatment programs shall provide:

1. A combination of individual and group therapy as deemed appropriate by an assessment and treatment plan;

2. Medical and nursing services as deemed appropriate by an assessment and treatment plan;
3. A system for referral for identified treatment needs, if service is not available in the program;
4. Family treatment services as deemed appropriate by an assessment and treatment plan; and
5. Educational and informational programming adaptable to individual client needs.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-04-06. Client admission criteria. For admission to intensive outpatient treatment, the client shall meet subsections 1 and 2 and at least two of the remaining criteria:

1. The client shall have few or no symptoms of withdrawal and present only stable physical or psychiatric conditions.
2. The client shall have experienced impairment in one or more life areas.
3. The client expresses willingness to attend all scheduled events.
4. The client shall have an environment supportive of recovery efforts.
5. The client shall require structured outpatient counseling of an intensity that will meet the client's needs without inpatient placement.
6. The client shall have been unable to sustain sobriety at a lower level of care or through a mutual self-help group.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-04-07. Ongoing care criteria. For a client to remain in intensive outpatient treatment, the client shall:

1. Be willing to participate in the intensive outpatient treatment program and to attend all activities;
2. Be motivated and work towards achievement of treatment goals; and

3. Demonstrate a decrease in denial and increase in ability to focus on short-term and long-term recovery issues.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-04-08. Client discharge and transfer criteria.

1. Transfer to a higher level of care must occur:
 - a. If the client is unable to sustain abstinence during the course of treatment;
 - b. If there is a deterioration in the client's condition;
 - c. If there is a continuing lack of progress toward treatment goal;
 - d. If additional, more significant addiction problems surface during treatment;
 - e. If greater intensity care would impact identified problem areas; or
 - f. If the required services are not available at the current level.
2. Transfer to a lower level of care must occur:
 - a. If there is sufficient documented improvement and progress toward treatment goals;
 - b. If there is evidence of some problem resolution;
 - c. If a lower level of intensity will continue to enable progress toward a stable recovery; or
 - d. If the required lower level of care is available and able to provide for continuity of care.
3. The client may be discharged when the client has not met criteria for care or no further progress is likely. Discharge may also occur if there is mutual agreement that treatment goals have been met.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-04-09. Sanctions. If the facility violates this chapter or performs any illegal act, or threatens the health and safety of the clients, immediate license revocation may result.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

CHAPTER 75-09-05
DAY TREATMENT PROGRAMS

Section

75-09-05-01	Definition
75-09-05-02	Application for Licensure - Licensure
75-09-05-03	Organizational and Programming Standards
75-09-05-04	Provider Criteria
75-09-05-05	Program Criteria
75-09-05-06	Client Admission Criteria
75-09-05-07	Ongoing Care Criteria
75-09-05-08	Client Discharge and Transfer Criteria
75-09-05-09	Sanctions

75-09-05-01. Definition. "Day treatment" means a treatment program that uses multidisciplinary staff and is provided for clients who require a more intensive treatment experience, but do not require inpatient care. This level of care is designed to offer highly structured intensive treatment to those clients whose condition is sufficiently stable so as not to require twenty-four hours-a-day monitoring and care, but whose illness has progressed so as to require consistent, near-daily treatment intervention. For third-party payor purposes, "day treatment" means "day treatment and partial hospitalization".

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-05-02. Application for licensure - Licensure.

1. An application for a day treatment program license must be made with the department in the form and manner prescribed.
2. A new application for a license must be filed by a facility upon change of operator, location, management, or programming philosophy.
3. The department may declare an application withdrawn if an applicant fails to submit all required documentation within thirty days of notification of incompleteness.
4. The issuance of a license to operate a day treatment program is evidence of compliance at the time of licensure with the standards contained in this chapter.
5. The license must be on display in the facility in a conspicuous place.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-05-03. Organizational and programming standards. Day treatment programs must comply with all provisions of chapters 75-09-01 and 75-09-02 in addition to those in this chapter.

History: Effective June 1, 1995.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-05-04. Provider criteria.

1. The provider shall offer no less than five hours and no more than eight hours of therapeutic involvement per day. The provider shall offer a minimum of days per week and a maximum of five days per week of therapeutic involvement.
2. The provider shall offer the day treatment program for no less than three weeks and no more than five weeks duration to maximize the client's ability to clear sufficiently and to be able to function adequately to accomplish the treatment goals and objectives.
3. The provider shall be appropriately licensed as an addiction treatment program in North Dakota and shall provide care by appropriately licensed addiction counselors.
4. The provider shall use a treatment plan that must be reviewed and updated weekly.
5. The provider shall document progress or lack of progress in reference to the treatment plans.
6. The assessment process must include thorough evaluation of the client's use and abuse of alcohol, tobacco, and any other mind altering substances.

History: Effective June 1, 1995.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-05-05. Program criteria. The program shall offer the client:

1. A combination of individual and group therapy as deemed appropriate by an assessment and treatment plan;
2. Availability of medical and nursing services as deemed appropriate by an assessment and treatment plan;

3. A system for referral for needs identified, but not available in the program;
4. The availability of family treatment services as deemed appropriate by an assessment and treatment plan; and
5. Educational and informational programming adaptable to individual client needs.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-05-06. Client admission criteria. For admission to a day treatment program, the client shall meet subsections 1 and 2 and at least two of the remaining criteria:

1. Be at low risk for withdrawal symptoms or have minimal remaining withdrawal symptoms;
2. Be physically and psychologically stable, but may have a medical or psychiatric condition that would be aggravated by continued use of alcohol or drugs;
3. Have had previous attempts at a treatment program of lower intensity with an inability to remain sober;
4. Have minimal support for sustaining beginning recovery in the client's home or customary environment;
5. Have experienced significant impairment in life areas that require a high level of intensity best accomplished as close to the client's home community as is feasible; and
6. Have experienced significant life traumas or stresses that require therapeutic intervention adjunct to addiction treatment to assure continuing recovery.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-05-07. Ongoing care criteria. For a client to remain in a day treatment program, the client shall:

1. Be willing to participate in the highly structured, intensive treatment program and to attend all activities;
2. Be motivated and work towards achievement of treatment goals; and

3. Demonstrate a decrease in denial and increase in ability to focus on short-term and long-term recovery issues.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-05-08. Client discharge and transfer criteria.

1. Transfer to a higher level of care must occur if the client:
 - a. Is unable to sustain abstinence during the course of day treatment;
 - b. Experiences deterioration due to physical or psychiatric condition requiring twenty-four hours-a-day management;
 - c. Displays continued lack of progress toward treatment goals; or
 - d. Is unable to obtain services at current level because of unavailability.
2. Transfer to a lower level of care must occur:
 - a. When there is sufficient documented improvement and progress toward treatment goals;
 - b. When there is evidence of progressive problem resolution;
 - c. If a lower level of intensity will continue to enable progress toward a stable recovery; or
 - d. If the required level of care is available and able to provide for continuity of care.
3. The client may be discharged from day treatment when the client has not met criteria for care or when no further progress is likely. Discharge may also occur if there is mutual agreement that treatment goals have been met.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-05-09. Sanctions. If the facility violates this chapter or performs any illegal act, or threatens the health and safety of the clients, immediate license revocation may result.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

CHAPTER 75-09-06
MEDICALLY SUPERVISED INTENSIVE INPATIENT CARE

Section	
75-09-06-01	Definition
75-09-06-02	Application for Licensure - Licensure
75-09-06-03	Organizational and Programming Standards
75-09-06-04	Provider Criteria
75-09-06-05	Program Criteria
75-09-06-06	Client Admission Criteria
75-09-06-07	Ongoing Care Criteria
75-09-06-08	Client Discharge and Transfer Criteria
75-09-06-09	Sanctions

75-09-06-01. Definition. "Medically supervised intensive inpatient care" means a program of care that offers continuous observation, monitoring, and treatment by a multidisciplinary staff. This level of care allows for co-joint treatment of coexisting physical and psychiatric conditions for clients whose physical, psychosocial, or psychiatric problems are severe enough to require inpatient services.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-06-02. Application for licensure - Licensure.

1. An application for a medically supervised intensive inpatient care license must be made with the department in the form and manner prescribed.
2. A new application for a license must be filed by a facility upon change of operator, locations, management, or programming philosophy.
3. The department may declare an application withdrawn if an applicant fails to submit all required documentation within thirty days of notification of incompleteness.
4. The issuance of a license to operate a medically supervised intensive inpatient care program is evidence of compliance at the time of licensure with the standards contained in this chapter.
5. The license must be on display in the facility in a conspicuous place.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-06-03. Organizational and programming standards. Medically supervised intensive inpatient care must comply with all provisions of chapters 75-09-01 and 75-09-02 in addition to those in this chapter.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-06-04. Provider criteria. The provider shall:

1. Offer twenty-four-hour skilled nursing care, daily onsite counseling services, and twenty-four-hour physician availability seven days per week;
2. Have available specialized professional consultation;
3. Offer the inpatient treatment program for no less than five days per week, with the length of stay to be determined by the client's condition and functioning;
4. Involve the client with the development and weekly revision and review of the individual treatment plan;
5. Document progress or lack of progress in reference to the established treatment plan; and
6. Include thorough evaluation of the client's use and abuse of all mind altering substances.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-06-05. Program criteria. The program shall provide:

1. A combination of individual and group therapy as deemed appropriate by an assessment and treatment plan;
2. Medical and nursing services available onsite to provide ongoing assessment and care of acute detoxification needs, medical, and psychiatric problems;
3. A system for referral for identified treatment needs, if service is not available in the program;
4. Family treatment services as deemed appropriate by an assessment and treatment plan; and
5. Educational and informational programming adaptive to individual client needs.

History: Effective June 1, 1995.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-06-06. Client admission criteria. For admission to a medically supervised intensive inpatient program, the client shall meet at least one of the following criteria:

1. Be in need of detoxification from alcohol or drugs or display potential for severe, acute withdrawal;
2. Have a physical condition or complication impacting immediate safety and well-being;
3. Have a psychiatric condition or complication impacting immediate safety and well-being;
4. Exhibit severe impairment in significant life areas, such as legal, family or work;
5. Exhibit significant loss of control and relapse symptoms; or
6. Have had multiple attempts at treatment programs of lower intensity with an inability to stay sober.

History: Effective June 1, 1995.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-06-07. Ongoing care criteria. For a client to remain in a medically supervised intensive inpatient care program, the client shall:

1. Be willing to participate in the highly structured, intensive treatment program and to attend all activities;
2. Be motivated and work toward achievement of treatment goals; and
3. Demonstrate a decrease in denial and an increase in the ability to focus on short-term and long-term recovery issues.

History: Effective June 1, 1995.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-06-08. Client discharge and transfer criteria.

1. Transfer to a higher level of care must occur if the client requires more intensive care for medical or psychiatric conditions than treatment setting allows.

2. Transfer to a lower level of care must occur:
 - a. When there is sufficient documented improvement and progress toward treatment goals;
 - b. When there is evidence of progressive problem resolution;
 - c. If a lower level of intensity will continue to enable progress toward a stable recovery; or
 - d. If the lower intensity level of care is available and able to reinforce an uninterrupted continuity of care.
3. The client may be discharged from medically supervised intensive inpatient treatment when the client has not met the criteria for care or when no further progress is likely. Discharge may also occur if there is mutual agreement that treatment goals have been met.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-06-09. Sanctions. If the facility violates this chapter or performs any illegal act, or threatens the health and safety of the clients, immediate license revocation may result.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

CHAPTER 75-09-07
LONG-TERM RESIDENTIAL CARE SERVICES

Section	
75-09-07-01	Definition
75-09-07-02	Application for Licensure - Licensure
75-09-07-03	Organizational and Programming Standards
75-09-07-04	Provider Criteria
75-09-07-05	Program Criteria
75-09-07-06	Admission Criteria
75-09-07-07	Ongoing Care Criteria
75-09-07-08	Client Discharge and Transfer Criteria
75-09-07-09	Sanctions

75-09-07-01. Definition. "Long-term residential care" means providing an ongoing therapeutic environment for clients requiring some structured support to maintain newly acquired sobriety. In addition to that support, this level of care offers the opportunity to learn social, living, and other adaptive skills that may not have been achieved or have been diminished during the client's active addiction. Long-term residential care is also designed for the client suffering from chronic, long-term alcoholism or drug addiction, affording an extended period of time to establish sound recovery and a solid support system.

History: Effective June 1, 1995

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-07-02. Application for licensure - Licensure.

1. An application for a long-term residential care program license must be made with the department in the form and manner prescribed.
2. A new application for a license must be filed by a facility upon change of operator, location, management, or programming philosophy.
3. The department may declare an application withdrawn if an applicant fails to submit all required documentation within thirty days of notification of incompleteness.
4. The issuance of a license to operate a long-term residential care program is evidence of compliance at the time of licensure with the standards contained in this chapter.
5. The license must be on display in the facility in a conspicuous place.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-07-03. Organizational and programming standards. Long-term residential care programs must comply with all provisions of chapters 75-09-01 and 75-09-02 in addition to those in this chapter.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-07-04. Provider criteria.

1. The provider shall maintain a safe, comfortable, alcohol-free and drug-free environment.
2. The provider shall provide a full meal service that meets established nutritional guidelines.
3. The provider shall commit to writing referral procedures and agreements with providers of services for the client to receive necessary aftercare, other therapeutic services, vocational rehabilitation, and attendance at local support groups.
4. The provider shall staff the unit twenty-four hours a day.
5. The provider shall offer a minimum of two support or group sessions a week for clients.
6. The provider shall collaborate with care providers to develop a long-term plan of care with time specific goals and objectives.
7. The provider shall maintain a record of the client's progress and activities in the program.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-07-05. Program criteria. The long-term residential care program shall include:

1. Educational and informational programming to enhance client recovery;
2. Activities to promote social skill development;
3. Support group meetings available on site; and

4. Transportation assistance to use offsite rehabilitation services.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-07-06. Admission criteria. For admission to a long-term residential care program, the client shall:

1. Demonstrate high habilitative needs and a social environment nonsupportive of continued recovery; or
2. Have a history of compulsive, relapse-prone chronicity or organic-related difficulties as a result of the client's abuse of alcohol or other drugs; and
3. Be capable of performing self-care and physically and psychologically stable.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-07-07. Ongoing care criteria. For a client to remain in a long-term residential care program, the client shall:

1. Comply with facility rules;
2. Participate in recommended therapeutic activities; and
3. Demonstrate progress toward development of independent social and living skills, firmly established recovery, and completion of recommended therapeutic tasks.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-07-08. Discharge and transfer criteria.

1. The client shall be transferred to a higher level of care if the client is unable to maintain sobriety or experiences significant relapse and loss of stability in physical or psychological status.
2. The client shall be discharged from long-term residential care if:

- a. The client refuses to follow facility rules or to comply with recommended therapeutic plans; or
- b. The client has met both residential care and therapeutic plans and goals, with a multidisciplinary team having evaluated progress and determined with the client a readiness for independent living.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-07-09. Sanctions. If the facility violates this chapter or performs any illegal act, or threatens the health and safety of the clients, immediate license revocation may result.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

CHAPTER 75-09-08
DUI SEMINAR

Section	
75-09-08-01	Definition
75-09-08-02	Provider Criteria
75-09-08-03	Prevention Oriented Seminar - Attendance by Intervention Oriented Seminar Referrals
75-09-08-04	Intervention Oriented Seminar - Attendance by Prevention Oriented Seminar Referrals
75-09-08-05	Prevention Oriented Seminar - Participant Admission Criteria
75-09-08-06	Intervention Oriented Seminar - Participant Admission Criteria
75-09-08-07	Seminar Care Criteria
75-09-08-08	Participant Discharge and Transfer Criteria
75-09-08-09	Sanctions

75-09-08-01. Definition. "DUI seminars" means alcohol and drug-risk reduction education programs for clients convicted of driving under the influence or actual physical control. There are two categories of DUI seminars. One DUI seminar is a prevention oriented education program for clients who have been determined to be nonproblem drinkers. The other DUI seminar is an intervention oriented education program for clients who have been determined to be potential problem drinkers.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-08-02. Provider criteria.

1. A DUI seminar instructor shall have, at a minimum, a two-year degree or its equivalence from the education, health, human service, or criminal justice fields and shall have one year of professional work experience. The DUI seminar instructor shall not engage in current and illegal use of drugs. The DUI seminar instructor shall not conduct the DUI seminar while under the influence of alcohol or under the influence of illegally used drugs.
2. A DUI seminar instructor shall be certified by the department to teach the department-approved curriculum. To achieve certification by the department, the instructor candidate shall meet all DUI seminar instructor requirements, shall successfully complete the department-approved DUI seminar instructor training, and shall submit the certification application to the department.

3. A DUI seminar instructor shall be recertified by the department every two years. To maintain certification by the department, the DUI seminar instructor shall:
 - a. As detailed in department policy, teach the required number of DUI seminars per certification cycle;
 - b. Achieve an acceptable rating during biennial onsite recertification review;
 - c. Develop and comply with a department-approved plan of correction to correct deficiencies noted during biennial onsite recertification review;
 - d. Attend DUI seminar instructor training coordinated by the department and the department of transportation; and
 - e. Submit the certification application to the department.
4. To achieve recertification when a DUI seminar instructor has allowed certification to lapse, a DUI seminar instructor shall:
 - a. Submit a letter to the department that must:
 - (1) Show evidence that the provider's curriculum has incorporated current DUI information and educational changes; and
 - (2) Provide an explanation for the provider's lapse in certification.
 - b. Meet all DUI seminar instructor requirements; and
 - c. Submit the certification application to the department.
5. A DUI seminar instructor shall comply with all department DUI seminar policies and certification requirements and shall follow the department-approved curriculum's sequence, schedule, format, process, and content.
6. A DUI seminar instructor shall provide a seminar site that must be sufficient to accommodate all seminar participants and the functions of the seminar. The seminar site must have:
 - a. Adequate space, furnishings, and lighting;
 - b. Furnishings and equipment in good repair;
 - c. Adequate ventilation and room temperature maintained within a normal range;
 - d. Clean and comfortable surroundings;

- e. Adequate toilet and lavatory facilities; and
 - f. Water suitable for drinking and no objectionable odor.
7. A DUI seminar instructor shall conduct the seminar in a site that meets the standards of life safety code or an equivalent code.
 8. At the beginning of the DUI seminar, the DUI seminar instructor shall point out emergency evacuation exits and routes to seminar participants.
 9. A DUI seminar instructor shall comply with the requirements of the Americans with Disabilities Act [Pub. L. 101-336].
 10. A DUI seminar instructor shall establish the fees for the DUI seminars provided and shall post the fee schedule in a visible location.
 11. A DUI seminar instructor shall charge the DUI seminar fee directly to the seminar participant.
 12. A DUI seminar instructor shall use only those videos approved by the department for use in the DUI seminar and shall use those videos only at the times when the curriculum schedule permits their use.
 13. A DUI seminar instructor shall provide each seminar participant with a student booklet.
 14. A DUI seminar instructor shall not continue a class for more than two hours without providing the seminar participants with a break.
 15. A DUI seminar instructor shall not count time for breaks beyond two 10-minute breaks toward the required hours of education to be provided to seminar participants.
 16. A DUI seminar instructor shall conduct the seminar in groups whose size must provide an opportunity for client participation in the seminar process.
 17. A DUI seminar instructor shall prohibit the illegal use of drugs and use of all alcohol at the seminar site. Providers shall have written procedures for referral for further assessment for alcohol or drug problems if they occur. If a seminar participant arrives at the DUI seminar under the influence, or during the seminar is under the influence, a DUI instructor shall:
 - a. Not admit the client into the class;
 - b. Discharge the client from the class;

- c. Terminate the client from the course;
 - d. Inform the client that law enforcement will be notified if the client drives when the client leaves class, and shall inform law enforcement if the client drives when the client leaves the class; and
 - e. Notify the department of transportation suspension section of the driver's license and traffic safety department regarding the incident and followup with documentation.
- 18. A DUI seminar instructor shall maintain a current statewide treatment services listing and current information on local twelve-step groups.
 - 19. A DUI seminar instructor shall administer department-approved tests to seminar participants.
 - 20. A DUI seminar instructor shall ask all DUI seminar participants to complete a participant evaluation form at the conclusion of each seminar.
 - 21. A DUI seminar instructor shall comply with all applicable state and federal laws and regulations governing confidentiality of client records.
 - 22. Release forms must conform to section 75-09-02-04.
 - 23. A DUI seminar instructor shall notify the department of transportation and, as appropriate, the court of each seminar participant's completion, withdrawal, or termination from the DUI seminar.
 - 24. A single record shall be prepared and either electronically or manually maintained for each seminar participant so as to communicate the appropriate case information. This information must be in a form that is clear, concise, complete, and current.
 - 25. Appropriate safeguards to protect active and closed confidential written, electronic, or audiovisual records and to minimize the possibility of loss or destruction must be applied.
 - 26. If electronic records are maintained, the provider shall develop and implement procedures to ensure the protection and confidentiality of electronic records.
 - 27. The record of each seminar participant must include:
 - a. Seminar attendance record;
 - b. Post-test;

- c. Copy of department of transportation seminar completion form;
 - d. Release of information forms;
 - e. Correspondence related to the seminar participant; and
 - f. Other information required by the department or the department of transportation.
28. A DUI seminar instructor shall assure the right of each seminar participant, in a language understandable to the participant, to:
- a. Be treated with respect and dignity;
 - b. Be served without regard to race, creed, national origin, sex, sexual preference, or physical or mental disability;
 - c. Have all information treated confidentially in accordance with standards of confidentiality;
 - d. Not be subject to physical, emotional, or sexual abuse or harassment by staff or other seminar participants; and
 - e. Have access to an established client grievance procedure.
29. Files must not be needlessly retained or prematurely discarded. The retention of records must be guided by professional research, administrative, and legal requirements.
30. A DUI seminar instructor shall respond to all requests for information from the department and from the department of transportation.
31. A DUI seminar instructor shall not be obligated to teach both the prevention oriented seminar and the intervention oriented seminar.
32. A DUI seminar instructor shall conduct the seminar in classes that must last from two and one-half hours to not more than three hours per session, not counting breaks, and only one session must be scheduled per calendar day unless an exemption is granted by the department.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-08-03. Prevention oriented seminar - Attendance by intervention oriented seminar referrals. A DUI seminar instructor shall

not accept intervention oriented seminar referrals unless the instructor has received written permission from the department to do so.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-08-04. Intervention oriented seminar - Attendance by prevention oriented seminar referrals. A DUI seminar instructor may combine prevention oriented seminar and intervention oriented seminar participants for the prevention oriented section of the DUI seminar curriculum.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-08-05. Prevention oriented seminar - Participant admission criteria. A prevention oriented seminar participant shall:

1. Not meet the department-approved diagnostic criteria for psychoactive substance abuse or dependence; and
2. Have completed the department-approved evaluation process no longer than six months prior to participation in the seminar.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-08-06. Intervention oriented seminar - Participant admission criteria. An intervention oriented seminar participant shall:

1. Have been determined to be a potential problem drinker as assessed by the department-approved DUI evaluation process;
2. Meet the department-approved diagnostic criteria for psychoactive drug abuse and require intervention for a potential alcohol or drug problem; and
3. Have completed the department-approved evaluation process no longer than six months prior to participating in the seminar.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-08-07. Seminar care criteria. For the seminar participant to fulfill the seminar care criteria, the participant shall:

1. Complete all required registration activities;
2. Attend all seminar sessions, in sequence;
3. Complete all in-class assignments;
4. Complete all required seminar testing; and
5. Attain a passing mark on the seminar post-test.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-08-08. Participant discharge and transfer criteria.

1. A seminar participant will be discharged or transferred if addiction problems are identified.
2. Discharge must occur:
 - a. If the seminar participant arrives at the seminar under the influence or during the seminar is under the influence;
 - b. If the seminar participant does not comply with the provider; or
 - c. If the seminar participant has complied with the provider.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-08-09. Sanctions. If the facility violates this chapter or performs any illegal act, or threatens the health and safety of the clients, immediate license revocation may result.

History: Effective June 1, 1995.

General Authority: NDCC 23-17.1, 50-06-16, 54-38

Law Implemented: NDCC 23-17.1-05, 50-06-16

JULY 1995

CHAPTER 75-02-07

AGENCY SYNOPSIS: Proposed amendments to North Dakota Administrative Code chapter 75-02-07, Basic Care Facilities specifically subsection 3 of Section 75-02-07-17, Ratesetting.

A public hearing was conducted on September 14, 1994, in Bismarck, concerning proposed amendments to North Dakota Administrative Code Chapter 75-02-07, Provider Reimbursement - Basic Care Facilities, specifically subsection 3 of Section 75-02-07-17, Ratesetting. The proposed amendments effectively raised the limit on maximum payable rates from the rate set for the seventieth percentile bed to the rate set for the ninetieth percentile bed.

Subsequent to the hearing, the Fifty-fourth Legislative Assembly met and adopted Senate Bill No. 2012, which has the following impacts on the proposal:

1. Section 1 of the bill appropriates funds sufficient to increase the rate limit from the seventieth percentile to the eightieth percentile, but not to the ninetieth percentile, as proposed; and
2. Section 16 of the bill amends North Dakota Century Code Section 50-06-14.3 to delay changes in the ratesetting methodology to create "rate equalization" until after June 30, 1997.

Based upon these circumstances, it was recommended that subsection 3 of Section 75-02-07-17 be amended as follows:

3. The department shall rank all licensed beds, in facilities for which an audit rate is established, by the respective audit rate set for the bed, and determine the position in the

ranking below which lie seventy eighty percent of the ranked beds. The reasonable rate established for each facility must be the lesser of the facility's audit rate or the audit rate which has been established for the facility in which the bed thus determined is located. The reasonable rate shall must be effective from July first through June thirtieth of the following year.

75-02-07-17. Ratesetting.

1. The department shall establish reasonable rates for facilities for the care and maintenance of individuals dependent in whole or in part upon state or county supplementation of supplemental security income benefits.
2. The department shall annually determine the allowable costs and shall adjust those costs to reflect changes projected in operational and labor costs for the year, beginning on July first and ending on June thirtieth of the following year. The rate thereby established must be called the audit rate.
3. The department shall rank all licensed beds, in facilities for which an audit rate is established, by the respective audit rate set for the bed, and determine the position in the ranking below which lie seventy eighty percent of the ranked beds. The reasonable rate established for each facility must be the lesser of the facility's audit rate or the audit rate which has been established for the facility in which the bed thus determined is located. The reasonable rate shall must be effective from July first through June thirtieth of the following year.
4. A county social service board shall determine the payable rate for any resident whose care is, in whole or in part, paid for by that county social service board. The payable rate shall be an amount equal to forty-five dollars plus the least of:
 - a. The reasonable rate;
 - b. The rate charged by the facility to residents not dependent upon state or county supplementation of supplemental security income benefits; or
 - c. A rate voluntarily agreed to by the facility.
5. In the event a county social service board establishes a payable rate less than that required by subsection 4, any county social service board expenditures made pursuant to that rate will nonetheless be considered by the department in determining that county social service board's expenditures for poor relief pursuant to North Dakota Century Code section 50-01-09.2.

NOTICE

5. In the event a county social service board establishes a payable rate less than that required by subsection 4, any county social service board expenditures made pursuant to that rate will not be considered by the department in determining that county social service board's expenditures for poor relief pursuant to North Dakota Century Code section 50-01-09.2. The amendment made under this subsection becomes effective with respect to rates paid for services furnished on and after July 1, 1991.

6. The payable rate shall include a forty-five dollar per month clothing and personal needs allowance which must be reserved for each individual. Facilities shall ensure that this monthly clothing and personal needs allowance is reserved for its intended purpose.
7. Partial year.
- a. For facilities changing ownership during the rate period, the rate established for the previous owner will be retained.
 - b. For existing facilities adding beds, the rate for the new beds will be the same as for the other similarly licensed beds in the facility.
 - c. New facilities will submit, for departmental approval, a proposed budget for operations for the period, at least three months but not more than fifteen months in duration, which ends on June thirtieth. The rate established based upon the approved budget shall be final and shall continue in effect until the beginning of the rate period next following after the end of the report period which coincides with the end of the budget period.
8. Adjustments and reconsideration procedures.
- a. Rate adjustments may be made to correct errors subsequently determined and shall also be retroactive to the beginning of the facility's rate period.
 - b. An adjustment must be made for a facility which has terminated participation in the program and has disposed of its depreciable assets or which has changed ownership. In this case, the regulations pertaining to gains and losses on disposable assets will be effective.

- c. Any requests for reconsideration of the rate must be filed with the department for administrative consideration within thirty days of the date of the rate notification.

History: Effective July 1, 1989; amended effective April 1, 1991; July 1, 1995.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-14.2

TITLE 81
Tax Commissioner

APRIL 1995

CHAPTER 81-02.1-01

81-02.1-01-01. Definitions. As used in these sections and for the administration of North Dakota Century Code chapter 57-55, unless the context otherwise requires:

1. "Owner"--means--the--person--holding--legal--title--to--the--mobile home--for--the--purpose--of--determining--who--must--apply--for--a mobile-home-tax-permit.--A-vendee,-mortgagor,-or-lessee-is-the owner-if-the-mobile-home-is-subject--to--a--conditional--sales agreement--or-lease-with-an-option-to-purchase-upon-expiration of-the-agreement-and-if-the-vendee,-mortgagor,-or-lessee--is entitled-to-possession-of-the-mobile-home;
- 2.--"Mobile--home-structure"--means-a-structure-as-defined-in-North Dakota--Century--Code--section---57-55-01---and---includes---a recreational--vehicle-if-it-is-not-permanently-attached-to-the land-and-is-used-as-living-quarters-or-as-a-place-of-business;
3. "Length" means the longest exterior dimension of the area used as a residence or place of business, excluding the hitch, if any.
2. "Lot" means any piece of land of required size intended for occupancy by a mobile home.
3. "Mobile home park" means any contiguous tract of land under the same ownership containing three or more lots intended for occupancy by mobile homes.
4. "Mobile home structure" means a structure as defined in North Dakota Century Code section 57-55-01 and includes a

recreational vehicle if it is not permanently attached to the land and is used as living quarters or as a place of business.

5. "Owner" means the person holding legal title to the mobile home for the purpose of determining who must apply for a mobile home tax permit. A vendee, mortgagor, or lessee is the owner if the mobile home is subject to a conditional sales agreement or lease with an option to purchase upon expiration of the agreement and if the vendee, mortgagor, or lessee is entitled to possession of the mobile home.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; April 1, 1995.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-01, 57-55-01.1, 57-55-02, 57-55-08

CHAPTER 81-03-01.1

81-03-01.1-06. Income tax exemption for new and expanding business.

1. When a taxpayer is granted an exemption from income tax pursuant to North Dakota Century Code chapter 40-57.1, the exemption must be prorated, when necessary, in the first and last years in order to exempt income for a period not to exceed sixty months.
2. The amount of the yearly income tax exemption for new and expanding business is limited to income earned from the new business or expansion in each tax year reduced by the amount of federal tax assignable to the North Dakota exempt income which was included in federal taxable income.
3. When the project operator is a partnership ~~or~~, S corporation, or limited liability company, the income tax exemption flows through to the partners and, shareholders, and members.
4. The conditions for reapplication set forth in North Dakota Century Code chapter 40-57.1 apply to the income tax exemption. A project operator must reapply for the income tax exemption if these conditions are met.
5. The office of the state tax commissioner must be notified of any changes in ownership of a new industry which has been granted an income tax exemption. A change of ownership includes transfer of a partnership interest ~~or~~ a stock interest in a subchapter S corporation or a membership in a limited liability company.
6. The income tax exemption may not be claimed by an individual taxpayer on North Dakota form 37 37-S.
7. A taxpayer with both exempt and nonexempt activities shall prorate its income pursuant to the provisions of North Dakota Century Code chapter 57-38.1.
 - a. If the taxpayer has only North Dakota activity, exempt income must be determined by multiplying income from all activities, exempt and nonexempt, by a fraction, the numerator of which is the sum of its exempt property, sales, and payroll factors and the denominator of which is three.

EXAMPLE:

	Exempt Plant	Other North Dakota Activity	Total North Dakota Activity
Facts:			

Property	\$ 5,000,000	\$10,000,000	\$15,000,000
Payroll	750,000	1,000,000	1,750,000
Sales	20,000,000	35,000,000	55,000,000

Apportionable income \$50,000,000

Computing-North-Dakota-exempt-income

Apportionment-factor-relating-to-exempt-activities:

Property-factor--\$-5,000,000-:---\$15,000,000---.333333
Payroll-factor---\$---750,000-:---\$-1,750,000---.428571
Sales-factor-----\$20,000,000-:---\$55,000,000---.363636
1.12554-+-3---.37518

.37518-Apportionment-factor-of-exempt-activities
\$50,000,000-Apportionable-income
\$18,759,000-Exempt-income

Federal tax liability \$17,500,000

Determine North Dakota exempt income:

(1) Compute apportionment factor of exempt activities.

Property factor = \$5,000,000/\$15,000,000 = .333333
Payroll factor = \$750,000/\$1,750,000 = .428571
Sales factor = \$20,000,000/\$55,000,000 = .363636
1.125540/3 = .375180

(2) Compute exempt income before federal tax deduction.

Apportionable income	\$50,000,000
Apportionment factor of exempt activities	.375180
Exempt income before federal tax deductions	\$18,759,000

(3) Compute federal tax deduction assignable to exempt activity.

Federal tax liability	\$17,500,000
Apportionment factor of exempt activities	.375180
Federal tax deduction assignable	\$ 6,565,650

(4) Compute exempt income.

Exempt income before federal tax deductions	\$18,759,000
Federal tax deduction assignable	6,565,650
Exempt income	\$12,193,350

b. Computing---North---Dakota--exempt--income--of--multistate business-requires-two-steps-

{1}--Compute-North-Dakota-income-including-both-exempt-and nonexempt-activities-in-the-apportionment-factor--and in-apportionable-income-

If the taxpayer has multistate business activity, North Dakota income must first be determined by including all exempt and nonexempt activity in apportionable income and in the apportionment factor. North Dakota exempt income is then determined as in subdivision a.

EXAMPLE:

Multistate corporation

Facts: Utilize the same facts in the above prior example, and add:

Total activity within and without North Dakota

Property	\$100,000,000
Payroll	\$ 5,000,000
Sales	\$200,000,000

Apportionment-factor,-including-tax-exempt-activity

Property-Factor--	-\$-15,000,000-÷-\$100,000,000----	.15
Payroll-Factor---	-\$-1,750,000-÷-\$-5,000,000----	.35
Sales-Factor-----	-\$-55,000,000-÷-\$200,000,000----	.275
		.775-÷-3---.258333

\$50,000,000
x---.25833
\$12,916,650-North-Dakota-income

Determine North Dakota exempt income:

(1) Compute the North Dakota apportionment factor, including tax-exempt activity.

Property factor =	\$ 15,000,000/\$100,000,000 =	.150000
Payroll factor =	\$ 1,750,000/\$ 5,000,000 =	.350000
Sales factor =	\$ 55,000,000/\$200,000,000 =	.275000
		<u>.775000/3 = .258333</u>

{2}--Apply-a-second-factor-to-North-Dakota-income-computed in-the-first-step--The-second-factor-is-computed--in the--same--way--as--in--subdivision-a--as-a-ratio-of exempt-North-Dakota-activity-to--total--North--Dakota activity-

\$12,916,650-North-Dakota-income

x-.37518-Apportionment-factor-of-exempt-activities
\$-4,846,069-North-Dakota-exempt-income

(2) Compute the apportionment factor of the North Dakota exempt activities. For this example, the computation would be the same as that in paragraph 1 of subdivision a and would yield a factor of .375180.

(3) Compute exempt income before federal tax deduction.

<u>Apportionable income</u>	<u>\$50,000,000</u>
<u>North Dakota apportionment factor</u>	<u>.258333</u>
<u>Income apportioned to North Dakota</u>	<u>\$12,916,650</u>
<u>before federal tax deduction</u>	
<u>Apportionment factor-exempt activities</u>	<u>.375180</u>
<u>Exempt income before federal tax</u>	<u>\$ 4,846,069</u>
<u>deduction</u>	

(4) Compute federal tax deduction assignable to exempt activity.

<u>Federal tax liability</u>	<u>\$17,500,000</u>
<u>North Dakota apportionment factor</u>	<u>.258333</u>
<u>Federal tax deduction</u>	<u>\$ 4,520,827</u>
<u>Apportionment factor-exempt activities</u>	<u>.375180</u>
<u>Federal tax deduction assignable to</u>	<u>\$ 1,696,124</u>
<u>exempt activities</u>	

(5) Compute exempt income.

<u>Exempt income before federal tax</u>	<u>\$ 4,846,069</u>
<u>deduction</u>	
<u>Federal tax deduction assignable to</u>	<u>\$ 1,696,124</u>
<u>exempt activities</u>	
<u>Exempt income</u>	<u>\$ 3,149,945</u>

c. When a partial exemption on a project or plant has been granted, the percentage of the project's nonexempt property, payroll, and sales would be added to the other North Dakota taxable activity's factors. For instance, a twenty percent exemption would mean eighty percent of the project's property, payroll, and sales would be added to the other North Dakota factors creating a taxable activity.

d. When a company has only one operating facility which has been granted a partial exemption, North Dakota taxable income shall be computed based on total income of the operation, and a percentage of the income which is equal to the percentage of the exemption shall be deducted from the total.

History: Effective March 1, 1990; amended effective June 1, 1992;
August 1, 1994; April 1, 1995.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 40-57.1

CHAPTER 81-03-05.1

81-03-05.1-03. DISC and FSC subject to North Dakota income tax.
A DISC (domestic international sales corporation) is treated as an ordinary corporation and subject to state income tax. If the domestic international sales corporation has no activity within this state, but the parent corporation is required to file a tax return with this state, the deemed and actual distributions made by the domestic international sales corporation must be included in business income of the parent and subject to state tax.

The tax commissioner may require a combined report whereby income of the domestic international sales corporation is included in the parent's income for state tax purposes and deemed distributions and intercompany items are eliminated.

If both the parent corporation and the domestic international sales corporation are nonapportioning North Dakota corporations, the domestic international sales corporation must be required to file a return and compute income subject to state tax based on its total income, and the parent corporation will be allowed a deduction for the deemed distribution to the extent of the domestic international sales corporation's business activity taxed in this state. If the domestic international sales corporation is taxed on its total income, then the parent corporation may deduct one hundred percent of the deemed distribution.

A FSC (foreign sales corporation) must be treated the same as a domestic international sales corporation for state tax purposes. Distributions made by the foreign sales corporation to the parent corporation must be included in the parent's income for state tax purposes. The tax commissioner may also require a combined report by the parent corporation to include the total income of the foreign sales corporation, with deemed distributions and intercompany items eliminated.

History: Effective July 1, 1985; amended effective April 1, 1995.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-01, 57-38-01.3

CHAPTER 81-03-05.2

81-03-05.2-01. Definitions. As used in these sections and for the administration of North Dakota Century Code chapter 57-38.4, unless the context otherwise requires:

1. "Assets" means both tangible and intangible property valued at original cost less depreciation, amortization, or depletion as reflected on the corporation's balance sheet prepared according to generally accepted accounting principles.
2. "Average of property and payroll" means average of property and payroll as defined pursuant to chapter 81-03-09 and North Dakota Century Code chapters 57-38.1 and 57-59.
3. "Commissioner" means the tax commissioner of the state of North Dakota.
4. "80/20 corporation" means a corporation that:
 - a. Is incorporated in the United States.
 - b. Is eligible to be included in a federal consolidated return as defined in subsection 5 of North Dakota Century Code section 57-38.4-01.
 - c. Has eighty percent or more of the average of its property and payroll assigned to locations in foreign countries.
5. "Foreign corporation" means a corporation incorporated outside the United States.
6. "Foreign country" means a country other than the United States or a possession of the United States.
7. "Income from an 80/20 corporation" means net book income for financial statement purposes. However, a corporation's net book income cannot be offset by a net book loss from another 80/20 corporation. In addition, when calculating net book income, an expense cannot be taken for federal income taxes that are eliminated through the application of foreign tax credits.
8. ~~"Joint-election" means that the water's-edge-election-form was executed on behalf of more than one taxpayer. --- Provided, however, that the taxpayer executing the election-form must be authorized to bind the other taxpayers.~~ "Net book income for financial statement purposes" as used herein means the results of operations as determined using the accrual method of accounting and generally accepted accounting principals as adopted by the American institute of certified public

accountants. If a corporation has more than one financial statement, it must use the first statement in the following priority:

- a. Financial statements required to be filed with the securities and exchange commission.
 - b. Financial statements audited by an independent certified public accountant.
 - c. Income statements prepared for a nontax purpose required to be provided to the federal government, state government, or a political subdivision of state government.
 - d. Income statements prepared for credit purposes, for reporting to stockholders or other owners, or for any other nontax purpose. An unaudited report that is accompanied by an independent auditor's review report has priority over another unaudited statement.
9. "New corporation" means a corporation that either has not filed or was not required to file an income tax return after the 1979 tax year.
 10. "Property, payroll, and sales" means property, payroll, and sales as defined in chapter 81-03-09 and North Dakota Century Code chapters 57-38.1 and 57-59.
 11. "State" means each of the fifty states and the District of Columbia.
 12. "Taxpayer" means a corporation that is required to file an income tax return in North Dakota.
 13. "Transaction" means an event that causes a change in a corporation's assets, liabilities, or owner's equity.
 14. "United States" means the fifty states and the District of Columbia.

History: Effective July 1, 1989; amended effective March 1, 1990; April 1, 1995.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38.4

81-03-05.2-02. Water's edge election.

1. A taxpayer may elect to use the water's edge method for any taxable year beginning on or after January 1, 1989.

2. Each taxpayer in the unitary group shall take the following steps when electing to use the water's edge method:

- a. Execute the water's edge election form provided by the commissioner; and

- b. File the water's edge election form with its original North Dakota income tax return for the first year to which the election applies.

Provided, however, that a joint election may be made on behalf of more than one taxpayer.

A water's edge election is made when each taxpayer in the unitary group checks the water's edge box on its original North Dakota income tax return for the first year to which the election applies.

3. Each taxpayer in the water's edge group shall make an election pursuant to subsection 2 before any taxpayer in the group may use the water's edge method. If a water's edge taxpayer files a consolidated water's edge return, the election made on that return shall apply to all members of the water's edge group included in that return.
4. An affiliated corporation is considered to have consented to a water's edge election if the corporation becomes a member of the group after the group elects to use the water's edge method.

History: Effective July 1, 1989; amended effective August 1, 1994; April 1, 1995.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38.4-02

81-03-05.2-06.1. Recission of a water's edge election.

1. The water's edge election of a corporation that has had more than fifty percent of its voting stock acquired by a nonaffiliated corporation is rescinded.
2. The water's edge election of a corporation formed due to a reorganization or spinoff from an existing taxpayer is rescinded if, after such reorganization or spinoff, it is no longer an affiliated member of the water's edge group.
3. The water's edge election of a corporation that is completely liquidated is rescinded. The election does not carry over to a corporation receiving the liquidated assets. This provision does not affect the water's edge election made by any corporation that receives liquidated assets.

History: Effective April 1, 1995.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-38.4

CHAPTER 81-03-09

81-03-09-39. Special rules - Publishing. The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing, or other distribution of books, newspapers, magazines, periodicals, trade journals, or other printed material.

1. In general. Except as specifically modified by this rule, when a person in the business of publishing, selling, licensing, or distributing newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity must be determined under North Dakota Century Code chapter 57-38.1 and the rules adopted under that chapter.
2. Definitions. The following definitions are applicable to the terms contained in this rule, unless the context clearly requires otherwise.
 - a. "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables, and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling, or otherwise distributing printed material, but which are not physically located in any particular state.
 - b. "Print or printed material" includes the physical embodiment or printed version of any thought or expression including a play, story, article, column, or other literary, commercial, educational, artistic, or other written or printed work. The determination of whether an item is or consists of print or printed material must be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.
 - c. "Purchaser" and "subscriber" mean the individual, residence, business, or other outlet that is the ultimate or final recipient of the print or printed material. Neither of such terms means or includes a wholesaler or other distributor of print or printed material.
 - d. "Terrestrial facility" includes any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay, or carry any data, voice, image,

or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

3. Apportionment of business income.

a. The property factor.

- (1) Property factor denominator. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business must be included in the denominator of the property factor.
- (2) Property factor numerator. All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period must be included in the numerator of the property factor.
 - (a) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period must be included in the numerator of the property factor in the ratio that the value of such property which is attributable to its use by the taxpayer in business activities in this state bears to the total value of such property which is attributable to its use in the taxpayer's business activities everywhere.

The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state must be determined by the ratio that the number of uplinks and downlinks, sometimes referred to as "half-circuits", that were used during the tax period to transmit from this state and to receive in this state any data, voice, image, or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere.

Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer-jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state must be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive in this

state any data, voice, image, or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

- (b) Outer-jurisdictional property must be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing, or other distribution of books, newspapers, magazines, or other printed material and any data, voice, image, or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

Example: One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of uplinks, downlinks, or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of said satellite to its total usage everywhere.

Assume that ABC Newspaper Co. owns a total of four hundred million dollars of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees, and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at three million dollars. Assume also that the total original cost of the satellite is one hundred million dollars for the tax period and that of the ten thousand uplinks and downlinks of satellite transmissions used by the taxpayer during the tax period, two hundred or two percent are attributable to its satellite

communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of forty delivery trucks, were determined to have an original cost of four million dollars and such mobile property was used in this state for ninety-five days.

The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state \$3,000,000

Value of mobile property: 95/365
or (.2602) x \$4,000,000: \$1,048,000

Value of leased satellite property
used instate (.02) x \$100,000,000: \$2,000,000

Total value of property attributable
to state: \$6,048,000

Total property factor percent:
\$6,048,000/(\$500,000,000): .01209

b. The payroll factor. The payroll factor must be determined in accordance with North Dakota Century Code chapter 57-38.1 and the rules adopted under that chapter.

c. The sales factor.

(1) Sales factor denominator. The denominator of the sales factor must include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under North Dakota Century Code sections 57-38.1-15, 57-38.1-16, 57-38.1-17, and 57-38.1-18 and the rules adopted under those sections.

(2) Sales factor numerator. The numerator of the sales factor must include all gross receipts of the taxpayer from sources within this state, including the following:

(a) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

(b) Except as provided in subparagraph c, gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer

lists or any portion thereof must be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor must be determined for each individual publication by the taxpayer of printed material containing advertising and must be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere.

The circulation factor for an individual publication must be determined by reference to the rating statistics as reflected in such sources as audit bureau of circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor must be determined from the taxpayer's books and records.

(c) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the tax commissioner may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subparagraph b. Such attribution must be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method is permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

(d) If the purchaser or subscriber is the United States government or the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale,

rental, or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such state, must be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

History: Effective April 1, 1995.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-59

CHAPTER 81-04.1-01

81-04.1-01-23. Manufacturers and--recyclers. Manufacturing or agricultural processing is a process which produces a new article with a different form, use, and name. An agricultural commodity processing facility is a manufacturing plant that processes agricultural commodities into new products. A facility that only stores, cleans, dries, or transports agricultural commodities is not an agricultural commodity processing facility. The modification of articles of tangible personal property is not manufacturing or processing. For example, the creation of steel ducts or I-beams is manufacturing whereas the modification of steel ducts or I-beams to meet the specifications of a particular real property construction contract is not manufacturing or processing. To be considered manufacturing or processing, the raw materials must be materially altered.

By way of illustration and not of limitation, the following are manufacturers or agricultural processors: food, beverage, confectionary plants; grain mills; bakeries; textile mills; apparel makers; wood and lumber plants; furniture and fixture makers; paper product makers; printers and publishers (includes newspapers); chemical producers; leather good plants; stone, clay, glass, concrete product makers; cement and asphalt plants; metal ware makers; auto/aircraft makers; dairy processors (not producers); photo finishers (not photographers); and dental, medical, ophthalmologic labs.

By way of illustration and not of limitation, the following are not manufacturers or agricultural processors: farmers or ranchers, construction contractors, refining companies, artists, utilities, nurseries, restaurants, pharmacists, drycleaners, photographers, advertisement agencies, secretarial services, computer programmers, auto body shops, repair shops, radio and television stations, architects, jewelers, grain elevators, and tire retreaders or recappers.

Manufacturing machinery and equipment are exempt from sales and use taxes if the machinery or equipment:

1. Is used directly in the process of manufacturing tangible personal property for wholesale, retail, or lease;
2. Is used in a new manufacturing plant or in a physical or economic expansion of an existing plant; and
3. Is used directly in the manufacturing process more than fifty percent of the time the machinery or equipment is used by the manufacturer.

The manufacturing process begins at the point where the raw materials are first received at the plantsite and includes all direct processes prior to transporting the finished product from the plantsite. In addition, machinery and equipment used by a manufacturer to conduct

research, development, and design activities qualify for the sales and use tax exemption. Examples of research, development, and design equipment include computer software and hardware used to draw, design, or plan products and machinery and equipment used to build or test prototype models.

Machinery and equipment used directly in the manufacturing process includes molds and dies that determine the physical characteristics of the finished product or its packaging material, and computers and related peripheral equipment that directly control or measure the manufacturing process, and testing equipment used to measure or test product quality.

Machinery and equipment used directly in the manufacturing process also includes temperature or humidity control equipment necessary to maintain certain levels of temperature or humidity levels in a limited area of the processing or manufacturing facility where either temperature or humidity must be closely regulated for the proper function or production process to occur. For example, in certain food processing plants, maintenance of high levels of humidity are necessary during part of the process. Therefore, equipment or machinery used to create or maintain necessary humidity levels is exempt as manufacturing or processing equipment.

Equipment or machinery used for pollution control, general heating or cooling of the facility or air conditioning or air exchange equipment used to otherwise control the working environment does not qualify for the tax exemption. Also, items which are consumed or destroyed in the manufacturing process but which do not become a part of the finished product cannot be considered are not machinery and equipment and consequently are subject to the general sales and use tax. Machinery and equipment not used directly in the manufacturing process or in agricultural processing include repair parts, and equipment used for storage, delivery to and from the plant, repairing, cleaning, or maintaining facilities, research and development, or environmental control equipment required to maintain certain levels of air quality in a manufacturing or agricultural processing plant machinery, or equipment; handtools; backup or standby power supplies; computer hardware and software used to maintain inventory, production, or scheduling records; waste disposal or treatment facilities; and safety and security equipment such as fire sprinkler systems and burglar alarms. Purchase of these items by a manufacturer is taxable, and suppliers shall charge sales or use tax on these consumable items. If the items are purchased from an out-of-state supplier or if a North Dakota supplier fails to charge the tax, the North Dakota manufacturer shall report the sales or use tax directly to the North Dakota tax commissioner.

"Recycling" means collecting or recovering waste material and processing it so it becomes a raw material or another product for sale.

Machinery and equipment used directly in recycling of tangible personal property includes pulverizers, shredders, balers, granulators,

separators--and--conveyors---The--machinery--and--equipment--must--be--used
solely--and--exclusively--in--affecting--material--as--a--part--of--the--recycling
process.

Motor--vehicles--used--to--collect--material--to--be--recycled--do--not
qualify--for--the--exemption--nor--does--transportation--equipment--such--as
forklift--trucks--used--to--load--or--unload--material--either--before--it--is
recycled--or--after--the--recycling--process.

Items--consumed--or--destroyed--in--the--recycling--process--but--which--do
not--become--a--part--of--the--finished--product--are--not--considered--recycling
machinery--or--equipment--and--are--subject--to--sales--tax--when--purchased--for
use--by--the--recycler.

Requests for approval by the manufacturer to buy goods purchase machinery and equipment without paying tax or for refunds of tax paid on goods machinery or equipment which qualify for exemption must be made in writing to the tax commissioner. Only the manufacturer may apply for a refund of the sales or use tax paid on exempt machinery or equipment. A request for refund must include documentation showing the amount of tax paid by the manufacturer or the contractor. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying goods machinery and equipment without paying tax or prior to receiving approving a refund. The tax commissioner's approval to purchase goods without paying tax or to grant a refund is binding unless a further review or additional information indicates that the decision was made upon misrepresentation by the applicant. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.

The tax commissioner shall respond in writing to each exemption request stating whether or not the machinery or equipment qualifies for the exemption. The manufacturer may provide the approval letter to its equipment and machinery suppliers to avoid paying sales or use taxes on approved equipment. If a manufacturer purchases equipment before requesting a sales tax exemption, it shall pay all applicable sales and use taxes at the time of purchase but may apply to the tax commissioner for a refund of the taxes paid.

Tangible personal property consumed during the construction of an agricultural commodity processing facility or incorporated into the structure of an agricultural processing facility is exempt from sales and use tax. However, the contractor consuming or installing the materials shall pay the applicable sales or use taxes and the manufacturer shall apply in writing for a refund of the taxes paid by the contractor.

To receive a refund of taxes paid, the agricultural commodity processor must provide documentation showing that the contractor paid North Dakota sales or use taxes on the tangible personal property consumed during construction, or on the tangible personal property installed into the processing facility. The tax commissioner may request an onsite inspection of the processing facility before approving

the refund of taxes paid by a contractor. The agricultural commodity processor may request that the refund amount be taken as a credit adjustment on its next sales and use tax return; however, the tax exemption must be approved in writing by the tax commissioner before the tax credit may be applied on a sales and use tax return. A letter from the tax commissioner stating the amount of the approved credit must be attached to the sales and use tax return on which the credit was applied.

History: Effective June 1, 1984; amended effective March 1, 1990; November 1, 1991; August 1, 1994; April 1, 1995.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-07, 57-39.2-25, 57-40.2-02.1, 57-40.2-04, 57-40.2-13

57-39.2-04.3, 57-39.2-07, 57-39.2-25, 57-40.2-02.1, 57-40.2-04, 57-40.2-13

81-04.1-01-23.1. Recyclers. Recycling means collecting or recovering solid waste material and processing it so it becomes a raw material or another product for sale. The recycling process begins at the point where the raw materials are first received at the recycling facility and includes all direct processes prior to transporting the product from the facility. To qualify as recycling, the solid waste must be processed. Collecting or transporting waste materials without processing them is not recycling.

Recycling machinery and equipment are exempt from sales and use taxes if the machinery or equipment:

1. Is used solely in the process of recycling solid waste that will become a raw material for manufacturing or that will become a product for sale at retail or wholesale; and
2. Is used in a new recycling facility or in a physical or economic expansion of an existing facility.

Machinery and equipment used directly in recycling of tangible personal property includes pulverizers, shredders, balers, granulators, separators, and conveyors. Motor vehicles used to collect material to be recycled do not qualify for the exemption. Items consumed or destroyed in the recycling process, but which do not become a part of the finished product are not considered recycling machinery or equipment and are subject to sales tax when purchased for use by the recycler.

Requests for approval to buy recycling machinery or equipment without paying tax or for refunds of tax paid on machinery or equipment that qualifies for the exemption must be made in writing to the tax commissioner. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying machinery

or equipment without paying tax or prior to approving a refund. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.

The tax commissioner shall respond to each exemption request in writing stating whether or not the machinery or equipment qualifies as exempt recycling machinery or equipment. The recycler may provide the approval letter to equipment and machinery suppliers to avoid paying sales or use tax on approved equipment.

If a recycler purchases equipment before requesting a sales tax exemption, it must pay all applicable sales and use taxes at the time of purchase; however, the recycler may apply to the tax commissioner for a refund of taxes paid on qualifying equipment. When a recycler applies for a sales or use tax refund on qualifying machinery and equipment, the exemption application must include documentation showing the amount of tax paid.

History: Effective April 1, 1995.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-25, 57-40.2-02.1, 57-40.2-04, 57-40.2-13

CHAPTER 81-04.1-04

81-04.1-04-41. Telephone companies. A telephone company provides communication service to retail customers or users and shall pay sales or use tax on purchases of supplies and equipment for final use or consumption. The company shall also collect and remit sales tax on the gross receipts derived from the sale of communication service except those receipts derived from interstate communication service. Interstate communication includes service originating or terminating outside of North Dakota.

End-user federal access charges are subject to sales tax as part of the basic communication subscription service.

Sales charges between telephone companies, such as those commonly referred to as switching charges or access charges, are sales for resale and are not subject to sales tax.

Charges for telephone calls or telegrams beginning within North Dakota and completed outside the state or beginning outside North Dakota and completed within this state are not subject to sales or use tax if such charges are clearly indicated on a statement given to the customer. Federal excise taxes separately stated may be excluded.

Telegrams subject to sales tax charged to the account of telephone subscribers and billed by the telephone company must appear on the toll bill with the sales tax added.

A telephone system includes several components. These components include wiring, cables, plug-ins, jacks, installation labor, telephone instruments, and switchboard modules.

A telephone system includes both material and equipment which are installed into real property and material and equipment which remain tangible personal property.

The retailer of a telephone system is usually also responsible for the installation of all material and equipment necessary for the system to function. The wiring, cables, plug-ins, and jacks are installed into real property. An installer of these items is regarded as a contractor who is subject to sales or use tax on the cost of the installed material and equipment.

A telephone instrument or a switchboard module is regarded as tangible personal property and the gross receipts from the sale of these items are subject to sales tax.

Since the completed system will include both material and equipment which are installed into real property and material and equipment which remain tangible personal property, all material, equipment, and installation charges must be separately stated on the

~~billing--The-portion-of-the-billing-representing-material-and-equipment which-remain-tangible-personal-property-is-subject-to-sales-tax-and--the portion--of--the--billing--representing-the-installation-of-material-and equipment-into-real-estate-is-subject-to-sales-or-use-tax-based--on--the cost--of--the--material--and--equipment--to--the--installer,-with-no-tax appearing-on-the-billing-~~

~~If--a--lump--sum--amount-is-billed-to-the-purchaser-of-a-telephone system,-the-total-gross-receipts,-including-labor-charges,-are--subject to-sales-tax-~~ Repealed effective April 1, 1995.

History: Effective--June-1,-1984,-amended--effective-October-1,-1986; March-1,-1990-

General Authority: NDEC-57-39-2-19

Law Implemented: NDEC-57-39-2-01,-57-39-2-02-1,-57-39-2-04,-57-39-2-11, 57-39-2-19,-57-39-2-20

81-04.1-04-41.1. Communication service. The gross receipts from the sale of all communication services provided in the state are subject to sales tax provided the communication service originates and terminates within the state's borders, regardless of where the billing for the service is made.

"Communication service" is the transmission of any interactive electromagnetic communication, including voice, image, data, and any other information, by means of wire, cable, fiber optic, microwave, radio wave, any combination of such media, or any other method now in existence or that may be devised.

Taxable communication services include the following:

1. Basic telephone service;
2. Toll telephone service;
3. Teletypewriter or computer exchange service;
4. Cellular mobile communication service;
5. Mobile radio service; and
6. Two-way paging service.

Auxiliary or enhanced services are taxable and include charges for connection or reconnection of communication services, charges connected with the transmission of any message or image, charges for storage of data connected with communication services, call waiting, and call forwarding. Access charges billed to retail consumers are also taxable.

Cellular telephone services. A cellular radio communication company's receipts for intrastate mobile telephone communications services to retail consumers are taxable. The taxability of roaming

charges associated with this service is determined by the location of the first cell site. Gross receipts from interstate mobile communication services are not taxable. If the service provider's records do not identify a point of origination and termination of a communication, the communication is presumed to originate and terminate within the state and is taxable.

Taxable communication services do not include:

1. One-way communication service;
2. Purchase of communication service from one communication provider to another, for resale to a retail consumer, provided a certificate of resale is provided to the seller by the purchaser;
3. Charges for interstate communication service;
4. Communication services to exempt entities;
5. Communication services to Indian retail consumers enrolled and living on an Indian reservation within this state; and
6. 911 emergency telephone charges.

Charges for nontaxable services must be separately stated from charges for taxable services.

History: Effective April 1, 1995.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-19, 57-39.2-20

81-04.1-04-41.2. Communication equipment. Tangible personal property used to provide a communication service by a communication service provider, but that is not sold, leased, or rented to a retail customer is taxable. Taxable charges include down payments, commission charges, or other service or handling charges applied in conjunction with the sales, rental, or lease of tangible personal property.

Communication systems sold, leased, or rented to a retail customer may include both material and equipment that are installed, attached, or affixed to real property and material and equipment that remains tangible personal property. The material and equipment installed, attached, or affixed to real property is subject to sales or use tax based on the cost of the material and equipment to the installer.

A communication system that includes material and equipment installed, attached, or affixed to real property and material and equipment remaining tangible personal property must be separately stated on the billing. That portion of the billing representing the installation of material and equipment into real property is subject to

sales or use tax based on the cost of the material and equipment and that portion remaining tangible personal property is subject to sales tax based on the selling price to the final consumer.

The purchase of telephone directories for distribution to subscribers is not for resale and sales tax applies at the time of purchase.

History: Effective April 1, 1995.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-19, 57-39.2-20.

CHAPTER 81-09-02

81-09-02-01. Definitions. As used in this chapter and for the administration of North Dakota Century Code chapter 57-51, unless the context otherwise requires:

1. "Casinghead gas" means gas as produced from a well classified as an oil well by the industrial commission.
2. "Commissioner" means the tax commissioner of the state of North Dakota.
3. "Gross value at the well" means fair market value at the time of production.
4. "Natural gas" means gas as produced from a well classified as a gas well by the industrial commission.
5. "Nonoperating interest" means an interest in production from a mineral property which does not share in operating rights. A nonoperating interest includes an overriding royalty interest, a net profit interest, and a carried interest.
6. "Oil" means petroleum, crude oil (including condensate), mineral oil, and casinghead gasoline.
7. "Operator" means the person responsible for the actual physical operation of the producing property.
8. "Person" means an individual, partnership, corporation, association, fiduciary, trustee, and any combination thereof.
- 8: 9. "Producer" means the owner of a working interest or a nonoperating interest, in a well capable of producing oil or gas, or both.
- 9: 10. "Purchaser" means any buyer of oil or gas after it has been produced, or any processor of gas. Purchaser does not include one who acquires oil or gas in place in the earth through a lease, estate, or other interest.
- 10: 11. "Return" means any statement, report, or return required by North Dakota Century Code chapter 57-51 to be filed with the commissioner. To constitute a timely filed original or amended return, a return must be filed on or before the due date and must contain sufficient information by which the commissioner can process the return and determine the correct tax due. In the case of an information return, a return must be filed on or before the due date and must contain sufficient information by which the commissioner can process the return

and determine the correct oil and gas volumes to be reported and, where applicable, the gross value of oil produced.

12. "Take-in-kind" means a nonoperator elects to receive production in lieu of proceeds from the sale of production.

11- 13. "Tax" means the oil and gas gross production tax.

12- 14. "Taxpayer" means any person that is responsible for filing a report or paying the tax.

14- 15. "Working interest" means a mineral interest which includes the rights granted to a lessee of property to explore for, produce and own, oil or gas.

History: Effective July 1, 1982; amended effective August 1, 1986; July 1, 1989; June 1, 1992; April 1, 1995.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51

81-09-02-03. Procedure for refund of overpayments, duplicate payments, and erroneous payments of tax.

1. For purposes of this section, "taxpayer" means the party who has actually remitted an overpayment, duplicate payment, or erroneous payment of tax.

2. A claim for credit or refund must be made by filing with the commissioner an amended return. A claim for refund must also contain a statement outlining the specific grounds upon which the claim for refund is based, the total amount of the refund claimed, a list of the leases and production periods involved, and any documentation supporting the claim for refund.

3. A claim for credit or refund must be made within the applicable time period specified in North Dakota Century Code section 57-51-19. For the purpose of determining whether there has been a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, the change in tax liability must be determined on a well or unit basis, as reported on the return. If no tax has been paid on production from a well or unit for any production month, the requirement of a change in the liability in excess of twenty-five percent is automatically met.

~~4. The commissioner will not issue a tax refund or allow a tax credit for periods prior to the date of the taxpayer's claim for credit or refund in the following situations:~~

~~a. For a tax refund or credit claimed on production from a stripper well property, unless the producer submits to the~~

commissioner--the-industrial-commission's-certification-of
the-stripper-well-property-within-one-year-after--the--end
of-the-stripper-well-property's-qualification-period.

b:--For--a--tax--refund-or-credit-claimed-on-production-from-a
new-well;--unless-the-producer-submits-to-the--commissioner
the--industrial-commission's-new-well-qualification-letter
within-one-year-after-the-new-well-is-completed.

c:--For--a--tax--refund-or-credit-claimed-on-production-from-a
work-over-project;--unless--the--producer--submits--to--the
commissioner---the---industrial---commission's---work-over
qualification-letter-within-one-year-after--the--work-over
project-is-completed.

d:--For--a--tax--refund-or-credit-claimed-on-production-from-a
secondary-or-tertiary-project;--unless-the-operator-of--the
secondary--or--tertiary--project--submits--the--industrial
commission's-order-which-certifies--the--project--for--the
reduced--tax-rate-or-for-the-tax-exemption-within-one-year
after-the-end-of-the-period-qualifying-the-project-for-the
reduced--rate--or-within-one-year-after-the-month-in-which
the-first-incremental-oil-was-produced.

- 5: 4. Within thirty days of the claim for refund or credit, the commissioner shall acknowledge receipt of the claim and request additional information if needed. The commissioner shall notify the taxpayer as to the amount of refund or credit granted within a reasonable time of the claim. If the commissioner decides to deny the taxpayer's claim for refund or credit, in part or in full, a notice of refund change must be sent by certified mail with a return receipt requested, and it must state the reasons for the decision.
- 6: 5. The notice of refund change becomes final and irrevocable unless the taxpayer files a protest and statement of grounds with the commissioner pursuant to section 81-01.1-01-06. If a taxpayer protests only a portion of the commissioner's decision, the portion which is not protested becomes finally and irrevocably fixed. The commissioner shall provide a detailed response to the statement of grounds pursuant to section 81-01.1-01-07.
- 7: 6. Upon request, the commissioner may grant the taxpayer an informal conference.
- 8: 7. If a protest and statement of grounds are filed, the commissioner shall reconsider the notice of refund change. This reconsideration may include further examination by the commissioner of the taxpayer's books, papers, records, or memoranda, pursuant to section 81-01.1-01-03 and North Dakota Century Code sections 57-01-02 and 57-01-07.

- 9- 8. Pursuant to section 81-01.1-01-08, the commissioner shall send a notice of reconsideration to the taxpayer by certified mail with a return receipt requested stating the amount of refund or credit denied.
- 10- 9. The notice of reconsideration becomes final and irrevocable unless the taxpayer seeks formal administrative review of the notice by filing a complaint and requesting an administrative hearing pursuant to sections 81-01.1-02-01 and 81-01.1-02-02.1. The complaint must be served personally or by certified mail. The provisions of North Dakota Century Code chapter 28-32 apply to and govern the filing of the complaint and the administrative hearing procedure, including an appeal from any decision rendered by the commissioner.

History: Effective October 1, 1987; amended effective July 1, 1989; May 1, 1991; June 1, 1992; April 1, 1995.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-01-02, 57-01-07, 57-51-19

81-09-02-03.2. Tax-credit-requirements:--Tax-credits,-as-claimed on-amended-returns,-may-be--used--to--reduce--the--current--month's--tax liability--when--both-of-the-following-conditions-are-met: Procedure for limited review of amended returns submitted with claim for credit or refund.

1. The--tax--credits--are-attributable-to-the-twelve-month-period immediately-preceding-the-current-month's-return--being--filed Upon receipt of an amended return submitted with a claim for credit or refund, the commissioner shall perform a limited review to determine that tax was paid with a previously filed return and that the amended return is completed properly.
2. The--total--amount--of--the--tax--credits--does-not-exceed-ten thousand-dollars Mathematical or clerical errors as defined in section 81-01.1-01-02 may be corrected by the commissioner after notification is provided to the taxpayer.
3. When a tax credit is granted by the commissioner, the taxpayer will be notified by telephone, with written confirmation, of the amount of the tax credit which may be used to reduce the current month's tax liability. Under no circumstances may the taxpayer apply a tax credit on an original return without the express permission of the commissioner.
4. When a tax refund is granted by the commissioner, a refund check will be issued to the taxpayer.
5. Nothing in this rule is intended to preclude the commissioner's authority to audit the information reported on the amended return or to assess tax due.

~~If the conditions above are not met, the taxpayer must submit the amended returns for the commissioner's review and approval prior to reducing a current month's tax liability.~~

History: Effective June 1, 1992; amended effective April 1, 1995.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-19

~~81-09-02-06. Penalty for delinquent filing of failure to file a return and procedure for review of imposition of penalty. A delinquent return is subject to a penalty of twenty-five dollars per day for each well or unit reported on the return.~~

1. The term "taxpayer" includes any person or entity that is responsible for filing a tax or information return.
2. For purposes of this section, the terms "tax return" and "information return" have the meanings provided in section 81-09-02-01.
3. A taxpayer is subject to a penalty of twenty-five dollars per day for each well or unit for which a tax or information return has not been filed. This penalty must be apportioned to the general fund.
4. The commissioner shall notify the taxpayer of imposition of the failure to file penalty by certified mail, return receipt requested. The notice of imposition of failure to file penalty must specify the wells or units for which a return was not filed, the reporting periods for which a return was not filed, and the amount of penalty assessed. If the taxpayer objects to the imposition of the penalty, the taxpayer may protest by filing an administrative complaint with the commissioner within thirty days of the notice of imposition of penalty for failure to file a return. The taxpayer will be granted an automatic extension of thirty days to file a complaint, provided the taxpayer makes a request for extension within thirty days of the notice. If the taxpayer fails to protest within thirty days of the notice and the penalty remains unpaid, the commissioner may bring an action to collect the penalty for failure to file a return. The two year statute of limitations on actions under North Dakota Century Code section 28-01-18 applies to imposition of this penalty by the commissioner and to protest of this penalty by the taxpayer.
5. The taxpayer may request a hearing before the commissioner relating to the imposition of the penalty for failure to file a return. An administrative complaint filed by the taxpayer must be served personally or by certified mail. The provisions of North Dakota Century Code chapter 28-32 apply to and govern the filing of the complaint and the administrative

hearing including any appeal from a decision rendered by the commissioner.

History: Effective July 1, 1989; amended effective April 1, 1995.

General Authority: NDCC 28-01-18, 57-51-21

Law Implemented: NDCC 57-51-05 57-51-06

81-09-02-06.1. Penalty and interest on delinquent tax.

1. A penalty is imposed on delinquent tax in the amount of five percent of the delinquent tax or five dollars, whichever is greater. This penalty does not apply to delinquent tax reported on an amended return if:
 - a. Ninety percent of the total combined tax liability, reported on the original return and amended returns, was paid with the taxpayer's original return; and
 - b. The amended return is filed and all delinquent tax is paid within sixty days of the due date of the original return.
2. Interest is imposed on delinquent tax at a rate of one percent per month for each calendar month or any part of a month in which the tax remains unpaid, except that interest is not imposed in the month the delinquent tax became due.

The commissioner will consider a taxpayer's oral or written request for a waiver of penalty and interest and may grant a waiver in accordance with sections 81-01.1-01-09 and 81-01.1-01-10.

Penalty and interest collected by the commissioner on delinquent tax must be apportioned in the same manner as the delinquent tax.

The amount of penalty and interest due will be determined in the following manner:

- a. The penalty and interest rates must be applied to delinquent tax for each production period. Multiple tax underpayments for different production periods will not be combined to calculate penalty and interest. Tax overpayments and tax underpayments for different production periods will not be offset to calculate penalty and interest.
- b. The penalty and interest rates must be applied to the delinquent tax computed on an original or amended return. Tax overpayments and tax underpayments for individual well or unit entries on a single return will be offset and the penalty and interest computed on the net delinquent tax. Tax overpayments and tax underpayments reported on

separate returns for the same production period will not be offset.

History: Effective April 1, 1995.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-05(1), 57-51-10

81-09-02-09.1. Reduction from gas volumes and reporting.

1. To determine the volume of gas upon which gross production tax must be paid, the following may be deducted from the total volume of gas produced and must be reported to the commissioner:
 - 1- a. Wet gas and gas products exempt from taxation pursuant to subsection 3 of North Dakota Century Code section 57-51-05. The volume of gas to be deducted for the wet gas and gas products must be computed using the formulas prescribed in forms provided by the commissioner.
 - 2- b. Condensate reported as oil. The volume of gas to be deducted for each barrel of condensate must be computed using the formula prescribed in forms provided by the commissioner.
 - 3- c. Gas flared from an oil well by a producer that is not subject to taxation pursuant to North Dakota Century Code section 38-08-06.4.
 - 4- d. In the event a substance is being injected into a reservoir as a part of a tertiary recovery project, and the amount of nonhydrocarbon gas produced from a well is disproportionally increased as a result of the project, the total volume of gas produced from the well may be adjusted subject to the approval of the commissioner in a manner approved by the commissioner.
2. A producer is not required to report exempt lease use gas and gas flared from an oil well that is not connected to a gas gathering line if the producer submits the following to the commissioner a:
 - a. A chemical analysis of the flared gas, if available; and,
after;
 - b. After the first year's production, an industrial commission order exempting the producer from the provisions of North Dakota Century Code section 38-08-06.4; and
 - c. A written statement stating the specific use of exempt gas volumes used on the lease.

History: Effective June 1, 1992; amended effective April 1, 1995.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-01, 57-51-05

81-09-02-10. Condensate recovered from a gas stream.

1. For the purposes of this section, the following definitions apply:

a. "Condensate" means all liquid hydrocarbons recovered from a gas stream in a gathering system after the custody transfer meter but before processing at a gas plant. Condensate is otherwise referred to as "pigging liquids", "gathering system condensate", or "drip".

b. "Gross value" of condensate at the point of recovery means the price paid under an arm's length contract for the sale of oil as defined in North Dakota Century Code section 57-51-02.3.

c. "Processing" means any process designed to remove elements or compounds, hydrocarbons and nonhydrocarbons, from gas, including absorption, adsorption, or refrigeration. Field processes that normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing.

2. Gross value at the well includes the value of condensate from associated and nonassociated production. There may be deducted from the gross value of condensate certain costs incurred to recover the condensate from a gas stream after the custody transfer meter. Effective January 1, 1995, the costs of recovery must be calculated and deducted from the gross value of condensate under either of the following methods:

a. By multiplying fifteen percent times the gross value of the condensate, as gross value is finally determined by the commissioner. This method establishes conclusively the costs of recovery of the condensate from a gas stream; or

b. By using reasonable actual costs incurred to recover the condensate from a gas stream after the custody transfer meter. Actual costs do not include proceeds retained under a gas sales or gas processing agreement between a producer and a purchaser or processor. If the method under this subdivision is elected, the costs of recovery must be fully substantiated upon request and are subject to audit by the commissioner.

The value of condensate is included in gross value regardless of the point at which it is recovered. This includes, ~~but is not limited to~~, condensate recovered at the lease site, gas gathering lines, compressor station, and inlet separator of a processing plant.

The commissioner shall review the cost of recovery methods under subdivisions a and b of subsection 2 after the cost of recovery provision has been in effect for two years.

History: Effective August 1, 1986; amended effective April 1, 1995.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-02

81-09-02-17. Definition of gas base rate adjustment and tax rate.

The gas base rate adjustment and the tax rate on taxable gas production reported in MCF for fiscal years beginning July 1, 1992, and subsequent years, are as follows:

FISCAL YEAR	BASE RATE ADJUSTMENT	TAX RATE PER MCF
July 1, 1992, through June 30, 1993	1.018494	\$.0407
July 1, 1993, through June 30, 1994	1.002642	\$.0401
July 1, 1994, through June 30, 1995	1.036988	\$.0415

History: Effective August 1, 1994; amended effective April 1, 1995.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-02.2

81-09-02-19. Reporting requirements for producers and purchasers.

1. The purchaser of oil at the well must file a monthly oil purchaser's report, as follows:

a. If the purchase of oil at the well is an arm's length transaction, the first purchaser must file the oil purchaser's report.

b. If the first purchase of oil at the well is a non-arm's length transaction and the oil is resold at the well to an arm's length purchaser, the second purchaser must file the oil purchaser's report.

c. If the first purchase of oil at the well is a non-arm's length transaction and the oil is not resold at the well but is sold downstream, the purchaser at the well must file the oil purchaser's report.

d. The term arm's length transaction as used in this section is defined in section 81-09-02-09.

2. The purchaser is primarily responsible for remitting tax due on all oil purchased from an operator or working interest owner when delivery is made at the well. The commissioner may accept payment of the tax from the operator or working interest owner but failure of the operator or working interest owner to pay the tax will not relieve the purchaser of liability for the tax.
3. The operator and working interest owner shall report as follows:
 - a. The operator of a property must report one hundred percent of production volume each month. The operator must also report the sales volume and the gross value at the well of the oil the operator actually sold.
 - b. The working interest owners who take oil in kind must report the sales volume and the gross value at the well of the oil taken in kind.
4. The operator of a producing property must file a monthly oil producer's report unless a written exception is granted allowing a working interest owner to assume the reporting responsibilities of an operator who does not have a working interest in production.
5. The operator must report and remit the tax on all oil not sold at the well including any oil used, lost, stolen, or otherwise unaccounted for after it has been produced.
6. Beginning January 1, 1995, the person reporting and remitting tax on a new property will be required to submit documentation to support a claim for exempt royalty interests. The documentation must be mailed to the commissioner within ninety days after the first report is filed on the property.

History: Effective April 1, 1995.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-05, 57-51-06, 57-51-07

TITLE 89
Water Commission

MARCH 1995

STAFF COMMENT: Article 89-13 contains all new material but is not underscored so as to improve readability.

ARTICLE 89-13

NORTHWEST AREA WATER SUPPLY PROJECT

Chapter	
89-13-01	Northwest Area Water Supply Project

CHAPTER 89-13-01
NORTHWEST AREA WATER SUPPLY PROJECT

Section	
89-13-01-01	Definitions
89-13-01-02	Statement of Project Purpose and Intent
89-13-01-03	Eligibility

89-13-01-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Agreement of intent" means an agreement between the entity operating or desiring to operate a distribution system and the state water commission whereby the entity agrees to consider entering into a water service agreement for delivery of water

from the northwest area water supply project and the state water commission agrees to include the water requirements of the distribution system in the prefinal design of the project.

2. "Distribution system" means a system for the provision to users of potable water, if such system has at least fifteen service connections or regularly serves at least twenty-five users.
3. "Prefinal design" means the engineering analysis of the project layout incorporating distribution systems of all entities that have entered into an agreement of intent.
4. "Project" means the northwest area water supply project authorized by North Dakota Century Code chapter 61-24.6.
5. "User" means a household, business, or farmstead that uses water.
6. "Water service agreement" means an agreement to purchase water from the northwest area water supply project based upon the results of the prefinal design and projected development of the project.

History: Effective March 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-24.6-04

89-13-01-02. Statement of project purpose and intent. The purpose of the project is to ensure a dependable, long-term supply of good quality water to users of existing and planned distribution systems in northwestern North Dakota that have entered into a northwest area water service agreement with the state water commission.

The support of existing rural water associations and cities that are supplying water to other distribution systems in the project area is very important to the success of the project. Therefore, it is the intent of the project advisory committee to preserve existing water supply relationships in the project area.

History: Effective March 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-24.6-04

89-13-01-03. Eligibility.

1. Any distribution system or portion of a distribution system may enter into an agreement of intent or a water service agreement except for:

- a. A distribution system, or portion thereof, that received water from a rural water association, city, or other distribution system in the project area at any time prior to March 1, 1995, if the distribution system that supplied the water has entered into an agreement of intent or a water service agreement; or
 - b. A distribution system, or portion thereof, that enters into an agreement to receive water from a rural water association, city, or other distribution system after March 1, 1995, if the distribution system that supplied or is supplying water has entered into an agreement of intent or a water service agreement.
2. Any receiving distribution system, or portion thereof, that was receiving water from a supplying distribution system may enter into an agreement of intent or a water service agreement if the supplying distribution system terminates the agreement to provide water to the receiving distribution system.
3. A receiving distribution system purchasing water from a supplying distribution system which has entered into an agreement of intent or a water service agreement is eligible to enter into an agreement of intent or a water service agreement for the purpose of expansion into areas not served by project water from the supplying distribution system.

History: Effective March 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-24.6-04

TITLE 92
Workers Compensation Bureau

FEBRUARY 1995

CHAPTER 92-01-02

92-01-02-18. Experience rating system. The following system is established for the experience rating of risks of employers contributing to the fund:

1.--Basis--for--experience--rating.--A merit-rating-system-must-be applied-at--the--termination--of--the--twelve-month--insurance period--for--all--employers--accounts-of-the-fund-meeting-the following-qualifications:

a.--The--account--has--completed--two-consecutive-twelve-month insurance-periods.

b.--The--employer's--account,--excluding-optional-coverage,--has developed-an-annual-premium-of-one-hundred-dollars-or-more on-its-last-actual-payroll.

Employer's--coverage--shall--not-be-eligible-for-merit-rating. No-minimum-premium-shall-be-eligible-for-merit--rating.--When computing--merit-rating-discount,--an-employer-may-not-pay-less than-the-minimum-premium-for-the-highest--classification--rate of--that--employer-for-merit-rating-purposes.--The-date-claims are-accepted-must-be--the--controlling--factor--for--the--five succeeding-years.

2.--Basic---compensation--allowance.--The--premium--allowance--is established-by--adding--the--total--earned--premium--for--each account--based--on-the-period-within-the-first-five-of-the-six years-immediately-preceding-the-twelve-month-insurance--period times--fifty-percent-of-the-accumulated-earned-premium-for-the

stated-five-year-period,-which-equals--the--premium--allowance
for-a-stated-twelve-month-period:

3.--Merit--rate--discount:---Percentage--of-merit-rate-discount-is
computed-as-follows:

a.--The--four-year-premium-and-the-current-year's-base-premium
obtained--from--the--current--payroll--report--are---added
together:

b.--Take-fifty-percent-of-this-total,-which-is-the-five-years'
premium,-and-arrive-at-the-allowance:

c.--If--the--losses--on-the-experience-rating-sheet-exceed-the
allowance--arrived--at--in--subdivision-b,-the--allowance
figure-is-subtracted-from-the-loss-figure:

d.--This--difference--is--divided--by--the-allowance-figure-to
obtain-the-percentage-of-difference:

e.--The--percentage-of-difference-is-multiplied-by-the-maximum
percent-of-charge-based-upon-the-amount-of-premium--billed
to-the-individual-account:

f.--This--figure-is-the-percentage-of-merit-rate-charged-to-be
applied-on-the-current-estimated-portion--of--the--payroll
report:

g.--If--the--allowance--figure--exceeds-the-loss-figure-on-the
experience-rating-sheet,-the--loss--figure--is--subtracted
from-the-allowance-figure:

h.--This--difference--is--divided--by--the-allowance-figure-to
obtain-the-percentage-of-difference:

i.--This-percentage-of-difference-is-multiplied-by-the-maximum
percent-of-discount--based--upon--the--amount--of--premium
billed-to-the-individual-account:

j.--This-figure-is-the-percentage-of-merit-rate-discount-to-be
applied-on-the-current-estimated-portion--of--the--payroll
report:

4.--Percentage--charge--or--discount:---In--no--instance--may--the
employer's-base-premium-be-added-to,-for-charge,-or-subtracted
from,-for--discount,-by-more-than-forty-percent:---For-payroll
periods-ending-July-31,-1994,-and--after,-the--percentage--or
merit--rate--may--not--change--more--than--forty-percent-on-an
individual-account-of-twenty-five-thousand--dollars--or--more;
thirty-five--percent--on--accounts-of-five-thousand-dollars-to
twenty-four-thousand-nine--hundred--ninety-nine--dollars,-and
thirty--percent--on--accounts-from-one-hundred-dollars-to-five
thousand-dollars:

1. Definitions. In this section, unless the context otherwise requires:

- a. "Five-year losses" means the total sum of ratable losses accrued on claims occurring during the first five of the six years immediately preceding the premium year being rated. For payroll periods beginning between July 1, 1994, and June 30, 1995, this term means the total sum of ratable losses accrued on claims occurring during the first four of the five years immediately preceding the payroll year being rated.
- b. "Five-year payroll" means the total sum of limited payroll reported for the first five of the six years immediately preceding the premium year being rated. For payroll periods beginning between July 1, 1994, and June 30, 1995, this term means the total sum of limited payroll reported for the first four of the five years immediately preceding the payroll year being rated.
- c. "Five-year premium" means the total sum of earned premium for the first five of the six years immediately preceding the premium year being rated. For payroll periods beginning between July 1, 1994, and June 30, 1995, this term means the total sum of earned premium for the first four of the five years immediately preceding the payroll year being rated.
- d. "Manual premium" means the actual premium, prior to any experience rating, for the premium year immediately preceding the premium year being rated for claims experience.

2. Qualified accounts. An employer's account is not eligible for an experience rating until the account has completed three consecutive twelve-month payroll periods and has developed annual premium of one hundred twenty-five dollars or more, excluding optional coverages, on its last actual payroll report. Employer's and volunteer coverages are not eligible for experience rating.

3. For accounts with manual premium of less than twenty-five thousand dollars.

- a. The experience rating must be applied prior to the inception of each payroll year for all eligible employers' accounts. No minimum premium is eligible for experience rating. Notwithstanding a calculated experience rate discount, an employer may not pay less than the minimum premium for the highest applicable classification rate. A claim is deemed to occur in the payroll year in which it is accepted by the bureau.

b. Experience rate discount or surcharge. Percentage of experience rate discount or surcharge is computed as follows:

- (1) Calculate the basic compensation allowance which is determined by multiplying the five-year premium by forty percent.
- (2) Subtract the basic compensation allowance from the five-year losses.
- (3) Divide this difference by the basic compensation allowance to obtain the percentage difference.
- (4) Multiply thirty-five percent by the percentage difference obtained under paragraph 3 to give the experience rate percentage to be applied in calculating the estimated premium for the current premium year. If this percentage is greater than zero, the account is subject to an experience rate surcharge in the amount of the calculated percentage. If this percentage is less than zero, the account is entitled to an experience rate discount in the amount of the absolute value of the percentage.

c. Maximum percent of surcharge or discount. For payroll periods beginning prior to August 1, 1993, the maximum experience rating surcharge or discount may not exceed forty percent for all accounts. For payroll periods beginning between August 1, 1993, and June 30, 1994, the maximum experience rating surcharge or discount may not exceed thirty-five percent on an individual account with base premium of five thousand dollars to twenty-four thousand nine hundred ninety-nine dollars and ninety-nine cents, and thirty percent on an account with base premium of one hundred dollars to four thousand nine hundred ninety-nine dollars and ninety-nine cents. For payroll periods beginning after June 30, 1994, the maximum experience rating surcharge or discount may not exceed twenty percent on an account with base premium of five thousand dollars to twenty-four thousand nine hundred ninety-nine dollars and ninety-nine cents, and fifteen percent on an account with base premium of one hundred twenty-five dollars to four thousand nine hundred ninety-nine dollars and ninety-nine cents.

4. For accounts with manual premium of twenty-five thousand dollars or more.

a. The experience rating must be applied prior to the inception of each premium year for all eligible accounts. A claim is deemed to occur in the premium year in which the injury date occurs.

b. The experience modification factor (EMF) to be applied to the current estimated portion of an of an employer's payroll report is computed as follows:

- (1) Calculate the actual primary losses (A_p), which consist of the sum of those five-year losses, comprising the first ten thousand dollars of each individual claim.
- (2) Calculate the actual excess losses (A_e), which consist of the sum of those five-year losses in excess of the first ten thousand dollars of losses of each individual claim.
- (3) Calculate the total expected losses (E_t), which are determined by adding the products of the actual payroll for each year of the five-year payroll times the class expected loss rate for each year. The class expected loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of the North Dakota workers compensation bureau summary of expected loss rates and information, which is hereby adopted by reference and incorporated within this subsection as though set out in full herein.
- (4) Calculate the expected excess losses (E_e), which are determined by adding the products of the actual payroll for each year of the five-year payroll times the class expected excess loss rates. The class expected excess loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of the North Dakota workers compensation bureau summary of expected loss rates and information, which is hereby adopted by reference and incorporated within this subsection as though set out in full herein.
- (5) Calculate the "credibility factor" (Z) which is the quotient of the total expected losses divided by the sum of the total expected losses plus one million dollars.
- (6) The experience modification factor is then calculated as follows:
 - (a) Add the actual primary losses to the product of the actual excess losses times the credibility factor.
 - (b) To this sum add the product of the expected excess losses times the difference between one dollar and the credibility factor.

(c) To this sum add twenty thousand dollars.

(d) Divide this total sum by the sum of the total expected losses plus twenty thousand dollars.

The resulting quotient is the experience modification factor to be applied in calculating the estimated premium for the current payroll year.

(7) The formula for the above-mentioned calculation is as follows:

$$\text{EMF} = \frac{A_p + (Z \times A_e) + [(1.00 - Z) \times E_e] + \$20,000.00}{E_t + \$20,000.00}$$

History: Effective June 1, 1990; amended effective July 1, 1993; July 1, 1994.

General Authority: NDCC 65-02-08, 65-04-17

Law Implemented: NDCC 65-04-01

92-01-02-20. Classification of employments - Premium rates. Classifications and premium rates, taking into consideration hazards and risks of different occupations, must be those classifications and premium rates contained in the document entitled, "ND Workers Compensation Bureau Summary of Premium/Loss Information", 1994 edition, which is hereby adopted by reference thereto and incorporated within this section as though set out in full herein.

Premium rates must be adjusted annually as recommended by the bureau's actuaries based upon the criteria set forth in North Dakota Century Code section 65-04-01.

The minimum premium charge for all classifications will be one hundred twenty-five dollars per year except for the following volunteer classifications:

Classification No.

7710	Fire department, volunteer - minimum will be fifty dollars
7715	Civil defense volunteer disaster - minimum will be fifty dollars
9830	Civil air patrol, volunteer - minimum will be one hundred ten dollars
9385	Volunteer programs - minimum will be one hundred fifty dollars

9840

Vocational training and work evaluation
programs, volunteer - minimum will be one
hundred fifty dollars

History: Effective June 1, 1990; amended effective July 1, 1990;
July 1, 1991; July 1, 1992; July 1, 1993; July 1, 1994.

General Authority: NDCC 65-02-08, 65-04-01

Law Implemented: NDCC 65-04-01

TITLE 97
Board of Counselors Examiners

FEBRUARY 1995

CHAPTER 97-02-01

97-02-01-01. Requirements to become a licensed professional counselor. In order for an applicant to become a licensed professional counselor, an individual must make application to the board, supplying, at a minimum, the following information:

1. A copy of a masters degree transcript from an accredited school or college that meets the academic standards set forth in section 97-02-01-02.
2. Three recommendations as follows:
 - a. One from the counselor educator who provided direct supervision in the applicant's counseling practicum or internship;
 - b. One from an employer who provided general supervision of the applicant's work since receipt of the masters degree; and
 - c. One from the professional who provided direct supervision of the applicant's counseling experience.
3. Certification that the individual has a minimum of two years of supervised experience under a licensed professional counselor or its equivalent. Equivalency has been determined to be a duly credentialed human service professional or other individual ~~approval~~ approved by the board for supervision. The supervision must include individual, face-to-face meetings that occur at regular intervals over a two-year period. Supervision in a group setting may also be provided, such as

in the case of a conference among members of a professional staff or other arrangement. A total of one hundred hours over the two-year period of supervision through individual and group methods must be documented. At least twenty-five hours must be individual face-to-face supervision.

4. Provides a statement of intent to practice, describing proposed use of the license, the intended client population, and the counseling procedures that the applicant intends to use in serving the client population.
5. Showing successful completion of the national counselor examination as distributed and administered under the auspices of the national board of certified counselors.

History: Effective June 1, 1991; amended effective February 1, 1995.

General Authority: NDCC 43-47-03

Law Implemented: NDCC 43-47-06

97-02-01-02. Academic programs. Academic programs are programs identified specifically as counseling programs in the graduate bulletin of the accredited school or college. These programs include counseling, counselor education, counseling and guidance, and counseling and development. In addition to the master's degree in counseling, the applicant's graduate transcript must indicate coursework in the following areas: counseling methods, group counseling, counseling theories, counseling practicum, individual appraisal or testing, and statistics or research methods. Effective July 1, 1995, in addition to the master's degree, the applicant's graduate transcript must indicate a minimum of forty-eight semester credits (or seventy-two quarter hours), including coursework in the following areas: counseling theories, counseling methods, group counseling, individual appraisal or testing, statistics or research methods, human growth and development, social and cultural foundations, career and lifestyle development, professional orientation and ethics, and counseling practicum or internship.

Graduates from master's degree programs in other human services fields may also meet the academic and training standards for licensure. In addition to the master's degree, the applicant's transfer must indicate coursework that is equivalent to the coursework in the following areas: counseling methods, group counseling, counseling theories, counseling practicum, individual appraisal or testing, and statistics or research methods. Effective July 1, 1995, in addition to the master's degree, the applicant's graduate transcripts must indicate a minimum of forty-eight semester credits (or seventy-two quarter credits), including coursework in the following areas: counseling theories, counseling methods, group counseling, individual appraisal or testing, statistics or research methods, human growth and development, social and cultural foundations, career and lifestyle developments, professional orientation and ethics, and counseling practicum or internship.

History: Effective June 1, 1991; amended effective February 1, 1995.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-47-06

97-02-01-03. Requirements to become a licensed associated counselor. In order for an applicant to become a licensed professional associated counselor, an individual must make application to the board, supplying, at a minimum, the following information:

1. A copy of a master's degree from an accredited school or college that meets the academic standards set forth in section 97-02-01-02.
2. Three recommendations as follows:
 - a. One from the practicum agency contact person;
 - b. ~~One--from--the--counselor-educator-who-provided-the-direct supervision-in-the-applicant's-counseling-practicum;-and~~
 - e. One from the applicant's master's degree program advisor; and
 - c. One from an additional counselor educator.
3. A written plan which at a minimum must include an estimated number of client contact hours per week and must specify the supervision received. The supervision must include individual, face-to-face meetings that occur at regular intervals over the two-year period. Supervision in a group setting may also be provided such as in case conference among members of a professional staff or other arrangement. A total of one hundred hours over the two-year period of supervision through individual and group methods must be documented. At least twenty-five hours must be individual face-to-face supervision.
4. Showing successful completion of the national counselor examination as distributed and administered under the auspices of the national board of certified counselors.

History: Effective June 1, 1991; amended effective February 1, 1995.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-47-06

STAFF COMMENT: Chapter 97-02-03 contains all new material but is not underscored so as to improve readability.

**CHAPTER 97-02-03
CODE OF ETHICS**

Section
97-02-03-01 Code of Ethics

97-02-03-01. Code of ethics. The board adopts the ethical standards of the American counseling association (as revised by the American association of counseling and development governing counsel, March 1988) as its code of ethics for the practice of counseling. A copy of the ethical standards of the American counseling association may be obtained from the board.

History: Effective February 1, 1995.
General Authority: NDCC 28-32-02, 43-47-03
Law Implemented: NDCC 43-47-03

TITLE 101
Real Estate Appraiser Qualifications and Ethics Board

JANUARY 1995

CHAPTER 101-02-01

101-02-01-03. Filing fees. The following annual fees must be charged:

- | | |
|---|-------------------|
| 1. Apprentice real property appraiser permit | \$200 |
| 2. Licensed real property appraiser permit
(including the transitionally licensed real
property appraiser permit) | 200 |
| 3. Certified general real property appraiser permit | 200 |
| 4. Inactive status | 200 50 |

History: Effective October 1, 1992; amended effective January 1, 1995.

General Authority: NDCC 43-23.3-20

Law Implemented: NDCC 43-23.3-05

CHAPTER 101-02-02

101-02-02-05. Licensed real property appraiser.

1. **Definitions.** A licensed real property appraiser permit must be issued to an individual who successfully meets all of the North Dakota appraisal requirements for such a permit.
2. **Property appraisal limitations.** All appraisals for transactions not requiring the services of a certified general real property appraiser may be prepared by a licensed real property appraiser.
3. **Prerequisite requirements - Education and examination.** A licensed real property appraiser must have successfully completed the appraisal board endorsed uniform licensing examination or its equivalent. A licensed real property appraiser must have successfully completed seventy-five classroom hours of education related to real estate appraisal which must include coverage of the uniform standards of professional appraisal practice.
 - a. A classroom hour is defined as fifty minutes out of each sixty-minute segment.
 - b. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen hours, and the individual successfully completes an examination pertinent to that educational offering.
 - c. Credit for the classroom requirement may be obtained from the following:
 - (1) Colleges or universities;
 - (2) Community or junior colleges;
 - (3) Real estate appraisal or real estate related organizations;
 - (4) State or federal agencies or commissions;
 - (5) Proprietary schools; and
 - (6) Other providers approved by the board.
 - d. Credit toward the classroom hour requirement may be awarded to teachers of appraisal courses. A teacher requesting credit for the classroom hour requirement may

request credit for either the classroom hour or experience requirement, but not both.

e. There is no time limit regarding when qualifying education credit must have been obtained.

f. Various appraisal courses may be credited toward the seventy-five classroom hour education requirement. Applicants must demonstrate that their education involved substantially equivalent coverage of the topics listed below, with particular emphasis on the appraisal of one to four unit residential properties.

(1) Influences on real estate value;

(2) Legal considerations in appraisal;

(3) Types of value;

(4) Economic principles;

(5) Real estate markets and analysis;

(6) Valuation process;

(7) Property description;

(8) Highest and best use analysis;

(9) Appraisal statistical concepts;

(10) Sales comparison approach;

(11) Site value;

(12) Cost approach;

(13) Income approach:

(a) Gross rent multiplier analysis;

(b) Estimation of income and expenses; and

(c) Operating expense ratios;

(14) Valuation of partial interests; and

(15) Appraisal standards and ethics.

4. **Prerequisite requirement - Experience.** A licensed real property appraiser must have the equivalent of two thousand hours of credible appraisal experience prior to obtaining the licensing permit. If requested, documentation in the form of

reports or file memoranda should be available to support the experience claimed.

a. Adequate experience will be determined on a point system.

(1) The point system awards points based on the types of appraisals performed, the types of properties appraised, and the number of appraisals performed by the individual.

(2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.

(a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value.

(b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate.

(c) A condemnation appraisal is an appraisal of real property for condemnation purposes where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process including a field inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.

(3) Types of property appraised may include, but are not limited to, the following:

- (a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, land in transition, etc.
 - (b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.
 - (c) Residential multifamily, thirteen plus units may include apartments, condominiums, townhouses, and mobile home parks.
 - (d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, day care center, etc.
 - (e) Commercial multitenant may include office building, shopping center, hotel, etc.
 - (f) Industrial may include warehouse, manufacturing plant, etc.
 - (g) Institutional may include rest home, nursing, home, hospital, school, church, government building, etc.
- (4) Points assigned for each appraisal type are assigned by the appraisal board and are included on the application for licensure and certification. A copy of this form can be obtained by contacting the appraisal board office.
- b. A total of two hundred forty points is equivalent to the two thousand-hour requirement. These two hundred forty points (two thousand hours of experience) must be obtained using at least two years of appraisal practice gained over a period of at least twenty-four months.
 - c. There is no other time limit regarding when qualifying experience may be obtained.
 - d. Hours may be treated as cumulative in order to achieve the necessary two thousand hours (two hundred forty points) of appraisal experience.
 - e. Acceptable appraisal experience includes, but is not limited to, the following:
 - (1) Fee and staff appraisal, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate counseling (excludes related fields such as real

estate lending), highest and best use analysis, feasibility analysis or study, and teaching of appraisal courses.

(2) No more than seventy-five points of the total experience credit may be in related areas. Related experience includes teaching, authorship, and counseling.

(3) Teachers may request credit for either the classroom hour or experience requirement, but not both.

f. The verification for the two thousand hours (two hundred forty points) of experience credit claimed by an applicant must be via affidavit on forms prescribed by the state certification or licensing board.

History: Effective October 1, 1992; amended effective January 1, 1995.

General Authority: NDCC 43-23.3-03, 43-23.3-09

Law Implemented: NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

101-02-02-06. Certified general real property appraiser.

1. **Definitions.** A certified general real property appraiser permit must be issued to an individual who successfully meets all of the North Dakota appraisal requirements for such a permit.
2. **Property appraisal limitations.** All transactions having a transaction value of one million dollars or more requires an appraisal prepared by a certified general real property appraiser; all transactions having a transaction value of two hundred fifty thousand dollars or more, other than those involving appraisals of one-to-four family residential properties, require an appraisal prepared by a certified general real property appraiser; and all complex one-to-four family residential property appraisals require a certified general real property appraiser if the transaction value is two hundred fifty thousand dollars or more. The term "complex one-to-four family residential property appraisal" means an appraisal in which the property to be appraised, the form of ownership, or the market conditions are atypical.
3. **Prerequisite requirements - Education and examination.** A certified general real property appraiser must have successfully completed the appraisal board endorsed uniform state certification examination or its equivalent. A certified appraiser must have successfully completed one hundred sixty-five classroom hours of education related to real estate appraisal, which must include coverage of the uniform standards of professional appraisal practice.

- a. A classroom hour is defined as fifty minutes out of each sixty-minute segment.
- b. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen hours, and the individual successfully completes an examination pertinent to that educational offering.
- c. Credit for the classroom requirement may be obtained from the following:
 - (1) Colleges or universities;
 - (2) Community or junior colleges;
 - (3) Real estate appraisal or real estate related organizations;
 - (4) State or federal agencies or commission;
 - (5) Proprietary schools; and
 - (6) Other providers approved by the state certification or licensing board.
- d. Credit towards the classroom hour requirement may be awarded to teachers of appraisal courses. A teacher requesting credit for the classroom hour requirement may request credit for either the classroom hour or experience requirement, but not both.
- e. There is no time limit regarding when qualifying education credit must have been obtained.
- f. Various appraisal courses may be credited toward the one hundred sixty-five classroom hour education requirement. Applicants must demonstrate that their education involved substantially equivalent coverage of topics listed below with particular emphasis on the appraisal of nonresidential properties. Residential is defined as one-to-four residential units.
 - (1) Influence on real estate value;
 - (2) Legal considerations in appraisal;
 - (3) Types of value;
 - (4) Economic principles;
 - (5) Real estate markets and analysis;

- (6) Valuation process;
- (7) Property description;
- (8) Highest and best use analysis;
- (9) Appraisal math and statistics;
- (10) Sales comparison approach:
- (11) Site value;
- (12) Cost approach;
- (13) Income approach:
 - (a) Estimation of income and expenses;
 - (b) Operating statement ratios;
 - (c) Direct capitalization;
 - (d) Cash flow estimates;
 - (e) Measures of cash flow; and
 - (f) Discounted cash flow analysis;
- (14) Valuation of partial interests;
- (15) Appraisal standards and ethics; and
- (16) Narrative report writing.

4. **Prerequisite requirement - Experience.** A certified general real property appraiser must have the equivalent of two thousand hours of credible appraisal experience prior to obtaining the certified general real property appraiser permit. If requested, experience documentation in the form of reports or file memoranda should be available to support the experience claimed.

a. Adequate experience will be determined on a point system.

- (1) The point system awards points based on the types of appraisals performed, the types of properties appraised, and the number of appraisals performed by the individual.
- (2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.

- (a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value.
 - (b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate.
 - (c) A condemnation appraisal is an appraisal of real property for condemnation purposes where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process including a field inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.
- (3) Types of property appraised may include, but are not limited to, the following:
- (a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, land in transition, etc.
 - (b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.
 - (c) Residential multifamily, thirteen plus units may include apartments, condominiums, townhouses, and mobile home parks.

- (d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, day care center, etc.
 - (e) Commercial multitenant may include office building, shopping center, hotel, etc.
 - (f) Industrial may include warehouse, manufacturing plant, etc.
 - (g) Institutional may include rest home, nursing home, hospital, school, church, government building, etc.
- (4) Points assigned for each appraisal type are assigned by the appraisal board and are included on the application for licensure or certification. A copy of this form can be obtained by contacting the appraisal board office.
- b. A total of two hundred forty points is equivalent to two thousand-hour requirement. These two hundred forty points, (two thousand hours of experience) must be obtained using at least two years of appraisal practice gained over a period of at least twenty-four months.
 - c. There is no other time limit regarding when qualifying experience may be obtained.
 - d. Hours may be treated as cumulative in order to achieve the necessary two thousand hours (two hundred forty points) of appraisal experience.
 - e. Acceptable appraisal experience includes, but is not limited to, the following:
 - (1) Fee and staff appraisal, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate counseling (excludes related fields such as real estate lending), highest and best use analysis, feasibility analysis or study, and teaching of appraisal courses.
 - (2) No more than seventy-five points of the total experience credit may be in related areas. Related experience includes teaching, authorship, and counseling.
 - (3) Teachers may request credit for either the classroom hour or experience requirement, but not both.
 - f. The verification for the two thousand hours (two hundred forty points) of experience credit claimed by an applicant

must be via affidavit on forms prescribed by the state certification or licensing board.

- g. The applicant must have at least fifty percent (one thousand hours) of nonresidential appraisal experience. Residential is defined as one-to-four residential units.

History: Effective October 1, 1992; amended effective January 1, 1995.

General Authority: NDCC 43-23.3-03, 43-23.3-09

Law Implemented: NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

STAFF COMMENT: Chapter 101-02-02.1 contains all new material but is not underscored so as to improve readability.

**CHAPTER 101-02-02.1
NONRESIDENT LICENSURE AND TEMPORARY PRACTICE**

Section

101-02-02.1-01	Reciprocity
101-02-02.1-02	Temporary Practice Licensure
101-02-02.1-03	Nonresident Consent to Service of Process

101-02-02.1-01. Reciprocity. If, in the determination of the board, another state, territory, or the District of Columbia has substantially equivalent licensure requirements and enters into a reciprocity agreement with the board, an applicant who is licensed in the other state may be licensed under North Dakota Century Code chapter 43-23.3. To qualify, the applicant must:

1. Submit an application on a form provided by the board;
2. Certify that the applicant is licensed or certified to appraise real estate in the applicant's state of domicile;
3. Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile or any other jurisdiction; and
4. Pay the application fee.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03, 43-23.3-11

Law Implemented: NDCC 43-23.3-11

101-02-02.1-02. Temporary practice licensure. A nonresident of this state who has submitted an irrevocable consent to service of process may obtain a temporary license to perform a contract relating to the appraisal of real estate involving a federally related transaction in this state. To qualify, the applicant must:

1. Submit an application on a form provided by the board;
2. Certify that the applicant is licensed or certified to appraise real estate in the applicant's state of domicile;
3. Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile or any other jurisdiction; and

4. Pay the application fee.

A temporary license issued under this section is expressly limited to a grant of authority to perform the appraisal work required by the contract for appraisal services. Each temporary license expires upon the completion of the appraisal work required by the contract for appraisal services.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03, 43-23.3-11

Law Implemented: NDCC 43-23.3-11

101-02-02.1-03. Nonresident consent to service of process. Each applicant under this chapter who is not a resident of this state shall submit with the applicant's application an irrevocable consent that service of process upon the applicant may be made by delivery of the process to the board. This method of process may be used in an action against the applicant in a court of this state arising out of the applicant's activity as a real estate appraiser in this state if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-11

CHAPTER 101-03-01

101-03-01-01. Standards Copies of uniform standards of professional appraisal practice requirements. Copies of the uniform standards of professional appraisal practice are available upon request to the board.

History: Effective October 1, 1992; amended effective January 1, 1995.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-08, 43-23.3-18

101-03-01-02. Standards of appraisal practice requirements. The board adopts as its standards of appraisal practice requirements the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal foundation.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-18

STAFF COMMENT: Article 101-03.1 contains all new material but is not underscored so as to improve readability.

ARTICLE 101-03.1

DISCIPLINARY MATTERS

Chapter

101-03.1-01	Unprofessional Conduct
101-03.1-02	Disciplinary Actions
101-03.1-03	Complaint Procedure

CHAPTER 101-03.1-01 UNPROFESSIONAL CONDUCT

Section

101-03.1-01-01	Unprofessional Conduct
101-03.1-01-02	Reporting Requirements
101-03.1-01-03	Conflict of Interest

101-03.1-01-01. Unprofessional conduct. Any of the following acts and omissions constitute a violation of the standards of professional appraisal practice and are grounds for disciplinary action:

1. Violation or attempted violation of North Dakota Century Code chapter 43-23.3 or the rules adopted by the board;
2. Failure to comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal foundation;
3. Engaging in the business of real estate appraising under an assumed or fictitious name;
4. Paying a finder's fee or referral fee to any person in connection with the appraisal of real estate, but an intracompany payment for business development is not unethical;
5. Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualification;

6. Violation of the confidential nature of individual, business, or governmental records to which a licensee or permittee gained access through employment or engagement as an appraiser;
7. Performance of appraisal services beyond the licensee's or permittee's level of competence;
8. Having been disciplined in another state, territory, or country relating to a license or certificate or the authorization to practice as an appraiser;
9. Negligence, refusal, or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;
10. Failing as a state-certified real estate appraiser to actively and personally supervise any person not certified under the provisions of North Dakota Century Code chapter 43-23.3 who assists the state-certified appraiser in performing real estate appraisals;
11. Having become permanently or temporarily unfit to engage in appraisal activity because of physical, mental, emotional, or other causes. Suspension of a license or certification in cases where the licensee or permittee is temporarily unfit to conduct appraisal activity shall only be for the period of unfitness;
12. Commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as an appraiser or otherwise;
13. Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03, 43-23.3-22

Law Implemented: NDCC 43-23.3-18, 43-23.3-22

101-03.1-01-02. Reporting requirements.

1. A licensee or permittee having direct knowledge that any licensee or permittee has violated any provision of North Dakota Century Code chapter 43-23.3 or the rules adopted by the board shall report such knowledge to the board.
2. Upon being convicted of any act which is or would be punishable as a felony in this state, or upon being disciplined by the authority that regulates state license or

certified appraisers in another jurisdiction, an appraiser licensed or certified in this state shall notify the board of that fact within thirty days.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-18, 43-23.3-22

101-03.1-01-03. Conflict of interest. Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact to the board and shall not vote upon such matter.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-18, 43-23.3-22

CHAPTER 101-03.1-02
DISCIPLINARY ACTION

Section

101-03.1-02-01	Types of Disciplinary Action
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101-03.1-02-01. Types of disciplinary action. Disciplinary action by the board may consist of the following:

1. **Revocation.** Revocation terminates an individual's status as a licensed or certified appraiser. When a license or certificate has been revoked the permittee shall surrender the license or certificate immediately to the board. When a license or certificate has been revoked the licensee may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a licensed or certified appraiser. Any reapplication for licensure shall be treated as a new application.
2. **Suspension.** Suspension is the removal of a licensee's privilege to act as a licensed or certified appraiser for a specified minimum period of time. When a license or certificate has been suspended the licensee shall surrender the license or certificate to the board for the period of suspension. When a license or certificate has been suspended the licensee may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a licensed or certified appraiser, but must maintain the license by properly renewing it and complying with continuing education requirements.
3. **Monetary fine.** A monetary fine must be reasonable in light of the conduct of the licensee. A monetary fine may include an amount sufficient to reimburse the board for the cost of a disciplinary action, or to prevent the licensee from obtaining a financial benefit as a result of the licensee's unprofessional or improper conduct.
4. **Issuance of letter of reprimand.** Reprimand is a form of discipline which declares the conduct of the licensee improper, but does not limit the licensee's right to act as a licensed or certified appraiser. Letters of reprimand may be public or private. Letters of reprimand shall be sent by certified mail to the licensee. The letter of reprimand shall be placed in the licensee's licensure file.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03, 43-23.3-22
Law Implemented: NDCC 43-23.3-18, 43-23.3-22

101-03.1-02-02. Consideration. In determining whether a license or certificate should be revoked or suspended, whether a monetary fine should be imposed, or whether a public or private letter of reprimand should be issued, the board shall consider all relevant factors, including the following:

1. The severity of the offense;
2. The licensee's mental state;
3. Any physical or mental disability or impairment of licensee;
4. The potential or actual injury caused by the licensee's conduct;
5. The number of repetitions of the offense;
6. A pattern of misconduct;
7. The length of time since the date of violation;
8. The length of time the respondent has practiced;
9. Prior disciplinary offenses or the absence thereof;
10. Remoteness of prior offenses;
11. The deterrent effect of the penalty imposed;
12. Dishonesty or selfish motive, or the absence thereof;
13. The effect of the penalty upon the respondent's livelihood;
14. Any efforts by the licensee to make restitution or to rectify consequences of misconduct;
15. Evidence of rehabilitation;
16. Refusal to acknowledge wrongful nature of conduct;
17. Imposition of other penalties or sanctions; and
18. Any other aggravating or mitigating circumstances.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-18, 43-23.3-22

101-03.1-02-03. Modification of disciplinary action. The board, on its own motion or upon application, at any time after the imposition of any discipline may reconsider its prior action and reinstate or restore such license or certificate or reduce the severity of its prior disciplinary action. The taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

History: Effective January 1, 1995.
General Authority: NDCC 43-23.3-03
Law Implemented: NDCC 43-23.3-22

101-03.1-02-04. Notice of disciplinary action. The board shall notify the disciplinary enforcement agency of other jurisdictions in which the licensee is admitted about any disciplinary action except a private letter of reprimand. Except for a private letter of reprimand, the board shall cause a notice of disciplinary action to be published in the board's newsletter and in the official newspaper of the county in which the licensee maintains an office. The notice shall clearly identify the licensee affected by the disciplinary action and contain a summary of the circumstances which resulted in the action taken, including a reference to the appropriate rule or statute.

History: Effective January 1, 1995.
General Authority: NDCC 43-23.3-03
Law Implemented: NDCC 43-23.3-22

101-03.1-02-05. Notice of status. Within ten days after the date of the order by which a licensee's license is revoked or suspended, the licensee shall cause notice to be given by registered or certified mail, return receipt requested, to all current clients. The notice shall include the order of the board and state that the licensee cannot act as a certified or licensed real estate appraiser after the effective date of the order.

The board may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interest of clients and other members of the public.

History: Effective January 1, 1995.
General Authority: NDCC 43-23.3-03
Law Implemented: NDCC 43-23.3-22

**CHAPTER 101-03.1-03
COMPLAINT PROCEDURE**

Section

101-03.1-03-01 Complaint Procedure
101-03.1-03-02 Informal Disposition

101-03.1-03-01. Complaint procedure. Any person may file a complaint with the board seeking disciplinary action against the holder of a license issued by the board. The complainant shall submit a written statement describing the nature of the complaint and the facts supporting the complaint. The complaint must be verified and include the address or phone number at which the complainant can be contacted. A complaint must be on the form prescribed by the board absent good cause.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-22

101-03.1-03-02. Informal disposition. At any time prior to or after formal disciplinary proceedings have been instituted against a licensed or certified appraiser, the appraiser may submit to the board an offer of settlement whereby the appraiser agrees to accept sanctions in lieu of formal disciplinary action. Sanctions may include voluntarily surrendering the license or certificate, suspension of the license or certificate, probation, imposition of a monetary fine, a letter of reprimand, licensing or certification education courses, or a requirement that the appraiser submit work product for board review. If the board determines that the proposed settlement will adequately protect the public, the board may accept the offer and enter a decision consented to by the appraiser incorporating the proposed settlement.

History: Effective January 1, 1995.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 28-32-05.1

