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TITLE 6

Aeronautics Commission

JULY 1998

CHAPTER 6-02-02

6-02-02-04. Commercial pilot safety standards.

1. **General.** The following rules and regulations relating to pilot experiences and skill have been adopted in the interest of the pilot and public safety and the general public interest.
2. **Chief pilot.** All operators or contractors employing one or more commercial pilots for the purpose of conducting aerial spraying, dusting, fertilizing, or insect control by aircraft or helicopter in this state shall employ at least one chief pilot who shall have the qualifications set forth in this section.
3. **Chief pilot qualifications.** A chief pilot must produce evidence of a commercial federal aviation administration license with a minimum of seven hundred fifty flight hours as pilot in command, of which a minimum of two hundred fifty flight hours as pilot in command must be in the class of aircraft in which the sprayer or duster equipment will be installed and used for agricultural application. In addition, the chief pilot shall be one who has had at least two years apprentice commercial aerial spraying flying experience as pilot in command and who has accumulated at least two hundred hours total aerial spraying flying time as an employee, supervised by a North Dakota chief pilot, who may recommend the applicant and certify the applicant's qualifications for the operational level sought, or certified to by an affidavit of the applicant, subject to investigation by the aeronautics commission, which may approve or deny the application.

4. **Pilot employees of contractor.** An operator or aerial applicator or contractor in the business of aerial spraying that employs a chief pilot, meeting the qualifications of this section, may employ pilots for aerial spraying, dusting, fertilizing, and insecticiding, with a minimum of a valid federal aviation administration commercial license, except that a license will be revoked or denied to an operator or contractor who employs an unqualified aerial spray pilot who has been designated as unqualified to conduct aerial spraying in North Dakota, for just cause, by the aeronautics commission. Pilots supervised and employed under the supervision of the chief pilot, who have never aerial sprayed before, must be given a minimum of ten hours of simulated dual spraying time under supervision of the chief pilot before they are permitted to aerial spray as pilot in command, and in addition, must be given ten hours of direct ground supervised solo flight at operational loads while aerial spraying. The chief pilot shall certify in writing the name of the pilot under the chief pilot's supervision who has never aerial sprayed before and the fact that the chief pilot has given such pilot at least ten hours of simulated dual spraying flight time, and in addition, given such pilot ten hours of direct ground supervised solo flight at operational loads while aerial spraying.
5. **Chief pilot located within state of North Dakota required.** It is the responsibility of the chief pilot to determine the amount of supervision a pilot requires. The chief pilot must be familiar with the area in which the supervised pilot or pilots are flying and be able to contact each pilot daily as needed. Pilots with less than two years' experience and less than two hundred fifty hours of actual aerial application must be under the direct, personal supervision of a chief pilot and must be flying out of the same airport as the airport in which the chief pilot is operating. The chief pilot of every aerial spraying, dusting, and fertilizing operation licensed by the aeronautics commission must be located within North Dakota during the time of actual aerial spraying, dusting, fertilizing, or insecticiding operations and the chief pilot shall give---reasonable---supervision--to--all--employed be responsible for the actions of all pilots under the chief pilot's supervision.
6. **Commercial pilot operating own equipment qualifications.** A pilot with a commercial federal aviation administration license may operate one's own equipment, but not hire or supervise other pilots, for the purpose of engaging in aerial spraying, dusting, fertilizing, or insecticiding with a minimum of five hundred flight hours as pilot in command, of which a minimum of two hundred fifty flight hours as pilot in command must be in the class of aircraft in which the sprayer or duster will be installed for agricultural application, provided such pilot has had at least two years apprentice

commercial aerial spraying flight time as pilot in command and who has accumulated at least one hundred hours of aerial spraying flying time as an employee, supervised by a North Dakota chief pilot, who may recommend the applicant and certify the applicant's qualifications for the operational level sought, or certified to by an affidavit of the applicant, subject to investigation by the aeronautics commission, which may approve or deny the application.

7. **Commercial rated pilots who graduate from an agricultural flying school.** Commercial rated pilots who graduate from a qualified agricultural flying and ground school shall undergo the same apprentice commercial aerial spraying flight training provided for in this section for the operational level sought, except the chief pilot may issue a credit of up to fifty percent of the ten hours of simulated dual spraying time supervised by the chief pilot before such pilot is permitted to aerial spray as pilot in command, and in addition, the chief pilot may issue a credit up to fifty percent of the ten hours of direct ground supervised solo flight at operational loads while aerial spraying.

History: Amended effective July 1, 1998.

General Authority: NDCC 2-05-18

Law Implemented: NDCC 2-05-18

TITLE 13

Banking and Financial Institutions, Department of

JULY 1998

CHAPTER 13-04-02

13-04-02-03. Debt collectors - Approval - Certificate. Licensed collection agencies may only appoint debt collectors who ~~must-be~~ are of good moral character, are knowledgeable in good collection agency practices and ethics, ~~and-having~~ have a good credit reputation, and have a reputation for fair and honest dealings. The name and address of a person appointed as a debt collector must be forwarded to the department ~~of-banking-and-financial-institutions~~ by the licensed collection agency. The department ~~shall-thereupon,-with-approval-of-the-commissioner-of-banking-and-financial-institutions,~~ upon request by a collection agency located in North Dakota, may issue an identification card bearing the name of the debt collector and the name of the licensed collection agency. All debt collectors' ~~certificates-expire-on-June--thirtieth--of-each--year,--unless-renewed-by-June-fifteenth,-by-a-current-list-of-debt-collectors-being-submitted-by-each-licensee-to-the-department.---In--the-event--of--the--cancellation--of--an--agency--license,--the-certificates~~ identification cards are issued for an indefinite period. The identification cards of all debt collectors authorized-for-that-agency by-the-department-will-be-concurrently which are issued must be canceled and--the--debt--collectors--must--be-notified-by-regular-mail,--If-a and turned in to the department if the debt collector ceases to be employed by a licensed agency,--the--agency-shall,-within-ten-days-thereafter, notify-the-department-at-which-time--the--debt--collector's--certificate will--be-voided-and-the-debt-collector-may-not-thereafter-be-employed-by any-other-licensed--collection--agency--until--such--time--as--the--debt collector--has--been-issued-a-new-certificate-as-herein-provided or upon cancellation of the agency's license.

History: Amended effective July 1, 1984; July 1, 1998.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-03(4)

TITLE 25

State Board of Funeral Service

MAY 1998

CHAPTER 25-01-01

25-01-01-01. Organization of state board of funeral service.

1. **History.** The 1905 legislative assembly enacted legislation providing for a state board of embalmers and regulating the licensure and practice of embalming. The 1963 legislative assembly enacted legislation empowering the board of embalmers to license and regulate funeral establishments in this state. The 1989 legislative assembly ~~redefined--rules--for--licensed embalmers--and--funeral-directors~~ changed the name of the board to the state board of funeral service and placed crematories under the board's jurisdiction. These enactments are codified as North Dakota Century Code chapter 43-10. It is the responsibility of the board to uphold high ethical and professional standards in the practice of embalming funeral service and in the conduct of business of funeral establishments and crematoriums in this state.
2. **Board membership.** The board consists of the state health officer and three ~~practicing-embalmers~~ funeral practitioners appointed by the governor. The appointed members of the board serve four-year terms, with not more than one term expiring on June thirtieth of each year.
3. **Officers of the board and executive secretary.** The members of the board elect from board membership a president, a secretary, and a treasurer. The board may hire an executive secretary, who may be an officer of the board, to transact the business of the board. The board may also hire any other individual deemed necessary for special work relating to the business of the board.

4. **Inquiries.** Inquiries regarding the board may be addressed to the executive secretary and treasurer:

Mr. Rodger E. Haugen
Executive Secretary and Treasurer
State Board of Funeral Service
P.O. Box 633
Devils Lake, North Dakota 58301

History: Amended effective January 1, 1982; July 1, 1983; October 1, 1989; May 1, 1993; May 1, 1998.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 25-01-02

25-01-02-01. Compliance with rules and statutes. All licensees shall comply with the requirements of this title and laws on embalming the practice of funeral service, and the laws, rules, and regulations of the state department of health and ~~consolidated~~ laboratories, for the purpose of protecting the public health.

History: Amended effective May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05, 43-10-06

25-01-02-03. Amendment of rules. ~~This title may be amended by the board of funeral service at any time and in any manner it shall deem necessary; and any new or amended regulations shall be effective when promulgated by the board, approved for legality by the attorney general, adopted by the board, all licensed embalmers duly notified, and ten days after publication in the North Dakota Administrative Code.~~ Repealed effective May 1, 1998.

History: Amended effective May 1, 1993.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05, 43-10-06

25-01-02-05. Display of license or registration. Each license or certification of registration issued by the board must be conspicuously displayed at all times in the holder's place of business. "Conspicuously display" means in a location where a member of the general public within the holder's place of business will be able to observe and read the license.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

25-01-02-06. Issuance of duplicate license. Upon receipt of satisfactory evidence that a license or certificate has been lost, mutilated, or destroyed the board shall issue a duplicate license or certificate upon payment of a fee of ten dollars.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-15.2

25-01-02-07. Change of name on license. Any licensee desiring to change the name appearing on the licensee's license may do so by applying to the board and paying a fee of ten dollars.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-15.3

CHAPTER 25-02-01

25-02-01-01. Definitions. As-used-in-this-article The terms in this title have the same meaning as in North Dakota Century Code section 43-10-01 unless the context or subject matter otherwise requires, except:

1. "Approved--school--of--embalming"--means-one-accredited-by-the American-board-of-funeral-service-education--or--the--national conference--of-funeral-service-examiners. "Assistant" means a nonprofessional providing assistance to a funeral practitioner under the direct and immediate supervision of the funeral director. Assistance provided by an assistant may not require the exercise of professional judgment or training.
2. "Embalmer"--means-a-person-duly-licensed-as-such-under-the-laws of-North-Dakota-to-practice-mortuary-science-or-who-engages-in the-practice-of-embalming. "Branch facility" means a facility which is affiliated with a funeral service establishment and is equipped for the preparation and embalming of dead human bodies.
3. "Funeral--director--or--funeral--service-practitioner"--means-a person-duly-licensed--under--the--laws--of--North--Dakota--to practice--mortuary--science--who--engages--in--the-practice-of funeral-service-or-funeral-directing. "Funeral chapel" means a facility that is affiliated with a funeral service establishment and used for mourning or funeral ceremony purposes but not preparation of a dead human body for final disposition.
4. "Funeral--service--establishment"--means-any-place-of-business conducted-at-a-specific-street-address-or-location-devoted--to care--and--preparation--for--burial--or-transportation-of-dead human-bodies.
5. "Intern--embalmer"--means--a--person--engaged--in-learning-the practice-of-embalming--under--the--instruction--and--personal supervision-of-a-duly-licensed-and-registered-embalmer;-except no-person-shall--serve--or--attempt--to--serve--as--an--intern embalmer--until--the--person-has-filed-a-registration-with-the board-of-funeral-service.
6. "Practice--of--embalming"--means-preparing-dead-human-bodies-for burial--or--removal--by--the--injection--of--antiseptic--or preservative-preparations-into-the-skin;-the-blood-vessels;-or cavities--of--the--body;-and--the--external--application--of antiseptic--solution;-or-taking-charge-of-the-remains-of-those dead-of-any-communicable-disease;-preparing-dead-human--bodies for--shipment;-or--holding-oneself-out-to-do-any-of-the-above acts-by-advertising-or-any-other-means.

7.--"Preparation---of--dead--human--bodies--for--burial"--includes preparation-of-dead-human-bodies-by-cremation.

8.--"Practice-of-funeral-service"--means:

a.--Supervising-the-receipt-of-custody-and-transportation-of-a dead-body-for-its-disposition-or-for-shipment--to--another location;

b.--Entering--into--contracts--with--a--third--party--for--the providing-of-professional-services--regulated--under--this chapter;

c.--Embalming--or--otherwise--preparing--a-dead-human-body-for disposition-or-transportation;

d.--Supervising--arrangements--for--or-conduction-of-a-funeral service; graveside-service; or memorial-service;

e.--Cremation;--calcification;--or--pulverization--of-the-dead human-body-or-its-remains;

f.--Supervising--arrangement--for--or-actually-facilitating-the disposition-or-direct-disposition-or-transportation--of--a dead-human-body;

g.--Supervising--sales--or--funeral--merchandise--by-a-funeral establishment;

h.--Managing--or--otherwise-being-responsible-for-the-practice of-funeral-service-in-a--licensed--funeral--establishment; and

i.--Supervising---sale---of---prearranged---funeral--plans--or contracting--with--or--employing---individuals---to---sell prearranged--funeral--plans--through--a--licensed--funeral establishment.

9.--"Practice-of-funeral-directing"--means-the-work-of-preparing for-the-burial-or-disposal-of-dead-human-remains-by--embalming or--otherwise;--or--for--the--case--of--dead-human-remains-for funeral-services;--transportation;--burial;--or--cremation;--or-the holding--oneself-out-as-being-engaged-in-such-work-or-being-in the--general--control;--supervision;--or--management--of---the operations--of--a--funeral--establishment--or--the-practice-of funeral-service.

10.--"Practice-of-mortuary-science"--means-engaging-in-the-practice of-embalming;--funeral-service;--or-funeral-directing;--or--using the---word---"funeral---director";--"director";--"undertaker"; "mortician";--"funeral--service--practitioner";--or--any--other title--implying-one-is-engaged-in-the-business-of-the-practice

of-embalming,-practice-of-funeral-service,-or-the-practice--of
funeral-directing-

11.--Wherever--in-this-chapter-the-licensee-is-referred-to-as-"him"
or-"his"--or-in-such-reference-as-to-the--male--gender--it--can
also-be-substituted-for-"she"--or-"her"--or-in-such-reference-to
the-female-gender-with-equal-significance-

History: Amended effective April 1, 1979; May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

25-02-01-02. Preparation room Waste disposal. The-North-Dakota
board-of-funeral-service-recommends-that-all All funeral directors shall
contact either prime health care facilities in their area or waste
disposition companies established to handle wastes to arrange suitable
disposition pending--further--state--and--federal--regulations. Every
preparation room shall be provided with proper and convenient
receptacles for refuse. Waste material shall be packaged in a plastic
or nonporous bag and sealed at the conclusion of each case and the
public health thereby maintained.

History: Amended effective July 1, 1983; May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-06

Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-03. Preparation room equipment. Every preparation room
shall be equipped with a sanitary embalming table, and such table shall
be provided with running water. Every plumbing fixture, receptacle, and
water supply tank shall be provided with a proper air gap or other
acceptable device to prevent backflow into the water supply. All
plumbing shall comply with North Dakota Administrative Code article
62-03, the State Plumbing Code. Every embalming room must be equipped
with an exhaust fan below tabletop height and an eyewash station with
the potential for running cold water only, continuously for fifteen
minutes, in an unobstructed area.

Every embalmer funeral establishment must:

1. Maintain a formaldehyde monitor report;
2. Post hazardous signs on-the-outside-preparation-room-door in
compliance with applicable federal regulations;
3. Label storage area for chemicals or hazardous chemicals;
4. Keep a cover on any embalming machine;
5. Store and utilize a safety shield or mask, protective
clothing, and rubber gloves;

6. Maintain a splash tube on a functioning hydroaspirator; and
7. Maintain material safety data sheets, training records, and Sharp's trainer.

History: Amended effective March 1, 1985; May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-06

Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-04. Instruments and appliances. All instruments and appliances used in the embalming of a dead human body shall be thoroughly cleansed and sterilized by ~~boiling-or-by-immersion-for-ten minutes-in-a-one-percent-solution-of-chlorinated-soda,-or-other-suitable and--effective--disinfectant;~~ a federally approved germicidal solution immediately at the conclusion of each individual case and or autoclave, or both.

History: Amended effective May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-06

Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-05. Funeral establishments. All funeral establishments shall be kept and maintained in a clean and sanitary condition and all embalming tables, hoppers, sinks, receptacles, instruments, and other appliances used in the embalming of dead human bodies shall be thoroughly cleansed and disinfected ~~with--a--one-percent-solution-of chlorinated--soda;--or--other--suitable--and---effective---disinfectant;~~ immediately at the conclusion of each individual case.

History: Amended effective May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-06

Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-06. Attire while embalming. Every person, while engaged in actual embalming, shall be attired in a clean and disposable sanitary smock or gown and ~~should~~ shall, while so engaged, wear rubber impervious gloves, disposable facial mask, or safety shield, and disposable shoe covers.

History: Amended effective May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-06

Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-08. Privacy. The care and preparation of all bodies of persons dead from any cause shall be entirely private and no one shall be allowed in the embalming room; except the-licensed-embalmer funeral practitioners, intern embalmers, and ~~the--embalmer's~~ assistants; until the body is fully prepared and dressed, except by permission of the immediate family.

History: Amended effective May 1, 1998.
General Authority: NDCC 43-10-05, 43-10-06
Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-09. Shipment of bodies. ~~Only under supervision of a North Dakota licensed funeral service practitioner can bodies be shipped or transported from point to point in North Dakota, or from any point in North Dakota to any other state upon~~ Shipment of bodies shall be done in compliance with shipping regulations of the state department of health and consolidated laboratories and any other applicable state or federal laws or regulations.

History: Amended effective July 1, 1983; May 1, 1993; May 1, 1998.
General Authority: NDCC 43-10-05, 43-10-06
Law Implemented: NDCC 43-10-05, 43-10-06

25-02-01-10. Refusal to provide service. A licensed practitioner may not refuse service to anyone because of a significant contagious or infectious disease. Refusal of any licensed practitioner to provide service to anyone because of a significant contagious or infectious disease may result in ~~a revocation of that practitioner's license in accordance with North Dakota Century Code section 43-10-16~~ disciplinary action.

History: Effective May 1, 1993; amended effective May 1, 1998.
General Authority: NDCC 43-10-05, 43-10-06, 43-10-16
Law Implemented: NDCC 43-10-05, 43-10-06, 43-10-16

CHAPTER 25-02-02

25-02-02-01. Application for license. An application for an embalmer's license to practice funeral service shall be written made on a form provided by the state board of funeral service. The application shall contain the person's full name, age, place of residence, recent photograph, and any other ~~provisions--as--may--be--from--time--to--time~~ information required by the board. The application shall be accompanied by a designated fee of seventy-five dollars which shall entitle the applicant to examination of the state rules and laws, by the required transcripts, and by affidavits of at least two reputable residents of the county in which the applicant resides or proposes to engage in the practice of funeral service to the effect that the applicant is of good moral character and ~~temperate habits~~.

History: Amended effective March 1, 1985; May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-11, 43-10-13

25-02-02-02. Qualifications for licensure. To qualify for a license ~~as an embalmer or to practice~~ funeral ~~direetor~~ service, the applicant shall comply with all of the following requirements:

1. Be of good moral character.
2. Furnish evidence of successful completion of an accredited four-year high school course of study.
3. Furnish evidence of satisfactory completion of at least two years of accredited college or university course of study (one year means a minimum of thirty semester hours or a minimum of forty-five quarter hours) ~~at--an--accredited---college---or university--with--credit--evaluation--in--course--areas--as--follows:.~~

~~The--applicant--must--complete--courses--in--communications;--twelve semester--hours--including--speech--and--English;--social--science; fifteen--semester--hours;--including--sociology--and--psychology; natural--science;--eighteen--semester--hours;--including--general--or inorganic--chemistry;--biology--or--zoology;--microbiology--or anatomy;--business;--nine--semester--hours;--including--accounting; business--law--and--business--management;--and--electives;--six semester--hours.~~

4. Show evidence of ~~completion--of--a--course--of--instruction--and graduated--from--a--school--of--embalming--as--accredited--by--the American--board--of--funeral--service--education--or--any--successor recognized--by--the--United--States--office--of--education--for funeral---service--education~~ graduation from an accredited college of mortuary science.

5. ~~Furnish--a--certified--record--containing--a--list-of-subjects completed-with-the-individual-grades-or-rating-from-the-school described--in--subsection--~~ Have successfully completed all required examinations.
6. ~~Demonstrate completion of at-least-twelve-months-internship after-completion-of-educational-requirements-during-which-time the-applicant-has-assisted-in-the-preparation-of-not-less-than twenty-five-bodies-as-evidenced-by-reports-on--file--with--the executive--secretary--and--has--been--present--at--ten-funeral arrangements-and-submit-a--report--on--the--completed--funeral services~~ an approved internship.
7. ~~Demonstrate to a licensed--embalmer~~ funeral practitioner proficiency in the art of embalming. ~~Final embalming report to indicate by affidavit signed by a licensed-North-Dakota embalmer funeral practitioner that the intern applicant is proficient in embalming.~~

History: Amended effective April 1, 1979; July 1, 1983; March 1, 1985; May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-11

25-02-02-03. Examination for licensure.

1. Questions used.

- a. ~~Conference~~ The conference of funeral service examining boards' questions may be used in the examination. Written answers to these questions shall be examined and passed upon at the direction of the board. A general average of seventy-five percent correct answers must be attained by the applicant.
- b. ~~A--passing-grade-on-any-single-subject-shall-be-sixty-five percent--~~
- c. The national board examinations as provided by the American conference of funeral service examining board and approved by the state board of funeral service may be used in lieu of the examinations on the following subjects: anatomy, embalming, chemistry, pathology, bacteriology, mortuary administration, and restorative arts as provided by the state board.

2. Failure to pass examination.

- a. ~~Should the applicant fail in-one-or-more-of-the-subjects covered-by the examination, the applicant shall-be-allowed to-again-appear-before-the-board-within-a-year-of-the-time of-the-applicant's-first-examination-and-be-examined--only~~

on--the--subjects--in--which--the--applicant--failed--with--a
passing--mark---If--the--applicant--then--passes--in--all
subjects--so--taken--the--applicant--shall--be--entitled--to--a
license--without--the--payment--of--any--additional--fees must
wait three months to retake the examination.

- b. Should-the-applicant-fail-in-any-one-subject-on-the-second
reexamination--the-applicant--shall--submit--any--additional
credentials--as--required--shall--be--reexamined--in--all
subjects--and--shall--accompany--the--applicant's--request--for
reexamination--with--a--designated--fee--in--addition--the
applicant--shall--pay--for--the--actual--cost--of--the
examination. An applicant may not take the examination
more than three times.

3. **Examination dates.** Examination of North Dakota laws and rules
must be given by the division of vital records, North Dakota
state department of health and--consolidated--laboratories,
state capitol, 600 east boulevard, Bismarck, ND 58505. Time
of examination must be arranged by the examinee and the
department. The board of funeral service shall issue a card
indicating eligibility of the examinee to take the
examination. The--board--shall--hold--at--least--one--meeting
annually--for--the--purpose--of--examining--applicants--for
embalmer's--license. Applicants of record shall be duly
notified a reasonable time prior to an examination as to the
time and place of the examination. The secretary of the board
with the assistance of other members of the board may give
special examinations during any regular meeting when in the
opinion of the board it is necessary to prevent undue hardship
upon applicants who may wait many months for the regular
examination. These special examinations shall be consistent
with all provisions of law and the rules and regulations for
the examination for licensure.

History: Amended effective April 1, 1979; May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-12

25-02-02-04. License renewal, destruction,--suspension,--and
reinstatement,--and late renewal of lapsed license.

1. **Date of renewal.** The license to practice embalming--or
preparing--dead--human--bodies funeral service shall be issued
for one year only--but--shall and may be renewed by the board
upon payment--to--the--treasurer--of by submitting a completed
renewal application and the annual renewal fee as designated
by the board of seventy-five dollars. The board may refuse to
issue--or renew the license for cause. The executive secretary
of the board shall notify each holder of an--embalmer's a
license to practice funeral service thirty days prior to the
renewal date. A retired funeral service practitioner who has

been licensed by the board for fifty or more years may be given a paid up honorary membership certificate as long as the embalmer funeral practitioner is not engaged in the active practice of funeral service.

2. Loss--or--destruction--of--original--license.--In--the--event--of--the--loss--or--destruction--of--the--original--license--issued--to--any--funeral--service--practitioner,--the--secretary--of--the--state--board--of--funeral--service--is--authorized--to--issue--a--duplicate--license--upon--verified--proof--of--the--loss--or--destruction--of--the--original--license: Late renewal. A license which has been expired may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within thirty days after its expiration, the licensee shall pay a late fee of one hundred fifty dollars. A license which is not renewed within three years after its expiration may not be renewed thereafter.
3. Causes--for--which--the--board--may--refuse--or--suspend--a--license: The--board--may--refuse--to--renew--or--suspend--a--license--for--any--of--the--following:
 - a. Conviction--of--an--offense--where--the--board--determines--that--the--offense--has--a--direct--bearing--upon--a--person's--ability--to--serve--the--public--as--an--embalmer--or--where--the--board--determines--pursuant--to--North--Dakota--Century--Code--section--12-1-33-02-1--that--the--person,--following--conviction--of--any--offense,--is--not--sufficiently--rehabilitated.
 - b. Misrepresentation--or--fraud--in--the--conduct--of--the--business--of--the--profession--of--an--embalmer.
 - c. Solicitation--after--death--or--while--death--is--impending--for--embalming--business--by--the--licensee,--or--by--the--agents,--assistants--or--employees--of--the--licensee.--This--subdivision--does--not--prohibit--general--advertising.
 - d. Gross--immorality.
 - e. Aiding--or--abetting--an--unlicensed--person--to--practice--embalming.
 - f. Violation--of--any--provision--of--North--Dakota--Century--Code--chapter--43-10.
 - g. Violation--of--any--state--law--or--municipal--ordinance--or--regulation--affecting--the--handling,--custody,--care,--or--transportation--of--dead--human--bodies.

- h.--Refusing-to-surrender-promptly-the-custody-of-a-dead-human body-upon-the-express-order-of-a-person-lawfully-entitled to-its-custody.
- i.--Gross-negligence-or-gross-incompetency-in-the-practice-of embalming-or-funeral-directing.
- j.--Knowingly-violating-any-state-or-federal-laws-regarding funeral-service.
- 4.--Reinstatement-of-revoked-license.--A-licensee-whose-license has-been-revoked-can-be-reinstated-only-by-the-unanimous consent-of-the-board-and-upon-passing-such-examination-and investigation-as-the-board-may-deem-necessary-and-proper-under all-circumstances.
- 5.--Peer-review-committee.--The-board-may-appoint-a-peer-review committee-as-needed-consisting-of-not-more-than-four-persons who-are-licensed-to-practice-funeral-service-and-an-assistant attorney-general-assigned-to-the-state-department-of-health and-consolidated-laboratories-to-advise-the-board-on-standards of-practice-and-other-matters-relating-to-specific-complaints as-requested-by-the-board.--Peer-committee's-so-appointed-must be-paid-mileage-and-per-diem-and-other-necessary-expenses-as established-by-North-Dakota-Century-Code-section-54-06-09-by the-board.
- 6.--Renewal-of-lapsed-license.--A-person-who-formerly-was-licensed under-this-chapter-may-apply-for-relicensure-on-the-lapsed license-renewal-form-furnished-by-the-board-after-paying-the yearly-late-fee-for-each-year-that-the-license-has-been lapsed;--not-to-exceed-five-years.--If-the-period-that-the license-has-been-lapsed-is-longer-than-five-years;--the applicant-must-pass-such-examination;-investigation;-and-fees as-the-board-may-deem-necessary-and-proper-under-the circumstances.

History: Amended effective July 1, 1983; March 1, 1985; May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05,-43-46-02

Law Implemented: NDCC 43-10-13, 43-10-15, 43-10-16,-43-10-17,-43-10-18, 43-10-19 43-10-15.1

25-02-02-05. Licensure by reciprocity.

1. **Education and experience requirements.** Applicants for license through reciprocity with other states must meet educational and experience requirements in conformity with the requirements of the North-Dakota-state board of-funeral service.

2. **License through examination.** Consideration for reciprocity will be given only to ~~an--embalmer--or~~ embalmers, ~~funeral director~~ directors, or funeral service practitioners who secured through examination the license on which they apply for reciprocal license; ~~--who-were-at-the-time-of-taking-such examination-and-securing-such--license--an--actual--and--legal resident--of--the--state-that-issued-the-license;~~ and who have been actively engaged in the practice of their profession as a licensed embalmer ~~or~~, funeral director, or funeral service practitioner for a period of not less than one year preceding the filing of an application for reciprocity.
3. **Fee.** The applicant must pay ~~the-designated-licensure~~ a fee determined-by-the-board of one hundred dollars.
4. **Submit to examination.** ~~A-licensee~~ An applicant for licensure through reciprocity shall submit to an examination at the time and place designated by the board for the purpose of taking a written examination on the laws and rules of North Dakota regarding the practice of funeral service.

History: Amended effective July 1, 1983; March 1, 1985; May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-14

25-02-02-06. Intern embalmer ~~or~~-funeral-director.

1. Application.

- a. The application for registration as an ~~embalmer's-or funeral-director's~~ intern embalmer shall be made upon a form approved by the board and verified by the applicant and accompanied by ~~the-designated~~ a fee of fifty dollars. ~~This~~ The application shall include the name and home address of the intern embalmer, the date the internship begins, and the name, license number, and business address of the supervising funeral practitioner. The registration will--be is valid for one year ~~only-provided-the-intern-is under-the-supervision-of-a-registered-embalmer--holding--a North--Dakota--license-residing-in-North-Dakota--Such and may be renewed by filing a renewal application with the board and by payment of the renewal fee of twenty-five dollars.~~ The registration may not be renewed more than three times.

- b. ~~The--intern-license-shall-be-issued-for-a-period-of-twelve months.~~

2. **Qualifications ~~for--internship.~~** In order to qualify as an ~~embalmer's--or--funeral--director's~~ intern embalmer, the applicant shall comply with the following requirements:

- a. Be eighteen years of age.
 - b. Be of good moral character.
 - c. Furnish evidence of having completed an accredited four-year high school course of study and evidence of completion of two years of accredited college or university studies.
 - d. ~~Reside--in--same-city-in-which-the-licensed-embalmer-under whom-the-intern-is-registered-maintains-a--fully--equipped embalming-establishment.~~
 - e. Graduated from an accredited college of mortuary science.
3. **Certification.** The state board of funeral service shall pass upon every intern embalmer application ~~for internship~~ at its regular meeting. The applicant shall be duly notified whether the applicant has been accepted or rejected after a majority vote of the board has been received. ~~The executive secretary may approve internship enrollment subject to final approval of the board.~~
 4. **Intern embalmer register.** The executive secretary of the board shall keep a separate register for ~~interns~~ intern embalmers.
 5. **Lapsed certificate.** In case an intern embalmer has allowed the certificate of internship registration to lapse for thirty days or more, no reregistration shall be permitted so as to make the ~~intern's~~ intern embalmer's registration continuous from the date of the ~~intern's~~ intern embalmer's original registration.
 6. **Monthly report.** Each registered intern ~~must~~ embalmer shall submit a report to the executive secretary of the state board ~~of--funeral--service~~ by the fifteenth of the month stating all cases in which the intern embalmer has assisted during the preceding month. This report is to be made on forms furnished by the state board ~~of--funeral--service~~. Reports must be signed by the supervising funeral practitioner. Ten reports of funeral arrangements and funeral services must be submitted during the final six months of internship.
 7. ~~Employment--of--one--intern--funeral-service-practitioner--in order-to-maintain-a-high-standard-of-instruction--a--licensed funeral--service--practitioner-shall-be-permitted-to-have-only one-registered-intern-funeral-service-practitioner-working-for the-funeral-service-practitioner-at-any-one-time.~~

History: Amended effective April 1, 1979; July 1, 1983; May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-10, 43-10-22

25-02-02-06.1. Internship requirements.

1. Intern embalmers may only practice funeral service under the direct supervision of a North Dakota funeral practitioner.
2. An intern embalmer may be registered under only one funeral practitioner at any given time and may be directed and supervised only by the funeral practitioner. A funeral practitioner shall have only one registered intern embalmer working for the funeral practitioner at any given time.
3. While under the direct and exclusive supervision of a North Dakota funeral practitioner, the intern embalmer must actively participate in the embalming of at least twenty-five dead human bodies and in the arrangements or the direction of at least ten funerals.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-15.4

25-02-02-07. Prohibited acts. It-is-unlawful-for:

- 1.--Any--individual--who--is--not--licensed--under--this--chapter--to embalm--or--otherwise--use--a--method--or--technique--which--invades the--dead--human--body--to--prepare--that--human--body--for--burial--or other--disposition.
- 2.--Any--individual--who--is--not--licensed--under--this--chapter--to--act as--or--represent--himself--to--be--a--funeral--director,--director, funeral--service--practitioner,--embalmer,--or--apprentice.
- 3.--Any--person--not--issued--a--funeral--establishment--license--under this--chapter--to--operate--or--manage,--or--to--hold--oneself--out--as operating--or--managing,--a--funeral--establishment. Repealed effective May 1, 1998.

History: Effective-May-1,-1993-

General Authority: NDCC-43-10-05

Law Implemented: NDCC-43-10-10,-43-10-22

25-02-02-08. Exemptions from licensure. The-following-activities are-exempt-from-licensure-under-this-chapter:

- 1.--Transportation--of--a--dead--human--body--in--accordance--with--other applicable--state--and--federal--laws.

- 2.--Ambulance--or--other--emergency-transportation-of-a-dead-human body-
- 3.--Performing-funeral,-graveside,-or-memorial-services-by-members of-the-clergy-
- 4.--Assisting-a-North-Dakota-licensed-embalmer-regarding-disasters or-special-emergencies-by-individuals-licensed-in-other-states as-embalmers-or-funeral-directors-if-applicable-
- 5.--Nonprofessional--tasks--or--activities--which--do--not--require independent,--professional--judgment--which--are--required--of persons---employed---by--a--funeral--establishment--under--the supervisor-of-a--North--Dakota--licensed--embalmer- Repealed effective May 1, 1998.

History: Effective-May-1,-1993-
General Authority: NDCC-43-10-05
Law Implemented: NDCC-43-10-10

CHAPTER 25-03-01

25-03-01-01. Funeral home establishment license.

1. Application for license. An application for licensing of a funeral establishment must be made on a form provided by the board and be accompanied by a fee of seventy-five dollars.
2. License renewal. A funeral establishment license must be issued for one year and may be renewed by the board by submitting to the board a completed renewal application and the renewal fee of seventy-five dollars.
3. Change of owner, supervising personnel, funeral home name, or location. A funeral home license shall not be transferred from one owner to another. The new owner shall submit an application for a new license to the executive secretary of the state board of--funeral--service, accompanied by the designated--licensee a fee of seventy-five dollars. The funeral home license is issued in conjunction with a North Dakota funeral service license. Should the licensee signing the funeral home license application no longer be associated with the funeral home, the licensee shall notify the state board of--funeral--service. No funeral home license shall be valid unless the funeral home is under the supervision of a licensed--embalmer-or funeral director practitioner. A change in the licensed personnel supervising the funeral home or funeral home name change or location supervising-the-funeral home shall require a new funeral home license.

History: Amended effective July 1, 1983; May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05, 43-10-22

25-03-01-02. Requirements for funeral establishment. All funeral establishments, except for branch facilities and funeral chapels, must contain a preparation and embalming room and office space for making arrangements. A preparation and embalming room at a minimum must:

1. Be of sufficient size and dimensions to accommodate a preparation or embalming table, an open fixture with water connects, and an instrument table, cabinet, or shelves;
2. Be properly lit and ventilated with an exhaust fan that provides at least twelve air changes per hour and is so located that air is drawn away from the person preparing the preparations;

3. Have plumbing fixtures, water supply lines, plumbing vents, and waste drains properly vented and connected pursuant to the North Dakota state plumbing code;
4. Have nonporous flooring, so that a sanitary condition is provided. The walls and ceiling of the preparation and embalming room must run from floor to ceiling and be covered with tile, or by plaster or sheetrock painted with washable paint, or other appropriate material so that a sanitary condition is provided. The doors, walls, ceiling, and windows must be constructed to prevent odors from entering into any other part of the building. All windows or other openings to the outside must be screened and all windows must be treated in a manner that prevents viewing into the preparation room from the outside;
5. Have a preparation and embalming table and a functioning aspirator. The preparation and embalming table must have a nonporous top, preferably a rustproof metal or porcelain, with raised edges around the top of the entire table and a drain opening at the lower end. Where embalmings are actually performed in the room, the room must be equipped with a functional method for injection of fluids, an eyewash station, and sufficient supplies and instruments for normal operations;
6. Be private and have no general passageway through it. Each door allowing ingress or egress must carry a sign that indicates that the room is private and access is limited; and
7. Be maintained in a clean and sanitary condition at all times and not be used for any other purposes.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

CHAPTER 25-03-03

25-03-03-01. Disclosure of merchandise and services. Each funeral home, at the time of selection of merchandise and services from the funeral home, shall disclose in writing to the person or persons making the selection: Funeral practitioners shall comply with 16 CFR part 453 and all other federal laws applicable to the practice of funeral service. A failure to do so is grounds for disciplinary action.

1. The total price at retail of the merchandise and services selected and a listing of what merchandise and services are included in the total.
2. The price at retail of each item of supplemental service or merchandise requested.
3. The amount of cash advance to the extent that it is known or can be ascertained at the time of the selection.
4. The terms by which payment for merchandise and services is to be made.
5. A listing of the funeral goods and services selected must be given to each family after making funeral arrangements and prior to leaving the funeral home. Price information may be given over the telephone. Upon request, a copy of the general price list must be available.

In addition, the funeral home shall ensure that permission to embalm is received prior to embalming and have available a general price list of all caskets on hand in the funeral home including those in the display room and in the warehouse. A similar list must be available for vaults and alternative containers on hand.

History: Amended effective May 1, 1993; May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

25-03-03-02. Other service requirement.

1. It is the duty of all licensed funeral service practitioners to be familiar with title 16, Code of Federal Regulations, CFR part 453 {1984}, Federal Trade Commission Trade Regulation Rule for Funeral Industry Practices, and to abide by these rules.
2. The North Dakota state board of funeral service can review present and past cases of any and all funeral homes under its jurisdiction in North Dakota to ensure proper implementation under title 16, Code of Federal Regulations, CFR part 453

{1984}, Federal Trade Commission Trade Regulation Rule for Funeral Industry Practices. In the event of apparent noncompliance, the board will conduct a formal review of the funeral home.

History: Effective May 1, 1993; amended effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

CHAPTER 25-04-01

25-04-01-01. Eye enucleation. Any A funeral service practitioner licensed-in-North-Dakota-who-has-succcessfully-completed-a-course-in-eye enucleation---conducted---by---the--department--of--ophthalmology--of--an accredited-college-of-medicine-that-has-been-approved-by-the-state-board of--medical--examiners--is--authorized--to may only enucleate eyes from anybody-when-the-gift-of-such-eye-has-been-made in accordance with the terms of the North Dakota anatomical gift act. Funeral-homes-shall-have liability-insurance-to-protect-itself-and-all-employees-of--the--funeral home-regarding-this-service.

History: Effective May 1, 1993; amended effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05; -23-06:2

CHAPTER 25-05-01

25-05-01-01. Licensure of crematoriums. ~~All--crematoriums established in the state of North Dakota--shall--be--subject--to--yearly licensure--from--the--North--Dakota--state--department--of--health--and consolidated laboratories.--The fee for the license must--be--determined by--the--board,--and--is--due on the first of January of each year.--The license must be posted.~~ An application to license a crematorium must be made on a form provided by the board and include the application fee of seventy-five dollars. The license is good for a period of one year, and may be renewed by submitting a renewal application and the renewal fee of seventy-five dollars.

History: Effective May 1, 1993; amended effective May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-25

Law Implemented: NDCC 43-10-05

25-05-01-01.1. Crematory requirements. A crematory must consist of:

1. A building or structure that complies with applicable local and state building codes, zoning laws and ordinances, and environmental standards, containing one or more cremation chambers or retorts for the cremation of dead human bodies;
2. A motorized mechanical device for grinding, crushing, or pulverizing the cremated remains to a granulated appearance appropriate for final disposition; and
3. An appropriate holding facility for dead human bodies awaiting cremations.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05; 43-10-25

25-05-01-03. Insurance requirements. ~~All--crematoriums in the state of North Dakota must carry liability and fire protection insurance in--accordance--with--nationally-accepted levels suitable for operation.~~ Repealed effective May 1, 1998.

History: Effective May 1, 1993.

General Authority: NDCC 43-10-05, 43-10-25

Law Implemented: NDCC 43-10-05

25-05-01-04. Inspection of crematoriums. Any crematorium in the state of North Dakota for the disposition of human remains through the process of cremation must be open for inspection by any authorized

representative of the North Dakota state department of health and consolidated--laboratories, or any representative of the North-Dakota state board of-funeral-service.

History: Effective May 1, 1993; amended effective May 1, 1998.

General Authority: NDCC 43-10-10, 43-10-22, 43-10-25

Law Implemented: NDCC 43-10-05

25-05-01-05. Bond required. ~~All--crematoriums-in-the-state-of North-Dakota-must-bond-their-employees-in-the-performance-of-the--actual cremation.~~ Repealed effective May 1, 1998.

History: Effective-May-1,-1993-

General Authority: NDCC-43-10-05,-43-10-25

Law Implemented: NDCC-43-10-05

25-05-01-07. Cremation requirements. All cremation facilities shall clean their retorts at the conclusion of each cremation, and bone fragments that remain must be duly reduced by equipment sanctioned by the National Cremation Association of America, and placed in a tight rigid sealed container of fiberglass, ~~strendex~~ metal, wood, or plastic, and duly marked with the name of the person cremated, the ultimate disposition of the cremains, the name of the funeral director involved in the cremation, the age and date of birth and death of the person cremated, and the name and complete address of the cremation authority. Cremains sent through the mail must be duly marked, registered, insured, and sealed in the form for mailing and delivery as devised by the United States postal service. Cost of mailing is to be borne by the cremation authority together with the registration and insurance costs involved.

History: Effective May 1, 1993; amended effective May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-25

Law Implemented: NDCC 43-10-05

25-05-01-08. Permits Cremation authorization. Cremation authorization permits must be signed by the legal representative or representatives of the deceased, and all information with full name of decedent, date and place of birth, and date and place of death, and cause of death, and final disposition of cremains instructions, together with funeral director signature and signature of acceptance of the cremation authority shall appear on this form, together with the full legal name and legal address of the cremation authority, and the completion date and time of cremation. Copies of these forms must be kept by the cremation authority, and sent to the funeral home that has contracted the cremation authority.

History: Effective May 1, 1993; amended effective May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-25

Law Implemented: NDCC 43-10-05

25-05-01-09. Penalty. ~~Any-crematorium-or-cremation-authority-is forbidden-to-perform-any--multiple--cremations--of--any--type--of--human remains---Multiple--cremations--may--result--in--suspension--or--loss-of license-by-the-state-regulatory-board:~~ Repealed effective May 1, 1998.

History: Effective-May-1,-1993-

General Authority: NDCC-43-10-05,-43-10-25

Law Implemented: NDCC-43-10-05

25-05-01-09.1. Identification of body. All licensed crematories must develop, implement, and maintain an identification procedure whereby dead human bodies can be identified from the time the crematorium accepts delivery of the remains until the cremated remains are released to an authorized party. Before cremation, an identifying disk, tab, or other permanent label must be placed within the cremated remains container before the cremated remains are released from the crematory. Each identification disk, tab, or label must have a number that must be recorded on all paperwork regarding the decedent. This procedure must be designed to reasonably ensure that the proper body is cremated and that the cremated remains are returned to the appropriate party.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-25

Law Implemented: NDCC 43-10-05

25-05-01-10. Prohibitions.

1. Crematoriums are forbidden to cremate fetuses, limbs, and body parts from private or public health agencies or medical schools or medical doctors unless appropriate releases are given to the crematoriums by those agencies. Copies of releases must remain with the cremation authority and the parties contracting for cremations mentioned in this section.
2. Cremation of animals and pets of any type is strictly forbidden in a crematorium designed for cremation of human remains.
3. Except for the items listed in subsection 1, crematoriums are forbidden to perform any multiple cremations of any type of human remains.

History: Effective May 1, 1993; amended effective May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-25

Law Implemented: NDCC 43-10-05

25-05-01-11. Written release. Funeral directors holding cremations-for-over-ninety--days cremated remains must have written release from legal next of kin before the funeral director disposes of

remains in any manner other than that suggested on the cremation form. The release must clearly remove liability of the funeral director, the cremation facility or authority, or the state regulatory agency from responsibility. Copies of these forms must be retained-by provided to the next of kin, retained by the funeral director, and the cremation authority, and made available to the state board of funeral service upon request. Failure to comply may result in prosecution--and--loss--of license disciplinary action. Any cremated remains existing prior to May 1, 1993, may be disposed of ninety days after a written attempt to contact next of kin for written approval.

History: Effective May 1, 1993; amended effective May 1, 1998.

General Authority: NDCC 43-10-05; -43-10-25

Law Implemented: NDCC 43-10-05

25-05-01-12. Unclaimed cremated remains. After twelve months, unclaimed cremated remains may be disposed of by earth burial in an established cemetery in an appropriate container. The container may hold one or more cremated remains, as long as the individual remains are kept separate. At least thirty days prior to such disposition, the funeral home shall send a written notice to the last known address of the responsible person who directed and provided for the method of final disposition of the human remains to the effect that such remains will be disposed of unless claimed by the person within thirty days from the date of mailing such notice. The notice must be sent by registered mail, return receipt requested.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05, 43-10-06.1

Law Implemented: NDCC 43-10-06.1, 43-10-26

25-05-01-13. Sale of funeral goods. A crematorium that sells funeral goods shall comply with 16 CFR part 453. A failure to do so is grounds for disciplinary action.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

CHAPTER 25-06-01

25-06-01-01. Definition Licensure of branch facilities. For purposes of this chapter, a branch facility means a facility which is affiliated with a funeral service establishment and is equipped for preparation and embalming of dead human bodies. An application to license a branch facility shall be made on a form provided by the board and include the application fee of thirty-five dollars. The license is good for a period of one year, and may be renewed by submitting a renewal application and the renewal fee of thirty-five dollars.

History: Effective May 1, 1993; amended effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05, 43-10-22

25-06-01-05. Insurance. All facilities shall have complete liability and comprehensive building insurance. Repealed effective May 1, 1998.

History: Effective May 1, 1993.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

25-06-01-08. Seating. All facilities shall have furnishings to seat fifty people. Repealed effective May 1, 1998.

History: Effective May 1, 1993.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

25-06-01-12. Preparation room. Preparation rooms in branch facilities must meet the requirements of section 25-03-01-02.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

STAFF COMMENT. Article 25-07 contains all new material and is not underscored so as to improve readability.

ARTICLE 25-07

FUNERAL CHAPELS

Chapter
25-07-01 Funeral Chapels

CHAPTER 25-07-01 FUNERAL CHAPELS

Section	
25-07-01-01	Licensure of Funeral Chapels
25-07-01-02	Accessibility
25-07-01-03	Restroom Facilities
25-07-01-04	Plumbing
25-07-01-05	Approaches
25-07-01-06	Electrical Design
25-07-01-07	Aspiration System
25-07-01-08	Fire Codes
25-07-01-09	Responsibility of Funeral Service Establishment

25-07-01-01. Licensure of funeral chapels. An application to license a funeral chapel must be made on a form provided by the board and include the application fee of thirty-five dollars. The license is good for a period of one year and may be renewed by submitting a renewal application and the renewal fee of thirty-five dollars.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05, 43-10-22

25-07-01-02. Accessibility. All funeral chapels must have appropriate entrance and exit doors clearly marked and lighted. All exterior and interior doors must be of appropriate width and length.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

25-07-01-03. Restroom facilities. All funeral chapels must have restroom facilities that meet state and local requirements.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05

25-07-01-04. Plumbing. All funeral chapels must have running water and adequate plumbing facilities.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05

25-07-01-05. Approaches. All funeral chapels must have concrete sidewalk areas and approaches to the building for all entrances and exits.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05

25-07-01-06. Electrical design. All funeral chapels must have electrical design that conforms to applicable state and local codes.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05

25-07-01-07. Aspiration system. All funeral chapels must have a functional aspiration system in place.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05

25-07-01-08. Fire codes. All new funeral chapels must meet appropriate state and local fire codes.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05

25-07-01-09. Responsibility of funeral service establishment. It is the responsibility of the funeral service establishment to ensure that its funeral chapels meet board requirements.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

STAFF COMMENT. Article 25-08 contains all new material and is not underscored so as to improve readability.

ARTICLE 25-08

DISCIPLINARY ACTION

Chapter	
25-08-01	Investigations
25-08-02	Standard of Practice

CHAPTER 25-08-01 INVESTIGATIONS

Section	
25-08-01-01	Peer Review Committee
25-08-01-02	Professional Cooperation

25-08-01-01. Peer review committee. The board may appoint a peer review committee as needed consisting of not more than four persons who are licensed to practice funeral service and an assistant attorney general assigned to the board to advise the board on standards or practice and other matters relating to specific complaints as requested by the board.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05

25-08-01-02. Professional cooperation. A licensee, intern embalmer, or applicant for licensure who is the subject of an inspection or investigation by the board shall cooperate fully with the inspection or investigation. Failure to cooperate constitutes grounds for disciplinary action.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05

**CHAPTER 25-08-02
STANDARD OF PRACTICE**

Section	
25-08-02-01	Unprofessional Conduct
25-08-02-02	Advertising
25-08-02-03	Solicitation of Business
25-08-02-04	Offer, Solicitation, or Acceptance of Fees, Commissions, or Other Reimbursement

25-08-02-01. Unprofessional conduct. A licensee or intern embalmer may not engage in or permit others under the licensee's supervision or employment to engage in unprofessional conduct. Unprofessional conduct includes:

1. Harassing, abusing, or intimidating a customer or a customer's family;
2. Using profane, indecent, or obscene language within the immediate hearing of the family or relatives of the deceased;
3. Failure to treat with dignity and respect the body of the deceased, any member of the family or relatives of the deceased, any employee, or any other person encountered while within the scope of practice;
4. Habitual overindulgence in the use of or dependence on intoxicating liquors, prescription drugs, over-the-counter drugs, illegal drugs, or any other mood-altering substances that substantially impair a person's work-related judgment or performance;
5. Intentionally misleading or deceiving any customer in the sale of any goods or services provided by the licensee;
6. Knowingly making a false statement in the procuring, preparation, or filing of any required permit;
7. Knowingly making a false statement on a certificate of death;
8. Conviction of an offense that has a direct bearing upon that individual's ability to provide professional services or for which it is determined the individual is not sufficiently rehabilitated;
9. Misrepresentation or fraud;
10. Solicitation, after death or while death is impending, for business by the licensee, or by the agents, assistants, or employees of the licensee. This subsection does not prohibit general advertising;

11. Gross immorality;
12. Aiding or abetting an unlicensed person to practice funeral service;
13. Refusing to surrender promptly the custody of a dead human body upon the express order of a person lawfully entitled to its custody;
14. Gross negligence or gross incompetency in the practice of funeral service; or
15. Knowingly violating any state or federal laws regarding funeral service.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

25-08-02-02. Advertising. A licensee or intern embalmer may not publish or disseminate false, misleading, or deceptive advertising. False, misleading, or deceptive advertising includes:

1. Identifying, by using the names or pictures of, persons who are not licensed to practice funeral service in a way that leads the public to believe those persons will provide funeral service;
2. Using any name other than the names under which the funeral establishment or crematory is known to or licensed by the board;
3. Using a surname not directly, actively, or presently associated with a licensed funeral establishment or crematory, unless the surname had been previously and continuously used by the licensed funeral establishment or crematory; and
4. Using a founding or establishing date or total years of service not directly or continuously related to a name under which the funeral establishment or crematory is currently or was previously licensed.

Any advertising or other printed material that contains the names or pictures of persons affiliated with a funeral establishment or crematory must state the position held by the persons and must identify each person who is licensed or unlicensed.

History: Effective May 1, 1998.

General Authority: NDCC 43-10-05

Law Implemented: NDCC 43-10-05

25-08-02-03. Solicitation of business. A licensee may not directly or indirectly pay or cause to be paid any sum of money or other valuable consideration for the securing of business or for obtaining the authority to dispose of any dead human body.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05

25-08-02-04. Offer, solicitation, or acceptance of fees, commissions, or other reimbursement. A licensee or intern embalmer may not offer, solicit, or accept a commission, fee, bonus, rebate, or other reimbursement in consideration for recommending or causing a dead human body to be disposed of in specific crematory, mausoleum, or cemetery.

History: Effective May 1, 1998.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05

TITLE 37

Department of Transportation

JUNE 1998

CHAPTER 37-10-01

37-10-01-02. Penalty for violating out-of-service order. A person convicted of violating an out-of-service order issued under section 37-10-01-01 is deemed to have committed the offense of driving under suspension under North Dakota Century Code section 39-06-42. The suspension periods for driving a commercial motor vehicle in violation of the out-of-service order are:

1. For a first violation, the driver must be suspended for a period of ninety days;
2. For a second violation arising from separate incidents, the driver must be suspended for a period of one year; and
3. For a third or subsequent violation arising from separate incidents, the driver must be suspended for a period of three years.

If the violation occurred while transporting hazardous material required to be placarded or while operating a motor vehicle designed to transport sixteen or more passengers including the driver, the suspension period must be one hundred eighty days for a first violation and three years for each subsequent violation arising from a separate incident during a ten-year period.

History: Effective June 1, 1998.
General Authority: NDCC 39-06.2-14
Law Implemented: NDCC 39-06.2-10.9

TITLE 45

Insurance, Commissioner of

JUNE 1998

CHAPTER 45-06-02.1

45-06-02.1-03. Enrollment by certain children. A child will be deemed an "eligible person" pursuant to subdivision b of subsection 4 of North Dakota Century Code section 26.1-08-01, despite the lack of eighteen months of qualifying previous coverage, if:

1. The child was covered under any qualifying previous coverage within thirty days of birth, adoption, or placement for adoption; and
2. The child has not had a break in qualifying previous coverage which exceeds sixty-three days.

History: Effective December 1, 1997.

General Authority: NDCC 26.1-08-02

Law Implemented: NDCC 26.1-08-02

CHAPTER 45-06-06.1

45-06-06.1-01. Definitions. As used in this chapter:

1. "Associate member of an employee organization" means any individual who participates in an employee benefit plan (as defined in 29 U.S.C. 1002(1)) that is a multiemployer plan (as defined in 29 U.S.C. 1002(37A)), other than the following:
 - a. An individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or
 - b. An individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan or of a related plan.
2. "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.
3. "Preexisting condition exclusion" means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the effective date of coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.
4. "Risk characteristic" means the health status, claims experience, duration of coverage, health status-related factor, or any similar characteristic related to the health status or experience of a small employer group or of any member of a small employer group.
- 4- 5. "Risk load" means the percentage above the applicable base premium rate that is charged by a small employer carrier to a small employer to reflect the risk characteristics of the small employer group.
6. "Waiting period" means, with respect to a group health benefit plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

History: Effective August 1, 1994; amended effective December 1, 1997.
General Authority: NDCC 26.1-01-08
Law Implemented: NDCC 26.1-36.3

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} a. 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; and

{2} b. Provides coverage to ~~three~~ one 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 any individual health insurance 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~~ one 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~~ one or more employees of a small employer, the small employer shall be considered to be an eligible small employer as defined in subdivision e 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~~ two 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 less than two or more than twenty-five fifty eligible employees. Within sixty days of becoming aware that the employer has less than two or more than twenty-five fifty 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~~ is a "small employer" as that term is defined in subsection 35 of North Dakota Century Code section 26.1-36.1-01, 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; December 1, 1997.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-36.3

45-06-06.1-05. Restrictions relating to premium rates.

1. This section applies only to a health benefit plan offered by a small employer who employed an average of at least two but not more than twenty-five eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.
2. a. A small employer carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to small employers by

the small employer carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a small employer carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

- b. (1) A small employer carrier shall not modify the rating method used in the rate manual for a class of business until the change has been approved as provided in this paragraph. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this chapter.
- (2) A carrier may modify the rating method for a class of business only with prior approval of the commissioner. A carrier requesting to change the rating method for a class of business shall make a filing with the commissioner at least thirty days prior to the proposed date of the change. The filing shall contain at least the following information:
 - (a) The reasons the change in rating method is being requested;
 - (b) A complete description of each of the proposed modifications to the rating method;
 - (c) A description of how the change in rating method would affect the premium rates currently charged to small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals and a description of the types of groups or individuals whose premium rates may change by more than ten percent due to the proposed change in rating method, not generally including increases in premium rates applicable to all small employers in a health benefit plan;
 - (d) A certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and
 - (e) A certification from a qualified actuary that the proposed change in rating method would not produce premium rates for small employers that would be in violation of North Dakota Century Code section 26.1-36.3-04.

(3) For the purpose of this section a change in rating method means:

- (a) A change in the number of case characteristics used by a small employer carrier to determine premium rates for health benefit plans in a class of business;
- (b) A change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;
- (c) A change in the method of allocating expenses among health benefit plans in a class of business; or
- (d) [1] A change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any small employer that exceeds ten percent.

[2] For the purpose of item 1, a change in a rating factor shall mean the cumulative change with respect to such factor considered over a twelve-month period. If a small employer carrier changes rating factors with respect to more than one case characteristic in a twelve-month period, the carrier shall consider the cumulative effect of all such changes in applying the ten percent test under item 1.

2- 3. a. The rate manual developed pursuant to subsection 1 2 shall specify the case characteristics and rate factors to be applied by the small employer carrier in establishing premium rates for the class of business.

b. A small employer carrier may not use case characteristics other than those specified in subdivision j of subsection 1 of North Dakota Century Code section 26.1-36.3-04 without the prior approval of the commissioner. A small employer carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under subdivision b of subsection 1 2.

c. A small employer carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall

be applied without regard to the risk characteristics of a small employer.

- d. The rate manual developed pursuant to subsection 1 2 shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.
- e. Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and shall not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan. A small employer carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical small employer groups vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.
- f. The rate manual developed pursuant to subsection 1 2 shall provide for premium rates to be developed in a two step process. In the first step, a base premium rate shall be developed for the small employer group without regard to any risk characteristics of the group. In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of North Dakota Century Code section 26.1-36.3-04, to reflect the risk characteristics of the group.
- g. A premium charged to a small employer for a health benefit plan shall not include a separate application fee, underwriting fee, or any other separate fee or charge.
- h. A small employer carrier shall allocate administrative expenses to the basic and standard health benefit plans on no less favorable of a basis than expenses are allocated to other health benefit plans in the class of business. The rate manual developed pursuant to subsection 1 2 shall describe the method of allocating administrative expenses to the health benefit plans in the class of business for which the manual was developed.
- i. Each rate manual developed pursuant to subsection 1 2 shall be maintained by the carrier for a period of six

years. Updates and changes to the manual shall be maintained with the manual.

- j. The rate manual and rating practices of a small employer carrier shall comply with any guidelines issued by the commissioner.

3- 4. If group size is used as a case characteristic by a small employer carrier, the highest rate factor associated with a group size classification shall not exceed the lowest rate factor associated with such a classification by more than twenty percent.

4- 5. The restrictions related to changes in premium rates in subdivisions c and g of subsection 1 of North Dakota Century Code section 26.1-36.3-04 shall be applied as follows:

- a. A small employer carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

- b. (1) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of paragraph 3 of subdivision c of subsection 1 and paragraph 1 of subdivision g of subsection 1 of North Dakota Century Code section 26.1-36.3-04.

- (2) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the small employer carrier is no longer enrolling new small employers for the purposes of subdivisions c and g of subsection 1 of North Dakota Century Code section 26.1-36.3-04.

- c. If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than twenty percent, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made within thirty days of the beginning of the rating period.

- d. A small employer carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.
5. 6. a. Except as provided in subdivisions b through d, a change in premium rate for a small employer shall produce a revised premium rate that is no more than the following:
- (1) The base premium rate for the small employer, as shown in the rate manual as revised for the rating period, multiplied by;
 - (2) One plus the sum of:
 - (a) The risk load applicable to the small employer during the previous rating period; and
 - (b) Fifteen percent, prorated for periods of less than one year.
- b. In the case of a health benefit plan into which a small employer carrier is no longer enrolling new small employers, a change in premium rate for a small employer shall produce a revised premium rate that is no more than the following:
- (1) The base premium rate for the small employer, given its present composition and as shown in the rate manual in effect for the small employer at the beginning of the previous rating period, multiplied by;
 - (2) One plus the lesser of:
 - (a) The change in the base rate; or
 - (b) The percentage change in the new business premium for the most similar health benefit plan into which the small employer carrier is enrolling new small employers, multiplied by;
 - (3) One plus the sum of:
 - (a) The risk load applicable to the small employer during the previous rating period; and
 - (b) Fifteen percent, prorated for periods of less than one year.
- c. In the case of a health benefit plan described in subdivision g of subsection 1 of North Dakota Century Code section 26.1-36.3-04, if the current premium rate for the

health benefit plan exceeds the ranges set forth in subsection 1 of North Dakota Century Code section 26.1-36.3-04, the formulae set forth in subdivisions a and b will be applied as if the fifteen percent adjustment provided in subparagraph b of paragraph 2 of subdivision a and subparagraph b of paragraph 3 of subdivision b were a zero percent adjustment.

- d. Notwithstanding the provisions of subdivisions a and b, a change in premium rate for a small employer shall not produce a revised premium rate that would exceed the limitations on rates provided in subdivision b of subsection 1 of North Dakota Century Code section 26.1-36.3-04.

6. 7. a. A representative of a Taft-Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of subsection 1 of North Dakota Century Code section 26.1-36.3-04 with respect to such trust.

- b. A request made under subdivision a shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

- (1) Adversely affect the participants and beneficiaries of the trust; and

- (2) Require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

- c. A waiver granted under subsection 3 of North Dakota Century Code section 26.1-36.3-04 shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

History: Effective August 1, 1994; amended effective December 1, 1997.

General Authority: NDCC 26.1-01-08, 26.1-36.3-04

Law Implemented: NDCC 26.1-36.3-04

45-06-06.1-06. Requirement to insure entire groups.

- 1. a. A small employer carrier that offers coverage to a small employer shall offer to provide coverage to each eligible employee and to each dependent of an eligible employee. Except as provided in subdivision b, the small employer carrier shall provide the same health benefit plan to each such employee and dependent.

- b. A small employer carrier may offer the employees of a small employer the option of choosing among one or more health benefit plans, provided that each employee may choose any of the offered plans. Except as provided in subsection 3 of North Dakota Century Code section 26.1-36.3-06, with respect to exclusions for preexisting conditions, the choice among benefit plans may not be limited, restricted, or conditioned based upon the risk characteristics of the employees or their dependents.
- 2. a. A small employer carrier shall require each small employer that applies for coverage, as part of the application process, to provide a complete list of eligible employees and dependents of eligible employees as defined in subsections 11 12 and 12 13 of North Dakota Century Code section 26.1-36.3-01. The small employer carrier shall require the small employer to provide appropriate supporting documentation, such as the W-2 summary wage and tax form, or certification, to verify the information required under this subdivision.
- b. A small employer carrier shall secure a waiver with respect to each eligible employee and each dependent of such an eligible employee who declines an offer of coverage under a health benefit plan provided to a small employer. The waiver shall be signed by the eligible employee, on behalf of such employee or the dependent of such employee, and shall certify that the individual who declined coverage was informed of the availability of coverage under the health benefit plan. The waiver form shall require that the reason for declining coverage be stated on the form and shall include a written warning of the penalties imposed on late enrollees. Waivers shall be maintained by the small employer carrier for a period of six years.
- c. (1) A small employer carrier may not issue coverage to a small employer that refuses to provide the list required under subdivision a or a waiver required under subdivision b.
- (2) (a) A small employer carrier shall not issue coverage to a small employer if the carrier, or a producer for such carrier, has reason to believe that the small employer has induced or pressured an eligible employee, or dependent of an eligible employee, to decline coverage due the individual's risk characteristics.
- (b) A producer shall notify a small employer carrier, prior to submitting an application for coverage with the carrier on behalf of a small employer, of any circumstances that would

indicate that the small employer has induced or pressured an eligible employee, or dependent of an eligible employee, to decline coverage due the individual's risk characteristics.

3. a. New entrants to a small employer group shall be offered an opportunity to enroll in the health benefit plan currently held by such group. A new entrant that does not exercise the opportunity to enroll in the health benefit plan within the period provided by the small employer carrier may be treated as a late enrollee by the carrier, provided that the period provided to enroll in the health benefit plan extends at least thirty days after the date the new entrant is notified of his or her opportunity to enroll. If a small employer carrier has offered more than one health benefit plan to a small employer group pursuant to subdivision b of subsection 1, the new entrant shall be offered the same choice of health benefit plans as the other members of the group.
 - b. A small employer carrier may not apply a waiting period, elimination period, or other similar limitation of coverage, other than an exclusion for preexisting medical conditions consistent with subdivision b of subsection 3 of North Dakota Century Code section 26.1-36.3-06, with respect to a new entrant that is longer than sixty days.
 - c. New entrants to a group shall be accepted for coverage by the small employer carrier without any restrictions or limitations on coverage related to the risk characteristics of the employees or their dependents, except that a carrier may exclude coverage for preexisting medical conditions, consistent with the provisions provided in subsection 3 of North Dakota Century Code section 26.1-36.3-06.
 - d. A small employer carrier may assess a risk load to the premium rate associated with a new entrant, consistent with the requirements of North Dakota Century Code section 26.1-36.3-04. The risk load shall be the same risk load charged to the small employer group immediately prior to acceptance of the new entrant into the group.
4. a. (1) In the case of an eligible employee or dependent of an eligible employee who, prior to the effective date of subsection 1 of North Dakota Century Code section 26.1-36.3-06, was excluded from coverage or denied coverage by a small employer carrier in the process of providing a health benefit plan to an eligible small employer, as defined in subdivision c of subsection 1 of North Dakota Century Code section 26.1-36.3-06, the small employer carrier shall provide an opportunity for the eligible employee or

dependent of such eligible employee to enroll in the health benefit plan currently held by the small employer.

- (2) A small employer carrier may require an individual who requests enrollment under this subsection to sign a statement indicating that such individual sought coverage under the group contract other than as a late enrollee and that the coverage was not offered to the individual.

b. The opportunity to enroll must meet the following requirements:

- (1) The opportunity to enroll shall begin September 1, 1994, and shall last for a period of at least three months.
- (2) Eligible employees and dependents of eligible employees who are provided an opportunity to enroll pursuant to this subsection shall be treated as new entrants. Premium rates related to such individuals shall be set in accordance with subsection 3.
- (3) The terms of coverage offered to an individual described in paragraph 1 of subdivision a may exclude coverage for preexisting medical conditions if the health benefit plan currently held by the small employer contains such an exclusion, provided that the exclusion period shall be reduced by the number of days between the date the individual was excluded or denied coverage and the date coverage is provided to the individual pursuant to this subsection.
- (4) A small employer carrier shall provide written notice at least forty-five days prior to the opportunity to enroll provided in paragraph 1 of subdivision a to each small employer insured under a health benefit plan offered by such carrier. The notice shall clearly describe the rights granted under this subsection to employees and dependents who were previously excluded from or denied coverage and the process for enrollment of such individuals in the employer's health benefit plan.

History: Effective August 1, 1994; amended effective December 1, 1997.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-36.3

45-06-06.1-09. Qualifying previous and qualifying existing coverage.

1.--In--determining--whether-a-health-benefit-plan-or-other-health benefit-arrangement;--whether--public--or--private;--shall--be considered-qualifying-previous-coverage-or-qualifying-existing coverage-for-the-purposes-of--subsection-18--of--North--Dakota Century---Code--section--26.2-36.3-01--and--subdivision-b--and paragraph-3-of-subdivision-d-of-subsection-3-of--North--Dakota Century--Code--section--26.1-36.3-06;--a-small-employer-carrier shall-interpret-the--Act--no--less--favorably--to--an--insured individual--than--the--following:

a.--A--health--insurance--policy;--certificate;--or--other-health benefit-arrangement--shall--be--considered--employer-based--if an--employer--sponsors--the-plan-or-arrangement-or-makes-a contribution-to-the-plan-or-arrangement:

b.--A--health--insurance--policy;--certificate;--or--other-benefit arrangement--shall--be--considered--to--provide--benefits similar--to--or--exceeding--the-benefits-provided-under-the basic-health-benefit-plan-if-the-policy;--certificate;--or other-benefit-arrangement-provides-benefits-that:

(1)--Have--an--actuarial-value;--as--considered--for--a-normal distribution-of-groups;--that--is--not--substantially less--than--the--actuarial--value--of--the--basic-health benefit-plan;--or

(2)--Provides--coverage--for--hospitalization-and-physician services--that--is--substantially-similar-to-or--exceeds the--coverage--for--such-services-in-the-basic-health benefit-plan:

In--making--a-determination-under-this-subsection;--a-small employer-carrier--shall--evaluate--the--previous--or--existing policy;--certificate;--or--other-benefit-arrangement--taken-as a-whole--and--shall--not--base--its--decision--solely--on--the--fact that--one--portion--of--the--previous--or--existing-policy; certificate;--or--benefit-arrangement--provides--less--coverage than--the--comparable--portion--of--the--basic-health-benefit plan:

2.--For--the--purposes--of--subdivision-b-of-subsection-3-of-North Dakota-Century-Code-section-26.1-36.3-06;--an--individual--will be--considered--to--have--qualifying--previous--coverage--with respect-to--a--particular--service--if--the--previous--policy; certificate;--or--other--benefit--arrangement--covering--such individual--met--the--definition--of--qualifying-previous--coverage contained--in--subsection-23--of--North--Dakota--Century--Code section-26.1-36.3-01--and--provided--any--benefit--with--respect--to the-service:

3.--A--small--employer--carrier--shall--ascertain--the--source--of previous-or-existing-coverage-of-each--eligible--employee--and each--dependent--of--an--eligible--employee--at--the--time--such

~~employee--or--dependent--initially--enrolls--into--the--health benefit--plan--provided--by--the--small-employer-carrier--The small-employer-carrier--shall--have--the--responsibility--to contact--the--source--of--such--previous--or--existing--coverage--to resolve--any--questions--about--the--benefits--or--limitations related--to--such--previous--or--existing--coverage.~~ Repealed effective December 1, 1997.

History: Effective-August-1,-1994-

General Authority: NDCC-26.1-01-08

Law Implemented: NDCC-26.1-36.3

45-06-06.1-11. Rules related to fair marketing.

1. a. A small employer carrier shall actively market each of its health benefit plans to small employers in this state. A small employer carrier may not suspend the marketing or issuance of ~~the basic and standard~~ a health benefit plans unless the carrier has good cause and has received the prior approval of the commissioner.
- b. In marketing the basic and standard health benefit plans to small employers, a small employer carrier shall use at least the same sources and methods of distribution that it uses to market other health benefit plans to small employers. Any producer authorized by a small employer carrier to market health benefit plans to small employers in the state shall also be authorized to market the basic and standard health benefit plans.
2. a. A small employer carrier shall offer ~~at least the basic and standard health benefit plans~~ to any small employer that applies for or makes an inquiry regarding health insurance coverage from the small employer carrier all health benefit plans it actively markets to small employers. The offer shall be in writing and shall include at least the following information:
 - (1) A general description of the benefits contained in the ~~basic and standard~~ health benefit plans ~~and--any other--health-benefit-plan~~ being offered to the small ~~employer~~ employers in this state; and
 - (2) Information describing how the small employer may enroll in the plans. The offer may be provided directly to the small employer or delivered through a producer.
- b. In connection with the offering of any health insurance coverage to a small employer, a health insurance issuer is required to make reasonable disclosure to the employer, as a part of its solicitation and sales materials, of the

availability of information described in this subsection;
and upon request provide that information to the employer.

Subject to the above, the information that must be
provided is the provisions of coverage relating to the
following:

- (1) The issuer's right to change premium rates and the
factors that may affect changes in premium rates.
- (2) Renewability of coverage.
- (3) Any preexisting condition exclusion, including use of
the alternative method of counting creditable
coverage.
- (4) The geographic areas served by HMOs.

- c. (1) A small employer carrier shall provide a price quote to a small employer, directly or through an authorized producer, within ten working days of receiving a request for a quote and such information as is necessary to provide the quote. A small employer carrier shall notify a small employer, directly or through an authorized producer, within five working days of receiving a request for a price quote of any additional information needed by the small employer carrier to provide the quote.
- (2) A small employer carrier may not apply more stringent or detailed requirements related to the application process for the basic and standard health benefit plans than are applied for other health benefit plans offered by the carrier.

~~e. (1) If a small employer carrier denies coverage under a health benefit plan to a small employer on the basis of a risk characteristic, the denial shall be in writing and shall state with specificity the reasons for the denial, subject to any restrictions related to confidentiality of medical information. The written denial shall be accompanied by a written explanation of the availability of the basic and standard health benefit plans from the small employer carrier. The explanation shall include at least the following:~~

~~(a) A general description of the benefits contained in each such plan;~~

~~(b) A price quote for each such plan; and~~

~~{c}--Information--describing--how--the--small--employer
may--enroll--in--such--plans.~~

~~The--written--information--described--in--this--paragraph
may--be--provided;--within--the--time--periods--provided--in
subdivision-b;--directly--to--the--small--employer--or
delivered--through--an--authorized--producer.~~

~~{2}--The--price--quote--required--under--subparagraph-b-of
paragraph-1--shall--be--for--the--lowest--priced--basic--and
standard--health--benefit--plan--for--which--the--small
employer--is--eligible.~~

3. The small group carrier shall not require a small employer to join or contribute to any association or group as a condition of being accepted for coverage by the small employer carrier, except that, if membership in an association or other group is a requirement for accepting a small employer into a particular health benefit plan, a small employer carrier may apply such requirement, subject to the requirements of paragraph 2 of subdivision b of subsection 1 of North Dakota Century Code section 26.1-36.3-06.
4. A small employer carrier may not require, as a condition to the offer or sale of a health benefit plan to a small employer, that the small employer purchase or qualify for any other insurance product or service.
5. a. Carriers offering individual and group health benefit plans in this state shall be responsible for determining whether the plans are subject to the requirements of the Act and this chapter. Carriers shall elicit the following information from applicants for such plans at the time of application:
 - (1) Whether or not any portion of the premium will be paid by or on behalf of a small employer, either directly or through wage adjustments or other means of reimbursement; and
 - (2) Whether or not the prospective policyholder, certificate holder, or any prospective insured individual intends to treat the health benefit plan as part of plan or program under section 162 (other than section 162(1)), section 125, or section 106 of the United States Internal Revenue Code.
- b. If a small employer carrier fails to comply with subdivision a, the small employer carrier shall be deemed to be on notice of any information that could reasonably have been attained if the small employer carrier had complied with subdivision a.

6. a. A small employer carrier shall file annually the following information with the commissioner related to health benefit plans issued by the small employer carrier to small employers in this state:

- (1) The number of small employers that were issued health benefit plans in the previous calendar year, separated as to newly issued plans and renewals;
- (2) The number of small employers that were issued the basic health benefit plan and the standard health benefit plan in the previous calendar year, separated as to newly issued plans and renewals and as to class of business;
- (3) The number of small employer health benefit plans in force in each county or by zip code of the state as of December thirty-first of the previous calendar year;
- (4) The number of small employer health benefit plans that were voluntarily not renewed by small employers in the previous calendar year;
- (5) The number of small employer health benefit plans that were terminated or nonrenewed for reasons other than nonpayment of premium by the carrier in the previous calendar year; and
- (6) The number of small employer health benefit plans that were issued to small employers that were uninsured for at least the three months prior to issue.

b. The information described in subdivision a shall be filed no later than March fifteenth of each year.

History: Effective August 1, 1994; amended effective December 1, 1997.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-36.3-11

CHAPTER 45-06-07

45-06-07-05. Prohibited practices.

1. Preexisting conditions.

- a. A health maintenance organization may ~~include--in-its individual-contract-a-provision-setting--forth--reasonable exclusions--or--limitations--of--services--for-preexisting conditions-at--the--time--of--enrollment:---However,--such exclusions--or--limitations-may-not-be-for-a-period-greater than--twelve--months:~~ impose a preexisting condition exclusion only if:

- (1) The exclusion relates to a condition, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period immediately preceding the effective date of coverage;
- (2) The exclusion extends for a period of not more than twelve months, or eighteen months in the case of a late enrollee for coverage offered to a small employer pursuant to North Dakota Century Code chapter 26.1-36.3, after the effective date of coverage;
- (3) In the case of group contracts, the exclusion does not relate to pregnancy as a preexisting condition; and
- (4) In the case of group contracts, the exclusion does not relate to genetic information as a preexisting condition in the absence of a diagnosis of a condition related to such information.

- b. A health maintenance organization may not exclude or limit services for a preexisting condition when the enrollee transfers coverage from one individual contract to another or when the enrollee converts coverage under the enrollee's conversion option, except to the extent of a preexisting condition limitation or exclusion remaining unexpired under the prior contract. Any required probationary or waiting period must be deemed to have commenced on the effective date of coverage under the prior contract. The health maintenance organization contract must disclose any preexisting condition limitations or exclusions that are applicable when an enrollee transfers from a prior health maintenance organization contract.

c. ~~A---preexisting---condition---may---not---be---defined---more
restrictively---than---a---disease---or---physical---condition---that
was---diagnosed---or---treated---within---a---six-month---period
preceding---the---effective---date---of---coverage---under---the---health
care---plan. A health maintenance organization shall reduce
any time period applicable to a preexisting condition, for
a contract by the aggregate of periods the individual was
covered by qualifying previous coverage, if the qualifying
previous coverage as defined in North Dakota Century Code
section 26.1-36.3-01 is continuous until at least
sixty-three days before the effective date of the new
coverage. Any waiting period applicable to an individual
for coverage under a health maintenance organization
contract may not be taken into account in determining the
period of continuous coverage. A health maintenance
organization shall credit coverage in the same manner as
provided by North Dakota Century Code section 26.1-36.3-06
and the rules adopted by the commissioner pursuant
thereto.~~

d. ~~A---preexisting---condition---period---must---be---reduced---for---any
time---period---already---served---under---qualifying---previous
coverage---as---defined---by---subsection---23---of---North-Dakota
Century---Code---section---26.1-36.3-01---if---the---qualifying
previous---coverage---is---continuous---at---least---ninety-days
before---the---effective---date---of---the---new---coverage.~~

e. ~~A---group---contract---or---evidence---of---coverage---may---not---exclude
or---limit---services---for---a---preexisting---condition.~~

2. **Unfair discrimination.** A health maintenance organization may not unfairly discriminate against any enrollee or applicant for enrollment on the basis of the age, sex, race, color, creed, national origin, ancestry, religion, marital status, or lawful occupation of an enrollee, or because of the frequency of utilization of services by an enrollee. However, a health maintenance organization is not prohibited from setting rates or establishing a schedule of charges in accordance with relevant actuarial data. ~~A health maintenance organization may not expel or refuse to reenroll any enrollee nor refuse to enroll individual members of a group on the basis of the health status or health care needs of the individuals or enrollees.~~

3. Prohibiting discrimination against enrollees and beneficiaries based on health status-related factors.

a. A health maintenance organization may not establish rules for eligibility including continued eligibility of any individual to enroll under the terms it group contracts based on a health status-related factor, as defined in subsection 20 of North Dakota Century Code section 26.1-36.3-01.

b. This section shall not be construed to:

(1) Require a health maintenance organization offering group contracts to provide particular benefits other than those provided under the terms of the contract; or

(2) To prevent a health maintenance organization from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled under the contract.

c. A health maintenance organization offering group contracts may not require an individual as a condition of enrollment or continued enrollment under the plan to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled under the contract based on any health status-related factor, as defined in subsection 20 of North Dakota Century Code section 26.1-36.3-01.

d. This subsection shall not be construed to:

(1) Restrict the amount that an employer may be charged for the contract; or

(2) Prevent a health maintenance organization offering group contracts from establishing premium discounts or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

History: Effective July 1, 1994; amended effective April 1, 1996; December 1, 1997.

General Authority: NDCC 26.1-18.1

Law Implemented: NDCC 26.1-18.1

CHAPTER 45-06-11

STAFF COMMENT. Chapter 45-06-11 contains all new material and is not underscored so as to improve readability.

CHAPTER 45-06-11 REGULATION ON THE CREDITING OF QUALIFYING PREVIOUS COVERAGE TOWARD THE REDUCTION OF PREEXISTING CONDITION EXCLUSION PERIODS

Section

45-06-11-01	Definitions
45-06-11-02	Methods of Crediting Coverage
45-06-11-03	Certification of Coverage in the Individual Market
45-06-11-04	Certification of Coverage in the Group Market
45-06-11-05	Notification of Qualifying Previous Coverage and Preexisting Condition Exclusion Period

45-06-11-01. Definitions. As used in this chapter:

1. "Health carrier" means any entity that provides health insurance in this state. For purposes of this chapter, "health carrier" includes an insurance company, a prepaid limited health services corporation, a fraternal benefits society, a health maintenance organization, a nonprofit health services corporation, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.
2. "Preexisting condition exclusion" means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the effective date of coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.
3. "Waiting period" means, with respect to a group health benefit plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

History: Effective December 1, 1997.

General Authority: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

Law Implemented: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

45-06-11-02. Methods of crediting coverage.

1. Any health carrier offering health insurance in this state must reduce any time period applicable to a preexisting condition exclusion or limitation period by the aggregate of periods the individual was covered by qualifying previous coverage, if any, if the qualifying previous coverage was continuous until at least sixty-three days prior to the effective date of the new coverage. The health carrier must credit coverage by either a standard or alternative method.
2. A health carrier electing to credit coverage by the standard method shall determine the amount of qualifying previous coverage without regard to the specific benefits covered during the period of qualifying previous coverage.
3. For purposes of reducing the preexisting condition exclusion period under the standard method, a health carrier determines the amount of qualifying previous coverage by counting all the days that the individual has under one or more types of qualifying previous coverage. If an individual is covered by more than one source of qualifying previous coverage on any given day, all the qualifying previous coverage on that day is counted as one day. Days spent in a waiting period for a plan or policy are not days of qualifying previous coverage.
4. Days of qualifying previous coverage occurring before a significant break in coverage are not required to be counted by the plan or issuer in reducing the preexisting condition exclusion. A significant break in coverage means a period of sixty-three consecutive days during all of which the individual was not covered by any qualifying previous coverage. Waiting periods are not taken into account in determining a significant break in coverage.
5. A health carrier offering health insurance in this state may elect to use an alternative method of crediting coverage. In applying the alternative method, coverage may be credited based on coverage of benefits within the following five categories of benefits:
 - a. Mental health;
 - b. Substance abuse treatment;
 - c. Prescription drugs;
 - d. Dental care; or
 - e. Vision care.

Any health carrier offering health insurance in this state may use the alternative method for any or all of the five categories and may apply a different preexisting condition exclusion with respect to each category. The qualifying

previous coverage determined for a category of benefits applies only for purposes of reducing the preexisting condition exclusion period with respect to that category. For coverage that is not within the above categories, qualifying previous coverage is determined by using the standard method. A health carrier using the alternative method is required to apply it in a uniform manner.

6. Under the alternative method, the health carrier counts qualifying previous coverage within a category if any level of benefits is provided within a category. The health carrier first determines the amount of the individual's qualifying previous coverage that may be counted under the standard method, up to a total of three hundred sixty-five days of the most recent qualifying previous coverage. The period over which this qualifying previous coverage is determined is referred to as the determination period. Then, for the category specified under the alternative method, the health carrier counts within the category all days of coverage that occurred during the determination period, whether or not a significant break in coverage for that category occurs, and reduces the individual's preexisting condition exclusion period for that category by that number of days.
7. A health carrier electing to credit coverage using the alternative method is required to:
 - a. State prominently that the health carrier is using the alternative method of counting qualifying previous coverage in disclosure statements concerning the health insurance coverage, and state this to each enrollee at the time of enrollment under the coverage; and
 - b. Include in these statements a description of the effect of using the alternative method, including an identification of the categories used.
8. A health carrier may determine the amount of qualifying previous coverage in any other reasonable manner that is at least as favorable to the individual as long as the issuer applies the method uniformly.

History: Effective December 1, 1997.

General Authority: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

Law Implemented: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

45-06-11-03. Certification of coverage in the individual market.

1. This section applies to all health carriers offering health insurance coverage in the individual market.

2. A certificate of coverage must be provided, without charge, for individuals and dependents, who are or were covered under an individual health insurance policy, for the following:
 - a. An automatic certificate must be provided within a reasonable period of time after the individual ceases to be covered under the policy; and
 - b. A certificate of coverage must be provided upon request if the request is made, by or on behalf of an individual, within twenty-four months after coverage ends.
 - c. A certificate of coverage issued under this section must be provided in writing. However, a written certificate is not required if:
 - (1) The individual is entitled to receive a certificate of coverage;
 - (2) The individual requests that the certificate be sent to another plan or health carrier instead of to the individual;
 - (3) The plan or health carrier agrees to accept the information through means other than a written certificate; and
 - (4) The plan or health carrier receives the certification within a reasonable time.
 - d. A certificate of coverage issued under this section must include the following information:
 - (1) The date on which the certificate is issued;
 - (2) The name of the individual or dependent to whom the certificate applies and any other information necessary to identify the individual;
 - (3) The name, address, and telephone number of the issuer of the certificate;
 - (4) A telephone number to call for further information;
 - (5) The date the qualifying previous coverage ended, unless the certificate indicates that the qualifying previous coverage is continuing as of the date of the certificate; and
 - (6) Either one of the following statements:

- (a) A statement that the individual has at least eighteen months of qualifying previous coverage; or
 - (b) Both the date the individual first sought coverage, as evidenced by a substantially complete application, and the date qualifying previous coverage began.
- e. If an automatic certificate is provided under this section, the period that must be included on the certificate is the last period of continuous qualifying previous coverage ending on the date coverage ceased.
- f. If an individual requests a certificate under this section, a certificate must be provided for each period of continuous qualifying previous coverage ending within the twenty-four-month period ending on the date of the request. A separate certificate may be provided for each such period of continuous qualifying previous coverage.
- g. A health carrier may provide a single certificate for both an individual and the individual's dependents if it provides all the required information for each individual and dependent, and separately states the information that is not identical.
- h. The certificate is required to be provided, without charge, to each individual described in this section or an entity requesting the certificate on behalf of the individual. The certificate may be provided by first-class mail. If the certificate or certificates are provided to the individual and the individual's spouse at the individual's last known address, the requirements of this section are satisfied with respect to all individuals residing and dependents at that address. If the dependent's last known address is different than the individual's last known address, a separate certificate is required to be provided to the dependent at the dependent's last known address.
- i. A health carrier must establish a procedure for individuals to request and receive certificates under this section.
- j. If an automatic certificate is required to be provided under this section, and the individual entitled to receive the certificate designates another individual or entity to receive the certificate, the health carrier responsible for providing the certificate is permitted to provide the certificate to the designated party.

- k. If a certificate is required to be provided upon request under this section and the individual entitled to receive the certificate designates another individual or entity to receive the certificate, the health carrier responsible for providing the certificate is required to provide the certificate to the designated party.
- l. A health carrier is required to use reasonable efforts to determine any information needed for a certificate relating to the dependent coverage. In any case in which an automatic certificate is required to be furnished with respect to a dependent under this section, no individual certificate is required to be furnished until the health carrier knows, or making reasonable efforts should know, of the dependent's cessation of coverage under the plan.
- m. If a certificate furnished by a health carrier does not provide the name of any dependent of an individual covered by the certificate, the individual may, if necessary, use the procedures described in this section for demonstrating dependent status. In addition, an individual may, if necessary, use these procedures to demonstrate that a child was enrolled within thirty days of birth, adoption, or placement for adoption.
- n. A health carrier that cannot provide the names of dependents, or related coverage information, for purposes of providing a certificate of coverage for a dependent may satisfy the requirements of this section by providing the name of the participant covered by the health carrier and specifying that the type of coverage described in the certificate is for dependent coverage. This subdivision is in effect through June 30, 1998.
- o. For purposes of certificates provided at the request of, or on behalf of, an individual in this section, a health carrier must make reasonable efforts to obtain and provide the names of any dependent covered by the certificate where such information is requested to be provided. If the certificate does not include the name of any dependent of an individual covered by the certificate, the individual may, if necessary, use the procedures described in this section for submitting documentation to establish that the qualifying previous coverage in the certificate applies to the dependent.
- p. A health carrier providing an automatic certificate that does not contain the name of a dependent must furnish a certificate within twenty-one days after the individual ceases to be covered under the policy.
- q. If an individual enrolls in a group health benefit plan with respect to which the plan or health carrier uses the

alternative method of counting qualifying previous coverage described in this section, the individual provides a certificate of coverage under this section, and the plan or health carrier in which the individual enrolls so requests, the entity that issued the certificate, the "prior entity", is required to disclose promptly to a requesting plan or health carrier, the "requesting entity", the information set forth in this section. The prior entity furnishing the information under this subsection may charge the requesting entity for the reasonable cost of disclosing such information.

- r. Every health carrier must allow individuals to establish qualifying previous coverage by means other than a certificate. The health carrier is required to take into account all information that it obtains or that is presented on behalf of an individual in making its determination, based on the relevant facts and circumstances, whether the individual has qualifying previous coverage and is entitled to offset all or a portion of any preexisting condition exclusion period. The health carrier shall treat the individual as having provided a certificate if the individual attests to the period of qualifying previous coverage, presents relevant corroborating evidence, and cooperates with the plan or health carrier's efforts to verify the coverage. While a health carrier may refuse to credit coverage if the individual fails to cooperate with efforts to verify coverage, the health carrier may not consider an individual's inability to obtain a certificate as evidence of the absence of qualifying previous coverage.

History: Effective December 1, 1997.

General Authority: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

Law Implemented: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

45-06-11-04. Certification of coverage in the group market.

1. A health carrier offering group health insurance coverage under a group health benefit plan is required to provide certificates of qualifying previous coverage in accordance with this section.
2. Any entity required to provide a certificate under this section for an individual is deemed to have satisfied the requirements of this section for that individual if another party provides the certificate, but only to the extent the information related to the individual's qualifying previous coverage and waiting period is provided by the other party.
3. A health carrier is not required to provide information regarding coverage provided to an individual by another party.

4. If an individual's coverage under a health carrier's policy ceases before an individual's coverage under the plan ceases, the health carrier is required to provide sufficient information to the plan to enable a certificate to be provided by the plan, after cessation of the individual's coverage under the plan, that reflects the period of coverage under the policy.
5. A certificate of coverage must be provided, without charge, for individuals and dependents, who are or were covered under a group health insurance policy, for the following:
 - a. An automatic certificate must be provided in the following circumstances:
 - (1) In the case of an individual who is a qualified beneficiary entitled to elect Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82] continuation coverage, an automatic certificate is required to be provided at the time the individual would lose coverage under the plan in the absence of Consolidated Omnibus Budget Reconciliation Act continuation coverage or alternative coverage elected instead of Consolidated Omnibus Budget Reconciliation Act continuation coverage.
 - (2) In the case of an individual who is not a qualified beneficiary entitled to elect Consolidated Omnibus Budget Reconciliation Act continuation coverage, an automatic certificate is required to be provided at the time the individual ceases to be covered under the plan. A health carrier satisfies this requirement if it provides the certificate within a reasonable time period after the individual ceases to be covered under the plan. In the case of an individual who is entitled to elect continuation coverage under North Dakota Century Code section 26.1-36-23 or 26.1-36-23.1, an automatic certificate is required to be furnished no later than thirty-one days after the individual ceases to be covered under the plan.
 - (3) In the case of an individual who has elected Consolidated Omnibus Budget Reconciliation Act continuation coverage, an automatic certificate must be provided at the time the individual's coverage under the plan ceases. The health carrier satisfies this requirement if it provides the automatic certificate within a reasonable time after coverage ceases. An automatic certificate is required to be provided to an individual regardless of whether the

individual has previously received an automatic certificate.

- b. A certificate of coverage must be provided upon request if the request is made, by or on behalf of an individual, within twenty-four months after coverage ends.
- 6. A certificate of coverage issued pursuant to this section must be provided in writing. However, a written certificate is not required if:
 - a. The individual is entitled to receive a certificate of coverage;
 - b. The individual requests that the certificate be sent to another plan or health carrier instead of to the individual;
 - c. The plan or health carrier agrees to accept the information through means other than a written certificate; and
 - d. The plan or health carrier receives the certification within a reasonable time.
- 7. A certificate of coverage issued under this section must include the following information:
 - a. The date on which the certificate is issued;
 - b. The name of the individual or dependent to whom the certificate applies and any other information necessary to identify the individual;
 - c. The name, address, and telephone number of the issuer of the certificate;
 - d. A telephone number to call for further information;
 - e. The date qualifying previous coverage ended, unless the certificate indicates the qualifying previous coverage is continuing as of the date of the certificate; and
 - f. Either:
 - (1) A statement that the individual has at least eighteen months of qualifying previous coverage; or
 - (2) The date any waiting period began and the date qualifying previous coverage began.
- 8. If an automatic certificate is provided under this section, the period that must be included on the certificate is the

last period of continuous qualifying previous coverage ending on the date coverage ended.

9. If an individual requests a certificate under this section, a certificate must be provided for each period of continuous qualifying previous coverage ending within the twenty-four-month period ending on the date of the request. A separate certificate may be provided for each such period of continuous qualifying previous coverage.
10. A certificate may provide information with respect to both a participant and the participant's dependents if the information is identical for each individual or, if the information is not identical, certificates may be provided on one form if the form provides all the required information for each individual and separately states the information that is not identical.
11. The certificate is required to be provided to each individual described in this section or an entity requesting the certificate on behalf of the individual. The certificate may be provided by first-class mail. If the certificate or certificates are provided to the participant and the participant's spouse at the participant's last known address, the requirements of this section are satisfied with respect to all individuals residing at that address. If the dependent's last known address is different than the participant's last known address, a separate certificate is required to be provided to the dependent at the dependent's last known address.
12. A health carrier must establish a procedure for individuals to request and receive certificates under this section.
13. If an automatic certificate is required to be provided under this section, and the individual entitled to receive the certificate designates another individual or entity to receive the certificate, the health carrier responsible for providing the certificate is permitted to provide the certificate to the designated party.
14. If a certificate is required to be provided upon request under this section and the individual entitled to receive the certificate designates another individual or entity to receive the certificate, the health carrier responsible for providing the certificate is required to provide the certificate to the designated party.
15. A health carrier is required to use reasonable efforts to determine any information needed for a certificate relating to the dependent coverage. In any case in which an automatic certificate is required to be furnished with respect to a dependent under this section, no individual certificate is

required to be furnished until the health carrier knows, or making reasonable efforts should know, of the dependent's cessation of coverage under the plan.

16. If a certificate furnished by a health carrier does not provide the name of any dependent of an individual covered by the certificate, the individual may, if necessary, use the procedures described in this section for demonstrating dependent status. In addition, an individual may, if necessary, use these procedures to demonstrate that a child was enrolled within thirty days of birth, adoption, or placement for adoption.
17. A health carrier that cannot provide the names of dependents, or related coverage information, for purposes of providing a certificate of coverage for a dependent may satisfy the requirements of this section by providing the name of the participant covered by the health carrier and specifying that the type of coverage described in the certificate is for dependent coverage. This subsection is in effect through June 30, 1998.
18. For purposes of certificates provided on the request of, or on behalf of, an individual in this section, a health carrier must make reasonable efforts to obtain and provide the names of any dependent covered by the certificate where such information is requested to be provided. If the certificate does not include the name of any dependent of an individual covered by the certificate, the individual may, if necessary, use the procedures described in this section for submitting documentation to establish that the qualifying previous coverage in the certificate applies to the dependent.
19. Issuers of group and individual health insurance are required to provide certificates of any qualifying previous coverage they provide in the group or individual health insurance market even if the coverage is provided in connection with an entity or program that is not itself required to provide a certificate because it is not subject to the group market provisions.
20. If an individual enrolls in a group health benefit plan with respect to which the plan or health carrier uses the alternative method of counting qualifying previous coverage described in this section, the individual provides a certificate of coverage under this section, and the plan or health carrier in which the individual enrolls so requests, the entity that issued the certificate, the "prior entity", is required to disclose promptly to a requesting plan or health carrier, the "requesting entity", the information set forth in this section. The prior entity furnishing the information under this subsection may charge the requesting entity for the reasonable cost of disclosing such information.

21. Every health carrier must allow individuals to establish qualifying previous coverage by means other than a certificate. The health carrier is required to take into account all information that it obtains or that is presented on behalf of an individual in making its determination, based on the relevant facts and circumstances, whether the individual has qualifying previous coverage and is entitled to offset all or a portion of any preexisting condition exclusion period. The health carrier shall treat the individual as having provided a certificate if the individual attests to the period of qualifying previous coverage, presents relevant corroborating evidence, and cooperates with the plan or health carrier's efforts to verify the coverage. While a health carrier may refuse to credit coverage where the individual fails to cooperate with efforts to verify coverage, the health carrier may not consider an individual's inability to obtain a certificate as evidence of the absence of qualifying previous coverage.
22. Every health carrier offering health insurance on a group basis is using the alternative method of crediting coverage is required to allow an individual to demonstrate categories of qualifying previous coverage in a fashion similar to that outlined in subsection 21. Likewise, a health carrier offering health insurance on a group basis must allow an individual to demonstrate dependent status in a fashion similar to that outlined in subsection 21.

History: Effective December 1, 1997.

General Authority: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

Law Implemented: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

45-06-11-05. Notification of qualifying previous coverage and preexisting condition exclusion period.

1. A health carrier is required, within a reasonable time, to make a determination regarding the individual's qualifying previous coverage and notify the individual of the determination in accordance with this section.
2. A health carrier seeking to impose a preexisting condition exclusion is required to disclose to the individual in writing its determination of any preexisting condition exclusion period that applies to the individual and the basis for such determination, including the source and substance of any information on which the health carrier relied. In addition, the health carrier is required to provide the individual with a written explanation of any appeal procedures established by the issuer and with a reasonable opportunity to submit additional evidence of coverage. Nothing in this section prevents a health carrier from modifying an initial determination qualifying previous coverage if it determines

that the individual did not have the claimed qualifying previous coverage, provided that:

- a. A notice of reconsideration is provided to the individual;
and
- b. Until the final determination is made, the health carrier, for purposes of approving access to medical services, acts in a manner consistent with the initial determination.

History: Effective December 1, 1997.

General Authority: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

Law Implemented: NDCC 26.1-08-12(4), 26.1-36.3-06(3)(b), 26.1-36.4-04

CHAPTER 45-06-12

STAFF COMMENT. Chapter 45-06-12 contains all new material and is not underscored so as to improve readability.

CHAPTER 45-06-12 REGULATION TO IMPLEMENT NORTH DAKOTA CENTURY CODE CHAPTER 26.1-36.4, RELATING TO HOSPITAL AND MEDICAL INSURANCE

Section	
45-06-12-01	Definitions
45-06-12-02	Prohibiting Discrimination Against Participants and Beneficiaries Based on Health Status-Related Factors
45-06-12-03	Special Enrollments for Certain Individuals Who Lose Coverage
45-06-12-04	Special Enrollment Periods for Certain Dependent Beneficiaries
45-06-12-05	Notice of Enrollment Rights
45-06-12-06	Conformance with the Health Insurance Portability and Accountability Act of 1996

45-06-12-01. Definitions. As used in this chapter and North Dakota Century Code chapter 26.1-36.4:

1. "Preexisting condition exclusion" means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the effective date of coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.
2. "Waiting period" means, with respect to a health benefit plan, whether offered on a group or individual basis, and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

History: Effective December 1, 1997.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 26.1-36.4

45-06-12-02. Prohibiting discrimination against participants and beneficiaries based on health status-related factors.

1. An insurer offering group health insurance coverage in connection with a group health benefit plan may not establish rules for eligibility, including continued eligibility, of any individual to enroll under the terms of the plan based on a health status-related factor, as defined in subsection 20 of North Dakota Century Code section 26.1-36.3-01.
2. Subsection 1 shall not be construed to:
 - a. Require an insurer to provide particular benefits other than those provided under the terms of the plan or coverage; or
 - b. Prevent the insurer from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage.
3. An insurer offering group health insurance coverage in connection with a group health benefit plan may not require an individual as a condition of enrollment or continued enrollment under the plan to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan based on any health status-related factor, as defined in subsection 20 of North Dakota Century Code section 26.1-36.3-01.
4. Subsection 3 shall not be construed to:
 - a. Restrict the amount that an employer may be charged by an insurer for coverage under a group health benefit plan; or
 - b. Prevent the insurer from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence for a bona fide wellness program. For purposes of this subsection, a bona fide wellness program is a program of health promotion and disease prevention.

History: Effective December 1, 1997.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 26.1-36.4

45-06-12-03. Special enrollments for certain individuals who lose coverage.

1. An insurer offering group health insurance coverage in connection with a group health benefit plan is required to permit employees and dependents described in this section to enroll for coverage under the terms of the plan if the conditions in subsection 4 are satisfied and the enrollment is requested within the period described in subsection 5.

2. An employee is described in this section if:
 - a. The employee is eligible, but not enrolled, for coverage under the terms of the plan; and
 - b. When enrollment was previously offered to the employee under the plan and was declined by the employee, the employee was covered under another group health benefit plan or had other health insurance coverage.
3. A dependent is described in this section if:
 - a. The dependent is a dependent of an employee participating in the plan;
 - b. The dependent is eligible, but not enrolled, for coverage under the terms of the plan; and
 - c. When enrollment was previously offered under the plan and was declined, the dependent was covered under another group health benefit plan or had other health insurance coverage.
4. An employee or dependent described above is eligible to enroll during a special enrollment period if each of the following applicable conditions is met:
 - a. When the employee declined enrollment for the employee or the dependent, the employee stated in writing that coverage under another group health benefit plan or other health insurance coverage was the reason for declining enrollment. This paragraph only applies if:
 - (1) The plan required such a statement when the employee declined enrollment; and
 - (2) The employee is provided with notice of the requirement to provide the statement in this section, and the consequences of the employee's failure to provide the statement, at the time the employee declined enrollment.
 - b. (1) When the employee declined enrollment for the employee or dependent under the plan, the employee or dependent had Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82] continuation coverage under another plan and Consolidated Omnibus Budget Reconciliation Act continuation coverage under the other plan has since been exhausted; or
 - (2) If the other coverage that applied to the employee or dependent when enrollment was declined was not under

a Consolidated Omnibus Budget Reconciliation Act continuation provision, either the other coverage has been terminated as a result of loss of eligibility for the coverage or employer contributions towards the other coverage has been terminated. For this purpose, loss of eligibility for coverage includes a loss of coverage as a result of legal separation, divorce, death, termination of employment, reduction of the number of hours of employment and any loss of eligibility after a period that is measured by reference to any of the foregoing.

5. The employee is required to request enrollment for the employee or the employee's dependent not later than thirty days after the exhaustion of the other coverage described in this section or termination of other coverage has resulted in the loss of eligibility for the other coverage for items described in this section or following the termination of employer contributions toward the other coverage. The plan may impose the same requirements that apply to employees who are otherwise eligible under the plan to immediately request enrollment for coverage.
6. Enrollment is effective not later than the first day of the first calendar month beginning after the date the completed request is received.

History: Effective December 1, 1997.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 26.1-36.4

45-06-12-04. Special enrollment periods for certain dependent beneficiaries.

1. A group health benefit plan that makes coverage available with respect to dependents of a participant is required to provide a special enrollment period to permit individuals described in this section to be enrolled for coverage under the terms of the plan if the enrollment is requested within the time period described in subsection 7. The enrollment is effective at the time described in subsection 8. The special enrollment rights under this section apply without regard to the dates on which an individual would otherwise be able to enroll under the plan.
2. An individual is described in this section if:
 - a. The individual is an employee who is eligible, but not enrolled, in the plan;

- b. The individual would be a participant but for a prior election by the individual not to enroll in the plan during a previous enrollment period; and
 - c. A person becomes a dependent of the individual through marriage, birth, adoption, or placement for adoption.
- 3. An individual is described in this section if either:
 - a. The individual becomes the spouse of a participant; or
 - b. The individual is a spouse of a participant and a child becomes a dependent of a participant through birth, adoption, or placement for adoption.
- 4. An employee who is eligible, but not enrolled, in the plan, and an individual who is a dependent of such employee, is described in this section if the employee would be a participant but for a prior election by the employee not to enroll in the plan during a previous enrollment period, and either:
 - a. The employee and the individual become married; or
 - b. The employee and the individual are married and a child becomes a dependent of the employee through birth, adoption, or placement for adoption.
- 5. An individual is described in this section if:
 - a. The individual is a dependent of a participant; and
 - b. The individual becomes a dependent of such participant through marriage, birth, adoption, or placement for adoption.
- 6. An employee who is eligible, but not enrolled, in the plan, and an individual who is a dependent of such employee, is described in this section if:
 - a. The employee would be a participant but for a prior election by the employee not to enroll in the plan during a previous enrollment period; and
 - b. The dependent becomes a dependent of the employee through marriage, birth, adoption, or placement for adoption.
- 7. The special enrollment period under this section is a period of not less than thirty days and begins on the date of marriage, birth, adoption, or placement for adoption. The period does not begin earlier than the date the plan makes dependent coverage generally available.

8. Enrollment is effective:

- a. In the case of marriage, not later than the first day of the first calendar month beginning after the date the completed request for enrollment is received by the plan;
- b. In the case of a dependent's birth, the date of such birth; and
- c. In the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

History: Effective December 1, 1997.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 26.1-36.4

45-06-12-05. Notice of enrollment rights. On or before the time an employee is offered the opportunity to enroll in a group health benefit plan, the plan is required to provide the employee with a description of the plan's special enrollment rules under this chapter. A group health benefit plan using the following model description of the special enrollment rules is deemed to be in compliance with this section:

If you decline enrollment for yourself or your dependents, including your spouse, because of other health insurance coverage, you may in the future be able to enroll yourself or your dependents in this plan, provided that you request enrollment within thirty days after your other coverage ends. In addition, if you have a new dependent as a result of marriage, birth, adoption, or placement for adoption, you may be able to enroll yourself or your dependents, provided that you request enrollment within thirty days after the marriage, birth, adoption, or placement for adoption.

History: Effective December 1, 1997.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 26.1-36.4

45-06-12-06. Conformance with the Health Insurance Portability and Accountability Act of 1996. This chapter, as well as North Dakota Century Code chapter 26.1-36.4, will be interpreted by the commissioner to conform with the requirements of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.].

History: Effective December 1, 1997.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 26.1-36.4

JULY 1998

CHAPTER 45-06-07

45-06-07-10. Producer compliance. Any health maintenance organization producer under this chapter is subject to the requirements and provisions of North Dakota Century Code chapter 26.1-26.

History: Effective July 1, 1998.

General Authority: NDCC 26.1-18.1-16

Law Implemented: NDCC 26.1-18.1-16

TITLE 65.5

Committee on Protection and Advocacy

JUNE 1998

CHAPTER 65.5-01-01

65.5-01-01-01. Organization and functions of the committee on protection and advocacy.

1. Organization-of-committee-

a.--History Membership. The protection and advocacy project was-created-in-1977-as-the-result-of--a--federal--mandate. On--August-31,--1982,--the--United-States-federal-district court-of-the-district-of-North-Dakota-issued--a--permanent injunction--in--Association-for-Retarded-Citizens-of-North Dakota-v.-Olson, 561-F.Supp. 470--(D.N.D.--1982)--affirmed 713---F.2d---1384---(8th---Cir.---1983)---addressing---the responsibilities-of-the-state-of-North-Dakota-with-respect to---individuals---with--developmental--disabilities.---On August-8,--1984,--Governor--Olson--issued--executive--order 1984-9--which--placed--the--administrative-supervision-and direction-of-the-statewide-protection-and-advocacy-program under-the-executive-committee-of-the-governor's-council-on human-resources.---Following-passage--by--Congress--of--the Protection--and--Advocacy-for-Mentally-Ill-Individuals-Act on-May-23,--1986,--the-project--started--providing--advocacy services--for--individuals--with-mental-illness.---In-1989, the-legislative-assembly-passed-House-Bill-No.-1205--which provided--that--the--governor-shall-appoint-a-committee-on protection--and--advocacy--to--be--responsible---for---the administrative--supervision-of-the-project.---The-bill-also provided-that-the-committee--on--protection--and--advocacy must--operate--independently--of-the-governor-or-any-state agency-that-provides-treatment,--services,--or--habilitation to--persons--with--developmental--disabilities--or--mental

illness.--As-a-result--of--passage--of--the--Developmental Disabilities--Assistance--and--Bill-of-Rights-Act-of-1990, the-governor-may-not-appoint-more-than-one-third--of--the membership-of-the-committee-on-protection-and-advocacy,-or two-members.--The-remaining-five-members-are--selected--by the--members--in--office--through-committee-recruitment is governed by a committee which is made up only of those members appointed as provided by statute. Any vacancies on the committee must be filled not-later-than-sixty--days after--the--date--in--which-the-vacancy-occurs.--Committee members-may-not-be-providers-of--services--or--have--other conflicts-of-interest as provided by statute.

b.--Initially,--four--members--must--be-appointed-for-two-year terms-and-three-members-must--be-appointed--for--one-year terms.---Future--appointments--must--be-for-two-year-terms unless-the-appointee-is-filling-an-uncompleted-term.--Four members---constitute--a--quorum--for--the--transaction--of business.--A-majority-of-the-members-present--is--required for-any-committee-action-

c.--Executive---director:----The--committee--shall--employ--an executive-director.--The-executive-director-shall--perform the--duties--specified--by-statute-and-as-delegated-by-the committee-

2. Committee--officers-----Functions--and--duties Administrative status. The-committee-shall-adopt-by-laws--providing--for--the election---from---its---membership---of--a--chairperson,--vice chairperson,-or-other-officers.--The-terms-and-duties--of--the officers-must-be-established-by-the-by-laws. The committee and project is an administrative unit of the executive branch of state government and is subject to the Administrative Agencies Practice Act, North Dakota Century Code chapter 28-32.

3. Committee officers. The committee shall elect annually from its membership a chair and a vice chair. The duties of these officers are those ordinarily attached to a presiding officer and a vice presiding officer respectively. Any dispute over the duties or powers of one of these officers shall be decided by vote of the committee.

4. Quorum. A majority of committee membership is required to constitute a quorum for the transaction of business. A majority vote of committee members participating in any meeting is required for committee action.

5. Meetings. The committee must meet at least four times each year. A meeting may be an in-person meeting or some members may attend electronically so long as each member attending electronically is able to participate in discussions and vote. If a member attends a meeting electronically but is unable to

participate in discussions or voting, that member may not be counted in determining the presence of a quorum.

6. Conflicts of interests. A committee member may not be a service provider and may not have a fundamental conflict of interests with the lawful purposes of the committee. Each member shall complete and update annually a disclosure statement revealing any potential conflicts of interest.

If a conflict of interest arises in a specific matter, the affected member must abstain from deliberations and voting on the matter that gives rise to the conflict. The committee may disqualify any member from participating and voting on a matter that gives rise to a perceived conflict of interest.

Employees of the protection and advocacy project are not eligible for membership on the committee.

7. Misuse of position. A committee member shall not promote the interests of an employer, business, or other organization while acting under color of approval by the committee or the project. A committee member may not improperly use committee affiliation for personal, commercial, or financial purposes.

8. Executive director. The committee shall employ an executive director who shall perform the duties specified by statute and additional duties as assigned by the committee. Rules of the committee and project shall be promulgated by the executive director with the advice and consent of the committee.

History: Effective December 1, 1990; amended effective January 1, 1992; June 1, 1998.

General Authority: NDCC 25-01.3-02, 25-01.3-03, 28-32-02

Law Implemented: NDCC 25-01.3-02; S.L.-1989, Ch.-333, §-2, 25-01.3-03, 28-32-01

CHAPTER 65.5-01-02

65.5-01-02-01. Definitions. All definitions in North Dakota Century Code section 25-01.3-01 apply in this article except those defined in this section or unless the context requires a different meaning. As used in this article, unless the context otherwise requires:

1. "Access to records" means the right ~~of--inspection-of~~ to inspect records pertaining to ~~a-client~~ an individual or group of ~~clients~~ individuals, including the right to make copies of ~~such~~ those records.
2. "Caretaker" ~~--means--the--person--identified-in-subsection-4-of-North-Dakota-Century-Code-section-25-01.3-01;~~ "Committee" is the committee on protection and advocacy as set forth in North Dakota Century Code section 25-01.3-02.
3. "Client" ~~--means--a--person-identified-in-subsection-8-of-North-Dakota-Century-Code-section-25-01.3-01-as-being--eligible--for-services--including--an--individual--who--is-deceased-or-whose-whereabouts-are-unknown;~~
4. "Consent" means voluntary permission ~~which-is-based-upon-full-disclosure-of-facts-necessary-to-make-the-decision,~~ given by an individual who has been provided full disclosure of relevant facts and who has the ability to understand such those facts. ~~Consent--by Permission from an adult with developmental-disabilities--or--mental--illness,--who--is--not-subject--to--a--decreed--of--incapacity-affecting-competency-to-enter-into-a-legal-contract-under-North--Dakota--Century--Code-chapter--30.1-28,--given-to-a-representative-of-the-project~~ is presumptively a proper valid consent, unless there is clear indication of the absence of full disclosure, voluntariness, or requisite mental ability.
4. "Family member" includes only the following relatives who have maintained significant contacts with the individual involved: spouse, adult children, parents, adult stepchildren, stepparents, adult siblings, grandparents, and adult grandchildren.
5. "Grievance" is a written document that initiates an administrative review as described in chapter 65.5-01-05. A properly written grievance includes:
 - a. The name of the individual who is presenting the grievance;
 - b. The individual's status as applicant for services, a recipient of services, or a former recipient of services

from the project; a parent of a minor applicant for, recipient of, or former recipient of services from the project; an individual's guardian acting on behalf of the individual, who is an applicant for, recipient of, or former recipient of services from the project;

- c. The place where the incident occurred;
- d. The date of the action or inaction that is the subject of the grievance;
- e. The names of the project employees involved; and
- f. A brief summary of the relevant facts.

5- 6. "Guardian" means--a--person--appointed--to--represent--a--ward pursuant-to-North--Dakota--Century--Code--chapter--30.1-27--or 30.1-28 has the meaning assigned to that term in North Dakota Century Code section 30.1-01-06.

7. "Individual" means a human being, including one who is deceased or whose whereabouts is unknown.

8. "Inquiry" is a written document that initiates a public inquiry as described in chapter 65.5-01-06. A properly written inquiry includes:

- a. The name of the individual who is initiating the public inquiry;
- b. The status of the individual as a family member of an individual with a disability, service provider, or member of the general public;
- c. An identification of the inquiry as concerned with a specific incident or with a general policy, procedure, or operations of the project;
- d. If the inquiry concerns a specific incident:
 - (1) The date of the incident;
 - (2) The place where the incident occurred;
 - (3) The name of any service provider involved;
 - (4) The name of any individuals with disabilities who were primarily involved in the incident;
 - (5) The names of any project employees involved; and
 - (6) A brief summary of the relevant facts; and

e. If the inquiry concerns a general policy, procedure, or operations of the project:

(1) Identification of the general policy, procedure, or operations of the project that are the subject of the inquiry;

(2) If possible, an example or examples of undesirable effects of the current general policy, procedure, or operations of the project that are the subject of the inquiry; and

(3) Any proposed change in the general policy, procedure, or operations of the project that are the subject of the inquiry.

6- 9. "Monitoring" means the review of habilitation ~~or~~, treatment plans, program plans, or educational plans, facilities and programs, and all other services and care provided to persons with developmental disabilities ~~or mental illness~~, including implementation of such these plans, services, and care.

7- ~~"Probable cause" means reasonable grounds for the belief that a fact is more likely true than not true.~~

10. "Plan" means the product of a team, acting under law, to guide interaction with an individual or the range of services to be provided to an individual. This includes all plans whether designated as an essential lifestyle plan, individual education plan, individual habilitation plan, individual justice plan, individual program plan, individual service plan, individual treatment plan, individualized written rehabilitation program, or otherwise.

8- 11. "Project" is the protection and advocacy project, as defined in subsection 14 of set forth in North Dakota Century Code section 25-01.3-01 25-01.3-06.

12. "Project's decision" is issued by the executive director after an administrative review conducted pursuant to chapter 65.5-01-05. This decision must include the reasons that support the decision and any action the project will take to implement the decision. This decision must not disclose any confidential information that the individual does not have the right to access. The decision must inform the individual that the project's decision may be appealed to the committee.

9- 13. "Records" means all records including ~~those identifying specific clients, including staff notes and logs maintained by a facility, all individual records of treatment or care facilities including reports prepared by any staff of a facility rendering care or treatment, reports by an agency investigating incidents of abuse, neglect, exploitation, and~~

injury-occurring-at-such-facility;-discharge-planning-records;
hospital;-psychiatric;-psychological;-medical-care-records;
school-or-education-records;-and-records-otherwise-maintained
by-facilities-regarding-general-care-of-clients;-including
facility-policies-and-regulations;-staff-ratios;-staff
training-records;-and-employee-records of every kind and
nature.

14. "Service provider" is an individual or entity that directly
provides treatment or services to address needs related to a
disability. Examples include services that address economic,
educational, emotional, employment, housing, medical, mental
health, personal, physical, psychological, psychiatric, or
social needs. "Service provider" includes employees and board
members of a service provider. Advocacy and self-advocacy
training and support are not considered services for purposes
of this definition.

History: Effective December 1, 1990; amended effective June 1, 1998.

General Authority: NDCC 25-01.3-02, 25-01.3-03, 25-01.3-07, 28-32-02

Law Implemented: NDCC 25-01.2-03, 25-01.3-07; S.L.-1989, Ch.-333, §-7,
30.1-01-06

CHAPTER 65.5-01-03

65.5-01-03-01. Access to records - Client--representation Representation - Investigation of reports of abuse, neglect, or exploitation and complaints.

1. The project will have access to records of a-client an individual for representation of ~~the-client-or~~ that individual and for investigation of complaints or reports of abuse, neglect, or exploitation; ~~or--complaints;--when.~~ When those records are subject to confidentiality requirements imposed by statute, administrative regulation, or court order, the project will have access to those records consistent with such that statute, administrative regulation, or court order, if:
 - a. For an adult, release access is consented to by a-client, the individual or a-client's the individual's guardian.
 - b. For a minor, release access is consented to by a the minor's parent or guardian.
 - c. The client individual is unable to provide consent by reason of mental or physical condition, does not have a guardian or other legal representative, and either:
 - (1) The project has received a report or complaint as ~~defined--in--North--Dakota---Century---Code---section 25-01-3-01;~~ or
 - (2) There is probable cause to believe:
 - (a) The client individual has been subjected to abuse, neglect, or exploitation; or
 - (b) There is a lack of compliance with federal or state laws or rules ~~with-respect-to~~ that affect the client's individual's habilitation or treatment plans, program plans, educational plans, or other services and care.
 - d. A--client's An individual's guardian has refused to consent, the project has probable cause to believe the guardian is not acting in the best interest of the client individual, and either:
 - (1) The project has received a report or complaint as ~~defined--in--North--Dakota---Century---Code---section 25-01-3-01;~~ or
 - (2) There is probable cause to believe:

- (a) The ~~client~~ individual has been subjected to abuse, neglect, or exploitation; or
 - (b) There is a lack of compliance with federal or state laws or rules ~~with-respect-to~~ that affect the ~~client's~~ individual's habilitation or treatment plans, program plans, educational plans, or other services and care.
2. The project will have access to a facility's records maintained-by-a-facility-for-representation-of-a-client in order to represent an individual or for-investigation-of to investigate complaints or reports of abuse, neglect, or exploitation,--or--complaints,--when--these--records--are--not subject-to-confidentiality-requirements--imposed--by--statute, administrative--regulation,--or-court-order. The project will maintain the confidentiality of all records that have been designated confidential by another law, to the extent this is possible without compromising the primary responsibilities assigned to the project by law.

History: Effective December 1, 1990; amended effective June 1, 1998.

General Authority: NDCC 25-01.3-02, 25-01.3-07, 28-32-02

Law Implemented: NDCC 25-01.3-07; S.L.-1989, Ch.-333, §-7

CHAPTER 65.5-01-04

65.5-01-04-01. Authority of the project - Representation.

1. Representation for specific ~~clients~~ individuals may be provided by the project consistent with North Dakota Century Code section 25-01.3-11 if:
 - a. For an adult, services are consented to by the ~~client~~ individual or the ~~client's~~ individual's guardian.
 - b. For a minor, services are consented to by the ~~client's~~ minor's parent or ~~the-client's~~ guardian.
 - c. The ~~client~~ individual is unable to provide consent by reason of mental or physical condition, does not have a guardian or other legal representative, and either:
 - (1) The project has received a report or complaint as ~~defined--in--North--Dakota---Century---Code---section 25-01:3-01~~; or
 - (2) There is probable cause to believe:
 - (a) The ~~client~~ individual has been subjected to abuse, neglect, or exploitation; or
 - (b) There is a lack of compliance with federal or state laws or rules ~~with-respect-to~~ that affect the client's individual's habilitation or treatment plans, program plans, educational plans, or other services and care.
 - d. ~~A---client's~~ An individual's guardian has refused to consent, the project has probable cause to believe the guardian is not acting in the best interest of the ~~client~~ individual, and either:
 - (1) The project has received a report or complaint as ~~defined--in--North--Dakota---Century---Code---section 25-01:3-01~~; or
 - (2) There is probable cause to believe:
 - (a) The ~~client~~ individual has been subjected to abuse, neglect, or exploitation; or
 - (b) There is a lack of compliance with federal or state laws or rules ~~with-respect-to~~ that affect the client's individual's habilitation or

treatment plans, program plans, educational plans, or other services and care.

2. The project shall attempt to obtain a signed authorization from each ~~client~~ individual to whom representation is offered. A copy of such signed authorization, if received, must be provided to the ~~client~~ individual and the ~~client's~~ individual's guardian.
3. This section does not limit the ability of the project to represent ~~clients~~ individuals under 29 U.S.C. 794e, 42 U.S.C. 6042, 42 U.S.C. 10805, or North Dakota Century Code section 25-01.3-06 to-the-extent-authority-is-granted-to--the--project thereunder.

History: Effective December 1, 1990; amended effective June 1, 1998.

General Authority: NDCC 25-01.3-02, 25-01.3-03, 25-01.3-06, 28-32-02

Law Implemented: NDCC 25-01.3-06, 25-01.3-11

65.5-01-04-02. Authority of the project - Investigation. The project may investigate incidents of possible abuse, neglect, or exploitation reported to the project or which the project has probable cause to believe have occurred, pursuant to North Dakota Century Code chapter 25-01.3. If the project determines that a ~~client~~ an individual is unable to protect himself or herself from abuse, neglect, or exploitation, the project may take such action as is necessary to provide for protection of the ~~client~~ individual through essential services, subject to the limitations of North Dakota Century Code section 25-01.3-11.

History: Effective December 1, 1990; amended effective June 1, 1998.

General Authority: NDCC 25-01.3-02, 25-01.3-03, 25-01.3-06, 28-32-02

Law Implemented: NDCC 25-01.3-06, 25-01.3-11

CHAPTER 65.5-01-05

STAFF COMMENT. Chapter 65.5-01-05 contains all new material and is not underscored so as to improve readability.

CHAPTER 65.5-01-05 GRIEVANCE PROCEDURE

Section

65.5-01-05-01 Informal Process
65.5-01-05-02 Procedures

65.5-01-05-01. Informal process. Disputes covered by this rule will be determined by administrative review which is an informal process.

History: Effective June 1, 1998.

General Authority: NDCC 25-01.3-02, 25-01.3-03

Law Implemented: NDCC 25-01.3-03, 25-01.3-06(9), 25-01.3-10, 28-32-05.1, 28-32-09

65.5-01-05-02. Procedures.

1. An individual has the right to administrative review of the actions or inaction of a project employee. This right is available only to an individual who is:
 - a. An applicant for services from the project;
 - b. A recipient or former recipient of services from the project;
 - c. A parent of a minor applicant for, recipient of, or former recipient of services from the project; or
 - d. An individual's guardian acting on behalf of the individual, who is an applicant for, recipient of, or former recipient of services from the project.
2. The administrative review that is available under this rule applies only to:
 - a. The denial of services to the individual by the project;
 - b. The amount, quality, or kind of services provided to the individual by the project; and
 - c. The legality of activities or policies of the project.

3. Administrative review by the project is an informal process with the following features:
 - a. Every reasonable accommodation will be provided if requested in advance by the individual to facilitate full participation despite any disability or alleged disability.
 - b. The process is initiated by a written grievance mailed or delivered to the executive director of the project. If the individual needs help to write the grievance, the project will assist the individual to get someone to help write the grievance.
 - c. The individual will be allowed to review and copy relevant documents that were relied upon by the project to make the decision that underlies the grievance. If the supplier of a document has prohibited the project from giving the document to the individual, the individual will be advised of the existence of the document but will have to obtain a copy from the source. If a document contains confidential information about another individual, the project will conceal that information and provide only a sanitized version of the document. If the document cannot be sanitized, the document will not be provided to the individual.
 - d. The executive director may designate a project employee to investigate the grievance. The executive director may not designate this duty to the employee whose action or inaction is the subject of the grievance.
 - e. The individual has the right to have a personal interview included as part of the investigation of the grievance.
 - f. If a project employee has been designated by the executive director to investigate the grievance, that employee may recommend a decision to the executive director. The executive director will make the project's decision in each case.
4. The individual may appeal the project's decision to the committee.
 - a. The committee's review of the decision is limited to a determination of whether it was made in accordance with the project's policies and priorities.
 - b. The review will be considered at the next regularly scheduled committee meeting if it occurs at least ten days after receipt of the written appeal.

- c. If the committee determines the decision is consistent with the project's policies and priorities, the committee must affirm the decision. If the committee determines the decision is not consistent with the project's policies and priorities, it must direct the executive director to reconsider the decision and revise it to conform to the project's policies and priorities.
 - d. The committee must protect confidentiality to the maximum extent permitted by law, considering a protected individual's right to waive that protection. When committee review of a decision might jeopardize confidentiality, that review must be conducted in a closed meeting that may be attended by only those people who are authorized under law to have access to all the confidential material that may be disclosed during that review.
5. The following time guidelines apply:
- a. The administrative review must be initiated with a written grievance within fifteen days of the action or inaction that is the subject of the grievance.
 - b. The project must acknowledge receipt of the written grievance within seven days of receipt.
 - c. The investigation of the grievance must be completed within fifteen days of acknowledging receipt of the grievance unless there are reasonable delays in setting up a personal interview with the individual. If scheduling the personal interview causes reasonable delay, the investigation must be completed within ten days after the interview.
 - d. The executive director must issue a decision within fifteen days of completing of the investigation. The decision will be immediately mailed to the individual by certified mail.
 - e. The individual must file an appeal from the project's decision by sending or delivering a written notice of appeal to the committee within fifteen days of receipt of the decision.
 - f. The committee must issue its determination of an appeal within fifteen days of the meeting at which it is considered. The committee's determination will be immediately mailed to the individual by certified mail.
 - g. Any revised decision of the executive director must be issued within fifteen days of receipt of the committee's determination that it must be reconsidered. The committee

will review any revised decision by the committee on protection and advocacy within fifteen days of its issuance. Any revised decision will be mailed to the individual by certified mail from the committee no later than fifteen days after its review.

History: Effective June 1, 1998.

General Authority: NDCC 25-01.3-02, 25-01.3-03

Law Implemented: NDCC 25-01.3-03, 25-01.3-06(9), 25-01.3-10,
28-32-05.1, 28-32-09

CHAPTER 65.5-01-06

STAFF COMMENT. Chapter 65.5-01-06 contains all new material and is not underscored so as to improve readability.

CHAPTER 65.5-01-06 PUBLIC INQUIRY

Section

65.5-01-06-01	Purpose
65.5-01-06-02	Procedures

65.5-01-06-01. Purpose. The public inquiry process is available to facilitate communication among the project and members of the public when more informal means of communication are not appropriate. Any issue that is not eligible for treatment within the administrative review process is eligible for handling under the public inquiry process. This includes issues presented by people who are not eligible to utilize the administrative review process, for example, service providers and the general public.

History: Effective June 1, 1998.

General Authority: NDCC 25-01.3-02, 25-01.3-03

Law Implemented: NDCC 25-01.3-02

65.5-01-06-02. Procedures.

1. Any issue related to policy, procedure, or operations of the project may be presented for consideration through the public inquiry process.
2. The public inquiry process is initiated by sending or delivering a written inquiry to the project's executive director. If the inquiry relates to a specific incident, it must be sent or delivered to the executive director within fifteen days of that incident. An inquiry may be submitted at any time for general consideration of policies, procedures, or operations of the project.
3. Upon receipt of a written inquiry, the project will acknowledge receipt within ten days.
4. The project will invite input to its consideration of a public inquiry as follows:
 - a. If the inquiry involves a specific incident and a specific service provider:

- (1) The inquirer will be invited to provide additional information directly to the executive director who may designate a project employee to receive that information and to develop any factual inquiry.
 - (2) Based upon that inquiry, the executive director will decide upon any appropriate action to be undertaken by the project. Notice of any action will be provided to the inquirer, subject to the project's obligations to protect confidentiality.
 - (3) The inquirer may ask the committee to review the executive director's decision. The committee has complete discretion in determining whether to review that decision. If the committee exercises its discretion to review that decision, the committee's review will be limited to determining whether the decision is consistent with policies and procedures of the project. If the committee determines the decision is consistent with the project's policies and procedures, the committee must affirm the decision. If the committee determines the decision is not consistent with the project's policies and procedures, it must direct the executive director to reconsider the decision and revise it to conform to the project's policies and priorities.
- b. If the inquiry involves a general policy, procedure, or operation of the project and does not involve a specific incident or specific service provider:
- (1) The project may invite additional information or advice from appropriate people among the general public. This may include written input or meetings at which input may be offered.
 - (2) Based upon the input received, the executive director will decide upon any appropriate action to be undertaken by the project. Notice of any action will be provided to the inquirer, subject to the project's obligations to protect confidentiality. Notice may be provided to the general public, depending upon the nature of the policy, procedure, or operation that has been considered.
 - (3) Anyone may ask the committee to review the executive director's decision. The committee has complete discretion in determining whether to review that decision. If the committee exercises its discretion to review that decision, the committee's review will focus on determining the best policies, procedures, and operations to govern the project. The committee

has complete discretion in shaping its response to this review.

- c. The committee must protect confidentiality to the maximum extent permitted by law, considering a protected individual's right to waive that protection. When committee review of a public inquiry might jeopardize confidentiality, that review must be conducted in a closed meeting that may be attended by only those people who are authorized under law to have access to all the confidential material that may be disclosed during that review.

History: Effective June 1, 1998.

General Authority: NDCC 25-01.3-02, 25-01.3-03

Law Implemented: NDCC 25-01.3-02

TITLE 69

Public Service Commission

JULY 1998

CHAPTER 69-02-05

69-02-05-04. Depositions, interrogatories, and other discovery.

- 1:--A--party--must--request--permission--to--conduct--discovery--in writing;--showing--good--cause--and--obtain--written--approval--before undertaking--discovery.
- 2:--The--deposition--of--a--witness--required--in--any--proceeding--before the--commission--may--be--taken--in--accordance--with--the--North Dakota--Rules--of--Civil--Procedure.
- 3:--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--the--costs--must--be--paid--by--the--party--at--whose instance--the--deposition--is--taken: Repealed effective July 1, 1998.

History: Amended-effective-September-1,-1992:
General Authority: NDCC-28-32-02
Law Implemented: NDCC-49-01-07

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of January 1, ~~1997~~ 1998, are adopted by reference:

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

Copies of these regulations may be obtained from:

Public Service Commission
State Capitol
Bismarck, North Dakota 58505-0480

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

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

CHAPTER 69-10-01

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

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

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

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

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-01-02. Installation by other than a registered service person. A person, other than a registered service person, who installs a commercial weighing or measuring device must report the installation to the commission within ~~five~~ seven working days from the day the installation was completed. The device must then be certified by a weights and measures inspector or a registered service person, as allowed by section 69-10-04-02.1, before the device can be used in commerce.

History: Amended effective April 1, 1992; August 1, 1993; July 1, 1997; July 1, 1998.

General Authority: NDCC 64-02-03

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

69-10-01-02.1. Certification. A weighing and measuring device may only be certified for commercial use by the commission or a registered service person. Certification must take place at the location of intended use unless the device is otherwise designed, in which case the device must be tested by the commission at the location of intended use within ~~thirty-days~~ fifteen months of its installation. The commission may certify a weighing or measuring device by actual testing of the device, or by witnessing the test.

History: Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998.

General Authority: NDCC 64-02-03

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

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

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

General Authority: NDCC 64-02-03

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

69-10-01-03.1. Registration of a new or moved commercial device. A new commercial weighing or measuring device, or, one that has been moved from its original location of certification, must be reported to the commission, in writing, at least ~~twenty-four--hours~~ seven working days prior to its use.

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

General Authority: NDCC 64-02-03

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

69-10-01-10.1. Retention of records. A record of a scale such as a weigh ticket, weigh receipt, meter printer ticket, or any other record resulting from the operation of any commercial weighing or measuring

device must be maintained on file at the place of sale for a period of not less than two years from the date of sale.

History: Effective July 1, 1998.

General Authority: NDCC 64-02-03

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

CHAPTER 69-10-03

69-10-03-01. National Institute of Standards and Technology (NIST) Handbook No. 44. Except as modified in this article, the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices in North Dakota shall conform to the following sections and subsections of the 1996 1997 edition of the United States department of commerce, NIST Handbook No. 44, which is adopted by reference: all of section 1, all of section 2, subsections 3.30, 3.31, 3.32, 3.33, 3.35, and 3.37 of section 3, subsections 5.50, 5.51, and 5.52 of section 5, and, all of appendices A, B, C, and D. In the event of a conflict between the NIST Handbook No. 44 and North Dakota laws and rules, North Dakota laws and rules shall prevail. Copies of the handbook may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

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

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-07

CHAPTER 69-10-04

69-10-04-01.1. Registration of service companies. A registered service company has the authority to maintain state-certified field standards and to employ a registered service person to design, install, and repair a commercial weighing or measuring device as described in North Dakota Century Code section 64-02-13.

History: Effective July 1, 1998.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-02.2. Application for registration of a service company. An annual application for registration as a registered service company must be filed with the commission prior to conducting any service work on commercial weighing or measuring devices and must include:

1. Acceptable evidence that all of the service standards used to test and approve commercial weighing or measuring devices have been certified under section 69-10-03-02;
2. A copy of the company's standardized report form, if not currently on file with the commission, as required by section 69-10-04-05;
3. A sample of the company's "tested and approved" sticker, if not currently on file with the commission, as required by section 69-10-01-03; and
4. An application for registration.

History: Effective July 1, 1998.

General Authority: NDCC 64-02-03

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

69-10-04-03. Revocation of registration. The commission may, for good cause, suspend or revoke a registered service person's permit or a registered service company's permit. A person or company not registered with the commission but qualified to install a commercial weighing or measuring device may install but may not service, repair, or recondition a commercial weighing or measuring device.

History: Amended effective April 1, 1992; July 1, 1997; July 1, 1998.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-07. Adequate field standard requirements - Exception. All state weights and measures inspectors and registered service

companies shall make available minimum test weights and test loads as required by NIST handbook No. 44, table 4, during tests of commercial weighing devices. However, during highway load restrictions as announced by the North Dakota department of transportation, shift tests, load-bearing tests, and section tests required by section 69-10-02-21 and NIST handbook No. 44, table 4, may be performed with a test load of ten thousand pounds [4535.9 kilograms].

History: Effective July 1, 1998.

General Authority: NDCC 64-02-03

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

69-10-04-08. Devices taken out of service. A state weights and measures inspector or a registered service person must report to the commission, in writing, within seven working days, the removal of a commercial device from service.

History: Effective July 1, 1998.

General Authority: NDCC 64-02-03

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

TITLE 71
Retirement Board

JULY 1998

CHAPTER 71-02-02

71-02-02-01. Membership - General rule. Each eligible employee shall become a member of the public employees retirement system upon filing a membership form with the office, and the beginning of contributions to the fund. In addition, the following requirements apply:

1. A temporary employee must ~~complete--a~~ submit a completed participation agreement before becoming a member. Application must be completed within ~~---Six~~ six months of the date of hire as a temporary employee; or within six months of a change in status from a permanent ~~position~~ to temporary position.
2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member for the remainder of the plan year.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.
6. ~~An---elected---official~~ Elected officials of participating counties and elected state officials, at their individual

option, must enroll or waive participation in writing within six months of taking office or beginning a new term.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1992; June 1, 1996; July 1, 1998.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-01(3), 54-52-02.9, 54-52-05

CHAPTER 71-02-03

71-02-03-05. Coordination of multiple plan membership. Upon providing proper documentation of retirement plan participation, a member who meets the following criteria may use service credit in the teachers' insurance retirement fund for the purpose of meeting the rule of ~~eighty-eight~~ eighty-five or for vesting purposes under North Dakota Century Code chapter 54-52. The member:

1. Must have participated in both the teachers' fund for retirement and the teachers' insurance and annuity association of America-college retirement equities fund.
2. Must have elected to transfer the member's teachers' insurance retirement fund account balance to teachers' insurance and annuity association of America-college retirement equities fund in connection with the administrative coordination of the various state retirement plans as provided under chapter 133 of the 1973 North Dakota Session Laws.
3. Did not have a cash out since the time of the transfer of funds.
4. Did not relinquish such service credit in writing.

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

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-01(11)(12)(16), 54-52-17

CHAPTER 71-02-04

71-02-04-13. Reduced benefit option. A participating member may enter into an agreement with the retirement board to receive an actuarially adjusted monthly retirement benefit to accommodate the less than full payment for years of service credit necessary to meet the rule of ~~eighty-eight~~ eighty-five, if the following criteria are met:

1. The participating member is at least fifty years old and has twenty or more years of credited service in the retirement system.
2. The amount of time to be purchased, or sick leave to be converted, does not exceed one hundred twenty months.
3. The service cannot be purchased, or the sick leave cannot be converted, prior to the participating member drawing a retirement benefit because it would be in violation of 26 U.S.C. 415.

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

General Authority: NDCC 54-52-04

Law Implemented: NDCC 39-03.1-11.1, 54-52-17.8

CHAPTER 71-02-05

71-02-05-05. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit. A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. Upon receiving a disability determination, the interest accrual shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches normal retirement age. The disability benefit will be calculated and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

History: Effective September 1, 1982; amended effective November 1, 1990; January 1, 1992; July 1, 1998.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-09. Interest accrual on accumulated contributions for disabled annuitants. Effective January 1, 1998, interest must accrue on accumulated contributions as defined in article 71-01 until the disabled annuitant reaches normal retirement age, the account is closed, or until benefit payments commence to the member's beneficiary.

History: Effective July 1, 1998.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

CHAPTER 71-02-06

71-02-06-01. Conditions for return.

1. The accumulated contributions of a member who terminates permanent employment:
 - 1- a. Before accumulating five years of service credit shall be automatically refunded unless the member elects to remain in an inactive status.
 - 2- b. After accumulating five years of service credit shall be refunded upon application filed with the executive director.
 - 3- c. The termination date for purposes of processing an application for refund or rollover must be the last date for which a member receives salary except for a member who is on an approved leave of absence. For members who are paid salary in any month following actual separation from employment if the salary is received after the normal processing date, the termination date for purposes of processing the application must be the same date as the date that the last paycheck was issued as salary.
2. Retirement contributions must be returned if a membership form SFN 2561 has not been filed with the office. Contributions will be returned until proper membership enrollment forms have been filed.

History: Amended effective November 1, 1990; June 1, 1996; July 1, 1998.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06, 54-52-17

71-02-06-04. Contributions paid in a month other than month earned. Adjustments for the following may only be made for individuals who are within ten years of the earlier of age fifty-five or meeting the rule of ~~eighty-eight~~ eighty-five:

1. Participating employers shall report bonuses paid when remitting the contribution associated with the bonus.
2. Bonuses paid by a participating employer will be prorated equally as actual compensation paid over the term of the intended bonus period.
3. Upon receiving notice, contributions received in a month other than the month earned will be assigned to the appropriate month.

History: Effective June 1, 1993; amended effective June 1, 1996; July 1, 1998.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05, 54-52-06

71-02-06-08. Retirement contributions for individuals working less than a forty-hour workweek. Retirement contributions must be made on wages paid to eligible permanent employees who are regularly scheduled for less than forty hours per week but who work more--than at least twenty hours per week at--intermittent--intervals during a twelve-month period.

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

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05, 54-52-06

CHAPTER 71-02-07

71-02-07-02. Return to service - Retired member. The benefits of a retired member who returns to permanent employment shall be suspended without interest accruing on the suspended account. Upon ~~final retirement~~ subsequent termination, the member's benefit shall be recalculated as follows:

1. If the period of subsequent employment is less than two years, the member may elect:
 - a. A return of the member's contributions made after reemployment, and the suspended benefit restored, adjusted for the member's age at ~~final--retirement~~ subsequent termination and for benefit payments received prior to reemployment; or
 - b. A recalculation of the member's benefit based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at final retirement, benefit payments received prior to reemployment, and salary and service credits accrued during the period of subsequent employment.
2. If the period of subsequent employment is more than two years, the member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member's age and salary earned during the period of reemployment together with total service credits earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment. If a different option is selected at the second retirement date, the member and office will submit information as required to make an actuarial determination of the elected benefit and the related payment of such.

History: Amended effective November 1, 1990; July 1, 1998.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

CHAPTER 71-03-02

HEALTH MAINTENANCE ORGANIZATION

[Repealed effective July 1, 1998]

CHAPTER 71-03-03

71-03-03-01. Enrollment. An eligible employee is entitled to coverage the first of the month following the month of employment, provided the employee submits an application for coverage within the first thirty-one days of employment or eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health insurance plan.
2. Addition of a spouse. An employee who previously waived coverage is also eligible to enroll for coverage at the time the employee's spouse is enrolled.
3. Addition of a dependent as a result of birth, adoption, placement for adoption, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage is also eligible to enroll for coverage at the same time that the employee's eligible dependent is enrolled.

History: Effective October 1, 1986; amended effective July 1, 1994; June 1, 1996; July 1, 1998.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-03-02. Late enrollment. An eligible employee failing to submit an application for coverage within the first thirty-one days of employment ~~must-furnish-evidence-of-insurability-on-the-employee-and-any dependent-for-whom-coverage-is-desired---Any-person-may-be-denied coverage-based-on-the-carrier's-underwriting-requirements~~ or eligibility for a special enrollment period may enroll during the annual open enrollment and may be subject to a twelve-month waiting period for preexisting conditions. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

History: Effective October 1, 1986; amended effective June 1, 1996; July 1, 1998.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-03-05. Open Special enrollment for certain qualifying events. An eligible employee, retiree, or surviving spouse who elects to take a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America-college retirement equities fund is eligible for coverage with the group health insurance program.

1. The employee, retiree, or surviving spouse must submit application for coverage within thirty-one days from one of the following qualifying events:
 - a. The month in which the eligible employee or retiree turns age sixty-five or becomes eligible for medicare.
 - b. The month in which the eligible employee's or retiree's spouse turns age sixty-five or becomes eligible for medicare.
 - c. The month in which the eligible employee terminates employment.
 - d. The month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems outlined above.
 - e. The month in which an eligible employee or retiree who is covered through a spouse's plan becomes ineligible for the spouse's plan due to divorce, death, loss of employment, reduction in hours or other events which may cause loss of coverage as determined by the board.
 - f. The month in which the eligible employee or retiree is no longer eligible for employer sponsored insurance, including coverage provided under the Consolidated Omnibus Budget Reconciliation Act.
2. Coverage will become effective on the first day of the month following the month in which the qualifying event occurred. If an application is not submitted ~~on-time-and-subsequent coverage-is-desired~~ within thirty-one days of a qualifying event, the eligible ~~employee-or-retiree~~ individual must submit ~~evidence-of-insurability--and--coverage--may--be--denied----~~ if coverage--is--accepted,--coverage-will-become-effective-on-the first-day-of-the-month-following-approval-by--the--carrier be considered to have waived coverage and may not be enrolled unless the individual meets the criteria of another qualifying event. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.
3. Other individuals eligible for the health insurance plan include a surviving spouse who is not receiving a qualified monthly retirement benefit from one of the eligible retirement systems outlined above, but who was a covered dependent on the eligible retiree's group health insurance plan at the time of the eligible retiree's death, if there is no lapse in coverage.
4. Individuals not eligible for the group health insurance plan include:

- a. A former employee who received a refund of the employee's retirement account.
- b. A nonspouse beneficiary (eligible for Consolidated Omnibus Budget Reconciliation Act).
- c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for the Consolidated Omnibus Budget Reconciliation Act (if eligible) ends and the month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems.
- d. A formerly deferred retiree who received a refund of the retiree's retirement account.
- e. A surviving spouse of a nonvested employee eligible for the Consolidated Omnibus Budget Reconciliation Act.
- f. A surviving spouse of a former employee who received a refund of the employee's retirement account.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03; Consolidated Omnibus Budget Reconciliation Act (Pub. L. 99-272; 100 Stat. 222; 26 U.S.C. 162 et seq.)

71-03-03-09. Leave without pay. An employee on an approved leave without pay may elect to continue coverage for the periods specified in the plans for life insurance, hospital and medical coverages by paying the full premium to the agency. An eligible employee electing not to continue coverage during a leave of absence is entitled to renew coverage for the first of the month following the month that the employee has returned to work if the employee submits an application for coverage within the first thirty-one days of returning to work. An eligible employee failing to submit an application for coverage within the first thirty-one days of returning to work ~~must-furnish-evidence--of insurability--on--the--employee--and--any-dependent-for-whom-coverage-is desired--Any-person-may-be--denied--coverage--based--on--the--carrier's underwriting--requirements~~ or eligibility for a special enrollment period, may enroll during the annual open enrollment and may be subject to a twelve-month waiting period for preexisting conditions. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

History: Effective October 1, 1986; amended effective November 1, 1990; June 1, 1996; September 1, 1997; July 1, 1998.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

CHAPTER 71-03-04

71-03-04-05. Premium for basic ~~one-thousand-two-hundred-fifty dollar~~ term life insurance. All state departments and those political subdivisions that elect to participate in the group life insurance program shall must pay the board the full premium for the basic ~~one thousand--two--hundred--fifty-dollar~~ term life insurance for each of its eligible employees.

History: Effective October 1, 1986; amended effective July 1, 1994; July 1, 1998.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-01(7)

CHAPTER 71-03-06

71-03-06-01. Enrollment.

1. New eligible employees of a participating political subdivision are entitled to coverage the first of the month following the month of employment, if the employee submits an application for coverage within the first thirty-one days of employment, or eligibility for one of the following special enrollment periods:
 - a. Loss of coverage under any other health insurance plan.
 - b. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage is also eligible to enroll for coverage at the time the employee's spouse is enrolled.
 - c. Addition of a dependent as a result of birth, adoption, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage is also eligible to enroll for coverage at the same time that the employee's eligible dependent is enrolled.
2. Eligible employees of qualifying political subdivisions are entitled to individual coverage, ~~subject to evidence of insurability~~ if the political subdivision for which the employee works does not offer its employees a group health insurance plan and the employee submits an application for coverage within the first thirty-one days of employment or eligibility for one of the special enrollment periods as follows:
 - a. Loss of coverage under any other health insurance plan.
 - b. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage is also eligible to enroll for coverage at the time the employee's spouse is enrolled.
 - c. Addition of a dependent as a result of birth, adoption, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage is also eligible to enroll for coverage at the same time that the employee's eligible dependent is enrolled.

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

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52.1-03.1, 54-52.1-03.4

71-03-06-02. Late enrollment. An eligible employee failing to submit an application for coverage within the first thirty-one days of employment ~~must--furnish--evidence--of--insurability--for--the--employee--and--any--dependents--for--whom--coverage--is--desired---Any--person--may--be--denied--coverage--based--on--the--carrier's--underwriting--requirements~~ or eligibility for a special enrollment period may enroll during the annual open enrollment and may be subject to a twelve-month waiting period for preexisting conditions. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

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

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

CHAPTER 71-04-06

71-04-06-10. Income tax withholding. The provider shall, ~~at the request of the participant,~~ allow for the withholding of federal and state income taxes from the benefit payments and file the required reports of the withholdings with the appropriate federal and state agencies. This includes the delivery of W2's to annuitants or terminated participants.

History: Effective April 1, 1989; amended effective July 1, 1998.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-07

71-04-07-01. Application.

1. The participant upon separation from service may apply for settlement of the participant's account by completion of a benefit selection form. Application for benefits must be completed within sixty days of separation from service. If no application is received by the public employees retirement system within sixty days, a letter will be sent to the provider directing that the funds be distributed to the member within sixty days. A copy of the letter will be sent by certified mail to the participant. If the participant sends an application to the public employees retirement system prior to distribution, the executive director shall inform the provider to distribute the funds in a manner consistent with the application.
2. An active participant may submit a written request for a lump sum distribution of the participant's account balance without separating from service if:
 - a. The total value of the deferred assets in the program is less than ~~three-thousand-five-hundred-dollars~~ the maximum federal limit for such distributions from 457 plans;
 - b. The participant has not contributed to the plan in the preceding two years; and
 - c. The participant has not received a distribution from the plan.

History: Effective April 1, 1989; amended effective July 1, 1994; September 1, 1997; July 1, 1998.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-05

CHAPTER 71-05-02

71-05-02-04. Optional benefits. An individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. These options are not available if the calculation of the optional benefit to which the member is entitled would result in an amount that is less than one hundred dollars.

1. One hundred percent joint and survivor benefit. A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary supplies a marriage certificate and death certificate and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs. If the designated beneficiary predeceases the member, the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death if written notification of death and a death certificate have been submitted.
2. Fifty percent joint and survivor benefit. A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11 and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, if the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. If the designated beneficiary predeceases the member, the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death if written notification of death and a death certificate have been submitted.
3. Five-year or ten-year certain option. A member may receive the actuarial equivalent of the member's normal, early, or

deferred vested retirement pension payable for life with a five-year or ten-year certain feature, as designated by the member.

History: Effective July 1, 1998.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11.4(d)

71-05-02-05. Interest accrued on accumulated contributions for disabled annuitants. Effective January 1, 1998, interest shall accrue on accumulated contributions as defined in article 71-01 until the disabled annuitant reaches normal retirement age or dies.

History: Effective July 1, 1998.

General Authority: NDCC 39-03.1-06, 39-03.1-1-11

Law Implemented: NDCC 39-03.1-11.4(d)

CHAPTER 71-05-04

71-05-04-01. Service credit - General rule. A member receives credit for each month a contribution is made except--if--the--enrollment date--is--after--the--fifteenth--of--the--month.--If--the--enrollment--date--is--after--the--fifteenth;--then--the--member's--enrollment--date--will automatically--be--the--following--month.

History: Effective October 1, 1991; amended effective July 1, 1998.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

CHAPTER 71-06-01

71-06-01-03. For individuals receiving more than one benefit entitled to retiree health insurance credit.

1. If an individual is receiving more than one benefit from the public employees retirement system, or other participating system; one as a surviving spouse, and the other based upon their own service credit, the higher of the two retiree health insurance credits will be applied towards the individual's uniform group health insurance premium. Under no circumstances will these two benefits be combined. If the surviving spouse benefit is the larger of the two benefits, and is limited in duration, the individual will be eligible to utilize his or her own retiree health insurance credit upon cessation of surviving spouse benefits.
2. If an individual is receiving a public employees retirement system retirement benefit as a surviving spouse and is also an active contributor to either the public employees retirement system, the highway patrol retirement system, the judges retirement system, or the job service retirement program, the individual will not be eligible for retiree health insurance credit until one of the following events occurs:
 - a. The individual terminates employment, at which time they may receive the retiree health insurance credit as any other surviving spouse.
 - b. The individual retires and begins receiving a benefit through an eligible retirement system, at which time they may receive the greater of their own retiree health insurance credit or the credit available as a surviving spouse.
3. If the individual is employed by a political subdivision which does not participate in the public employees retirement system health plan, and is drawing a retirement benefit or a surviving spouse benefit, the individual may receive the retiree health insurance credit as any other annuitant based upon a retiree premium.
4. If a husband and wife are both participants of a retirement system that provides the retiree health insurance credit, and are both receiving a benefit, the retiree health insurance credit will be applied as follows:
 - a. If each individual takes a single health insurance plan under the uniform group health insurance program, each will have their respective retiree health insurance credit applied to their respective premiums.

- b. If only one individual takes a family health plan under the uniform group health insurance program, only that individual will be able to utilize his or her retiree health insurance credit applied to the premium.
 - c. In no event will the retiree health insurance credits for both spouses be combined and applied to only one premium.
5. Persons with service credit in more than one of the participating systems may combine that credit for retiree health insurance purposes, using the credit earned from the system the member contributed to most recently as primary.

History: Effective April 1, 1992; amended effective June 1, 1996; July 1, 1998.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

71-06-01-04. Employer paid health premiums. An individual can only receive retiree health insurance credit if they are responsible for paying their own health premium. If a previous employer or current employer is paying for a retired individual's health insurance premium, the employer cannot receive the benefit of the retiree health insurance credit. If this situation occurs, the retiree health insurance credit applicable to the annuitant will not be applied to the annuitant's health insurance premium until the annuitant begins paying the premium.
 Repealed effective July 1, 1998.

History: Effective April 1, 1992; amended effective June 1, 1996.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

71-06-01-07. Optional benefits. A married member may elect to receive one of the following optional retiree health credit benefits in lieu of the retiree health insurance credit option provided in section 71-06-01-01:

1. Fifty percent joint and survivor benefit. A member shall receive an actuarially reduced retiree health insurance credit during the member's lifetime and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Benefits shall terminate in the month in which the death of the beneficiary occurs. If the member's spouse predeceases the member, the member's benefit must be returned to the standard option amount. The standard option amount must commence on the first day of the month following the spouse's death if a death certificate has been submitted.

2. One hundred percent joint and survivor benefit. A member shall receive an actuarially reduced retiree health insurance credit during the member's lifetime and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Benefits shall terminate in the month in which the death of the beneficiary occurs. If the member's spouse predeceases the member, the member's benefit must be returned to the standard option amount. The standard option amount shall commence on the first day of the month following the spouse's death providing written notification of the death and a death certificate has been submitted.

History: Effective July 1, 1998.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

TITLE 74

Seed Commission

JUNE 1998

CHAPTER 74-05-01

74-05-01-03. License fee. The annual license fee ~~is-fifty dollars~~ must be set by the state seed commission. All licenses expire on June thirtieth.

History: Amended effective June 1, 1998.

General Authority: NDCC 4-11-06

Law Implemented: NDCC 4-11-06

74-05-01-04. Bond - Fee - Exemption. An applicant for license must file a bond issued in favor of the seed commissioner in the amount ~~of--twenty--thousand--dollars~~ fixed by the seed commission or present a letter of credit from a bank in lieu of a bond if approved by the commissioner.

History: Amended effective June 1, 1998.

General Authority: NDCC 4-11-04

Law Implemented: NDCC 4-11-04

74-05-01-09. Claims against bonds. No person delivering potatoes to a licensed dealer shall be entitled to the benefits of any required bond unless the person shall have filed the person's claim therefore with the seed commissioner within ninety one hundred eighty days after the delivery of the person's potatoes to the principal in the case of a sale, or within ninety one hundred eighty days after the sale by the principal in the case of potatoes received on consignment. The approval of the commissioner must be secured before any civil action can be maintained against the surety or sureties on the bond of the licensed dealer. No civil action shall be brought against the surety or sureties

on a bond of a licensed dealer without including in the complaint the name of the principal and making the principal a party to the action.

History: Amended effective June 1, 1998.

General Authority: NDCC 4-11-19

Law Implemented: NDCC 4-11-15

TITLE 75

Department of Human Services

JUNE 1998

CHAPTER 75-03-08

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-03-08 Family Child Care Homes - Early Childhood Services

The department proposed rules amending North Dakota Administrative Code Chapter 75-03-08, Family Child Care Homes - Early Childhood Services. The department conducted a hearing by conference call with the human service centers on October 8, 1996. The department conducted public hearings on October 9 and 10, 1996, in Bismarck. The department received written comment on the proposed rules until the end of the day on November 11, 1996.

The purpose of chapter 75-03-08 is to establish minimum standards of family child care and assure that those standards are maintained.

75-03-08-01. Purpose: This section is repealed.

75-03-08-02. Authority and objective: This section is repealed.

75-03-08-03. Definitions: Corrects grammar and defines terms relating to staff and volunteers.

75-03-08-04. Effect of Licensing and Display of License: Changes name of title; specifies that issuance of a license is evidence of compliance with North Dakota Century Code Chapter 50-11.1.

75-03-08-05. Denial or Revocation of License: Corrects grammar; provides that the department may revoke a license to operate a family child care home without first issuing a correction order.

75-03-08-05.1. Family Child Care Home License: New section providing that the right to operate a licensed family child care home depends upon continuing compliance with applicable state law and department standards.

75-03-08-06. (Formerly 75-03-08-05.1). Provisional License: New provision articulating minimum standards and procedures for the issuance of a license when a provider is not in total compliance with all applicable standards and rules of the department.

75-03-08-07 (Formerly 75-03-08-06). Application for and Nontransferability of Family Child Care Home License: Corrects grammar.

75-03-08-08. Family Child Care Homes Registered Prior to Effective Date: This section repealed effective January 1, 1987.

75-03-08-08.1. (Formerly 75-03-08-06.4). Provider Responsibilities: New provision outlining CPR and first-aid training requirements for staff members; specifying that adequate staff member supervision must be available to prevent children from being placed in a harmful or dangerous environment; creating a reporting requirement for incidents of death, serious accidents, or illnesses requiring hospitalization of a child while in the care of the facility; mandating the development and implementation of a procedure for accountability; requiring the provider to make carecheck information available to parents; and requiring providers to attend a department-approved six-hour course in basic child care training during the first year following licensure.

75-03-08-09. (Formerly 75-03-08-06.1). Staffing Requirements: Corrects grammar; replaces outdated use of term "handicapping" with "disabling"; and creates exemption which prevents children using the facility as a safe house from being counted for purposes of determining appropriate staff ratio.

75-03-08-10. (Formerly 75-03-08-06.2). Minimum Qualifications of Family Child Care Providers: Increases number of minimum hours of county-approved training a provider is required to attain every licensing year.

75-03-08-11. Reserved: This section is reserved for purposes of creating a uniform and parallel numbering scheme throughout all five chapters of child care rules.

75-03-08-12. (Formerly 75-03-08-06.3). Minimum Qualifications for All Caregivers: Increases minimum age requirement of all caregivers to sixteen years of age except for caregivers who are an immediate family member of the child care provider and are at least twelve years of age; and mandates that any individual providing care who is under age sixteen provide written parental consent for such employment and further requires that the employment complies with state law.

75-03-08-13. (Formerly 75-03-08-06.5). Provider and Caregiver Health Requirements: Adds a requirement that if a provider adds or replaces a

caregiver after the licensure process is complete, the provider must complete a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday; creates a requirement that each provider or caregiver, except substitute caregivers, furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter; prohibits a provider from being found in violation of this provision for using an untested emergency designee; and specifies that a provider or caregiver shall not use or be under the influence of any alcohol or judgment-altering drugs.

75-03-08-14. (Formerly 75-03-08-06.6). Physical Facilities: Corrects grammar; increases requirements of smoke detectors and fire extinguishers by requiring at least one working smoke detector in each sleeping area used by children and one fire extinguisher per level of the home; prohibits any child who has not attained both a developmental and chronological age of thirty-six months from being placed on a waterbed; allows for use of trigger locks on guns in storage where guns and ammunition are not otherwise kept in separate locked storage; creates requirement that hot water heaters must either be turned down or a tempering valve or antiscalding device put in place so as to prevent the temperature of water supplied to lavatories from exceeding one hundred twenty degrees Fahrenheit; replaces inappropriate term "environmental health practitioner" with "state department of health."

75-03-08-15. (Formerly 75-03-08-06.13). Minimum Standards for Provision of Transportation: New provision requiring the provider to establish and implement a written policy governing the transportation of children to and from the family child care home if the family child care home provides transportation; requires the provider to inform the parents of any insurance coverage on vehicles; mandates that children be protected by adequate staff supervision, safety precautions, and liability and medical insurance when transportation is provided; requires the driver providing transportation on behalf of a family child care home to comply with all relevant state and local laws.

75-03-08-16. Reserved: This section is reserved for purposes of creating a uniform and parallel numbering scheme throughout all five chapters of child care rules.

75-03-08-17. Reserved: This section is reserved for purposes of creating a uniform and parallel numbering scheme throughout all five chapters of child care rules.

75-03-08-18. Reserved: This section is reserved for purposes of creating a uniform and parallel numbering scheme throughout all five chapters of child care rules.

75-03-08-19. (Formerly 75-03-08-06.7). Admission Procedures: Corrects grammar; requires that the provider explain methods of discipline and developmentally appropriate techniques to carry out such discipline; requires that parents be provided with unlimited access and opportunity to observe their children while in care.

75-03-08-20. (Formerly 75-03-08-06.8). Program Requirements: Corrects grammar; specifies that each home shall have enough play materials and equipment so that at any one time each child in attendance may be individually involved.

75-03-08-21. (Formerly 75-03-08-06.9). Nutrition: Requires that if a parent does not provide a sack lunch the provider must supply a meal; outlines meal requirements contingent upon the time of day and the period of time since the child's last meal or snack; and creates requirements regarding the storage and feeding of formula and milk to infants.

75-03-08-21.1. (Formerly 75-03-08-06.10). Health Protection: Corrects grammar; specifies that caregivers shall wash their hands after nosewiping or after any other procedure which may involve contact with bodily fluids; requires providers to keep a written record of the administration of medication; specifies that infants requiring diapering must be changed on a cleanable surface which must be thoroughly cleaned with detergent and sanitized after each diapering; allows the provider to apply to the department for permission to use cloth diapers, upon a satisfactory showing of adequate sanitary controls; requires that all pets present in the family child care home be properly restricted and maintained; requires that any wading pools used by the facility be strictly supervised, emptied, and cleaned daily; requires that all swimming pools be approved by the local health unit; and prohibits smoking in any family child care home at any time in which a child is present and receiving services.

75-03-08-22. (Formerly 75-03-08-06.11). Records: Corrects grammar; specifies that a current health assessment or health assessment statement must be completed by the parent at the time of initial enrollment of the child, and that the statement must indicate any special precautions with regard to diet, medication, or activity of the child; further provides that the statement will act as evidence that a child is physically able to take part in the child care program; and requires the family child care home have a release of information form available and have the form signed prior to the release of information.

75-03-08-23. (Formerly 75-03-08-06.12). Discipline - Punishment Prohibited: Changes the title of the section by adding the term "Punishment Prohibited"; corrects grammar; specifies that children may not be subjected to fear as a form of discipline.

75-03-08-24. Reserved: This section is reserved for purposes of creating a uniform and parallel numbering scheme throughout all five chapters of child care rules.

75-03-08-25. Reserved: This section is reserved for purposes of creating a uniform and parallel numbering scheme throughout all five chapters of child care rules.

75-03-08-26. Reserved: This section is reserved for purposes of creating a uniform and parallel numbering scheme throughout all five chapters of child care rules.

75-03-08-27. (Formerly 75-03-08-07.1). Effect of Conviction on Licensure and Employment. New section providing that any individual seeking licensure or employment in a family child care home may not be licensed or employed if they have been found guilty of, pled guilty to, or pled no contest to any one of a specific list of criminal offenses; provides that if an individual seeking licensure or employment in a family child care home has been found guilty of, pled guilty to, or pled no contest to any other offense, then a determination shall be made as to whether that individual has been sufficiently rehabilitated; clarifies that determinations of sufficient rehabilitation in regard to licensees or applicants is to be made by the department, and decisions of sufficient rehabilitation in regard to employees are to be made by the provider; and provides that completion of a period of five years after final discharge from any term or probation, parole, or other form of community correction or imprisonment, without subsequent conviction, will serve as prima facie evidence of sufficient rehabilitation.

75-03-08-28. (Formerly 75-03-08-07.2). Child Abuse and Neglect Determinations: New section providing that if a probable cause determination or a determination that services are required under North Dakota Century Code Chapter 50-25.1 exists indicating that any child has been abused or neglected by a staff member, that individual shall furnish information to the department from which the department may determine the staff member's ability to provide care free of abuse and neglect; and further provides that this determination be furnished to the provider, to the regional director of the human service center, or such director's designee.

75-03-08-29. (Formerly 75-03-08-09). Allowable Time Periods for Correction of Deficiencies: New section outlining the period of time in which any deficiency noted in a correction order must be corrected; providing when an extension of time to correct deficiencies may be granted and how much of an extension is allowable; and requiring written notice of completion of the correction order be submitted by the provider to the county.

75-03-08-30. (Formerly 75-03-08-10). Fiscal Sanctions: New section providing for a per day dollar amount that will be assessed for specific violations of the rules contained in this chapter.

75-03-08-31. (Formerly 75-03-08-12). Appeals: New section stating that an applicant or provider may appeal a decision to deny or revoke a license through filing a written appeal with the department within ten days of receipt of written notice of such a decision, and further stating that the appeal process will be conducted by administrative hearing in accordance with Chapter 75-01-03 of the North Dakota Administrative Code.

75-03-08-01. Purpose. ~~The--purpose--of--this--chapter--is--to establish--minimum--standards--of--family--child--care--and--to--assure--that those--standards--are--maintained.~~ Repealed effective August 1, 1998.

History: ~~Effective--December-1,-1981;-repealed-effective-July-1,-1996; July-1,-1996;--repeal--voided--by--the--Administrative--Rules--Committee effective-August-24,-1996.~~

General Authority: NDCC-50-11.1-08

Law Implemented: NDCC-50-11.1-01

75-03-08-02. Authority and objective. ~~Pursuant-to-North-Dakota Century-Code--section--50-11.1-08;--the--department--may--prescribe--and promulgate--such--rules--as--are--necessary--to--carry--out--the--provisions--of North-Dakota-Century-Code-chapter-50-11.1.~~ Repealed effective August 1, 1998.

History: ~~Effective-December-1,-1981;-amended-effective-January-1,-1987; repealed-effective-July-1,-1996; July-1,-1996;--repeal--voided--by--the Administrative-Rules-Committee-effective-August-24,-1996.~~

General Authority: NDCC-50-11.1-08

Law Implemented: NDCC-50-11.1-08

75-03-08-03. Definitions. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the home.
2. "Caregiver" means any person individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a child care home under the guidance and supervision of the family child care provider.
3. "County agency" means the county social service board in the county where the family child care home is located.
4. "Department" means the department of human services.
5. "Emergency designee" means an individual designated by the family child care provider to be a backup caregiver for emergency assistance or to provide substitute care.
6. "Family child care provider" means the person-in-whom-inheres individual who has the legal responsibility and the administrative authority for the operation of a family child care home operation. The family child care provider is the applicant for license or the licensee ~~pursuant-to~~ under this chapter.
7. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term

includes a residence providing early childhood services to two additional school-aged children during the two hours immediately before and after the school day and all day, except Saturday and Sunday, when school is not in session during the official school year.

8. "Provider" means the family child care provider.
9. "Staff member" means provider, substitute staff, volunteer, caregiver, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the family child care home.
10. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month.
11. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a fire person for fire safety week, McGruff, or Santa Claus person.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-08-04. Effect of licensing and availability display of license.

1. The issuance of a license to operate a family child care home ~~shall--be~~ is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license shall ~~must~~ must be available displayed in the premises to which it applies.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06

75-03-08-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.

2. If an action to revoke a license is appealed, the licenseholder may continue the operation of the facility pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection shall does not limit the actions the department may take pursuant to North Dakota Century Code section 50-11.1-12.
3. The department may revoke a license to operate a family child care home without first issuing a correction order.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-10

75-03-08-05.1. Family child care home license. The right to operate a licensed family child care home is dependent upon continuing compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the applicable standards contained in this chapter.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-08-06. Application--for--and--nontransferability-of-family child-care-home-license: Provisional license.

1.--An--application--for--license--may--be--made--to--the--county--social service--board--office--in--the--county--wherein--the--applicant proposes--to--provide--family--child--care--

a.--Application---shall---be--made--in--the--form--and--manner prescribed--by--the--department--

b.--Any--license--issued--by--the--department--shall--serve--as--public documentation--that--the--provider--of--family--child--care--has complied--with--the--provisions--of--North--Dakota--Century--Code chapter--50--11.1--and--the--requirements---contained---in subsection--2--

c.--The--license--shall--be--nontransferable--and--shall--be--valid only--on--the--premises--that--are--indicated--on--the--license---A new--application--for--a--license--must--be--filed--by--a--licensed home--upon--change--of--provider--or--location--

2.--Standards--for--provision--of--early--childhood--services--in--a family--child--care--home--

a.--Staffing.--The staffing requirements are determined on the basis of the number of children physically in care at a given time, rather than total enrollment.--A family child care provider may provide care to no more than four children ages twenty-four months or younger, or for no more than a total of seven children.--Where one or more children is a child with a handicapping condition which requires more than usual care, the child's evaluated developmental age level, rather than chronological age level, will be used in determining the number of children for which care can be provided.

b.--Minimum qualifications of family child care providers: Providers shall:

{1}--Be at least eighteen years of age.

{2}--Certify attendance at a minimum of five hours of county agency approved training related to child care every licensing year.

{3}--Be physically present in the home no less than sixty percent of the time when children are in care.

{4}--Be mentally, physically, and emotionally able to provide adequate care for the children in the provider's charge.

{5}--Report any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1.

{6}--Select an emergency designee for the home as backup for emergency assistance.

c.--Minimum qualifications of all caregivers who provide direct care, supervision, and guidance to children: Caregivers shall:

{1}--Be at least fourteen years of age.

{2}--Be mentally, physically, and emotionally able to provide adequate care for the children under their supervision.

{3}--Ensure safe care for the children under their supervision.--If there exists a probable cause determination under North Dakota Century Code chapter 50-25.1 indicating that any child has been abused or neglected by a caregiver or a family child care provider, the person shall furnish information satisfactory to the department, from which the department can determine the caregiver's current

ability--to--provide--care--free-of-abuse-or-neglect.
The--determination--of--current---ability---will---be
furnished--to--the--family-child-care-provider-and-to
the-regional-director-of-the-human-service-center--or
his--designee--for--consideration--and--action-on-the
family-child-care-home-license.

d.--Caregivers--under--the-age-of-eighteen-and-all-children-in
care-must-have-adult-supervision-in-the-home-at-all-times.

e.--All--volunteers,-including-family-members-providing-direct
care-for-children,-shall-meet-the-minimum-requirements--of
caregivers.

f.--Health-factors:

{1}--Family-child-care-home-providers-and-caregivers-shall
complete-a-health-statement-to-certify-that--they--do
not--have--health--problems-that-would-interfere-with
their-functioning-as--caregivers--or--that--would--be
detrimental--to--the--health-of-the-children-or-other
staff.

{2}--If--the--physical--or--mental-health-of-a-provider-or
caregiver-appears-questionable,--the--department--may
require--the-provider-or-caregiver-to-be-evaluated-by
appropriate-professionals,-with-the-results--provided
to-the-department-and-any-costs-for-evaluations-borne
by-the-provider.--Where-appropriate,--the--department
may--arrange--for--an--evaluation--through-the-use-of
professional--staff--with--the--caregiver--signing--a
release-authorizing-the-use-of-the-evaluation-results
for-licensing-purposes.

{3}--Providers--or--caregivers--shall-not-use-any-drugs-or
alcoholic-beverages-except-for-medical-purposes-while
children-are-in-care.

{4}--The--provider--or--caregiver--shall--at-no-time-place
children-in-an-environment-that-would-be--harmful--or
dangerous--to--their--physical--or--emotional-health.
Children-under-care--shall--never--be--left--without
supervision---by---a---person---meeting--the--minimum
qualifications-of-a-caregiver.

g.--Physical-facilities:

{1}--The--family--child--care--home-shall-provide-adequate
space,-indoors-and-out,-for-the-daily--activities--of
the--children.---This--shall--include--a--minimum--of
thirty-five-square-feet-{3.25-square-meters}-of-space
per--child--indoors--and--a--minimum--of-seventy-five
square-feet-{6.97-square-meters}-of--play--space--per

child---outdoors;----Indoor--space--considered--shall
exclude-bathrooms;-pantries;-passageways--leading--to
outdoor--exits;--and--areas--occupied-by-furniture-or
appliances-that-children-should-not-play-on-or-under;

{2}--The--home-must-be-clean-and-maintained-to-protect-the
health-and-safety-of-children;--The-home-and--outdoor
play--area--must--be-free-of-clutter;-accumulation-of
refuse;-standing-water;--unprotected--wells;--debris;
attractive--nuisances;--and--other--health-and-safety
hazards;---Rubbish--and--garbage--must--be--regularly
removed;

{3}--There---must---be---adequate---heating;--ventilation;
humidity;-and-lighting-for-the-comfort-and-protection
of-the-health-of-the-children;

{4}--The--home--shall--be-equipped-with-at-least-one-smoke
detector-per-floor-used-by-the-children-and-one--fire
extinguisher-per-home;

{5}--Elevated--areas--such-as-stairs-or-porches-shall-have
railings-and-safety-gates-where-necessary-to--prevent
falls;

{6}--The--home--shall-have-a-drinking-water-supply-from-an
approved-community-water-system;--If--water--is--from
another-source;-a-sample-shall-be-tested-and-approved
by-the-local-health-department;

{7}--Each--child--shall-have-a-comfortable-and-clean-place
to-sleep-or-rest--and--an--individual--blanket;---The
floor--shall--be--used--only-when-carpeted-or-padded;
warm;-and-free-from-drafts;--A-child-who-is--in--care
between--the--hours--of-eight-p.m.-and-six-a.m.-shall
have-an-individual-sleeping--place;---Children--under
twelve--months--of--age--and-any-child-unable-to-walk
unassisted-shall-sleep-in-a-crib;-bed-with-side-rails
and-a-firm-mattress;-or-playpen;

{8}--Exterior--play--areas--in--close--proximity--to--busy
streets-and-other-unsafe-areas--shall--be--contained;
fenced;-or-have-natural-barriers-to-restrict-children
from-unsafe-areas;

{9}--Potential--hazards--such--as-guns;-household-cleaning
chemicals;-uninsulated--wires;-medicines;-poisonous
plants;-and-open-stairways-must-not-be-accessible-to
young-children;--Guns-must-be-kept-in-locked-storage;
separate-from-ammunition;

{10}--Indoor--and-outdoor-equipment;-toys-and-supplies-must
be-safe;-strong;-nontoxic;-and-in-good-repair;

{11}--Doors-and-pathways-may-not-be-blocked-

{12}--The-home-shall-have-a-telephone-

{13}--The--home-shall-have-an-indoor-bathroom-with-a-toilet
and-plumbing-

{14}--The-home-must-have-hot-and-cold-running-water-

{15}--If-the-fire/safety,-health,-or-sanitation-of-the-home
appears-questionable,-the-department-or-county-agency
may--require--the--provider--to-obtain-an-appropriate
inspection-or-inspections-from-the--appropriate--fire
authority--or--environmental-health-practitioner,-and
to-submit-the-results-of-the-inspection-to-the-county
agency.--Fire/safety-inspections-are-required-for-all
initially-licensed-family-child-care-homes-which--are
manufactured-or-mobile-homes,-in-apartment-buildings,
those-providing-care-to-children--in--basements,-and
homes--that--have--alternate--heating-devices-such-as
woodburning-stoves,-propane-heaters,-or--fireplaces.
Any--fees--for--inspection--are-the-family-child-care
home-provider's-responsibility.--Any--problems--found
shall-be-corrected-

{16}--Steps---and---walkways---must---be---kept--free--from
accumulations-of-water,-ice,-or-snow-

{17}--Combustible--materials--must--be-kept-away-from-light
bulbs-and-other-heat-sources-

{18}--Soiled--or--wet-diapers-must-be-stored-in-a-sanitary,
airtight-container-until-they-are--removed--from--the
home-and-disposed-of-

h--Admission-procedures-

{1}--The--provider--shall--request-a-preadmission-visit-by
the-child-and-the-child's--parents--to--acquaint--the
child--and--the--parent-with--the--home--and--its
surroundings,-the--other--children,-and--the--family
child-care-provider-

{2}--The--provider--shall--inform--parents-about-the-child
care-program,-places-and-times-of-special--activities
outside-the-home,-policies,-and-emergency-procedures,
and-discuss-information-concerning-the-child-so--that
the-child's-needs-can-be-identified-and-accommodated.
An-explanation-of-how-accidents-and-illnesses-will-be
dealt-with--shall--be-provided-as-well-as-methods-of
discipline-and--child--management--techniques--to--be
used-

{3}--Parents--shall--be--notified-of-the-payment-rates-and
the-time-of-payment.

{4}--The---provider---shall---regularly---offer---parents
opportunities-to-observe-their-children-at--any--time
while-in-care.

{5}--A-licensed-health-practitioner's-statement-based-upon
a-health-assessment-or-a-health-assessment--statement
completed--by--the--parents--shall-be-obtained-at-the
time-of-initial-enrollment-of--the--child.---No--more
than--six--months-shall-have-elapsed-between-the-date
the-health-assessment-was-completed-and-the--date--of
initial-enrollment.---The-statement-shall-indicate-any
special--precautions---for---diet,---medication,---or
activity.---This--statement--shall--serve-as-evidence
that-a-child-is-physically-able-to-take-part--in--the
child--care--program.---The--statement-for-each-child
must-be-completed-annually.

i:--Program:

{1}--There--shall--be--a--program--of-daily-individual-and
small-group-activities-appropriate-to--the--ages--and
needs--of-the-children-in-the-family-child-care-home.
The-program-shall--include--activities--which--foster
sound--social,--intellectual,--emotional,--and-physical
growth,--developed-with--discussion--and--consultation
with-parents-as-to-their-children's-needs.

{2}--The--program--shall--be--designed--with--intervals-of
stimulation-and-relaxation,--and--a--balance--between
periods--of--active-play-and-quiet-play-or-rest.---The
daily-routine-should-foster-the-development--of--good
health--habits--and--self-discipline,--adequate-indoor
and-outdoor-play,--rest,--and--sleep--with--sufficient
time-and-opportunities-for-various-experiences.

{3}--The---program---shall---provide---for--a--variety--of
educational-experiences--for--all--ages--of--children
served---with---an---adequate--supply--of--safe--play
equipment,--toys,--and-materials-for-indoor-and-outdoor
activity.

{4}--Areas--used--for-napping-shall-provide-an-opportunity
for-undisturbed-rest.---Napping--schedules--should--be
set--for-children-according-to-their-ages,--needs,--and
parent's-wishes.

j:--Nutrition:

{1}--All--children--present--at-mealtime-shall-be-served-a
nutritious-meal,--including-a-food-from-each--of--the

four--basic--food--groups:---Adequate-amounts-of-food shall-be-available:---A-nourishing-midmorning--and midafternoon-snaek-shall-be-provided:

- {2}--If--saek--lunches--are-provided-by-parents,-the-child care--provider--shall--supplement--these--lunches--as necessary:

k:--Health-protection:

- {1}--Children--shall-receive-all-immunizations-appropriate for-their-age,-as-prescribed-by-the--North--Dakota state-department-of-health:
- {2}--Family--child--care--provider--shall-be-familiar-with emergency-first-aid-techniques:
- {3}--Caregivers--shall--wash--hands--before--preparing--or serving-meals,-after-diapering,-after--using--toilet facilities,---and--after--any--other--procedure--that contaminates-their-hands:--Hand-soap-and-towels--must be--available-at-each-lavatory:--Clean-towels-must-be provided-daily:
- {4}--A--copy--of-a-statement-signed-by-the-child's-parents authorizing-emergency-medical--care--for--each--child shall-be-in-the-possession-of-the-provider:
- {5}--Suffieient--first-aid-supplies-shall-be-available-for minor-emergencies:
- {6}--The--family--child--care-provider-shall-have-plans-to respond--to--illness--and--to--emergencies--including evacuation--in--case--of--fire,-serious--injury,-and ingestion-of-poison:
- {7}--At--least-one-person-who-may-be-called-upon-for-child care-assistance-in-emergencies-shall-be-designated:
- {8}--Plans--shall--be--made--to-respond-to-minor-illnesses when-children-can-be--cared--for--in--the--provider's home:
- {9}--If--children--in--care--require--medication,-proper instruction--as--to--the--administration--of--such medication--shall--be--secured--and--followed--by-the caregiver.-Medications-must-be--stored--in--an--area inaccessible--to-children:--If-medications-are-stored in-a-refrigerator,-they-must-be--stored--collectively in-a-spill-proof-container:
- {10}--The--family-child-care-provider-shall-release-a-child only-to-the-child's-parent,-guardian,-or--person--in

to--parentis;--or--to--an--individual--authorized--in
writing--by--such--person--to--take--the--child--from--the--day
care--home.

{11}--No--child--shall--be--allowed--to--play--outdoors--without
clothing--appropriate--to--the--climatic--conditions.

{12}--No--child--shall--be--bathed;--permitted--to--use--wading
pool;--or--to--play--outdoors--without--adequate
supervision.

{13}--Children's--personal--items--such--as--combs;--brushes;
pacifiers;--and--toothbrushes--must--be--individually
identified--and--stored--in--a--sanitary--manner.

{14}--There--must--be--a--designated--cleanable--diapering--area
in--the--home--if--children--requiring--diapering--are--in
care;--Diapers--must--be--changed--promptly--when--needed
and--in--a--sanitary--manner.

{15}--All--pets--must--be--properly--immunized;--Nondomestic
animals--such--as--skunks;--opossum;--or--raccoon--are
prohibited;--No--pets--may--be--allowed--in--the--kitchen--or
eating--area--during--meal--preparation--or--meals.

7.--Records.

{1}--A--current--license--for--the--family--child--care--home--must
be--available--in--the--premises--to--which--it--applies.

{2}--A--copy--of--the--current--standards--for--family--child--care
homes--shall--be--kept--in--the--premises.

{3}--The--following--records--shall--be--kept--and--maintained
for--each--child:

{a}--The--child's--full--name;--birthdate;--current--home
address;--names--of--the--child's--parents--or--legal
guardian--and--business--phone--and--home--telephone
numbers--where--those--persons--can--be--reached.

{b}--A--health--assessment--statement--completed--annually
by--the--child's--parent--or--a--licensed--health
practitioner.

{c}--A--written--statement--from--the--parents--or--legal
guardian--authorizing--emergency--medical--care.

{d}--Names--and--telephone--numbers--of--persons
authorized--to--take--the--child--from--the--home.

{e}--Verification--that--the--child--has--received--all
immunizations--appropriate--for--the--child's--age;

as--prescribed-by-the-North-Dakota-department-of
health,-unless-the-child-is-a-drop-in-or--school
aged-

{4}--All--records--which--are--maintained--with-respect-to
children--receiving--child--care--services--shall--be
deemed--confidential,-and-access-shall-be-limited-to
the-provider,-the-provider's-staff,-parents,-and--to
the-following:

{a}--Authorized----county---agency---and---department
representatives-

{b}--Persons---having--a--definite--interest--in--the
well-being-of-the-child--or--children--concerned
and--who,-in-the-judgment-of-the-department,-are
in-a-position-to-serve--their--interests--should
that-be-necessary-

{c}--Persons-who-possess-a-written-authorization-from
the-child's-parent-

m.--Discipline:-----Discipline---must---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-

{1}---No--child--may--be-punished,-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-may-not

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:

1. The director of a regional human service center, in the director's discretion, or the director's designee, may issue a provisional license for the operation of a newly opened family child care home or for a previously licensed family child care home although the family child care home fails to comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. Prominently state that the family child care home has failed to comply with all applicable standards and rules of the department;
 - b. State that the items of noncompliance are set forth on a document available, upon request to the family child care provider;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears the same date of issuance as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and rules.
3. A provisional license may be issued only to an applicant who has waived, in writing:
 - 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 provider.

5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded the holder of an unrestricted license.
6. The department shall not issue a provisional license if the facility is not in compliance with section 75-03-08-14.
7. The provider shall prominently display the provisional license.
8. The provider shall provide parents notice that the facility is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, -50-11.1-08 55-11.1-03, 55-11.1-04

75-03-08-07. Family-child-care-home-license. Application for and nontransferability of family child care home license. The--right--to operate--a--licensed-family-child-care-home-is-dependent-upon-compliance with-the-applicable-provisions-of--North--Dakota--Century--Code--chapter 50-11.1-and-the-applicable-standards-contained-in-this-chapter.

1. An application for a license must be submitted to the county agency in the county in which the facility is located. Application must be made in the form and manner prescribed by the department.
2. The license is nontransferable and valid only on the premises indicated on the license. A new application for a license must be filed by a licensed home upon change of provider or location.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-08.1. Provider responsibilities.

1. Except as provided in subsections 2 and 3, a provider shall maintain, whenever services are provided, at least one staff member who:
 - a. Is certified in basic cardiopulmonary resuscitation that meets the requirements of the American heart association,

American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and

- b. Is certified or trained in a department-approved program to provide first aid.
2. Substitute staff are exempted from the requirements of subsection 1.
3. A provider who uses an emergency designee and has no staff member present who is trained or certified to provide first aid and cardiopulmonary resuscitation may not be found in violation of subsection 1.
4. The provider shall have an adult present in the home at all times to supervise staff members under the age of eighteen and children in care.
5. A staff member may not at any time place children in an environment that would be harmful or dangerous to their physical or emotional health.
6. The provider shall report within twenty-four hours to the county director or the county director's designee a death or serious accident or illness requiring hospitalization of a child while in the care of the facility or attributable to care received in the facility.
7. The provider shall develop and follow a procedure for accountability when a child fails to arrive for the program.
8. The provider shall make available carecheck information to parents.
9. Providers must attend a department-approved six-hour course in basic child care training during the first year following initial licensure.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-09. Staffing requirements. Staffing requirements are established by the number of children physically in care at the family child care home at a given time, rather than total enrollment.

1. A provider may provide care to no more than a total of four children if all are under age twenty-four months.

2. A provider providing care to five or more children may provide care to no more than three children under age twenty-four months.
3. If a child in care has a disabling condition which requires more than usual care, the child's developmental age level must be used in determining the number of children for which care may be provided.
4. Children using the licensed facility for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-09

75-03-08-10. Minimum qualifications of family child care providers. A provider shall:

1. Be at least eighteen years of age;
2. Certify attendance at a minimum of nine hours of county-approved training related to child care every licensing year;
3. Be physically present in the home no less than sixty percent of the time when children are in care;
4. Report any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1;
5. Select an emergency designee for the home as backup for emergency assistance;
6. Ensure safe care for the children under supervision; and
7. Be mentally, physically, and emotionally able to provide adequate care for the children in the provider's charge.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-11. [Reserved]

75-03-08-12. Minimum qualifications for all caregivers. Each staff member who provides care shall:

1. Be at least sixteen years of age or, if a member of the immediate family of the family child care provider, be at least twelve years of age, provided that each such individual under age sixteen provides written parental consent for such employment, and the employment arrangements comply with North Dakota Century Code chapter 34-07;
2. Be mentally, physically, and emotionally able to provide adequate care for the children under supervision; and
3. Ensure safe care for the children under supervision.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-13. Provider and caregiver health requirements.

1. Each provider or caregiver shall complete a health self-certification form certifying that the provider or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the provider adds or replaces a caregiver after the licensure process is complete, the provider must submit a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday.
2. Each provider or caregiver shall furnish documentation of a negative mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the provider adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative mantoux tuberculosis test before the first day of employment. Substitute staff are exempted from this requirement. A family child care provider who uses an untested emergency designee may not be found in violation of this provision.
3. If the physical or mental health of a provider or caregiver appears questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department. The department is not responsible for the costs of any required evaluation.
4. While children are in care, a provider or caregiver shall not use or be under the influence of any alcohol or judgment-altering drugs.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

75-03-08-14. Physical facilities.

1. The family child care home shall provide adequate space, indoors and out, for the daily activities of the children. This must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, and space children are not permitted to occupy.
2. The home must be clean and maintained to protect the health and safety of children. The home and outdoor play area must be free of clutter, accumulation of refuse, standing water, unprotected wells, debris, and other health and safety hazards. Rubbish and garbage must be regularly removed.
3. There must be adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children.
4. The home must be equipped with one working smoke detector located in each sleeping area used by the children, and one working smoke detector and one fire extinguisher per level.
5. Elevated areas, including stairs or porches, must have railings and safety gates where necessary to prevent falls.
6. The home must have a drinking water supply from an approved community water system or from a source tested and approved by the state department of health.
7. Each child shall have a comfortable and clean place to sleep or rest and an individual blanket. The floor may be used only when carpeted or padded, warm, and free from drafts. A child who is in care between the hours of eight p.m. and six a.m. shall have an individual sleeping place. Any child under twelve months of age or unable to walk unassisted must be provided sleeping space in a crib with a firm mattress, or a playpen with adequate padding. A staff member may not place a child on a waterbed unless the child has attained both a developmental and chronological age of thirty-six months.
8. Exterior play areas in close proximity to busy streets and other unsafe areas must be contained, fenced, or have natural barriers to restrict children from those unsafe areas.
9. Potential hazards, including guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways, may not be accessible to young children. Guns

must be kept in locked storage, separate from ammunition, or trigger locks must be used.

10. Indoor and outdoor equipment, toys, and supplies must be safe, strong, nontoxic, and in good repair. All toys must be easily cleanable and must be cleaned and sanitized on a routine basis.
11. Exit doorways and pathways may not be blocked.
12. The home must have a working telephone.
13. The home must have an indoor bathroom with a minimum of one lavatory and one flush toilet.
14. The home must have hot and cold running water. Hot water heaters must be turned down or there must be a tempering valve or an antiscalding device on the faucets used by children so that the temperature of hot water supplied to lavatories does not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
15. If the fire, safety, health, or sanitation environment of the home appears questionable, the department or county agency may require the provider to obtain an appropriate inspection from the appropriate fire authority or state department of health, and to submit the results of the inspection to the county licensing agency. Fire and safety inspections must be obtained for all initially licensed family child care homes located in manufactured homes, mobile homes, apartment buildings, homes in which care is provided to children in basements, or homes having alternate heating devices, such as wood burning stoves, propane heaters, or fireplaces. Any inspection fees are the family child care home provider's responsibility. Any problems found must be corrected.
16. Steps and walkways must be kept free from accumulations of water, ice, snow, or debris.
17. Combustible materials must be kept away from light bulbs and other heat sources.
18. Soiled or wet diapers must be stored in a sanitary, airtight container until laundered or removed from the home.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-02.2, 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-15. Minimum standards for provision of transportation.

1. The provider shall establish a written policy governing the transportation of children to and from the family child care home, if the family child care home provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the family child care home. If the family child care home provides transportation, the provider shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a family child care home, children must be protected by adequate staff supervision, safety precautions, and liability and medical insurance.
 - a. Staffing requirements must be met to assure the safety of children while being transported.
 - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct appropriate to their age and stage of development.
4. The driver shall comply with all relevant state and local laws.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-08-16. [Reserved]

75-03-08-17. [Reserved]

75-03-08-18. [Reserved]

75-03-08-19. Admission procedures.

1. The provider shall request a preadmission visit with the child and the child's parents to acquaint the child and the parent with the home and its surroundings, the other children, and the family child care provider.
2. The provider shall inform parents about the child care program, places and times of special activities outside the home, policies, and emergency procedures, and discuss information concerning the child to identify and accommodate the child's needs. An explanation of how accidents and

illnesses may be dealt with must be provided, as well as methods of discipline and developmentally appropriate techniques to be used.

3. Parents must be notified of the payment rates and the time of payment.
4. The provider shall provide parents with unlimited access and opportunities to observe their children at any time their children are in care.
5. A health assessment statement completed by the parent must be obtained at the time of initial enrollment of the child and annually thereafter. This statement must indicate any special precautions for diet, medication, or activity. This statement must serve as evidence that a child is physically able to take part in the child care program.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-20. Program requirements.

1. The family child care provider shall have a program of daily individual and small group activities appropriate to the ages and needs of the children in the family child care home. The program must include activities that foster sound social, intellectual, emotional, and physical growth, developed with discussion and consultation with parents as to their children's needs.
2. The program must be designed with intervals of stimulation and relaxation and a balance between periods of active play and quiet play or rest. The daily routine must foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep, with sufficient time and opportunities for various experiences.
3. The program must provide a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity. Each family child care home shall have enough play materials and equipment so that at any one time, each child in attendance may be individually involved.
4. Areas used for napping must provide an opportunity for undisturbed rest. Napping schedules must be set for children according to the children's ages, needs, and the parent's wishes.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-21. Nutrition. Children must be served a nutritious morning and afternoon snack and, if the parent does not provide a sack lunch, a nourishing meal, and:

1. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day.
2. Children in care during any normal mealtime hour must be served food appropriate to that time of day.
3. Children in care after school who have not had any food since lunch shall be provided with a snack.
4. a. Infants must be provided age-appropriate nutritious foods. Only breast milk or iron-fortified artificial milk, meeting the requirements of the Infant Formula Act of 1980 [Pub. L. 96-359; 94 Stat. 1190; 21 U.S.C. note et seq.], may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent.
 - b. Infants must be fed only the specific brand of artificial baby milk requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions, based upon directions of a child's physician, are provided.
 - c. Mixed formula, in single bottles or batches, that has been unrefrigerated more than one hour, must be discarded.
 - d. Frozen breast milk must be thawed under cool running tap water, in amounts needed. Unused, thawed breast milk must be discarded at the end of each day.
5. a. Staff members shall hold infants unable to hold their own bottles when bottlefeeding breast milk, artificial baby milk, soy or cow's milk based ready-to-feed, concentrate, powdered prepared formulas or cow or goat milk.
 - b. Staff members may not leave an infant unattended during the infant's feeding or eating process.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-21.1. Health protection.

1. Children shall have received all immunizations appropriate for the child's age, as prescribed by the state department of health.
2. At least one staff member shall meet the current basic cardiopulmonary resuscitation certification requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department.
3. Caregivers shall wash their hands before preparing or serving meals, after nosewiping, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and towels must be available at each lavatory. Clean towels must be provided daily.
4. The family child care provider shall have a statement on file, signed by the child's parents, authorizing emergency medical care for each child.
5. Sufficient first-aid supplies must be available for minor emergencies.
6. The family child care provider shall have plans to respond to illness and emergencies, including evacuation in case of fire, serious injury, and ingestion of poison.
7. The family child care provider shall designate at least one individual who may be called upon for child care assistance in emergencies.
8. The family child care provider shall develop plans to respond to minor illnesses when children may be cared for in the provider's home.
9. If children in care require medication, the caregiver shall secure and follow proper instructions as to the administration of medication. Medications must be stored in an area inaccessible to children. Medications stored in a refrigerator must be stored collectively in a spillproof container. A written record of the administration of medication, including over-the-counter medication, to each child must be kept. Records must include the date and time 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.
10. Children with infectious or communicable conditions shall be excluded from the family child care home until the condition may no longer be transmitted and guidance regarding exclusion and return to the family child care home is obtained through

consultation with local and state health department authorities.

11. The family child care provider may release a child only to the child's parent, guardian, individual in loco parentis, or individual who provides a written authorization by the child's parent, guardian, or individual in loco parentis.
12. A staff member may not permit a child to play outdoors without clothing appropriate to the climatic conditions.
13. A staff member may not bathe a child, permit a child to use a wading pool, or permit a child to play outdoors, without adequate supervision.
14. Children's personal items, including combs, brushes, pacifiers, and toothbrushes, must be individually identified and stored in a sanitary manner.
15. There must be a designated cleanable diapering area in the home if children requiring diapering are in care. Diapers must be changed promptly when needed and in a sanitary manner. Infants must be changed on a cleanable surface area which must be thoroughly cleaned with detergent and sanitized after each diapering. The provider may apply to the department for permission to use cloth diapers. The department, in its discretion, may grant permission upon a satisfactory showing of adequate sanitary controls.
16. All pets present in the family child care home must be properly immunized, restricted, and maintained. Nondomestic animals, such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the family child care home. Pets may not be allowed in the kitchen or eating area during meal preparation or meals.
17. Wading pools used by the facility must be strictly supervised and must be emptied and cleaned daily.
18. All swimming pools must be approved by the local health unit.
19. Smoking is not permitted in any family child care home at any time during which a child who receives early childhood services from that family child care home is present and receiving services.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-02.2, 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-22. Records.

1. A copy of this chapter must be kept on the premises.
2. The family child care provider shall maintain the following records:
 - a. The child's full name, birthdate, current home address, names of the child's parents or legal guardian, and the business and home telephone numbers where those individuals may be reached;
 - b. A written statement from the parents or legal guardian authorizing emergency medical care;
 - c. Names and telephone numbers of individuals authorized to take the child from the family child care home;
 - d. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is a drop-in or school aged; and
 - e. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity, must serve as evidence that a child is physically able to take part in the child care program, and must be completed annually.
3. All records maintained with respect to children receiving child care services must be kept confidential, and access must be limited to staff members, the parents, or legal guardian of each child, and to:
 - a. Authorized county agency and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent or legal guardian. The family child care home shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-08-23. Discipline - Punishment prohibited. Disregard of any of the following disciplinary rules is grounds for denial or revocation.

1. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking 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, fear, or humiliation.
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. Any child must be in a safe, lighted, well-ventilated room within hearing of an adult. A child may not be isolated in a locked room or closet.
4. A child may not be physically punished for lapses in toilet training.
5. When addressing a child, or while in the presence of a child, staff members may not make derogatory remarks about the child, the child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language.
6. A child may not 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.
8. A child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the facility.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-08-24. [Reserved]

75-03-08-25. [Reserved].

75-03-08-26. [Reserved]

75-03-08-27. Effect of conviction on licensure and employment.

1. A family child care home provider may not be, and a family child care home may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the family child care home, an individual who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
 - b. An offense other than an offense identified in subdivision a, if the department in the case of a family child care provider, or the family child care provider in the case of an employee, determines that the individual has not been sufficiently rehabilitated.
2. A family child care home shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section.
3. For the purposes of subdivision b of subsection 1, the department in the case of a family child care provider, or the family child care provider in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public as the owner or proprietor of a family child care home.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-06.1

75-03-08-28. Child abuse and neglect determinations. If a probable cause determination or a decision that services are required under North Dakota Century Code chapter 50-25.1 exists, indicating that any child has been abused or neglected by a staff member, that individual shall furnish information satisfactory to the department, from which the department may determine the staff member's current ability to provide care free of abuse and neglect. The determination of current ability must be furnished to the family child care provider and to the regional director of the human service center or the regional director's designee for consideration and action on the family child care home license.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-29. Allowable time periods for correction of deficiencies.

1. Deficiencies noted in a correction order must be corrected:
 - a. For a violation of section 75-03-08-09, subsections 2 and 7 of section 75-03-08-14, or section 75-03-08-23, within twenty-four hours.
 - b. For a deficiency that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-08-14, within sixty days.
 - c. For a deficiency that requires substantial building remodeling, construction, or change, within sixty days.
 - d. For all other deficiencies, within twenty days.
2. All periods for correction begin on the date of receipt of the correction order by the licensee.
3. The regional supervisor of early childhood program licensing may grant an extension of additional time to correct deficiencies, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee and a showing that the need for the extension is created by unforeseeable circumstances and the licensee has diligently pursued the correction of the deficiency.
4. The provider shall furnish a written notice of completion of the correction order action to the county agency. The correction order is effective until the county agency receives the notice.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-07.2

75-03-08-30. Fiscal sanctions.

1. A fiscal sanction of twenty-five dollars per day must be assessed for each violation of subsections 1, 2, and 9 of section 75-03-08-14; subsection 3 of section 75-03-08-21.1; or section 75-03-08-23 for each day, after the allowable time for correction of deficiencies ends, that the family child care home has not verified correction.
2. A fiscal sanction of fifteen dollars per day must be assessed for each violation of section 75-03-08-09; subsections 8 and 10 of section 75-03-08-14; or subsection 13 of section 75-03-08-21.1 for each day, after the allowable time for correction of deficiencies ends, that the family child care home has not verified correction.
3. A fiscal sanction of five dollars per day must be assessed for each violation of any other provision of this chapter for each day, after the allowable time for correction of deficiencies ends, that the family child care home has not verified correction.

History: Effective August 1, 1998.
General Authority: NDCC 50-11.1-07.4, 50-11.1-08
Law Implemented: NDCC 50-11.1-07.4

75-03-08-31. Appeals. An applicant or provider may appeal a decision to deny or revoke a license by filing a written appeal with the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective August 1, 1998.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-08, 50-11.1-09

CHAPTER 75-03-09

AGENCY SYNOPSIS: REGARDING PROPOSED AMENDMENTS TO NORTH DAKOTA ADMINISTRATIVE CODE CHAPTER 75-03-09 Group Child Care - Early Childhood Services

The department proposed rules amending North Dakota Administrative Code Chapter 75-03-09, Group Child Care - Early Childhood Services. The department conducted a hearing by conference call with the human service centers on October 8, 1996. The department conducted public hearings on October 9 and 10, 1996, in Bismarck. The department received written comment on the proposed rules until the end of the day on November 11, 1996.

The purpose of Chapter 75-03-09 is to establish minimum standards of group child care and assure that those standards are maintained.

75-03-09-01. Purpose: This section is repealed.

75-03-09-02. Authority and Objective: This section is repealed.

75-03-09-03. Definitions: Corrects grammar; adds definition of terms related to staff and volunteers.

75-03-09-04. Effect of Licensing and Display of License: Corrects grammar; changes title of section by adding term "display" and deleting the term "availability"; and specifies that the issuance of a license to operate a group child care home or facility is evidence of compliance with North Dakota Century Code Chapter 50-11.1.

75-03-09-05. Denial or Revocation of License: Corrects grammar; states that the department may revoke a license to operate a group child care home or facility without first issuing a correction order.

75-03-09-06. (Formerly 75-03-09-08). Provisional License: Corrects grammar and language usage; allows the designee of a director of a regional human service center to issue a provisional license; specifies that the department shall not issue a provisional license if the facility is not in compliance with requirements as to fire inspections or minimum sanitation and safety requirements; and requires that the operator prominently display the provisional license and provide parents notice that the facility is operating on a provisional license as well as the basis for the provisional license.

75-03-09-07. Application for and Nontransferability of Group Child Care License: Changes title of section by adding the language "application for" and specifies that an application for license must be submitted to the county agency in the county in which the facility is located.

75-03-09-08 (Formerly 75-03-09-09). Duties of Child Care Operator: Changes title of section by eliminating reference to minimum

qualifications of operator; specifies that the operator of a group child care home or facility is responsible for complying with North Dakota Century Code Chapter 50-11-1; specifies that enrollment, attendance, health, and financial records are to be maintained; requires that the operator maintain necessary information to verify staff qualifications; specifies that developmentally appropriate guidance techniques be used in disciplining children in care; specifies that fees to be paid, methods of payment, and policies regarding delinquency of fees must be covered in written agreements with the parents of each child; specifies that a written policy must be developed with regard to the reporting of suspected child abuse or neglect; requires the operator to develop and implement a procedure for accountability; sets minimum staffing requirements with regard to CPR certification as well as first-aid training; requires that operators make care check information available to parents; and implements a requirement that the operator of a facility report any instance of death, serious accident, or illness of a child requiring hospitalization within twenty-four hours of the incident.

75-03-09-09 (Formerly 75-03-09-14). Staffing requirements: Shortens title of section; provides decimal figures for calculating the appropriate staff to child ratio in each specific age group; creates procedure to be followed in calculating staff to child ratios where children in care are of mixed age categories; eliminates outdated use of term "handicapping" and replaces it with "disabling"; creates exemption which prevents children who are using a facility as a safe house from being counted for purposes of calculating appropriate staff to child ratios.

75-03-09-10. Minimum Qualifications of Group Child Care Supervisor: Corrects grammar; requires that a supervisor be certified or trained in a department-approved program to provide first aid; and requires that the ten hours of county-approved training related to child care as required in the first year following initial licensure include a six-hour course in basic child care training.

75-03-09-11. Duties of Group Child Care Supervisor: Corrects grammar and language usage.

75-03-09-12. Minimum Qualifications for All Caregivers: Reduces the minimum age requirement to sixteen except where the caregiver is a member of the immediate family of the group child care operator and is at least twelve years of age; increases the minimum number of county-approved hours of training related to child care that each caregiver must obtain annually; and exempts emergency backup careworkers from the county-approved annual training requirements.

75-03-09-13. Minimum Health Requirements for All Staff: Changes name of section by deleting term "caregivers" and replacing it with term "staff"; requires each operator or caregiver to complete a health self-certification form; mandates that if an operator adds or replaces a caregiver after the licensure process is complete, the operator must complete a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday;

requires each provider or caregiver to furnish documentation of a negative mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter; exempts substitute staff from the tuberculosis requirement; prohibits an operator from being found in violation of this provision for using an untested emergency designee; and prohibits any staff members from using or being under the influence of any alcohol or judgment-altering drug while children are in care.

75-03-09-14 (Formerly 75-03-09-22). Minimum Requirements for Facility: Corrects grammar and language usage; prohibits any staff member from placing a child on a waterbed where the child has not attained both a developmental and chronological age of thirty-six months; specifies that a group child care home or facility must have a drinking supply from a community water supply system; requires either that hot water heaters be turned down or that there be a tempering valve or antiscalding device in place to prevent the temperature of hot water supplied to lavatories and bathing facilities from exceeding one hundred twenty degrees Fahrenheit; replaces reference to "public health sanitarian" with "state department of health"; and corrects an incorrect citation to the State Plumbing Code.

75-03-09-15 (Formerly 75-03-09-28). Minimum Standards for Provision of Transportation: Corrects grammar and language usage; requires the operator to establish a written policy governing the transportation of children to and from the group child care home or facility if the group child care home or facility provides transportation; and requires the operator to inform the parents of any insurance coverage on the vehicles.

75-03-09-16 (Formerly 75-03-09-18). Minimum Emergency Evacuation and Disaster Plan: Corrects grammar and language usage; requires that each group child care home or facility have a disaster plan which is approved by local authorities; and requires that fire evacuation drills be performed in accordance with the local fire department's guidelines.

75-03-09-17 (Formerly 75-03-09-19). Fire Inspections: Corrects grammar and language usage and specifies that the operator shall file reports of fire inspections with the county licensing agency.

75-03-09-18 (Formerly 75-03-09-20 and 75-03-09-20.1). Minimum Sanitation and Safety Requirements: Corrects grammar and language usage; merges the previously separated section prohibiting smoking with the minimum sanitation and safety requirement section; specifies that a State Department of Health inspection is required in facilities where meals are prepared as opposed to facilities where only snacks or occasional cooking projects are prepared; specifies that caregivers must wash their hands after nosewiping or after any other procedure that may involve contact with bodily fluids; further specifies that handsoap and towels must be available to each lavatory and clean towels must be provided daily; adds household cleaning chemicals, medicines, and open stairways to the list of potential hazards which may not be accessible to young children; requires the use of trigger locks where guns are not

otherwise kept in locked storage separate from ammunition; requires that room temperature be at a minimum of sixty-eight degrees Fahrenheit and a maximum of seventy-four degrees Fahrenheit during the heating season when the home or facility is occupied by children, and further requires that all heating devices be approved by the local fire authorities; adds requirement that any pets present in the home or facility be properly restricted and maintained; prohibits nondomestic animals from being present in the home or facility even if otherwise regarded as pets; replaces the term "state department of health and consolidated laboratories" with "local health units" in regard to approval of all swimming pools; and prohibits smoking in any home or facility at any time during which a child is present and receiving services.

75-03-09-19 (Formerly 75-03-09-21). Minimum Requirements Regarding Space: Corrects grammar and language usage; clarifies the physical space which is not to be calculated in determining or computing minimum space; and requires that in cases where outdoor play space cannot accommodate the licensed capacity of the home or facility at any one time, the operator shall have a written plan or schedule of outdoor playtime which limits the use of the play area to its capacity, giving every child an opportunity to play outdoors.

75-03-09-20 (Formerly 75-03-09-24). Program Requirements: Corrects grammar and language usage and specifies that the group child care home or facility operator shall have a program of daily individual or small group activities developed with discussion and consultation with parents.

75-03-09-21 (Formerly 75-03-09-23). Minimum Standards for Food and Nutrition: Specifies that children must be served food and portion sizes appropriate to their age.

75-03-09-22 (Formerly 75-03-09-15 and 75-03-09-16). Records: Merges the two sections dealing with records and confidentiality of records and corrects grammar and language usage.

75-03-09-23 (Formerly 75-03-09-27 and 75-03-09-27.1). Discipline - Punishment Prohibited: Merges the two sections dealing with discipline and punishment prohibited into one section; corrects grammar and language usage; prohibits children from being subjected to fear as a form of discipline; requires that the group child care home or facility have a written policy in place regarding the discipline of children and that such policy be interpreted to staff members before the facility begins operation or before staff members begin working with children; and specifies that a child may not be bitten by any staff member or any other adult in the facility.

75-03-09-24 (Formerly 75-03-09-25). Specialized Types of Care and Minimum Requirements Therefor: Corrects grammar and language usage; specifies that an infant's diet and pattern of feeding must be appropriate to the parent's wishes; provides for proper storage and feeding of formula and milk for infants; requires that as to group

facilities but not group homes, when night care is provided, the staff must be awake and within listening distance during sleeping hours.

75-03-09-25 (Formerly (75-03-09-26). Minimum Requirements for Care of Children With Special Needs: Corrects grammar and language usage and requires the group home or facility to document how the child's special needs may be met.

75-03-09-26 (Formerly 75-03-09-17). Minimum Provisions Regarding Emergency Care for Children: Corrects grammar and language usage; specifies that emergency care plans must provide that at least one State Department of Health-approved first-aid kit be kept and maintained in a designated location; specifies that the plan must require that a working telephone line be immediately accessible to caregivers with a list of emergency telephone numbers conspicuously posted adjacent to the telephone; specifies that there must be a written record of administration of medication to children; parents are to be asked to pick up their child when a child is too ill to remain in the group or has an infectious or contagious disease; and the plan must provide for practices in which children with infectious or communicable conditions are excluded from the home or facility until the condition is no longer transmitted.

75-03-09-27 (Formerly 75-03-09-06.1). Effect of Conviction on Licensure and Employment: Changes title of section by adding reference to employment; provides that any individual seeking licensure or employment in a group child care home may not be licensed or employed if they have been found guilty of, pled guilty to, or pled no contest to any one of a specific list of criminal offenses; provides that if an individual seeking licensure or employment in a group child care home has been found guilty of, pled guilty to, or pled no contest to any other offense, then a determination shall be made as to whether that individual has been sufficiently rehabilitated; clarifies that determinations of sufficient rehabilitation in regard to licensees or applicants is to be made by the department, and decisions of sufficient rehabilitation in regard to employees are to be made by the operator; and provides that completion of a period of five years after final discharge from any term or probation, parole, or other form of community correction or imprisonment, without subsequent conviction, will service as prima facie evidence of sufficient rehabilitation.

75-03-09-28 (Formerly 75-03-09-06.2). Child Abuse and Neglect Determinations: Requires that where a probable cause determination or a decision that services are required under North Dakota Century Code Chapter 50-25.1 exists as to a staff member, that individual shall furnish information satisfactory to the department from which the department may determine the staff member's current ability to provide care free of abuse and neglect; and further requires that such determination be furnished to the group child care operator and the regional director of the human service center or such director's designee.

75-03-09-29. Allowable Time Periods for Correction of Deficiencies: Provides specific time periods in which deficiencies noted in a correction order must be corrected and requires that the operator furnish written notice of completion of the correction order action to the county agency.

75-03-09-30. Fiscal Sanctions: Provides for specific fiscal sanctions on a per day basis to be assessed for each violation of the rules.

75-03-09-31. Appeals: Provides that an applicant or provider may appeal a decision to deny or revoke a license by filing a written appeal with the department within ten days of receipt of written notice of such decision, and that subsequently the process as outlined in North Dakota Administrative Code Chapter 75-01-03 shall be followed as to administrative hearings.

75-03-09-01. Purpose. ~~The--purpose--of--this--chapter--is--to establish-minimum-standards-of-group-child-care-and-to-assure-that-these standards-are-maintained-~~ Repealed effective August 1, 1998.

History: ~~Effective--December-1,--1981;-repealed-effective-July-1,-1996; July-1,-1996,--repeal--voided--by--the--Administrative--Rules--Committee effective-August-24,-1996-~~

General Authority: NDCC-50-11.1-08

Law Implemented: NDCC-50-11.1-01

75-03-09-02. Authority and objective. ~~Pursuant-to-North-Dakota Century-Code--section--50-11.1-08,--the--department--may--prescribe--and promulgate--such--rules--as-are-necessary-to-carry-out-the-provisions-of North-Dakota-Century-Code-chapter-50-11.1-~~ Repealed effective August 1, 1998.

History: ~~Effective-December-1,-1981;-amended-effective-January-1,-1987; repealed-effective-July-1,-1996;-July-1,-1996,--repeal--voided--by--the Administrative-Rules-Committee-effective-August-24,-1996-~~

General Authority: NDCC-50-11.1-08

Law Implemented: NDCC-50-11.1-08

75-03-09-03. Definitions. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the group child care home or facility.
2. "Caregiver" means any person individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the a group child care home or facility under the guidance and supervision of the group child care operator.
3. "County agency" means the county social service board in the county where the group child care home or facility is located.

4. "Department" means the department of human services.
5. "Emergency designee" means an individual designated by the group child care operator as to be a backup caregiver for emergency assistance or to provide substitute care.
6. "Group child care home or facility" means a child care facility where early childhood services are provided for eight through eighteen children or a facility, other than an occupied private residence, which serves fewer than eight children.
7. "Group child care supervisor" means any--person--with--the responsibility an individual responsible for overseeing the day-to-day operation of a group child care program.
7. 8. "Group child care operator" means any-person the individual or group in-whom-inheres who has the legal responsibility and the administrative authority for the operation of a group child care home or facility. The group child care operator is the applicant for license or the licensee pursuant-to under this chapter.
9. "Operator" means group child care operator.
10. "Staff member" means operator, substitute staff, volunteer, caregiver, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the group child care home or facility.
11. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month.
12. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a fireperson for fire safety week, McGruff, or Santa Claus person.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-09-04. Effect of licensing and availability display of license.

1. The issuance of a license to operate a group child care home or facility ~~shall--be~~ is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.

2. The current license shall must be available displayed in the premises to which it applies.

~~3. The license shall specify the maximum number of children who may be cared for, and the home or facility shall at no time admit a greater number of children.~~

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03

75-03-09-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the licenseholder may continue the operation of the group child care home or facility pending the final administrative determination or until the license expires, whichever occurs first ~~occurs~~; provided, however, that this subsection shall does not limit the actions the department may take pursuant to North Dakota Century Code section 50-11.1-12.
3. The department may revoke a license to operate a group child care home or facility without first issuing a correction order.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-10

75-03-09-06. Application for group child care license Provisional license. An application for license shall be submitted to the county agency. ~~Application shall be made in the form and manner prescribed by the department.~~

1. The director of a regional human service center, in the director's discretion, or the director's designee, may issue a provisional license for the operation of a newly opened group child care home or facility or for a previously licensed group child care home or facility although the group child care home or facility fails to comply with all applicable standards and rules of the department.

2. A provisional license must:

- a. Prominently state that the group child care home or facility has failed to comply with all applicable standards and rules of the department;
- b. State that the items of noncompliance are set forth on a document available upon request made to the group child care operator;
- c. Expire at a set date, not to exceed six months from the date of issuance; and
- d. Be exchanged for an unrestricted license, which bears the same date of issuance as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and rules.

3. A provisional license may be issued only to an applicant who has waived, in writing:

- 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 the holder to all rights and privileges afforded the holder of an unrestricted license.

6. The department shall not issue a provisional license if the facility is not in compliance with section 75-03-09-17 or 75-03-09-18.

7. The operator shall prominently display the provisional license.

8. The operator shall provide parents notice that the facility is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative

Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04 50-11.1-07, 50-11.1-07.2, 50-11.1-08

75-03-09-07. Nontransferability--of--license Application for and nontransferability of group child care license. The--license--shall--be nontransferable-and-shall-be-valid-only-on-the-premises-indicated-on-the license.--A-new-application-for-a-license-must-be-filed--by--a--licensed home-or-facility-upon-change-of-operator-or-location.

1. An application for license must be submitted to the county agency in the county in which the facility is located. Application must be made in the form and manner prescribed by the department.
2. The license is nontransferable and valid only on the premises indicated on the license. A new application for a license must be filed by a licensed group child care home or facility upon change of group child care provider or location.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-09-08. Provisional--license Duties of group child care operator.

- 1.--A--group--child--care-operator-who-applies-for-a-license-for-a newly-opened-home-or-facility,--or--for--a--home--or--facility previously--licensed,--where--the--home--or--facility-fails-to comply-with-all-applicable-standards-and--regulations--of--the department,--may,--at-the-discretion-of-the-regional-director-of the--human--service-center--or--his--designee,--be--issued--a provisional--license.
- 2.--A-provisional--license-shall:
 - a.--Prominently--state-that-the-home-or-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--home--or facility's-operator-or-supervisor.
 - c.--Expire--at--a--set-date,--not-to-exceed-six-months-from-the date-of-issuance.

d.--Be--exchanged--for--an--unrestricted--license,--which--will--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--has,--in--writing,--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--shall--be--accompanied--by--a--written--statement--of--violations--signed--by--the---regional--director--of--the--human--service--center--or--his--designee--and,--in--writing,--acknowledged--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.

1. The operator of a group child care home or facility is responsible to the department for compliance with requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. In meeting this responsibility, the operator shall ensure:

a. Establishment of the child care program;

b. An application is made for a license for each group child care home or facility operated;

c. Creation of an outline of a written plan and policies for the operation of each group child care home or facility;

d. Notification is provided to the county agency of any major changes in the operation or in the ownership or governing body of the group child care home or facility and of any staff or caregiver changes;

e. Maintenance of required enrollment, attendance, health, financial, and related records;

f. Responsibility for all group child care home or facility staff, volunteers, or others who provide services in the home or facility and for having an emergency designee for backup emergency assistance;

- g. Maintenance of necessary information to verify staff qualifications and to ensure safe care for the children in the group child care home or facility;
 - h. That the group child care home or facility is sufficiently staffed at all times to meet the child and staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
 - i. That preadmission visits for children and their parents are offered in order that the facility's program, fees, operating policies, and procedures can be viewed and discussed, including:
 - (1) An explanation of how accidents and illnesses may be dealt with; and
 - (2) Methods of discipline and developmentally appropriate guidance techniques to be used.
 - j. That written agreements with the parents of each child specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
 - k. Parents are provided, upon request, any progress reports on their children, and are regularly provided opportunities to observe their children while in care;
 - l. Parents are provided the name of the group child care home or facility's operator, the group child care supervisor, and the emergency designee;
 - m. The reporting of any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and development of a written policy for staff to handle this reporting;
 - n. The development of and compliance with a procedure for accountability when a child fails to arrive for the program;
 - o. There is, at all times when children are receiving care, a staff member on duty who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs and in a first-aid program approved by the department. Substitute staff are exempt from this requirement; and
 - p. Carecheck information is made available to parents.
2. If the operator of the group child care home or facility is also the group child care supervisor, the operator shall also

meet the qualifications of the supervisor in section 75-03-09-10.

3. The operator of a facility shall report within twenty-four hours to the county director or the county director's designee a death or serious accident or illness requiring hospitalization of a child while in the care of the facility or attributable to care received in the facility.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, -50-11.1-07.2, -50-11.1-08 50-11.1-04

75-03-09-09. Minimum--qualifications--and--duties--of--operator Staffing requirements.

1. ~~The operator of a group child care home or facility is responsible to the department for compliance with requirements set forth in the standards.~~
2. ~~The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the home or facility.~~
3. ~~The operator shall ensure that all standards are complied with and shall:~~
 - a. ~~Be responsible for establishing the child care program.~~
 - b. ~~Make application for a license for each home or facility operated.~~
 - c. ~~Outline a written plan and policies for the operation of each home or facility.~~
 - d. ~~Notify the county agency of any major changes in the operation or in the ownership or governing body of the home or facility and of any staff or caregiver changes.~~
 - e. ~~Maintain required records.~~
 - f. ~~Be responsible for all persons who provide child care in the home or facility and for having an emergency designee for back-up emergency assistance.~~
 - g. ~~Ensure safe care for the children in the home or facility. If there exists a probable cause determination under North Dakota Century Code chapter 50-25.1 indicating that any child has been abused or neglected by a caregiver, group~~

child-care-supervisor,--or--employee--who--has--access--to children,---the---person---shall---furnish---information, satisfactory--to--the--department,--from--which--the--department can--determine--the--person'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 regional--director--of--the--human--service--center--or--his designee--for--consideration--and--action--on--the--license--or license-application.

h.---Ensure--that--the--home--or--facility--is--sufficiently--staffed at--all--times--to--meet--the--child/staff--ratios--for--children in--attendance--and--that--no--more--children--than--the--licensed capacity--be--served--at--any--one--time.

i.---Request--preadmission--visits--for--children--and--their--parents in--order--that--the--facility's--program,--fees,--operating policies,--and--procedures--can--be--viewed--and--discussed. Information--concerning--the--child--shall--be--shared--so--that the--child's--needs--can--be--identified--and--accommodated.---An explanation--of--how--accidents--and--illnesses--will--be--dealt with--shall--be--provided--as--well--as--methods--of--discipline and--child--management--techniques--to--be--used.

j.---Ensure--that--parents--of--each--enrollee--are--notified--of--the fees--to--be--paid,--methods--of--payment,--and--policies regarding--delinquency--of--fees.

k.---Regularly--offer--parents--opportunities--to--observe--their children--at--any--time--while--in--care.

l.---Provide--parents--upon--request--any--progress--reports--on--their individual--child--or--children--and--the--compliance--of--the home--or--facility--with--standards--contained--in--this--chapter.

m.---Provide--parents--with--the--name--of--the--home--or--facility's operator,--the--group--child--care--supervisor,--and--the emergency--designee.

n.---Report--any--suspected--child--abuse--or--neglect--as--required--by North-Dakota-Century-Code--chapter--50-25.1--and--develop--a procedure--to--handle--this--reporting--for--all--caregivers--in the--home--or--facility.

4.---If--the--operator--of--the--group--child--care--home--or--facility--is also--the--group--child--care--supervisor,--the--operator--must--also meet--the--qualifications--of--the--supervisor--set--forth--in--section 75-03-09-10.

1. The number of staff members and their use shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings, if necessary.

2. The minimum ratio of caregivers or program staff to children in group child care must be:
 - a. If all children in care are children less than twenty-four months of age, one staff member may care for four children, a ratio of .25 in decimal form;
 - b. If all children in care are children twenty-four months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form;
 - c. If all children in care are children thirty-six months of age to four years of age, one staff member may care for seven children, a ratio of .142 in decimal form;
 - d. If all children in care are children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form;
 - e. If all children in care are children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form;
 - f. If all children in care are children six to twelve years of age, one staff member may care for eighteen children, a ratio of .05 in decimal form; and
 - g. If children in care are of mixed age categories, the staff to child ratio is calculated in accordance with subsection 6.
3. The operator of a group child care home or facility shall ensure that the facility is sufficiently staffed at all times to meet the child and staff ratios for children in attendance, and that no more children than the licensed capacity are served at one time.
4. If a child in care has a disabling condition which requires more than usual care, the child's developmental age level must be used in determining the number of children for which care can be provided.
5. Children with special conditions requiring more than usual care and supervision shall have adequate care and supervision provided to them without adversely affecting care provided to the remaining children in the group child care home or facility.
6. The number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver

count is then rounded to the next highest whole number whenever the fractional caregiver count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.

7. Children using the licensed facility for a McGruff safe house, a block house, or a certified safe house program during an emergency shall not be counted under this section.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04 50-11.1-02, 50-11.1-02.1

75-03-09-10. Minimum qualifications of group child care supervisor.

1. A group child care supervisor shall must be an adult of good mental and physical health, capable of mature judgment, and possessing shall possess knowledge and experience in management and interpersonal relationships.
2. The supervisor shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education;:
 - b. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or fields directly related thereto;:
 - c. An associate of arts degree in the field of early childhood development;:
 - d. Certification as a child development associate or similar status where such a local, state, or federal certification program exists;:
 - e. Certification from a Montessori teacher training program;:
 - f. ~~A--minimum--of--one--year's~~ At least one year of exclusive experience as a registered or licensed child care provider with positive references from at least two parents whose children were in the provider's care;:
 - g. A high school degree or equivalency with certification of completion in a secondary occupational child care program and at least one year's year of exclusive experience working with young children, with references from at least

two ~~persons~~ individuals who either had their children in the provider's care or instructed the provider in child care programming;

- h. A minimum of one ~~year's~~ year of exclusive experience providing care to three or more preschool age children, with positive references from at least two parents whose children were in the provider's care; or
- i. Qualification under regulations in force and effect for ~~child--care--center--directors~~ group child care center directors supervisors prior to July 1, 1981.

3. The group child care supervisor shall have:

- a. Have current certification in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation programs ~~that--are~~ approved by the department. ~~The effective-date-of-this-subsection-is-July-1,-1987-;~~ and
- b. Be certified or trained in a department-approved program to provide first aid.

- 4. The group child care supervisor shall certify attendance at a minimum of ~~six~~ ten hours of county-approved training related to child care annually. The ten hours of training in the first year following initial licensure must include a six-hour course in basic child care training.
- 5. The group child care supervisor must be physically present in the home or facility no less than sixty percent of the time when children are in care.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-11. Duties of group child care supervisor. The supervisor shall, coextensive with the group child care operator:

- 1. Be responsible for ~~child--care~~ planning, supervision, and activity; and
- 2. Ensure that caregivers and children under the age of eighteen shall have adult supervision in the group child care home or facility at all times.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-12. Minimum qualifications for all caregivers.
Caregivers shall:

1. Be at least ~~fourteen~~ sixteen years of age, or, if a member of the immediate family of the group child care supervisor operator, be at least twelve years of age, provided that any ~~employee~~ each such individual under age sixteen has provides written parental consent for such employment, and the employment arrangements ~~are-in-conformance~~ comply with North Dakota Century Code chapter 34-07.
2. Be mentally, physically, and emotionally able to provide adequate care for the children ~~in-the-caregiver's-charge~~ under supervision.
3. Receive orientation related to child care, emergency procedures, special needs of children in care, and program activities during the first week of caregiving.
4. ~~Not--use--any--drugs-or-alcoholic-beverages-except-for-medical purposes-while-children-are-in-care.~~
5. At no time place a child ~~or-children~~ in an environment that would be harmful or dangerous to ~~their~~ a child's physical or emotional health.
6. 5. Certify attendance at county-approved training related to child care annually.
 - a. A caregiver working thirty to forty hours per week shall certify a minimum of ~~four~~ eight hours of county-approved training annually.
 - b. A caregiver working twenty to thirty hours per week shall certify a minimum of ~~three~~ six hours of county-approved training annually.
 - c. A caregiver working ten to twenty hours per week shall certify a minimum of ~~two~~ four hours of county-approved training annually.
 - d. A caregiver working less than ten hours per week shall certify ~~attendance-at~~ a minimum of ~~one-hour~~ two hours of county-approved training annually.

- e. An emergency backup care worker is exempt from county-approved annual training.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-13. Minimum health requirements for all caregivers staff.

1. ~~All-caregivers-shall-certify-within-thirty-days-of-licensing, that-they-do~~ Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with their his or her functioning as child-caregivers a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the county agency within five working days of the caregiver's first workday.
2. ~~There--shall--be-provision-for-adequate-substitution-for-child caregivers-who-are-too-ill--to--function--effectively--or--who present--a--serious--health-hazard-to-others-in-the-child-care program.~~ Each operator or caregiver shall furnish documentation of a negative mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the group child care operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative mantoux tuberculosis test before the first day of employment. Substitute staff are exempted from this requirement. A group child care operator who uses an untested emergency designee may not be found in violation of this provision.
3. ~~If the physical or mental health of the-operator,-supervisor, an operator or a caregiver appears questionable, the department or--county--agency may require the individual to present-evidence--of--such--capabilities--based--on--a--formal evaluation.--Where-appropriate,-the-department-may-arrange-for an-evaluation-through-the-use-of-professional-staff--with--the caregiver--signing--a--release--authorizing--the--use--of--the evaluation-results-for--licensing--purposes.---Any--costs--for evaluations--needed--are--to--be--borne--by--the--caregiver~~ be evaluated by appropriate professionals, with the results provided to the department. The department is not responsible for the costs of any required evaluation.

4. While children are in care, staff members shall not use or be under the influence of any alcohol or judgment-altering drugs.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-14. Group-child-care-minimum-state-staffing-requirements
Minimum requirements for facility.

- 1.--The--number--of--staff--and--their--utilization--shall--reflect program-requirements,--individual-differences-in-the--needs--of the--children--enrolled,--and--shall--permit--flexible--groupings where-necessary.
- 2.--The--minimum--ratio--of--caregivers--or--program--staff--to--children in-group-child-care-programs--shall--be:
 - a.--Children--less--than--twenty-four-months-of-age,--one--staff per-four-children.
 - b.--Children--twenty-four-months-of-age--to--thirty-six-months-of age,--one--staff--per-five-children.
 - c.--Children--thirty-six--months--of-age--to--four-years-of-age, one--staff--per-seven-children.
 - d.--Children--four-years-of-age--to--five-years-of-age,--one--staff per-ten-children.
 - e.--Children--five-years-of-age--to--six-years-of-age,--one--staff per-twelve-children.
 - f.--Children--six--to--twelve--years--of--age,--one--staff--per eighteen-children.
- 3.--When---a--child--is--in--care--with--a--mentally--handicapping condition,--and--requires--more--than--usual--care,--the--evaluated developmental--age--level,--rather--than--the--chronological--age--of the--child,--shall--be--used--in--determining--appropriate--staff ratios.
- 4.--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--home--or--facility.
- 5.--In--each--age--category,--the--number--of--children--is--divided--by--the corresponding--ratio--number--and--carried--to---the---nearest

hundredths.---To--determine-the-number-of-caregivers-neecessary
at--any--given--time,--numbers--of--caregivers--for--all--age
categories--are-added,--and-any-fractional-caregiver-count-then
rounded--to--the--next--highest--whole--number--whenever---the
fractional--caregiver--count-amounts-to-thirty-five-hundredths
or-more,--If-lower-than-thirty-five-hundredths,--the-fractional
amount-is-dropped.

1. The group child care home or facility must be properly lighted. If the lighting of the home or facility appears questionable, the department or county agency may require the operator to obtain additional lights so that a minimum of fifty foot-candles of light is used in the areas generally used for children's activities.
2. Safe and comfortable arrangements for naps for enrolled children must be provided.
 - a. The floor may be used only when carpeted or padded, warm, free from drafts, and when each child has an individual blanket or sleeping mat.
 - b. There must be a minimum space of two feet [58.42 centimeters] between each crib or cot. Aisles between cots and cribs must be kept free of all obstructions while they are occupied.
 - c. There must be a room available, separate from the nap room, where an individual child can go for supervised play if the child is unable to nap, so as not to disrupt the other children's rest.
 - d. A child who is in care between the hours of eight p.m. and six a.m. shall have an individual sleeping place.
 - e. Any child under twelve months of age or unable to walk unassisted must be provided sleeping space in a crib with a firm mattress or a playpen with adequate padding.
 - f. A staff member may not place a child on a waterbed unless the child has attained both a developmental and chronological age of thirty-six months.
3. Water supply:
 - a. The group child care home or facility must have a drinking supply from a community water system or from a source tested and approved by the state department of health.
 - b. The group child care home or facility must have hot and cold running water. Hot water heaters must be turned down or there must be a tempering valve or antiscalding device on the faucets used by children so that the temperature of

hot water supplied to lavatories and bathing facilities does not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

4. Toilet and lavatory facilities:

- a. Toilet and lavatory facilities must be provided and must be convenient to the areas used by the children and staff.
- b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping. A minimum of one lavatory and one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained. Two toilets must be provided for each sixteen to eighteen children, excluding those children who are not toilet trained.
- c. Child-sized toilet adapters, training chairs, or potty chairs must be provided for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
- d. At least one handwashing lavatory must be provided per toilet room facility or diapering area. Sanitary hand-drying equipment, individual cloth, or paper towels must be provided near handwashing lavatories.
- e. Safe step stools must be provided to allow standard-size toilets and lavatories to be used by the children or child-size toilets and lavatories must be provided.

5. Sewage and wastewater disposal:

- a. Any group child care home or facility not on a municipal or public water supply or wastewater disposal system shall have its sewage and wastewater system approved by the state department of health.
- b. The group child care home or facility shall meet the requirements of the state plumbing code, North Dakota Administrative Code article 62-03.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02; ~~50-11.1-02.1~~ 50-11.1-01, 50-11.1-04

75-03-09-15. Minimum--records--for--each--enrolled-child Minimum standards for provision of transportation. The following records--shall be-kept-and-maintained-for-each-child:

- 1.---The-child's-full-name,-birthdate,-and-current-home-address-
- 2.---The--names--and--addresses--of--the--parents--or--other--persons
legally-responsible-for-the-child,-as-well-as-their--home--and
business-telephone-numbers-
- 3.---Names---and---telephone---numbers---of---persons---who---can---assume
responsibility-for-the-child-if-the-person-legally-responsible
for-the-child-cannot-be-reached-immediately-in-an-emergency-
- 4.---The--written--consent-of-a-parent-or-legally-responsible-party
for-emergency-care-shall-also-be-obtained-
- 5.---Names--and-telephone-numbers-of-persons-authorized-to-take-the
child-from-the-group-home-or-facility-
- 6.---Verification--that--the--child--has-received-all-immunizations
appropriate-for-the-child's-age,-as-prescribed--by--the--North
Dakota---state---department---of---health---and---consolidated
laboratories,-unless-the-child-is-a-drop-in-or-school-aged-
- 7.---A-licensed-health-practitioner's-statement-based-upon-a-health
assessment-or-a-health-assessment-statement-completed--by--the
parent--shall-be-obtained-at-the-time-of-initial-enrollment-of
the-child.---No-more-than-six-months-shall-have-elapsed-between
the--date--the-health-assessment-was-completed-and-the-date-of
initial-enrollment.---The-statement-shall-indicate-any--special
precautions-for-diet,-medication,-or-activity.---This-statement
shall-serve-as-evidence-that-a-child--is--physically--able--to
take--part--in-the-child-care-program.---The-statement-for-each
child-must-be-completed-annually-

1. The operator shall establish a written policy governing the transportation of children to and from the group child care home or facility, if the group child care home or facility provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the group child care home or facility. If the group child care home or facility provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a group child care home or facility, children must be protected by adequate staff supervision, safety precautions, and liability and medical insurance.
 - a. Child and staff ratios must be maintained to assure the safety of children while being transported.

- b. A child may not 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 shall comply with all relevant state and local laws.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07

75-03-09-16. Confidentiality-of-child's-records Minimum emergency evacuation and disaster plan. Information-pertaining-to-the--admission; progress;--health;--or--discharge--of--a-child-shall-be-confidential-and access-shall-be-limited-to-staff-and-parents;-and-to-the-following:

- 1.--Authorized-county-agency-and-department-representatives-
- 2.--Persons--having--a--definite-interest-in-the-well-being-of-the child-or-children-concerned-and-who;-in-the--judgment--of--the department;--are-in-a-position-to-serve-their-interests-should that-be-necessary-
- 3.--Persons--who--possess-a-written-authorization-from-the-child's parent;--The-group-child-care-home-or-facility--shall--have--a release--of--information--form--available--and-shall-have-such forms-signed-prior-to-the-release-of-information-
1. Each group child care home or facility shall have an approved and posted emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with the authorities.
2. Fire evacuation drills must be performed in accordance with the local fire department's guidelines.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07 50-11.1-01, 50-11.1-04

75-03-09-17. Minimum--provisions--regarding--emergency--care-for children Fire inspections. The-supervisor-shall-have-plans--to--respond to--illness--and--to--emergencies--including--burns;-serious-injury;-and

ingestion-of-poison:--Parents-of-enrollees-shall--be--advised--of--these plans:--The-following-provisions-shall-be-made:

1:--All--caregivers--shall--be--familiar--with-emergency-first-aid techniques:

2:--Emergency-response-procedures-shall-be-established:

3:--At---least---one---working--flashlight--shall--be--immediately available:

4:--Sufficient--first--aid--supplies--shall-be-available-for-minor emergencies-and-kept-in-a-designated-location;--so--as--to--be inaccessible-to-children-yet-readily-accessible-to-caregivers:

5:--The-home-or-center-shall-have-a-telephone:

6:--Plans--shall--be--made--to--respond--to--minor--illnesses-when children-can-be-cared-for-in-the-home--or--facility:--Medical consultation--shall--be--available--regarding-special-care-and medication:

7:--If--children--in--the--home--or--facility--require-medication; written-permission-to-dispense--medication--must--be--obtained from---the---parent;---and---proper--instructions--as--to--the administration-of-such-medication-shall-be-given-by-the-parent or-physician:

a:--Any---medication---prescribed--by--a--physician--shall--be accompanied-by-the-doctor's-written-instructions-as-to-its dosage--and-storage;--and--labeled-with-the-child's-name-and date:

b:--All--medication--shall-be-kept-in-secure-storage-away-from food-items-and-out-of-the-reach-of-children:

8:--A--supervised-temporary-isolation-area-shall-be-provided-for-a child-who-is-too-ill-to-remain-in-the-group;--or--who--has--an infectious-or-contagious-disease;--and-the-following-procedures shall-be-followed-when-such-signs-or-symptoms-are-observed:

a:--Parents-shall-be-notified-immediately:

b:--First--aid--shall--be--provided--and-medical-care-shall-be sought-as-necessary:

9:--Provisions--shall-be-made-to-provide-emergency-transportation: When-a-child-is-brought-to-another-place-for--emergency--care; the--child--shall--be-accompanied-by-an-adult-who-shall-remain with--the---child---until---medical---personnel---assume---the responsibility--for--the--child's-care-and-until-the-parent-or responsible-party-arrives:

1. Annual fire inspections must be completed by local or state fire authorities on all facilities in which care is provided to seven or more children who are not members of the immediate family of the group child care operator and upon facilities providing for any number of children in homes which are manufactured or mobile homes, in apartment buildings, homes in which care is provided to children in basements, and in homes that have alternative heating devices, such as wood burning stoves, propane heaters, or fireplaces. The operator shall have corrected any code violations noted by the fire inspector and shall file reports of the inspections with the county licensing agency.
2. The group child care home or facility shall provide:
 - a. The local fire inspector's written statement of compliance with the local fire code, if there is one;
 - b. The local fire inspector's written statement that the group child care home or facility has been inspected and that the inspector is satisfied that the facility meets minimum fire and safety standards; or
 - c. A written statement from an appropriate fire official that the group child care home or facility meets the minimum fire and safety standards adopted by the state fire marshal.
3. The group child care home or facility shall be equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-18. ~~Minimum--emergency--evacuation--and--disaster--plan~~
~~Minimum sanitation and safety requirements. Each home or facility shall have--an--evacuation-and-disaster-plan-for-the-safety-of-the-children-in care-in-case-of-an-emergency.~~

1. In facilities other than an occupied private residence with license capabilities of thirteen to eighteen children and where meals are prepared, the state department of health shall conduct an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required.

2. Group child care home or facility bathroom lavatories, toilets, tables, chairs, and floors must be cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
3. The group child care home or facility's building, grounds, and equipment must be located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and the caregivers.
4. Caregivers shall wash their hands before preparing or serving meals, after nose wiping, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and towels must be available at each lavatory. Clean towels must be provided daily.
5. Indoor and outdoor equipment, toys, and supplies must be safe, strong, nontoxic, and in good repair. All toys must be easily cleanable and must be cleaned and sanitized on a routine basis.
6. The group child care home or facility's ground areas must be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
7. Garbage must be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning is not permitted.
8. Exterior play areas in close proximity to busy streets and other unsafe areas must be contained, fenced, or have natural barriers to restrict children from those unsafe areas.
9. Potential hazards, including guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways may not be accessible to young children. Guns must be kept in locked storage, separate from ammunition, or trigger locks must be used.
10. Indoor floors and steps may not be slippery or have splinters. Steps and walkways must be kept free from accumulations of water, ice, snow, or debris.
11. Elevated areas, such as stairs or porches, must have railings and safety gates where necessary to prevent falls.
12. The group child care operator shall take steps to keep the group child care home or facility free of insects and rodents. Chemicals for insect and rodent control may not be applied in

areas accessible to children when children are present in the group child care home or facility.

13. Exit doorways and pathways may not be blocked.
14. Light bulbs in areas used by children must be properly shielded or shatterproof.
15. Combustible materials must be kept away from light bulbs and other heat sources.
16. There must be adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. During the heating season when the group child care home or facility is occupied by children, the room temperature may not be less than sixty-eight degrees Fahrenheit [20 degrees Celsius] and not more than seventy-four 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 authorities.
17. All group child care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, must have these surfaces repainted or must submit evidence that the 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 which 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, when measured by a lead-detecting instrument approved by the state department of health.
18. Personal items including combs, pacifiers, and toothbrushes must be individually identified and stored in a sanitary manner.
19. All pets present in the group child care home or facility must be properly immunized, restricted, and maintained. Nondomestic animals such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the group child care home or facility. Pets may not be allowed in the kitchen or eating area during meal preparation or meals.
20. Wading pools used by the group child care home or facility must be strictly supervised and must be emptied and cleaned daily.
21. All swimming pools must be approved by the local health unit.

22. Smoking is not permitted in any group child care home or facility at any time during which a child who receives early childhood services from that group child care home or facility is present and receiving services.

History: Effective December 1, 1981; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02.2, 50-11.1-04

75-03-09-19. Fire--inspections Minimum requirements regarding space.

1.--Annual--fire--inspections--must-be-completed-by-local-or-state fire-authorities-on-all-facilities-in-which-care--is--provided to-seven-or-more-children-who-are-not-members-of-the-immediate family-of-the-group-child-care-operator--and--upon--facilities providing--for--any--number--of--children--in--homes-which-are manufactured-or--mobile--homes;--in--apartment--buildings;--in basements;--and-in-homes-that-have-alternative-heating-devices such-as-woodburning-stoves;--propane--heaters;--or--fireplaces. The-operator-shall-have-corrected-any-code-violations-noted-by the-fire-inspector-and-shall-file-reports-of-such--inspections with-the-county-agency:

2.--The-home-or-center-shall-provide:

a.--The-local-fire-inspector's-written-statement-of-compliance with-the-local-fire-code;--if-there-is-one;

b.--The-local-fire-inspector's-written-statement-that-the-home or-facility-has-been-inspected-and-that-the--inspector--is satisfied--that-it-meets-minimum-fire-and-safety-standards for-the-facility;--or

c.--A-written-statement-from-an-appropriate-fire-official-that the-home-or-center--meets--the--minimum--fire--and--safety standards-adopted-by-the-state-fire-marshal:

3.--Fire--evacuation--drills-shall-be-performed-in-accordance-with the-local-fire-department's-guidelines:

4.--The-facility-shall-be-equipped-with-sufficient-smoke-detectors and-fire--extinguishers--as--recommended--by--the--local--fire department:

1. Each group child care home or facility shall provide adequate space for all children in attendance.

2. The group child care home or facility shall provide adequate space, indoors and out, for the daily activities of the children. This must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a

minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the home or facility at one time, the operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, -50-11.1-07, -50-11.1-08

75-03-09-20. Minimum--sanitation-and-safety-requirements Program requirements.

- 1.--Facilities--other--than--an--occupied--private--residence--with license--capabilities--of--thirteen--to--eighteen--children--must have--an--annual--health--and--sanitation--inspection--completed--by an--environmental--health--practitioner.---If--the--health--or sanitation--of--a--home--or--facility--appears--questionable,--the department--or--county--agency--may--require--the--operator--to--obtain a---sanitation---inspection---by---an---environmental---health practitioner.---Results--of--the--inspection--must--be--submitted--to the--county--agency--and--any--problems--found--must--be--corrected.
- 2.--Group---child--care--home--or--facility--bathroom--lavatories, toilets,--tables,--chairs,--and--floors--must--be--cleaned--daily. Mats--and--mats,--if--used,--must--be--maintained--in--a--clean, sanitary--condition.
- 3.--The--home--or--facility's--building,--grounds,--and--equipment--shall be--located,--cleaned,--and--maintained--to--protect--the--health--and safety---of---children.---Routine--maintenance--and--cleaning procedures--shall--be--established--to--protect--the--health--of--the children--and--the--caregivers.
- 4.--Caregivers--shall--wash--hands--before--meals--and--after--using toilet--facilities.
- 5.--Indoor--and--outdoor--equipment,--toys,--and--supplies--must--be--safe, strong,--nontoxic,--and--in--good--repair.---All--toys--must--be--easily cleanable--and--be--cleaned--and--sanitized--on--a--routine--basis.
- 6.--The--home--or--facility's--ground--areas--shall--be--free--from accumulations--of--refuse,--standing--water,--unprotected--wells, debris,--flammable--material,--and--other--health--and--safety hazards--or--attractive--nuisances.

7. Garbage shall be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning shall not be permitted.
8. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the children shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
9. Potentially hazardous items such as guns, uninsulated wires, and poisonous plants must not be accessible to young children. Guns must be kept in locked storage separate from ammunition.
10. Indoor floors and steps shall not be slippery or have splinters. All steps and walkways shall be kept free from accumulations of water, ice, or snow.
11. Elevated areas such as stairs or porches shall have railings and approved safety gates where necessary to prevent falls.
12. The operator shall take steps to keep the home or facility free of insects and rodents. Chemicals for insect and rodent control shall not be applied in areas accessible to children when children are present in the facility.
13. Doors and pathways shall not be blocked.
14. All light bulbs in areas used by children must be properly shielded.
15. All combustible materials must be kept away from light bulbs and other heat sources.
16. There must be adequate ventilation, heating, humidity, and lighting for the comfort and protection of the health of the children.
17. All group care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, shall have surfaces repainted or shall 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 which 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, when measured by a lead detecting instrument approved by the state department of health and consolidated laboratories.

18.--Personal-items-such-as-combs,-pacifiers,-and-toothbrushes-must be-individually-identified-and-stored-in-a-sanitary-manner.

19.--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.

20.--Caregivers-and-staff-members-shall-wash-hands-before-preparing or--serving--meals,--after--diapering,--after---using---toilet facilities,--and--after--any-other-procedure-that-contaminates their-hands.

21.--All-pets-must-be-properly-immunized.--Nondomestic-animals-such as-skunks,-opossum,-or-raccoon-are-prohibited.--No-pets-may-be allowed--in--the-food-service-area-during-meal-preparation-and serving.

22.--If--wading--pools--are-used-by-the-home-or-facility,-their-use must-be-strictly-supervised.--Wading--pools--must--be--cleaned (emptied)--daily.---All-swimming-pools-must-be-approved-by-the state-department--of--health--and--consolidated--laboratories' division--of--water-supply-and-pollution-control.--Operational practices-as-established-by-the-state-department-of-health-and consolidated-laboratories-must-be-followed.

1. The group child care home or facility operator shall have a program of daily individual or small group activities appropriate to the ages and needs of the children in the group child care home or facility. The program must include activities which foster sound social, intellectual, emotional, and physical growth, developed with discussion and consultation with parents as to their children's needs.

2. The program must be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest. The daily routine must be written, but subject to change. The daily routine must foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep, with sufficient time and opportunities for various experiences.

3. The program must provide a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity. Each home or facility shall have enough play materials and equipment so that, at any one time, each child in attendance may be individually involved.

4. Areas used for napping must provide an opportunity for undisturbed rest. Napping schedules must be set for children

according to the children's ages, needs, and the parent's wishes.

5. At the time of enrollment, the group child care supervisor shall meet with the parents to discuss the children's habits, activities, and schedules while at home and in school and the parent's special concern about the children's past and future behavior and development. The schedule and activities must be designed to complement and supplement the children's experiences at home or in school.
6. The group child care supervisor shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to parents promptly and directly.
7. Personal hygiene practices appropriate for a child's age and development must be stressed.
8. Each child's cultural and ethnic background and primary language or dialect must be respected by the caregivers.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-21. Minimum---requirements---regarding--space Minimum standards for food and nutrition.

1. ~~Each home or facility shall provide adequate space for all children in attendance.~~
2. ~~The group child care home or facility shall provide adequate space, indoors and out, for the daily activities of the children. This shall include a minimum of thirty-five square feet {3.25 square meters} of indoor activity area per child. Unused areas, bathrooms, pantries, passageways leading to outdoor exits, and areas occupied by furniture or appliances that children do not or should not play under or on shall not be considered when computing minimum space. Every child shall have daily access to at least seventy-five square feet {6.97 square meters} of outdoor play space. If available outdoor play space cannot accommodate the licensed capacity of the home or facility at one time, the operator must have a plan for outdoor playtimes which limits use of the play area to its capacity, giving every child an opportunity to play outdoors.~~

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, varied according to diets of the children enrolled, and served at appropriate hours.
2. When parents bring sack lunches for their children, the operator may supplement lunches to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. Children shall be served a nutritious morning and afternoon snack, and, if the parent does not provide a sack lunch, a nourishing meal.
 - a. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day.
 - b. Children in care during any normal mealtime hour shall be served food appropriate to that time of day.
 - c. Children in care after school who have not had any food since lunch shall be provided with a snack.
4. 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 individuals.
5. Information provided by the children's parents as to their eating habits, food preferences, or special needs must be considered in the feeding schedules and in the tailoring of menus.
6. Children shall be served in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.
7. Children may be encouraged to eat the food served, but may not be subjected to coercion or force-feeding.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-22. Minimum-requirements-for-facility Records.

1.--The--home--or--facility--shall--be--properly--lighted.--If--the--lighting--of--the--home--or--facility--appears--questionable,--the--department--or--county--agency--may--require--the--operator--to--obtain--additional--lights--so--that--a--minimum--of--fifty--foot--candles--of--light--is--used--in--the--areas--generally--used--for--children's--activities.

2.--Safe--and--comfortable--arrangements--for--naps--for--enrolled--children--shall--be--provided:

a.--The--floor--shall--be--used--only--when--carpeted--or--padded,--warm,--free--from--drafts,--and--when--each--child--has--an--individual--blanket--or--sleeping--mat.

b.--There--should--be--a--minimum--space--of--two--feet--[58.42--centimeters]--between--each--crib--or--cot.--Aisles--between--cots--and--cribs--shall--be--kept--free--of--all--obstructions--while--they--are--occupied.

c.--There--shall--be--a--room--available,--separate--from--the--nap--room,--where--an--individual--child--can--go--if--they--are--unable--to--nap,--for--supervised--play--so--as--not--to--disrupt--the--other--children's--rest.

d.--A--child--who--is--in--care--between--the--hours--of--eight--p.m.--and--six--a.m.--shall--have--an--individual--sleeping--place.

e.--Children--under--twelve--months--of--age--and--any--child--unable--to--walk--unassisted--shall--sleep--in--a--crib,--bed--with--side--rails--and--a--firm--mattress,--or--a--playpen--with--adequate--padding.

3.--Water--supply:

a.--Drinking--water--shall--be--from--a--source--which--is--approved--by--the--state--department--of--health--and--consolidated--laboratories.

b.--Hot--and--cold--running--water--and--of--sufficient--pressure--from--an--approved--community--system--must--be--available--in--the--home--or--facility.

4.--Toilet--and--lavatory--facilities:

a.--Toilet--and--lavatory--facilities--shall--be--provided--and--shall--be--convenient--to--the--areas--used--by--the--children--and--caregivers.

b.--Toilets--shall--be--located--in--rooms--separate--from--those--used--for--cooking,--sleeping,--and--eating.--A--minimum--of--one--lavatory--and--one--flush--toilet--shall--be--provided--for--group--child--care--homes--or--facilities--serving--up--to--and--including--fifteen--children--excluding--those--children--who--are--not

toilet-trained-and-able-to-use-larger-toilets.--in-a--home
or---facility---serving---sixteen--to--eighteen--children;
excluding-those-children-who-are-not--toilet--trained--and
able--to-use-larger-toilets;-two-toilets-must-be-provided-

e.--Child-sized--toilet--adapters--or--training--chairs--(potty
chairs)--shall-be-provided-for-use-by-children-who--require
them.---Training--chairs--shall--be--emptied--promptly-and
thoroughly-cleaned-and-sanitized-after-each-use-

d.--At--least--one--handwashing-lavatory-shall-be-provided-per
toilet-room-facility-or-diapering-area-

e.--Soiled--or--wet--diapers--shall--be--stored-in-a-sanitary,
airtight-container-until-they-are-removed-and-disposed--of
properly-

f.--Sanitary-hand-drying-equipment;-individual-cloth;-or-paper
towels-shall-be-provided-near-handwashing-lavatories-

5.--Sewage-and-wastewater-disposal-

a.--Any--home--or--facility-not-on-a-municipal-or-public-water
supply-or-wastewater-disposal-system-must-be-approved-by-a
public-health-sanitarian--for--its-sewage-and-wastewater
system-

b.--The--group--home-or-facility-must-meet-the-requirements-of
the-state-plumbing-code;-North-Dakota-Century-Code-chapter
62-03-

1. The group child care home or facility shall maintain the following records:

a. The child's full name, birthdate, and current home
address;

b. Names of the child's parents or legal guardian, and the
business and home telephone numbers where those
individuals may be reached;

c. Names and telephone numbers of individuals who may assume
responsibility for the child if the individual legally
responsible for the child may not be reached immediately
in an emergency;

d. A written statement from the parents or legal guardian
authorizing emergency medical care;

e. Names and telephone numbers of individuals authorized to
take the child from the group child care home or facility;

- f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is a drop-in or school aged; and
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity, must serve as evidence that a child is physically able to take part in the child care program, and must be completed annually.
2. All records maintained with respect to children receiving child care services must be kept confidential, and access must be limited to staff members, the parents, or legal guardian of each child, and to:
- a. Authorized county agency and department representatives;
 - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the children's interests should that be necessary; and
 - c. Individuals who possess a written authorization from the child's parent or legal guardian. The group child care home or facility shall have a release of information form available and shall have the form signed prior to the release of information. An acceptable form must have the following elements:
 - (1) The name and social security number of the child;
 - (2) The name and signature of the child's parent or legal guardian authorizing disclosure;
 - (3) The name and signature of the individual to receive the information;
 - (4) The nature of the information to be disclosed;
 - (5) The purpose of disclosure;
 - (6) A time limit on the effectiveness of the release;
 - (7) A statement that the release may be revoked, but not as to disclosures already made in good faith reliance;
 - (8) A statement that a copy has the same effect as an original; and

(9) The date of signature.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01; 50-11.1-04, 50-11.1-07

75-03-09-23. Minimum standards for food and nutrition Discipline
- Punishment prohibited. Disregard of any of the following disciplinary rules is grounds for denial or revocation.

- 1.--When--the--operator--is--responsible--for--providing--food--to children,--the--food--supplied--shall--meet--United--States department-of-agriculture-standards,--and-be-properly-prepared, sufficient--in--amount,--varied--according--to--diets--of--the children-enrolled,--and-served-at-appropriate-hours.
- 2.--When--parents--bring--sack--lunches--for--their--children,--the operator-may-supplement--lunches--to--provide--nutritious--and sufficient--amounts--of--food--for--children--and-shall--provide adequate--and--appropriate--refrigeration--and--storage--as required.
- 3.--Children--shall--be--served-a-nutritious-morning-and-afternoon snack,--as-outlined-below,--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-for--the time-of-the-day.
 - b.--Children--in--care-during-any-normal-mealtime-hour-shall--be served-food-appropriate-to-that-time-of-the-day.
 - c.--Children--in--care--after-school-who-have-not-had-any-food since-lunch-shall--be-provided-with-a-snack.
- 4.--Whenever--the--operator--is--responsible-for-providing-food-to children,--menus-shall-be-prepared-on-a-weekly-basis--and--shall be--printed--or--written--in--such--a--manner--that-either-the parents,--the-department,--or--other--appropriate--persons--may review-them.
- 5.--Information--provided--by--the--children's-parents-as-to-their eating-habits,--food-preferences,--or--special--needs--shall--be considered-in-the-feeding-schedule-and-menus.
- 6.--Children--shall--be-served-in-a-manner-commensurate-with-their age-using-appropriate-dishes-and-eating-utensils.

~~7.---Children shall be encouraged to eat the food served, but shall not be subjected to coercion or forced feeding.~~

1. The group child care home or facility must have a written policy regarding the discipline of children that must be interpreted to staff members before the group child care home or facility begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking 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, fear, or humiliation.
3. Authority to discipline may not be delegated to or be accomplished by children.
4. Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances. Any child must be in a safe, lighted, well-ventilated room within hearing of an adult. A child may not be isolated in a locked room or closet.
5. A child may not be physically punished for lapses in toilet training.
6. When addressing a child, or while in the presence of a child, staff members may not make derogatory remarks about the child, the child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language.
7. A child may not be force-fed, unless medically prescribed and administered under a physician's care.
8. Deprivation of meals may not be used as a form of discipline or punishment.
9. A child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the facility.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01; 50-11.1-04 50-11.1-08

75-03-09-24. Program--requirements Specialized types of care and minimum requirements therefor.

- 1.--There--shall--be--a-program-of-daily-activities-appropriate-to the-ages-and-needs-of-the-children-in-group-child-care.---The general--activity--schedule--shall--include--activities--which foster-sound-social,--intellectual,--emotional,--and--physical growth.
- 2.--The--program--shall--be-designed-with-intervals-of-stimulation and-relaxation,--and-a-balance-between-periods-of--active--play and--quiet--play--or-rest.---The-general-daily-routine-shall-be written,--but--subject--to--change.---It--should--foster--the development--of--good--health--habits--and--self-discipline, adequate-indoor--and--outdoor--play,--rest,--and--sleep,--with sufficient-time-and-opportunities-for-various-experiences.
- 3.--The--program-shall-provide-children-in-care-with-opportunities for-individual-and-small-group-activities.
- 4.--The--program--shall--provide--for--a--variety--of--educational experiences-for-all-ages-of-children-served-with--an--adequate supply--of--safe-play-equipment,--toys,--and--materials-for-indoor and-outdoor-activity.---Each-home-or-facility-shall-have-enough play--materials--and--equipment-so,--that-at-any-one-time,--each child-in-attendance-can-be-individually-involved.
- 5.--Areas--used--for--napping--shall--provide--an--opportunity-for undisturbed--rest.---Napping--schedules--should--be--set---for children--according-to-their-ages,--needs,--and-parent's-wishes.
- 6.--At--the--time-of-enrollment,--the-supervisor-shall-discuss-with the-parents-the-children's-habits,--activities,--and--schedules while--at--home-and-in-school-and-the-parent's-special-concern about-their-past-and-future--behavior--and--development.---The schedule--and--activities--shall-be-designed-to-complement-and supplement-the-children's-experiences-at-home-or-in-school.
- 7.--The--supervisor-shall-be-responsible-for-contacting-parents-to exchange-information-concerning-the--child--and--any--concerns about--the--health,--development,--or--behavior--of-the-child. These-concerns-shall-be-communicated-to-parents--promptly--and directly.
- 8.--Personal--hygiene--practices-appropriate-for-a-child's-age-and development-shall-be-stressed.
- 9.--Each--child's--cultural--and--ethnic--background--and--primary language-or-dialect-shall-be-respected-by-the-caregivers.

1. Infant care.

- a. A group child care home or facility serving children from birth to twenty-four months shall provide an environment which protects the children from physical harm and is not

so restricted as to inhibit physical, intellectual, emotional, and social development.

- b. Nonwalking children shall have the opportunity during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.
- c. Each infant shall have an individual sleeping space. The sheets must be changed whenever they become soiled or wet. If individual protective coverings are used for each child to protect linens, the protective coverings must be laundered at least weekly.
- d. Children must be taken outdoors or to other areas within the group child care home or facility for a part of each day to provide some change of physical surroundings and to be with other children. A child may not be confined to a crib or playpen during the entire time at the group child care home or facility, unless the child is preparing to sleep or sleeping for the duration of the care.
- e. Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked to, or sung to.
- f. Low chairs and tables or infant seats with trays must be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, must have a wide base and a safety strap.
- g. Children may not be shaken or jostled.
- h. All cries of infants must be investigated.
- i. Infants must be fed or supervised individually and the diet and pattern of feeding must be appropriate to the individual developmental needs and parent's wishes.
- j. Infants must be provided age-appropriate nutritious foods. Only breast milk or iron-fortified artificial milk, meeting the requirements of the Infant Formula Act of 1980 [Pub. L. 96-359; 94 Stat. 1190; 21 U.S.C. 30 note et seq.], may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent.
- k. Infants must be fed only the specific brand of artificial baby milk requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions, based upon directions of a child's physician, are provided.
- l. Mixed formula, in single bottles or batches, that has been unrefrigerated more than one hour, must be discarded.

- m. Frozen breast milk must be thawed under cool running tap water, in amounts needed. Unused, thawed breast milk must be discarded at the end of each day.
- n. Staff members shall hold infants when bottle-feeding breast milk, artificial baby milk, soy or cow's milk based ready-to-feed, concentrate, powdered prepared formulas or cow or goat milk.
- o. Infants, determined by the parent to be developmentally ready for foods other than breast milk or artificial baby milks, shall have those other foods offered from a spoon only.
- p. Staff members may not leave an infant unattended during the infant's feeding or eating process.
- q. There must be a designated cleanable diapering area in the group child care home or facility if children requiring diapering are in care. Diapers must be changed promptly when needed and in a sanitary manner. Infants must be changed on a cleanable surface area which must be thoroughly cleaned with detergent and sanitized after each diapering.
- r. Soiled or wet disposable diapers must be stored in a sanitary, airtight container until removed from the group child care home or facility.

2. Night care.

- a. Any group child care home or facility 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 provide a transition into this type of care appropriate to the child's emotional needs.
- c. When practical, children must be left for care and picked up before and after their normal sleeping period to ensure minimal disturbance of the child during sleep, but consideration must be given to the parent's work schedule.
- d. Preschool age children must be supervised when bathing.
- e. Comfortable beds, cots, or cribs, 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, at least weekly.
- (3) If beds are used by different children, sheets and pillowcases must be laundered before use by other children.
- (4) Each bed or cot must have sufficient blankets available.
- f. The child care home or facility shall require each child in night care to have night clothing and a toothbrush marked for identification.
- g. For group facilities not operating out of an occupied private residence, the staff must be awake and within listening distance during sleeping hours in order to provide for the needs of children and respond to an emergency. This provision does not apply to group homes.

3. Drop-in group child care homes or facilities.

- a. If a group child care home or facility serves drop-in children, schoolchildren, or before-school and after-school children, the group child care home or facility must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program.
- b. The program must reflect the special needs of the children who are provided drop-in service.
- c. Admission records secured must comply with all enrollment requirements contained in section 75-03-09-22, except the immunization record requirement.
- d. Admittance procedures must provide for a period of individual attention for the child in order to acquaint the child with the group child care home or facility, its equipment, and the staff.
- e. A group child care home or facility may not receive drop-in or part-time children who, when added to the children in regular attendance, cause the group child care home or facility to exceed the total number of children for which the group child care home or facility is licensed.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

75-03-09-25. Specialized--types-of-care-and-minimum-requirements therefor Minimum requirements for care of children with special needs. When children with special needs are admitted, there must be appropriate provisions to meet those needs. The group child care home or facility shall document how the child's special needs may be met.

1.--Infant-care-

- a.--When-children-from-birth-to-twenty-four-months-are-served, the-operator-shall-provide-an-environment--which--protects the--children--from--physical-harm-and-one-which-is-not-so restricted---as---to---inhibit---physical,---intellectual, emotional,--and-social-development-
- b.--Nonwalking-children-shall-have-the-opportunity-during-each day-for-freedom-of-movement,--such-as-creeping-or--crawling in-a-safe,--clean,--open,--uncluttered-area-
- c.--Each--infant-shall-have-an-individual-sleeping-space.--The sheets-shall-be-changed-whenever--they--become--soiled--or wet.--If-individual-protective-coverings-are-used-for-each child-to-protect-linens,--these-shall-be-laundered-at-least weekly-
- d.--Children--shall--be--taken--out-of-doors-or-to-other-areas within-the-home-or-facility-for-a--part--of--each--day--to provide--some--change--of--physical-surroundings-and-to-be with-other-children.--No-child-shall-be-confined-to-a-crib or-playpen-during-the-entire-time-at-the-home-or-facility, unless-the-child-is-preparing-to-sleep-or-sleeping-for-the duration-of-the-care-
- e.--Each---infant--shall--have--periodic--individual--personal contact-and-attention-from-an-adult,--such-as--being--held, rocked,--talked-to,--or-sung-to-
- f.--Low--chairs-and-tables-or-infant-seats-with-trays-shall-be provided-for-table--play--and--mealtime--for--children--no longer-being-held-for-feeding.--Highchairs,--if-used,--shall have-a-wide-base-and-a-safety-strap-
- g.--Children-shall-never-be-shaken-or-jostled-in-a-moderate-or severe-manner-
- h.--All-eries-of-infants-shall-be-investigated-
- i.--Infants--shall-be-fed-or-supervised-individually-and-their diet-and-pattern-of-feeding-shall-be-appropriate-to--their individual-developmental-needs-

- j.---At no time shall infants be left unattended while feeding.
- k.---If prepackaged, presterilized formula is used for each child's feeding, any excess shall be discarded in a safe, sanitary manner if it has been unrefrigerated for a total of four or more hours.
- l.---Diapers shall be changed promptly when needed and in a sanitary manner. There must be a designated diapering area where infants must be changed on a cleanable surface which is thoroughly cleaned with detergent after each diapering. When more than one infant is in care, the diapering area must be thoroughly cleaned and sanitized between use for each infant.
- m.---Soiled or wet diapers must be stored in a sanitary, airtight container. Disposable diapers must be removed at least daily and disposed of properly.

2.---Night care.

- a.---Any home or facility offering night care shall provide program modification for the special needs of children and their parents during the night.
- b.---In consultation with parents, special attention shall be given by the caregiver to provide 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 shall be given to the parents' work schedules.
- d.---Preschool-age children shall be supervised when bathing.
- e.---Comfortable beds, cots, or cribs complete with a mattress or pad shall be available.
 - (1)---Pillows and mattresses shall have clean coverings.
 - (2)---Sheets and pillowcases shall 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 shall be laundered before use by other children.
 - (3)---Each bed or cot shall have sufficient blankets available.
- f.---The home or facility shall require each child in night care to have:

{1}--Night-clothing-

{2}--A-toothbrush-marked-for-identification-

3---Drop-in-facilities-

a---If---the---home---or---facility---serves---drop-in---children;
schoolchildren;---or---before-school---and---after-school
children;---it-shall-be-sufficiently-staffed-to-effectively
handle-admission-records--and--explain--the--policies--and
procedures--of--the-group-care-program--Admission-records
secured--must--comply--with--all--enrollment--requirements
contained--in--section-75-03-09-15-except-the-immunization
record-requirement-

b---Admittance--procedures--shall--provide--for--a--period--of
individual-attention-for-the-child-in--order--to--acquaint
the-child-with-the-home-or-facility-

c---No--home--or--facility--shall--receive-drop-in-or-part-time
children-who;--when--added--to--the--children--in--regular
attendance;--cause--it--to--exceed--the--total--number--of
children-for-which-it-is-licensed-

1. When children with special needs are admitted, the group child care supervisor shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants.
2. Caregivers shall receive proper instructions as to the nature of the child's disability and potential for growth and development.
3. If the nature of the special needs or the number of children with special needs warrants added care, the group child care home or facility shall add sufficient staff and equipment as deemed necessary by the department to compensate for these needs.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-26. Minimum--requirements--for--care--of--children-with special-needs Minimum provisions regarding emergency care for children. When---children---with---special---needs---are---admitted;---there---shall---be appropriate-provisions-to-meet-these-needs. The group child care home or facility shall have written plans to respond to illness and

emergencies, including burns, serious injury, and ingestion of poison. Parents of enrollees must be advised of these plans. Plans must provide for:

- 1.--When--children-with-special-needs-are-admitted,-the-supervisor shall-consult-with-the-child's-parents,-and-with-the--parent's permission;--the--child's--source-of-professional-health-care; or;--when---appropriate;---other---health---and---professional consultants;
- 2.--Caregivers--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--needs--or--the-number-of children-with-special-needs-warrants-added-care,-the--home--or faeility--shall--add--suffieient-staff-and-equipment-as-deemed necessary-by-the-department-to-compensate-for-these-needs;

1. The conspicuous posting of emergency response procedures.
2. The establishment of emergency response procedures.
3. The availability of at least one working flashlight.
4. At least one state department of health-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to caregivers.
5. A working telephone line immediately accessible to the caregivers with a list of emergency telephone numbers conspicuously posted adjacent to the telephone.
6. Response to minor illnesses when children are cared for in the group child care home or facility and available medical consultation regarding special care and medication.
7. Written permission to dispense medication and proper instructions for the administration of medication obtained from the parent, if a child in the group child care home or facility requires medication.
 - a. Medications prescribed by a physician must be accompanied by the physician's written instructions as to dosage and storage, and labeled with the child's name and dated.
 - b. Medications must be stored in an area inaccessible to children, and medications stored in a refrigerator must be stored collectively in a spillproof container.
 - c. A written record of the administration of medication, including over-the-counter medication, to each child must be kept. Records must include the date and time 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.

8. The designation of a supervised temporary isolation area for a child who is too ill to remain in the group or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought, as necessary.
9. Provisions for emergency transportation, specifically that when a child is brought to another place for emergency care, the child is accompanied by an adult who remains with the child until medical personnel assume responsibility for the child's care and until the parent or legal guardian arrives.
10. Practices in which children with infectious or communicable conditions are excluded from the group child care home or facility until the condition may no longer be transmitted. Guidance regarding exclusion and return to the group child care home or facility shall be obtained through consultation with local and state health department authorities.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-01~~; ~~50-11.1-04~~ 50-11.1-07, 50-11.1-07.2, 50-11.1-08

75-03-09-27. Discipline Effect of conviction on licensure and employment. ~~Discipline must be constructive or educational in nature and may include diversion, separation from 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.~~

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 young 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, or abusive language may not 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.

1. A group child care home or facility operator may not be, and a group child care home or facility may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the group child care home or facility, an individual who has been found guilty of, pled guilty to, or pled no contest to:

- a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
- b. An offense, other than an offense identified in subdivision a, if the department in the case of a group child care home or facility operator, or the group child care home or facility operator in the case of an employee, determines that the individual has not been sufficiently rehabilitated.

2. The group child care home or facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section.
3. For purposes of subdivision b of subsection 1, the department in the case of a group child care home or facility operator, or the group child care home or facility operator in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-01~~ 50-11.1-03, 50-11.1-04

75-03-09-28. Minimum--standards--for-provision-of-transportation
Child abuse and neglect determinations.

- 1.--~~The--child--care--operator--shall--inform--parents-of-enrolled children-of-how-any-transportation-will-be-provided;--who--may provide--transportation;--insurance-coverage;--and-how-parental permission-is-to-be-obtained--for--special--field--trips--and related--activities--which-occur-outside-the-home-or-facility. Any-vehicle-used-for-transporting-children-shall--be--in--safe operating--condition--and--in--compliance-with-state-and-local laws.~~
- 2.--~~When--transportation--is-provided;--children-shall-be-protected by--adequate--staff--supervision;--safety--precautions;--and liability/medical-insurance.~~
 - a.--~~Child/staff--ratios--shall--be--maintained--to--assure-the safety-of-children-while-being-transported.~~
 - b.--~~No-child-shall-be-left-unattended-in-a-vehicle.~~
- 3.--~~Children-shall-be-instructed-in-safe-transportation-conduct-as appropriate-to-their-age-and-stage-of-development.~~
- 4.--~~The--driver-shall-be-in-compliance-with-all-relevant-state-and local-laws.~~

If a probable cause determination or a decision that services are required under North Dakota Century Code chapter 50-25.1 exists, indicating that any child has been abused or neglected by a staff member, that individual shall furnish information satisfactory to the department, from which the department may determine the staff member's current ability to provide care free of abuse and neglect. The determination of current ability must be furnished to the group child care operator and to the regional director of the human service center or the regional director's designee for consideration and action on the group child care license.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-09-29. Allowable time periods for correction of deficiencies.

1. ~~Pursuant to North Dakota Century Code section 50-11.1-07.2, the following time periods are established in which the corrections of these deficiencies noted in the correction order issued must be made~~ Deficiencies noted in a correction order must be corrected:
 - a. For a violation of section 75-03-09-09, section 75-03-09-23, and subsections 6 and 10 of section 75-03-09-18, within twenty-four hours;
 - b. For a violation or deficiency requiring the hiring of a group child care supervisor with those qualifications set forth in section 75-03-09-11, a period of within sixty days to correct the deficiency shall be allowed;
 - c. For a violation or deficiency that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-09-19 75-03-09-17, a period of within sixty days to correct the deficiency shall be allowed; and
 - d. For a violation or deficiency that requires substantial building remodeling, construction, or change, a period of within sixty days to correct the deficiency shall be allowed; and
 - e. For all other violations or deficiencies, a period of within twenty days shall be allowed to correct the deficiency.

2. All time periods shall ~~commence with~~ for correction begin on the date of receipt, by the provider, of the correction order by the licensee.
3. The regional supervisor of early childhood program licensing shall ~~have the authority to~~ may grant extensions an extension of allowable additional time to correct deficiencies for up to a period of one-half the original allowable time to correct the deficiency. These extensions allotted. An extension may be granted upon application by the ~~provider licensee~~ and upon a showing that the need for the extension is created by unforeseeable circumstances beyond the control of the provider and that the provider and the licensee has diligently pursued the correction of the deficiency.
4. The operator shall furnish written notice of completion of the correction order action to the county agency. The correction order is effective until the county agency receives the notice.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-09-30. Penalties Fiscal sanctions.

1. ~~A violation of any of the following sections shall subject the licensee to a fiscal sanction of twenty-five dollars per day: subdivision g of subsection 3 of section 75-03-09-09, subsection 2 of section 75-03-09-14, section 75-03-09-19, subsections 7, 10, and 14 of section 75-03-09-20, and sections 75-03-09-21 and 75-03-09-27.~~
2. ~~A violation of any of the following sections shall subject the licensee to a fiscal sanction of fifteen dollars per day: subsection 2 of section 75-03-09-10, section 75-03-09-12, subsections 3, 5, 8, 9, and 12 of section 75-03-09-20, subsection 2 and subdivisions b and f of subsection 4 of section 75-03-09-22, subsection 1 of section 75-03-09-23, subsections 2 and 4 of section 75-03-09-24, subsections 1 and 3 of section 75-03-09-25, and section 75-03-09-28.~~
3. ~~A violation of any other sections of this chapter not noted in subsections 1 and 2 shall subject the licensee to a fiscal sanction of five dollars per day.~~
1. A fiscal sanction of twenty-five dollars per day must be assessed for each violation of subdivision g of subsection 1 of section 75-03-09-08, subsection 2 of section 75-03-09-09,

section 75-03-09-17, subsections 7, 10, and 14 of section 75-03-09-18, section 75-03-09-19, and section 75-03-09-23, for each day after the allowable time for correction of deficiencies ends, that the group child care home or facility has not verified correction.

2. A fiscal sanction of fifteen dollars per day must be assessed for each violation of subsection 2 of section 75-03-09-10, section 75-03-09-12, subsection 2 and subdivisions b and d of subsection 4 of section 75-03-09-14, section 75-03-09-15, subsections 3, 5, 8, 9, and 12 of section 75-03-09-18, subsections 2 and 4 of section 75-03-09-20, subsection 1 of section 75-03-09-21, and subsections 1 and 3 of section 75-03-09-24, for each day, after the allowable time for correction of deficiencies ends, that the group child care home or facility has not verified correction.
3. A fiscal sanction of five dollars per day must be assessed for each violation of any other provision of this chapter for each day after the allowable time for correction of deficiencies ends, that the group child care home or facility has not verified correction.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-07.4; 50-11.1-08

Law Implemented: NDCC 50-11.1-07.4; ---50-11.1-07.5; ---50-11.1-07.6; 50-11.1-07.7 50-11.1-04

75-03-09-31. Appeals. An applicant or provider may appeal a decision to deny or revoke a license by filing a written appeal with the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing may be conducted in the manner provided in chapter 75-01-03.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

CHAPTER 75-03-10

AGENCY SYNOPSIS: Regarding Proposed Amendments to North Dakota Administrative Code Chapter 75-03-10 Child Care Center - Early Childhood Services

The department proposed rules amending North Dakota Administrative Code Chapter 75-03-10, Child Care Center - Early Childhood Services. The department conducted a hearing by conference call with the human service centers on October 8, 1996. The department conducted public hearings on October 9 and 10, 1996, in Bismarck. The department received written comment on the proposed rules until the end of the day on November 11, 1996.

The purpose of chapter 75-03-10 is to establish minimum standards of group child care and assure that those standards are maintained.

75-03-10-01. Purpose: This section is repealed.

75-03-10-02. Authority and Objective: This section is repealed.

75-03-10-03. Definitions: Corrects grammar and adds definitions of terms related to staff and volunteers.

75-03-10-04. Effect of Licensing and Display of License: Corrects grammar and language usage and specifies that issuance of a license to operate a child care center is evidence of compliance with North Dakota Century Chapter 50-11.1 at the time of licensure.

75-03-10-05. Denial or Revocation of License: Corrects grammar and language usage and provides that the department may revoke a license to operate a child care center without first issuing a correction order.

75-03-10-06. (Formerly 75-03-10-08). Provisional License: Corrects grammar and language usage; allows the designee of a director of a regional human service center to issue a provisional license; prohibits the issuance of a provisional license if the facility is not in compliance with rules pertaining to fire inspections and minimum sanitation and safety requirements; specifies that the operator shall prominently display the provisional license; and requires the operator to provide parents notice that the facility is operating on a provisional license as well as the basis for the provisional license.

75-03-10-07. (Formerly 75-03-10-06). Application for and Nontransferability of Child Care License: Changes title of section by including reference to nontransferability; corrects grammar and language usage; and specifies that license is nontransferable.

75-03-10-08. (Formerly 75-03-10-09). Duties of Child Care Center Operator: Changes title of section by eliminating specific reference to minimum qualifications; corrects grammar and language usage; specifies

that the operator is required to comply with the requirements set forth in North Dakota Century Code Chapter 50-11.1; requires that parents of enrolled children be informed of methods of discipline as well as developmentally appropriate guidance techniques to be used in implementing such discipline; specifies that parents of enrolled children are to be advised of the name, address, and telephone number of the operator and director; specifies that the center must be sufficiently staffed so as to accommodate the appropriate child and staff ratios for children in attendance; requires that no more children than the licensed capacity be served at any one time; allows parents to be provided regular opportunities to meet with caregivers during enrollment as well as before enrollment; requires that there be at all times at least one staff member on duty who, in addition to having CPR training, also be trained in a first-aid program approved by the department; allows for an exemption from the CPR and first-aid training requirements as to substitute staff; requires the development and implementation of a procedure for accountability; requires that the operator make carecheck information available to parents; and mandates that the operator of a facility report any instance of death, serious accident, or illness requiring hospitalization of a child to the county director or such county director's designee within twenty-four hours of the incident.

75-03-10-09. (Formerly 75-03-10-16). Staffing and Group Size Requirements: Shortens title of section and adds reference to group size; corrects language and grammar usage; specifies that children with special conditions requiring more than usual care and supervision shall receive this care and supervision without adversely affecting care provided to other children; specifies that the operator shall ensure that a center is sufficiently staffed at all times to meet the necessary staffing requirements and that no more children than the licensed capacity will be served at one time; includes maximum group sizes based upon the age of children in care; implements a grandfathering clause which exempts operators licensed prior to August 1, 1998, from compliance with maximum group size requirements; replaces term "handicapping" with term "disabling"; provides for calculation procedure to determine group size when there are mixed age groups in the same room; and exempts children who are using a licensed facility as a safe house from being counted for purposes of determining the appropriate staff to child ratio.

75-03-10-10. (Formerly 75-03-10-12). Minimum Qualifications of Child Care Center Supervisor: Corrects grammar and language usage; specifies that supervisors must be of good mental and physical health, capable of mature judgment, and must possess knowledge and experience in interpersonal relationships; and must certify attendance at a minimum of thirteen hours of county-approved training related to child care on an annual basis.

75-03-10-11. Duties of Child Care Center Director: Corrects grammar and language usage and eliminates unnecessary reference to duty to cooperate with the department and other agencies in improving care and competence of personnel.

75-03-10-11.1. (Formerly 75-03-10-10). Minimum Qualifications of Child Care Center Director: Corrects grammar and language usage; deletes unnecessary grandfathering clause dating back to July 1, 1984; deletes provision relating exclusively to school-age child care programs; and requires that a director certify attendance at a minimum of thirteen hours of county-approved child care training annually.

75-03-10-12. (Formerly 75-03-10-13). Minimum Qualifications for All Caregivers: Shortens title of section; corrects grammar and language usage; increases the minimum number of hours of child care training each caregiver must obtain on an annual basis, contingent upon the number of hours worked per week; specifies that such training must be county-approved child care training; and specifies that no caregiver may be under the influence of any judgment-altering drug while children are in care.

75-03-10-13. (Formerly 75-03-10-15). Minimum Health Requirements for All Caregivers: Corrects language and grammar usage; provides that each operator or caregiver shall complete a health self-certification form and the operator shall submit such form to the county within five working days of such caregiver's first workday; provides that each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter; allows an exempts for substitute staff with regard to the tuberculosis testing requirement; provides that any child care center operator who uses an untested emergency designee may not be found in violation of this provision; and reiterates the point that staff members may not use or be under the influence of any alcohol or judgment-altering drug while children are in care.

75-03-10-14. Minimum Qualifications for Volunteers: Corrects grammar and language usage.

75-03-10-15. (Formerly 75-03-10-30). Minimum Standards for Provision of Transportation: Corrects grammar and language usage; and mandates that there be one busdriver per twenty children and one additional individual for twenty-one children or more.

75-03-08-16. (Formerly 75-03-10-20). Minimum Emergency Evacuation and Disaster Plan: Corrects grammar and language usage and eliminates repetitive reference to fire inspections being completed by local or state fire authorities.

75-03-10-17. (Formerly 75-03-10-21). Fire Inspections: Corrects grammar and language usage; specifies that the operator of a child care center shall file reports of the inspections with the county licensing agency and requires that the child care center be equipped with sufficient smoke detectors and fire extinguishers as recommended by the local fire department.

75-03-10-18. (Formerly 75-03-10-22). Minimum Sanitation and Safety Requirements: Shortens title of section; corrects grammar and language usage; specifies that the State Department of Health shall conduct an

annual inspection in centers where meals are prepared; eliminates unnecessary statement that cots and mats be constructed of easily cleanable materials; specifies that caregivers shall wash their hands after nose wiping and after any other procedure that may involve contact with bodily fluids; requires that hand soap and paper towels be made available at each lavatory; specifies that all toys must be sanitized on a routine basis; specifies that steps and walkways must be kept free from debris; specifies that exit doorways may not be blocked; requires that there be adequate lighting for the comfort and protection of the health of children; clarifies that measurements for hazardous levels of lead-bearing substances in child care centers erected before January 1, 1970, must be performed with a lead-detecting instrument approved by the State Department of Health; includes a requirement that all pets present in the child care center be immunized and further states that nondomestic animals may not be present in the child care center even where regarded as pets; prohibits pets from being in the kitchen or eating area during meal preparation or meals; replaces reference to the "state department of health and consolidated laboratories" with "local health unit"; prohibits smoking at any time during which a child who receives early childhood services is present and receiving services; specifies that disposable diapers must be stored in a sanitary airtight container until removed from the center; specifies that the center must have a drinking supply from an approved community water system where such supply is not from a source tested and approved by the State Department of Health; in addition to having a tempering valve, allows for hot water heaters to be turned down or an antiscalding device to be in place so as to prevent the temperature of hot water supplied to lavatories and bathing facilities from exceeding one hundred twenty degrees Fahrenheit; eliminates the term "environmental health practitioner" and substitutes "state department of health"; requires that paper towels or other sanitary hand-drying equipment be provided near washing lavatories; and corrects an incorrect reference to the North Dakota State Plumbing Code.

75-03-10-19. (Formerly 75-03-10-23 and 75-03-10-24). Minimum Requirements Regarding Space and Lighting: Merges two previously separated sections to one; corrects language and grammar usage; specifies that the child care center shall provide adequate indoor and outdoor space for the daily activities of children; prohibits consideration of space children are not permitted to occupy in calculating whether adequate space is available; specifies that each child must be given an opportunity to play outdoors; and provides that if the lighting of the child care center appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

75-03-10-20. (Formerly 75-03-10-26). Program Requirements: Corrects grammar and language usage; specifies that the child care center operator shall have a program of daily individual or small group activities appropriate to the age and needs of the children in care, and that such program is to be developed with discussion and consultation with parents; replaces term "handicapped" with "disabled"; deletes

unnecessary reference to having separate arrangements available for napping; and specifies that it is the duty of the supervisor to contact parents so as to allow meaningful opportunity to participate in general program policymaking.

75-03-10-21. (Formerly 75-03-10-25). Minimum Standards for Food and Nutrition: Corrects language and grammar usage; provides that where food is prepared, served, or stored in a child care center the food must be treated in a sanitary and safe manner; requires that the operator provide adequate and appropriate refrigeration for food items as required; replaces term "lunch" with "meal"; and specifies that children must be served foods and portions commensurate with their age.

75-03-10-22. (Formerly 75-03-10-17 and 75-03-10-18). Records: Merges two previously separate sections into one; corrects grammar and language usage; exempts drop-in or school-aged children from the requirement that records contain verification that all appropriate immunizations have been received as prescribed by the State Department of Health; specifies that records maintained with respect to children receiving services may be released to authorized county agency representatives; and clarifies that a legal guardian may have access to the child's records.

75-03-10-23. (Formerly 75-03-10-29). Discipline - Punishment Prohibited: Changes title of section by adding reference to "punishment prohibited"; corrects grammar and language usage; specifies that the child care center must have a written policy regarding the discipline of children and that such policy must be interpreted to staff members before staff members begin working with children; prohibits children from being subjected to fear as a form of punishment or discipline; specifies that no staff member may engage in unduly loud or otherwise abusive language while in the presence of a child or when addressing a child; and specifies that the prohibition against punching, spanking, shaking, pinching, biting, or rough handling of any child applies to all staff members or any other adult in the child care center.

75-03-10-24. (Formerly 75-03-10-27). Specialized Types of Care and Minimum Requirements Therefor: Corrects grammar and language usage; specifies that as to infants, if individual protective coverings are used to protect linens, such protective coverings must be laundered at least weekly; specifies that the diet and pattern of feeding used with infants must be in conjunction with parent's wishes as well as the individual development needs of the infant; provides for specific storage and feeding requirements for formula and milk; and specifies that as to drop-in child care centers, the center must be sufficiently staffed so as to be able to explain the procedures of the center's program.

75-03-10-25. (Formerly 75-03-10-28). Minimum Requirements for Care of Children with Special Needs: Corrects grammar and language usage and specifies that when children with special needs are admitted, the child care center supervisor shall consult with the child's parents, and with the parents' permission, other help and professional consultants as may be appropriate.

75-03-10-26. (Formerly 75-03-10-19). Minimum Provisions Regarding Emergency Care for Children: Corrects language and grammar usage; adds a requirement that the child care center have a plan to respond to burns; specifies that parents of enrollees be advised to such plans; requires that medications stored in a refrigerator be stored collectively in a spillproof container; requires that a written record of the administration of medication be maintained; requires that completed medication records be included in the child's record; provides that in the event a child is too ill to remain in the group or has an infectious or contagious disease, parents are to be asked to pick up their child immediately; requires that children with infectious or communicable diseases be excluded from the child care center until the condition may no longer be transmitted, and further requires that guidance regarding exclusion and return to the child care center be obtained through consultation with local and state health department authorities; requires that the child care center inform parents in writing of any first aid administered to their child within twenty-four hours of the incident and immediately notify parents of any injury which requires emergency care beyond first aid; and requires that each injury report be made a part of the child's record.

75-03-10-27. (Formerly 75-03-10-07.1). Effect of Conviction on Licensure and Employment: Changes title of section by adding reference to employment; provides that any individual seeking licensure or employment in a child care center may not be licensed or employed if they have been found guilty of, pled guilty to, or pled no contest to any one of a specific list of criminal offenses; provides that if an individual seeking licensure or employment in a child care center has been found guilty of, pled guilty to, or pled no contest to any other offense, then a determination shall be made as to whether that individual has been sufficiently rehabilitated; clarifies that determinations of sufficient rehabilitation in regard to licensees or applicants is to be made by the department, and decisions of sufficient rehabilitation in regard to employees are to be made by the operator; and provides that completion of a period of five years after final discharge from any term or probation, parole, or other form of community correction or imprisonment, without subsequent conviction, will serve as prima facie evidence of sufficient rehabilitation.

75-03-10-28. (Formerly 75-03-10-07.2). Child Abuse and Neglect Determinations: New section providing that is a probable cause determination or decision that services are required under North Dakota Century Code Chapter 50-25.1 exists, indicating that any child has been abused or neglected by a staff member, that individual shall furnish information satisfactory to the department from which the department may determine the staff member's current ability to provide care free of abuse and neglect; and such determination must be furnished to the child care center operator and to the regional director of the human service center or such director's designee.

75-03-10-29. (Formerly 75-03-10-31). Allowable Time Periods for Correction of Deficiencies: Corrects grammar and language usage; modifies references to other sections of chapter consistent with

renumbering scheme; and adds requirement that the operator furnish a written notice of completion of a correction order action to the county agency.

75-03-10-30. (Formerly 75-03-10-32). Fiscal Sanctions: Changes references to other sections throughout the chapter to reflect changes in the renumbering scheme; clarifies that per day fiscal sanction applies for each day after the allowable time for correction of deficiencies ends that the child care center has not verified correction.

75-03-10-31. (Formerly 75-03-10-33). Appeals: New section outlining the right of an applicant or provider to appeal an adverse decision by filing a written appeal with the department, further providing that an administrative hearing will be conducted in a manner consistent with North Dakota Administrative Code Chapter 75-01-03.

75-03-10-01. Purpose. ~~The--purpose--of--this--chapter--is--to establish-minimum-standards-for-licensed-child-care-centers--providing early--childhood--services--and--to--assure--that--those--standards--are maintained.~~ Repealed effective August 1, 1998.

History: Effective-December-1,-1981;-amended-effective-January-1,-1987; July-1,-1996;-July-1,-1996;-repeal-voided-by--the--Administrative--Rules Committee-effective-August-24,-1996-

General Authority: NDCC-50-11.1-08

Law Implemented: NDCC-50-11.1-01

75-03-10-02. Authority and objective. Pursuant-to-North-Dakota Century--Code--section--50-11.1-08;-the--department--is--empowered---to prescribe--and--promulgate--such-rules-as-are-necessary-to-carry-out-the provisions-of-North--Dakota--Century--Code--chapter--50-11.1. Repealed effective August 1, 1998.

History: Effective-December-1,-1981;-amended-effective-January-1,-1987; July-1,-1996;-July-1,-1996;-repeal-voided-by--the--Administrative--Rules Committee-effective-August-24,-1996-

General Authority: NDCC-50-11.1-08

Law Implemented: NDCC-50-11.1-08

75-03-10-03. Definitions. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the facility.
2. "Caregiver" means any person individual whose prime responsibility is the provision of direct provision--of--early childhood-services-in-facilities-subject-to-this-chapter care, supervision, and guidance to children in a child care center under the guidance and supervision of the child care center operator.

3. "Child care center" means an early childhood facility where early childhood services are provided to nineteen or more children.
4. "Child care center director" means any person--with--the responsibility individual responsible for overseeing and planning the day-to-day child care center activities.
- 4- 5. "Child care center operator" means any-person-in-whom-inheres the individual who has the legal responsibility and the administrative authority for the operation of a child care center. The child care center operator is the applicant for license or the licensee pursuant-to under this chapter.
- 5- 6. "Child care center supervisor" means any person individual with the responsibility for organizing and supervising daily program activities.
- 6- 7. "Department" means the North Dakota department of human services.
8. "School-age--child--care--program"--means--a-child-care-center providing-early-childhood-services-exclusively--to--school-age children--before--and-after-school-and-during-school-holidays. "Emergency designee" means an individual designated by the child care center operator to be a backup caregiver for emergency assistance or to provide substitute care.
- 7- 9. "Parent" means any--person an individual bearing the legal relationship of father or mother to a child enrolled in a child care center, including those-persons an individual who legally stand stands in place of such a parent, such--as including a legal guardians guardian or custodians custodian.
10. "Staff member" means operator, substitute staff, volunteer, caregiver, or other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the child care center.
11. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month.
12. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a fire person for fire safety week, McGruff, or Santa Claus person.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-10-04. Effect of licensing and display of license.

1. The issuance of a license to operate a child care center shall be is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license shall must be ~~on-display~~ displayed in the ~~facility-in-a-conspicuous-place~~ premises to which it applies.
3. The license shall must specify the maximum number of children who may be cared for by the center; ~~and the~~. The center shall may at no time admit a greater number of children.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-10-05. Denial or revocation of license.

1. ~~The--right-to-provide-early-childhood-services-in-a-child-care center--is--dependent--upon--compliance--with--the--applicable provisions--of--North--Dakota--Century--Code--chapter-50-11.1-and the-required-minimum-standards-set-forth-in-this-chapter.~~
2. ~~The--department--may--revoke--or--deny--a--license--to--operate--a--child care-center~~ A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
- 3: 2. If an action to revoke a license is appealed, the licenseholder may continue the operation of the facility child care center pending the final administrative determination or until the license expires, whichever ~~first~~ occurs first; provided, however, that this subsection shall does not limit the actions the department may take pursuant to North Dakota Century Code section 50-11.1-12.
3. The department may revoke a license to operate a child care center without first issuing a correction order.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-09

75-03-10-06. Application-for-child-care-center-license Provisional license.

~~1.--An--application--for-a-child-care-center-license-shall-be-made with-the-county-social-service-board-of-the--county--in--which the-facility-is-located.~~

~~2.--Application-shall-be-made-in-the-form-and-manner-prescribed-by the-department.~~

~~3.--A--new--application--for-a-license-must-be-filed-by-a-licensed center-upon-change-of-operator-or-location.~~

1. The director of a regional human service center, in the director's discretion, or the director's designee, may issue a provisional license for the operation of a newly opened child care center or for a previously licensed child care center, although the child care center fails to comply with all applicable standards and rules of the department.

2. A provisional license must:

a. Prominently state that the child care center has failed to comply with all applicable standards and rules of the department;

b. State that the items of noncompliance are set forth on a document available upon request made to the child care center's operator;

c. Expire at a set date, not to exceed six months from the date of issuance; and

d. Be exchanged for an unrestricted license, which bears the same date of issuance as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and rules.

3. A provisional license may be issued only to an applicant who has waived, in writing:

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 the holder to all 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 section 75-03-10-17 or 75-03-10-18.
7. The operator shall prominently display the provisional license.
8. The operator shall provide parents notice that the facility is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04 50-11.1-07, 50-11.1-07.2, 50-11.1-08

75-03-10-07. Requirements--for--child--care-center-license.--~~The name,--address,--and--telephone-number-of-the-operator-as-well-as-the-name, address,--and--telephone-number-of-the-director-shall-be-provided-to-the department-and-county-agency-upon-application-for-license-and--shall--be provided--to--the--parents--of--enrolled--children-when-the-center-is-in operation.~~ Application for and nontransferability of child care center license. An application for a license must be submitted to the county agency in the county in which the facility is located.

1. Application must be made in the form and manner prescribed by the department.
2. The license is nontransferable and is valid only on the premises that are indicated on the license.
3. A new application for a license must be filed by a licensed center upon change of operator or location.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-10-08. Provisional--license: Duties of child care center operator.

1.--Child--care-center-operators-who-apply-for-a-child-care-center 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; may;--at--the--discretion-of-the-director-of-the-human-service center-or-his-designee;-be-issued-a-provisional-license.

2.--A-provisional-license-shall:

a.--Prominently--state--that--the--center-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--child--care center'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-will-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 has;-in-writing;-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--shall--be--accompanied-by-a written-statement-of-violations-signed-by-the-director-of--the human---service--center--or--his--designee--and;-in-writing; acknowledged-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.

1. The operator of a child care center is responsible to the department for compliance with the requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. In meeting this responsibility, the operator shall ensure:

- a. Establishment of the child care program;
- b. An application is made for a license for each child care center operated;
- c. Creation of an outline of a written plan and policies for the operation of each child care center;
- d. Notification is provided to the county agency of any major changes in the operation or in the ownership or governing body of the child care center and of any staff or caregiver changes;
- e. Liability insurance for bodily injury and property damage for the child care center is carried;
- f. Formulation of written policies and procedures relating to:
 - (1) Hiring practices and personnel policies for staff;
 - (2) Methods for obtaining references and employment histories of staff;
 - (3) Methods of conducting staff performance evaluations;
 - (4) Children's activities, care, and enrollment; and
 - (5) The responsibilities and rights of staff and parents;
- g. Maintenance of required enrollment, attendance, health, financial, and related records;
- h. Responsibility for all child care center staff, volunteers, or others who provide services in the facility and for notifying the department and county agency of any change of directors;
- i. Maintenance of necessary information to verify staff qualifications and to ensure safe care for the children in the child care center;
- j. Designation of a qualified director;
- k. That parents of enrolled children and other interested parties are informed of the goals, policies, procedures, and content of the child care center's program, including:
 - (1) An explanation of how accidents and illnesses may be dealt with; and
 - (2) Methods of discipline and developmentally appropriate guidance techniques to be used;

l. That parents of enrolled children:

(1) Are advised of the center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director; and

(2) Receive written notice of the effective date, duration, scope, and impact of any significant changes in the center's services;

m. That the center is sufficiently staffed at all times to meet the child and staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;

n. That the child care center has sufficient qualified caregivers available to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty;

o. That written agreements with the parents of each child specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;

p. That written policies are established which provide for emergency medical care, the care of children with special physical, emotional, or mental needs, if children with these needs are in care, and the treatment of illness and accident;

q. That written policies are established concerning the care and safeguarding of personal belongings brought to the child care center by children or others on their behalf;

r. Parents are provided regular opportunities to meet with caregivers before and during enrollment to discuss their children's needs and observe their children at any time while in care;

s. Parents are provided, upon request, any progress reports on their children.

t. The reporting of any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1, and development of a written policy for staff to handle this reporting; and

u. That there is, at all times when children are receiving care, a staff member on duty who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation

training programs and in a first-aid program approved by the department. Substitute staff are exempt from this requirement.

v. The development of and compliance with a procedure for accountability when a child fails to arrive for the program; and

w. Carecheck information is made available to parents.

2. If the operator of the child care center is also the director, the operator shall also meet the qualifications of the director set forth in section 75-03-10-11.1.

3. The operator of a facility shall report within twenty-four hours to the county director or the county director's designee a death or serious accident or illness requiring hospitalization of a child while in the care of the facility or attributable to care received in the facility.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07; 50-11.1-07.2; 50-11.1-08 50-11.1-04

75-03-10-09. Minimum--qualifications--and--duties--of--operator Staffing and group size requirements.

1.--The--operator--of--a--child--care--facility--is--responsible--to--the department--for--compliance--with--requirements--set--forth--in--the standards.

2.--The---operator---may---be---any---individual,--group,--agency, association,--or--organization--legally--responsible--for--the operation--of--the--facility.

3.--The--operator--shall--ensure--that--all--standards--are--complied--with and--shall:

a.--Be--responsible--for--establishing--the--child--care--program.

b.--Make--application--for--a--license--for--each--child--care--center operated.

c.--Outline--a--plan--of--operation--for--each--child--care--center.

d.--Notify--the--county--agency--of--any--major--changes--in--the operation--or--in--the--ownership--or--governing--body--of--the facility--and--of--any--staff--or--caregiver--changes.

e.--Carry--liability--insurance--for--bodily--injury--and--property--damage--for--the--center.--This--subdivision--is--effective--on--July--1,--1987.

f.--Ensure--the--formulation--of--written--policies--and--procedures--relating--to--hiring--practices--and--personnel--policies--for--staff;----These--must--include--obtaining--references;--employment--histories;--and--a--method--of--conducting--staff--performance--evaluations.--Written--policies--and--procedures--must--also--be--formulated--for--children's--activities--and--care;--enrollment;--the--responsibilities--and--rights--of--staff--and--of--parents.

g.--Maintain----required--enrollment;--attendance;--health;--financial;--and--related--records.

h.--Make--available--office--space;--furniture;--and--equipment--for--parent--conferences;--maintenance--and--storage--of--records--for--children--and--staff--and--for--accommodating--administrative--responsibilities.

i.--Be--responsible--for--all--center--staff;--volunteers;--or--others--who--provide--services--in--the--facility--and--for--notifying--the--department--and--county--agency--of--any--change--of--directors.

j.--Maintain----necessary----information--to--verify--staff--qualifications--and--ensure--that--safe--care--be--provided--for--the--children--in--the--facility.--If--a--caregiver--or--employee--who--has--access--to--children--is--employed--or--retained--in--the--child--care--center--when--there--has--been--a--probable--cause--determination--that--the--individual--has--abused--or--neglected--a--child;--the--person--shall--furnish--information;--satisfactory--to--the--department;--from--which--the--department--can--determine--the--person'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--regional--director--of--the--human--service--center--or--his--designee--for--consideration--and--action--on--the--license--or--license--application.

k.--Cooperate--with--the--department--and--other--appropriate--agencies--in--all--reasonable--efforts--to--improve--the--quality--of--care--and--the--competence--of--caregivers.

l.--Designate--a--qualified--center--director.

m.--Ensure--that--parents--of--enrolled--children--and--other--interested--parties--are--informed--of--the--goals;--policies--and--procedures;--and--content--of--the--child--care--center's--program.--An--explanation--of--how--accidents--and--illnesses--will--be--dealt--with--shall--be--provided--as--well--as--methods--of--discipline--and--child--management--techniques--to--be--used.

- n.--Ensure--that--the--center--is--staffed--sufficiently--to--provide physical--care--to--each--child;--to--offer--individual--attention to--children--as--needed--and--to--provide--time--to--interact--with children--for--the--benefit--of--their--social--competence; emotional--well--being;--and--intellectual--development.
- o.--Ensure--that--the--child--care--center--shall--have--sufficient qualified--caregivers--provided--to--substitute--for--regularly assigned--staff--who--are--sick;--on--leave;--or--who--are otherwise--unable--to--be--on--duty.
- p.--Ensure--that--parents--of--enrolled--children--are--advised--of the--center's--program;--service--fees;--operating--policies--and procedures;--location;--and--of--any--significant--changes--in the--services--offered--by--the--center.--Written--notice--shall be--provided--to--the--parents--and--the--department--of--such changes--and--their--effective--date;--duration;--scope;--and impact--on--the--center.
- q.--Ensure--that--written--agreements--with--the--parent--or--parents of--each--enrollee--specify--the--fees--to--be--paid;--methods--of payment;--and--policies--regarding--delinquency--of--fees.
- r.--Ensure--that--written--policies--are--established--which--provide for--emergency--medical--care;--the--care--of--children--with special--physical;--emotional;--or--mental--needs--(if--children with--these--needs--are--in--care)--and--the--treatment--of--illness and--accident.
- s.--Ensure--that--written--policies--are--established--concerning the--care--and--safeguarding--of--personal--belongings--brought to--the--child--care--center--by--enrollees--or--others--on--their behalf.
- t.--Provide--parents--with--opportunities--to--observe--the--center at--any--time--children--are--in--care--and--to--discuss--their children's--needs--before--enrollment;--regularly--offer parents--opportunities--to--observe--their--children--and--to meet--with--caregivers--to--advise--and--comment--on--their children's--needs.
- u.--Provide--parents--upon--request--any--progress--reports--on--their individual--child--or--children--and--the--compliance--of--the facility--with--standards--contained--in--this--chapter.
- v.--Report--any--suspected--child--abuse--or--neglect--as--required--by North--Dakota--Century--Code--chapter--50-25.1--and--develop--a policy--for--staff--to--handle--this--reporting.
- w.--Ensure--that--there--is;--at--all--times--when--children--are receiving--care;--a--staff--member--on--duty--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.

4. If the operator of the child care center is also the center director, the operator must also meet the qualifications of the child care center director set forth in section 75-03-10-10.

1. The number of staff members and their use shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child and staff ratio for periods of time when so engaged. Children with special conditions requiring more than usual care and supervision shall have adequate care and supervision provided to them without adversely affecting care provided to the remaining children in the child care center.
2. The operator of a child care center shall ensure that the center is sufficiently staffed at all times to meet the staffing requirements for children in attendance, and that no more children than the licensed capacity are served at one time. The minimum ratio of caregivers or program staff to children in child care centers and maximum groups size of children must be:
 - a. If all children in care are children less than twenty-four months of age, one staff member may care for four children, a ratio of .25 in decimal form, with a maximum group size of eight children;
 - b. If all children in care are children twenty-four months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form, with a maximum group size of ten children;
 - c. If all children in care are children three years of age to four years of age, one staff member may care for seven children, a ratio of .142 in decimal form, with a maximum group size of fourteen children;
 - d. If all children in care are children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form, with a maximum group size of twenty children;
 - e. If all children in care are children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form, with a maximum group size of twenty-four children; and

- f. If all children in care are children six to twelve years of age, one staff member may care for eighteen children, a ratio of .05 in decimal form, with a maximum group size of thirty-six children.

The provisions in this subsection relating to maximum group size shall not apply to child care center operators licensed prior to August 1, 1998, if such child care center operators are otherwise qualified to operate a child care center. Any child care center operator who discontinues operation of the child care center under a valid license or who fails to renew such license upon expiration thereof shall not thereafter be exempt from the requirements relating to maximum group size.

3. If a child has a disabling condition which requires more than usual care, the child's developmental age level must be used in determining the number of children for which care may be provided.
4. When there are mixed age groups in the same room, the group size must be consistent with the age of the majority of the children when no infants, age zero to twenty-four months, or toddlers, age twenty-four months to thirty-six months, are in the mixed age group. When infants or toddlers are in the mixed age group, the group size for infants and toddlers must be maintained.
5. The number of children in each age category is divided by the corresponding ratio number and carried to the nearest hundredth. To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count is then rounded to the next highest whole number whenever the fractional caregiver count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.
6. Children using the licensed facility for a McGruff safe house, a block house, or a certified safe house program during an emergency may not be counted under this section.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04 50-11.1-01, 50-11.1-02, 50-11.1-02.1

75-03-10-10. Minimum---qualifications---of---child---care---center director. Minimum qualifications of child care center supervisor. A supervisor shall:

1. A child-care-center director shall be an adult of good mental and physical health, capable of mature judgment, and possessing knowledge and experience in management and interpersonal relationships.
2. The director shall certify that at least one of the following qualifications, in addition to those set out in subsection 1, are met:
 - a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a child-care-center or similar setting.
 - b. A bachelor's degree with at least twenty-four semester hours or thirty-quarter hours in child development, child psychology, or fields directly related thereto, with at least six months' experience in a child-care-center or similar setting.
 - c. An associate of arts degree in the field of early childhood development with at least six months' experience in a child-care-center or similar setting.
 - d. A teaching certificate in elementary education with at least six months' experience in a child-care-center and at least 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, with at least one year's experience in a child-care-center or similar setting.
 - f. A bachelor's degree with at least twelve semester hours or fifteen-quarter hours in child development, child psychology, or fields directly related thereto, with at least one year's experience in a child-care-center or similar setting.
 - g. Certification for a Montessori teacher-training program with at least one year's experience in a Montessori school, child-care-center, or similar setting and at least 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, 1984, and continuous employment as a director from that time, and at all times subsequent, at the same center.

~~i. --When responsible for only a school-age child-care program;
a high school diploma with at least three years' experience as a licensed group child-care supervisor and at least three positive reference letters from parents whose children were in the supervisor's care.~~

1. Have had training and demonstrated ability in working with children;
2. Meet at least one of the following qualifications:
 - a. An associate degree in the field of early childhood development;
 - b. Certification as a child development associate or similar status where such a local, state, or federal certification program exists;
 - c. Certification from a Montessori teacher training program;
or
 - d. A high school diploma or high school equivalency with at least one year of experience in a child care or similar setting.
3. Possess the capacity and willingness to increase skills and competence through experience, training, and supervision;
4. Be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge and experience in interpersonal relationships;
5. Have current certification in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and
6. Certify attendance at a minimum of thirteen hours of county agency approved training related to child care annually.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-11. Duties of child care center director. The child care center director shall, coextensive with the child care center operator:

1. Be responsible for program planning, supervision, and activity;
2. Be responsible for ~~maintaining~~ adequate maintenance of required enrollment, health, attendance, health, financial, and other related records as required by this chapter;
3. Be responsible for the screening, scheduling, supervision, and conduct of staff members;
4. ~~Cooperate with the department and other agencies designated by the department in efforts to improve the quality of care and the competence of personnel in the center;~~
5. ~~At no time shall~~ Ensure that a child care center be without has a director or a designated acting director; ~~The director of a center shall~~ who must be present at the center at least sixty percent of the time that the center is open;
6. 5. ~~Any person~~ Ensure that the individual designated as an acting director for an ongoing period of less than thirty days ~~must meet~~ meets the qualifications of a child care supervisor; and
7. 6. ~~Any person~~ Ensure that the individual designated as an acting director for an ongoing period of more than thirty days ~~must meet~~ meets the qualifications of a child care center director.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-11.1. Minimum qualifications of child care center director.

1. A child care center director must be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge and experience in management and interpersonal relationships.
2. A child care center director shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a child care center or similar setting;

- b. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or fields directly related thereto, with at least six months of experience in a child care center or similar setting;
 - c. An associate degree in the field of early childhood development with at least six months of experience in a child care center or similar setting;
 - d. A teaching certificate in elementary education with at least six months of experience in a child care center and at least 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, with at least one year of experience in a child care center or similar setting;
 - f. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or fields directly related thereto, with at least one year of experience in a child care center or similar setting; or
 - g. Certification for a Montessori teacher training program with at least one year of experience in a Montessori school, child care center, or similar setting and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields.
3. The director shall certify attendance at a minimum of thirteen hours of county-approved training related to child care annually.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-12. ~~Minimum-qualifications-of-child-care-supervisor.--A supervisor-shall:~~ Minimum qualifications for all caregivers.

- ~~1.--Have--had--training--and--demonstrated-ability-in-working-with children.~~
- ~~2.--Meet-at-least-one-of-the-following-qualifications:~~
 - ~~a.--An--associate--of--arts--degree--in--the--field--of--early childhood-development.~~

- b. ~~Certification as a child development associate or similar status where such local, state, or federal certification program exists.~~
- c. ~~Certification from a Montessori teacher training program.~~
- d. ~~A high school diploma with at least one year's experience in a child care or similar setting.~~
- e. ~~High school equivalency with at least one year's experience in a child care or similar setting.~~
- 3. ~~Possess the capacity and willingness to increase skills and competence through experience, training, and supervision.~~
- 4. ~~Be of sufficiently good health so as to be able to provide adequate care for children in a child care center environment.~~
- 5. ~~Maintain current certification in cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department. This subsection is effective on July 1, 1987.~~

1. Caregivers shall:

- a. Be at least fourteen years of age, provided that each such individual under age sixteen has written parental consent for such employment, and the employment arrangements comply with North Dakota Century Code chapter 34-07;
- b. Be mentally, physically, and emotionally able to provide adequate care for the children under supervision;
- c. Certify annual attendance at county-approved training related to child care;
 - (1) If working thirty to forty hours per week, certify thirteen hours of county-approved training annually.
 - (2) If working twenty to thirty hours per week, certify eleven hours of county-approved training annually.
 - (3) If working ten to twenty hours per week, certify nine hours of county-approved training annually.
 - (4) If working less than ten hours per week, certify seven hours of county-approved training annually;
- d. Not use or be under the influence of any alcohol or judgment-altering drugs while children are in care; and

- e. At no time place a child in an environment that would be harmful or dangerous to a child's physical or emotional health.
- 2. Newly hired caregivers shall have a two-day, onsite orientation to the child care program during the first week of employment. The orientation must address the following:
 - a. Emergency health, fire, and safety procedures at the center;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children;
 - c. Any special health or nutrition problems of the children assigned to the caregiver;
 - d. Any special needs of the children assigned to the caregiver;
 - e. The planned program of activities at the child care center;
 - f. Rules and policies of the child care center; and
 - g. Child abuse and neglect laws.
- 3. Caregivers under the age of eighteen and all children in care shall have adult supervision in the child care center at all times.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-13. Minimum--qualifications--for--all--care-caregivers--
Minimum health requirements for all caregivers.

1.--Caregivers--shall:

a. Be--at--least--fourteen--years--of--age;--provided--that--any employee--under--age--sixteen--has--written--parental--consent for--such--employment;--and--the--employment--arrangements--are in--conformance--with--North--Dakota--Century--Code--chapter 34-07.

b. Be--mentally;--physically;--and--emotionally--able--to--provide adequate--care--for--the--children--in--the--caregiver's--charge.

- e.--Certify--attendance--at--a--minimum--of--ten--hours--of--county agency--approved--training--related--to--child--care--annually. Caregivers--working--thirty--to--forty--hours--per--week--are required--to--certify--ten--hours--of--training--annually. Caregivers--working--twenty--to--thirty--hours--per--week--are required--to--certify--eight--hours--of--training--annually. Caregivers--working--ten--to--twenty--hours--per--week--are required--to--certify--six--hours--of--training--annually. Caregivers--working--less--than--ten--hours--per--week--are required--to--certify--four--hours--of--training--annually.
 - d.--Not--use--any--drugs--or--alcoholic--beverages--except--for medical--purposes--while--children--are--in--care.
 - e.--At--no--time--place--a--child--or--children--in--an--environment that--would--be--harmful--or--dangerous--to--their--physical--or emotional--health.
- 2.--The--child--care--center--shall--provide--to--newly--hired--caregivers a--two--day,--onsite--orientation--to--the--child--care--program--during the--first--week--of--employment.--The--orientation--must--address all--of--the--following:
- a.--Emergency--health,--fire,--and--safety--procedures--at--the center.
 - b.--The--importance--of--handwashing--and--sanitation--procedures--to reduce--the--spread--of--infection--and--disease--among--children.
 - c.--Any--special--health--or--nutrition--problems--of--the--children assigned--to--the--caregiver.
 - d.--Any--special--needs--of--the--children--assigned--to--the caregiver.
 - e.--The--planned--program--of--activities--at--the--center.
 - f.--Rules--and--policies--of--the--center.
 - g.--Child--abuse--and--neglect--laws.
- 3.--Caregivers--under--the--age--of--eighteen--and--all--children--in--care must--have--adult--supervision--in--the--center--at--all--times.
1. Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the

county agency within five working days of the caregiver's first workday.

2. Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff are exempt from this requirement. A child care center operator who uses an untested emergency designee may not be found in violation of this provision.
3. If the physical or mental health of an operator or caregiver appears questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department. The department is not responsible for the costs of any required evaluation.
4. While children are in care, staff members may not use or be under the influence of any alcohol or judgment-altering drugs.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-14. Minimum qualifications for volunteers. Volunteers If providing child care, volunteers shall meet qualifications of child care caregivers,--if--providing--child-care, and receive orientation as needed for all assigned tasks.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-15. Minimum--health--requirements--for--all--caregivers. Minimum standards for provision of transportation.

1. --All---caregivers---shall---certify,---within--thirty--days--of employment,--that--they--do--not--have--health--problems--that--would interfere--with--their--functioning--as--child--caregivers--or--that would--be--detrimental--to--the--health--of--the--children--or--other staff.

2. --There--shall--be--provision--for--adequate--substitution--for--child
caregivers--who--are--too--ill--to--function--effectively--or--who
present--a--serious--health--hazard--to--others--in--the--child--care
center.

3. --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,--Where
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.

1. The operator shall establish a written policy governing the transportation of children to and from the child care center, if the child care center provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the child care center. If the child care center provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided by a child care center, children must be protected by adequate staff supervision, safety precautions, and liability and medical insurance.

a. Child and staff ratios must be maintained to assure the safety of children while being transported. The department requires one busdriver per twenty children and one additional individual for twenty-one children or more.

b. A child may not 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 shall comply with all relevant state and local laws.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-16. Child---care---center---minimum---state---staffing requirements: Minimum emergency evacuation and disaster plan.

- 1.--The--number--of--staff--and--their--utilization--shall--reflect program requirements;--individual differences in the--needs--of the--children--enrolled;--and--shall--permit flexible groupings where--necessary.---Service--personnel--that--are--engaged--in housekeeping--and food preparation shall not be counted in the child/staff ratio--for--periods--of--time--when--they--are--so engaged.
- 2.--The--minimum--ratio--of--caregivers--or--program--staff--to--children in--child--care--centers--shall--be:
 - a.--Children--less--than--twenty-four--months--of--age;--one--staff per--four--children.
 - b.--Children--twenty-four--months--of--age--to--thirty-six--months--of age;--one--staff--per--five--children.
 - c.--Children--three--years--of--age--to--four--years--of--age;--one staff--per--seven--children.
 - d.--Children--four--years--of--age--to--five--years--of--age;--one--staff per--ten--children.
 - e.--Children--five--years--of--age--to--six--years--of--age;--one--staff per--twelve--children.
 - f.--Children--six--to--twelve--years--of--age;--one--staff--per eighteen--children.
- 3.--Where--one--or--more--children--is--a--child--with--a--mentally handicapping condition;--and--requires--more--than--usual--care;--the evaluated--developmental--age--level;--rather--than--the chronological age of the child;--shall--be--used--in--determining appropriate staff ratios.
- 4.--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.
- 5.--In--each--age--category;--the--number--of--children--is--divided--by--the corresponding--ratio--number--and--carried--to--the--nearest hundredths.---To--determine--the--number--of--caregivers--necessary at--any--given--time;--numbers--of--caregivers--for--all--age categories--are--added;--and--any--fractional--caregiver--count--then rounded--to--the--next--highest--whole--number--whenever--the fractional--caregiver--count--amounts--to--thirty-five--hundredths or--more.---If--lower--than--thirty-five--hundredths;--the--fractional amount--is--dropped.

1. Each child care center shall have an approved and posted emergency disaster plan for the safety of the children in

care. Written disaster plans must be developed in cooperation with the authorities.

2. Fire evacuation drills must be performed in accordance with the local fire department's guidelines.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02, 50-11.1-02.1

75-03-10-17. Minimum--standards--for--enrollee's--records: Fire inspections.

The--following--information--shall--be--kept--and--maintained--in--the--records--concerning--each--individual--child--enrolled--in--the--child--care--center--and--shall--be--updated--as--appropriate.--Such--information--shall--include:

- 1.--The--child's--full--name,--birthdate,--and--current--home--address.
- 2.--The--names--and--addresses--of--the--parents--or--other--persons--legally--responsible--for--the--child,--as--well--as--their--home--and--business--telephone--numbers.
- 3.--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.
- 4.--The--written--consent--of--a--parent--or--legally--responsible--party--for--emergency--care--shall--also--be--obtained.
- 5.--Names--and--telephone--numbers--of--persons--authorized--to--take--the--child--from--the--child--care--center.
- 6.--Verification--that--the--child--has--received--all--immunizations--appropriate--for--the--child's--age,--as--prescribed--by--the--state--department--of--health--and--consolidated--laboratories.
- 7.--A--licensed--health--practitioner's--statement--based--upon--a--health--assessment--or--a--health--assessment--statement--completed--by--the--parent--shall--be--obtained--at--the--time--of--initial--enrollment--of--the--child.--No--more--than--six--months--shall--have--elapsed--between--the--date--that--the--health--assessment--was--completed--and--the--date--of--initial--enrollment.--The--statement--shall--indicate--any--special--precautions--for--diet,--medication,--or--activity.--This--statement--shall--serve--as--evidence--that--a--child--is--physically--able--to--take--part--in--the--child--care--program.--The--statement--for--each--child--must--be--completed--annually.

1. Annual fire inspections must be completed by local or state fire authorities. The operator shall have corrected any code violations noted by the fire inspector and shall file reports of the inspections with the county licensing agency.
2. The child care center must be equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department.
3. The child care center shall provide:
 - a. The local fire inspector's written statement of compliance with the local fire code, if there is one;
 - b. The local fire inspector's written statement that the child care center has been inspected and that the inspector is satisfied that the child care center meets minimum fire and safety standards; or
 - c. A written statement from an appropriate fire official that the child care center meets minimum fire and safety standards adopted by the state fire marshal.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-10-18. ~~Confidentiality--of--child's--records--Information pertaining to the admission, progress, health, or discharge of--a--child shall be confidential,--and access shall be limited to staff and parents, and to the following:~~ Minimum sanitation and safety requirements.

~~1.--Authorized department representatives.~~

~~2.--Persons--having--a--definite interest in the well-being of the child or children concerned and who,--in the--judgment--of--the department,--are in a position to serve their interests should that be necessary.~~

~~3.--Persons--who--possess a written authorization from the child's parent,--The--child--care--center--shall--have--a--release--of information--form--available--and shall have such forms signed prior to the release of information.~~

1. In centers where meals are prepared, the state department of health shall conduct an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required.

2. Child care center bathroom lavatories, toilets, tables, chairs, and floors must be cleaned daily. Cots and mats must be individually labeled, and cleaned and sanitized at least weekly. If different children use the same cots or mats, they must be thoroughly cleaned and sanitized between each use. Separate storage must be provided for personal blankets or coverings.
3. The child care center's building, grounds, and equipment must be located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and the caregivers.
4. Caregivers shall wash their hands before preparing or serving meals, after nose wiping, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and paper towels must be available at each lavatory.
5. Indoor and outdoor equipment, toys, and supplies must be safe, strong, nontoxic, and in good repair. All toys must be easily cleanable and must be cleaned and sanitized on a routine basis.
6. The child care center ground areas must be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
7. Garbage must be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning is not permitted.
8. Exterior play areas in close proximity to busy streets and other unsafe areas must be contained, fenced, or have natural barriers to restrict children from those unsafe areas.
9. Potential hazards, including household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways may not be accessible to young children.
10. Indoor floors and steps may not be slippery or have splinters. Steps and walkways must be kept free from accumulations of water, ice, snow, or debris.
11. Elevated areas, such as stairs or porches, must have railings and approved safety gates where necessary to prevent falls.
12. Child care centers shall take steps to keep the facility free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the facility.

13. Exit doorways and pathways may not be blocked.
14. If the center is providing care to children in wheelchairs, the center shall ensure doors have sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the center.
15. Light bulbs in areas used by children must be properly shielded or shatterproof.
16. Combustible materials must be kept away from light bulbs and other heat sources.
17. There must be adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. During the heating season when the child care center is occupied by children, the room temperature may not be less than sixty-eight degrees Fahrenheit [20 degrees Celsius] and not more than seventy-four 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 authorities.
18. All 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 may be present, must have these surfaces repainted or must submit evidence that the surfaces do not contain hazardous levels of lead-bearing substances. For purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which 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, when measured by a lead-detecting instrument approved by the state department of health.
19. Personal items including combs, pacifiers, and toothbrushes must be individually identified and stored in a sanitary manner.
20. All pets present in the child care center must be properly immunized, restricted, and maintained. Nondomestic animals such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the child care center. Pets may not be allowed in the kitchen or eating area during meal preparation or meals.
21. Wading pools used by the child care center must be strictly supervised and must be emptied and cleaned daily.
22. All swimming pools must be approved by the local health unit.

23. Smoking is not permitted in any child care center at any time during which a child who receives early childhood services from that child care center is present and receiving services.

24. Diapering:

- a. There must be a designated cleanable diapering area in the child care center if children requiring diapering are in care. A handwashing lavatory must be immediately accessible to the diapering area.
- b. Cloth diapers may not be used in a child care center.
- c. Diapers must be changed promptly when needed and in a sanitary manner. Infants must be changed on a cleanable surface which must be thoroughly cleaned with detergent and sanitized after each diapering.
- d. Soiled or wet disposable diapers must be stored in a sanitary, airtight container until removed from the child care center.

25. Water supply standards:

- a. The child care center shall have a drinking supply from an approved community water system or from a source tested and 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. The child care center must have hot and cold running water. Hot water heaters must be turned down or there must be a tempering valve or antiscalding device on the faucets used by children so that the temperature of hot water supplied to lavatories and bathing facilities does not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

26. Toilet and lavatory facilities:

- a. Toilet and lavatory facilities must be provided and must be convenient to the areas used by the children and staff.
- b. Toilet and lavatory facilities must meet requirements of the state department of health.
- c. Toilets must be located in rooms separated from those used for cooking, eating, and sleeping. A minimum of one lavatory and one flush toilet must be provided for each

fifteen children, excluding those children who are not toilet trained.

- d. Separate restrooms must be provided for boys and girls six years of age and over, and partitions must be installed to separate toilets in these restrooms.
- e. Child-sized toilet adapters, training chairs, or potty chairs must be provided for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
- f. At least one handwashing lavatory must be provided per toilet room facility. Sanitary hand-drying equipment or paper towels must be provided near handwashing lavatories.
- g. Safe step stools must be provided to allow standard-size toilets and lavatories to be used by the children or child-size toilets and lavatories must be provided.

27. Sewage and wastewater disposal:

- a. A child care center shall meet the requirements of the state plumbing code as contained in North Dakota Administrative Code article 62-03.
- b. Any child care center not on a municipal or public water supply or wastewater disposal system approved by the state department of health.

28. Laundry:

- a. If the child care center provides laundry service for common use linens, towels, or blankets, it shall 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 child care centers, the handling, sorting, or washing of soiled linen or blankets must take place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas.
- d. In existing child care centers where physical separation of laundry and kitchen areas is impractical, procedures must be developed that prohibit the washing or transportation of laundry while meals are being prepared or served.

- e. Sorting of laundry may not be allowed in food preparation, serving, or kitchen areas.
- f. If the child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the water temperature must be greater than one hundred seventy degrees Fahrenheit [77.2 degrees Celsius].
- g. If the water temperature is less than one hundred seventy degrees Fahrenheit [77.2 degrees Celsius], then bleach must be used in the laundry process during the rinse cycle to achieve fifty parts per million of available hypochlorite at a temperature of at least seventy-five degrees Fahrenheit [24 degrees Celsius].

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07 50-11.1-01, 50-11.1-02.1, 50-11.1-04

75-03-10-19. Minimum--provisions--regarding--emergency--care--for children--A-center-shall-have--plans--to--respond--to--illness--and--to emergencies--including--fire,--serious--injury,--and--ingestion--of--poison. These--plans--shall--be--in--writing. Plans--shall--include: Minimum requirements regarding space and lighting.

- 1.--The--conspicuous-posting-of-emergency-response-procedures.--At least-one-staff-member-having-received-a-minimum-of-five-hours of--first-aid--training--related--to--the-health-and-safety-of young-children-should-be-available-at-all-times-at-the-center.
- 2.--All--staff-members-shall-receive-training-concerning-emergency procedures--to--ensure--they--are--aware--of--the--hazards--of infection--and--accidents--and--how--such--problems--can--be minimized.
- 3.--At--least--one--department--of--health--and--consolidated laboratories-approved-first-aid-kit-shall-be-maintained--and kept--in--a--designated--location,--so-as-to-be-inaccessible-to children-yet-readily-accessible-to-staff-members.
- 4.--The--placement--of--a-telephone-line-immediately-accessible-to the-center-staff-with-a-list-of--emergency--telephone--numbers conspicuously-posted-adjacent-to-such-telephone.
- 5.--When--health-policies-of-the-facility-allow-ill-children-to-be admitted-or-to-remain--in--the--child--care--center,--medical consultation--shall--be--available--regarding-special-care-and medication.

6.--If---children---in--the--center--require--medication,--written permission-to-dispense-medication-must-be--obtained--from--the parent,--and--proper--instructions-as-to-the-administration-of such-medication-shall-be-given-by-the-parent-or-physician:

a.--Any---medication---prescribed--by--a--physician--shall--be accompanied-by-the-doctor's-written-instructions-as-to-its dosage--and-storage,--and-labeled-with-the-child's-name-and dated:

b.--All--medication-shall-be-kept-in-secure-storage-so-that-it is-out-of-the-reach-of-children:

7.--A--supervised-temporary-isolation-area-shall-be-provided-for-a child-who-is-too-ill-to-remain-in-the-group,--or--who--has--an infectious-or-contagious-disease,--and-the-following-procedures shall-be-followed-when-such-signs-or-symptoms-are-observed:

a.--Parents-shall-be-notified-immediately:

b.--First--aid--shall--be--provided--and-medical-care-shall-be sought-as-necessary:

8.--All--children--who--remain--at-the-center-who-are-ill-shall-be well-supervised:

9.--A--source--of--emergency--health--services--shall--be--readily available-to-the-center:

a.--There--shall--be--a-prearranged-plan-for-emergency-medical care:--Parents-of--enrollees--shall--be--advised--of--this arrangement:

b.--Provisions---shall---be---made---to---provide---emergency transportation,--When-a-child-is-brought-to-another--place for--emergency--care,--the-child-shall-be-accompanied-by-an adult-who--shall--remain--with--the--child--until--medical personnel--assume--the-responsibility-for-the-child's-care and-until-the-parent-or-responsible-party-arrives:

10.--A--child--care--center-shall-provide-information-to-parents-as needed-concerning-child-health-and-social--services--available in--the--community,--and-shall-assist-parents-in-obtaining-such services:

1. Each child care center shall provide adequate space for all children in attendance.

2. The child care center shall provide adequate space, indoors and out, for the daily activities of the children. This must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space

per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the child care center at one time, the child care center operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors.

3. The child care center must be properly lighted. The following technical requirements must be met:

a. Sixty-five foot-candles of light for all general use and play areas;

b. Twenty-five foot-candles of light for all bathrooms;

c. Fifty foot-candles of light for any kitchen, laundry, and office facilities; and

d. Fifteen foot-candles of light for corridors and storage areas.

e. If the lighting of the child care center appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-20. Minimum--emergency--evacuation--and--disaster-plan-Program requirements.

1.--Each--center--shall--have--an--approved--and--posted--disaster--plan--for--the--safety--of--the--children--in--care--in--case--of--an--emergency;

2.--Fire--inspections--shall--be--completed--by--local--or--state--fire--authorities.--Written--disaster--plans--shall--be--developed--in--cooperation--with--such--authorities;

3.--Fire--evacuation--drills--shall--be--performed--in--accordance--with--the--local--fire--department's--guidelines;

1. The child care center operator shall have a program of daily individual or small group activities appropriate to the ages and needs of the children in the child care center. The

program must include activities which foster sound social, intellectual, emotional, and physical growth, developed with discussion and consultation with parents as to their children's needs.

2. The program must be flexible and subject to modification for individual child differences.
3. The program must be written and 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 meet the children's developmental needs, including the special needs of children in the child care center who are multilingual or disabled. The written program must be made available to parents.
4. The program must include firsthand experiences for children to learn about the world in which they live. Opportunities must be provided for older children to participate in supervised visits and recreational activities in the community.
5. Learning experiences must be conducted in consultation with parents in order to ensure harmony with the lifestyle and cultural background of the children.
6. 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 established.
7. If 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.
8. 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 child care center shall have enough play materials and equipment so, that at any one time, each child in attendance may be individually involved.
9. The cultural diversity of the children must be reflected in the program through incorporation of their language, food, celebration, and lifestyles, if appropriate.
10. Equipment and furniture must be durable and safe and must be appropriately adapted for children's use.
11. Sufficient space accessible to children must be provided for each child's personal belongings.

12. The child care center shall supplement, augment, and reinforce the child's activities at home, and where applicable, at school.
13. At the time of enrollment, the child care center staff shall discuss with the parents the children's habits, activities, and schedules while at home and in school and their parents' special concerns about their past and future behavior and development. The schedule and activities must be designed to complement and supplement the children's experiences at home and in school.
14. Staff shall encourage parents to visit the facility, observe, and participate in the care of their children.
15. The child care center supervisor shall contact parents to exchange information concerning the child and the child care program as well as to offer meaningful opportunities to participate in general program policymaking.
16. Personal hygiene practices appropriate for a child's age and development must be stressed.
17. The child care supervisor shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to the parent promptly and directly.
18. Each child's cultural and ethnic background and primary language or dialect must be respected by the caregivers.
19. Each 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 sleeping mats so that each child in attendance may have an individual napping space. The floor may be used only when carpeted or padded, warm, and free from drafts, and when individual blankets or coverings are used. Napping schedules must be set for children according to their ages and needs. For children unable to sleep, time and space for quiet play must be available.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-21. Fire--inspections Minimum standards for food and nutrition.

~~1.--Annual--fire--inspections--shall--be--completed--by--local--or--state fire-authorities.--The-operator--shall--have--corrected--any--code~~

violations--noted-by-the-fire-inspector-and-shall-file-reports
of-such-inspections-with-the-county-agency.

2.--The-center-shall-provide:

a.--The-local-fire-inspector's-written-statement-of-compliance
with-the-local-fire-code,-if-there-is-one;

b.--The--local--fire--inspector's--written--statement-that-the
facility-has-been-inspected--and--that--the--inspector--is
satisfied--that-it-meets-minimum-fire-and-safety-standards
for-the-facility;-or

c.--A-written-statement-from-an-appropriate-fire-official-that
the-facility--meets--minimum-fire--and--safety--standards
adopted-by-the-state-fire-marshal.

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a child care center must be treated in a sanitary and safe manner with sanitary and safe equipment.
2. When parents bring sack lunches for their children, the operator may supplement lunches to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. If the services are available free of charge, a dietitian or other food service professional must be used as a consultant.
4. Children must be served a nutritious morning and afternoon snack and, if the parent does not provide a sack lunch, a nourishing meal.
 - a. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of the day.
 - b. Children in care during any normal mealtime hour must be served food appropriate to that time of the day.
 - c. Children in care in after-school child care center programs who have not had any food since lunch must be provided with a snack.
5. 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 individuals.

6. Information provided by the children's parents as to their eating habits, food preferences, or special needs must be considered in the feeding schedules and in the tailoring of menus.
7. Children must be served in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.
8. Children may be encouraged to eat the food served, but may not be subjected to coercion or force-feeding.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07

75-03-10-22. Minimum-sanitation-and-safety-requirements-for-child care-centers Records.

- 1.--The--facility--must--have--an--annual--health--and--sanitation inspection-completed-by-an-environmental-health--practitioner. Reports--of-such-inspections-must-be-filed-with-the-department and-any-problems-found-must-be-corrected.
- 2.--The--child-care-center's-building,-grounds,-and-equipment-must be-located,-cleaned,-and-maintained-to-protect-the-health--and safety---of---children.----Routine--maintenance--and--cleaning procedures-must-be-established-to-protect-the--health--of--the children-and-caregivers.
- 3.--The---child--care--center--ground--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-which-are-used-by--the--child--care--center must-be-contained,-fenced,or-have-natural-barriers-to-restrict children-from-unsafe-areas.
- 5.--Garbage-must-be-kept-away-from-areas-used-by-children-and-kept in-noncombustible-containers-with-tight-lids.--Open-burning-is not-permitted.--
- 6.--If--wading-pools-are-used-by-the-center,-they-must-be-strictly supervised.--Wading-pools-must--be--cleaned--(emptied)--daily.

All swimming pools must be approved by the state department of health and consolidated laboratories' division of water supply and pollution control. Operational practices as established by the state department of health and consolidated laboratories must be followed.

7. All 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 which 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 easily cleanable and be cleaned on a routine basis.
9. Indoor floors and steps must not be slippery or have splinters. All 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. If the center is providing care to children in wheelchairs, the center shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the center.
12. Doors and pathways must not be blocked.
13. All light bulbs in areas used by children must be properly shielded or shatterproof.
14. Combustible materials must be kept away from light bulbs and other heat sources.
15. There must be adequate ventilation, heating, and proper humidity in the center. During the heating season when the facility is occupied by children, the room temperature may not be less than sixty-eight degrees Fahrenheit {20 degrees Celsius} and not more than seventy-four 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 authorities.

- 16.--Child--care--center--bathroom--lavatories,--toilets,--tables, chairs,--and--floors--must--be--cleaned--daily.--Cots--and--mats--must be--individually--labeled,--and--cleaned--and--sanitized--at--least weekly.--If--different--children--use--the--same--cots--or--mats,--they 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.
- 17.--Personal--items--such--as--combs,--pacifiers,--and--toothbrushes--must be--individually--identified--and--stored--in--a--sanitary--manner.
- 18.--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.
- 19.--Caregivers--and--staff--members--shall--wash--hands--before--preparing or--serving--meals,--after--diapering,--after--using--toilet facilities,--and--after--any--other--procedure--that--contaminates their--hands.
- 20.--When--food--is--prepared,--served,--or--stored--in--a--child--care center,--it--will--be--done--in--a--sanitary--and--safe--manner--with sanitary--and--safe--equipment.
- 21.--When--parents--bring--sack--lunches--for--their--children--at--the center,--the--operator--shall--provide--adequate--and--appropriate refrigeration--and--storage--as--required.
- 22.--When--prepackaged,--presterilized--formula--is--used--for--a--child's feeding,--any--excess--left--unrefrigerated--for--a--total--of--four--or more--hours--must--be--discarded--in--a--safe,--sanitary--manner.
- 23.--Diapering:
- a.--A--designated--diapering--area--must--be--established--in--centers caring--for--children--requiring--diapering.---A--handwashing lavatory--must--be--immediately--accessible--to--the--diapering area.
 - b.--Cloth--diapers--may--not--be--used--in--a--child--care--center.
 - c.--Diapers--must--be--changed--promptly--when--needed--and--in--a sanitary--manner.--Infants--must--be--changed--on--a--cleanable surface--which--must--be--thoroughly--cleaned--with--detergent and--sanitized--after--each--diapering.
 - d.--Soiled--or--wet--diapers--must--be--stored--in--a--sanitary, airtight--container.--Disposable--diapers--must--be--removed--at least--daily--and--disposed--of--properly.

24.--Water-supply:

- a.--Drinking--water--must--be--from--a--source--which--is--approved--by--the--state--department--of--health--and--consolidated laboratories.
- 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-service-drinking-cups.
- c.--Hot--and--cold--running--water--of--sufficient--pressure--from--a system--approved--by--the--state--department--of--health--and consolidated laboratories--must--be--available--in--the--center.
- d.--A--tempering--valve--must--be--provided--to--control--the temperature--of--hot--water--supplied--to--lavatories--and bathing--facilities--to--be--no--greater--than--one--hundred twenty--degrees--Fahrenheit--{49.2--degrees--Celsius}.

25.--Toilet-and-lavatory-facilities:

- a.--Toilet--and--lavatory--facilities--must--be--provided--and--must be--convenient--to--the--areas--used--by--the--children--and--staff.
- b.--Toilet--and--lavatory--facilities--must--meet--requirements--of the--environmental--health--practitioner.
- c.--Toilets--must--be--located--in--rooms--separate--from--those--used for--cooking,--eating,--and--sleeping.--A--minimum--of--one lavatory--and--one--flush--toilet--must--be--provided--for--each fifteen--children,--excluding--those--children--who--are--not toilet--trained--and--able--to--use--larger--toilets.
- d.--Separate--restrooms--must--be--provided--for--boys--and--girls--six years--of--age--and--over.--Partitions--must--be--installed--to separate--toilets--in--these--restrooms.
- e.--If--training--chairs--(potty--chairs)--or--toilet--adapters--are used,--they--must--be--thoroughly--cleaned--and--sanitized between--each--use.
- f.--At--least--one--handwashing--lavatory--must--be--provided--per toilet--room--facility.--Sanitary--hand-drying--equipment--or materials--must--be--provided--near--handwashing--lavatories.
- g.--Safe--step--stools--must--be--provided--to--allow--standard--size toilets--and--lavatories--to--be--used--by--the--children--or child--size--toilets--and--lavatories--must--be--provided.

26.--Sewage-and-wastewater-disposal:

a.--A--child--care--center--must--meet--the--requirements--of--the
state-plumbing-code-as-contained-in-article-62-03.

b.--Any--facility--not--on--a--municipal--or--public--water--supply--or
wastewater--system--must--be--approved--by--an--environmental
health-practitioner.

27.--Laundry:---If-the-facility-provides-laundry-service-for-common
use-linens,-towels,-or-blankets,-it-shall-have-adequate--space
and-equipment-for-safe-and-effective-operation.--Soiled-linens
must-be-placed-in-closed-containers-or-hampers-during--storage
and--transportation.--In--all--new--or--extensively-remodeled
facilities,-the-handling,-sorting,-or-washing-of-soiled--linen
or--blankets--must--take--place--in--a-designated-area-that-is
separated-from-food-preparation,-serving,-and-kitchen-areas-by
a--permanent--partition.--In-existing-centers-where-physical
separation--of--laundry--and--kitchen--areas--is--impractical,
procedures--must--be--developed--that--prohibit-the-washing-or
transportation-of-laundry-while-meals-are--being--prepared--or
served.--Under--no--circumstances--will-sorting-of-laundry-be
allowed-in-food-preparation,-serving,-or--kitchen--areas.--If
the--facility--provides-laundry-service-for-common-use-linens,
towels,-or-blankets,-or--if--different--children's-clothing,
towels,-or-blankets-are-laundered-together,-water-temperature
must-be-greater-than-one-hundred--seventy--degrees--Fahrenheit
{77.2-degrees-Celsius}.--If-water-temperature-is-less-than-one
hundred-seventy-degrees--Fahrenheit--{77.2--degrees--Celsius},
then--bleach--must--be--used-in-the-laundry-process-during-the
rinse-cycle-to-achieve-fifty-parts-per-million-of-available
hypochlorite-at-a-temperature-of-at-least-seventy-five-degrees
Fahrenheit-{24-degrees-Celsius}.

28.--Centers--shall--take--steps--to--keep--the--facility--free--of--insects
and-rodents.--Chemicals-for-insect-and-rodent-control-may--not
be--applied--in-areas-accessible-to-children-when-children-are
present-in-the-facility.

29.--All--pets--must--be--approved--by--an--environmental--health
practitioner.--All--pets--must--be--properly--restricted--and
maintained.--The--feeding--and--care--must--be--performed--only--by
nonfood-preparation--staff.--Nondomestic--animals--such--as
skunks,-opossum,-or-raccoon-are-prohibited.

1. The child care center shall maintain the following records:

a. The child's full name, birth date, and current home
address;

b. Names of the child's parents or legal guardian, and the
business and home telephone numbers where those
individuals may be reached;

- c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child may not be reached immediately in an emergency;
 - d. A written statement from the parents or legal guardian authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the child care center;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is a drop-in or school aged; and
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity, must serve as evidence that a child is physically able to take part in the child care program, and must be completed annually.
2. All records maintained with respect to children receiving child care services must be kept confidential, and access must be limited to staff members, the parents, or legal guardian of each child, and to:
- a. Authorized county agency and department representatives;
 - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess a written authorization from the child's parent or legal guardian. The child care center shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07

75-03-10-23. Minimum--requirements--regarding-space Discipline - Punishment prohibited.

- 1.---Each---center---shall---provide---adequate---space---for---all---children---in attendance.
- 2.---There---shall---be---a---minimum---of---thirty-five-square-feet-{3.25 square-meters}-of-indoor-activity-area-per-child---Work-areas, unused---space,---permanent-crib-space,---bathrooms,---pantries,---and passageways---leading---to---outdoor-exits,---and---areas---which---are---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,---must---not---be---considered---when computing-minimum-space.---Every-child-shall-have-daily---access to---at---least-seventy-five-square-feet-{6.97-square-meters}-of outdoor-play-space.---If-available-outdoor-play-space---cannot accommodate---the---licensed-capacity-of-the-center-at-one-time, the-center-operator-must-prepare-a-written-schedule-of-outdoor play---times---which---limits-use-of-the-play-area-to-its-capacity.
- 3.---The---child---care---center---shall---have---sufficient---space---and appropriate-furniture-and-equipment---to---provide---for---support functions---necessary---to---the---program---and---to---provide---for---the reasonable-comfort-and-convenience-of-the-staff-and-parents.

Disregard of any of the following disciplinary rules is grounds for license denial or revocation:

1. The child care center must have a written policy regarding the discipline of children that must be interpreted to staff members before the 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 diversion, separation from the problem situation, talking 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, fear, or humiliation.
3. Authority to discipline may not be delegated to or be accomplished by children.
4. Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances. Any child must be in a safe, lighted, well-ventilated room within hearing of an adult. A child may not be isolated in a locked room or closet.
5. A child may not be physically punished for lapses in toilet training.
6. When addressing a child, or while in the presence of a child, staff members may not make derogatory remarks about the child, the child's family, race, or religion, nor use profane, threatening, unduly loud, or otherwise abusive language.

7. A child may not be force-fed, unless medically prescribed and administered under a physician's care.
8. Deprivation of meals may not be used as a form of discipline or punishment.
9. A child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the child care center.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-24. Minimum-requirements-for-lighting Specialized types of care and minimum requirements therefor. The child care center and all rooms therein shall be properly lighted. The following technical requirements shall be met:

1. Sixty-five-foot-candles-of-light-for-all-general-use-and-play areas.
2. Twenty-five-foot-candles-of-light-for-all-bathrooms.
3. Fifty-foot-candles-of-light-for-any-kitchen,-laundry,-and office-facilities.
4. Fifteen-foot-candles-of-light-for-corridors-and-storage-areas.

1. Infant care.

- a. A child care center serving children from birth to twenty-four months shall provide an environment which protects the children from physical harm and is not so restricted so as to inhibit physical, intellectual, emotional, and social development.
- b. Nonwalking children shall have the opportunity during each day for freedom of movement, including creeping or crawling in a safe, clean, open, uncluttered area.
- c. Each infant shall have an individual sleeping space. The sheets must be changed whenever they become soiled or wet. If individual protective coverings are used for each child to protect linens, the protective coverings must be laundered at least weekly.

- d. Any child under twelve months of age or unable to walk unassisted must be provided sleeping space in a crib with a firm mattress or a playpen with adequate padding.
- e. Children must be taken outdoors or to other areas within the child care center for a part of each day to provide some change of physical surroundings and to be with other children. A child may not be confined to a crib or playpen during the entire time at the child care center, unless the child is preparing to sleep or sleeping for the duration of the care.
- f. Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked to, or sung to.
- g. Low chairs and tables or infant seats with trays must be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, must have a wide base and a safety strap.
- h. Children may not be shaken or jostled.
- i. All cries of infants must be investigated.
- j. Infants must be fed or supervised individually and the diet and pattern of feeding must be appropriate to the individual developmental needs and parent's wishes.
- k. Infants must be provided age-appropriate nutritious foods. Only breast milk or iron-fortified artificial milk, meeting the requirements of the Infant Formula Act of 1980 [Pub. L. 96-359; 94 Stat. 1190; 21 U.S.C. 301 note et seq.], may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent.
- l. Infants must be fed only the specific brand of artificial baby milk requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions, based upon directions of a child's physician, are provided.
- m. Mixed formula, in single bottles or batches, that has been unrefrigerated more than one hour, must be discarded.
- n. Frozen breast milk must be thawed under cool running tap water, in amounts needed. Unused, thawed breast milk must be discarded at the end of each day.
- o. Staff members shall hold infants when bottle-feeding breast milk, artificial baby milk, soy or cow's milk based ready-to-feed, concentrate, powdered prepared formulas or cow or goat milk.

- p. Infants, determined by the parent to be developmentally ready for foods other than breast milk or artificial baby milk, shall have those other foods offered from a spoon only.
- g. Staff members may not leave an infant unattended during the infant's feeding or eating process.
- r. There must be a minimum space of two feet [58.42 centimeters] between each crib or cot. Aisles between cots and cribs must be kept free of all obstructions while they are occupied.

2. Night care.

- a. Any 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 provide a transition into this type of care appropriate to the child's emotional needs.
- c. When practical, children must be left for care and picked up before and after their normal sleeping period to ensure minimal disturbance of the child during sleep, but consideration must be given to the parent's work schedule.
- d. Preschool age children must be supervised when bathing.
- e. Comfortable beds, cots, or cribs, 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, at least 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.
- f. The child care center operator shall require each child in night care to have night clothing and a toothbrush marked for identification.
- g. For child care centers, during sleeping hours, the staff must be awake and within listening distance in order to provide for the needs of children and respond to an emergency.

3. Drop-in child care centers.

- a. If a child care center serves drop-in children, schoolchildren, or before-school and after-school children, the child care center must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program.
- b. The program must reflect the special needs of the children who are provided drop-in service.
- c. Admission records must comply with all enrollment requirements contained in section 75-03-10-22, except the immunization record requirement.
- d. Admittance procedures must provide for a period of individual attention for the child in order to acquaint the child with the child care center, its equipment, and the staff.
- e. A child care center may not receive drop-in or part-time children who, when added to the children in regular attendance, cause the child care center to exceed the total number of children for which the child care center is licensed.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-25. Minimum--standards--for--food-and-nutrition Minimum requirements for care of children with special needs.

- 1.--When--the--operator--is--responsible--for--providing--food--to children;--the--food--supplied--shall--meet--United--States department-of-agriculture-standards;--and-be-properly-prepared; sufficient--in--amount;--varied--according--to--diets--of--the children-enrolled;--and-served-at-appropriate-hours.
- 2.--When--parents--bring--sack--lunches--for-their-children-at-the center;--the--operator--may--supplement--lunches--to--provide nutritious-and-sufficient-amounts-of-food-for-children.
- 3.--Where--such--services--are--available-in-the-community-free-of charge-to-the-child-care-center;--a--dietitian--or--other--food service-professional--shall-be-used-as-a-consultant.

- 4.--Children--shall--be--served--a--nutritious--morning--and--afternoon
snack;--as--outlined--below--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--during--the--time
eited--above--shall--receive--either--a--snack--or--lunch;
whichecker--is--appropriate--by--the--time--of--the--day:
 - b.--Children--in--care--during--any--normal--mealtime--hour--shall--be
served--food--appropriate--to--that--time--of--the--day:
 - c.--Children--in--care--in--after--school--child--care--center
programs--who--have--not--had--any--food--since--lunch--shall--be
provided--with--a--snack:
- 5.--When--the--operator--is--responsible--for--providing--food--to
children;--menus--shall--be--prepared--on--a--weekly--basis--and--shall
be--printed--or--written--in--such--a--manner--that--either--the
parents;--the--department;--or--other--appropriate--persons--may
review--them:
- 6.--Information--provided--by--the--children's--parents--as--to--their
eating--habits;--food--preferences;--or--special--needs--shall--be
considered--in--the--child--care--center's--feeding--schedules--and
menus:
- 7.--Children--shall--be--served--in--a--manner--commensurate--with--their
age--using--appropriate--dishes--and--eating--utensils:
- 8.--Children--shall--be--encouraged--to--eat--the--food--served;--but--shall
not--be--subjected--to--coercion--or--forced--feeding:

When children with special needs are admitted to a child care center, there must be appropriate provisions to meet those needs. The child care center shall document how the child's special needs may be met.

1. When children with special needs are admitted, the child care center supervisor shall consult with the child's parents, and, with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants.
2. Caregivers shall receive proper instructions as to the nature of the child's disability and potential for growth and development.
3. If the nature of the special needs or the number of children with special needs warrants added care, the child care center shall add sufficient staff and equipment as deemed necessary by the department to compensate for these needs.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-26. Minimum--child--care--center--program--requirements
Minimum provisions regarding emergency care for children.

- 1.--A--child--care--center--shall--establish--a--planned--program--of--developmentally--appropriate--activities--which--promote--intellectual--social--emotional--and--physical--development--and--enhance--a--child's--cognitive--creative--and--communication--skills.
- 2.--The--program--of--the--child--care--center--shall--be--based--upon--the--developmental--needs--of--the--children--enrolled--It--shall--be--flexible--and--subject--to--modification--for--individual--child--differences--in--the--characteristics--of--the--groups--in--the--child--care--center.
- 3.--The--planned--program--shall--be--written--and--shall--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--plan--shall--describe--how--the--activities--planned--will--meet--the--children's--developmental--needs--including--the--special--needs--of--children--in--the--center--who--are--multilingual--or--handicapped--The--written--program--shall--be--made--available--to--parents.
- 4.--The--program--shall--include--firsthand--experiences--for--children--to--learn--about--the--world--in--which--they--live--Opportunities--shall--be--provided--for--older--children--to--participate--in--supervised--visits--and--recreational--activities--in--the--community.
- 5.--Learning--experiences--shall--be--conducted--in--consultation--with--parents--in--order--to--ensure--harmony--with--the--lifestyle--and--cultural--background--of--the--children.
- 6.--The--program--shall--provide--a--balance--of--quiet--and--active--indoor--and--outdoor--group--and--individual--activities--Within--the--schedule--a--time--for--supervised--child-initiated--and--self-selected--activity--shall--be--established.
- 7.--If--the--children--are--allowed--to--assist--in--any--food--preparation--their--activity--must--be--limited--to--use--of--equipment--and--appliances--that--do--not--present--a--safety--hazard--Children--must--not--be--allowed--in--the--kitchen--or--laundry--area--unsupervised.

- 8.--Safe--and--comfortable--arrangements--for--naps--for--enrolled children--must--be--provided.
- 9.--There--must--be--a--room--available;--separate--from--the--naproom; where--individual--children--can--go--if--they--are--unable--to--nap; for--supervised--play--so--as--not--to--disrupt--the--other--children's rest.
- 10.--A--variety--of--games;--toys;--books;--crafts;--and--other--activities and--materials--shall--be--provided--to--enhance--the--child's intellectual--and--social--development--and--to--broaden--the--child's life--experience.--Each--center--shall--have--enough--play--materials and--equipment--so;--that--at--any--one--time;--each--child--for--which the--center--is--licensed--can--be--individually--involved.
- 11.--The--cultural--diversity--of--the--children--shall--be--reflected--in the--program--through--incorporation--of--their--language;--food; celebration;--and--lifestyles;--where--appropriate.
- 12.--Equipment--and--furniture--shall--be--durable--and--safe--and--shall--be appropriately--adapted--for--children's--use.
- 13.--Sufficient--space--accessible--to--children--shall--be--provided--for each--child--to--have--the--child's--own--clothes--and--to--keep--other personal--items.
- 14.--The--center--shall--supplement;--augment;--and--reinforce--the child's--activities--at--home;--and--where--applicable;--at--school.
- 15.--At--the--time--of--enrollment;--the--child--care--center--personnel shall--discuss--with--the--parents--the--children's--habits; activities;--and--schedules--while--at--home--and--in--school--and their--parents'--special--concern--about--their--past--and--future behavior--and--development.--The--schedule--and--activities--in child--care--shall--be--designed--to--complement--and--supplement--the children's--experiences--at--home--and--in--school.
- 16.--Parents--shall--be--encouraged--to--visit--the--facility;--observe; and--participate--in--the--care--of--their--children.
- 17.--The--child--care--center--personnel--shall--be--responsible--for contacting--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.
- 18.--Personal--hygiene--practices--appropriate--for--a--child's--age--and development--shall--be--stressed.
- 19.--Any--concerns--about--the--health;--development;--or--behavior--of--any child--in--the--child--care--center--on--the--part--of--center personnel;--the--administering--or--operating--agency--shall--be communicated--to--the--parent--promptly--and--directly.

20. Each child's cultural and ethnic background and primary language or dialect shall be respected by the child care personnel.

21. Each facility shall have a designated area where a child can sit quietly or lie down to rest. There shall be sufficient cots or sleeping mats so that each child in attendance can have an individual napping space. The floor shall be used only when carpeted or padded, warm, free from drafts, and when individual blankets or coverings are used. Napping schedules shall be set for children according to their ages and needs. For children unable to sleep, time and space for quiet play must be available.

The child care center shall have plans to respond to illness and emergencies including burns, serious injury, and ingestion of poison. Parents of enrollees must be advised of these plans. Plans must provide that:

1. Emergency response procedures be conspicuously posted;
2. Training concerning emergency procedures be available for all staff members to ensure awareness of the hazards of infection and accidents and how such problems may be minimized.
3. At least one state department of health-approved first-aid kit be maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members;
4. The child care center have a working telephone line immediately accessible to staff with a list of emergency telephone numbers conspicuously posted adjacent to the telephone;
5. Medical consultation be available regarding special care and medication when health policies of the facility allow ill children to be admitted or to remain in the child care center;
6. Written permission to dispense medication be obtained from the parent if a child in the child care center requires medication, as well as proper instructions for the administration of medication:
 - a. Medications prescribed by a physician must be accompanied by the doctor's written instructions as to dosage and storage, and labeled with the child's name and dated;
 - b. Medications must be stored in an area inaccessible to children, and medications stored in a refrigerator must be stored collectively in a spillproof container;
 - c. A written record of the administration of medication, including over-the-counter medication, to each child must

be kept, and records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child; and

d. Completed medication records must be included in the child's record;

7. A supervised temporary isolation area be provided for a child who is too ill to remain in the group or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:

a. Parents are notified immediately and asked to pick up their child; and

b. First aid is provided and medical care is sought as necessary;

8. Children with infectious or communicable conditions be excluded from the child care center until the condition may no longer be transmitted, and guidance regarding exclusion and return to the child care center is obtained through consultation with local and state health department authorities;

9. Adequate supervision be available for all children who are ill and remain at the center;

10. A source of emergency health services be readily available to the child care center, including:

a. A prearranged plan for emergency medical care in which parents of enrollees are advised of the arrangement; and

b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, the child is to be accompanied by an adult who will remain with the child until medical personnel assume responsibility for the child's care and until the parent or legal guardian arrives;

11. Information be provided to parents, as needed, concerning child health and social services available in the community, and that assistance be available for parents to obtain these services;

12. The child care center inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, and immediately notify parents of any injury which requires emergency care beyond first aid; and

13. Each injury report be made a part of the child's record.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-27. Specialized--types-of-care-and-minimum-requirements therefor Effect of conviction on licensure and employment.

1.--Infant-care-

a.--A--child--care--center--serving--children--from--birth--to twenty-four-months--shall--provide--an--environment--which protects--the-children-from-physical-harm-and-one-which-is not-so-restricted-so-as-to-inhibit-physical;-intellectual; emotional;-and-social-development-

b.--Nonwalking-children-shall-have-the-opportunity-during-each day-for-freedom-of-movement;-such-as-crawling-or--crawling in-a-safe;-clean;-open;-uncutted-area-

c.--Each--infant-shall-have-an-individual-sleeping-space--The sheets-shall-be-changed-whenever--they--become--soiled--or wet-

d.--Children--shall--be--taken--out-of-doors-or-to-other-areas within-the-facility-for-a-part-of-each-day-to-provide-some change--of--physical--surroundings--and--to--be-with-other children--No-child-shall-be-confined-to-a-crib-or-playpen during--the-entire-time-at-the-center;-unless-the-child-is preparing-to-sleep-or-sleeping-for--the--duration--of--the care-

e.--Each---infant--shall--have--periodic--individual--personal contact-and-attention-from-an-adult;-such-as--being--held; rocked;-talked-or-sung-to-

f.--Low--chairs-and-tables-or-infant-seats-with-trays-shall-be provided-for-table--play--and--mealtime--for--children--no longer-being-held-for-feeding--Highchairs;-if-used;-shall have-a-wide-base-and-a-safety-strap-

g.--Children-shall-never-be-shaken-or-jostled-in-a-moderate-or severe-manner-

h.--All-cries-of-infants-shall-be-investigated-

i.--Infants--shall-be-fed-or-supervised-individually-and-their diet-and-pattern-of-feeding-shall-be-appropriate-to--their individual-developmental-needs-

j.---At-no-time-shall-infants-be-left-unattended-while-feeding.

k.---There---must--be--a--minimum--space--of--two--feet--{58.42 centimeters}-between-each-crib--or--cot.---Aisles--between cots-and-cribs-must-be-kept-free-of-all-obstructions-while they-are-occupied.

2.---Night-care.

a.---Any--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-shall-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-shall-be--given--to--the--parent's--work schedule.

d.---Preschool-age-children-shall-be-supervised-when-bathing.

e.---Comfortable--beds,-cots,-or-cribs-complete-with-a-mattress or-pad-shall-be-available.

{1}---Pillows-and-mattresses-shall-have-clean-coverings.

{2}---Sheets--and--pillowcases-shall-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-shall-be-laundered-before--use by-other-children.

{3}---Each--bed--or--cot--shall--have--sufficient--blankets available.

f.---The-center-shall-require-each-child-in-night-care-to-have:

{1}---Night-clothing.

{2}---A-toothbrush-marked-for-identification.

g.---During-sleeping-hours,-the-staff-shall-be-awake-and-within listening-distance-in-order-to-provide-for--the--needs--of children-and-respond-to-an-emergency.

3.---Drop-in-centers.

- a. ~~If a child care center serves drop-in children, school children, or before-school and after-school children, it shall be sufficiently staffed to effectively handle admission records, and explain the policies of the center. Admission records secured must comply with all enrollment requirements contained in section 75-03-10-17 except the immunization record requirement.~~
- b. ~~The program of the center shall reflect the special needs of the children who are provided drop-in service.~~
- c. ~~Admittance procedures shall provide for a period of individual attention for the child in order to acquaint the child with the facility, its equipment, and the people who can assist the child.~~
- d. ~~No child care center shall receive drop-in or part-time children who, when added to the children in regular attendance, cause the center to exceed the total number of children for which the center is licensed.~~

1. A child care center operator may not be, and a child care center may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the child care center, an individual who has been found guilty of, pled guilty to, or pled no contest to:

- a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
- b. An offense other than an offense identified in subdivision a, if the department in the case of a child care center operator, or the child care operator in the case of a child care center employee, determines that the individual has not been sufficiently rehabilitated.

2. A child care center shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section.

3. For the purposes of subdivision b of subsection 1, the department in the case of a child care center operator, or the child care center operator in the case of a child care center employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-28. ~~Minimum--requirements--for--care--of--children-with special-needs~~ Child abuse and neglect determinations. ~~When--children with--special--needs--are--admitted--to--a--child--care--center,--there--shall--be appropriate--provisions--to--meet--those--needs.--The--center--shall--document how--the--child's--special--needs--shall--be--met.~~

1. ~~When--children--with--special--needs--are--admitted,--the--responsible individual--in--the--center--shall--consult--with--the--child's parents,--the--child's--source--of--professional--health--care,--or, when--appropriate,--other--health--and--professional--consultants.~~
2. ~~The--appropriate--staff--of--the--center--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--center--shall--add sufficient--staff--and--equipment--as--deemed--necessary--by--the department--to--compensate--for--these--needs.~~

If a probable cause determination or a decision that services are required under North Dakota Century Code chapter 50-25.1 exists, indicating that any child has been abused or neglected by a staff member, that individual shall furnish information satisfactory to the department, from which the department may determine the staff member's current ability to provide care free of abuse and neglect. The determination of current ability must be furnished to the child care center operator and to the regional director of the human service center or the regional director's designee for consideration and action on the center child care license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-29. Discipline Allowable time periods for correction of deficiencies. Discipline must be constructive or educational in nature and may include diversion, separation from problem situation, talk with child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding. Children must 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:

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 young 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, or abusive language may not 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.

1. Deficiencies noted in a correction order must be corrected:

- a. For a violation of section 75-03-10-09, subsection 3 of section 75-03-10-18, and section 75-03-10-23, within twenty-four hours;
- b. For a violation or deficiency requiring the hiring of a child care supervisor with those qualifications set forth

in section 75-03-10-10, or a child care center director with those qualifications set forth in section 75-03-10-11.1, within sixty days;

- c. For a deficiency that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-10-17, within sixty days;
 - d. For a deficiency that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other deficiencies, within twenty days.
- 2. All periods for correction begin on the date of receipt of the correction order by the licensee.
 - 3. The regional supervisor of early childhood program licensing may grant an extension of additional time to correct deficiencies, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee and a showing that the need for the extension is created by unforeseeable circumstances and the licensee has diligently pursued the correction of the deficiency.
 - 4. The operator shall furnish a written notice of completion of the correction order action to the county agency. The correction order is effective until the county receives the notice.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-30. Minimum--standards--for-provision-of-transportation
Fiscal sanctions.

- 1.--The--operator--shall--establish-a-written-policy-governing-the transportation-of-children-to-and-from-the-child-care--center; if--the--center--provides-transportation--Such-a-policy-shall specify-who-is-to--provide--transportation--and--how--parental permission--is--to--be--obtained--for--special-field-trips-and related-activities-which-occur-outside-the-child-care--center. When--the--child--care--center--provides--transportation,--the operator-shall-inform-the-parents-of-any-insurance-coverage-on the--vehicles.---Any--vehicle--used--for-transporting-children shall-be-in-safe-operating-condition-and--in--compliance--with state-and-local-laws;

2.--When--transportation--is--provided--by--a--child--care--center;
children--shall--be--protected--by--adequate--staff--supervision;
safety-precautions;-and-liability/medical-insurance-

a.--Child/staff--ratios--shall--be--maintained--to--assure-the
safety-of-children-while-being-transported-

b.--No-child-shall-be-left-unattended-in-a-vehicle-

3.--Children--shall--be--instructed--in--safe--transportation--conduct--as
appropriate--to--their--age--and--stage--of--development-

4.--The--driver--shall--be--in--compliance--with--all--relevant--state--and
local--laws-

1. A fiscal sanction of twenty-five dollars per day must be assessed for each violation of subdivision i of subsection 2 of section 75-03-10-08; subsection 2 of section 75-03-10-09; section 75-03-10-17; subsections 6, 9, and 13 of section 75-03-10-18; subsection 2 of section 75-03-10-19; section 75-03-10-23; and section 75-03-10-28, for each day after the allowable time for correction of deficiencies ends, that the child care center has not verified correction.

2. A fiscal sanction of fifteen dollars per day must be assessed for each violation of section 75-03-10-11.1; section 75-03-10-15; subsections 2, 3, 4, 7, 8, 11, 19, and subdivision f of subsection 26 of section 75-03-10-18; subsection 1 of section 75-03-10-19; subsections 3, 8, and 19 of section 75-03-10-20; and subdivision a of subsection 1 of subsection 3 of section 75-03-10-24, for each day after the allowable time for correction of deficiencies ends, that the child care center has not verified correction.

3. A fiscal sanction of five dollars per day must be assessed for each violation of any other provision of this chapter, for each day after the allowable time for correction of deficiencies ends, that the child care center has not verified correction.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

**75-03-10-31. Allowable---time---periods---for---correction---of
deficiencies Appeals.**

1.--Pursuant--to--North--Dakota--Century--Code--section--50-11.1-07.2;
the--following--time--periods--are--established--in--which--the

corrections--of--those--deficiencies--noted--in--the--correction order--issued;--must--be--made:

a.--For--a--violation--or--deficiency--requiring--the--hiring--of--a child--care--center--director--with--those--qualifications--as set--forth--in--section--75-03-10-10;--a--child--care--supervisor with--those--qualifications--as--set--forth--in--section 75-03-10-12;--a--period--of--sixty--days--to--correct--the deficiency--shall--be--allowed:

b.--For--a--violation--or--deficiency--that--requires--an--inspection; by--a--state--fire--marshal--or--local--fire--department--authority pursuant--to--section--75-03-10-21;--a--period--of--sixty--days--to correct--the--deficiency--shall--be--allowed:

c.--For--a--violation--or--deficiency--that--requires--substantial building--remodeling;--construction--or--change;--a--period--of sixty--days--to--correct--the--deficiency--shall--be--allowed:

d.--For--all--other--violations--or--deficiencies--a--period--of twenty--days--shall--be--allowed--to--correct--the--deficiency:

2.--All--time--periods--shall--commence--with--the--date--of--receipt;--by the--provider;--of--the--correction--order:

3.--The--regional--supervisor--of--early--childhood--program--licensing shall--have--the--authority--to--grant--extensions--of--allowable--time to--correct--deficiencies;--for--a--period--of--one--half--the--original allowable--time--to--correct--the--deficiency;--These--extensions may--be--granted--upon--application--by--the--provider--and--upon--a showing--that--the--need--for--the--extension--is--created--by circumstances--beyond--the--control--of--the--provider--and--that--the provider--has--diligently--pursued--the--correction--of--the deficiency:

An applicant or provider may appeal a decision to deny or revoke a license by filing a written appeal with the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-10-32. Penalties.

1.--A--violation--of--any--of--the--following--sections--shall--subject--the licensee--to--a--fiscal--sanction--of--twenty--five--dollars--per--day:

subdivision---j---of--subsection--3--of--section--75-03-10-09;
subsection-2--of--section--75-03-10-16;--section--75-03-10-21;
subsections-3,-12,-and-18-of-section-75-03-10-22;-subsection-2
of-section-75-03-10-23;-and-section-75-03-10-29.

2:--A-violation-of-any-of-the-following-sections-shall-subject-the
licensee-to-a-fiscal-sanction--of--fifteen--dollars--per--day;
section-75-03-10-10;-subsections-1,-2,-4,-5,-10,-16,-and-19-of
section-75-03-10-22;-and-subdivision-f--of--subsection--25--of
section--75-03-10-22;-subsection--1--of--section-75-03-10-23;
subsections-3,-10,-and-21-of-section-75-03-10-26;-subdivision
a-of-subsection-1-and-subsection-3-of-section-75-03-10-27;-and
section-75-03-10-30.

3:--Any--violation--of-any-other-section-of-this-chapter-not-noted
in-subsections-1-or-2-shall-subject-the-licensee-to--a--fiscal
sanction---of---five--dollars--per--day: Repealed effective
August 1, 1998.

History: Effective-December-1,-1981;-amended-effective-January-1,-1987;
July-1,-1996;-July-1,-1996;-amendments--voided--by--the--Administrative
Rules-Committee-effective-August-24,-1996.

General Authority: NDCC-50-11.1-07.4;-50-11.1-08

Law Implemented: NDCC---50-11.1-07.4;---50-11.1-07.5;--50-11.1-07.6;
50-11.1-07.7

CHAPTER 75-03-11

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-03-11, Preschool Educational Facilities - Early Childhood Services

The department proposed rules amending North Dakota Administrative Code Chapter 75-03-11, Preschool Educational Facilities - Early Childhood Services. The department conducted a hearing by conference call with the human service centers on October 8, 1996. The department conducted public hearings on October 9 and 10, 1996, in Bismarck. The department received written comment on the proposed rules until the end of the day on November 11, 1996.

The purpose of chapter 75-03-11 is to establish minimum standards of group child care and assure that those standards are maintained.

75-03-11-01. Purpose: This section is repealed.

75-03-11-02. Authority and Objective: This section is repealed.

75-03-11-03. Definitions: Corrects language and grammar usage and adds definitions of terms related to staff and volunteers.

75-03-11-04. Effect of Licensing and Display of License: Corrects grammar and language usage and specifies that the issuance of a license to operate a preschool educational facility is evidence of compliance with North Dakota Century Chapter 50-11.1 at the time of licensure.

75-03-11-05. Denial or Revocation of License: Corrects grammar and language usage and provides that the department may revoke a license to operate a facility without first issuing a correction order.

75-03-11-06. (Formerly 75-03-11-08). Provisional License: Corrects grammar and language usage.

75-03-11-07. Application for and Nontransferability of Preschool Educational Facility License: Changes title of section by adding reference to application for license and specifies that the application must be made in the form and manner prescribed by the department.

75-03-11-08 and (Formerly 75-03-11-09). Duties of Preschool Educational Facility Operator: Changes title of section; corrects language and grammar usage; specifies that the operator of a facility is responsible for complying with North Dakota Century Code Chapter 50-11.1; specifies that enrollment, attendance, health, and financial records must be maintained; specifies that the operator is responsible for notifying the department and county agency of any change of director; provides that necessary information must be maintained so as to verify staff qualifications; requires the offering of preadmission visits for children and their parents to discuss the facility's program, fees,

operating policies, and procedures; specifies that written agreements state the fees to be paid, methods of payment, and policies regarding delinquency of fees; specifies that the facility is to be sufficiently staffed at all times to meet the child and staff ratios for children in attendance; prohibits the facility from providing care to any more children than the licensed capacity at any one time; requires that written policies be established concerning care and safeguarding of personal belongings brought to the facility; requires that parents be provided the name of the facility's emergency designee; specifies that the facility must develop and comply with a procedure for accountability; requires that there be at all times when children are receiving care, a staff member on duty who meets current certification requirements in basic CPR and in a first-aid program approved by the department; exempts substitute staff from the CPR/first-aid requirement; and requires the operator of a facility to report instances of death, serious accident, or illnesses requiring hospitalization of a child to the county director or the county director's designee within twenty-four hours of the incident.

75-03-11-08.1. (Formerly 75-03-11-10). Minimum Qualifications of a Preschool Educational Facility Director: Changes title of section; corrects language and grammar usage; clarifies that the director of a facility must meet certain educational requirements; and deletes outdated and unnecessary grandfathering clause which was ineffective subsequent to July 1, 1989.

75-03-11-08.2. (Formerly 75-03-11-11). Minimum Qualifications of a Preschool Educational Facility Teacher: Changes title of section and corrects language and grammar usage.

75-03-11-08.3. (Formerly 75-03-11-12). Minimum Qualifications of a Preschool Educational Facility Aide: Changes title of section and corrects language and grammar usage.

75-03-11-09. (Formerly 75-03-11-14): Staffing Requirements: Changes title of section; corrects language and grammar usage; specifies that service personnel who are engaged in housekeeping and food preparation shall not be counted for purposes of child and staff ratios; provides the staff to child ratio in decimal form to assist with computation; replaces "handicapping" with "disabling"; specifies that a child's developmental age is to be used in determining the number of staff members necessary to care for children with a disabling condition; and exempts children using a facility as a safe house from being counted in determining compliance with staff to child ratios.

75-03-11-10: This section is reserved so as to allow for uniformity throughout the early childhood services chapters with regard to reorganizational structure.

75-03-11-11: This section is reserved so as to allow for uniformity through the early childhood services chapters with regard to reorganizational structure.

75-03-11-12: This section is reserved so as to allow for uniformity throughout the early childhood services chapters with regard to reorganizational structure.

75-03-11-13. Minimum Health and Training Requirements for Staff: Corrects language and grammar usage; requires each operator or caregiver to complete a health self-certification form; specifies that if the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday; requires each operator or caregiver to furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter; specifies that if the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment; exempts substitute staff from any of these requirements; eliminates previous mandate that volunteers comply with these requirements; provides that a facility operator who uses an untested emergency designee may not be found in violation of this provision; specifies that staff members shall not use or be under the influence of any alcohol or judgment-altering drug while children are in care; and increases the minimum number of county-approved training hours related to child care that each staff member must certify attendance at on an annual basis.

75-03-11-14. (Formerly 75-03-11-20). Minimum Requirements for Facility: Requires fifty foot-candles of light for any kitchen, laundry, or office area and allows for the department or county agency to require the operator to obtain additional lighting so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities where such lighting appears questionable; specifies that the drinking water supply must come from an approved community water system or the State Department of Health; allows for the options of turning down a hot water heater, installing a tempering valve, or having an antiscalding device in place on faucets used by children so that the temperature of hot water supplied to lavatories and bathing facilities does not exceed one hundred twenty degrees Fahrenheit; replaces reference to the "local health department" with "state department of health"; adds requirements that any facility not on a municipal or public water supply or wastewater disposal system shall have its sewage and wastewater system approved by the State Department of Health; and specifies that the facility must meet the requirements of the State Plumbing Code.

75-03-11-15. (Formerly 75-03-11-25). Minimum Standards for Provision of Transportation: Corrects language and grammar usage.

75-03-11-16: This section is reserved so as to allow for uniformity throughout the early childhood services chapters with regard to reorganizational structure.

75-03-11-17. Fire Inspections: Changes title of section; corrects language and grammar usage; and specifies that the operator shall file reports of the inspections with the county licensing agency.

75-03-11-18. Minimum Sanitation and Safety Requirements: Merges section prohibiting smoking which had previously been set out as separate section; corrects language and grammar usage; specifies that cots and mats, if used, must be maintained in a clean and sanitary condition; requires that routine maintenance and cleaning procedures be established; clarifies that in facilities where only snacks or occasional cooking projects are prepared, a State Department of Health inspection is not required; specifies that all toys must be easily cleanable and be cleaned and sanitized on a routine basis; mandates that there be adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of children; specifies that the room temperature in a facility during the heating season is to be between sixty-eight and seventy-four degrees Fahrenheit; specifies that cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways may not be accessible to children; specifies that exit doorways may not be blocked; requires that wading pools used by the facility be strictly supervised and emptied and cleaned daily; requires that all swimming pools be approved by the local health unit; clarifies that nondomestic animals may not be present in the facility whether or not regarded as pets; states that pets may not be allowed in the kitchen or eating area during meal preparation or meals; and prohibits smoking while a child is present and receiving services.

75-03-11-19. Minimum Requirements Regarding Space: Corrects language and grammar usage; specifies that the facility must provide a minimum of seventy-five square feet of play space per child outdoors; provides guidance as to physical areas not to be considered in determining if adequate indoor space is available; and requires the operator to prepare a written schedule of outdoor playtime which limits use of the play area to its capacity and gives every child an opportunity to play outdoors where available outdoor play space does not otherwise accommodate the entire licensed capacity of the facility at one time.

75-03-11-20. (Formerly 75-03-11-22). Program Requirements: Changes title of section; and corrects language and grammar usage.

75-03-11-21. Minimum Standards for the Provision of Snacks: Section unchanged.

75-03-11-22. (Formerly 75-03-11-15). Records: Changes title of section; corrects language and grammar usage; specifies that a copy of this chapter must be kept on the preschool educational facility premises; exempts drop-in children from otherwise applicable requirement that verification be provided showing that the child has received all immunizations appropriate for the child's age as prescribed by the State Department of Health; adds requirement that a current health assessment or health assessment statement be completed by the parent and obtained at the time of initial enrollment; provides that such a health assessment statement is to serve as evidence that a child is physically

able to take part in the child care program; and adds confidentiality requirements to records of children in care.

75-03-11-23. (Formerly 75-03-11-24 and 75-03-11-24.1). Discipline - Punishment Prohibited: Merges two previously separate sections; corrects grammar and language usage; deletes reference to "disciplinary measures"; requires that the facility have a written policy regarding the discipline of children which must be interpreted to staff members before the facility begins operation or before staff members begin working with children; specifies that children may not be subjected to fear as a form of discipline; specifies that staff members may not use profane, threatening, unduly loud, or otherwise abusive language when addressing a child or while in the presence of a child; and specifies that no child may be bitten by a staff member or other adult in the facility.

75-03-11-24. This section is reserved so as to allow for uniformity throughout the early childhood services chapters with regard to reorganizational structure.

75-03-11-25. (Formerly 75-03-11-23). Minimum Requirements for Care of Children with Special Needs: Changes title of section; corrects language and grammar usage; specifies that when children with special needs are admitted, the facility supervisor shall consult with the child's parents and with the parents' permission, the child's source of professional health care; and specifies that caregivers shall receive proper instruction as to the nature of the child's disability and potential for growth and development.

75-03-11-26. (Formerly 75-03-11-16). Minimum Provisions Regarding Emergency Care for Children: Corrects language and grammar usage; requires that the facility's emergency plan include a provision that there be at least one working flashlight available; requires that the plan provide for responses to be made when children in care suffer from minor illnesses; specifies that medications must be stored in an area inaccessible to children, and if refrigeration is necessary, such medication must be stored collectively in a spillproof container; adds requirement that a written record be maintained regarding the administration of medication; requires that the plan contain provisions for emergency transportation and transfer of the child to an adult who will assume responsibility for the child's care; and requires the plan establish practices in which children with infectious or communicable diseases will be excluded from the facility until the condition may no longer be transmitted, with guidance regarding these practices being obtained through consultation with local and state health department authorities.

75-03-11-27. (Formerly 75-03-11-06.1). Effect of Conviction on Licensure and Employment: Changes title of section by adding reference to employment; provides that any individual seeking licensure or employment in a preschool educational facility may not be licensed or employed if they have been found guilty of, pled guilty to, or pled no contest to any one of a specific list of criminal offenses; provides

that if an individual seeking licensure or employment in a preschool educational facility has been found guilty of, pled guilty to, or pled no contest to any other offense, then a determination shall be made as to whether that individual has been sufficiently rehabilitated; clarifies that determinations of sufficient rehabilitation in regard to licensees or applicants is to be made by the department, and decisions of sufficient rehabilitation in regard to employees are to be made by the operator; and provides that completion of a period of five years after final discharge from any term or probation, parole, or other form of community correction or imprisonment, without subsequent conviction, will serve as prima facie evidence of sufficient rehabilitation.

75-03-11-28. (Formerly 75-03-11-06.2). Child Abuse and Neglect Determinations: Provides for a protocol in situations where there exists, with regard to a caregiver, a probable cause determination or a decision that services are required under the North Dakota Century Code Chapter 50-25.1.

75-03-11-29. (Formerly 75-03-11-26). Allowable Time Periods for Correction of Deficiencies: Changes title of section; corrects language and grammar usage; and provides that the operator shall furnish written notice of completion of a correction order action to the county agency and that the correction order is effective until the county agency receives the notice.

75-03-11-30. (Formerly 75-03-11-27). Fiscal Sanctions: Corrects language and grammar usage and provides for a per day fiscal sanction for violations of the rules contained in this chapter.

75-03-11-31. (Formerly 75-03-11-28). Appeals: Provides that an applicant or provider may appeal a decision to deny or revoke a license by filing a written appeal with the department within ten days of receiving notice of the adverse decision; and establishes that the appeal will be conducted in a manner consistent with administrative hearing appeal procedures outlined in North Dakota Administrative Code Chapter 75-01-03.

75-03-11-01. Purpose. ~~The--purpose--of--this--chapter--is--to establish standards for preschool educational facilities and--to--assure that--those--standards--are--maintained.~~ Repealed effective August 1, 1998.

History: Effective-December-1,-1981;-amended-effective-January-1,-1987; repealed-effective-July-1,-1996;--July-1,-1996;--repeal--voided--by--the Administrative-Rules-Committee-effective-August-24,-1996-

General Authority: NDCC-50-11.1-08

Law Implemented: NDCC-50-11.1-01

75-03-11-02. Authority and objective. ~~Pursuant-to-North-Dakota Century-Code--section--50-11.1-08;--the--department--may--prescribe--and promulgate--such--rules--as--are--necessary--to--carry--out--the--provisions--of North-Dakota-Century-Code-chapter-50-11.1.~~ Repealed effective August 1, 1998.

History: Effective-December-1,-1981;-amended-effective-January-1,-1987;
 repealed-effective-July-1,-1996;-July-1,-1996;-repeal-voided-by-the
 Administrative-Rules-Committee-effective-August-24,-1996-
 General Authority: NDEC-50-11.1-08
 Law Implemented: NDEC-50-11.1-08

75-03-11-03. Definitions. As used in this chapter:

1. "Aide" means any person individual other than a teacher or one who works in a preschool educational facility under the supervision of a teacher or a director.
2. "Caregiver" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a preschool educational facility under the guidance and supervision of the preschool educational facility operator.
3. "County agency" means the county social service board in the county where the preschool educational facility is located.
- 3- 4. "Department" means North Dakota department of human services.
- 4- 5. "Director" means ~~any--person--with--the-responsibility-of an~~ individual responsible for supervising and organizing program activities in a preschool educational facility.
6. "Emergency designee" means an individual designated by the facility operator to be a backup caregiver for emergency assistance or to provide substitute care.
- 5- 7. "Facility operator" or "operator" means ~~any--person the individual or group in--whom--inherits who has~~ the legal responsibility and the administrative authority for the operation of a preschool educational facility. The facility operator is the applicant for license or the licensee pursuant to under this chapter.
- 6- 8. "Parent" means ~~any--person an individual bearing the legal relationship of father or mother to a child enrolled in a preschool educational facility, including these-persons an individual who legally stand stands in place of such a parent,~~ such as a legal guardians guardian or custodians custodian.
- 7- 9. "Preschool educational facility" or "facility" means a program licensed under this chapter and the provisions of North Dakota Century Code chapter 50-11.1, which serves ~~no a child no more~~ more than three hours per day, offers early childhood services, and follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility.

8- 10. "Staff" or "staff member" means any--person operator, substitute staff, volunteer, caregiver, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the preschool educational facility.

9- 11. "Teacher"---means---any--person--with--the--responsibility--of implementing-program-activities--either--as--the--director--or under--the--supervision--of--the-director. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month.

12. "Teacher" means an individual with the responsibility of implementing program activities, either as the director or under the supervision of the director.

13. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a fireperson for fire safety week, a McGruff, or Santa Claus person.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11-04. Effect of licensing and display of license.

1. The issuance of a license to operate a preschool educational facility ~~shall be~~ is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.

2. The current license ~~shall~~ must be ~~on-display~~ displayed in the ~~facility-in-a-conspicuous-place~~ premises to which it applies.

3. The license ~~shall~~ must specify the maximum number of children who may be cared for ~~in-the-program,-and-the-program-shall~~ by the preschool educational facility. The preschool educational facility may at no time admit a greater number of children.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03

75-03-11-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the licenseholder may continue the operation of the preschool educational facility pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection shall does not limit the actions the department may take pursuant to North Dakota Century Code section 50-11.1-12.
3. The department may revoke a license to operate a preschool educational facility without first issuing a correction order.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-10

75-03-11-06. ~~Application--for--a--preschool-educational-facility license~~ Provisional license. ~~An application for license and issuance by the--department--shall--be--submitted--to--the--county--agency--in--the--county wherein--the--applicant--proposes--to--operate--a--preschool--educational facility.---Application--shall--be--made--in--the--form--and--manner--prescribed by--the--department.~~

1. The director of a regional human service center, in the director's discretion, or the director's designee, may issue a provisional license for the operation of a newly opened preschool educational facility or for a previously licensed preschool educational facility although the preschool educational facility fails to comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. Prominently state that the preschool educational facility has failed to comply with all applicable standards and rules of the department;
 - b. State that the items of noncompliance are set forth on a document available, upon request made to the operator;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears the same date of issuance as the provisional license, upon

demonstrating compliance, satisfactory to the department, with all applicable standards and rules.

3. A provisional license may be issued only to an applicant who has waived, in writing:
 - 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 the holder to all rights and privileges afforded the holder of an unrestricted license.
6. The department shall not issue a provisional license if the facility is not in compliance with section 75-03-11-17 or 75-03-11-18.
7. The operator shall prominently display the provisional license.
8. The operator shall provide parents notice that the facility is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-07. Nontransferability--of--license Application for and nontransferability of preschool educational facility license. The license--shall--be--nontransferable--and--shall--be--valid--only--on--such premises--as--are--indicated--on--the--license.---A--new--application--for--a license--must--be--filed--by--any--licensed--facility--upon--change--of--operator or--location. An application for a license must be submitted to the county agency in the county in which the facility is located.

1. Application must be made in the form and manner prescribed by the department.
2. The license is nontransferable and valid only on the premises indicated on the license. A new application for a license must be filed by a licensed facility upon change of operator or location.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-08. Provisional--license Duties of preschool education facility operator.

- 1.--Preschool--educational--facility--operators--who--apply--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, may,--at--the-discretion-of-the-regional-director-of-the-human service-center,--or--his--designee,--be--issued--a--provisional license.
- 2.--A-provisional-license-shall:
 - a.--Prominently--state--that--the--center-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--program operator.
 - c.--Expire--at--a--set-date,--not-to-exceed-six-months-from-the date-of-issuance.
 - d.--Be--exchanged-for-an-unrestricted-license,--which-will-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 has,--in-writing,--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--shall--be--accompanied-by-a
written--statement--of--violations--signed--by--the---regional
director---of--the--human--service--center--and,--in--writing,
acknowledged-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-

1. The operator of a preschool educational facility is responsible to the department for compliance with the requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. In meeting this responsibility, the operator shall ensure:

a. Establishment of the preschool educational facility program;

b. An application is made for a license for each preschool educational facility operated;

c. Creation of an outline of a written plan and policies for the operation of each preschool educational facility;

d. Notification is provided to the county agency of any major changes in the operation or in the ownership or governing body of the preschool educational facility and of any staff changes;

e. Liability insurance for bodily injury and property damage for the preschool educational facility;

f. Formulation of written policies and procedures relating to:

(1) Hiring practices and personnel policies for staff;

(2) Methods for obtaining references and employment histories;

(3) Methods of conducting staff performance evaluations;

(4) Children's activities, care, and enrollment; and the responsibilities and rights of staff and parents;

g. Maintenance of required enrollment, attendance, health, financial, and related records;

h. Responsibility for all preschool educational facility staff, volunteers, or others who provide services in the

facility and for notifying the department and county agency of any change of director;

i. The reporting of any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and development of a written policy for staff to handle this reporting;

j. Maintenance of necessary information to verify staff qualifications and to ensure safe care for the children in the preschool educational facility;

k. Designation of a qualified director;

l. That preadmission visits for children and their parents are offered in order that the preschool educational facility's program, fees, operating policies, and procedures can be viewed and discussed, including:

(1) An explanation of how accidents and illnesses may be dealt with; and

(2) Methods of discipline and developmentally appropriate guidance techniques to be used.

m. That written agreements with the parents of each child specify the fees to be paid, methods of payments, and policies regarding delinquency of fees;

n. That the preschool educational facility is sufficiently staffed at all times to meet the child and staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;

o. That written policies are established concerning the care and safeguarding of personal belongings brought to the preschool educational facility by enrollees or others on their behalf;

p. Parents are provided, upon request, any progress reports on their children and are regularly provided opportunities to observe their children while in care;

q. Parents are provided the name of the preschool educational facility's operator, the director, and the emergency designee;

r. The development of and compliance with a procedure for accountability when a child fails to arrive for the program;

s. That there is at all times when children are receiving care, a staff member on duty who meets current

certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs and in a first-aid program approved by the department. Substitute staff are exempted from this requirement; and

t. Carecheck information is made available to parents.

2. If the operator of the preschool educational facility is also the director, the operator shall also meet the qualifications of the director set forth in section 75-03-11-28.

3. The operator of a facility shall report within twenty-four hours to the county director or the county director's designee a death or serious accident or illness requiring hospitalization of a child while in the care of the facility or attributable to care received in the facility.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-07.2, 50-11.1-08

75-03-11-08.1. Minimum qualifications of a preschool educational facility director.

1. A preschool educational facility director shall be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge and experience in management and interpersonal relationships.

2. The director shall meet at least one of the following qualifications, in addition to those set out in subsection 1:

a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a preschool educational facility or similar setting;

b. A bachelor's degree with at least twenty-four quarter hours or sixteen semester hours in child development, child psychology, or fields directly related thereto, with at least six months of experience in a preschool educational facility or similar setting;

c. An associate degree in the field of early childhood development with at least six months of experience in a preschool educational facility or similar setting;

- d. Certification as a child development associate or similar status where such a local, state, or federal certification program exists, with at least one year of experience in a preschool educational facility or similar setting;
- e. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or fields directly related thereto, with at least one year of experience in a preschool educational facility or similar setting; or
- f. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, preschool educational facility, or similar setting.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-08.2. Minimum qualifications of a preschool educational facility teacher.

- 1. A teacher shall be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge of teaching and working with young children.
- 2. The teacher shall have met at least one of the following qualifications:
 - a. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or fields directly related thereto;
 - b. A teaching certificate in elementary education or kindergarten endorsement;
 - c. An associate degree in the field of early childhood education;
 - d. Certification as a child development associate or similar status where such a local, state, or federal certification program exists; or
 - e. Certification from a Montessori teacher training program.
- 3. If the teacher is also the director, that individual shall meet the qualifications of the director and perform the function of a director as defined in section 75-03-11-08.1.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-08.3. Minimum qualifications of a preschool educational facility aide. Each aide shall:

1. Be mentally, physically, and emotionally able to provide care and attention to the children in the aide's charge.
2. Meet one of the following qualifications:
 - a. A high school diploma; or
 - b. A high school equivalency.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-09. Responsibilities--of--facility--operator Staffing requirements.

- 1.--The---operator---of---a---preschool--educational--facility--is responsible-to-the-department-for-compliance-with-requirements set-forth-in-the-standards-
- 2.--The---operator---may---be---any---individual,--group,--agency, association,--or--organization--legally--responsible--for--the operation-of-the-program-
- 3.--The-operator-shall-ensure-that-all-standards-are-complied-with and-shall:-
 - a.--Be--responsible-for-establishing-the-preschool-educational facility-
 - b.--Make---application---for--a--license--for--each--preschool educational-facility-operated,-if-more-than-one-program-is operated-
 - c.--Outline--a--written-plan-and-policies-for-the-operation-of each-program-
 - d.--Notify--the--county--agency--of--any--major-changes-in-the operation-or-in-the-ownership-or-governing--body--of--the program-and-of-any-staff-changes-
 - e.--Carry--liability--insurance-for-bodily-injury-and-property damage-for-the-facility.--This-subdivision-is-effective-on July-1,-1987-

- f.--Ensure--the--formulation--of--written--policies--and--procedures relating--to--hiring--practices--and--personnel--policies--for staff.----These---must---include---obtaining---references; employment--histories;--and--a--method--of--conducting--staff performance--evaluations.---Written--policies--and--procedures must--also--be--formulated--for--the--children's--activities--and care;--enrollment;--the--responsibilities--and--rights--of--staff and--of--parents.
- g.--Maintain--required--records.
- h.--Be--responsible--for--all--center--staff;--volunteers;--or--others who--provide--services--in--the--facility.
- i.--Report--any--suspected--child--abuse--or--neglect--as--required--by North--Dakota--Century--Code--chapter--50-25.1--and--develop--a policy--for--staff--to--handle--this--reporting.
- j.--Ensure--safe--care--for--the--children--in--the--facility.---If there--exists--a--probable--cause--determination--under--North Dakota--Century--Code--chapter--50-25.1--indicating--that--any child--has--been--abused--or--neglected--by--a--director;--teacher; or--staff--member;--the--person--shall--furnish--information; satisfactory--to--the--department;--from--which--the--department can--determine--the--person'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 regional--director--of--the--human--service--center--or--his designee--for--consideration--and--action--on--the--license--or license--application.
- k.--Designate--a--qualified--director.
- l.--Ensure---that--parents--of--enrolled--children--and--other interested--parties--are--informed--of--the--goals;--policies--and procedures;--methods--of--discipline--and--child--management--to be--used;--and--content--of--the--preschool--program.
- m.--Ensure--that--the--facility--is--sufficiently--staffed.
- n.--Ensure--that--written--policies--are--established--which--provide for--emergency--medical--care;--and--the--treatment--of--illness and--accident.
- o.--Provide--parents;--upon--request;--any--progress--reports--on their--individual--child--or--children--and--the--compliance--of the--facility--with--standards--contained--in--this--chapter.
- p.--Provide--parents--with--the--name--of--the--facility's--operator and--the--director.

4.---If--the-operator-of-the-preschool-educational-facility-is-also the-director,-the-operator-must-also-meet--the--qualifications of-the-director-set-forth-in-section-75-03-11-10:

1. The number of staff members and their use shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings, where necessary. Service personnel that are engaged in housekeeping and food preparations shall not be counted in the child and staff ratio for periods of time when they are so engaged.
2. The minimum ratio of caregivers or program staff to children in preschool educational facilities must be:
 - a. If all children in care are children two years of age to three years of age, one staff member may care for six children, a ratio of .167 in decimal form.
 - b. If all children in care are children three years of age to four years of age, one staff member may care for eleven children, a ratio of .09 in decimal form.
 - c. If all children in care are children four years of age to five years of age, one staff member may care for thirteen children, a ratio of .077 in decimal form.
 - d. If all children in care are children five years of age to six years of age, one staff member may care for sixteen children, a ratio of .063 in decimal form.
 - e. There must be at least one director or teacher per group of ten children, if the group includes children two years old.
 - f. There must be at least one director or teacher per group of twenty children, if the group includes children three years old.
 - g. There must be at least one director or teacher per group of twenty-four children, ages four to six.
 - h. There must be one Montessori-certified director or teacher per group of thirty children enrolled in accredited Montessori programs.
3. If a child in care has a disabling condition, and which requires more than usual care, the child's developmental age level must be used in determining the number of children for which care may be provided.
4. Children with special conditions requiring more than usual care and supervision shall have adequate care and supervision

provided to them without adversely affecting care provided to the remaining children in the facility.

5. To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count is then rounded to the next highest whole number whenever the fractional caregiver count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.
6. Children using the licensed facility for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-10. Minimum-qualifications-of-a-director: [Reserved]

- 1.---A--director--shall--be--an--adult--of--good--mental--and--physical health;--capable--of--mature--judgment;--and--possessing--knowledge and--experience--in--management--and--interpersonal--relationships.
- 2.---The--director--shall--certify--that--the--director--has--met--at--least one--of--the--following--qualifications:
 - a.---A--bachelor's--degree--in--the--field--of--early--childhood education--with--eight--or--more--weeks--of--supervised--student teaching--experience--in--a--child--care--center;--preschool educational--facility;--kindergarten;--elementary--school;--or similar--setting;
 - b.---A--bachelor's--degree--with--at--least--twenty--four--quarter hours--or--sixteen--semester--hours--in--child--development; child--psychology;--or--fields--directly--related--thereto;--with at--least--six--months'--experience--in--a--child--care--center; preschool--educational--facility;--kindergarten;--elementary school;--or--similar--setting;
 - c.---An--associate--of--arts--degree--in--the--field--of--early childhood--development--with--at--least--six--months'--experience in--a--child--care--center;--preschool--educational--facility; kindergarten;--elementary--school;--or--similar--setting;
 - d.---Certification--as--a--child--development--associate--or--similar status--where--such--a--local;--state;--or--federal--certification program--exists;--with--at--least--one--year's--experience--in--a

child-care-center;--preschool--educational--facility;
kindergarten;--elementary-school;--or-similar-setting;

e.--A--bachelor's-degree-with-at-least-eight-semester-hours-or
twelve--quarter--hours---in---child---development;---child
psychology;--or--fields--directly-related-thereto;--with-at
least-one--year's--experience--in--a--child--care--center;
preschool--educational--facility;--kindergarten;--elementary
school;--or-similar-setting;

f.--Certification--from--a-Montessori-teacher-training-program
with-at--least--one--year's--experience--in--a--Montessori
school;--child-care-center;--preschool-educational-facility;
kindergarten;--elementary-school;--or-similar-setting;--or

g.--Continuous---employment--as--a--director--of--a--preschool
educational-facility-or-child-care--center--for--at--least
three--years--prior-to-July-1;--1985;--provided-the-director
qualifies-under-an-option-under-subdivisions-a--through--f
by-July-1;--1989.

h.--Continuous---employment---as--a--teacher--in--a--preschool
educational-facility-for-at--least--five--years--prior--to
July-1;--1985;--provided--the--director-qualifies-under-an
option-under-subdivisions-a-through-f-by-July-1;--1989.

History: Effective-December-1;--1981;--amended-effective-January-1;--1987;
July-1;--1996;--July-1;--1996;--amendments--voided--by--the--Administrative
Rules-Committee-effective-August-24;--1996.

General Authority: NDCC-50-11.1-08

Law Implemented: NDCC-50-11.1-04

75-03-11-11. Minimum-qualifications-of-a-teacher: [Reserved]

1.--A--teacher--shall--be--an--adult--of--good-mental-and-physical
health;--capable-of-mature-judgment;--and--possessing--knowledge
of-teaching-and-working-with-young-children.

2.--The--teacher--shall--have--met--at--least-one-of-the-following
qualifications:

a.--A--bachelor's-degree-with-at-least-eight-semester-hours-or
twelve--quarter--hours---in---child---development;---child
psychology;--or--fields-directly-related-thereto.

b.--A---teaching---certificate---in--elementary--education--or
kindergarten-endorsement.

c.--An--associate--of--arts--degree--in--the--field--of--early
childhood-education.

d.--Certification--as-a-child-development-associate-or-similar status--where---such---a---local,---state,---or---federal certification-program-exists:

e.--Certification--from-a-Montessori-teacher-training-program:

3.--If-the-teacher-is-also-the-director,-that-person-must-meet-the qualifications-of-the-director-and-perform-the-function--of--a director-as-defined-in-section-75-03-11-10:

History: Effective-December-1,-1981;-amended-effective-January-1,-1987; July-1,-1996;-July-1,-1996,--amendments--voided--by--the--Administrative Rules-Committee-effective-August-24,-1996:

General Authority: NDEC-50-11.1-08

Law Implemented: NDEC-50-11.1-04

75-03-11-12. Minimum-qualifications-of-an-aide:--Each-aide-shall:
[Reserved]

1.--Be--mentally,-physically,-and-emotionally-able-to-provide-care and-attention-to-the-children-in-the-aide's-charge:

2.--Meet-one-of-the-following-qualifications:

a.--A-high-school-diploma:

b.--A-high-school-equivalency:

History: Effective-December-1,-1981:

General Authority: NDEC-50-11.1-08

Law Implemented: NDEC-50-11.1-04

75-03-11-13. Minimum health and training requirements for staff.

1. All-personnel-shall-certify,-within-thirty-days-of-employment, that-they-do-not-have-health--problems--that--would--interfere with--their--functioning--or--that-would-be-detrimental-to-the health-of-the-children--or--other--staff. Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday.

2. There--shall--be-provision-for-adequate-substitution-for-staff who-are-too-ill-to-function-effectively--or--who--present-a serious--health-hazard-to-others--in--the--facility. Each

operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff are exempted from this requirement. A preschool educational facility operator who uses an untested emergency designee may not be found in violation of this provision.

3. If--the--physical--or--mental-health-of-a-staff-member-appears questionable;--the--department--may--require---the---employing operator--to--present-evidence-of-such-capabilities-based-on-a formal-evaluation;---Where--appropriate;--the--department--may arrange--for--an--evaluation--through--the-use-of-professional staff-with-the-caregiver-signing-a-release-authorizing-the-use of---the--results--for--licensing--purposes;---Any--costs--for evaluations-needed-are-to-be-borne-by-the--staff--member: If the physical or mental health of an operator or caregiver appears questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department. The department is not responsible for the costs of any required evaluation.
4. While children are in care, staff members shall not use or be under the influence of any alcohol or judgment-altering drugs.
5. All staff shall annually certify attendance at county-agency approved county-approved training related to early--childhood services child care annually.
 - a. Staff working thirty to forty hours per week must shall certify ten a minimum of thirteen hours of county-approved training annually.
 - b. Staff working twenty to thirty hours per week must shall certify eight a minimum of eleven hours of county-approved training annually.
 - c. Staff working ten to twenty hours a week must shall certify six a minimum of nine hours of county-approved training annually.
 - d. Staff working less than ten hours per week must shall certify four a minimum of seven hours of county-approved training annually.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

**75-03-11-14. Preschool---educational---facility---minimum---state
staffing-requirements Minimum requirements for facility.**

- 1.--The--number--of--staff--and--their--utilization--shall--reflect
program-requirements;--individual-differences-in-the--needs--of
the--children--enrolled;--and--shall--permit--flexible--groupings
where-necessary.
- 2.--The---minimum---ratio---of--staff--to--children--in--preschool
educational-facilities-shall-be:
 - a.--Children-two-years-of-age-to-three-years-of-age;-one-staff
per-six-children.
 - b.--Children--three--years--of--age--to--four-years-of-age;-one
staff-per-eleven-children.
 - c.--Children-four-years-of-age-to-five-years-of-age;-one-staff
per-thirteen-children.
 - d.--Children--five-years-of-age-to-six-years-of-age;-one-staff
per-sixteen-children.
 - e.--Unless--otherwise-provided-in-subsection-h;-there-shall-be
at-least-one-director-or-teacher-per-group-of--twenty-four
children;-ages-four-to-six.
 - f.--Unless--otherwise-provided-in-subsection-h;-there-shall-be
at-least-one-director--or--teacher--per--group--of--twenty
children;--if--the--group--includes--three-year-olds-but-no
younger-children.
 - g.--Unless--otherwise-provided-in-subsection-h;-there-shall-be
at--least--one--director--or--teacher--per--group--of--ten
children;--if--the--group--includes--two--year-olds-and-no
younger-children.
 - h.--There--shall-be-at-least-one-Montessori-certified-director
or-teacher-per-group--of--thirty--children--in--accredited
Montessori-programs.
- 3.--Where--one--or--more--children--is-a-child-with-a-handicapping
condition;-and-requires-more-than-usual--care;--the--evaluated
developmental--age-level;-rather-than-the-chronological-age-of
the-child;-shall-be--used--in--determining--appropriate--staff
ratios.
- 4.--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-

5.--The--number-of-children-in-each-age-category-is-divided-by-the
corresponding--ratio--number--and--carried--to---the---nearest
hundredths.--Numbers-of-necessary-staff-for-all-age-categories
are-added;-and-any-fractional-staff-count-then-rounded-to--the
next-largest-whole-number;-in-order-to-determine-the-number-of
staff-necessary-to-staff-the-facility-at-any-given-time-

1. The preschool educational facility must be properly lighted.
The following technical requirements must be met:

a. Sixty-five foot-candles of light for all general use and
play areas;

b. Twenty-five foot-candles of light for all bathrooms;

c. Fifteen foot-candles of light for corridors and storage
areas; and

d. Fifty foot-candles of light for any kitchen, laundry, and
office areas.

e. If the lighting of the preschool educational facility
appears questionable, the department or county agency may
require the operator to obtain additional lights so that a
minimum of sixty-five foot-candles of light is used in the
areas generally used for children's activities.

2. Water supply.

a. The preschool educational facility must have a drinking
water supply from an approved community water system or
from a source tested and 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-service drinking cups; and

c. The preschool educational facility must have hot and cold
running water. Hot water heaters must be turned down or
there must be a tempering valve or antiscalding device on
the faucets used by children so that the temperature of
hot water supplied to lavatories and bathing facilities
does not exceed one hundred twenty degrees Fahrenheit
[49.2 degrees Celsius].

3. Toilet and lavatory facilities:

- a. Toilet and lavatory facilities must be provided and must be convenient to the areas used by the children and staff;
- b. Toilet and lavatory facilities must meet requirements of the state department of health;
- c. A minimum of one lavatory and one flush toilet must be provided for each fifteen children;
- d. At least one handwashing lavatory must be provided per toilet room facility; and
- e. Sanitary hand-drying equipment, individual cloth, or paper towels must be provided near handwashing lavatories.

4. Sewage and wastewater disposal:

- a. Any preschool educational facility not on a municipal or public water supply or wastewater disposal system shall have its sewage and wastewater system approved by the state department of health.
- b. The preschool educational facility shall meet the requirements of the state plumbing code, North Dakota Administrative Code article 62-03.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-02.1

75-03-11-15. Minimum-information-for-each-enrolled-child Minimum standards for provision of transportation. The--following--information shall--be--kept--and--maintained--in--the--registration--forms--for--each individual-child-enrolled-in--the--preschool--educational--facility--and shall--be--updated--as--appropriate--Such-information-shall-include:

- 1. The-child's--full-name,--birthdate,--and--current-home-address.
- 2. The--names--and--addresses--of--the--parents--or--other-persons legally-responsible-for-the-child,--as-well-as-their--home--and business-telephone-numbers.
- 3. 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.
- 4. The-written-consent-of-parent-or-legally-responsible-party-for emergency-care.

~~5.--Names--and--telephone--numbers--of--persons--authorized--to--take--the--child--from--the--facility.~~

~~6.--Verification--that--the--child--has--received--all--immunizations--appropriate--for--the--child's--age,--as--prescribed--by--the--North--Dakota--state--department--of--health.~~

~~7.--Verification--from--parents,--within--thirty--days--of--enrollment,--that--the--child--does--not--have--health--problems--that--would--interfere--with--the--child's--functioning--or--be--detrimental--to--the--health--of--others.--This--parent--certified--health--assessment--would--be--updated--annually.~~

1. The provider shall establish a written policy governing the transportation of children to and from the preschool educational facility, if the preschool educational facility provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the preschool educational facility. If the preschool educational facility provides transportation, the provider shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. If transportation is provided by a preschool educational facility, children must be protected by adequate staff supervision, safety precautions, and liability and medical insurance.

a. Child and staff ratios must be maintained to assure the safety of children while being transported.

b. A child may not 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 comply with all relevant state and local laws.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-11-16. Minimum--provisions--regarding--emergency--care--for--children.--The--facility--shall--have--plans--to--respond--to--illness--and--to--emergencies--including--fire,--serious--injury,--and--ingestion--of--poison. These--plans--shall--be--in--writing.--Plans--shall--include--the--conspicuous--posting--of--emergency--response--procedures. [Reserved]

- 1.--At-least-one-department-of-health-approved-first-aid-kit-shall be-maintained-and-kept-in-a-designated-location;-so-as--to--be inaccessible--to--children--yet--readily--accessible--to-staff members.
- 2.--The--placement--of--a--telephone-immediately-accessible-to-the staff-with-a-list-of-emergency-telephone-numbers-conspicuously posted-adjacent-to-such-telephone.
- 3.--If---children--in--the--program--require--medication;--written permission-to-dispense-medication-must-be--obtained--from--the parent;--and--proper--instructions-as-to-the-administration-of such-medication-shall-be-given-by-the-parent-or-physician.
 - a.--Any---medication---prescribed--by--a--physician--shall--be accompanied-by-the-doctor's-written-instructions-as-to-its dosage--and-storage;-and-labeled-with-the-child's-name-and dated.
 - b.--All--medication-shall-be-kept-in-secure-storage-so-that-it is-out-of-the-reach-of-children.
- 4.--The--director--shall--maintain-at-all-times-at-least-one-staff person--who--has--a--current---cardiopulmonary---resuscitation certification-effective-July-1,-1987.
- 5.--A--supervised-temporary-isolation-area-shall-be-provided-for-a child-who-becomes-ill-and-cannot-remain-in-the-group;-and--the following-procedures--shall--be--followed--when-such-signs-or symptoms-are-observed:
 - a.--Parents-shall-be-notified-immediately-and-asked-to-pick-up their-children.
 - b.--First--aid--shall--be--provided--and-medical-care-shall-be sought-as-necessary.

History: Effective-December-1,-1981;-amended-effective-January-1,-1987; July-1,-1996;-July-1,-1996;--amendments--voided--by--the--Administrative Rules-Committee-effective-August-24,-1996.

General Authority: NDCC-50-11.1-08

Law Implemented: NDCC-50-11.1-01,-50-11.1-04

75-03-11-17. Fire inspection--and-minimum-fire-safety-standards inspections.

- 1: Annual fire inspections shall must be completed by local or state fire authorities with-any-fees-for-inspection-being--the operator's--responsibility. Emergency plans shall must be developed in cooperation with such authorities. The operator shall file--a--written-fire/safety-inspection-report-and have corrected any code violations noted by the fire inspection

inspector and shall file reports of the inspections with the county licensing agency. The program shall must provide the following as approved by an appropriate fire official:

- a. Approved smoke detectors placed as directed-;
 - b. Fire extinguishers that bear approval ratings for 2A classification or better-;
 - c. Emergency exit signs with at least six-inch [15.24-centimeter] stroke letters-;
 - d. At least two qualifying exits-;
 - e. A ~~boilerroom~~ boiler room door and frame with a one-hour fire rated enclosure if it faces an exit corridor-; and
 - f. A self-closing solid core door on any stairwells if the preschool educational facility is more than a two-story building.
2. Fire evacuation drills shall must be performed in accordance with the local fire department's guidelines.
 3. The preschool educational facility shall be equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07

75-03-11-18. Minimum sanitation and safety requirements.

1. The preschool educational facility's bathroom lavatories, toilets, tables, chairs, and floors shall must be cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
2. The preschool educational facility's building, grounds, and equipment shall must be located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and caregivers.
3. ~~A-preschool-educational-facility-within-which-food-is-prepared and-served--must--receive--an--annual--health--and--sanitation inspection-by-a-local,-district,-or-state-environmental-health practitioner---Reports-of-such-inspections-must-be-filed-with~~

~~the--county--agency--and--any--problems--found--must--be--corrected-~~
If meals are prepared, the state department of health shall
conduct an annual inspection. If only snacks or occasional
cooking projects are prepared, a state department of health
inspection is not required.

4. Indoor and outdoor equipment, toys, and supplies shall must be safe, strong, nontoxic, and in good repair ~~for children~~. All toys must be easily cleanable and must be cleaned and sanitized on a routine basis.
5. ~~There--shall--be--adequate--ventilation--and--heating--in--the facility-~~ There must be adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. During the heating season when the preschool educational facility is occupied by children, the room temperature may not be less than sixty-eight degrees Fahrenheit [20 degrees Celsius] and not more than seventy-four 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 authorities.
6. Exterior play areas in close proximity to busy streets and other unsafe areas ~~which are used by the facility--shall~~ must be contained, fenced, or have natural barriers to restrict children from those unsafe areas.
7. ~~Hazardous--or--potentially--injurious--or--poisonous--substances should be kept in locked storage in a--space--designed--solely for--this--purpose--and--shall--be--inaccessible--to--children-~~ Potential hazards, including cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways may not be accessible to children.
8. Indoor floors and steps shall must not be slippery or have splinters. ~~All steps~~ Steps and walkways shall must be kept free from accumulations of water, ice, ~~or snow~~, or debris.
9. Elevated areas such as stairs or porches shall must have railings and safety gates, where necessary to prevent falls.
10. All heating devices shall must be approved by the local fire authorities.
11. The preschool educational facility operator shall take steps to keep the preschool educational facility free of insects and rodents. Chemicals for insect and rodent control shall may not be applied in areas accessible to children when children are present in the preschool educational facility.
12. Combustible materials shall must be kept away from light bulbs and other heat sources.

13. Doors Exit doorways and pathways shall may not be blocked.
14. All preschool educational buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, shall must have such the surfaces repainted or shall must submit evidence that such the 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 which 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, when measured by a lead-detecting instrument approved by the state department of health and ~~consolidated laboratories~~.
15. Wading pools used by the preschool educational facility must be strictly supervised and emptied and cleaned daily.
16. All swimming pools must be approved by the local health unit.
17. All pets present in the preschool educational facility must be properly immunized, restricted, and maintained. Nondomestic animals, such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the preschool educational facility. Pets may not be allowed in the kitchen or eating area during meal preparation or meals.
18. Smoking is not permitted in any preschool educational facility at any time during which a child who receives early childhood services from that preschool educational facility is present and receiving services.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02.2, 50-11.1-04

75-03-11-19. Minimum requirements regarding space.

1. Each preschool educational facility shall provide adequate space for all children in attendance.
2. ~~There shall be a minimum of thirty-five square feet {3.25 square meters} of indoor activity area per child. Work areas, unused space, and areas which are not exclusively used for the early childhood facility's purposes shall not be considered when computing minimum space.~~ The preschool educational facility shall provide adequate space, indoors and out, for

the daily activities of the children. This must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the preschool educational facility at one time, the operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

**75-03-11-20. Minimum--requirements--for-facilities-and-equipment
Program requirements.**

**1.--The--facility-and-all-rooms-therein-shall-be-properly-lighted.
The-following-technical-requirements-shall-be-met:**

**a.--Sixty-five--foot-candles--of-light-for-all-general-use-and
play-areas:**

b.--Twenty-five-foot-candles-of-light-for-all-bathrooms:

**c.--Fifteen--foot-candles--of--light-for-corridors-and-storage
areas:**

2.--Water-supply:

**a.--Drinking-water-shall-be-from-a-source-which-is-approved-by
the--state---department---of---health---and---consolidated
laboratories:**

**b.--Drinking--water-shall-be-easily-accessible-to-the-children
and-shall-be-provided--by--either--an--angle-jet--drinking
fountain-with-mouthguard-or-by-a-running-water-supply-with
individual-single-service-drinking-cups:**

**c.--Hot--and--cold--running--water-and-of-sufficient-pressure;
from-an-approved-community-system;-must--be--available--in
the-facility:**

3.--Toilet-and-lavatory-facilities:

a.--Toilet-and-lavatory-facilities-shall-be-provided-and-shall be-convenient-to-the-areas-used-by-the-children-and-staff.

b.--Toilet--and-lavatory-facilities-shall-meet-requirements-of the-local-health-department-authorities.

c.--A--minimum--of--one-lavatory-and-one-flush-toilet-shall-be provided-for-each-fifteen-children.

d.--At--least--one--handwashing-lavatory-shall-be-provided-per toilet-room-facility.

e.--Sanitary--hand-drying--equipment--or--materials--shall--be provided-near-handwashing-lavatories.

1. A preschool educational program must have a written curriculum which describes the program's philosophy, goals, objectives, and a program evaluation process.

2. The curriculum must promote intellectual, social, emotional, and physical development of children in care.

3. The curriculum must be based on the developmental levels and needs of children enrolled.

4. The director shall exchange information with parents concerning the program, its activities, and the adjustment of the child to the program.

5. Each child's cultural and ethnic background and primary language or dialect must be respected by the caregivers.

6. There must be a written daily plan of program activities for the children enrolled in the program.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-22. Minimum--preschool--educational--facility--program requirements Records.

1.--A---preschool---educational---program--shall--have--a--written curriculum-which-describes-the--program's--philosophy,--goals, objectives,-and-a-program-evaluation-process.

2.--The--curriculum-shall-promote-intellectual,-social,-emotional, and-physical-development-of-children-in-care.

~~3.--The--curriculum--shall--be--based--on--the--developmental--levels--and--needs--of--children--enrolled--~~

~~4.--The--director--shall--be--responsible--for--exchanging--information--with--parents--concerning--the--program,--its--activities,--and--the--adjustment--of--the--child--to--the--program--~~

~~5.--Each--child's--cultural--and--ethnic--background--and--primary--language--or--dialect--shall--be--respected--by--the--preschool--educational--facility's--staff--~~

~~6.--There--shall--be--a--written--daily--plan--of--program--activities--for--the--children--enrolled--in--the--program--~~

1. A copy of this chapter must be kept on the premises.

2. The preschool educational facility operator shall maintain the following records:

a. The child's full name, birthdate, current home address, names of the child's parents or legal guardian, and the business and home telephone numbers where those individuals may be reached;

b. A written statement from the parents or legal guardian authorizing emergency medical care;

c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child may not be reached immediately in an emergency;

d. Names and telephone numbers of individuals authorized to take the child from the preschool educational facility;

e. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is a drop-in; and

f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity, must serve as evidence that a child is physically able to take part in the child care program, and must be completed annually.

3. All records maintained with respect to children receiving child care services must be kept confidential, and access must be limited to staff members, the parents, or legal guardian of each child, and to:

- a. Authorized county agency and department representatives;
- b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
- c. Individuals who possess written authorization from the child's parent or legal guardian. The preschool educational facility shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-23. Minimum--requirements--for--facilities--that--serve children-with-special-needs Discipline - Punishment prohibited. When children--with--special--needs--are--admitted-to-a-preschool-educational program;--there-shall-be-appropriate--provisions--to--meet--those--needs. Disregard of any of the following disciplinary rules is grounds for denial or revocation.

- 1.--When-children-with-special-needs-are-admitted;--the-responsible individual-in--the--center--shall--consult--with--the--child's parents;--the--child's-source-of-professional-health-care;--or; when-appropriate;--other-health-and-professional-consultants:
 - 2.--The--director--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-facility-shall-add sufficient--staff--and--equipment--as--deemed-necessary-by-the department-to-compensate-for-these-needs:
- 1. The preschool educational facility must have a written policy regarding the discipline of children that must be interpreted to staff members before the preschool educational facility begins operation or before staff members begin working with children.
 - 2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking 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, fear, or humiliation.

3. Authority to discipline may not be delegated to or be accomplished by children.
4. Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances. Any child must be in a safe, lighted, well-ventilated room within hearing of an adult. A child may not be isolated in a locked room or closet.
5. A child may not be physically punished for lapses in toilet training.
6. When addressing a child, or while in the presence of a child, staff members may not make derogatory remarks about the child, the child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language.
7. A child may not be force-fed, unless medically prescribed and administered under a physician's care.
8. Deprivation of meals may not be used as a form of discipline or punishment.
9. A child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the facility.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-24. Discipline---~~Discipline--must--be--constructive-or educational-in-nature-and-may-include-diversion,-separation-from-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:~~ [Reserved]

1. ~~No--child--may--be--punched,-spanked,-shaken,-pinched,-bitten, roughly-handled,-or-struck-by-the-care-taker-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 young--child--must--be--within--hearing--of--an--adult--in--a--safe, lighted,--well--ventilated--room.--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--cultural--background--may--not be--used--or--permitted.
- 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.

History: Effective-December-1,-1981;-amended-effective-January-1,-1987; July-1,-1996;-July-1,-1996;-amendments--voided--by--the--Administrative Rules-Committee-effective-August-24,-1996.

General Authority: NDCC-50-11.1-08

Law Implemented: NDCC-50-11.1-01,-50-11.1-04

75-03-11-25. Minimum--standards--for--provision--of--transportation
Minimum requirements for care of children with special needs. When children with special needs are admitted, there must be appropriate provisions to meet those needs.

- 1.--The--operator--shall--establish--a--written--policy--governing--the transportation--of--children--to--and--from--the--preschool educational--program,--if--the--facility--provides--transportation. Such--a--policy--shall--specify--who--is--to--provide--transportation and--how--parental--permission--is--to--be--obtained--for--special field--trips--and--related--activities--which--occur--outside--the facility.---When--the--facility--provides--transportation,--the operator--shall--inform--the--parents--of--any--insurance--coverage--on the--vehicles.---Any--vehicle--used--for--transporting--children shall--be--in--safe--operating--condition--and--in--compliance--with state--and--local--laws.
- 2.--When--transportation--is--provided--by--the--facility,--children shall--be--protected--by--adequate--staff--supervision,--safety precautions,--and--liability/medical--insurance.
 - a.--Child/staff--ratios--shall--be--maintained--to--assure--the safety--of--children--while--being--transported.
 - b.--No--child--shall--be--left--unattended--in--a--vehicle.

~~3.--Children shall be instructed in safe transportation conduct as appropriate to their ages and stages of development.~~

~~4.--The driver shall be in compliance with all relevant state and local laws.~~

1. When children with special needs are admitted, the preschool educational facility operator shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants.

2. The caregivers shall receive proper instructions as to the nature of the child's disability and potential for growth and development.

3. If the nature of the special need or the number of children with special needs warrants added care, the preschool educational facility shall add sufficient staff and equipment as deemed necessary by the department to compensate for those needs.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-26. Allowable time periods for correction of deficiencies Minimum provisions regarding emergency care for children.

~~1.--Pursuant to North Dakota Century Code section 50-11.1-07.2, the following time periods are established in which the corrections of those deficiencies noted in the correction order issued must be made:~~

~~a.--For a violation of deficiency requiring the hiring of a director with those qualifications as set forth in section 75-03-11-10 or a teacher with those qualifications as set forth in section 75-03-11-11, a period of sixty days to correct the deficiency shall be allowed.~~

~~b.--For a violation or deficiency that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, a period of sixty days to correct the deficiency shall be allowed.~~

~~c.--For a violation or deficiency that requires substantial building remodeling, construction, or change, a period of sixty days to correct the deficiency shall be allowed.~~

d. ~~For all other violations or deficiencies, a period of twenty days shall be allowed to correct the deficiency.~~

2. ~~All time periods shall commence with the date of receipt, by the provider, of the correction order.~~

3. ~~The regional supervisor of early childhood program licensing shall have the authority to grant extensions of allowable time to correct deficiencies for a period of one-half the original allowable time to correct the deficiency. These extensions may be granted upon application by the operator and upon a showing that the need for the extension is created by circumstances beyond the control of the operator and that the operator has diligently pursued the correction of the deficiency.~~

The preschool educational facility shall have written plans to respond to illness and emergencies including burns, serious injury, and ingestion of poison. Parents of enrollees must be advised of these plans. Plans must provide for:

1. The conspicuous posting of emergency response procedures.

2. The establishment of emergency response procedures.

3. The availability of at least one working flashlight.

4. Maintenance of at least one state department of health-approved first-aid kit in a designated location, inaccessible to children, yet readily accessible to caregivers.

5. A working telephone line immediately accessible to the caregivers with a list of emergency telephone numbers conspicuously posted adjacent to the telephone.

6. Responses to be made regarding minor illnesses when children are cared for in the preschool educational facility, and available medical consultation regarding special care and medication.

7. Written permission to dispense medication and proper instructions for the administration of medication, obtained from the parent if a child in the preschool education facility requires medication.

a. Medications prescribed by a physician must be accompanied by the physician's written instructions as to dosage and storage, and labeled with the child's name and dated.

b. Medications must be stored in an area inaccessible to children, and medications stored in a refrigerator must be stored collectively in a spillproof container.

- c. A written record of the administration of medication, including over-the-counter medication, to each child shall be kept. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records shall be included in the child's record.
8. The designation of a supervised temporary isolation area for a child who is too ill to remain in the group, or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought, as necessary.
9. Provisions for emergency transportation, specifically that when a child is brought to another place for emergency care, the child is accompanied by an adult who remains with the child until medical personnel assume the responsibility for the child's care and until the parent or legal guardian arrives.
10. Practices in which children with infectious or communicable conditions are excluded from the preschool educational facility until the condition may no longer be transmitted. Guidance regarding exclusion and return to the preschool educational facility must be obtained through consultation with local and state health department authorities.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-11-27. Effect of conviction on licensure and employment.

1. A preschool educational facility operator may not be, and a preschool educational facility may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the preschool educational facility, an individual who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion;

or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

b. An offense, other than an offense identified in subdivision a, if the department in the case of a preschool educational facility operator, or the preschool educational facility operator in the case of an employee, determines that the individual has not been sufficiently rehabilitated.

2. The preschool educational facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section.

3. For purposes of subdivision b of subsection 1, the department in the case of a preschool educational facility operator, or a preschool educational facility operator in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.

4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-06.1

75-03-11-28. Child abuse and neglect determinations. If a probable cause determination or a decision that services are required under North Dakota Century Code chapter 50-25.1 exists, indicating that any child has been abused or neglected by a staff member, that individual shall furnish information satisfactory to the department, from which the department may determine the staff member's current ability to provide care free of abuse and neglect. The determination of current ability must be furnished to the preschool educational facility

operator and to the regional director of the human service center or the regional director's designee for consideration and action on the preschool educational facility license.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-11-29. Allowable time periods for correction of deficiencies.

1. Deficiencies noted in a correction order must be corrected:
 - a. For a violation of section 75-03-11-09, or section 75-03-11-23, within twenty-four hours;
 - b. For a violation or deficiency requiring the hiring of a director with those qualifications set forth in section 75-03-11-08.1 or a teacher with those qualifications as set forth in section 75-03-11-08.2, within sixty days;
 - c. For a deficiency that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, within sixty days;
 - d. For a deficiency that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other deficiencies, within twenty days.
2. All periods for correction begin on the date of receipt of the correction order by the licensee.
3. The regional supervisor of early childhood program licensing may grant an extension of additional time to correct deficiencies, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee and a showing that the need for the extension is created by unforeseeable circumstances and the licensee has diligently pursued the correction of the deficiency.
4. The operator shall furnish written notice of completion of the correction order action to the county agency. The correction order is effective until the county agency receives the notice.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-11-30. Fiscal sanctions.

1. A fiscal sanction of twenty-five dollars per day must be assessed for each violation of section 75-03-11-13, 75-03-11-17, 75-03-11-18, or 75-03-11-19 for each day, after the allowable time for correction of deficiencies ends, that the preschool educational facility has not verified correction.
2. A fiscal sanction of fifteen dollars per day must be assessed for each violation of section 75-03-11-09 for each day, after the allowable time for correction of deficiencies ends, that the preschool educational facility has not verified correction.
3. A fiscal sanction of five dollars per day must be assessed for each violation of any other provision of this chapter for each day, after the allowable time for correction of deficiencies ends, that the preschool educational facility has not verified correction.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-07.4

75-03-11-31. Appeals. An applicant or operator may appeal a decision to deny or revoke a license by filing a written appeal with the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-09

CHAPTER 75-03-11.1

AGENCY SYNOPSIS: Regarding Proposed Amendments to North Dakota Administrative Code Chapter 75-03-11.1 School Age Child Care Center - Early Childhood Services

The department proposed rules amending North Dakota Administrative Code Chapter 75-03-11.1, School Age Child Care Center. The department conducted a hearing by conference call with the human service centers on October 8, 1996. The department conducted public hearings on October 9 and 10, 1996, in Bismarck. The department received written comment on the proposed rules until the end of the day on November 11, 1996.

The purpose of chapter 75-03-11.1 is to establish minimum standards of family child care and assure that those standards are maintained.

75-03-11.1-01. Reserved: This section is reserved so as to allow the numbering scheme of this chapter to be as consistent as possible with the numbering scheme and organization of the other day care chapters.

75-03-11.1-02. Reserved: This section is reserved so as to allow the numbering scheme of this chapter to be as consistent as possible with the numbering scheme and organization of the other day care chapters.

75-03-11.1-03. (Formerly 75-03-11.1-01). Definitions: Added definitions of terms related to staff, substitute staff, emergency staff, and volunteers.

75-03-11.1-04. (Formerly 75-03-11.1-02). Effect of Licensing and Display of License: Corrects grammar and language usage, and clarifies that the issuance of a license is evidence of compliance with North Dakota Century Chapter 50-01 at the time of licensure.

75-03-11.1-05. (Formerly 75-03-11.1-03). Denial or Revocation of License: Corrects grammar and language usage, and specifies that the department may revoke a license to operate a school age child care center without first issuing a correction order.

75-03-11.1-06. (Formerly 75-03-11.1-05). Provisional License: Corrects grammar and language usage; requires the operator to prominently display the provisional license; and requires the operator to provide parents notice that the facility is operating on a provisional license and the basis for the provisional license.

75-03-11.1-07. (Formerly 75-03-11.1-04). Application for and Nontransferability of School Age Child Care Center License: Changes title of section; corrects language and grammar usage; specifies that license is nontransferable and will be valid only on the premises indicated on the license; and deletes repetitive provision outlining requirement that both the operator and director provide their name,

address, and telephone number to the county social service board and parents upon application and enrollment of children.

75-03-11.1-08. (Formerly 75-03-11.1-07). Duties of School Age Child Care Center Operator: Changes title of section; corrects grammar and language usage; specifies that the operator is responsible for compliance with the requirements set forth in the standards and North Dakota Century Code Chapter 50-11.1; deletes unnecessary reference to enrollment records being maintained; clarifies that authorization must be obtained from each staff member and volunteer for the department to conduct a child abuse and neglect background check; deletes unnecessary reference to requirement that operator cooperate with the department and other appropriate agencies and make all reasonable efforts to improve the quality of care and competence of caregivers; specifies that parents of enrolled children are to be advised of the center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and director; specifies that parents are to be provided regular opportunities to meet with caregivers both before and during enrollment to discuss their children's needs; requires that there be at all times when children are receiving care a staff member who is trained in a first-aid program approved by the department except that substitute staff are exempted from any such first-aid requirement as well as any CPR training requirement; requires that the operator of a facility report a death or serious accident or illness requiring hospitalization of a child to the county director or the county director's designee within twenty-four hours of the incident; and requires that the operators make carecheck information available to parents.

75-03-11.1-08.1. (Formerly 75-03-11.1-08). Minimum Qualifications of a School Age Child Care Center Director: Changes name of title; corrects grammar and language usage; and deletes reference to grandfather clause which was unnecessary subsequent to July 1, 1989.

75-03-11.1-08.2. (Formerly 75-03-11.1-09). Duties of School Age Child Care Center Director: Changes title of section; corrects grammar and language usage; clarifies that the director must carry out his duties coextensive with the school age child care center operator; and eliminates repetitive reference to requirement that director make carecheck information available to parents.

75-03-11.1-08.3. (Formerly 75-03-11.1-10). Minimum Qualifications of School Age Child Care Center Supervisor or Site Coordinator: Changes title of section; corrects grammar and language usage; and clarifies that the supervisor must possess knowledge and experience in management and interpersonal relationships.

75-03-11.1-08.4. (Formerly 75-03-11.1-11). Minimum Qualifications for All School Age Child Care Center Caregivers or Group Leaders: Changes title of section; corrects grammar and language usage; adds requirement that newly hired caregivers be provided a two-day onsite orientation during the first week of employment, consistent with child care center requirements; provides that no caregiver or group leader may use or be

under the influence of any alcohol or judgment-altering drug while children are in care; and specifies that no caregiver or group leader may at any time place a child in an environment which would be harmful or dangerous to the child's physical or emotional health.

75-03-11.1-08.5. (Formerly 75-03-11.1-12). Minimum Qualifications for Volunteers: Corrects grammar and language usage, and eliminates requirement that volunteers complete health self-certification forms.

75-03-11.1-09. (Formerly 75-03-11.1-14). Staffing and Group Size Requirements: Changes title of section; corrects language and grammar usage; specifies that the operator is to ensure that a center is sufficiently staffed at all times to meet staffing requirements; prohibits the center from caring for any more children than the licensed capacity at any one time; includes a maximum group size of thirty children; provides a grandfathering exemption for operators who were licensed prior to effective date of rules with regard to the maximum group size requirement; and exempts children who are using a facility as a safe house from being counted for purposes of determining the appropriate staffing.

75-03-11.1-10. Reserved: This section is reserved so as to allow the numbering scheme of this chapter to be as consistent as possible with the numbering scheme and organization of the other day care chapters.

75-03-11.1-11. Reserved: This section is reserved so as to allow the numbering scheme of this chapter to be as consistent as possible with the numbering scheme and organization of the other day care chapters.

75-03-11.1-12. Reserved: This section is reserved so as to allow the numbering scheme of this chapter to be as consistent as possible with the numbering scheme and organization of the other day care chapters.

75-03-11.1-13. Minimum Health Requirements for All Caregivers: Corrects language and grammar usage; specifies that if an operator adds or replaces a caregiver after the licensure process is complete the operator must submit a self-certification form which is completed by the new caregiver to the county within five working days of the caregiver's first workday; mandates that each operator or caregiver furnish documentation of a negative Mantoux tuberculosis test prior to each licensure or employment, and every two years thereafter; if the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative tuberculosis test prior to the caregiver's first day of employment; substitute staff are to be exempted from this requirement; and provides that an operator who used an untested emergency designee may not be found in violation of this provision.

75-03-11.1-14. Reserved: This section is reserved so as to allow the numbering scheme of this chapter to be as consistent as possible with the numbering scheme and organization of the other day care chapters.

75-03-11.1-15. (Formerly 75-03-11.1-28). Minimum Standards for Provision of Transportation: Corrects language and grammar usage.

75-03-11.1-16. (Formerly 75-03-11.1-18). Minimum Emergency Evacuation and Disaster Plan: Corrects grammar and language usage; specifies that emergency disaster plans must be posted; and requires that written disaster plans be developed in cooperation with the authorities.

75-03-11.1-17. (Formerly 75-03-11.1-19). Fire Inspections: Corrects grammar and language usage; substitutes "county social service board" with "county licensing agency"; and specifies that the center must be equipped with sufficient smoke detectors and fire extinguishers as recommended by the local fire department.

75-03-11.1-18. (Formerly 75-03-11.1-20). Minimum Sanitation and Safety Requirements: Corrects grammar and language usage; specifies that in centers where only snacks or occasional cooking projects are prepared, a State Department of Health inspection is not required; requires the establishment of routine maintenance and cleaning procedures; deletes reference to outdated term "attractive nuisances"; deletes reference to requirement that operational practices as established by the State Department of Health must be followed with regard to wading and swimming pools; specifies that lead measurements are to be made by a lead-detecting instrument approved by the State Department of Health; specifies that exit doors and pathways must not be blocked; provides that if the center is providing care to children in wheelchairs, the center shall provide doors of sufficient width and construction so as to accommodate any children in wheelchairs who are receiving care; specifies that caregivers shall wash their hands after nose wiping or after any other procedure that may involve contact with bodily fluids; requires that hand soap and paper towels be made available at each lavatory and that clean towels be provided daily; specifies that potential hazards including household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways must not be accessible to young children; provides that the drinking supply must come from an approved community water system or from some source tested and approved by the State Department of Health; provides that hot water heaters must be turned down, or a tempering valve or an antiscalding device be in place so as to prevent the temperature of hot water supplied to lavatories from exceeding one hundred twenty degrees Fahrenheit; deletes reference to "environmental health practitioner" and replaces it with "state department of health"; provides that all pets present in the center must be properly immunized; states that nondomestic animals may not be present in the school age child care center regardless of whether such animals are regarded as pets; provides that pets may not be allowed in the kitchen or eating area during meal preparation or meals; and prohibits smoking in any center at any time during which a child is present and receiving care.

75-03-11.1-19. (Formerly 75-03-11.1-21 and 75-03-11.1-22). Minimum Requirements Regarding Space and Lighting: Merges two previously

separated sections; corrects grammar and language usage; and specifies that if the lighting of the school age child care center appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

75-03-11.1-20. (Formerly 75-03-11.1-24). Program Requirements: Corrects grammar and language usage; specifies that the operator shall have a program of daily individual or small group activities developed in consultation with parents; eliminates reference to "handicapped" and replaces with term "disabled"; specifies that the program must include firsthand experiences for children to learn about the world in which they live; specifies that the operator shall contact parents to exchange information concerning their child as opposed to the staff doing so; and specifies that when children are unable to sleep during designated nap time, time and space for quiet play must be available.

75-03-11.1-21. (Formerly 75-03-11.1-23). Minimum Standards for Food and Nutrition: Corrects grammar and language usage; specifies that operators may supplement sack lunches made by the parents for their children; and replaces the term "lunch" with "meal".

75-03-11.1-22. (Formerly 75-03-11.1-15 and 75-03-11.1-16). Records: Merges two previously separated sections into one; corrects grammar and language usage; specifies that a copy of this chapter of the Administrative Code must be kept on the premises; eliminates previous requirement that the name of the school that the child attends and the name of the classroom teacher be retained by the center; eliminates requirement that a current photo of the child be maintained; specifies that only the home telephone numbers of a child's parent or legal guardian need be obtained; specifies that where a child is a drop-in child, verification that that child has received all immunizations as prescribed by the State Department of Health need not be obtained; provides that a current health assessment or a health assessment statement completed by the parent must be obtained; and specifies that records are confidential and that only individuals having a definite interest in the well-being of the child and who are in a position to serve the child's interests may have access to such records.

75-03-11.1-23. (Formerly 75-03-11.1-27). Discipline - Punishment Prohibited: Corrects grammar and language usage; allows the use of gentle physical restraint such as holding; specifies that staff members may not make derogatory comments about a child, the child's family, race, or religion, nor use profane, threatening, unduly loud, or otherwise abusive language when addressing a child or while in the presence of a child; specifies that a child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any adult in the center; and provides that a disregard of any of the disciplinary rules is grounds for license denial or revocation.

75-03-11.1-24. (Formerly 75-03-11.1-25). Specialized Types of Care and Minimum Requirements Therefor: Changes title of section; corrects grammar and language usage; and emphasizes the exception from the

immunization record requirement stated in 75-03-11.1-22 with regard to drop-in children.

75-03-11.1-25. (Formerly 75-03-11.1-26). Minimum Requirements for Care of Children with Special Needs: Corrects grammar and language usage; specifies that when children with special needs are admitted, there must be appropriate provisions to meet those needs in that the center shall document how the child's special needs may be met; and specifies that where necessary, the center shall add sufficient equipment as deemed necessary to provide for the needs of children requiring special care.

75-03-11.1-26. (Formerly 75-03-11.1-17). Minimum Provisions Regarding Emergency Care for Children: Corrects grammar and language usage; specifies that the center shall have a written plan to respond to illness and emergencies, including burns, serious injury, and ingestion of poison; specifies that a working telephone must be immediately accessible to staff; specifies that medications must be stored in an area inaccessible to children, and that medications stored in a refrigerator must be stored collectively in a spillproof container; specifies that children with infectious or communicable condition must be excluded from the center until the condition may no longer be transmitted and that guidance regarding exclusion and return to the center be obtained through consultation with local and state health department authorities; specifies that when a child is brought to another place for emergency care the child is to be accompanied by an adult until medical personnel assume responsibility for the child's care and the parent or legal guardian arrives; and mandates that information be provided to the parents as needed regarding child health and social services available in the community.

75-03-11.1-27. (Formerly 75-03-11.1-06). Effect of Conviction on Licensure and Employment: Changes title of section; corrects grammar and language usage; provides that any individual seeking licensure or employment in a school age child care center may not be licensed or employed if they have been found guilty of, pled guilty to, or pled no contest to any one of a specific list of criminal offenses; provides that if an individual seeking licensure or employment in a school age child care center has been found guilty of, pled guilty to, or pled no contest to any other offense, then a determination shall be made as to whether that individual has been sufficiently rehabilitated; clarifies that determinations of sufficient rehabilitation in regard to licensees or applicants is to be made by the department, and decisions of sufficient rehabilitation in regard to employees are to be made by the operator; and provides that completion of a period of five years after final discharge from any term or probation, parole, or other form of community correction or imprisonment, without subsequent conviction, will serve as prima facie evidence of sufficient rehabilitation.

75-03-11.1-28. (Formerly Part of 75-03-11.1-07). Child Abuse and Neglect Determinations: Corrects grammar and language usage, and specifies that the determination of current ability to provide care free of abuse and neglect must be furnished to both the school age child care

center operator and to the regional director of the human service center or such director's designee.

75-03-11.1-29. Allowable Time Periods for Correction of Deficiencies: Corrects grammar and language usage; specifies that a violation of the provision relating to staffing, specific portions of the provision relating to minimum sanitation and safety requirements; and the provision relating to discipline and prohibited punishment must be corrected with twenty-four hours; requires the operator to furnish a written notice of completion of the correction order to the county; and provides that a correction order is effective until the county receives such notice.

75-03-11.1-30. Fiscal Sanctions: Corrects grammar and language usage.

75-03-11.1-31. (Formerly 75-03-11.1-32). Appeals: Corrects grammar and language usage.

75-03-11.1-01. Definitions--As-used-in-this-chapter: [Reserved]

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;--amended--effective--July-1,--1996;
July-1,--1996;-amendments-voided-by-the--Administrative--Rules--Committee
effective-August-24,--1996.

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.
[Reserved]

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 Definitions. As
used in this chapter:

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.~~

1. "Attendance" means the total number of children present at any one time at the facility.
2. "Caregiver or group leader" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to school age children in a child care facility under the guidance and supervision of the school age child care center operator.
3. "Department" means the North Dakota department of human services.
4. "Director" means an individual responsible for supervising and organizing program activities in a school age child care center.
5. "Emergency designee" means an individual designated by the school age child care center to be a backup caregiver for emergency assistance or to provide substitute care.
6. "Operator" means the individual or group who has the legal responsibility and the administrative authority for the operations of a school age child care center. The operator is the applicant for license or the licensee under this chapter.
7. "Parent" means an individual bearing the legal relationship of father or mother to a child enrolled in a school age child care center, including an individual who legally stands in place of a parent, such as a legal guardian or custodian.
8. "School age child care center" means the location for adult supervised care of a school age child care program on a regular basis for nineteen or more children who are usually between the ages of five and twelve years old.
9. "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 nineteen or more 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.
10. "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.

11. "Staff member" means operator, substitute staff, volunteer, caregiver, group leader, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the school age child care center.
12. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month.
13. "Supervisor or site coordinator" means any person with the responsibility for organizing and supervising daily program activities.
14. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a fireperson for fire safety week, a McGruff, or Santa Claus person.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-09, 50-11.1-10 50-11.1- 02

75-03-11.1-04. Application---process---for---license Effect of licensing and display of 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.

1. The issuance of a license to operate a school age child care center is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed in the premises to which it applies.
3. The license must specify the maximum number of children who may be cared for by the school age child care center. The

school age child care center may at no time admit a greater number of children.

History: Effective June 1, 1995; amended effective August 1, 1998.

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 Denial or revocation of 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.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.

2. If an action to revoke a license is appealed, the licenseholder may continue the operation of the school age child care center pending the final administrative determination 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.

3. The department may revoke a license to operate a school age child care center without first issuing a correction order.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04 50-11.1-09, 50-11.1-10

75-03-11.1-06. Licensure---standards Provisional license. 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.

1. The director of a regional human service center, in the director's discretion, or the director's designee, may issue a provisional license for the operation of a newly opened school age child care center or for a previously licensed school age child care center although the school age child care center fails to comply with all applicable standards and rules of the department.

2. A provisional license must:

a. Prominently state that the school age child care center 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 operator;

c. Expire at a set date, not to exceed six months from the date of issuance; and

d. Be exchanged for an unrestricted license, which bears the same date of issuance as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and rules.

3. A provisional license may be issued only to an applicant who has waived, in writing:

- 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 the holder to all 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 section 75-03-11.1-17 or 75-03-11.1-18.
7. The operator shall prominently display the provisional license.
8. The operator shall provide parents notice that the facility is operating on a provisional license and the basis for the provisional license.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-06.1~~ 50-11.1-03, 50-11.1-04

75-03-11.1-07. Operator-standards-of-conduct Application for and nontransferability of school age child care center license. An application for a license must be submitted to the county agency in the county in which the facility is located.

- ~~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.

1. Application must be made in the form and manner prescribed by
the department.

2. The license is nontransferable and is valid only on the
premises indicated on the license.

3. A new application for a license must be filed by a licensed
center upon change of operator or location.

History: Effective June 1, 1995; amended effective July 1, 1996;
July 1, 1996, amendments voided by the Administrative Rules Committee
effective August 24, 1996; amended effective August 1, 1998.

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 Duties of
school age child care center operator..**

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;

- e.--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.

The operator of a school age child care center is responsible to the department for compliance with the requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. In meeting this responsibility, the operator shall ensure:

1. Establishment of the school age child care program;
2. An application is made for a license for each school age child care center operated;
3. Creation of an outline of a written plan and policies for the operation of each school age child care center;
4. Notification is provided to the county agency of any major changes in the operation or in the ownership or governing body of the school age child care center and of any staff changes;

5. Liability insurance for bodily injury and property damage for the school age child care center is carried;
6. The development and maintenance of policies and procedures relating to children's activities and care, enrollment, and the responsibilities and rights of staff and parents;
7. That personnel policies include written references, employment histories, and a method of conducting staff performance evaluations;
8. Maintenance of attendance, health, financial, and other related records as required by statute or rule;
9. Authorization is obtained from each staff member and volunteer for the department to conduct a child abuse and neglect background check;
10. Maintenance of necessary information to verify staff qualifications and to ensure safe care, for the children in the school age child care center;
11. Designation of a qualified director. The minimum qualifications for a director are set forth in section 75-03-11.1-08.1, but specifically:
 - a. At no time shall a school age child care center be without a director or an acting director;
 - b. An individual designated as acting director for an ongoing period of less than thirty days shall meet the qualifications of a supervisor or site coordinator under section 75-03-11.1-08.3; and
 - c. An individual designated as acting director for an ongoing period of more than thirty days shall meet the qualifications of a director under section 75-03-11.1-08.1.
12. Parents of enrolled children and other interested parties are informed about the school age care center's goals, policies, procedures, and content of the program, including:
 - a. How accidents and illnesses will be dealt with; and
 - b. Methods of discipline and developmentally appropriate techniques to be used.
13. Parents of enrolled children are advised of the school age child care center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;

14. Written notice is provided to the parents of enrolled children regarding the effective date, duration, scope, and impact of any significant changes in the school age child care center's services;
15. That the center is sufficiently staffed to provide physical care to each child for the benefit of their social competence, emotional well-being, and intellectual development;
16. That the school age child care center has sufficient qualified caregivers on call to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty;
17. That written agreements with the parents of each child specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
18. That written policies are established which provide for emergency medical care, the care of children with special physical, emotional, or mental needs, if children with these needs are in care, and the treatment of illness and accident;
19. That written policies are established concerning the care and safeguarding of personal belongings brought to the school age child care center by children or others on their behalf;
20. Parents are provided regular opportunities to meet with caregivers before and during enrollment to discuss their children's needs and observe their children at any time while in care;
21. Parents are provided, upon request, any progress reports on their children;
22. Provisions are made for safe arrival and departure of all children that also allows for parent-staff interaction, and a system is developed to ensure that children are released only as authorized by the parent or legal guardian;
23. Development of and compliance with a procedure for accountability when a child fails to arrive for the program;
24. Development of a system to ensure the safety of children whose parents have agreed to allow them to leave the program without supervision, with such system including, at a minimum:
 - a. Written permission from the parents allowing the operator to allow the children to leave the program without supervision; and
 - b. Consistent sign-out procedures for released children.

25. The reporting of any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and development of a written policy for staff to handle this reporting;
26. That there is, at all times when children are receiving care, a staff member on duty who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs and in a first-aid program approved by the department, except that substitute staff are exempted from this requirement;
27. If the operator of the school age child care center is also the director, the operator meets the qualifications of the director set forth in section 75-03-11.1-08.1;
28. That caregivers and children under the age of eighteen have adult supervision in the school age child care center at all times;
29. The operator of a facility shall report within twenty-four hours to the county director or the county director's designee a death or serious accident or illness requiring hospitalization of a child while in the care of the facility or attributable to care received in the facility; and
30. That carecheck information is made available to parents.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2) 50-11.1-03.1, 50-11.1-04(3)

75-03-11.1-08.1. Minimum qualifications of a school age child care center director.

1. A school age child care center director shall be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge and experience in management and interpersonal relationships.
2. The director shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of elementary education with eight weeks of 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 of experience in a child care center or similar setting;

- c. An associate degree in the field of early childhood development and six months of 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 of 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 of experience in a child care center or similar setting;
- g. Certification for a Montessori teacher training program with one year of experience in a Montessori school, school age child care center, or similar setting, and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or fields directly related thereto;
- h. A high school diploma with three years of experience as a licensed school age child care supervisor and three positive reference letters from parents whose children were in the supervisor's care; and
- i. The director shall certify attendance at a minimum of thirteen hours of county-approved training related to child care annually.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-08.2. Duties of school age child care center director. The school age child care center director shall, coextensive with the school age child care center operator, be responsible for:

- 1. Program planning, supervision, and activity;
- 2. Assisting the operator in maintaining enrollment, health, attendance, financial, and other related records as required by this chapter;

3. Scheduling, supervision, and conduct of staff members;
4. Designating a supervisor or onsite coordinator for each school age child care center; and
5. Assisting the operator in efforts to improve the quality of care and the competence of caregivers.
6. The director shall be present at the school age child care 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 August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11.1-08.3. Minimum qualifications of school age child care center supervisor or site coordinator.

1. A supervisor or site coordinator shall meet at least one of the following qualifications:
 - a. An associate 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 for a Montessori teacher training program;
 - d. A high school diploma and one year of experience in a child care center or similar setting; or
 - e. A high school equivalency and one year of experience in a child care center or similar setting.
2. The supervisor shall demonstrate the ability to work with children and the willingness to increase skills and competence through experience, training, and supervision.
3. The supervisor shall be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge and experience in management and interpersonal relationships.
4. The supervisor must be certified in basic cardiopulmonary resuscitation by the American heart association, American red

cross, or other similar cardiopulmonary resuscitation training programs approved by the department.

5. The supervisor shall certify attendance at a minimum of thirteen hours of county-approved training related to child care annually.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-08.4. Minimum qualifications for all school age child care center caregivers or group leaders.

1. Caregivers or group leaders shall be at least sixteen years of age and shall be mentally, physically, and emotionally able to provide adequate care for the children under supervision.
2. Each caregiver or group leader shall certify attendance at county-approved training related to child care:
 - a. Caregivers or group leaders working thirty to forty hours per week shall certify a minimum of thirteen hours of county-approved training annually;
 - b. Caregivers or group leaders working twenty to thirty hours per week shall certify a minimum of eleven hours of county-approved training annually;
 - c. Caregivers or group leaders working ten to twenty hours per week shall certify a minimum of nine hours of county-approved training annually; and
 - d. Caregivers or group leaders working less than ten hours per week shall certify a minimum of seven hours of county-approved training annually.
3. Newly hired caregivers shall have a two-day onsite orientation to the child care program during the first week of employment. The orientation must address the following:
 - a. Emergency health, fire, and safety procedures at the school age child care center;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children;
 - c. Any special health or nutrition problems of the children assigned to the caregiver;
 - d. Any special needs of the children assigned to the caregiver;

- e. The planned program of activities at the school age child care center;
 - f. Rules and policies of the school age child care center; and
 - g. Child abuse and neglect laws.
- 4. No caregiver or group leader may use or be under the influence of any alcohol or judgment-altering drugs while children are in care.
 - 5. No caregiver or group leader may at any time place a child in an environment that would be harmful or dangerous to a child's physical or emotional health.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-08.5. Minimum qualifications for volunteers. If providing child care, volunteers shall meet qualifications of caregivers or group leaders, and receive orientation as needed for all assigned tasks.

History: Effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-09. Duties--of--director Staffing and group size requirements.

- 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.

1. The number of staff members and their use shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child and staff ratio for periods of time when they are so engaged. Children with special conditions requiring more than usual care and supervision shall have adequate care and supervision provided to them without adversely affecting care provided to the remaining children in the school age child care center.
2. Staffing requirements and maximum group size.
 - a. The operator of a school age child care center shall ensure that the center is sufficiently staffed at all times to meet the staffing requirements for children in attendance, and that no more than the licensed capacity are served at one time. The staffing requirements for caregivers or program staff must be:
 - (1) For one to fourteen children, one staff member; and
 - (2) For fifteen children or more, two staff members, with a maximum group size of thirty children.
 - (3) The provisions in this subsection relating to maximum group size shall not apply to school age child care center operators licensed prior to August 1, 1998, if such operators are otherwise qualified to operate a school age child care center. Any school age child care center operator who discontinues operation of the school age child care center under a valid license, or who fails to renew such license upon expiration thereof, shall not thereafter be exempt from the requirements relating to maximum group size.
 - 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 and children under the age of eighteen shall have adult supervision in the school age child care center at all times.
 - d. When more than eight children are taken off the premises, the children shall be accompanied by at least two staff members, one of whom is a qualified group leader or caregiver who is at least age eighteen years. When eight

or fewer children are taken off the premises, the accompanying staff member must be a qualified group leader or caregiver who is at least age eighteen.

3. Children using the licensed facility for a McGruff safe house, a block house, or a certified safe house program during an emergency shall not be counted under this section.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04 50-11.1-08, 54-12-20

75-03-11.1-10. Minimum--qualifications--of--supervisor--or--site coordinator: [Reserved]

- 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;--amended--effective--July-1,-1996;
July-1,-1996;-amendments-voided-by-the--Administrative--Rules--Committee
effective-August-24,-1996.

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. [Reserved]

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. [Reserved]

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.

1. Each operator or caregiver shall complete a health
self-certification form certifying that the operator or
caregiver does not have health problems that would interfere
with the person's functioning as a caregiver or that would be
detrimental to the health of the children or other staff. If
the operator adds or replaces a caregiver after the licensure
process is complete, the operator must submit a

self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday.

2. Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to each licensure or employment, and every two years thereafter. If the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff, substituting for less than thirty-two hours per month, are exempted from this requirement. A school age child care center operator who uses an untested emergency designee may not be found in violation of this provision.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2)

75-03-11.1-14. Staffing-requirements: [Reserved]

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;--amended--effective--July-1;--1996; July-1;--1996;--amendments--voided--by--the--Administrative--Rules--Committee effective--August-24;--1996.

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 Minimum standards for provision of transportation. 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-

1. The operator shall establish a written policy governing the transportation of children to and from the school age child care center, if the school age child care center provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the school age child care center. If the school age child care center provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a school age child care center, children must be protected by adequate staff supervision, safety precautions, and liability and medical insurance.
 - a. Child and staff ratios must be maintained to assure the safety of the children while being transported. The department requires one busdriver per twenty children and one additional individual for twenty-one children or more.
 - b. A child may not 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 shall comply with all relevant state and local laws.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07 50-11.1-01, 50-11.1-04

75-03-11.1-16. Confidentiality---of---child's--records Minimum emergency evacuation and disaster plan. 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-pose-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.

1. Each school age child care center must have an approved and posted emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with the authorities.

2. Fire evacuation drills must be performed in accordance with the local fire department's guidelines.

History: Effective June 1, 1995; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07 50-11.1-01, 50-11.1-04

75-03-11.1-17. Minimum--provisions-regarding-emergency-care Fire inspections.

- 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.

1. Annual fire inspections must be completed by local or state fire authorities. The operator shall have corrected any code violations noted by the fire inspector and shall file reports of the inspections with the county licensing agency.

2. The school age child care center must be equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department.
3. The school age child care center shall provide:
 - a. The local fire inspector's written statement of compliance with the local fire code, if there is one;
 - b. The local fire inspector's written statement that the school age child care center has been 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; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-01~~ 50-11.1-07

**75-03-11.1-18. Minimum--emergency--evacuation--and-disaster-plan
Minimum sanitation and safety requirements.**

- ~~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--~~
1. In school age child care centers where meals are prepared, the state department of health shall conduct an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required.
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. Routine maintenance and cleaning procedures must be established to protect the health of the children and the caregivers.
3. The school age child care center ground areas must be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.

4. Exterior play areas in close proximity to busy streets and other unsafe areas must be contained, fenced, or have natural barriers to restrict children from those unsafe areas.
5. Garbage must be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning is not permitted.
6. Wading pools used by the school age child care center must be strictly supervised and must be emptied and cleaned daily.
7. All swimming pools must be approved by the local health unit.
8. 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 may be present, must have these surfaces repainted or must submit evidence that the 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 which 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, when measured by a lead-detecting instrument approved by the state department of health.
9. Indoor and outdoor equipment, toys, and supplies must be safe, strong, nontoxic, and in good repair. All toys must be easily cleanable and must be cleaned and sanitized on a routine basis.
10. Indoor floors and steps may not be slippery or have splinters. Steps and walkways must be kept free from accumulations of water, ice, snow, or debris.
11. Elevated areas such as stairs or porches, must have railings and safety gates where necessary to prevent falls.
12. If the school age child care center is providing care to children in wheelchairs, the center shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care.
13. Exit doorways and pathways may not be blocked.
14. Light bulbs in areas used by children must be properly shielded or shatterproof.
15. Combustible materials must be kept away from light bulbs and other heat sources.

16. There must be adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. During the heating season when the school age child care center is occupied by children, the room temperature must not be less than sixty-eight degrees Fahrenheit [20 degrees Celsius] and not more than seventy-four 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 authorities.
17. School age child care center bathroom lavatories, toilets, tables, chairs, and floors must be cleaned daily. Cots and mats must be individually labeled and cleaned and sanitized at least weekly.
18. Personal items including combs and toothbrushes must be individually identified and stored in a sanitary manner.
19. Caregivers shall wash their hands before preparing or serving meals, after nose wiping, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and towels must be available at each lavatory. Clean towels must be provided daily.
20. Potential hazards, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways may not be accessible to young children.
21. Water supply standards:
 - a. The school age child care center must have a drinking supply from an approved community water system or from a source tested and 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; and
 - c. The school age child care center must have hot and cold running water. Hot water heaters must be turned down or there must be a tempering valve or antiscalding device on the faucets used by children so that the temperature of hot water supplied to lavatories does not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
22. Toilet and lavatory facilities:
 - a. Toilet and lavatory facilities must be provided and must be convenient to the areas used by the children and staff;

- b. Toilet and lavatory facilities must meet requirements of the state department of health;
- c. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping;
- d. A minimum of one lavatory and one flush toilet must be provided for each fifteen children;
- e. Separate restrooms must be provided for boys and girls six years of age and over, and partitions must be installed to separate toilets in these restrooms;
- f. At least one handwashing lavatory must be provided per toilet room facility;
- g. Sanitary hand-drying equipment, individual cloth, or paper towels must be provided near handwashing lavatories; and
- h. Safe step stools must be provided to allow standard-size toilets and lavatories to be used by the children or child-size toilets and lavatories must be provided.

23. Sewage and wastewater disposal:

- 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 have its sewage and wastewater system approved by the state department of health.

24. Laundry:

- a. If the school age child care center provides laundry service for common use linens, towels, or blankets, it shall 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 school age child care centers, the handling, sorting, or washing of soiled linen or blankets must take place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas;
- d. In existing school age child care 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. Sorting of laundry may not be allowed in food preparation, serving, or kitchen areas;
 - f. If the school age child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the water temperature must be greater than one hundred seventy degrees Fahrenheit [77.2 degrees Celsius]; and
 - g. If the water temperature is less than one hundred seventy degrees Fahrenheit [77.2 degrees Celsius], then bleach must be used in the laundry process during the rinse cycle to achieve fifty parts per million of available hypochlorite at a temperature of at least seventy-five degrees Fahrenheit [24 degrees Celsius].
25. School age child care centers shall take steps to keep the facility free of insects and rodents. Chemicals for rodent control may not be applied in areas accessible to children when children are present in the facility.
26. All pets present in the school age child care center must be properly immunized, restricted, and maintained. Nondomestic animals, such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the school age child care center. Pets may not be allowed in the kitchen or eating area during meal preparation or meals.
27. Smoking is not permitted in any school age child care center at any time during which a child who receives early childhood services from that school age child care center is present and receiving care.

History: Effective June 1, 1995; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02.2, 50-11.1-04

75-03-11.1-19. Fire--inspections Minimum requirements regarding space and lighting.

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.

1. Each school age child care center shall provide adequate space for all children in attendance.
2. The school age child care center shall provide adequate space, indoors and out, for the daily activities of the children. This must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the school age child care center at one time, the operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors.
3. 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 areas;
 - (2) Twenty-five foot-candles of light for all bathrooms;
 - (3) Fifty foot-candles of light for any kitchen, laundry, and office areas; and
 - (4) Fifteen foot-candles of light for corridors and storage areas.
 - (5) If the lighting of the school age child care center appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

History: Effective June 1, 1995; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07 50-11.1-01, 50-11.1-04

75-03-11.1-20. Minimum sanitation and safety requirements Program 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--or--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.

1. The school age child care center operator shall have a program of daily individual or small group activities appropriate to the ages and needs of the children in the school age child

care center. The program must include activities which foster sound social, intellectual, emotional, and physical growth, developed with discussion and consultation with parents as to their children's needs.

2. The program must be flexible and subject to modification for individual child differences.
3. The program must be written and 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 meet the children's developmental needs, including the special needs of children in the school age child care center who are multilingual or disabled. The written program must be made available to parents.
4. The program must include firsthand experiences for children to learn about the world in which they live.
5. Learning experiences must be conducted in consultation with parents in order to ensure harmony with the lifestyle and cultural background of the children.
6. 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 established.
7. 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.
8. 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 at any one time, each child in attendance can be individually involved.
9. The cultural diversity of the children must be reflected in the program through incorporation of their language, food, celebration, and lifestyles, if appropriate.
10. Equipment and furniture must be durable and safe, and must be appropriately adapted for children's use.
11. Sufficient space accessible to children must be provided for each child's personal belongings.

12. The school age child care center shall supplement, augment, and reinforce the child's activities at home and school.
13. At the time of enrollment, the school age child care center staff shall discuss with the parents the children's habits, activities, and schedules while at home and in school their parents' special concerns about their past and future behavior and development. The schedule and activities must be designed to complement and supplement the children's experiences at home and in school.
14. Staff shall encourage parents to visit the facility, observe, and participate in the care of their children.
15. The school age child care center operator shall contact parents to exchange information concerning the child and the child care program as well as offer them meaningful opportunities to participate in general program policymaking.
16. Personal hygiene practices appropriate for a child's age and development must be stressed.
17. The school age child care center operator shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to the parent promptly and directly.
18. Each child's cultural and ethnic background and primary language or dialect must be respected by the caregivers.
19. 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 sleeping mats so that each child in attendance may have an individual napping space. The floor may be used only when carpeted or padded, warm, and free from drafts, and when individual blankets or coverings are used. Napping schedules must be set for children according to their ages and needs. For children unable to sleep, time and space for quiet play must be available.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

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 Minimum standards for food and nutrition.

1.--There-must-be-a-minimum-of-35-square-feet-{3.25-square-meters} of-indeor-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.

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards, and must be properly prepared, sufficient in amount, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a school age child care center must be treated in a sanitary and safe manner with sanitary and safe equipment.
2. Safe drinking water must be accessible to the children at all times.
3. When parents bring sack lunches for their children, the operator may supplement lunches to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
4. If the services are available free of charge, a dietician or other food service professional must be used as a consultant.
5. Children must be served a nutritious morning and afternoon snack, and if the parent does not provide a sack lunch, a nourishing meal:
 - a. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day;
 - b. Children in care during any normal mealtime hour 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 individuals.
7. Information provided by the children's parents as to their eating habits, food preferences, or special needs must be considered in the feeding schedules and in the tailoring of menus.
8. Children must be served in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.
9. Children must be encouraged to eat the food served, but shall not be subjected to coercion or force-feeding.

History: Effective June 1, 1995; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-22. Minimum--requirements--for-lighting Records. 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.

1. A copy of this chapter must be kept on the premises.
2. The school age child care center operator shall maintain the following records:
 - a. The child's full name, birthdate, and current home address;
 - b. Names of the child's parents or legal guardian, and the business and home telephone numbers where those individuals may be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child may not be reached immediately in an emergency;

- d. A written statement from the parents or legal guardian authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the school age child care center;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is a drop-in; and
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity, must serve as evidence that a child is physically able to take part in the child care program, and must be completed annually.
3. All records maintained with respect to children receiving child care services must be kept confidential, and access must be limited to staff members, the parents, or legal guardian of each child, and to:
- a. Authorized county agency and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent or legal guardian. The school age child care center shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective June 1, 1995; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07

75-03-11.1-23. Minimum---standards---for---food--and--nutrition Discipline - Punishment prohibited.

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.

Disregard of any of the following disciplinary rules is grounds for license denial or revocation.

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 diversion, separation from the problem situation, talking 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, fear, or humiliation.

3. Authority to discipline may not be delegated to or be accomplished by children.
4. Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances. Any child separated must be in a safe, lighted, well-ventilated room within hearing of an adult. A child may not be isolated in a locked room or closet.
5. A child may not be physically punished for lapses in toilet training.
6. When addressing a child, or while in the presence of a child, staff members may not make derogatory remarks about the child, the child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language.
7. A child may not be force-fed, unless medically prescribed and administered under a physician's care.
8. Deprivation of meals may not be used as a form of discipline or punishment.
9. A child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the school age child care center.

History: Effective June 1, 1995; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-01, 50-11.1-08

Law Implemented: NDCC 50-11.1-01; 50-11.1-04 50-11.1-08

75-03-11.1-24. Minimum-program-requirements Specialized types of care and minimum requirements therefor.

- 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.

1. 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 provide 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 to ensure 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.

(3) If beds are used by different children, sheets and pillowcases must be laundered before use by other children.

(4) Each bed or cot must have sufficient blankets available.

e. The school age child care center operator shall require each child in night care to have night clothing and a toothbrush marked for identification; and

- f. During sleeping hours, the staff shall be awake and within listening distance in order to provide for the needs of children and respond to an emergency.

2. Drop-in school age child care centers.

- a. If a school age child care center serves drop-in children, it shall be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program;
- b. The program must reflect the special needs of the children who are provided drop-in service;
- c. Admission records must comply with all enrollment requirements contained in section 75-03-11.1-22, except the immunization record requirement;
- d. 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; and
- e. A school age child care center may not receive drop-in or part-time children who, when added to the children in regular attendance, cause the school age child care center to exceed the total number of children for which the school age child care center is licensed.

History: Effective June 1, 1995; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-25. Specialized-types-of-care Minimum requirements for care of children with special needs.

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-eots-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--eot--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.

When children with special needs are admitted, there must be appropriate provisions to meet those needs. The school age child care center shall document how the child's special needs may be met.

1. When children with special needs are admitted, the school age child care center supervisor shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants.

2. Caregivers shall receive proper instructions as to the nature of the child's disability and potential for growth and development.
3. If the nature of the special needs or the number of children with special needs warrants added care, the school age child care center shall add sufficient staff and equipment as deemed necessary by the department to compensate for those needs.

History: Effective June 1, 1995; amended effective August 1, 1998.

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 Minimum provisions regarding emergency care for children.

~~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-reeive-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-suffieient-staff-as-deemed-necessary-by the-department-to-compensate-for-these-needs-~~

1. The school age child care center shall have written plans to respond to illness and emergencies, including burns, serious injury, and ingestion of poison. Parents of enrollees must be advised of these plans. Plans must require:

a. The conspicuous posting of emergency response procedures, with all staff members receiving training concerning such emergency procedures;

b. At least one state department of health-approved first-aid kit be maintained and kept in each major activity area, inaccessible to children, yet readily accessible to staff;

c. A working telephone be immediately accessible to staff with a list of emergency telephone numbers conspicuously posted adjacent to the telephone;

d. The school age child care center inform parents in writing of any first aid administered to their child within twenty-four hours of the incident and immediately notify

parents of any injury which requires emergency care beyond first aid;

e. That each injury report be made a part of the child's record;

f. The school age child care center implement infection control measures to prevent the spread of communicable diseases and follow rules 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;

g. That 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;

h. The following procedures where children in the school age child care center require medication:

(1) Written permission to dispense medication must be obtained from the parent, and proper instructions for the administration of the medicine must be given by the parent or physician;

(2) Any 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;

(3) A written record of the administration of medication, including over-the-counter medication, to each child must be kept. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child;

(4) Completed medication records must be included in the child's record; and

(5) Medications must be stored in an area inaccessible to children, and medications stored in a refrigerator must be stored collectively in a spillproof container.

i. A supervised, temporary isolation area be designated for a child who is too ill to remain in the group, or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:

- (1) Parents shall be notified immediately and asked to pick up their child; and
- (2) First aid must be provided and medical care sought, as necessary;
- j. Children with infectious or communicable conditions be excluded from the school age child care center until the condition may no longer be transmitted, and guidance regarding exclusion and return to the school age child care center be obtained through consultation with local and state health department authorities;
- k. That provisions for emergency transportation be made, specifically that when a child is brought to another place for emergency care, the child be accompanied by an adult who shall remain with the child until medical personnel assume the responsibility for the child's care and until the parent or legal guardian arrives; and
- l. That information be provided to parents, as needed, concerning child health and social services available in the community, and that there be assistance for parents in obtaining the services.

History: Effective June 1, 1995; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01; 50-11.1-04

75-03-11.1-27. Discipline Effect of conviction on licensure and employment.

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-

1. A school age child care center operator may not be, and a
school age child care center may not employ, in any capacity
that involves or permits contact between the employee and any
child cared for by the school age child care center, an
individual who has been found guilty of, pled guilty to, or
pled no contest to:

a. An offense described in North Dakota Century Code chapters
12.1-16, homicide; 12.1-17, assaults - threats - coercion;
or 12.1-18, kidnapping; North Dakota Century Code sections
12.1-20-03, gross sexual imposition; 12.1-20-04, sexual
imposition; 12.1-20-05, corruption or solicitation of
minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07,
sexual assault; 12.1-22-01, robbery; or 12.1-22-02,
burglary, if a class B felony under subdivision b of
subsection 2 of that section; North Dakota Century Code
chapter 12.1-27.2, sexual performances by children; or
North Dakota Century Code sections 12.1-29-01, promoting
prostitution; 12.1-29-02, facilitating prostitution; or
12.1-31-05, child procurement; or an offense under the
laws of another jurisdiction which requires proof of
substantially similar elements as required for conviction
under any of the enumerated North Dakota statutes; or

b. An offense, other than an offense identified in
subdivision a, if the department in the case of a school
age child care center operator, or the school age child
care center operator in the case of an employee,
determines that the individual has not been sufficiently
rehabilitated.

2. The school age child care center shall establish written
policies, and engage in practices that conform to those
policies, to effectively implement this section.

3. For purposes of subdivision b of subsection 1, the department in the case of a school age child care center, or the school age child care center operator in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-08, ~~50-11.1-01~~

Law Implemented: NDCC 50-11.1-08 50-11.1-06.1

75-03-11.1-28. Minimum standards for provision of transportation
Child abuse and neglect determinations.

- 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 busdriver 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.~~

If a probable cause determination or a decision that services are required under North Dakota Century Code chapter 50-25.1 exists, indicating that any child has been abused or neglected by a staff member, that individual shall furnish information satisfactory to the department from which the department may determine the staff member's current ability to provide care free of abuse and neglect. The determination of current ability must be furnished to the school age child care center operator and to the regional director of the human service center or the regional director's designee for consideration and action of the school age child care center license.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC ~~50-11.1-01~~; 50-11.1-04, 50-11.1-08, 50-11.1-09

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 corrected:
 - a. For a violation of section 75-03-11.1-09, subsection 3 of section 75-03-11.1-18, and section 75-03-11.1-23, within twenty-four hours.
 - b. 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~~ within sixty days ~~to correct the deficiency is allowed.~~
 - b. c. For a deficiency that requires an inspection by a state fire marshal or local fire department authority under pursuant to section 75-03-11.1-18, a period of 75-03-11.1-17, within sixty days ~~to correct the deficiency is allowed.~~
 - c. d. For a deficiency that requires substantial building remodeling, construction, or change, ~~a period of~~ within sixty days ~~to correct the deficiency is allowed.~~
 - d. e. For all other deficiencies, ~~a period of~~ within twenty days ~~is allowed to correct the deficiency.~~

2. All time periods ~~must commence with~~ for correction begin on the date of receipt of the correction order by the licensee of the ~~correction order~~.
3. The regional supervisor of early childhood program licensing ~~shall have the authority to~~ may grant extensions ~~an extension~~ of additional time to correct deficiencies, up to a period of one-half the original allowable time allotted; ~~to correct the deficiency.---These---extensions.~~ An extension may be granted upon application by the licensee ~~upon~~ and 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.
4. The operator shall furnish a written notice of completion of the correction order action to the county. The correction order is effective until the county receives the notice.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

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.~~
1. A fiscal sanction of twenty-five dollars per day shall be assessed for each violation of subsections 3, 13, and 19 of section 75-03-11.1-20; and section 75-03-11.1-23 for each day, after the allowable time for correction of deficiencies ends,

that the school age child care center has not verified correction.

2. A fiscal sanction of fifteen dollars per day shall be assessed for each violation of section 75-03-11.1-08, subsections 1, 2, 4, 5, 10, 17, and 20 of section 75-03-11.1-18; subsection 1 of section 75-03-11.1-19; subsections 3 and 11 of section 75-03-11.1-20; section 75-03-11.1-23; and subdivision a of subsection 1 of section 75-03-11.1-24 for each day, after the allowable time for correction of deficiencies ends, that the school age child care center has not verified correction.
3. A fiscal sanction of five dollars per day shall be assessed for each violation of any other provision of this chapter for each day, after the allowable time for correction of deficiencies ends, that the school age child care center has not verified correction.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective August 1, 1998.

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 Appeals. ~~In any school-age child-care center, smoking is prohibited at any time while a child is receiving care.~~ An applicant or operator may appeal a decision to deny or revoke a license by filing a written appeal with the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective June 1, 1995; amended effective August 1, 1998.

General Authority: NDCC 23-12-10, 50-11.1-02.2 50-11.1-08

Law Implemented: NDCC 50-11.1-02.2 50-11.1-08, 50-11.1-09

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.~~ Repealed effective August 1, 1998.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-09

JULY 1998

CHAPTER 75-02-07.1

AGENCY SYNOPSIS: REGARDING PROPOSED AMENDMENTS TO NORTH DAKOTA ADMINISTRATIVE CODE CHAPTER 75-02-07.1 RATESSETTING FOR BASIC CARE FACILITIES

A public hearing was conducted on February 17, 1998, in Bismarck concerning proposed amendments to North Dakota Administrative Code Chapter 75-02-07.1, Ratesetting for Basic Care Facilities.

The purpose of chapter 75-02-07.1 is to clarify policies concerning ratesetting for basic care facilities.

The department proposed rules amending North Dakota Administrative Code Chapter 75-02-07.1, Ratesetting for Basic Care Facilities, and conducted a public hearing on those rules on February 17, 1998, and received written comment on those proposed rules until the end of the day on March 20, 1998.

75-02-07.1-01. Definitions: Adds the definition of "resident day" to clarify that the amount of payment made for a facility's service does not determine whether a day is a resident day.

75-02-07.1-05. Resident Care: A new subsection 4 requires hospice residents to be identified as such for census purposes.

75-02-07.1-09. Cost Allocations: Is amended to require combination nursing care facilities and basic care facilities to use the allocations described in North Dakota Administrative Code Chapter 75-02-06, Ratesetting for Nursing Care Facilities.

75-02-07.1-10. Nonallowable Costs: Is amended to treat certain costs of education, costs associated with facility acquisition, and "goodwill" as nonallowable expenses.

75-02-07.1-11. Offsets to Costs: Is amended to identify the cost category to which vending income must be offset.

75-02-07.1-14. Compensation: Is amended to apply the compensation limit of North Dakota Administrative Code Chapter 75-02-06 to combination nursing care facilities and basic care facilities.

75-02-07.1-15. Depreciation: Is amended to define an acquisition date and specify criteria for determining the cost basis of a facility acquired as an ongoing operation.

75-02-07.1-22. Rate Limitations: Is amended to redefine the term "new facility" to avoid an ambiguity.

75-02-07.1-23. Rates: Is amended to set a limit on the number of years that can be opened for rereview when errors, adjustments, or omissions occur during a report year.

75-02-07.1-25. Special Rates: Is amended to specify the coverage of certain one-time adjustments for facilities that change ownership, and also clarifies the meaning of the term "new facility" to avoid an ambiguity.

75-02-07.1-29. Reconsiderations and Appeals: Is amended to specify information to be included with a request for reconsideration of rates, and to specify the time in which requested additional information must be produced.

75-02-07.1-01. Definitions.

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factors" means indices used to adjust reported costs for inflation or deflation based on forecasts for the rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Aid to vulnerable aged, blind, and disabled persons" means a program that supplements the income of an eligible beneficiary who resides in a facility.
6. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by basic care regulations.
7. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's length transaction. It does not include:
 - a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 4 of section 75-02-07.1-13;
 - b. A sale and leaseback to the same licensee;
 - c. A transfer of an interest to a trust;
 - d. Gifts or other transfer for nominal or no consideration;

- e. A change in the legal form of doing business;
 - f. The addition or deletion of a partner, owner, or shareholder; or
 - g. A sale, merger, reorganization, or any other transfer of interest between related organizations.
- 8. "Building" means the physical plant, including building components and building services equipment, licensed as a facility and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings if used directly for resident care.
 - 9. "Capital assets" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
 - 10. "Chain organization" means a group of two or more basic care or health care facilities owned, leased, or through any other device controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to basic care or health care.
 - 11. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
 - 12. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
 - 13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, determination of cost limitations, and determination of rates.
 - 14. "Cost center" means a division, department, or subdivision thereof, group of services or employees, or both, or any unit or type of activity into which functions of a facility are decided for purposes of cost assignment and allocations.
 - 15. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information of the facility.
 - 16. "Department" means the department of human services.

17. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
18. "Depreciation" means an allocation of the cost of a depreciable asset over its estimated useful life.
19. "Depreciation guidelines" means the American hospital association's depreciation guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 1993 edition.
20. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
21. "Direct care costs" means the cost category for allowable resident care, activities, social services, laundry, and food costs.
22. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
23. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the facility premises.
24. "Eligible beneficiary" means a facility resident who is eligible for aid to vulnerable aged, blind, and disabled persons.
25. "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
26. "Established rate" means the rate paid for services.
27. "Facility" means a licensed basic care facility not owned or administered by state government.
28. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.

31. "Freestanding facility" means a facility that does not share basic services with a hospital-based provider or a nursing facility.
32. "Fringe benefits" means worker's compensation insurance, group health or dental insurance, group life insurance, retirement benefits, uniform allowances, and medical services furnished at facility expense.
33. "Highest market driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
34. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
35. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
36. "In-house resident day" for basic care and nursing facilities means a day that a resident was actually residing in the facility. "In-house resident day" for hospitals means an inpatient day.
37. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
38. "Limit rate" means the rate established as the maximum allowable rate.
39. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
40. "Medical care leave day" means any day that a resident is not in the facility but is in a licensed health care facility, including a hospital, swing bed, nursing facility, or transitional care unit, and is expected to return to the facility.
41. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.

42. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
43. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
44. "Private-pay resident" means a resident on whose behalf the facility is not receiving any aid to vulnerable aged, blind, and disabled persons program payments and whose payment rate is not established by any governmental entity with ratesetting authority.
45. "Private room" means a room equipped for use by only one resident.
46. "Property costs" means the cost category for allowable real property costs and pass-through costs.
47. "Provider" means the organization or individual who has executed a provider agreement with the department.
48. "Rate year" means the year from July first through June thirtieth.
49. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
50. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.
51. "Report year" means the provider's fiscal year ending during the calendar year immediately preceding the rate year.
52. "Resident" means a person who has been admitted to the facility, but not discharged.

53. "Resident day" in a facility means any day for which service is provided or for which payment in any amount is ordinarily sought, including medical care leave and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought. The amount of remuneration has no bearing on whether a day should be counted as a resident day.
54. "Routine hair care" means hair hygiene which includes grooming and shampooing.
55. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater. It does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds. It does not mean an increase in a facility's capacity resulting from converting beds formerly licensed as nursing facility beds.
56. "Therapeutic leave day" means any day that a resident is not in the facility or in a licensed health care facility.
57. "Top management personnel" means corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
58. "Working capital debt" means debt incurred to finance facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

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

General Authority: NDCC 50-06-15

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

75-02-07.1-05. Resident census.

1. Adequate census records must be prepared and maintained on a daily basis by the facility to allow for proper audit of the census data. The daily census records must include:
 - a. Identification of the resident;
 - b. Entries for all days, and not just by exception;
 - c. Identification of type of day, i.e., medical care, in-house; and
 - d. Monthly totals by resident and by type of day.

2. A maximum of fifteen days per occurrence may be allowed for payment for medical care leave. Medical care leave days in excess of fifteen consecutive days not billable to the aid to vulnerable aged, blind, and disabled persons program are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-07.1-04.
3. A maximum of twenty-eight therapeutic leave days per rate year may be allowed for payment. Nonbillable therapeutic leave days in excess of twenty-eight are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-07.1-04.
4. Residents admitted to the facility through a hospice program, or electing hospice benefits while in a facility, must be identified as hospice residents for census purposes.

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

General Authority: NDCC 50-06-15

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

75-02-07.1-09. Cost allocations.

1. Direct costing of allowable costs must be used whenever possible. For a facility that cannot direct cost, the following allocation methods must be used:
 - a. If a facility is combined with other residential or health care facilities, except for a nursing facility, the following allocation methods must be used:
 - (1) Resident care salaries that cannot be reported based on actual costs must be allocated using time studies. Time studies must be conducted at least semiannually for a two-week period or quarterly for a one-week period. Time studies must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies must be used starting with the next pay period following completion of the time studies or averaged for the report year. The methodology used by the facility may not be changed without approval by the department. If time studies are not completed, resident care salaries must be allocated based on revenues for resident services.
 - (2) Salaries for a director of resident care or resident care supervisors that cannot be reported based on actual costs or time studies must be allocated based on resident care salaries or full-time equivalents of resident care staff.

- (3) Salaries for cost center supervisors must be allocated based on cost center salaries or full-time equivalents of supervised staff.
 - (4) Other resident care costs must be allocated based on resident days.
 - (5) Dietary and food costs must be allocated based on the number of meals served or in-house resident days.
 - (6) Laundry costs must be allocated on the basis of pounds of laundry.
 - (7) Activity costs must be allocated based on in-house resident days.
 - (8) Social service costs must be allocated based on resident days.
 - (9) Housekeeping costs must be allocated based on weighted square footage.
 - (10) Plant operation costs must be allocated based on weighted square footage.
 - (11) Medical records costs must be allocated based on the number of admissions or discharges and deaths.
 - (12) Pharmacy costs for consultants must be allocated based on in-house resident days.
 - (13) Administration costs must be allocated on the basis of the percentage of total adjusted cost, excluding property, administration, and chaplain, in each facility.
 - (14) Property costs must be allocated first to a cost center based on square footage. The property costs allocated to a given cost center must be allocated using the methodologies set forth in this section for that particular cost center.
 - (15) Chaplain costs must be allocated based on the percentage of total adjusted costs, excluding property, administration, and chaplain.
 - (16) Employment benefits must be allocated based on the ratio of salaries to total salaries.
- b. If any of the allocation methods in subdivision a cannot be used by a facility, a waiver request may be submitted to the department. The request must include an adequate explanation as to why the referenced allocation method

cannot be used by the facility. The facility shall also provide a rationale for the proposed allocation method. Based on the information provided, the department shall determine the allocation method used to report costs.

- c. Malpractice, professional liability insurance, therapy salaries, and purchased therapy services must be direct costed.
 - d. The costs of operating a pharmacy may not be included as facility costs.
 - e. For purposes of this subsection, "weighted square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described in this subsection for that cost category.
2. If a facility is combined with a nursing facility, the allocation methodologies, exceptions, and waivers set forth in chapter 75-02-06 must also be used for the facility.
3. If a facility cannot directly identify salaries and employment benefits to a cost category, the following cost allocation methods must be used:
- a. Salaries must be allocated using facility estimates. If no estimates are made, salaries must be allocated entirely to indirect care costs if any of the employee's job duties are included in this cost category.
 - b. Employment benefits must be allocated based on the ratio of salaries in the cost center to total salaries.
- 3: 4. A facility that operates or is associated with nonresident-related activities, such as apartment complexes, shall allocate all costs, except administration costs, in the manner required by subsection 1, and shall allocate administration costs as follows:
- a. If total costs of all nonresident-related activities, exclusive of property, administration, and chaplain costs, exceed five percent of total facility costs, exclusive of property, administration, and chaplain costs, administration costs must be allocated on the basis of the percentage of total ~~cost~~ costs, excluding property, administration, and chaplain costs.
 - b. If total costs of all nonresident-related activities, exclusive of property, administration, and chaplain costs, are less than five percent of total facility costs, exclusive of property, administration, and chaplain costs,

administration costs must be allocated to each activity based on the percent gross revenues for the activity is of total gross revenues except that the allocation may not be based on a percentage exceeding two percent for each activity.

- c. If the provider can document, to the satisfaction of the department, that none of the facility resources or services are used in connection with the nonresident-related activities, no allocation need be made.
- d. The provisions of this subsection do not apply to the activities of health care facilities associated with a facility.

- 4- 5. All costs associated with a vehicle not exclusively used by a facility must be allocated between resident-related and nonresident-related activities based on mileage logs.

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

General Authority: NDCC 50-06-15

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

75-02-07.1-10. Nonallowable costs. Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of the facility and its activities. These costs are not allowed in computing the rates. Nonallowable costs include:

- 1. Political contributions;
- 2. Salaries or expenses of a lobbyist;
- 3. Advertising designed to encourage potential residents to select a particular facility;
- 4. Fines or penalties, including interest charges on the penalty, bank overdraft charges, and late payment charges;
- 5. Legal and related expenses for challenges to decisions made by governmental agencies except for successful challenges as provided for in section 75-02-07.1-08;
- 6. Costs incurred for activities directly related to influencing employees with respect to unionization;
- 7. Cost of memberships in sports, health, fraternal, or social clubs or organizations such as elks, YMCA, country clubs, or knights of columbus;

8. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying costs, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions made by governmental agencies, including all dues unless an allocation of dues to such costs is provided;
9. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, i.e., lions, chamber of commerce, kiwanis, in excess of one thousand five hundred dollars per cost reporting period;
10. Home office costs not otherwise allowable if incurred directly by the facility;
11. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors that include annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements for security exchange commission purposes, stock transfer agent fees, and stockbroker and investment analysis;
12. Corporate costs not related to resident care, including reorganization costs; costs associated with the acquisition of capital stock, except otherwise allowable interest and depreciation expenses associated with the transaction described in subsection 4 of section 75-02-07.1-13; and costs relating to the issuance and sale of capital stock or other securities;
13. The full cost of items or services such as telephone, radio, and television, including cable hookups or satellite dishes, located in resident accommodations, excluding common areas, furnished solely for the personal comfort of the residents;
14. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;
15. The cost of 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 portion of the use of equipment was related to resident care;
16. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administration 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 health care facility or basic care facility;

17. Costs incurred by the provider's subcontractors or by the lessor of property that the provider leases, that are an element in the subcontractor's or lessor's charge to the provider, if the costs would not have been allowable had the costs been incurred by a provider directly furnishing the subcontracted services, or owning the leased property, except no facility shall have a particular item of cost disallowed under this subsection if that cost arises out of a transaction completed before July 1, 1995;
18. The cost, in excess of charges, of providing meals and lodging to facility personnel living on premises;
19. Depreciation expense for facility assets not related to resident care;
20. Nonbasic care facility operations and associated administration costs;
21. All costs for services paid directly by a government entity to an outside provider, such as prescription drugs;
22. Travel costs involving the use of vehicles not exclusively used by the facility except to the extent:
 - a. The facility supports vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care;
 - b. Resident-care related vehicle travel costs do not exceed a standard mileage rate established by the internal revenue service; and
 - c. The facility documents all costs associated with a vehicle not exclusively used by the facility;
23. Travel costs other than vehicle-related costs unless supported, reasonable, and related to resident care;
24. Additional compensation paid to an employee, who is a member of the board of directors, for service on the board;
25. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid, per day, to a member of the legislative council, pursuant to North Dakota Century Code section 54-35-10;
26. Travel costs associated with a board of directors meeting to the extent the meeting is held in a location where the organization has no facility;
27. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the

portion which relates to costs that benefit all eligible employees;

28. Premiums for top management personnel life insurance policies, except that the premiums must be allowed if the policy is included within a group policy provided for all employees, or if the policy is required as a condition of mortgage or loan and the mortgagee or lending institution is listed as the sole beneficiary;
29. Personal expenses of owners and employees, including vacations, personal travel, and entertainment;
30. Costs not adequately documented through written documentation, date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities;
31. The following taxes:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon;
 - b. State or local income and excess profit taxes;
 - c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes on the issuance of bonds, property transfers, or issuance or transfer of stocks, which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;
 - d. Taxes, including real estate and sales tax, for which exemptions are available to the provider;
 - e. Taxes on property not used in the provision of covered services;
 - f. Taxes, including sales taxes, levied against the residents and collected and remitted by the provider;
 - g. Self-employment (FICA) taxes, applicable to persons such as individual proprietors, partners, or members of a joint venture;
32. The unvested portion of a facility's accrual for sick or annual leave;
33. Salaries accrued at a facility's fiscal yearend but not paid within seventy-five days of the facility's fiscal yearend;

- 34. Employment benefits associated with salary costs not includable in a rate set under this chapter;
- 35. The cost, including depreciation, of equipment or items purchased with funds received from a government agency;
- 36. Hair care, other than routine hair care, furnished by the facility;
- 37. The cost of education unless:
 - a. The education was provided by an accredited academic or technical educational facility;
 - b. The expenses were for materials, books, or tuition;
 - c. The employee was enrolled in a course of study intended to prepare the employee for a position at the facility, and is in that position; and
 - d. The facility claims the cost of the education at a rate that does not exceed one dollar per hour of work performed by the employee in the position for which the employee received education at the facility's expense, provided the amount claimed per employee may not exceed two thousand dollars per year, or an aggregate of eight thousand dollars, and in any event may not exceed the cost to the facility of the employee's education;
- ~~38.~~ 39. Interest expense on the portion of operating loans equal to nonallowable costs incurred for the current and prior reporting periods;
- ~~38.~~ 39. Increased lease costs of a provider except to the extent:
 - a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;
 - b. The increased costs related to the ownership are charged to the lessee; and
 - c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee; and
- ~~39.~~ 40. Bad debts expense;
- 41. Costs associated with or paid for the acquisition of licensed basic care capacity; and
- 42. Goodwill.

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

General Authority: NDCC 50-06-15
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-11. Offsets to costs.

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income received by the facility in any form, with the exception of the established rate, income from payments made under the Job Training Partnership Act, and income from charges for private rooms, special services, or bed hold, must be offset up to the total of the appropriate actual allowable costs. If actual costs are not identifiable, income must be offset up to the total of costs as described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Sources of income and the related offset include:
 - a. Activities income. Income from the activities department and the gift shop must be offset to activity costs.
 - b. Bad debt recovery. Income for bad debts previously claimed must be offset to administration costs in total in the year of recovery.
 - c. Dietary income. Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks must be offset to dietary and food costs.
 - d. Drugs or supplies income. Amounts received from the sale of resident care supplies to employees, doctors, or others not admitted as residents must be offset to resident care supplies.
 - e. Insurance recoveries income. Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when or if the cost is incurred, if the facility did not adjust the basis for depreciable assets.
 - f. Interest or investment income. Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, must be offset to interest expense.
 - g. Laundry income. All amounts received for laundry services rendered to or on behalf of employees, doctors, or others must be offset to laundry costs.
 - h. Other cost-related income. Miscellaneous income, including amounts generated through the sale of a

previously expensed or depreciated item, e.g., supplies or equipment, must be offset, in total, to the cost category where the item was expensed or depreciated.

- i. Rentals of facility space income. Revenues received from outside sources for the use of facility space and equipment must be offset to property costs.
 - j. Telephone income. Revenues received from residents, guests, or employees for use of a telephone must be offset to administration costs. Income from emergency answering services need not be offset.
 - k. Therapy income. Income from all therapy services must be offset to resident care costs.
 - l. Vending income. Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to ~~administration--costs~~ the cost category where vending costs are recorded.
2. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.
 3. Payments to a provider by its vendor must ordinarily be treated as purchase discounts, allowances, refunds, or rebates, even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider shall provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.
 4. Where an owner, agent, or employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's, agent's, or employee's own personal use as a result of the provider's purchases from the vendor, the value of the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's cost for goods or services purchased from the vendor.
 5. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to costs of the provider

and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.

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

General Authority: NDCC 50-06-15

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

75-02-07.1-14. Compensation.

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:
 - a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the report year;
 - b. The limit set under this subsection for the previous rate year adjusted by the increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average; or
 - c. Thirty-three thousand seven hundred eighty-five dollars.
 - d. If the facility is combined with a nursing facility, the compensation limit for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility may not exceed the greatest of subdivision a, b, or c.
2. Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation described in subsection 1, divided by three hundred sixty-five times the number of calendar days the individual was employed.
3. Compensation includes:
 - a. Salary for managerial, administrative, professional, and other services;
 - b. Amounts paid for the personal benefit of the person, e.g., housing allowance, flat-rate automobile allowance;
 - c. The cost of assets and services the person receives from the provider;
 - d. Deferred compensation, pensions, and annuities;
 - e. Supplies and services provided for the personal use of the person;

- f. The cost of a domestic or other employee who works in the home of the person; or
 - g. Life and health insurance premiums paid for the person and medical services furnished at facility expense.
- 4. Reasonable compensation for a person with at least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount required to be paid for the same services if provided by a nonrelated employee to a North Dakota facility. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable hourly compensation may not exceed the amount determined under subsection 1, divided by two thousand eighty.
 - 5. Costs otherwise nonallowable under this chapter may not be included as compensation.
 - 6. The increase in the consumer price index means the percentage by which that consumer price index for the month of March, as prepared by the United States department of labor, exceeds that index for the month of March of the preceding year.

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

General Authority: NDCC 50-06-15

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

75-02-07.1-15. Depreciation.

- 1. Ratesetting principles require that payment for services include depreciation on all capital assets used to provide necessary services. ~~This includes~~
 - a. Capital assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program, may be depreciated. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a To properly provide for costs or the valuation of such assets, an appraisal is required if the provider has no historical cost records or has incomplete records of the capital assets.
 - b. A depreciation allowance is permitted on assets used in a normal standby or emergency capacity.

- c. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.

2. Depreciation methods.

- a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different from that submitted on the cost report, a reconciliation must be prepared by the facility.
- b. Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:
- (1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or
 - (2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.
- c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:
- (1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and
 - (2) A composite remaining useful life for movable equipment, determined from the seller's records.

3. Acquisitions.

- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars for each item, its cost must be capitalized and depreciated over the estimated useful life of the asset. Costs incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, must be capitalized as a part of the cost of the asset.
 - b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.
4. Proper records must provide accountability for the fixed assets and provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.
5. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and must be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.
6. Basis for depreciation of assets acquired as an ongoing operation.
 - a. Determination of the cost basis of a facility and its depreciable assets acquired as an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.
 - a- b. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1995, is limited to the lowest of:
 - (1) Purchase price paid by the purchaser;
 - (2) Fair market value at the time of the sale; or

(3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes, plus-recaptured-depreciation;-or

~~(4) The seller's cost basis, increased by one-half of the increase in the Dodge construction index from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes, plus-recaptured-depreciation;.~~

b. c. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer.

e. d. The cost basis of a facility and its depreciable assets acquired through donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer or donee.

e. In order to calculate the increase over the seller's cost basis, an increase may be allowed, under paragraph 3 of subdivision b, only for assets with a historical cost basis established separately and distinctly in the seller's depreciable asset records.

f. For purposes of this subsection, "date of acquisition" means the date when ownership of the depreciable asset transfers from the transferor to the transferee such that both are bound by the transaction. For purposes of transfers of real property, the date of acquisition is the date of delivery of the instrument transferring ownership. For purposes of titled personal property, the date of acquisition is the date the transferee receives a title acceptable for registration. For purposes of all other capital assets, the date of acquisition is the date the transferee possesses both the asset and an instrument, describing the asset, which conveys the property to the transferee.

7. ~~The seller shall use the sale price in computing the gain or loss on the disposition of assets.~~

~~8. To properly provide for costs or valuations of assets, an appraisal is required if the provider has no historical cost records or has incomplete records of capital assets.~~

9. An adjustment may not be allowed for any depreciable cost that exceeded the basis in effect for rate periods prior to July 1, 1995.

~~10.~~ 8. The department shall establish a cost basis limitation for construction or renovation of a facility.

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

General Authority: NDCC 50-06-15

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

75-02-07.1-22. Rate limitations.

1. Historical costs, as adjusted, for all facilities for which a rate is established, must be used in the establishment of a limit rate. The actual rate for each facility must be determined in accordance with this chapter. The department shall rank licensed beds in all facilities reporting historical costs by the actual rate and determine the position in the ranking below which lie eighty percent of the ranked beds. This rate shall be the limit rate.

2. If at any time the total number of licensed basic care beds in North Dakota exceeds one thousand three hundred eighty-two, before the beginning of each quarter beginning thereafter, the department shall review the sufficiency of appropriations provided to pay the estimated cost of supplements. If the appropriations appear insufficient, the department shall determine reduced rates for all facilities with substantial capacity increases and for all new facilities.

3. The reduced rate for each facility subject to a reduced rate is determined by:

a. Establishing the total appropriation available for supplements during that reduced rate quarter;

b. Projecting the number of beds, in all facilities with substantial capacity increases and all new facilities, that will likely be occupied by persons eligible for a supplement during the reduced rate quarter;

c. Projecting expenditures for supplements, for that reduced rate quarter, in all facilities not subject to reduced rates;

d. Projecting expenditures for supplements, during a reduced rate quarter, that would be made in all facilities with

substantial capacity increases and in all new facilities, if those facilities were not subject to limits;

- e. Subtracting the amount projected under subdivision c from the amount determined under subdivision a;
 - f. Subtracting the amount determined under subdivision e from the amount projected under subdivision d;
 - g. Dividing the amount determined under subdivision f by the number projected under subdivision b; and
 - h. Reducing the established rate set for that facility by the amount determined under subdivision g.
- 3- 4. A facility is not subject to reduced rates if it is not a new facility or if it has not been subject to a substantial capacity increase. All new facilities and all facilities subject to a substantial capacity increase are subject to reduced rates.
- 4- 5. A reduced rate is effective during the reduced rate quarter for which it is established.
- 5- 6. A facility subject to a reduced rate must be informed of the reduced rate no later than the usual date supplement payment is made to the facility for services furnished during the first month of the reduced rate quarter.
- 6- 7. For purposes of this section:
- a. "New facility" means a facility ~~that was not a licensed facility on or for which no rate was set, under this chapter, for any period~~ before July 1, 1995.
 - b. "Quarter" means one of the four periods occurring in each calendar year, beginning January first and ending March thirtieth, beginning April first and ending June thirtieth, beginning July first and ending September thirtieth, or beginning October first and ending December thirty-first.
 - c. "Substantial capacity increase" means a capacity increase to a licensed capacity six or more licensed beds greater than a facility's licensed capacity on July 1, 1995, or a capacity increase to a licensed capacity equal to or greater than one and one-tenth times that facility's licensed capacity on July 1, 1995, whichever is less.
 - d. "Supplement" means payments provided or the provision of payments under ~~subsection 3 of North Dakota Century Code section 50-24.5-02~~ chapter 50-24.5.

History: Effective July 1, 1996; amended effective July 1, 1998.
General Authority: NDCC 50-06-15
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-23. Rates.

1. Desk audit rate.

- a. The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by telephone or mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment may not be made. The department shall review the information and make any appropriate adjustments.
- b. The desk audit rate must be effective July first of each rate year unless the department specifically identifies an alternative effective date, and must continue in effect until a final rate is established.
- c. The desk rate may be adjusted for special rates or one-time adjustments provided for in section 75-02-07.1-25 or 75-02-07.1-26.
- d. The desk rate may be adjusted to reflect errors, omissions, or adjustments for the report year that results in a change of at least five cents per day.

2. Final rate.

- a. The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective July first of each rate year unless the department specifically identifies an alternative effective date.
- b. The final rate must include any adjustments for nonallowable costs, errors, or omissions found during a field audit or reported by the facility and that result in a change from the desk audit rate of at least five cents per day.
- c. The final rate may be revised at any time for special rates or one-time adjustments provided for in section 75-02-07.1-25 or 75-02-07.1-26.
- d. If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:

- (1) Adjustments, errors, or omissions found within twelve months of the date of notification of the final rate not including subsequent revisions, and resulting in a change of at least five cents per day, must result in a change to the final rate. The change must be applied retroactively as provided for in this section.
- (2) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate not including subsequent revisions, and that would have resulted in a change of at least five cents per day had they been included, must be included as an adjustment on the latest filed cost report.
- (3) Adjustments resulting from an audit of home office costs, and that result in a change of at least five cents per day, must be included as an adjustment in the report year in which the ~~cost~~ costs were incurred.
- (4) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.

3. **Adjustment of the total payment rate.** The final rate as established must be retroactive to the effective date of the desk rate.

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

General Authority: NDCC 50-06-15

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

75-02-07.1-25. Special rates.

1. For a new facility, the department shall establish an interim rate equal to the lesser of the limit rate for the rate year in which the facility begins operation, or a rate established based on an annual budget submitted by the facility. The interim rate may be in effect for no more than eighteen months. No retroactive adjustment may be made to the rate.
 - a. If the effective date of the interim rate is on or after September first and on or before December thirty-first, the interim rate must be effective for the remainder of that rate year and must continue through December thirty-first of the subsequent rate year. The facility shall file an interim cost report by August thirty-first for the period ending June thirtieth of the period in which the facility first provides services. The interim

cost report is used to establish the actual rate to be effective January first of the subsequent rate year.

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

state department of health through the end of the rate year. The direct care, indirect care, and projected property rates must be added and, if in excess of the limited rate, must be limited to the limit rate.

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

(2) For a facility with less than four months of operation under the new ownership during the report year:

(a) By using the rate established for the previous owner for the previous rate year; or

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

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

6. For a facility terminating its participation in the aid to vulnerable aged, blind, and disabled persons program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until eligible beneficiaries can be relocated.

7. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subsection 2 or 3 and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subsection 2 or 3 may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

8. For purposes of this section, "new facility" means a facility operated in a premises for which no costs were claimed and no rate was set under this chapter for any period prior to July 1, 1995, but does not mean a facility with:

a. Renovations or replacements;

b. A capacity increase; or

c. A change of ownership.

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

General Authority: NDCC 50-06-15

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

75-02-07.1-26. One-time adjustments.

1. Adjustments to meet licensure standards.

- a. The department may provide for an increase in the established rate for additional costs incurred to meet licensure standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary or other costs increased to correct the deficiencies cited in the survey process.
- b. The facility shall submit a written request to the department within thirty days of submitting the plan of correction to the state department of health. The request must:
 - (1) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's licensure survey;
 - (2) Identify the number of new staff or additional staff hours and the associated costs required to meet the licensure standards;
 - (3) Provide a detailed list of any other costs necessary to meet licensure standards;
 - (4) Describe how the facility shall meet licensure standards if the adjustment is received, including the number and type of staff to be added to the current staff and the projected salary and fringe benefit cost for the additional staff; and
 - (5) Document that all available resources, including efficiency incentives, if used to increase staffing, are not sufficient to meet licensure standards.
- c. The department shall review the submitted information and may request additional documentation or conduct onsite visits.

- d. If an increase in costs is approved, the adjustment must be calculated based on the costs necessary to meet licensure standards less any incentives included when calculating the established rate. The net increase must be divided by resident days and the amount calculated must be added to the established rate. This rate must then be subject to any rate limitations that may apply.
- e. Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with section 75-02-07.1-23.
- f. If the actual cost of implementation exceeds the amount included in the adjustment, no retroactive settlement may be made.

2. Adjustments for unforeseeable expenses.

- a. The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and beyond the control of those responsible for the management of the facility.
- b. Within sixty days after first incurring the unforeseeable expense, the facility shall submit to the department a written request containing:
 - (1) An explanation as to why the facility believes the expense was unforeseeable;
 - (2) An explanation as to why the facility believes the expense was beyond the managerial control of the owner or administrator of the facility; and
 - (3) A detailed breakdown of the unforeseeable expenses by expense line item.
- c. The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on their background and knowledge of basic care industry and business trends.
- d. The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.

- e. Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with section 75-02-07.1-23.

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

General Authority: NDCC 50-06-15

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

75-02-07.1-29. Reconsiderations and appeals.

1. Reconsiderations.

- a. Any requests for reconsideration of the final rate must be filed with the department within thirty days of the date of the rate notification.
- b. A request for reconsideration must include:
 - (1) A statement of each disputed item and the reason or basis for the dispute;
 - (2) The dollar amount of each adjustment that is disputed; and
 - (3) The authority in statute or rule upon which the facility is relying for each disputed item.
- c. The department may request additional documentation or information relating to the disputed item. If additional documentation is not provided within fourteen days of the department's request, the department shall make its determination based on the information and documentation available as of the fourteenth day following the date the department requested additional documentation.
- d. The department shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.

2. Appeals.

- a. A provider dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. An appeal may be perfected by mailing or delivering, on or before five p.m. on the thirty-first day after the date of mailing of the determination made with respect to a request for reconsideration, the information described in this subsection to the department, at the address the

department designates. An appeal under this section is perfected only if accompanied by written documents including:

- (1) A copy of the letter received from the department advising of the decision on the request for reconsideration;
- (2) A statement of each disputed item and the reason or basis for the dispute;
- (3) A computation and the dollar amount that reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;
- (4) The authority in statute or rule upon which the appealing party relies for each disputed item; and
- (5) The name, address, and telephone number of the person to whom all notices regarding the appeal may be sent.

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

General Authority: NDCC 50-06-15

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

